AN ACT
relating to certain insurance rates, forms, and practices;
providing penalties.

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

ARTICLE 1. RATE REQUIREMENTS

PART A. RATE FILINGS

SECTION 1.01. Chapter 5, Insurance Code, is amended by
adding Subchapters Q, S, and U to read as follows:

SUBCHAPTER Q. RATES FOR CERTAIN LINES

Art. 5.142. RATES FOR RESIDENTIAL PROPERTY INSURANCE

COVERAGE

Sec. 1. SCOPE. This article governs the regulation of rates
for residential property insurance.

Sec. 2. DEFINITIONS. (a) In this article:

(1) "Advisory organization" means an organization
licensed under Article 5.73 of this code.

(2) "Classification" means the grouping of risks with
similar risk characteristics so that differences in expected costs
may be appropriately recognized.

(3) "Disallowed expenses" includes:

   (A) administrative expenses; not including
acquisition, loss control, and safety engineering expenses, that
exceed 110 percent of the industry median for those expenses;

   (B) lobbying expenses;

   (C) investment expenses.
(C) advertising expenses, other than for advertising:
   (i) directly related to the services or products provided by the insurer;
   (ii) designed and directed at loss prevention; or
   (iii) for the promotion of organizations exempt from federal taxation under Section 501(c)(3), Internal Revenue Code of 1986, and its subsequent amendments;
(D) amounts paid or reserved by an insurer, whether classified by the insurer as a loss or an expense:
   (i) as damages in an action brought against the insurer for bad faith; or
   (ii) as fees, fines, or penalties for a civil or criminal violation of law;
(E) contributions to:
   (i) social, religious, political, or fraternal organizations; or
   (ii) organizations engaged in legislative advocacy;
(F) except as authorized by rule by the commissioner, fees and assessments paid to advisory organizations;
(G) any amount determined by the commissioner to be excess premiums charged by the insurer; and
(H) any unreasonably incurred expenses, as determined by the commissioner after notice and hearing.
(4) "Filer" means an insurer that files rates,
supplementary rating information, supporting information, rating
manuals, or any other information required to be filed under this
article.

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

(A) the Texas Windstorm Insurance Association
under Article 21.49 of this code; or

(B) the FAIR Plan Association under Article
21.49A of this code.

(6) "Line" means a type of insurance subject to this
article.

(7) "Rate" means the cost of insurance per exposure
unit, whether expressed as a single number or as a prospective loss
cost, with an adjustment to account for the treatment of expenses,
profit, and individual insurer variation in loss experience, and
before any application of individual risk variations based on loss
or expense considerations.

(8) "Rating manual" means a publication or schedule
that lists rules, rating factors, classifications, territory codes
and descriptions, rates, premiums, and other similar information
used by an insurer to determine the applicable premium charged an
insured for residential property insurance.

(9) "Residential property insurance" means insurance coverage against loss to residential real property at a fixed location or tangible personal property provided in a homeowners policy, which includes a tenant policy, a condominium owners policy, or a residential fire and allied lines policy.

(10) "Supplementary rating information" means any manual, rating schedule, plan of rules, rating rules, classification systems, territory codes and descriptions, rating plans, discount and surcharge programs, and other similar information used by the insurer to determine the applicable premium for an insured. The term includes factors and relativities, including increased limits factors, classification relativities, deductible relativities, minimum premiums, and other similar factors.

(11) "Supporting information" means:

(A) the experience and judgment of the filer and the experience or information of advisory organizations or other insurers relied on by the filer;

(B) the interpretation of any other information relied on by the filer;

(C) descriptions of methods used in making the rates; and

(D) any other information required by the commissioner by rule to be filed.

(b) For purposes of this subchapter, a rate is:

(1) excessive if the rate is likely to produce a
long-term profit that is unreasonably high in relation to the
insurance coverage provided;

(2) inadequate if the rate is insufficient to sustain
projected losses and expenses to which the rate applies, and
continued use of the rate:

(A) endangers the solvency of an insurer using
the rate; or

(B) has the effect of substantially lessening
competition or creating a monopoly within any market; or

(3) unfairly discriminatory if the rate:

(A) is not based on sound actuarial principles;

(B) does not bear a reasonable relationship to
the expected loss and expense experience among risks; or

(C) is based in whole or in part on the race,
creed, color, ethnicity, or national origin of the policyholder or
an insured.

Sec. 3. RATING CRITERIA. (a) An insurer shall set rates
for each line in accordance with this section.

(b) In setting rates, an insurer shall consider:

(1) past and prospective loss experience inside this
state, and outside this state if the state data are not credible;

(2) the peculiar hazards and experiences of individual
risks, past and prospective, inside and outside this state;

(3) the insurer's historical premium, exposure, loss,
and expense experience;

(4) catastrophe hazards within this state;

(5) operating expenses, excluding disallowed
expenses;

(6) investment income;

(7) a reasonable margin for profit; and

(8) any other relevant factors inside and outside this state.

(c) An insurer may:

(1) group risks by classification for the establishment of rates and minimum premiums; and

(2) modify classification rates to produce rates for individual risks in accordance with rating plans that establish standards for measuring variations in those risks on the basis of any factor listed in Subsection (b) of this section.

(d) Rates established under this section may not be excessive, inadequate, unreasonable, or unfairly discriminatory for the risks to which they apply.

(e) In setting rates applicable to policyholders in this state, an insurer shall use its own historical premium and loss data, as well as its own data for expenses and for profit and contingency factors. The commissioner may require an audit of the insurer's historical premium and loss data. The insurer may separately supplement its own historical premium and loss data with industry-wide historical premium and loss data for this state as necessary. The commissioner by rule may establish requirements for reporting historical premium and loss data under this subsection.

Sec. 4. RATE FILINGS. (a) An insurer shall file with the department all rates, supplementary rating information, reasonable and pertinent supporting information, and all applicable rating
manuals for risks written in this state. The insurer shall include in the filing any statistics or other information to support the rates to be used by the insurer and as required by the commissioner by rule, including information necessary to evidence that the computation of the rate does not include disallowed expenses. An insurer shall include in the filing all information concerning policy fees, service fees, and other fees that are charged or collected by the insurer under Article 21.35B of this code.

(b) The insurer shall file with each rate filing a certificate by an officer of the insurer that all rate classifications, the rates applicable to those classifications, and the risk factors to which those classifications apply are based on reasonably sound and verifiable actuarial principles and that no classifications are unfairly discriminatory.

(c) The commissioner may simplify filing requirements by rule for small insurers and new insurers, subject to the following:

(1) a "small insurer" is defined as an insurer, including a Lloyd's plan insurer or reciprocal exchange, that during the previous calendar year wrote less than two percent of the total homeowners premium in the state; if such an insurer is part of an insurance group, the total aggregate homeowners premium for the group must be less than two percent for any insurer in the group to be considered a small insurer for purposes of this subsection;

(2) a "new insurer" is defined as an insurer that, as of the effective date of S.B. No. 14, Acts of the 78th Legislature, Regular Session, 2003, is not authorized to write residential property insurance in this state and not affiliated with another
insurer that is authorized to write and is writing residential property insurance as of the effective date of S.B. No. 14, Acts of the 78th Legislature, Regular Session, 2003;

(3) the commissioner must specify what information the small insurer or new insurer must file to constitute a filing sufficient to comply with the filing requirements adopted under this article; and

(4) the commissioner shall allow for the immediate use of filed rates provided the rate filing does not constitute a significant overall rate increase, as determined by rule.

Sec. 5. PRIOR APPROVAL REQUIRED. (a) An insurer may not use a rate until the rate has been filed with the department and approved by the commissioner as provided by this section. For purposes of this section, a rate is filed with the department on the date the rate filing is received by the department.

(b) Not later than the 30th day after the date the rate is filed with the department, the commissioner shall:

(1) approve the rate if the commissioner determines that the rate complies with the requirements of this article; or

(2) disapprove the rate if the commissioner determines that the rate does not comply with the requirements of this article.

(c) If the commissioner approves a rate filing, the commissioner shall provide written or electronic notification of the approval to the insurer. On receipt of the notice of the commissioner's approval of a rate, the insurer may use the rate.

(d) Except as provided by Subsection (e) of this section or Section 9 of this article, if the rate has not been approved or
disapproved by the commissioner before the expiration of the 30-day period described by Subsection (b) of this section, the rate is deemed approved and the insurer may use the rate.

(e) The commissioner may extend the period for approval or disapproval of a rate filing for an additional 30-day period on the expiration of the 30-day period described by Subsection (b) of this section. If the rate has not been approved or disapproved by the commissioner before the expiration of the additional 30-day period described in this subsection, the rate is deemed approved and the insurer may use the rate. The commissioner may not extend the period for approval or disapproval of a rate filing beyond the additional 30-day period described in this subsection.

(f) If the department has requested additional information from the insurer during the first 30-day review period provided under Subsection (b) of this section or under the second 30-day review period provided under Subsection (e) of this section, the period of time between the date of the department's submission of the request for additional information to the insurer and the date of the receipt of the additional information by the department from the insurer shall not be counted in the days to determine what constitutes the first 30-day review period or the second 30-day review period. For purposes of this subsection, the date of the department's submission of the request for additional information is the date of the email or telephone call or postmarked date on the letter pertaining to the request for additional information.

(g) From the date of the filing of the rate with the commissioner to the effective date of the new rate, the insurer's
previously filed rate that is in effect as provided in this article shall remain in effect.

Sec. 6. DISAPPROVAL; WITHDRAWAL OF APPROVAL. (a) The commissioner shall disapprove a rate filed under this article if the commissioner determines that the rate does not meet the requirements of this article. The commissioner may consider the extent and nature of market competition in the residential property insurance market and the availability or lack of availability of residential property insurance in determining whether to disapprove any rates filed under this article.

(b) If the commissioner disapproves a rate filing before the 30th day after the date of the filing of the rate with the department, as provided by Section 5(b)(2) of this article and Subsection (e) of this section, or before the expiration of the additional 30-day period as provided by Section 5(e) of this article and Subsection (e) of this section, the commissioner shall issue an order specifying in what respects the rate filing fails to meet the requirements of this article. If the insurer has filed all of the information required to be filed under Section 4 of this article, the commissioner's order shall include the rates and terms which the commissioner would approve for use by the insurer. The filer is entitled to a hearing on written request to the commissioner not later than the 30th day after the effective date of the disapproval order.

(c) If the commissioner withdraws approval of a rate that is in effect, the commissioner shall notify in writing the insurer that made the filing and may issue a withdrawal of approval order
only after a hearing held not sooner than the 20th day after the
date of the written notice. The order must be issued not later than
the 15th day after the close of the hearing and must specify how the
rate fails to meet the requirements of this article. The order must
state the future date on which the further use of the disapproved
rate is prohibited and, if applicable, specify the interim rate as
provided in Subsection (d) of this section.

(d) If an insurer has no legally effective rate because of
an order withdrawing the approval of rates that are in effect, the
commissioner may specify an interim rate at the time the order is
issued. The interim rate may be modified by the commissioner on the
commissioner's own motion or on motion by the insurer. The interim
rate or any modification of that rate shall take effect on the date
specified in the commissioner's order.

(e) A commissioner's order disapproving a rate or
withdrawing the previous approval of a rate, and any notice of the
commissioner's intent to withdraw a previous approval, must state
the grounds for the disapproval or for the withdrawal of previous
approval in sufficient detail to reasonably inform the filer of the
grounds.

(f) An insurer may not use a rate in this state after
disapproval or withdrawal of approval of the rate by the
commissioner, except as provided by Section 13(b) of this article.

Sec. 7. SUPERVISION REQUIREMENT. If the commissioner
determines after a hearing that an insurer's rates require
supervision because of the insurer's financial condition or the
insurer's rating practices, the commissioner may require the
insurer to file with the commissioner all rates, supplementary
ingrating information, and any supporting information prescribed by
the commissioner.

Sec. 8. PUBLIC INFORMATION. Each rate filing and any
supporting information filed under this article are subject to
disclosure under Chapter 552, Government Code, as of the date the
filing is received by the commissioner.

Sec. 9. RIGHTS OF INSURED, PUBLIC INSURANCE COUNSEL, AND
OTHERS. An insured, the public insurance counsel, and any other
interested person may make a written application to the
commissioner not later than the 20th day after the date of a rate
filing under Section 5 of this article requesting a hearing on the
rate filing. The application must specify the grounds on which the
applicant is requesting the hearing. If the commissioner finds
that the application is made in good faith and that the applicant
establishes reasonable grounds to justify holding the hearing, the
commissioner shall conduct a hearing under Chapter 2001, Government
Code. After that hearing, the commissioner has 30 days to
disapprove the filing under Section 6 of this article, or it is
deemed approved.

Sec. 10. QUARTERLY LEGISLATIVE REPORT. (a) Each insurer
subject to this article shall file with the commissioner on a
quarterly basis information relating to changes in losses,
premiums, and market share.

(b) The commissioner shall report on a quarterly basis to
the governor, the lieutenant governor, and the speaker of the house
of representatives on the information provided by the insurers'
reports, summary information obtained from market conduct
examinations and analyses to the extent such information is not
confidential by law, and consumer complaints received by the
department.

Sec. 11. RATE HEARINGS; ADMINISTRATIVE PROCEDURES. Chapter
2001, Government Code, applies to all hearings on rates conducted
under this article. To the extent of any conflict between this
article and Chapter 2001, Government Code, this article prevails.

Sec. 12. APPEAL. An insurer, the public insurance counsel,
or an interested person described by Section 9 of this article
aggrieved by an order of the commissioner issued under this article
may, not later than the 30th day after the date the commissioner
issued the order, appeal the order in accordance with Subchapter D,
Chapter 36, of this code.

Sec. 13. JUDICIAL REVIEW. (a) Not later than the 10th day
after the date of receipt of the commissioner's order under Section
6(c) of this article, an insurer may file a petition for judicial
review in a district court in Travis County. The standard of review
of the commissioner's order is substantial evidence.

(b) During the pendency of the appeal, an insurer may charge
either its existing rates or the rates as ordered by the
commissioner.

Sec. 14. REFUND REQUIRED. If on final appeal the court
upholds the commissioner's determination as to rates, the insurer
shall refund the difference in overcharged premium to each
policyholder, plus interest. The interest rate is the prime rate
plus one percent as published in The Wall Street Journal on the
first day of each calendar year that is not a Saturday, Sunday, or legal holiday.

Sec. 15. NOTICE TO POLICYHOLDER. An insurer shall send to each holder of a policy of insurance subject to this article notice of any rate increase scheduled to take effect on the renewal of the policy that exceeds 10 percent of the amount paid by the policyholder for coverage under the policy immediately before renewal.

Sec. 16. RULES. The commissioner shall adopt rules as necessary to implement this article.

Sec. 17. EXPIRATION. (a) This article expires December 1, 2004.

SUBCHAPTER S. REFUND

Art. 5.144. REFUND OF EXCESSIVE OR DISCRIMINATORY PREMIUM; DISCOUNT. (a) In this article:

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

(A) the Texas Windstorm Insurance Association under Article 21.49 of this code; or

(B) the FAIR Plan Association under Article 21.49A of this code.
(2) "Personal automobile insurance" means motor vehicle insurance coverage for the ownership, maintenance, or use of a private passenger, utility, or miscellaneous type motor vehicle, including a motor home, trailer, or recreational vehicle, that is:

(A) owned or leased by an individual or individuals; and

(B) not primarily used for the delivery of goods, materials, or services, other than for use in farm or ranch operations.

(3) "Residential property insurance" means insurance coverage against loss to real or tangible personal property at a fixed location that is provided through a homeowners policy, including a tenants policy, a condominium owners policy, or a residential fire and allied lines policy.

(b) Except as provided by Subsection (d) of this article, if the commissioner determines that an insurer has charged a rate for personal automobile insurance or residential property insurance that is excessive or unfairly discriminatory, as described by Article 5.13-2 or 5.101 of this code, the commissioner may order the insurer to:

(1) issue a refund of the excessive or unfairly discriminatory portion of the premium directly to each affected policyholder if the amount of that portion of the premium is at least 7.5 percent of the total premium charged for the coverage; or

(2) if the amount of that portion of the premium is less than 7.5 percent:
(A) provide each affected policyholder who
renews the policy a future premium discount in the amount of the
excessive or unfairly discriminatory portion of the premium; and
(B) provide each affected policyholder who does
not renew or whose coverage is otherwise terminated a refund in the
amount described by Subdivision (1) of this subsection.
(c) On or before the 20th day after the date an order is
issued under this article, an insurer may request a rate hearing to
be conducted by the State Office of Administrative Hearings to
determine whether the rate that is subject to the order is excessive
and discriminatory. The office of public insurance counsel may
participate in a hearing conducted under this subsection and
present evidence at the hearings.
(d) After completion of the rate hearing under Subsection
(c) of this section, the administrative law judge shall prepare a
proposal for decision under Section 40.058 of this code and remand
the case to the commissioner recommending:
(1) that the commissioner affirm the commissioner's
order; or
(2) additional review of the order by the commissioner
to be completed not later than the 10th day after the date the
commissioner receives the administrative law judge's proposal,
that the parties enter into negotiations, or that the commissioner
take other appropriate action with respect to the order within a
time period specified by the administrative law judge.
(e) An action or failure to act of the commissioner under
Subsection (d) of this section is subject to appeal under
Subchapter D, Chapter 36 of this code.

(f) This article does not apply to rates for personal automobile insurance or residential property insurance for which an insurer has obtained prior approval of those rates under Section 5A, Article 5.13-2 of this code.

(g) Subsection (b) of this section applies prospectively to a rate filed on or after the effective date of S.B. No. 14, Acts of the 78th Legislature, Regular Session, 2003.

SUBCHAPTER U. RATING TERRITORIES FOR CERTAIN LINES

Art. 5.171. RATING TERRITORIES. Notwithstanding any other provision of this code, an insurer may not use rating territories that subdivide a county unless the county is subdivided and the rate for any subdivisions within that county is not greater than 15 percent higher than the rate used in any other subdivisions in the county by that insurer, except that the commissioner may by rule allow a greater rate difference for residential property insurance or personal automobile insurance.

Art. 5.172. APPLICATION TO CERTAIN INSURERS. Notwithstanding Sections 912.002, 941.003, 942.003, or any other provision of this code, this subchapter does not apply to a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange, before January 1, 2004.

PART B. RATES FOR CERTAIN PERSONAL AUTOMOBILE INSURANCE

SECTION 1.02. The heading to Article 5.101, Insurance Code, is amended to read as follows:

Art. 5.101. FLEXIBLE RATING PROGRAM FOR PERSONAL AUTOMOBILE [CERTAIN] INSURANCE [LINES]
SECTION 1.03. Section 1, Article 5.101, Insurance Code, is amended to read as follows:

Sec. 1. [PURPOSE] APPLICABILITY. (a) [The program on flexible rating is designed to help stabilize the rates charged for insurance in lines of property and casualty insurance covered by Subchapters A and C of this chapter.]

[(b)] This article applies only to personal automobile insurance [does not apply to:]

[(1) ocean marine insurance,]
[(2) inland marine insurance,]
[(3) fidelity, surety and guaranty bond insurance,]
[(4) errors and omissions insurance,]
[(5) directors' and officers' liability insurance,]
[(6) general liability insurance,]
[(7) commercial property insurance,]
[(8) workers' compensation insurance,]
[(9) professional liability insurance for physicians and health care providers as defined in Article 5.15-1 of this code,]

or

[(10) attorney's professional liability insurance].

[(b)] [(c)] Notwithstanding Subsection (a) of this section, this article does not apply to premium rates for motor vehicle insurance computed using a mile-based rating plan under Article 5.01-4 of this code.

SECTION 1.04. Section 2, Article 5.101, Insurance Code, is amended by adding Subdivision (6) to read as follows:

(6) "Personal automobile insurance" means motor
vehicle insurance coverage for the ownership, maintenance, or use
of a private passenger, utility, or miscellaneous type motor
vehicle, including a motor home, mobile home, trailer, or
recreational vehicle, that is:

(A) owned or leased by an individual or
individuals; and

(B) not primarily used for the delivery of goods,
materials, or services, other than for use in farm or ranch
operations.

SECTION 1.05. Section 3, Article 5.101, Insurance Code, is
amended by amending Subsection (e) and adding Subsection (r) to
read as follows:

(e) An insurer may use any rate by classification within the
flexibility band without prior approval by the commissioner. The
rate may not include expenses disallowed under Subsection (o) of
this section. Within 30 days of the effective date of the benchmark
rate for a particular line, each insurer which proposes to write
that line of insurance in this state during the effective period of
the benchmark rate shall file with the commissioner its proposed
rate by line, and by classification and territory under the rating
manual promulgated by the commissioner, unless the insurer has
obtained approval from the commissioner under Subsection (l) of
this section to use its own rating manual. The insurer shall
include in the filing any statistics to support the rates to be used
by the insurer as required by rule of the commissioner, including
information necessary to evidence that the calculation of the rate
does not include disallowed expenses. [Rates proposed in filings.
made under this subsection must be just, reasonable, adequate and
not excessive for the risks to which they apply.] The rate takes
effect on the date specified by the insurer, but not later than the
60th day after the date of filing of the rate with the commissioner.
For the purpose of this section, the date the rate is received by
the commissioner is the date of filing. From and after the
effective date of the benchmark rate and prior to the insurer's
specified effective date of a new rate, the insurer's previously
filed rate shall remain in effect. Subject to the limitations
contained in Subsection (p) of this section and Section 3B of this
article, an insurer may continue to use its previously filed rates
or may make additional rate filings based on the previous benchmark
rate for new policies or policies renewing prior to the specified
effective date of its new rate.

(r) An insurer who writes insurance in a line subject to
this article is subject to the rating standards described by
Section 3A of this article.

SECTION 1.06. Article 5.101, Insurance Code, is amended by
adding Sections 3A, 3B, 3C, and 7 to read as follows:

Sec. 3A. RATING STANDARDS. (a) Rates used by insurers
subject to this article may not be excessive, inadequate,
unreasonable, or unfairly discriminatory for the risks to which
they apply.

(b) For purposes of this section, a rate is:

(1) excessive if the rate is likely to produce a
long-term profit that is unreasonably high in relation to the
insurance coverage provided;
(2) inadequate if the rate is insufficient to sustain projected losses and expenses to which the rate applies, and continued use of the rate:

(A) endangers the solvency of an insurer using the rate; or

(B) has the effect of substantially lessening competition or creating a monopoly within any market; or

(3) unfairly discriminatory if the rate:

(A) is not based on sound actuarial principles;

(B) does not bear a reasonable relationship to the expected loss and expense experience among risks; or

(C) is based wholly or partly on the race, creed, color, ethnicity, or national origin of the policyholder or an insured.

Sec. 3B. CHANGE OF RATE WITHIN FLEXIBILITY BAND; REQUIRED FILING. Notwithstanding Section 3(e) of this article, an insurer who changes a rate used by the insurer that is established within the flexibility band shall file the changed rate with the department in the manner prescribed by rule by the commissioner.

Sec. 3C. REFUND. If the commissioner determines that rates of an insurer do not comply with the rating standards established under this article and are excessive or discriminatory, the commissioner may order the insurer to make a refund in the manner prescribed by Article 5.144 of this code.

Sec. 7. EXPIRATION. This article expires December 1, 2004.

PART C. TRANSITION

SECTION 1.07. An insurer's initial filing under Section 10,
Article 5.142, Insurance Code, as added by this article, must include the information required under that section beginning with the calendar quarter beginning January 1, 2003.

ARTICLE 2. POLICY FORMS AND ENSORSEMENTS

SECTION 2.01. Chapter 5, Insurance Code, is amended by adding Subchapter T to read as follows:

SUBCHAPTER T. POLICY FORMS FOR CERTAIN LINES

Art. 5.145. POLICY FORMS FOR PERSONAL AUTOMOBILE INSURANCE COVERAGE AND RESIDENTIAL PROPERTY INSURANCE COVERAGE

Sec. 1. DEFINITIONS. In this article:

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

(A) the Texas Windstorm Insurance Association under Article 21.49 of this code;

(B) the FAIR Plan Association under Article 21.49A of this code; or

(C) the Texas Automobile Insurance Plan Association under Article 21.81 of this code.

(2) "Personal automobile insurance" means motor vehicle insurance coverage for the ownership, maintenance, or use
of a private passenger, utility, or miscellaneous type motor
vehicle, including a motor home, trailer, or recreational vehicle,
that is:

(A) owned or leased by an individual or
individuals; and

(B) not primarily used for the delivery of goods,
materials, or services, other than for use in farm or ranch
operations.

(3) "Residential property insurance" means insurance
coverage against loss to residential real property at a fixed
location, or tangible personal property, that is provided in a
homeowners policy, including a tenants policy, a condominium owners
policy, or a residential fire and allied lines policy.

Sec. 2. REGULATION OF POLICY FORMS AND ENDORSEMENTS.
(a) Notwithstanding any other provision in this code and except as
provided by this section, an insurer is governed by the provisions
of Section 8, Article 5.13-2 of this code, relating to policy forms
and endorsements for personal automobile insurance and residential
property insurance.

(b) An insurer may continue to use the policy forms and
endorsements promulgated, approved, or adopted under Articles 5.06
and 5.35 of this code on notification to the commissioner in writing
that the insurer will continue to use those forms.

Sec. 3. REQUIREMENTS FOR FORMS; PLAIN LANGUAGE REQUIREMENT.
(a) Each form filed under this article must comply with applicable
state and federal law.

(b) Each form for a policy of personal automobile insurance
must provide the coverages mandated under Articles 5.06-1 and 5.06-3 of this code unless the coverages are rejected by the named insured in the manner provided by those articles.

(c) A form may not be used if it is not in plain language. For the purposes of this section, a form is written in plain language if it achieves the minimum score established by the commissioner on the Flesch reading ease test or an equivalent test selected by the commissioner or, at the option of the commissioner, if it conforms to the language requirements in a National Association of Insurance Commissioners model act relating to plain language. This section does not apply to policy language that is mandated by state or federal law.

Sec. 4. PERSONAL AUTOMOBILE INSURANCE. (a) A contract or agreement that is not written into the application for insurance coverage and the personal automobile insurance policy:

(1) is void and of no effect; and

(2) violates this article and Subchapter A of this chapter.

(b) A contract or agreement described by Subsection (a) of this section constitutes grounds for the revocation of the certificate of authority of an insurer to write personal automobile insurance in this state.

Sec. 5. PUBLIC INSURANCE COUNSEL. Notwithstanding Article 1.35A of this code, the office of public insurance counsel may submit written comments to the commissioner and otherwise participate regarding individual company filings made under Article 5.13-2 of this code.
Sec. 6. RULEMAKING. The commissioner may adopt reasonable and necessary rules to implement this article.

ARTICLE 3. USE OF CREDIT SCORING

PART A. CREDIT SCORING

SECTION 3.01. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.49-2U to read as follows:

Art. 21.49-2U. USE OF CREDIT SCORING IN CERTAIN PERSONAL LINES OF INSURANCE

Sec. 1. DEFINITIONS. In this article:

(1) "Adverse effect" means an action taken by an insurer in connection with the underwriting of insurance for a consumer that results in the denial of coverage, the cancellation or nonrenewal of coverage, or the offer to and acceptance by a consumer of a policy form, premium rate, or deductible other than the policy form, premium rate, or deductible for which the consumer specifically applied.

(2) "Agent" means a person licensed or required to be licensed as a general property and casualty insurance agent under Article 21.14 of this code.

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

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

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

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

(7) "Credit report" means any written, oral, or other communication of information by a consumer reporting agency that:

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

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

(8) "Credit score" or "insurance score" means a number or rating derived from an algorithm, computer application, model, or other process that is based on credit information and used to predict the future insurance loss exposure of a consumer.

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

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

(11) "Personal insurance" means:
(A) a personal automobile insurance policy;
(B) a residential property insurance policy;
(C) a residential fire and allied lines insurance
policy; or
(D) a noncommercial insurance policy covering a
boat, personal watercraft, snowmobile, or recreational vehicle.

Sec. 2. APPLICATION. This article applies to an insurer
that writes personal insurance coverage and uses credit information
or credit reports for the underwriting or rating of that coverage.

Sec. 3. PROHIBITED USE OF CREDIT INFORMATION. (a) An
insurer may not:
(1) use a credit score that is computed using factors
that constitute unfair discrimination;
(2) deny, cancel, or nonrenew a policy of personal
insurance solely on the basis of credit information without
consideration of any other applicable underwriting factor
independent of credit information; or
(3) take an action that results in an adverse effect
against a consumer because the consumer does not have a credit card
account without consideration of any other applicable factor independent of credit information.

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

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

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

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

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

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

Sec. 4. NEGATIVE FACTORS. (a) An insurer may not use any of the following as a negative factor in any credit scoring methodology or in reviewing credit information to underwrite or rate a policy of personal insurance:

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

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

(3) a collection account with a medical industry code, if so identified on the consumer's credit report.
(b) Multiple lender inquiries made within 30 days of a prior inquiry, if coded by the consumer reporting agency on the consumer's credit report as from the home mortgage industry, shall be considered by an insurer as only one inquiry.

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

Sec. 5. EFFECT OF EXTRAORDINARY EVENTS.

(a) Notwithstanding any other law, an insurer shall, on written request from an applicant for insurance coverage or an insured, provide reasonable exceptions to the insurer's rates, rating classifications, or underwriting rules for a consumer whose credit information has been directly influenced by a catastrophic illness or injury, by the death of a spouse, child, or parent, by temporary loss of employment, by divorce, or by identity theft. In such a case, the insurer may consider only credit information not affected by the event or shall assign a neutral credit score.

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

(c) An insurer may also consider granting an exception to an applicant for insurance coverage or an insured for an extraordinary event not listed in this section.

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

Sec. 6. DISPUTE RESOLUTION; ERROR CORRECTION. (a) If it is determined through the dispute resolution process established under Section 611(a)(5) of the Fair Credit Reporting Act (15 U.S.C. Section 1681i), as amended, that the credit information of a current insured was inaccurate or incomplete or could not be verified and the insurer receives notice of that determination from the consumer reporting agency or from the insured, the insurer shall re-underwrite and re-rate the insured not later than the 30th day after the date of receipt of the notice.

(b) After re-underwriting or re-rating the insured, the insurer shall make any adjustments necessary within 30 days, consistent with the insurer's underwriting and rating guidelines.

If an insurer determines that the insured has overpaid premium, the insurer shall credit the amount of overpayment. The insurer shall compute the overpayment back to the shorter of:

(1) the last 12 months of coverage; or
(2) the actual policy period.

Sec. 7. DISCLOSURE TO CONSUMERS FOR USE OF CREDIT SCORING.

(a) An insurer may use credit scoring to develop rates, rating classifications, or underwriting criteria regarding lines of insurance subject to this article except for factors that constitute unfair discrimination.

(b) An insurer that uses credit scoring in the underwriting or rating of insurance subject to this article shall disclose to each applicant for insurance coverage that the applicant's credit
report may be used in the underwriting or rating of the applicant's policy. The disclosure must be provided at the time of application by the insurer or agent and may be given orally, in writing, or electronically.

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

(d) An insurer or its agents shall disclose to its customers, on a form promulgated by the commissioner, whether credit information will be obtained on the applicant or insured or on any other member or members of the applicant's or insured's household and used as part of the insurance credit scoring process. If credit information is obtained or used on the applicant or insured, or on any member of the applicant's or insured's household, the insurer shall disclose to the applicant the name of each person on whom credit information was obtained or used and how each person's credit information was used to underwrite or rate the policy.

Sec. 8. NOTICE OF ACTION RESULTING IN ADVERSE EFFECT.

(a) If an insurer takes an action resulting in an adverse effect with respect to an applicant for insurance coverage or insured based in whole or in part on information contained in a credit report, the insurer shall provide to the applicant or insured within 30 days:

(1) written or electronic notice of the action resulting in an adverse effect and the reasons for that action;
(2) the name, address, and telephone number of the consumer reporting agency, including a toll-free number established by the agency and the consumer reporting agency's Internet website, if applicable;

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

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

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

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

(b) The insurer shall include a description of not more than four factors that were the primary influences of the action resulting in the adverse effect.

(c) The use by the insurer of a generalized term such as "poor credit history," "poor credit rating," or "poor credit score" does not constitute sufficient notice under this section of the action resulting in the adverse effect.

(d) Standardized credit explanations provided by a consumer reporting agency or other third-party vendors are also sufficient to comply with this section.
Sec. 9. MANDATED FILING WITH DEPARTMENT. An insurer that uses credit scores to underwrite and rate risks shall file the credit scoring models or other credit scoring processes with the department. Another entity may file credit scoring models on behalf of an insurer. A filing that includes credit scoring may include loss experience justifying the use of credit information.

Sec. 10. PUBLIC INFORMATION. A credit scoring model filed for purposes of compliance with this article, as of the date the filing is received by the department:

(1) is public information;

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

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

Sec. 11. INDEMNIFICATION. (a) An insurer shall indemnify, defend, and hold its agent harmless from and against all liability, fees, and costs that arise out of or relate to the actions, errors, or omissions of an agent who obtains or uses credit information or credit scores for the insurer if the agent follows the instructions of or procedures established by the insurer and complies with any applicable law or rule.

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

Sec. 12. SALE OF POLICY TERM INFORMATION BY CONSUMER REPORTING AGENCY PROHIBITED. (a) A consumer reporting agency may not provide or sell data or lists that include any information that, in whole or in part, was submitted in conjunction with an insurance
inquiry about a consumer's credit information or a request for a
credit report or credit score, including:

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

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

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

(1) the agent from whom information was received;
(2) the insurer on whose behalf the agent acted; or
(3) that insurer's affiliates.

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

Sec. 13. RULES. (a) The commissioner may adopt rules as
necessary to implement this article.

(b) The commissioner shall promulgate by rule the allowable
differences in rates charged by insurers due solely to the
difference in credit scores.

Sec. 14. EFFECT OF VIOLATION. An insurer that violates this
article or a rule adopted under this article commits an unfair
practice in violation of Article 21.21 of this code and is subject
to sanctions under Chapter 82 of this code.

Sec. 15. REPORT. (a) The commissioner shall submit a
report to the governor, the lieutenant governor, the speaker of the
house of representatives, and the members of the 79th Legislature
on the information collected from the insurer filings required
under this article and other information obtained by the department
regarding the use of credit information by insurers. The report
must be submitted before January 1, 2005.

(b) The report required under this section must include:
   (1) a summary statement regarding the use of credit
information, credit reports, and credit scores by insurers,
presented in a manner that protects the identity of individual
insurers and consumers;
   (2) a description of insurer practices and the effect
of different credit models, presented in a manner that protects the
identity of individual insurers and consumers;
   (3) the number of consumer complaints submitted to the
department regarding the use of credit information;
   (4) a description of favorable and unfavorable effects
on consumers related to the use of credit scoring from information
that may be provided by insurers, including the number of consumers
receiving lower or higher premiums;
   (5) any disproportionate impact on any class of
individuals, including classes based on income, race, or ethnicity,
resulting from the use of credit, to the extent that information is
readily available;
   (6) recommendations from the department to the
legislature regarding the use of credit information by insurers;
and
   (7) any other information considered necessary by the
commissioner.

(c) This section expires March 1, 2005.

Sec. 16. DUTIES OF DEPARTMENT. The department shall:

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

(2) post the report required under Section 15 of this article on the department's Internet website.

PART B. TRANSITION

SECTION 3.02. An insurer that is using an insurance credit score system on the effective date of this Act must file the insurance credit scoring models described by Section 9, Article 21.49-2U, Insurance Code, as added by this article, with the commissioner of insurance not later than the 90th day after the effective date of this Act. An insurer that uses an insurance credit score system after the effective date of this Act must file the insurer's insurance credit scoring models with the commissioner of insurance before using those models.

SECTION 3.03. (a) This article applies only to a residential property or personal automobile insurance policy:

(1) that is delivered, issued for delivery, or renewed on or after January 1, 2004;

(2) the application for which is submitted on or after January 1, 2004; or

(3) that is subject to determination of denial, cancellation, or nonrenewal on or after January 1, 2004.

(b) A residential property or personal automobile insurance
policy delivered, issued for delivery, or renewed before January 1, 2004, or the application for which is submitted before January 1, 2004, or that is subject to determination of denial, cancellation, or nonrenewal before January 1, 2004, is governed by the law as it existed immediately before January 1, 2004, and that law is continued in effect for that purpose.

ARTICLE 4. INITIAL RATE FILINGS; RATE REDUCTION

SECTION 4.01. Subchapter C, Chapter 5, Insurance Code, is amended by adding Article 5.26-1 to read as follows:

Art. 5.26-1. RESIDENTIAL PROPERTY INSURANCE INITIAL RATE FILINGS; RATE REDUCTION

Sec. 1. APPLICATION; DEFINITIONS. (a) This article applies only to residential property insurance.

(b) The definitions adopted under Article 5.142 of this code apply to this article.

Sec. 2. INITIAL RATE FILING. (a) Not later than the 20th day after the effective date of this article, each insurer subject to Article 5.142 of this code must file the insurer's rates, supporting information, and supplementary rating information with the commissioner. The insurer may notify the department that the insurer is using the rate filing submitted under Article 5.141 of this code to comply with the requirements of this article, or the insurer may file an update to the material filed under Article 5.141 of this code. An insurer shall use a rate filed under this subsection not later than the 30th day after the effective date of S.B. No. 14, Acts of the 78th Legislature, Regular Session, 2003.

(b) The department may approve the rate filed by an insurer
under Subsection (a) of this section or modify a filed rate not later than the 60th day after the effective date of this article for each insurer with $10 million or more in direct written residential property insurance premium in this state during 2002 and not later than the 90th day after the effective date of this article for each insurer with less than $10 million in direct written residential property insurance premium. An approved or modified rate under this subsection must be just, reasonable, adequate, not excessive, and not unfairly discriminatory for the risks to which it applies. The department has exclusive jurisdiction to determine a rate under this subsection. The department shall notify the insurer of the applicable rate. The rate determined by the department under this subsection or determined under Subsection (c) of this section shall take effect on the date specified by the insurer, but not later than the later of:

(1) the 30th day after the date the commissioner notifies the insurer of the rate determination under this subsection; or

(2) the 30th day after the date the rate filed by the insurer is deemed approved under Subsection (c) of this section.

(c) A rate filed by an insurer under Subsection (a) of this section that is not modified on or before the applicable deadline for modification described by Subsection (b) is deemed approved on the date of the applicable deadline for modification.

Sec. 3. APPEAL TO COMMISSIONER. Not later than the 10th day after the date of receipt by the insurer of notification from the department of rates determined by the department under Section 2(b)
of this article, an insurer may appeal the department's decision to
the commissioner.

Sec. 4. HEARING. Not later than the 30th day after the date
of receipt of notification of an insurer's appeal under Section 3 of
this article, the commissioner shall conduct a hearing and issue an
order on the insurer's appeal. The burden of proof is on the insurer
to show, by clear and convincing evidence, that the rate reduction
specified by the department would produce inadequate rates.
Notwithstanding any other provision of this code or the Government
Code, the hearing shall not be conducted by the State Office of
Administrative Hearings, but directly by the commissioner. The
commissioner, by order, may affirm the rate reduction, grant a
lesser rate reduction, or order a greater rate reduction than the
rate reduction imposed under Section 2(b) of this article.

Sec. 5. JUDICIAL REVIEW. (a) Not later than the 10th day
after the date of receipt of the commissioner's order under Section
4 of this article, an insurer may file a petition for judicial
review in a district court of Travis County. The standard of review
of the commissioner's order is substantial evidence.

(b) During the pendency of the appeal, an insurer may charge
either its existing rates or the rates as ordered by the
commissioner.

Sec. 6. REFUND REQUIRED. If on final appeal the court
upholds the commissioner's determination that the insurer's rates
are excessive, the insurer shall refund the difference in
overcharged premium to each policyholder, plus interest. The
interest rate is the prime rate plus one percent as published in The
Wall Street Journal on the first day of each calendar year that is not a Saturday, Sunday, or legal holiday.

Sec. 7. EXPIRATION. (a) This article expires September 1, 2004.

(b) The expiration of this article does not affect an action or proceeding against an insurer subject to that law for a failure to comply with that law before its expiration, regardless of when the action or proceeding was commenced, and that law is continued in effect for that purpose.

ARTICLE 5. RATE REGULATION EFFECTIVE UNTIL DECEMBER 1, 2004

SECTION 5.01. Article 5.13, Insurance Code, is amended to read as follows:

Art. 5.13. SCOPE OF SUBCHAPTER [SUB-CHAPTER]. (a) This subchapter [Sub-chapter] applies to every insurance company, corporation, interinsurance exchange, mutual, reciprocal, association, Lloyd's plan, [Lloyd's] or other organization or insurer writing any of the characters of insurance business herein set forth, hereinafter called "Insurer"; provided that nothing in this entire subchapter [Sub-chapter] shall [ever] be construed to apply to any county or farm mutual insurance company or association, as regulated under Chapters 16 and 17 of this code, except that Article 5.13-2 of this code shall apply to a county mutual insurance company with respect to rates for commercial automobile insurance [Code].

(b) This subchapter [Sub-chapter] applies to the writing of casualty insurance and the writing of fidelity, surety, and guaranty bonds, on risks or operations in this State except as
herein stated.

(c) Except as otherwise provided by this subchapter, this subchapter [This Subchapter] does not apply to the writing of motor vehicle, life, health, accident, professional liability, reinsurance, aircraft, fraternal benefit, fire, lightning, tornado, windstorm, hail, smoke or smudge, cyclone, earthquake, volcanic eruption, rain, frost and freeze, weather or climatic conditions, excess or deficiency of moisture, flood, the rising of the waters of the ocean or its tributaries, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, strike or lockout, water or other fluid or substance, resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes or other conduits or containers, or resulting from casual water entering through leaks or opening in buildings or by seepage through building walls, including insurance against accidental injury of such sprinklers, pumps, fire apparatus, conduits or container, workers' [workmen's] compensation, inland marine, ocean marine, marine, or title insurance; nor does this subchapter [Subchapter] apply to the writing of explosion insurance, except insurance against loss from injury to person or property which results accidentally from steam boilers, heaters or pressure vessels, electrical devices, engines and all machinery and appliances used in connection therewith or operation thereby.

(d) This subchapter [Subchapter] shall not be construed as
limiting in any manner the types or classes of insurance which may be written by the several types of insurers under appropriate statutes or their charters or permits.

(e) The regulatory power herein conferred is vested in the commissioner [Board of Insurance Commissioners of the State of Texas. Within the Board, the Casualty Insurance Commissioner shall have primary supervision of regulation herein provided, subject however to the final authority of the entire Board].

SECTION 5.02. The heading of Article 5.13-2, Insurance Code, is amended to read as follows:

Art. 5.13-2. RATES AND FORMS FOR CERTAIN [GENERAL LIABILITY AND COMMERCIAL] PROPERTY AND CASUALTY INSURANCE [COVERAGE]

SECTION 5.03. Sections 1 and 2, Article 5.13-2, Insurance Code, are amended to read as follows:

Sec. 1. PURPOSE. This article governs the regulation of insurance described by Section 2 of this article [general liability, commercial property, which shall include farm and ranch owners and farm and ranch policies, all commercial casualty, and medical professional liability insurance rates and forms. It does not govern automobile, fidelity, surety, or guaranty bonds]. The purposes of this article are to:

(1) promote the public welfare by regulating insurance rates to prohibit excessive, inadequate, or unfairly discriminatory rates;

(2) promote availability of insurance;

(3) promote price competition among insurers to provide rates and premiums that are responsive to competitive

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market conditions;

(4) prohibit price-fixing agreements and other anticompetitive behavior by insurers;

(5) regulate the insurance forms used for lines of insurance subject to this article to ensure that they are not unjust, unfair, inequitable, misleading, or deceptive; and

(6) provide regulatory procedures for the maintenance of appropriate information reporting systems.

Sec. 2. SCOPE. (a) This article applies to all lines of the following insurance written under policies or contracts of insurance issued by an insurer authorized to engage in the business of insurance in this state:

(1) general liability insurance;

(2) commercial property insurance, including farm and ranch insurance and farm and ranch owners insurance;

(3) all commercial casualty insurance, except as provided by Subsection (b) of this section;

(4) medical professional liability insurance;

(5) fidelity and surety bonds other than criminal court appearance bonds;

(6) personal umbrella insurance;

(7) personal liability insurance;

(8) guaranteed auto protection (GAP) insurance;

(9) involuntary unemployment insurance;

(10) financial guaranty insurance;

(11) inland marine insurance;

(12) rain insurance;
(13) hail insurance on farm crops; and

(14) commercial automobile insurance [written under policies or contracts of insurance issued by a licensed insurer, other than a fidelity, surety, or guaranty bond or an automobile insurance policy].

(b) Except as otherwise specifically provided by this article, this article does not apply to a line of insurance regulated under Subchapter A or C of this chapter.

(c) The commissioner shall adopt rules governing the manner in which forms and rates for the various classifications of risks insured under inland marine insurance, as determined by the commissioner, are regulated.

SECTION 5.04. Subdivision (2), Section 3, Article 5.13-2, Insurance Code, is amended to read as follows:

(2) "Insurer" means an insurer to which Article 5.13 of this code applies, but does not include the Texas Windstorm Insurance Association or the Texas FAIR Plan Association. However, the provisions of Sections 4, 5, 6, and 7 of this article shall not apply to Lloyd's or reciprocals with respect to commercial property insurance, and the provisions of Sections 4, 5, 6, 7, and 8 of this article shall not apply to Lloyd's or reciprocals with respect to inland marine insurance, rain insurance, or hail insurance on farm crops. The provisions of Sections 4, 5, 6, and 7 of this article shall apply to county mutual insurance companies with respect to commercial automobile insurance.

SECTION 5.05. This article expires December 1, 2004.
ARTICLE 6. RATE REGULATION EFFECTIVE DECEMBER 1, 2004

SECTION 6.01. Article 5.13, Insurance Code, is amended to read as follows:

Art. 5.13. SCOPE OF SUBCHAPTER [SUB-CHAPTER]. (a) This subchapter [Sub-chapter] applies to every insurance company, corporation, interinsurance exchange, mutual, reciprocal, association, Lloyd's plan, [Lloyd's] or other organization or insurer writing any of the characters of insurance business herein set forth, hereinafter called "Insurer"; provided that nothing in this entire subchapter [Sub-chapter] shall [ever] be construed to apply to any county or farm mutual insurance company or association, as regulated under Chapters 911 [16] and 912 [17] of this code, except that Article 5.13-2 of this code shall apply to a county mutual insurance company with respect to personal automobile and commercial automobile insurance, residential and commercial property insurance, and inland marine insurance [Code].

(b) This subchapter [Sub-chapter] applies to the writing of casualty insurance and the writing of fidelity, surety, and guaranty bonds, on risks or operations in this State except as herein stated.

(c) Except as otherwise provided by this subchapter, this subchapter [This Sub-chapter] does not apply to the writing of motor vehicle, life, health, accident, professional liability, reinsurance, aircraft, fraternal benefit, fire, lightning, tornado, windstorm, hail, smoke or smudge, cyclone, earthquake, volcanic eruption, rain, frost and freeze, weather or climatic conditions, excess or deficiency of moisture, flood, the rising of the waters of the ocean or its tributaries, bombardment, invasion,
insurrection, riot, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, strike or lockout, water or other fluid or substance, resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes or other conduits or containers, or resulting from casual water entering through leaks or opening in buildings or by seepage through building walls, including insurance against accidental injury of such sprinklers, pumps, fire apparatus, conduits or container, workers' [workmen's] compensation, noncommercial inland marine, ocean marine, marine, or title insurance; nor does this subchapter [Sub-chapter] apply to the writing of explosion insurance, except insurance against loss from injury to person or property which results accidentally from steam boilers, heaters or pressure vessels, electrical devices, engines and all machinery and appliances used in connection therewith or operation thereby.

(d) This subchapter [Sub-chapter] shall not be construed as limiting in any manner the types or classes of insurance which may be written by the several types of insurers under appropriate statutes or their charters or permits.

(e) The regulatory power herein conferred is vested in the commissioner [Board of Insurance Commissioners of the State of Texas. Within the Board, the Casualty Insurance Commissioner shall have primary supervision of regulation herein provided, subject however to the final authority of the entire Board].

SECTION 6.02. The heading of Article 5.13-2, Insurance
Code, is amended to read as follows:

Art. 5.13-2. **RATES AND FORMS FOR CERTAIN [GENERAL LIABILITY AND COMMERCIAL] PROPERTY AND CASUALTY INSURANCE [COVERAGE]**

SECTION 6.03. Sections 1 and 2, Article 5.13-2, Insurance Code, are amended to read as follows:

Sec. 1. PURPOSE. This article governs the regulation of insurance described by Section 2 of this article [general liability, commercial property, which shall include farm and ranch owners and farm and ranch policies, all commercial casualty, and medical professional liability insurance rates and forms. It does not govern automobile, fidelity, surety, or guaranty bonds]. The purposes of this article are to:

(1) promote the public welfare by regulating insurance rates to prohibit excessive, inadequate, or unfairly discriminatory rates;

(2) promote availability of insurance;

(3) promote price competition among insurers to provide rates and premiums that are responsive to competitive market conditions;

(4) prohibit price-fixing agreements and other anticompetitive behavior by insurers;

(5) regulate the insurance forms used for lines of insurance subject to this article to ensure that they are not unjust, unfair, inequitable, misleading, or deceptive; and

(6) provide regulatory procedures for the maintenance of appropriate information reporting systems.

Sec. 2. SCOPE. (a) This article applies to all lines of
the following insurance written under policies or contracts of
insurance issued by an insurer authorized to engage in the business
of insurance in this state:

(1) general liability insurance;

(2) residential and [ ] commercial property insurance,
including farm and ranch insurance and farm and ranch owners
insurance;

(3) personal and [ ] all commercial casualty
insurance, except as provided by Subsection (b) of this section;

(4) [ ] medical professional liability insurance;

(5) fidelity and surety bonds other than criminal
court appearance bonds;

(6) personal umbrella insurance;

(7) personal liability insurance;

(8) guaranteed auto protection (GAP) insurance;

(9) involuntary unemployment insurance;

(10) financial guaranty insurance;

(11) inland marine insurance;

(12) rain insurance;

(13) hail insurance on farm crops; and

(14) personal and commercial automobile insurance
[written under policies or contracts of insurance issued by a
licensed insurer, other than a fidelity, surety, or guaranty bond
or an automobile insurance policy].

(b) The commissioner shall adopt rules governing the manner
in which forms and rates for the various classifications of risks
insured under inland marine insurance, as determined by the
commissioner, are regulated.

SECTION 6.04. Section 3, Article 5.13-2, Insurance Code, is amended to read as follows:

Sec. 3. DEFINITIONS. (a) In this article:

(1) "Disallowed expenses" includes:

(A) administrative expenses, not including acquisition, loss control, and safety engineering expenses, that exceed 110 percent of the industry median for those expenses;

(B) lobbying expenses;

(C) advertising expenses, other than for advertising:

(i) directly related to the services or products provided by the insurer; or

(ii) designed and directed at loss prevention;

(D) amounts paid by an insurer:

(i) as damages in an action brought against the insurer for bad faith, fraud, or any matters other than payment under the insurance contract; or

(ii) as fees, fines, penalties, or exemplary damages for a civil or criminal violation of law;

(E) contributions to:

(i) social, religious, political, or fraternal organizations; or

(ii) organizations engaged in legislative advocacy;

(F) except as authorized by rule by the
commissioner, fees and assessments paid to advisory organizations;

(G) any amount determined by the commissioner to be excess premiums charged by the insurer; and

(H) any unreasonably incurred expenses, as determined by the commissioner after notice and hearing.

(2) "Filer" means an insurer that files rates, prospective loss costs, or supplementary rating information under this article.

(3) [§2.] "Insurer" means an insurer to which Article 5.13 of this code applies, but does not include the Texas Windstorm Insurance Association or the Texas FAIR Plan Association, or the Texas Automobile Insurance Plan Association. All provisions of this article shall apply to Lloyd's plans, reciprocals and interinsurance exchanges, and county mutual insurance companies with respect to the lines of insurance described in Section 2 of this article, except that [However,] the provisions of Sections 4, 5, 6, and 7 of this article shall not apply to Lloyd's or reciprocals with respect to commercial property insurance, and the provisions of Sections 4, 5, 6, 7, and 8 of this article shall not apply to Lloyd's or reciprocals with respect to inland marine insurance, rain insurance, or hail insurance on farm crops.

(4) [§3.] "Prospective loss costs" means that portion of a rate that does not include provisions for profit or expenses, other than loss adjustment expenses, that is based on historical aggregate losses and loss adjustment expenses projected by development to their ultimate value and through trending to a future point in time.
(5) "Rate" means the cost of insurance per exposure unit, whether expressed as a single number or as a prospective loss cost, with an adjustment to account for the treatment of expenses, profit, and individual insurer variation in loss experience, before any application of individual risk variations based on loss or expense considerations.

(6) "Rating manual" means a publication or schedule that lists rules, classifications, territory codes and descriptions, rates, premiums, and other similar information used by an insurer to determine the applicable premium charged an insured.

(7) "Residential property insurance" means insurance coverage against loss to real or tangible personal property at a fixed location that is provided through a homeowners policy, including a tenants policy, a condominium owners policy, or a residential fire and allied lines policy [The term does not include a minimum premium].

(8) "Supplementary rating information" means any manual, rating schedule, plan of rules, rating rules, classification systems, territory codes and descriptions, rating plans, and other similar information used by the insurer to determine the applicable premium for an insured. The term includes factors and relativities, including [such as] increased limits factors, classification relativities, deductible relativities, premium discount, and other similar factors and rating plans such as experience, schedule, and retrospective rating.

(9) "Supporting information" means:
(A) the experience and judgment of the filer and
the experience or information of other insurers or advisory
organizations relied on by the filer;

(B) the interpretation of any other information
relied on by the filer;

(C) descriptions of methods used in making the
rates; and

(D) any other information required by the
department to be filed.

(b) For purposes of this article, a rate is:

(1) excessive if the rate is likely to produce a
long-term profit that is unreasonably high in relation to the
insurance coverage provided;

(2) inadequate if the rate is insufficient to sustain
projected losses and expenses to which the rate applies, and
continued use of the rate:

(A) endangers the solvency of an insurer using
the rate; or

(B) has the effect of substantially lessening
competition or creating a monopoly within any market; or

(3) unfairly discriminatory if the rate:

(A) is not based on sound actuarial principles;

(B) does not bear a reasonable relationship to
the expected loss and expense experience among risks; or

(C) is based wholly or partly on the race, creed,
color, ethnicity, or national origin of the policyholder or an
insured.
SECTION 6.05. Section 4, Article 5.13-2, Insurance Code, is
amended by amending Subsections (b) and (d) and adding Subsection
(f) to read as follows:

(b) In setting rates, an insurer shall consider:

(1) past and prospective loss experience inside this
state, and outside this state if the state data are not credible;

(2) the peculiar hazards and experiences of individual
risks, past and prospective, inside and outside this state;

(3) the insurer's actuarially credible historical
premium, exposure, loss, and expense experience;

(4) [any applicable] catastrophe hazards within this
state;

(5) operating [(3) operation] expenses, excluding
disallowed expenses;

(6) [(4) investment income;

(7) [(5) a reasonable margin for profit and
contingencies; and

(8) [(6) any other [relevant] factors inside and
outside this state determined to be relevant by the insurer and not
disallowed by the commissioner.

(d) Rates established under this article may not be
excessive, inadequate, unreasonable, or unfairly discriminatory
for the risks to which they apply and may not be unreasonable.

(f) In determining rating territories and territorial
rates, an insurer shall use methods based on sound actuarial
principles.

SECTION 6.06. Section 5, Article 5.13-2, Insurance Code, is
amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) Except as provided by Section 5A of this article, each [Each] insurer shall file with the commissioner all rates, applicable rating manuals, supplementary rating information, and additional [reasonable and pertinent supporting] information as required by the commissioner for risks written in this state.

(a-1) The commissioner by rule shall determine the information required to be provided in the filing, including:

(1) the categories of supporting information;

(2) the categories of supplementary rating information;

(3) any statistics or other information to support the rates to be used by the insurer, including information necessary to evidence that the computation of the rate does not include disallowed expenses; and

(4) information concerning policy fees, service fees, and other fees that are charged or collected by the insurer under Article 21.35A or 21.35B of this code.

(a-2) For an insurer with less than five percent of the market, the commissioner shall consider insurer and market-specific attributes, as applicable, and shall promulgate filing requirements accordingly to accommodate premium volume and loss experience, targeted markets, limitations on coverage, and any potential barriers to market entry or growth.

SECTION 6.07. Article 5.13-2, Insurance Code, is amended by adding Section 5A to read as follows:
Sec. 5A. PRIOR APPROVAL REQUIRED FOR CERTAIN INSURERS.

(a) The commissioner by order may require an insurer to file with the commissioner all rates, supplementary rate information, and any supporting information as prescribed by this section if the commissioner determines that:

(1) an insurer's rates require supervision because of the insurer's financial condition;

(2) an insurer's rates require supervision because of the insurer's rating practices; or

(3) a statewide insurance emergency exists.

(b) Except as provided by Subsection (k) of this section, an insurer may not use a rate until the rate has been filed with the department and approved by the commissioner as provided by this section. For purposes of this section, a rate is filed with the department on the date the rate filing is received by the department.

(c) Not later than the 30th day after the date the rate is filed with the department, the commissioner shall:

(1) approve the rate if the commissioner determines that the rate complies with the requirements of this article; or

(2) disapprove the rate if the commissioner determines that the rate does not comply with the requirements of this article.

(d) Except as provided by Subsection (f) of this section, if the rate has not been approved or disapproved by the commissioner before the expiration of the 30-day period described by Subsection (c) of this section, the rate is considered approved and the insurer may use the rate unless the rate proposed in the filing represents
an increase of 12.5 percent or more from the insurer's prior filed rate.

(e) The commissioner and the insurer may not by agreement extend the 30-day period described by Subsection (c) of this section.

(f) For good cause, the commissioner may extend the period for approval or disapproval of a rate for one additional 30-day period on the expiration of the 30-day period described by Subsection (c) of this section.

(g) If the department determines that the information filed by the insurer under this article is incomplete or otherwise deficient, the department may request additional information from the insurer. If the department requests additional information from the insurer during the first 30-day review period provided under Subsection (c) of this section or under the second 30-day review period provided under Subsection (f) of this section, the period of time between the date of the department's submission of the request for additional information to the insurer and the date of the receipt of the additional information by the department from the insurer is not counted to determine what constitutes the first 30-day review period or the second 30-day review period. For purposes of this subsection, the date of the department's submission of the request for additional information is the date of the electronic mailing or telephone call or the postmarked date on the department's letter relating to the request for additional information.

(h) The commissioner shall approve the rate filing if the
proposed rate is adequate, not excessive, and not unfairly discriminatory.

(i) If the commissioner approves a rate filing, the commissioner shall provide written or electronic notification of the approval to the insurer. On receipt of the notice of the commissioner's approval of a rate, the insurer may use the rate.

(j) From the date of the filing of the rate with the department to the effective date of the new rate, the insurer's previously filed rate that is in effect on the date of the filing remains in effect.

(k) After approval of a rate filing under this section, an insurer may use any rate subsequently filed by the insurer, without prior approval of the commissioner, if the subsequently filed rate does not exceed the lesser of 107.5 percent of the rate approved by the commissioner or 110 percent of any rate used by the insurer within the previous 12-month period. Filed rates under this subsection take effect on the date specified by the insurer.

(l) If the commissioner disapproves a rate filing under Subsection (c)(2) of this section, the commissioner shall issue an order in the manner prescribed by Section 7(b) of this article. The insurer is entitled to a hearing in accordance with Section 7(b) of this article.

(m) The commissioner may require an insurer to file the insurer's rates under this section until the commissioner determines that the conditions described by Subsection (a) of this section no longer exist.

SECTION 6.08. Article 5.13-2, Insurance Code, is amended by
adding Section 13 to read as follows:

Sec. 13. STANDARD RATE INDEX FOR PERSONAL AUTOMOBILE INSURANCE; EXEMPTION. (a) This section governs rate regulation of personal automobile insurance issued by a county mutual insurance company as prescribed by this section.

(b) Using standard and generally accepted actuarial techniques, the commissioner shall annually compute and publish a statewide standard rate index that accurately reflects the average statewide rates for classifications for each of the following coverages for personal automobile insurance policies:

(1) bodily injury liability;
(2) property damage liability;
(3) personal injury protection;
(4) medical payments;
(5) uninsured and underinsured motorists;
(6) physical damage--collision; and
(7) physical damage--other than collision.

(c) The commissioner shall compute the rate index using the benchmark rate in effect for personal automobile insurance under Article 5.101 of this code on the effective date of S.B. No. 14, Acts of the 78th Legislature, Regular Session, 2003, and adjusted annually thereafter by the commissioner to reflect average changes in claims costs in the personal automobile insurance market in this state. After the effective date of S.B. No. 14, Acts of the 78th Legislature, Regular Session, 2003, and before the first annual adjustment by the commissioner, the commissioner may adjust the computation of the rate index under this section as the
commissioner determines necessary.

(d) The commissioner may compute and establish standard rate indexes other than the rate index required under Subsection (b) of this section for any of the personal automobile insurance coverages listed under that subsection as necessary to implement this section.

(e) For purposes of this section, "nonstandard rates" means rates that are 30 percent or more above the standard rate index as determined by the commissioner under this section.

(f) A county mutual insurance company that issues personal automobile insurance policies only at nonstandard rates is subject to filing requirements as determined by the commissioner by rule if the insurer and the insurer's affiliated companies or group have a market share of less than 3.5 percent. In setting rates, an insurance company subject to this subsection must comply with the rating standards established by this article. Not later than the first day on which any change in the rates becomes effective, the company shall for informational purposes file the rates and any additional information required by the department. The commissioner by rule shall determine the information required to be provided in the filing under this subsection. The commissioner may inspect the books and records of the company at any time to ensure compliance with the rating standards. An insurance company described by this subsection is subject to Article 5.144 of this code. A county mutual insurance company not described by this section is subject to Article 21.81 of this code and is required to comply with the filing requirements of this article and any other provision of this code.
applicable to a county mutual insurance company.

(q) The commissioner by rule may designate other types of insurers that historically and as of the effective date of S.B. No. 14, Acts of the 78th Legislature, Regular Session, 2003, have served exclusively or are serving exclusively the high-risk, nonstandard market and meet capitalization and solvency requirements set by the commissioner. An insurer designated by the commissioner under this subsection is governed by this section.

SECTION 6.09. Article 5.13-2, Insurance Code, is amended by adding Section 14 to read as follows:

Sec. 14. REVIEW OF RATES. In reviewing rates under this article, the commissioner shall consider any state or federal legislation that has been enacted and that may impact rates for liability coverage included in a policy subject to this article.

SECTION 6.10. Article 5.13-2, Insurance Code, is amended by adding Section 15 to read as follows:

Sec. 15. NOTICE OF RATE INCREASE. (a) An insurer shall send a policyholder of a policy of residential property insurance issued by the insurer notice of any rate increase scheduled to take effect on the renewal of the policy that will result in an increase in the premium amount to be paid by the policyholder that is at least 10 percent greater than the lesser of the premium amount paid by the policyholder for coverage under the policy during:

(1) the 12-month period preceding the renewal date of
the policy; or

(2) the policy period preceding the renewal date of
the policy.
(b) An insurer shall send the notice required by Subsection (a) of this section before the renewal date but not later than the 30th day before the date the rate increase is scheduled to take effect.

(c) In addition to the mandatory notice under Subsection (a) of this section, the insurer may send the notice required by Subsection (a) of this section to any policyholder of residential property insurance issued by the insurer, regardless of whether that policyholder's premium amount to be paid will increase as a result of the scheduled rate change.

(d) The commissioner by rule may exempt an insurer from the notice requirements under this section for a short-term policy, as defined by the commissioner, that is written by the insurer.

SECTION 6.11. Article 5.13-2, Insurance Code, is amended by adding Section 16 to read as follows:

Sec. 16. RIGHTS OF PUBLIC INSURANCE COUNSEL. (a) On request to the commissioner, the public insurance counsel may review all rate filings and additional information provided by an insurer under this article. Confidential information reviewed under this subsection remains confidential.

(b) The public insurance counsel, not later than the 30th day after the date of a rate filing under this article, may object to an insurer's rate filing or the criteria relied on by the insurer to determine the rate by filing a written objection with the commissioner. The written objection must contain the reasons for the objection.

SECTION 6.12. A county mutual insurance company required to
make informational rate filings under Subsection (f), Section 13, Article 5.13-2, Insurance Code, as added by this Act, shall make an initial informational rate filing, as required by the commissioner of insurance, not later than the 30th day after the effective date of this article.

SECTION 6.13. This article takes effect December 1, 2004, except that Sections 14 and 15, Article 5.13-2, Insurance Code, as added by this article, take effect on the effective date of this Act.

ARTICLE 7. EXEMPTIONS FROM CERTAIN RATE REQUIREMENTS

SECTION 7.01. Subchapter B, Chapter 5, Insurance Code, is amended by adding Article 5.13-2C to read as follows:

Art. 5.13-2C. EXEMPTIONS FROM RATE FILING AND APPROVAL REQUIREMENTS FOR CERTAIN INSURERS

Sec. 1. DEFINITIONS. In this article:

(1) "Insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write residential property insurance in this state. The term includes an affiliate, as described by this code, if that affiliate is authorized to write residential property insurance.

(2) "Residential property insurance" means insurance coverage against loss to real or tangible personal property at a fixed location that is provided through a homeowners policy, including a tenants policy, a condominium owners policy, or a residential fire and allied lines policy.
Sec. 2. APPLICABILITY. (a) Except as provided by Subsection (b) of this section, this article applies only to an insurer that, during the calendar year preceding the date filing is otherwise required under Article 5.13-2 or 5.142 of this code, issued residential property insurance policies in this state that accounted for less than two percent of the total amount of premiums collected by insurers for residential property insurance policies issued in this state, more than 50 percent of which cover property:

(1) valued at less than $100,000; and

(2) located in an area designated by the commissioner as underserved for residential property insurance under Article 5.35-3 of this code.

(b) If an insurer described by Subsection (a) of this section is a member of an affiliated insurance group, this article applies to the insurer only if the total aggregate premium collected by the group accounts for less than two percent of the total amount of premiums collected by insurers for residential property insurance policies issued in this state.

Sec. 3. EXEMPTION. (a) Except as provided by Subsection (b) of this section, an insurer described by Section 2 of this article is exempt from the rate filing and approval requirements of Article 5.142 and of Article 5.13-2 of this code.

(b) An insurer described by Section 2 of this article that proposes to increase the premium rates charged policyholders for a residential property insurance product by 10 percent or more than the amount the insurer charged policyholders for the same or an equivalent residential property insurance product during the
preceding calendar year must file the insurer's proposed rates in accordance with Article 5.142 or 5.13-2 of this code, as applicable, and obtain approval of the proposed rates as provided by the applicable article.

(c) Except as provided by Subsection (b) of this section, Article 5.142 of this code does not apply to an insurer described by Section 2 of this article.

ARTICLE 8. REGULATION OF UNDERWRITING GUIDELINES

SECTION 8.01. Subchapter A, Chapter 38, Insurance Code, is amended by amending Section 38.002 and adding Section 38.003 to read as follows:

Sec. 38.002. UNDERWRITING GUIDELINES FOR PERSONAL AUTOMOBILE AND RESIDENTIAL PROPERTY INSURANCE; FILING; CONFIDENTIALITY. (a) In this section:

(1) "Insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity engaged in the business of personal automobile insurance or residential property insurance in this state. The term includes:

(A) an affiliate as described by Section 2, Article 21.49-1, or Section 823.003(a) if that affiliate is authorized to write and is writing personal automobile insurance or residential property insurance in this state;

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

(C) the FAIR Plan Association under Article
21.49A; and

(D) the Texas Automobile Insurance Plan
Association under Article 21.81.

(2) "Personal automobile insurance" means motor
vehicle insurance coverage for the ownership, maintenance, or use
of a private passenger, utility, or miscellaneous type motor
vehicle, including a motor home, mobile home, trailer, or
recreational vehicle, that is:

(A) owned or leased by an individual or
individuals; and

(B) not primarily used for the delivery of goods,
materials, or services, other than for use in farm or ranch
operations.

(3) "Residential property insurance" means insurance
coverage against loss to residential real property at a fixed
location or tangible personal property provided in a homeowners
policy, which includes a tenant policy, a condominium owners
policy, or a residential fire and allied lines policy.

(4) "Underwriting guideline" means a rule, standard,
guideline, or practice, whether written, oral, or electronic, that
is used by an insurer or its agent to decide whether to accept or
reject an application for coverage under a personal automobile
insurance policy or residential property insurance policy or to
determine how to classify those risks that are accepted for the
purpose of determining a rate.

(b) Each insurer shall file with the department a copy of
the insurer's underwriting guidelines. The insurer shall update
its filing each time the underwriting guidelines are changed. If a group of insurers files one set of underwriting guidelines for the group, they shall identify which underwriting guidelines apply to each company in the group.

(c) The office of public insurance counsel may obtain a copy of each insurer's underwriting guidelines.

(d) The department or the office of public insurance counsel may disclose to the public a summary of an insurer's underwriting guidelines in a manner that does not directly or indirectly identify the insurer.

(e) Underwriting guidelines must be sound, actuarially justified, or otherwise substantially commensurate with the contemplated risk. Underwriting guidelines may not be unfairly discriminatory.

(f) The underwriting guidelines are subject to Chapter 552, Government Code.

Sec. 38.003. UNDERWRITING GUIDELINES FOR OTHER LINES; CONFIDENTIALITY. (a) This section applies to all underwriting guidelines that are not subject to Section 38.002.

(b) For purposes of this section, "insurer" means a reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, life, accident, or health or casualty insurance company, health maintenance organization, mutual life insurance company, mutual insurance company other than life, mutual, or natural premium life insurance company, general casualty company, fraternal benefit society, group hospital service company, or other...
legal entity engaged in the business of insurance in this state. The term includes an affiliate as described by Section 2, Article 21.49-1, or Section 823.003(a) if that affiliate is authorized to write and is writing insurance in this state.

(c) The department or the office of public insurance counsel may obtain a copy of an insurer's underwriting guidelines.

(d) Underwriting guidelines are confidential, and the department or the office of public insurance counsel may not make the guidelines available to the public.

(e) The department or the office of public insurance counsel may disclose to the public a summary of an insurer's underwriting guidelines in a manner that does not directly or indirectly identify the insurer.

(f) When underwriting guidelines are furnished to the department or the office of public insurance counsel, only a person within the department or the office of public insurance counsel with a need to know may have access to the guidelines. The department and the office of public insurance counsel shall establish internal control systems to limit access to the guidelines and shall keep records of the access provided.

(g) This section does not preclude the use of underwriting guidelines as evidence in prosecuting a violation of this code. Each copy of an insurer's underwriting guidelines that is used in prosecuting a violation is presumed to be confidential and is subject to a protective order until all appeals of the case have been exhausted. If an insurer is found, after the exhaustion of all appeals, to have violated this code, a copy of the
underwriting guidelines used as evidence of the violation is no longer presumed to be confidential.

(h) [(f)] A violation of this section is a violation of Chapter 552, Government Code.

SECTION 8.02. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.49-2V to read as follows:

Art. 21.49-2V. MEMBERSHIP DUES; ISSUANCE AND RENEWAL OF POLICY. (a) Except as otherwise provided by law, an insurer may require that membership dues in its sponsoring organization be paid as a condition for issuance or renewal of a policy.

(b) For purposes of this article, "insurer" includes a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange.

ARTICLE 9. WINDSTORM INSURANCE

SECTION 9.01. Subsection (f), Section 3, Article 21.49, Insurance Code, is amended to read as follows:

(f) "Insurable Property" means immovable property at fixed locations in a catastrophe area or corporeal movable property located therein (as may be designated in the plan of operation) which property is determined by the Association, pursuant to the criteria specified in the plan of operation to be in an insurable condition against windstorm, hail and/or fire and explosion as appropriate, as determined by normal underwriting standards; provided, however, that insofar as windstorm and hail insurance is concerned, any structure located within a catastrophe area, commenced on or after the 30th day following the publication of the plan of operation, not built or continuing in compliance with
building specifications set forth in the plan of operation shall not be an insurable risk under this Act except as otherwise provided under this Act. A structure, or an addition thereto, which is constructed in conformity with plans and specifications that comply with the specifications set forth in the plan of operation at the time construction commences shall not be declared ineligible for windstorm and hail insurance as a result of subsequent changes in the building specifications set forth in the plan of operation. 

Except as otherwise provided by this subsection, if [When] repair of damage to a structure involves replacement of items covered in the building specifications as set forth in the plan of operation, such repairs must be completed in a manner to comply with such specifications for the structure to continue within the definition of Insurable Property for windstorm and hail insurance. If repair to a structure, other than a roof repair that exceeds 100 square feet, is less than five percent of the amount of total property coverage on the structure, the repairs may be completed in a manner that returns the structure to its condition immediately before the loss without affecting the eligibility of the structure to qualify as insurable property. Nothing in this Act shall preclude special rating of individual risks as may be provided in the plan of operation. For purposes of this Act, all residential structures, other than a condominium, apartment, duplex, or other multifamily residence, or a hotel or resort facility, which are located within those areas designated as units under the federal Coastal Barrier Resources Act (Public Law 97-348) and for which a building permit or plat has been filed with the municipality, the county, or the United
States Army Corps of Engineers before the effective date of S.B. No. 14, Acts of the 78th Legislature, Regular Session, 2003, are [construction has commenced on or after July 1, 1991 shall not be considered] insurable property.

SECTION 9.02. Section 5, Article 21.49, Insurance Code, is amended by adding Subsection (m) to read as follows:

(m) After January 1, 2004, for geographic areas specified by the commissioner, the commissioner by rule may supplement the building specifications in the plan of operation with the structural provisions of the International Residential Code for one- and two-family dwellings, as published by the International Code Council, or by an analogous entity recognized by the department. For those specified geographic areas, the commissioner by rule may adopt subsequent editions of that code and may adopt any supplements published by the International Code Council and amendments to that code.

SECTION 9.03. Section 6A, Article 21.49, Insurance Code, is amended by amending Subsections (a), (d), (h), (j), and (k) and adding Subsections (j-1) and (k-1) to read as follows:

(a) Except as otherwise provided by this Subsection, all structures that are constructed or repaired or to which additions are made on or after January 1, 1988, to be considered insurable property for windstorm and hail insurance from the Association, must be inspected or approved by the Board for compliance with [the building specifications in] the plan of operation. After January 1, 2004 [2002], for [in] geographic areas specified by the commissioner, the commissioner by rule shall adopt [may supplement]
the building specifications in the plan of operation with the
structural provisions of] the 2003 International Residential Code
for one- and two-family dwellings published by the International
Code Council. For those geographic areas, the commissioner by rule
may adopt a subsequent edition of that code and may adopt any
supplements published by the International Code Council and
amendments to the code. [Roofing materials satisfy the building
specifications in the plan of operation if those materials pass the
UL Standard 997 or a comparable test certified by the Board and are
installed as required by the Board to promote the wind resistance of
the materials.] A structure constructed, repaired, or to which
additions were made before January 1, 1988, that is located in an
area covered at the time by a building code recognized by the
Association shall be considered an insurable property for windstorm
and hail insurance from the Association without compliance with the
inspection or approval requirements of this Section or the plan of
operation. A structure constructed, repaired, or to which
additions were made before January 1, 1988, that is located in an
area not covered by a building code recognized by the Association
shall be considered an insurable property for windstorm and hail
insurance from the Association without compliance with the
inspection or approval requirements of this Section or the plan of
operation if that structure has been previously insured by a
licensed insurance company authorized to do business in this State
and the risk is in essentially the same condition as when previously
insured, except for normal wear and tear, and without any
structural change other than a change made according to code.
Evidence of previous insurance includes a copy of a previous policy, copies of canceled checks or agent's records that show payments for previous policies, and a copy of the title to the structure or mortgage company records that show previous policies. After January 1, 2004 [2002], a person must submit a notice of an application for a windstorm inspection to the unit responsible for certification of windstorm inspections at the department before beginning to construct, alter, remodel, enlarge, or repair a structure. Failure to submit a timely application may result in a certificate of compliance not being issued unless plans and calculations, testing information, manufacturer's installation instructions, or any other documentation required by the commissioner is submitted to the unit responsible for windstorm inspection at the department as may be requested in order to fulfill the requirements of this section. The Board may appoint or employ qualified inspectors as defined in this section to perform any inspections required by this section.

(d) A windstorm inspection may only be performed by a qualified inspector. For purposes of this article, a "qualified inspector" includes:

(1) a person determined by the department to be qualified to perform building inspections because of training or experience;

(2) a licensed professional engineer meeting the requirements of the rules adopted by the commissioner for appointment to conduct windstorm inspections; and

(3) an inspector who is certified by the International
Code Council, the Building Officials and Code Administrators International, Inc., the International Conference of Building Officials, or the Southern Building Code Congress International, Inc., who has certifications as a buildings inspector and coastal construction inspector, and who also complies with other requirements specified by rule by the commissioner. A qualified inspector must be approved and appointed or employed by the department [Board] to perform building inspections. The department [Board] may charge a reasonable fee [not to exceed $200] for the filing of applications and determining the qualifications of persons for appointment as qualified inspectors.

(h) The department [Board] may charge a reasonable fee to cover the cost of making building requirements [specifications] and inspection standards available to the public.

(j) After notice and hearing, the department [Board] may cancel or revoke an appointment [or authorization] made [issued, or existing] under this Section if the holder [or possessor] of the appointment [or authorization] is found to be in violation of, or to have failed to comply with, specific provisions of this Section or any rule or regulation of the commissioner [Board] made under this Section. In lieu of cancellation or revocation, the commissioner [Board] may order one or more of the following sanctions, if the commissioner [it] determines from the facts that it would be fair, reasonable, or equitable:

(1) suspending the [authorization or] appointment for a specific period, not to exceed one year;

(2) an order directing the holder [or possessor] of
the [authorization or] appointment to cease and desist from the
specified activity determined to be in violation of specific
provisions of this Section or rules and regulations of the
commissioner [Board] made pursuant to this Section or from failing
to comply with those provisions of this Section or the rules and
regulations promulgated under this Section; or

(3) if the appointed person [authorized or appointed]
is found by the commissioner [Board] to have knowingly, wilfully,
 fraudulently, or with gross negligence signed or caused to be
prepared an inspection report that contains a false, fictitious, or
fraudulent statement or entry, directing the appointed person
[holder or possessor of the authorization or appointment] to remit
within a specified time, not to exceed 60 days, a specified monetary
forfeiture not to exceed $5,000 for the violation or failure to
comply.

(j-1) If an appointed person is an engineer licensed by the
Texas Board of Professional Engineers who is found by the
department to have knowingly, wilfully, fraudulently, or with gross
negligence signed or caused to be prepared an inspection report
that contains a false or fraudulent statement or entry, the
commissioner may take action against the appointed person in the
manner provided by Subsection (j) of this Section, but may not levy
any monetary fine against an appointed person who is a licensed
engineer.

(k) A monetary forfeiture paid as a result of an order
issued under Subsection (j)(3) of this Section shall be deposited
to the credit of the general revenue fund. If it is found after
hearing that any appointed person [holder or possessor] has failed to comply with an order issued under Subsection (j) of this Section, the department [Board] shall, unless the [ite] order is lawfully stayed, cancel the [authorization or] appointment of the person [holder or possessor]. The department [Board] may informally dispose of any matter under Subsection (j) of this Section by consent order or default.

(k-1) The commissioner shall notify the Texas Board of Professional Engineers of each order issued by the commissioner against an appointed person who is an engineer licensed by the Texas Board of Professional Engineers, including an order suspending, canceling, or revoking the appointment of that person.

SECTION 9.04. Subsections (b), (f), (g), (h), (k), (l), and (m), Section 6C, Article 21.49, Insurance Code, are amended to read as follows:

(b) The Windstorm Building Code Advisory Committee on Specifications and Maintenance is established as an advisory committee to the commissioner to advise and make recommendations to the commissioner on building requirements [specifications] and maintenance in the plan of operation.

(f) The advisory committee shall analyze and make recommendations for changes regarding procedures described under Section 5(d) of this article that are [building specifications] adopted by the commissioner in the plan of operation. In making recommendations, the advisory committee shall [consider technological developments in building products and windstorm research and shall] seek to balance the concerns of all affected
parties, including consumers, builders, and the Association.

(g) Each proposal for a change in an applicable procedure [building specification] must be submitted to the commissioner. Each proposal must be submitted separately in writing and must contain:

(1) the name, mailing address, and telephone number of the proponent, or, if the proponent is a group or organization, the name of the group or organization and the mailing address and telephone number of the group or organization;

(2) a citation of any applicable statute or rule [the building code section regarding that specification, as published in the latest edition of that code];

(3) the text of the proposed change, with deletions from current [code] language struck through with a single line and new language underlined; and

(4) a statement of the purpose of the proposed change, with supporting written or printed information.

(h) The commissioner by rule shall adopt a form to be used by a person in presenting a proposal for a change in an applicable procedure [building specification] to the commissioner.

(k) At an advisory committee meeting, any interested person may present the person's views on a proposal for a change in an applicable procedure [building specification] that is included on the advisory committee's published agenda. The advisory committee shall consider each comment presented in its action on the disposition of each proposal.

(1) After consideration of a proposal for a change in an
applicable procedure [building specification], the advisory committee by vote shall:

(1) recommend adoption of the proposal as initially submitted;

(2) recommend adoption of the proposal with modifications;

(3) recommend rejection of the proposal; or

(4) suspend consideration of the proposal and request additional evaluation and study of the proposal.

(m) The advisory committee shall submit its recommendation on each proposal to the commissioner. The commissioner shall notify the advisory committee of the acceptance or rejection of each recommendation not later than the 30th day after the date of receipt by the commissioner. Acceptance of a recommendation by the commissioner means that the commissioner will consider adoption of that recommendation at a rulemaking hearing. Before adopting a recommendation, the commissioner must determine that the proposal, if adopted, will not weaken the integrity or diminish the effectiveness of a procedure [building specification]. [The commissioner by rule may adopt a recommendation of the advisory committee by amending the plan of operation and, in amending the plan, may adopt a specification by reference.]

SECTION 9.05. Article 21.49, Insurance Code, is amended by adding Section 6D to read as follows:

Sec. 6D. APPOINTMENT OF ENGINEERS; RULES. (a) The commissioner, on the request of an engineer licensed by the Texas Board of Professional Engineers, shall appoint the engineer under
this article not later than the 10th day after the date of the
eengine's delivery to the commissioner of information
demonstrating that the engineer is qualified to perform windstorm
inspections under this article.

(b) The commissioner shall adopt rules to determine the
information the commissioner will consider in appointing engineers
under Subsection (a) of this section.

SECTION 9.06. Subsections (c) and (e), Section 6A, Article
21.49, Insurance Code, are repealed.

SECTION 9.07. Subdivision (9), Subsection (h), Section 8,
Article 21.49, Insurance Code, is amended to read as follows:

(9) A rate established and authorized by the
commissioner under this subsection may not reflect an average rate
change that is more than 10 percent higher or lower than the rate
for commercial or 10 percent higher or lower than the rate for
noncommercial windstorm and hail insurance in effect on the date
the filing is made. The rate may not reflect a rate change for an
individual rating class that is 15 percent higher or lower than the
rate for that individual class in effect on the date the filing is
made. The commissioner may, after notice and hearing, suspend this
subdivision upon a finding that a catastrophe loss or series of
occurrences resulting in losses in the catastrophe area justify a
need to assure rate adequacy in the catastrophe area and also
justify a need to assure availability of insurance outside the
catastrophe area. [This subdivision expires December 31, 2005.]

SECTION 9.08. Subsection (f), Section 3, Article 21.49,
Insurance Code, as amended by this article, applies only to an
insurance policy delivered or issued for delivery by the Texas Windstorm Insurance Association on or after the effective date of this Act. A policy delivered or issued for delivery before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 9.09. Article 21.49, Insurance Code, as amended by this article, other than Subsection (f), Section 3, applies only to a policy of windstorm or hail insurance that is delivered, issued for delivery, or renewed after January 1, 2004. A policy that is delivered, issued for delivery, or renewed on or before January 1, 2004, is governed by the law as it existed immediately before the effective date of this article, and that law is continued in effect for that purpose.

SECTION 9.10. Except as provided by Section 9.08 of this Act, this article takes effect January 1, 2004.

ARTICLE 10. WITHDRAWAL REQUIREMENTS

SECTION 10.01. (a) Effective June 1, 2003, Section 827.001, Insurance Code, is amended to read as follows:

Sec. 827.001. DEFINITIONS [DEFINITION]. In this chapter:

(1) "Insurer" means an insurance company or other legal entity authorized to engage in the business of insurance in this state, including a reciprocal or interinsurance exchange, a Lloyd's plan, and a county mutual insurance company. The term includes an affiliate. The term does not include a farm mutual insurance company or an eligible surplus lines insurer regulated under Chapter 981.
(2) "Rating["rating"] territory" means a rating territory established by the department.

(b) Until June 1, 2003, Subsection (a), Article 21.49-2C, Insurance Code, is amended by adding Subdivision (4) to read as follows:

(4) "Insurer" means an insurance company or other legal entity authorized to write insurance in this state, including a county mutual insurance company, a reciprocal or interinsurance exchange, and a Lloyd's plan. This subdivision expires June 1, 2003.

SECTION 10.02. (a) Effective June 1, 2003, Section 827.002, Insurance Code, is amended to read as follows:

Sec. 827.002. EXEMPTION. This chapter does not apply to a transfer of business from an insurer to a company that:

(1) is within the same insurance group as [under common ownership with] the insurer; [and]

(2) is authorized to engage in the business of insurance in this state; and

(3) is not a reciprocal or interinsurance exchange, a Lloyd's plan, a county mutual insurance company, or a farm mutual insurance company.

(b) Until June 1, 2003, Subsection (b), Article 21.49-2C, Insurance Code, is amended to read as follows:

(b) This article does not apply to the transfer of the business from an insurer to a company that is [under common ownership] admitted to do business in this state. This subsection expires June 1, 2003.
SEC. 827.003. WITHDRAWAL PLAN REQUIRED. An [authorized] insurer shall file with the commissioner a plan for orderly withdrawal if the insurer proposes to:

(1) [withdraw from writing a line of insurance in this state or] reduce the insurer's total annual premium volume by 50 [75] percent or more; [or]

(2) reduce the insurer's annual premium by 75 percent or more in a line of insurance in this state; or

(3) reduce in this state, or in any applicable [rating territory], the insurer's total annual premium volume in a [personal] line of personal automobile [motor vehicle comprehensive] or residential property insurance by 50 percent or more.

(b) Until June 1, 2003, Subdivision (1), Subsection (a), Article 21.49-2C, Insurance Code, is amended to read as follows:

(1) This subdivision expires June 1, 2003. An [authorized] insurer shall file with the commissioner a plan for orderly withdrawal if the insurer proposes [to withdraw from writing a line of insurance in this state or] to reduce its total annual premium volume by 50 [75] percent or more, proposes to reduce the insurer's annual premium by 75 percent or more in a line of insurance in this state, or proposes, in a personal line of motor vehicle insurance [comprehensive] or residential property insurance, to reduce its total annual premium volume in a rating territory by 50 percent or more. The insurer's plan shall be
constructed to protect the interests of the people of this state and
shall indicate the date it intends to begin and complete its
withdrawal plan and must contain provisions for:

(A) meeting the insurer's contractual
obligations;

(B) providing service to its Texas policyholders
and claimants; and

(C) meeting any applicable statutory
obligations, such as the payment of assessments to the guaranty
fund and participation in any assigned risk plans or joint
underwriting arrangements.

SECTION 10.04. (a) Effective June 1, 2003, Section
827.005, Insurance Code, is amended to read as follows:

Sec. 827.005. APPROVAL OF WITHDRAWAL PLAN. (a) Except as
provided by Subsection (b), the [The] commissioner shall approve a
withdrawal plan that adequately provides for meeting the
requirements prescribed by Section 827.004(3).

(b) The commissioner may modify, restrict, or limit a
withdrawal plan under this section as necessary if the commissioner
finds that a line of insurance subject to the withdrawal plan is not
offered in a quantity or manner to adequately cover the risks in
this state or to adequately protect the residents of this state and
policyholders in this state. The commissioner may by order set the
date on which the insurer's withdrawal begins.

(c) A withdrawal plan is deemed approved if the
commissioner:

(1) does not hold a hearing on the plan before the 61st
(2) does not deny approval before the 61st [31st] day after the date a hearing on the plan is held.

(b) Until June 1, 2003, Subsections (e) and (f), Article 21.49-2C, Insurance Code, are amended to read as follows:

(e) Except as provided by Subsection (f), the commissioner shall approve the plan if it adequately provides for:

(1) meeting the insurer's contractual obligations;

(2) providing service to its Texas policyholders and claimants; and

(3) meeting any applicable statutory obligations, such as the payment of assessments to the guaranty fund and participation in any assigned risk plans or joint underwriting arrangements.

(f) The commissioner may modify, restrict, or limit a withdrawal plan under this section as necessary if the commissioner finds that a line of insurance subject to the withdrawal plan is not offered in a quantity or manner to adequately cover the risks in this state or to adequately protect the residents of this state and policyholders in this state. The commissioner may by order set the date on which the insurer's withdrawal begins. The withdrawal plan shall be deemed approved if the commissioner has not held a hearing within 60 [30] days after the plan is filed with the commissioner or has not denied approval within 60 [30] days after the hearing. An insurer that withdraws from writing insurance in this state or that reduces its total annual premium volume by 75 percent or more in any
year without receiving the commissioner's approval is subject to the civil penalties under Article 1.10 of this code.

SECTION 10.05. (a) Effective June 1, 2003, Section 827.008, Insurance Code, is amended to read as follows:

Sec. 827.008. RESTRICTION PLAN. (a) Before an insurer, in response to a catastrophic natural event that occurred during the preceding six months, may restrict writing new business in a rating territory in a [personal] line of personal automobile [comprehensive motor vehicle] or residential property insurance, the insurer must file a proposed restriction plan with the commissioner for the commissioner's review and approval [comment].

(b) The commissioner may modify, restrict, or limit a restriction plan under this section as necessary if the commissioner finds that a line of insurance subject to the restriction plan is not offered in this state in a quantity or manner to adequately cover the risks in this state or to adequately protect the residents of this state and policyholders in this state in light of the impact of the catastrophic natural event. The commissioner may by order set the date on which the insurer's restriction begins. [The commissioner's approval of a restriction plan filed under Subsection (a) is not required. An insurer that files a restriction plan may institute the plan on or after the 15th day after the date the plan is filed.]

(c) A [Notwithstanding Subsection (b), a] withdrawal plan must be filed and approved under Sections 827.003 and 827.004 if an insurer's decision not to accept new business in a [personal] line of personal automobile [comprehensive motor vehicle] or
residential property insurance results in a reduction of the
insurer's total annual premium volume by 50 percent or more.

(b) Until June 1, 2003, Subdivision (2), Subsection (a),
Article 21.49-2C, Insurance Code, is amended to read as follows:

(2) If within six months after a catastrophic event of
natural origin an insurer, in response to such catastrophic event,
wishes to restrict its writing of new business in a personal
automobile [line of comprehensive motor vehicle] or residential
property insurance in a rating territory, it shall prepare and file
a plan as to such proposed plan of restriction with the commissioner
for the commissioner's review and approval [comment]. The
commissioner may modify, restrict, or limit a restriction plan
under this section as necessary if the commissioner finds that a
line of insurance subject to the restriction plan is not offered in
this state in a quantity or manner to adequately cover the risks in
this state or to adequately protect the residents of this state and
policyholders in this state in light of the impact of the
catastrophic natural event. The commissioner may by order set the
date on which the insurer's restriction begins. In [Approval of
such plan is not required and the insurer may institute such plan 15
days after filing. However, in] the event of a conflict between
Subsections (a)(1) and (a)(2), where not accepting new business may
result in a withdrawal as defined in Subsection (a)(1), Subsection
(a)(1) controls.

SECTION 10.06. (a) Effective June 1, 2003, Subsection (d),
Section 827.010, Insurance Code, is amended to read as follows:

(d) To impose or renew a moratorium under this section, the
commissioner must determine, after notice and hearing, that a catastrophic event has occurred and that as a result of that event a particular line of insurance is not reasonably expected to be available to a substantial number of policyholders or potential policyholders in this state or, in the case of [personal] lines of personal automobile [motor vehicle comprehensive] or residential property insurance, in a rating territory.

(b) Until June 1, 2003, Subsection (g), Article 21.49-2C, Insurance Code, is amended to read as follows:

(g) The commissioner may impose a moratorium of up to two years on the approval of plans for withdrawal or implementation of plans to restrict the writing of new business pursuant to Subsection (a)(2) of this section, including those such plans implemented subsequent to the commissioner's publishing of notice of intention to impose a moratorium regarding the catastrophic event related to such plans, and may renew the moratorium annually. To impose or renew a moratorium, the commissioner must find after notice and public hearing that a catastrophic event has occurred and that as a result of the event, the relevant line of insurance is not reasonably expected to be available to a substantial number of policyholders or potential policyholders in this state, or in the case of [personal] lines of personal automobile [motor vehicle comprehensive] or residential property insurance, in a rating territory. Such notice and hearing shall be governed by provisions of Chapter 2001, Government Code, related to contested cases and by Chapter 40 of this code [of Subsection (b), Article 1.33B, Insurance Code]. The commissioner shall, by rule, establish
reasonable criteria for applying the above set forth standards for
determining whether to impose a moratorium. The commissioner may
limit a moratorium on withdrawal from or reduction in personal
lines insurance to certain geographical areas of this state.

SECTION 10.07. This article applies only to a reduction of a
line of insurance or a withdrawal of a line of insurance by an
insurer on or after the effective date of this article. A reduction
of a line of insurance or a withdrawal of a line of insurance by an
insurer before the effective date of this article is governed by the
law as it existed immediately before the effective date of this
article, and that law is continued in effect for that purpose.

ARTICLE 11. REVENUE BOND PROGRAM

PART A. FAIR PLAN ASSOCIATION

SECTION 11.01. Subchapter E, Chapter 21, Insurance Code, is
amended by adding Article 21.49A-1 to read as follows:

Art. 21.49A-1. REVENUE BOND PROGRAM FOR FAIR PLAN
ASSOCIATION

Sec. 1. PURPOSE. The legislature finds that the issuance of
public securities to provide a method to raise funds to provide
residential property insurance through the FAIR Plan Association in
this state is for the benefit of the public and in furtherance of a
public purpose.

Sec. 2. DEFINITIONS. In this article:

(1) "Association" means the FAIR Plan Association
established under Article 21.49A of this code.

(2) "Public security resolution" means the resolution
or order authorizing public securities to be issued under this
article.

(3) "Bond" means any debt instrument or public
security issued by the Texas Public Finance Authority.

(4) "Board" means the board of directors of the Texas
Public Finance Authority.

(5) "Insurer" means any insurer required to
participate in the association under Section 5, Article 21.49A of
this code, including a Lloyd's plan or a reciprocal or
interinsurance exchange.

Sec. 3. PUBLIC SECURITIES AUTHORIZED; APPLICATION OF TEXAS
PUBLIC FINANCE AUTHORITY ACT. (a) At the request of the
association, the Texas Public Finance Authority shall issue public
securities to:

(1) fund the association, including:

(A) to establish and maintain reserves to pay
claims;

(B) to pay operating expenses; and

(C) to purchase reinsurance;

(2) pay costs related to issuance of the public
securities; and

(3) pay other costs related to the public securities
as may be determined by the board.

(b) To the extent not inconsistent with this article,
Chapter 1232, Government Code, applies to public securities issued
under this article. In the event of a conflict, this article
controls.

Sec. 4. APPLICABILITY OF OTHER STATUTES. The following
laws apply to public securities issued under this article to the extent consistent with this article:

(1) Chapters 1201, 1202, 1204, 1205, 1231, and 1371, Government Code; and

(2) Subchapter A, Chapter 1206, Government Code.

Sec. 5. LIMITS. The Texas Public Finance Authority may issue, on behalf of the association, public securities in a total amount not to exceed $75 million.

Sec. 6. CONDITIONS. (a) Public securities issued under this article may be issued at public or private sale.

(b) Public securities may mature not more than 10 years after the date issued.

(c) Public securities must be issued in the name of the association.

Sec. 7. ADDITIONAL COVENANTS. In a public security resolution, the board may make additional covenants with respect to the public securities and the designated income and receipts of the association pledged to their payment, and may provide for the flow of funds and the establishment, maintenance, and investment of funds and accounts with respect to the public securities.

Sec. 8. SPECIAL ACCOUNTS. (a) A public security resolution may establish special accounts, including an interest and sinking fund account, reserve account, and other accounts.

(b) The association shall administer the accounts in accordance with Article 21.49A of this code.

Sec. 9. SECURITY. (a) Public securities are payable only from the service fee established under Section 10 of this article or
other amounts that the association is authorized to levy, charge, and collect.

(b) Public securities are obligations solely of the association. Public securities do not create a pledging, giving, or lending of the faith, credit, or taxing authority of this state.

(c) Each public security must include a statement that the state is not obligated to pay any amount on the public security and that the faith, credit, and taxing authority of this state are not pledged, given, or lent to those payments.

(d) Each public security issued under this article must state on its face that the public security is payable solely from the revenues pledged for that purpose and that the public security does not and may not constitute a legal or moral obligation of the state.

Sec. 10. SERVICE FEE. (a) A service fee may be assessed against:

(1) each insurer; and

(2) the association.

(b) The service fee shall be set by the commissioner in an amount sufficient to pay all debt service on the public securities. The service fee shall be paid by each insurer and the association as required by the commissioner by rule.

(c) The comptroller shall collect the service fee and the department shall reimburse the comptroller in the manner described by Article 4.19 of this code.

(d) The commissioner, in consultation with the comptroller, may coordinate payment and collection of the service fee with other
payments made by insurers and collected by the comptroller.

(e) As a condition of engaging in the business of insurance in this state, an insurer agrees that if the company leaves the property insurance market in this state the insurer remains obligated to pay, until the public securities are retired, the insurer's share of the service fee assessed under this section in an amount proportionate to that insurer's share of the property insurance market, including residential property insurance, in this state as of the last complete reporting period before the date on which the insurer ceases to engage in that insurance business in this state. The proportion assessed against the insurer shall be based on the insurer's gross premiums for property insurance, including residential property insurance, for the insurer's last reporting period.

Sec. 11. TAX EXEMPT. The public securities issued under this article, any interest from those public securities, and all assets pledged to secure the payment of the public securities are free from taxation by the state or a political subdivision of this state.

Sec. 12. AUTHORIZED INVESTMENTS. The public securities issued under this article constitute authorized investments under Articles 2.10 and 3.33 and Subpart A, Part I, Article 3.39 of this code.

Sec. 13. STATE PLEDGE. The state pledges to and agrees with the owners of any public securities issued in accordance with this article that the state will not limit or alter the rights vested in the association to fulfill the terms of any agreements made with the
owners of the public securities or in any way impair the rights and
remedies of those owners until the public securities, bond premium,
if any, or interest, and all costs and expenses in connection with
any action or proceeding by or on behalf of those owners, are fully
met and discharged. The association may include this pledge and
agreement of the state in any agreement with the owners of the
public securities.

Sec. 14. ENFORCEMENT BY MANDAMUS. A writ of mandamus and
all other legal and equitable remedies are available to any party at
interest to require the association and any other party to carry out
agreements and to perform functions and duties under this article,
the Texas Constitution, or a public security resolution.

SECTION 11.02. Subsection (e), Section 3, Article 21.49A,
Insurance Code, is amended to read as follows:

(e) The plan of operation shall provide:

(1) for establishment of a FAIR Plan Association for
the issuing of residential property insurance pursuant to this Act
and the distribution of the losses and the expenses in the writing
of such insurance in this state;

(2) that all insurers licensed to write property
insurance and writing residential property insurance shall
participate in the writings, expenses, [profits,] and losses of the
association, in the proportion that the net direct premiums, of
each participating insurer, written in this state during the
preceding calendar year, bear to the aggregate net direct premium
written in this state by all participating insurers; such
information shall be determined in accordance with the residential
property statistical plan adopted by the commissioner;

(3) that a participating insurer is entitled to receive credit for similar insurance voluntarily written in a designated underserved area and its participation in the writings in the association shall be reduced in accordance with the provisions of the plan of operation;

(4) for the immediate binding of eligible risks; for the use of premium installment payment plans, adequate marketing, and service facilities; and for the establishment of reasonable service standards;

(5) procedures for efficient, economical, fair, and nondiscriminatory administration of the FAIR Plan Association;

(6) procedures for determining the net level of participation required for each insurer in the FAIR Plan Association;

(7) for the use of deductibles and other underwriting devices and for assessment of all members in amounts sufficient to operate the association; and establish maximum limits of liability to be placed through the program; and commissions to be paid to the licensed agents submitting applications;

(8) that the association issue policies in its own name;

(9) reasonable underwriting standards for determining insurability of the risk;

(10) procedures for the assumption and ceding of reinsurance by the association; and

(11) any other procedures or operational matters...
deemed necessary by the governing committee or the commissioner.

SECTION 11.03. Subsection (d), Section 5, Article 21.49A, Insurance Code, is amended to read as follows:

(d) Each insurer must participate in the writings, expenses, [profit] and losses of the association in the proportion that its net direct premiums written bear to the aggregate net direct premiums written by all insurers.

SECTION 11.04. Section 11, Article 21.49A, Insurance Code, is amended to read as follows:

Sec. 11. ASSESSMENTS AND PREMIUM SURCHARGES. Should a deficit occur in the association, the association, at the direction of the commissioner, shall either request the issuance of public securities as authorized by Article 21.49A-1 of this code or assess participating insurers in accordance with this section. Each [and each] insurer may charge a premium surcharge on every property insurance policy issued by it insuring property in this state, the effective date of which policy is within the three-year period commencing 90 days after the date of assessment by the association under this section. The amount of the surcharge shall be calculated on the basis of a uniform percentage of the premium on such policies equal to one-third of the ratio of the amount of an insurer's assessment to the amount of its direct earned premiums as reported in its financial statement to the department for the calendar year immediately preceding the year in which the assessment is made, such that over the period of three years the aggregate of all such surcharges by an insurer shall be equal to the amount of the assessment of such insurer. The minimum surcharges on a policy may
be $1; all surcharges may be rounded to the nearest dollar.

SECTION 11.05. Article 21.49A, Insurance Code, is amended by adding Section 15 to read as follows:

Sec. 15. RETENTION OF PROFITS. The association shall retain any profits of the association to be used for the purposes of the association. The profits of the association shall be used to mitigate losses, including the purchase of reinsurance and the offset of future assessments, and may not be distributed to insurers.

PART B. TRANSITION

SECTION 11.06. The changes in law made by this article to Article 21.49A, Insurance Code, apply only to the profits earned by the FAIR Plan Association in accordance with Article 21.49A on or after the effective date of this Act.

ARTICLE 12. SANCTIONS, PENALTIES, AND PAYMENT UNDER CERTAIN Policies

SECTION 12.01. Section 5, Article 21.21-6, Insurance Code, as added by Chapter 415, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 5. SANCTIONS. (a) Any legal entity engaged in the business of insurance in this state found to be in violation of or failing to comply with this article is subject to the sanctions authorized by Chapter 82 [in Article 1.10] of this code or [including] administrative penalties authorized by Chapter 84 [under Article 1.10B] of this code. The commissioner may also utilize the cease and desist procedures authorized by Chapter 83 [Article 1.10A] of this code.
(b) It is not a defense to an action of the commissioner under Subsection (a) of this section that the contract giving rise to the alleged violation was entered into before the effective date of this article.

SECTION 12.02. Subchapter B, Chapter 21, Insurance Code, is amended by adding Article 21.21-6A to read as follows:

Art. 21.21-6A. CRIMINAL PENALTY. (a) In this article, "person" means a legal entity engaged in the business of life insurance described by Subdivisions (a), (b), (c), (f), and (j), Section 2, Article 21.21-6 of this code, as added by Chapter 415, Acts of the 74th Legislature, Regular Session, 1995, or an officer or director of one of those entities.

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

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

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

(c) An offense under this article is a state jail felony.
Insurance Code, is amended to read as follows:

(c) All actions under this article must be commenced on or before the second anniversary of [within 12 months after] the date on which the plaintiff was denied insurance or the unfair act occurred or the date the plaintiff, in the exercise of reasonable diligence, should have discovered the occurrence of the unfair act.

SECTION 12.04. Section 1, Article 21.74, Insurance Code, is amended by amending Subdivisions (1) and (2) and adding Subdivision (4) to read as follows:

(1) "Holocaust victim" means a person who was killed or injured, or who lost real or personal property or financial assets, as the result of discriminatory laws, policies, or actions directed against any discrete group of which the person was a member, during the period of 1920 to 1945, inclusive, in Germany, areas occupied by Germany, [ex] countries allied with Germany, or countries that were sympathizers with Germany.

(2) "Insurer" means an insurance company or other entity engaged in the business of insurance or reinsurance in this state. The term includes:

(A) a capital stock company, a mutual company, or a Lloyd's plan; and

(B) any parent, subsidiary, reinsurer, successor in interest, managing general agent, or affiliated company, at least 50 percent of the stock of which is in common ownership with an insurer engaged in the business of insurance in this state.

(4) "Proceeds" means the face value or other payout value of insurance policies and annuities plus reasonable interest
to date of payment without diminution for wartime or immediate
postwar currency devaluation.

SECTION 12.05. Article 21.74, Insurance Code, is amended by
adding Sections 2A and 2B to read as follows:

Sec. 2A. FILINGS AND CERTIFICATES OF INSURANCE. (a) This
section applies to each insurer engaging in business in the state
that, directly or through a related company, sold to persons in
Europe insurance policies described by Section 1 of this article or
dowry or educational insurance policies that were in effect during
the period of 1920 to 1945, whether the sale occurred before or
after the insurer and the related company became related.

(b) Each insurer shall file or cause to be filed with the
commissioner the following information:

(1) the number of insurance policies described by
Subsection (a) of this section sold by the insurer or a related
company;

(2) the holder, beneficiary, and current status of the
policies; and

(3) the city of origin, domicile, or address for each
policyholder listed in the policies.

(c) Each insurer shall certify:

(1) that the proceeds of the policies described by
Subsection (a) of this section have been paid to the designated
beneficiaries or their heirs in circumstances in which that person
or those persons, after diligent search, could be located and
identified;

(2) that the proceeds of the policies, in
circumstances in which the beneficiaries or heirs could not, after
diligent search, be located or identified, have been distributed to
Holocaust survivors or to qualified charitable nonprofit
organizations for the purpose of assisting Holocaust survivors;

(3) that a court of law has certified in a legal
proceeding resolving the rights of unpaid policyholders and their
heirs and beneficiaries a plan for the distribution of the
proceeds; or

(4) that the proceeds have not been distributed and
the amount of those proceeds.

(d) The commissioner by rule shall require that insurers
update the information submitted to the commissioner under this
section at reasonable intervals.

Sec. 2B. ESTABLISHMENT AND MAINTENANCE OF REGISTRY; PUBLIC
ACCESS. (a) The commissioner shall establish and maintain within
the department a central registry containing records and
information relating to insurance policies described by Section
2A(a) of this article of Holocaust victims, living and deceased.
The registry shall be known as the Holocaust Era Insurance
Registry.

(b) The commissioner by rule shall establish appropriate
mechanisms to ensure public access to the registry.

(c) Information contained in the registry:

(1) is public information;

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

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

SECTION 12.06. (a) Article 21.21-6A, Insurance Code, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose. For the purposes of this subsection, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) Subsection (c), Section 3, Article 21.21-8, Insurance Code, as amended by this Act, applies to a cause of action for which the limitations period established under that subsection before its amendment by this Act has not expired on the effective date of this Act.

SECTION 12.07. Not later than the 180th day after the effective date of this Act, an insurer subject to Article 21.74, Insurance Code, as amended by this Act, shall file the information and certification required by Section 2A of that article.

ARTICLE 13. RATES STANDARDS

SECTION 13.01. Chapter 1, Insurance Code, is amended by adding Article 1.02 to read as follows:

Art. 1.02. RATING. (a) In this article, "insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, farm mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, a surplus lines insurer, or other legal entity engaged in the business of insurance in this state. The term includes:

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(1) an affiliate as described by Section 2, Article 21.49-1 of this code, or Section 823.003(a) of this code;

(2) the Texas Windstorm Insurance Association created and operated under Article 21.49 of this code;

(3) the FAIR Plan Association under Article 21.49A of this code; and

(4) the Texas Automobile Insurance Plan Association under Article 21.81 of this code.

(b) Rates used under this code must be just, fair, reasonable, adequate, not confiscatory and not excessive for the risks to which they apply, and not unfairly discriminatory. An insurer may not use rates that violate this article.

(c) For purposes of this article, a rate is:

(1) excessive if the rate is likely to produce a long-term profit that is unreasonably high in relation to the insurance coverage provided;

(2) inadequate if the rate is insufficient to sustain projected losses and expenses to which the rate applies, and continued use of the rate:

(A) endangers the solvency of an insurer using the rate; or

(B) has the effect of substantially lessening competition or creating a monopoly within any market; or

(3) unfairly discriminatory if the rate:

(A) is not based on sound actuarial principles;

(B) does not bear a reasonable relationship to the expected loss and expense experience among risks; or
ARTICLE 14. LEGISLATIVE OVERSIGHT COMMITTEE

SECTION 14.01. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.49-20 to read as follows:

Art. 21.49-20. PROPERTY AND CASUALTY LEGISLATIVE OVERSIGHT COMMITTEE. (a) In this section, "committee" means the property and casualty insurance legislative oversight committee.

(b) The committee is composed of seven members as follows:

(1) the chair of the Senate Business and Commerce Committee and the chair of the House Committee on Insurance, who shall serve as joint chairs of the committee;

(2) two members of the senate appointed by the lieutenant governor;

(3) two members of the house of representatives appointed by the speaker of the house of representatives; and

(4) the public insurance counsel.

(c) An appointed member of the committee serves at the pleasure of the appointing official. In making appointments to the committee, the appointing officials shall attempt to appoint persons who represent the gender composition, minority populations, and geographic regions of the state.

(d) The committee is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the committee is abolished September 1, 2007.

(e) The committee shall:
(1) meet at least annually with the commissioner;

(2) receive information about rules relating to property and casualty insurance proposed by the department, and may submit comments to the commissioner on those proposed rules;

(3) monitor the progress of property and casualty insurance regulation reform, including the fairness of rates, underwriting guidelines, and rating manuals, the availability of coverage, the effect of rate rollbacks, credit scoring, and regulation of homeowners and automobile insurance markets;

(4) review recommendations for legislation proposed by the department; and

(5) review the necessity of having the department periodically examine the market conduct of an insurer or group of insurers, including the business practices, performance, and operations of the insurer or group of insurers.

(f) The committee may request reports and other information from the department as necessary to carry out this section.

(g) Not later than November 15 of each even-numbered year, the committee shall report to the governor, lieutenant governor, and speaker of the house of representatives on the committee's activities under Subsection (e) of this section. The report shall include:

(1) an analysis of any problems caused by property and casualty insurance regulation reform; and

(2) recommendations of any legislative action necessary to address those problems and to foster stability, availability, and competition within the property and casualty
insurance industry.

ARTICLE 15. RULEMAKING

SECTION 15.01. Section 36.001, Insurance Code, is amended to read as follows:

Sec. 36.001. [RULES FOR] GENERAL RULEMAKING AUTHORITY [AND UNIFORM APPLICATION]. (a) The commissioner may adopt any rules necessary and appropriate to implement [for the conduct and execution of] the powers and duties of the department under this code and other laws of this state [only as authorized by statute].

(b) Rules adopted under this section must have general and uniform application.

[(c) The commissioner shall publish the rules in a format organized by subject matter. The published rules shall be kept current and be available in a form convenient to any interested person.]

SECTION 15.02. Section 36.004, Insurance Code, is amended to read as follows:

Sec. 36.004. COMPLIANCE WITH NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS REQUIREMENTS. Except as provided by Section 36.005, the [The] department may not require an insurer to comply with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners, including a rule, regulation, directive, or standard relating to policy reserves, unless application of the rule, regulation, directive, or standard is expressly authorized by statute and approved by the commissioner.

SECTION 15.03. Subchapter A, Chapter 36, Insurance Code, is
amended by adding Section 36.005 to read as follows:

Sec. 36.005. INTERIM RULES TO COMPLY WITH FEDERAL REQUIREMENTS. (a) The commissioner may adopt rules to implement state responsibility in compliance with a federal law or regulation or action of a federal court relating to a person or activity under the jurisdiction of the department if:

(1) federal law or regulation, or an action of a federal court, requires:

   (A) a state to adopt the rules; or

   (B) action by a state to ensure protection of the citizens of the state;

(2) the rules will avoid federal preemption of state insurance regulation; or

(3) the rules will prevent the loss of federal funds to this state.

(b) The commissioner may adopt a rule under this section only if the federal action requiring the adoption of a rule occurs or takes effect between sessions of the legislature or at such time during a session of the legislature that sufficient time does not remain to permit the preparation of a recommendation for legislative action or permit the legislature to act. A rule adopted under this section shall remain in effect only until 30 days following the end of the next session of the legislature unless a law is enacted that authorizes the subject matter of the rule. If a law is enacted that authorizes the subject matter of the rule, the rule will continue in effect.

SECTION 15.04. Subsection (p), Article 3.42, Insurance
Code, is amended to read as follows:

(p) The commissioner is hereby authorized to adopt [such] reasonable rules [and regulations] as [are] necessary to implement and accomplish the [specific provisions of this Article and are within the standards and] purposes of this Article. The commissioner shall adopt rules under this Article in compliance with Chapter 2001, Government Code [(Administrative Procedure Act)]. A rule adopted under this Article may not be repealed or amended until after the first anniversary of the adoption of the rule unless the commissioner finds that it is in the significant and material interests of the citizens of this state or that it is necessary as a result of legislative enactment to amend, repeal, or adopt a [in a public hearing after notice that there is a compelling public need for the amendment or repeal of the] rule or part of a [the] rule.

SECTION 15.05. Section 36.002, Insurance Code, is repealed.

ARTICLE 16. CANCELLATION OF CERTAIN INSURANCE POLICIES

SECTION 16.01. Section 4, Article 21.49-2B, Insurance Code, is amended by amending Subsection (i) and adding Subsection (j) to read as follows:

(i) An insurer may cancel any insurance policy other than a personal automobile or homeowners insurance policy if the policy has been in effect less than 90 days. An insurer may cancel a personal automobile insurance policy if the policy [it] has been in effect less than 60 days. An insurer may cancel a homeowners insurance [any other] policy if the policy [it] has been in effect less than 60 [90] days if:
(1) the insurer identifies a condition that:
   (A) creates an increased risk of hazard;
   (B) was not disclosed in the application for
   insurance coverage; and
   (C) is not the subject of a prior claim; or
(2) before the effective date of the policy, the
insurer does not accept a copy of a required inspection report that:
   (A) was completed by an inspector licensed by the
   Texas Real Estate Commission or who is otherwise authorized to
   perform inspections; and
   (B) is dated not earlier than the 90th day before
   the effective date of the policy.

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

ARTICLE 17. N.A.I.C. FEES

SECTION 17.01. Section 802.055, Insurance Code, as
effective June 1, 2003, is amended to read as follows:

Sec. 802.055. COSTS PAID BY INSURANCE COMPANY. [(a)] An
insurance company shall pay all [the] costs of preparing and
furnishing to the National Association of Insurance Commissioners
the information required under Section 802.052, including any
related filing fees.

[(b) Except as provided by Subsection (a), costs relating to
providing the information required under Section 802.052 may not be
assessed against an insurance company.]
ARTICLE 18. MEDICAL LIABILITY INSURANCE
UNDERWRITING ASSOCIATION

SECTION 18.01. Subdivision (5), Subsection (b), Section 4, Article 21.49-3, Insurance Code, is amended to read as follows:

(5) In the event that sufficient funds are not available for the sound financial operation of the association, in addition to assessments paid pursuant to the plan of operation in accordance with Section 3(c)(2) of this article and contributions from the policyholder's stabilization reserve fund, all members shall, on a basis authorized by the department [board], as long as the department [board] deems it necessary, contribute to the financial requirements of the association in the manner provided for in Section 5. Any assessment or contribution shall be reimbursed to the members, or to the state to the extent that the members have recouped their assessments using premium tax credits as provided under Subsection (b)(3) of this section, with interest at a rate to be approved by the commissioner, subject to the approval of the commissioner [board]. Pending recoupment or reimbursement of assessments or contributions paid to the association by a member, the unrepaid balance of such assessments and contributions may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements pursuant to Section 862.001 [Article 6.12] of this code.

ARTICLE 19. CERTAIN INSURANCE TRUSTS

SECTION 19.01. Subsection (b), Article 21.49-4, Insurance Code, is amended to read as follows:
(b) An incorporated association, the purpose of which, among other things, shall be to federate and bring into one compact organization the entire profession licensed to practice medicine and surgery or dentistry in the State of Texas, or a portion of the members of the profession licensed to practice medicine who are practicing a particular specialty within the practice of medicine or surgery in the state or are practicing within a particular region of the state [and to unite with similar associations of other states to form a nationwide medical association or dental association], may create a trust to self-insure physicians or dentists and by contract or otherwise agree to insure other members of the organization or association against health care liability claims and related risks on complying with the following conditions:

(1) the organization or association must have been in continuing existence for a period of at least two years [prior to the effective date of this Act];

(2) establishment of a health care liability claim trust or other agreement to provide coverage against health care liability claims and related risks; and

(3) employment of appropriate professional staff and consultants for program management.

ARTICLE 20. INSURER INTERESTS IN CERTAIN REPAIR FACILITIES

SECTION 20.01. Subdivision (4), Section 2306.001, Occupations Code, as added by H.B. No. 1131, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(4) "Insurer" means an insurer authorized by the Texas Department of Insurance to write motor vehicle insurance in this
state, including a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange if that insurer owns an interest in a repair facility in this state. The term includes an entity that is an affiliate of an insurer as described by Section 823.003, Insurance Code.

SECTION 20.02. Subdivision (4), Section 2306.001, Occupations Code, as amended by this article, is contingent on the passage of H.B. No. 1131, Acts of the 78th Legislature, Regular Session. If that legislation does not become law, Subdivision (4), Section 2306.001, Occupations Code, as amended by this article, has no effect.

ARTICLE 21. CONFORMING AMENDMENTS; REPEALER

SECTION 21.01. Subsection (f), Article 5.01, Insurance Code, is amended to read as follows:

(f) Notwithstanding Subsections (a) through (d) of this article, on and after the effective date of S.B. No. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1992], rates for personal automobile insurance in this state are determined as provided by Article 5.101 of this code, and rates for commercial motor vehicle insurance in this state are determined as provided by Article 5.13-2 [the flexible rating program adopted under Subchapter 4] of this code [chapter]. On and after December 1, 2004, rates for personal automobile insurance and commercial automobile insurance in this state are determined as provided by Article 5.13-2 of this code.

SECTION 21.02. Section 4, Article 5.01C, Insurance Code, is amended to read as follows:
Sec. 4. FORMS. An insurer selling short-term liability insurance policies under this article must use the policy forms adopted by the commissioner under Article 5.06 of this code or filed and in effect as provided by Article 5.145 of this code unless the insurer is exempt from using those forms.

SECTION 21.03. Subsection (b), Article 5.01-2, Insurance Code, is amended to read as follows:

(b) On and after the effective date of S.B. No. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1993], rates for personal automobile [motor vehicle] insurance written by a Lloyd's plan insurer or a reciprocal or interinsurance exchange are determined as provided by the flexible rating program adopted under Subchapter M of this chapter. This subsection expires December 1, 2004.

SECTION 21.04. Section 4, Article 5.01-4, Insurance Code, is amended to read as follows:

Sec. 4. APPLICABILITY OF CERTAIN LAWS. (a) In reporting incurred losses and earned premiums as required under this subchapter or[7] Subchapter M of this chapter, or on and after December 1, 2004, under Article 5.13-2 [or Chapter 17] of this code, an insurer shall separately report experience based on use of the mile-based rating plan and the time-based rating plan.

(b) The classifications used by an insurer for motor vehicles insured under the mile-based rating plan are exempt from the provisions of this subchapter other than this article [and] Subchapter M of this chapter, and on and after December 1, 2004, Article 5.13-2 of this code.
SECTION 21.05. Subsection (g), Article 5.03, Insurance Code, is amended to read as follows:

(g) Notwithstanding Sections (a) through (e) of this article, on and after the effective date of S.B. No. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1993], rates for personal automobile insurance in this state are determined as provided by Article 5.101 of this code, and rates for commercial motor vehicle insurance in this state [vehicles] are determined as provided by Article 5.13-2 [Subchapter M] of this code [chapter]. On and after December 1, 2004, rates for personal automobile insurance and commercial automobile insurance in this state are determined as provided by Article 5.13-2 of this code.

SECTION 21.06. Subsection (c), Article 5.04, Insurance Code, is amended to read as follows:

(c) Notwithstanding Subsections (a) and (b) of this article, on and after the effective date of S.B. No. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1993], rates for personal automobile insurance in this state are determined as provided by Article 5.101 of this code, and rates for commercial motor vehicle insurance in this state [vehicles] are determined as provided by Article 5.13-2 [Subchapter M] of this code [chapter]. On and after December 1, 2004, rates for personal automobile insurance and commercial automobile insurance in this state are determined as provided by Article 5.13-2 of this code.

SECTION 21.07. Article 5.06, Insurance Code, is amended by adding Subsection (12) to read as follows:

(12)(a) Notwithstanding Subsections (1)-(10) of this
article, policy forms and endorsements for automobile insurance in this state are regulated under Article 5.13-2 of this code.

(b) An insurer may continue to use the policy forms and endorsements promulgated, approved, or adopted by the commissioner under this article before the effective date of S.B. No. 14, Acts of the 78th Legislature, Regular Session, 2003, on notification in writing to the commissioner that the insurer will continue to use the policy forms and endorsements promulgated, approved, or adopted by the commissioner under this article.

SECTION 21.08. Subsection (2), Article 5.06-1, Insurance Code, is amended to read as follows:

(2) For the purpose of these coverages: (a) the term "uninsured motor vehicle" shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency.

(b) The term "underinsured motor vehicle" means an insured motor vehicle on which there is valid and collectible liability insurance coverage with limits of liability for the owner or operator which were originally lower than, or have been reduced by payment of claims arising from the same accident to, an amount less than the limit of liability stated in the underinsured coverage of the insured's policy.

(c) The commissioner [Board] may, in the policy forms adopted under Article 5.06 of this code, define "uninsured motor vehicle" to exclude certain motor vehicles whose operators are in
fact uninsured. The commissioner may in the policy forms filed under Article 5.145 of this code allow the term "uninsured motor vehicle" to be defined to exclude certain motor vehicles whose operators are in fact uninsured.

(d) The portion of a policy form adopted under Article 5.06 of this code or filed under Article 5.145 of this code to provide coverage under this article shall include provisions that, regardless of the number of persons insured, policies or bonds applicable, vehicles involved, or claims made, the total aggregate limit of liability to any one person who sustains bodily injury or property damage as the result of any one occurrence shall not exceed the limit of liability for these coverages as stated in the policy and the total aggregate limit of liability to all claimants, if more than one, shall not exceed the total limit of liability per occurrence as stated in the policy; and shall provide for the exclusion of the recovery of damages for bodily injury or property damage or both resulting from the intentional acts of the insured.

The portion of a policy form adopted under Article 5.06 of this code or filed under Article 5.145 of this code to provide coverage under this article shall require that in order for the insured to recover under the uninsured motorist coverages where the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured is unknown, actual physical contact must have occurred between the motor vehicle owned or operated by such unknown person and the person or property of the insured.

SECTION 21.09. Article 5.06-6, Insurance Code, is amended to read as follows:
Art. 5.06-6. COVERAGES FOR SPOUSES AND FORMER SPOUSES. A personal automobile policy or any similar policy form adopted or approved by the commissioner [State Board of Insurance] under Article 5.06 of this code or filed under Article 5.145 of this code that covers liability arising out of ownership, maintenance, or use of a motor vehicle of a spouse, who is otherwise insured by the policy, shall contain a provision to continue coverage for the spouse during a period of separation in contemplation of divorce.

SECTION 21.10. Subsection (c), Article 5.09, Insurance Code, is amended to read as follows:

(c) Notwithstanding Subsection (a) of this article, on and after the effective date of S.B. No. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1992], rates for personal automobile insurance in this state are determined as provided by Article 5.101 of this code, and rates for commercial motor vehicle insurance in this state [vehicles] are determined as provided by Article 5.13-2 [Subchapter M] of this code [chapter]. On and after December 1, 2004, rates for personal automobile insurance and commercial automobile insurance in this state are determined as provided by Article 5.13-2 of this code.

SECTION 21.11. Subsection (c), Article 5.11, Insurance Code, is amended to read as follows:

(c) Notwithstanding Subsections (a) and (b) of this article, on and after the effective date of S.B. No. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1992], rates for personal automobile insurance in this state are determined as provided by Article 5.101 of this code, and rates for commercial
motor vehicle insurance in this state [vehicles] are determined as
provided by Article 5.13-2 [Subchapter H] of this code [chapter].
On and after December 1, 2004, rates for personal automobile
insurance and commercial automobile insurance in this state are
determined as provided by Article 5.13-2 of this code.

SECTION 21.12. Subsection (b), Article 5.25, Insurance
Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and
after the effective date of S.B. No. 14, Acts of the 78th
Legislature, Regular Session, 2003 [March 1, 1993], rates for
homeowners and residential fire and residential allied lines
insurance coverage under this subchapter are determined as provided
by Subchapter Q [H] of this chapter, and rates for other lines of
insurance subject to this subchapter are determined as provided by
Article 5.13-2 of this code, except that on and after December 1,
2004, rates for all lines of insurance subject to this subchapter
are determined as provided by Article 5.13-2 of this code. This
subsection does not affect the requirement for the commissioner to
conduct inspections of commercial property and prescribe a manual
of rules and rating schedules for commercial property under this
subchapter.

SECTION 21.13. Subsection (b), Article 5.25A, Insurance
Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and
after the effective date of S.B. No. 14, Acts of the 78th
Legislature, Regular Session, 2003 [March 1, 1993], rates for
homeowners and residential fire and residential allied lines
insurance coverage under this subchapter are determined as provided by Subchapter Q [M] of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code, except that on and after December 1, 2004, rates for all lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code.

SECTION 21.14. Article 5.25-2, Insurance Code, is amended to read as follows:

Art. 5.25-2. CITY FIRE LOSS LISTS

Sec. 1. In this article,

[(1)] "list" means the list of fire and lightning losses in excess of $100 paid under policy forms adopted or approved by the commissioner [board] under Article 5.35 of this code or filed and in effect as provided by Article 5.145 of this code [subchapter] in a particular city or town prepared by the department [State Board of Insurance] for distribution to the city or town[+]

[(2)] "board" means the State Board of Insurance.

Sec. 2. (a) The department [board] shall compile for each city or town in Texas a list of the insured fire losses paid under policy forms adopted or approved by the commissioner [board] under Article 5.35 of this code or filed and in effect as provided by Article 5.145 of this code [subchapter] in that city or town for the preceding statistical year.

(b) The list shall include:

(1) the names of persons recovering losses under policy forms adopted or approved by the commissioner [board] under Article 5.35 of this code or filed and in effect as provided by
Article 5.145 of this code [subchapter];

(2) the addresses or locations where the losses occurred; and

(3) the amount paid by the insurance company on each loss.

(c) The department [board] shall obtain the information to make the lists from insurance company reports of individual losses during the statistical year.

Sec. 3. Upon the request of any city or town, or its duly authorized agent or fire marshall, the department [board] shall provide that city and town with a copy of the list for its particular area.

Sec. 4. Each city or town shall investigate its list to determine the losses actually occurring in its limits and shall make a report to the department, [board] which report shall include:

(1) a list of the losses that actually occurred in the limits of the city or town;

(2) a list of any losses not occurring in the limits of the city or town; and

(3) other evidence essential to establishing the losses in the city or town.

Sec. 5. The department [board] shall make such changes or corrections as to it shall seem appropriate in order to correct the list of insured fire and lightning losses paid under policy forms adopted or approved by the commissioner [board] under Article 5.35 of this code or filed and in effect as provided by Article 5.145 of
this code [subchapter] in a particular city or town and said list of losses, as changed or corrected, shall be used to determine the fire record credit or debit for each particular city or town for the next year.

Sec. 6. The commissioner [board] shall set and collect a charge for compiling and providing a list of fire and lightning losses paid under policy forms adopted or approved by the commissioner [board] under Article 5.35 of this code or filed and in effect as provided by Article 5.145 of this code [subchapter] in a particular city or town and as the commissioner [board] shall deem appropriate to administer the fire record system.

Sec. 7. The department [board] is authorized to require each and every city or town in the State of Texas and each and every insurance company or carrier of every type and character whatsoever doing business in the State of Texas to furnish to it a complete and accurate list of all fire and lightning losses occurring within the State of Texas and reflected in their records for the purpose of accumulating statistical information for the control and prevention of fires.

Sec. 8. The department [board] may, at its discretion, furnish such list only during such time as the fire record system remains in force and effect.

SECTION 21.15. Subsection (i), Article 5.26, Insurance Code, is amended to read as follows:

(i) Notwithstanding Subsections (a)-(h) of this article, on and after the effective date of S.B. No. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1992], rates for
homeowners and residential fire and residential allied lines
insurance coverage under this subchapter are determined as provided
by Subchapter Q [¶] of this chapter, and rates for other lines of
insurance subject to this subchapter are determined as provided by
Article 5.13-2 of this code, except that on and after December 1,
2004, rates for all lines of insurance subject to this subchapter
are determined as provided by Article 5.13-2 of this code.

SECTION 21.16. Subsection (d), Article 5.28, Insurance
Code, is amended to read as follows:

(d) Notwithstanding Subsection (a) of this article, on and
after the effective date of S.B. No. 14, Acts of the 78th
Legislature, Regular Session, 2003 [March 1, 1993], rates for
homeowners and residential fire and residential allied lines
insurance coverage under this subchapter are determined as provided
by Subchapter Q [¶] of this chapter, and rates for other lines of
insurance subject to this subchapter are determined as provided by
Article 5.13-2 of this code, except that on and after December 1,
2004, rates for all lines of insurance subject to this subchapter
are determined as provided by Article 5.13-2 of this code.

SECTION 21.17. Subsection (b), Article 5.29, Insurance
Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and
after the effective date of S.B. No. 14, Acts of the 78th
Legislature, Regular Session, 2003 [March 1, 1993], rates for
homeowners and residential fire and residential allied lines
insurance coverage under this subchapter are determined as provided
by Subchapter Q [¶] of this chapter, and rates for other lines of
insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code, except that on and after December 1, 2004, rates for all lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code.

SECTION 21.18. Subsection (b), Article 5.30, Insurance Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and after the effective date of S.B. No. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1992], rates for homeowners and residential fire and residential allied lines insurance coverage under this subchapter are determined as provided by Subchapter O [o] of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code, except that on and after December 1, 2004, rates for all lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code.

SECTION 21.19. Subsection (b), Article 5.31, Insurance Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and after the effective date of S.B. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1992], rates for homeowners and residential fire and residential allied lines insurance coverage under this subchapter are determined as provided by Subchapter O [o] of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code, except that on and after December 1, 2004, rates for all lines of insurance subject to this subchapter are determined as
provided by Article 5.13-2 of this code.

SECTION 21.20. Subsection (b), Article 5.32, Insurance Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and after the effective date of S.B. No. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1993], rates for homeowners and residential fire and residential allied lines insurance coverage under this subchapter are determined as provided by Subchapter Q [¶] of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code, except that on and after December 1, 2004, rates for all lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code.

SECTION 21.21. Subsection (b), Article 5.34, Insurance Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and after the effective date of S.B. No. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1993], rates for homeowners and residential fire and residential allied lines insurance coverage under this subchapter are determined as provided by Subchapter Q [¶] of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code, except that on and after December 1, 2004, rates for all lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code.

SECTION 21.22. Article 5.35, Insurance Code, is amended by adding Subsection (k) to read as follows:
(k)(1) Notwithstanding Subsections (a)-(j) of this article, policy forms and endorsements for residential property insurance in this state are regulated under Article 5.13-2 of this code.

(2) An insurer may continue to use the policy forms and endorsements promulgated, approved, or adopted by the commissioner under this article before the effective date of S.B. No. 14, Acts of the 78th Legislature, Regular Session, 2003, on notification in writing to the commissioner that the insurer will continue to use the policy forms and endorsements promulgated, approved, or adopted by the commissioner under this article.

SECTION 21.23. Article 5.35-1, Insurance Code, is amended to read as follows:

Art. 5.35-1. COVERAGES FOR SPOUSES AND FORMER SPOUSES. A homeowner's policy or fire policy promulgated under Article 5.35 of this code or filed and in effect as provided by Article 5.145 of this code may not be delivered, issued for delivery, or renewed in this state unless the policy contains the following language: "It is understood and agreed that this policy, subject to all other terms and conditions contained in this policy, when covering residential community property, as defined by state law, shall remain in full force and effect as to the interest of each spouse covered, irrespective of divorce or change of ownership between the spouses unless excluded by endorsement attached to this policy until the expiration of the policy or until canceled in accordance with the terms and conditions of this policy."

SECTION 21.24. Article 5.36, Insurance Code, is amended to read as follows:
Art. 5.36. WRITTEN EXPLANATION OF CERTAIN ENDORSEMENTS REQUIRED. An insurer may not use an endorsement to a policy form to which Article 5.35 of this code or Article 5.145 of this code applies that reduces the amount of coverage, unless requested by the insured, that would otherwise be provided under the policy unless the insurer provides the policyholder with a written explanation of the change made by the endorsement before the effective date of the change.

SECTION 21.25. Subsection (b), Article 5.39, Insurance Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and after the effective date of S.B. No. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1993], rates for homeowners and residential fire and residential allied lines insurance coverage under this subchapter are determined, and hearings related to those rates are conducted, as provided by Subchapter Q [H] of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code, except that on and after December 1, 2004, rates for all lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code.

SECTION 21.26. Subsection (d), Article 5.40, Insurance Code, is amended to read as follows:

(d) Notwithstanding Subsections (a)-(c) of this article, on and after the effective date of S.B. No. 14, Acts of the 78th Legislature, Regular Session, 2003 [March 1, 1993], rates for homeowners and residential fire and residential allied lines
insurance coverage under this subchapter are determined, and
hearings related to those rates are conducted, as provided by
Subchapter Q [¶] of this chapter, and rates for other lines of
insurance subject to this subchapter are determined as provided by
Article 5.13-2 of this code, except that on and after December 1,
2004, rates for all lines of insurance subject to this subchapter
are determined as provided by Article 5.13-2 of this code.

SECTION 21.27. Subsection (b), Article 5.41, Insurance
Code, is amended to read as follows:

(b) Notwithstanding Subsection (a) of this article, on and
after the effective date of S.B. No. 14, Acts of the 78th
Legislature, Regular Session, 2003 [March 1, 1992], rates for
homeowners and residential fire and residential allied lines
insurance coverage under this subchapter are determined as provided
by Subchapter Q [¶] of this chapter, and rates for other lines of
insurance subject to this subchapter are determined as provided by
Article 5.13-2 of this code, except that on and after December 1,
2004, rates for all lines of insurance subject to this subchapter
are determined as provided by Article 5.13-2 of this code.

SECTION 21.28. Article 5.52, Insurance Code, is amended to
read as follows:

Art. 5.52. PROVISIONS GOVERNING LIGHTNING, WINDSTORM,
HAIL, INVASION, RIOT, VANDALISM, STRIKES, LOCKOUTS AND OTHER
INSURANCE; "EXPLOSION" DEFINED. (a) The writing of insurance
against loss by lightning, tornado, windstorm, hail, smoke or
smudge, cyclone, earthquake, volcanic eruption, rain, frost and
freeze, weather or climatic conditions, excess or deficiency of
moisture, flood, the rising of the waters of the ocean or its tributaries, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, strike or lockout, explosion, water or other fluid or substance, resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes or other conduits or containers, or resulting from casual water entering through leaks or openings in buildings, or by seepage through building walls, including insurance against accidental injury of such sprinklers, pumps, fire apparatus, conduits or containers, and the rates to be collected therefor in this State, and all matters pertaining to such insurance except as hereinafter set out as to [inland] marine insurance as defined by Article 5.53 of this code, [rain insurance and insurance against loss by hail on farm crops] shall be governed and controlled by the provisions of Articles 5.25 to 5.48, inclusive, and also Articles 5.50 to 5.51, inclusive, of this subchapter and Article 5.67 of Subchapter D of this Chapter, in the same manner and to the same extent as fire insurance and fire insurance rates are now affected by the provisions of said articles of this code.

(b) Notwithstanding Subsection (a) of this section, rain insurance and hail insurance on farm crops are governed by Article 5.13-2 of this code.

(c) The term "explosion" as used in this article (above) shall not include insurance against loss of or damage to any
property of the insured, resulting from the explosion of or injury to (a) any boiler, heater, or other fired pressure vessel; (b) any unfired pressure vessel; (c) pipes or containers connected with any of said boilers or vessels; (d) any engine, turbine, compressor, pump, or wheel; (e) any apparatus generating, transmitting or using electricity; (f) any other machinery or apparatus connected with or operating by any of the previously named boilers, vessels or machines; nor shall same include the making of inspections and issuance of certificates of inspections upon any such boiler, apparatus or machinery, whether insured or otherwise. Said term shall include, but shall not be limited to (1) the explosion of pressure vessels (except steam boilers of more than fifteen pounds pressure) in buildings designed and used solely for residential purposes by not more than four (4) families; (2) explosion of any kind originating outside of the insured buildings or outside of the building containing the property insured; (3) explosion of pressure vessels which do not contain steam or which are not operated with steam coils or steam jets; (4) electric disturbance causing or concomitant with an explosion in public service or public utility property.

SECTION 21.29. Article 5.53, Insurance Code, is amended to read as follows:

Art. 5.53. APPLICATION TO [INLAND] MARINE INSURANCE [Rain Insurance, or Hail Insurance on Farm Crops, Definitions, Rates and Rating Plans Filed, Policy Forms, Checking Offices]. The provisions of this article shall apply to all insurance which is now or hereafter defined by statute, by rules of the commissioner.
[ruling of the Board of Insurance Commissioners], or by lawful custom, as [inland] marine insurance[, rain insurance, or insurance against loss by hail on farm crops]. None of the terms contained in [this article and] Article 5.52 shall be deemed to include insurance of vessels or craft, their cargoes, marine builder's risk, marine protection and indemnity, or other risk commonly insured under marine as distinguished from inland marine insurance policies.

The [Whenever used in this article the] term "Marine Insurance" shall mean and include insurance and reinsurance against any and all kinds of loss or damage to the following subject matters of insurance interest therein:

Marine Insurance. Hulls, vessels and craft of every kind, aids to navigation, dry docks and marine railways, including marine builders' and repairers' risks, and whether complete or in process of or awaiting construction; also all marine protection and indemnity risks; also all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests, and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit or transportation on or under any seas, lakes, rivers, or other waters or in the air, or on land in connection with or incident to export, import or waterborne risks, or while being assembled, packed, crated, baled, compressed or similarly prepared for such shipment or while awaiting the same, or during any delays,
storage, transshipment or reshipment incident thereto, including
the insurance of war risks in respect to any or all of the aforesaid
subject matters of insurance.

[(a) As to all classes of insurance contained in this
article, for which class rates or rating plans are customarily
fixed by rating bureaus or associations of underwriters, rates or
rating plans, together with applicable policy forms and
endorsements, shall be filed by all authorized insurers writing
such classes with the Board in such manner and form as it shall
direct; and all rates on risks not falling within a recognized class
fixed by any such bureau or association, together with applicable
policy forms and endorsements, shall be similarly filed. Due
consideration shall be given to past and prospective loss
experience within and outside the State, including catastrophe
hazard, to a reasonable margin for profit and contingencies, and to
all other relevant factors within and outside the State.

[(b) As soon as reasonably possible after the filing has
been made, the Board shall in writing approve or disapprove the
same, provided that any filing of class rates or rating plans,
together with applicable policies and endorsements, shall be deemed
approved unless disapproved within thirty (30) days, provided the
Board may by official order postpone action for such further time
not exceeding thirty (30) days, as it deems necessary for proper
consideration, and provided further that rates on risks not falling
within a recognized class fixed by a rating bureau or association of
underwriters, together with applicable policies and endorsements,
shall be deemed approved from the date of filing to the date of
formal approval or disapproval. The Board may investigate rates not required to be filed under the provisions of this article and may require the filing of any particular rate, together with applicable policies and endorsements, not otherwise required to be filed.

[(c) Any filing by an insurer of a rate less than an approved rate relative to any of the rates mentioned in subdivision (a) of this article may be used by such insurer after same shall have been approved by the Board, or after same shall have been on file with the Board without action for thirty (30) days.

[(d) If at any time the Board finds that an approved filing no longer meets the requirements of this article, it may after hearing issue an order withdrawing its approval thereof.

[(e) An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the Board to accept such filings on its behalf. A corporation, an unincorporated association, a partnership, or an individual, whether located within or outside the State, may be licensed as a rating organization in connection with any of the sorts of insurance mentioned in this article, subject to the conditions, not inconsistent herewith, prescribed by law for such organizations in connection with other kinds of insurance, provided two or more insurers have designated it to act for them as to any such class or classes of insurance in the manner prescribed herein. An insurer may belong or subscribe to rating bureaus or associations for other types of insurance.
(f) Insurers may, subject to the supervision of the Board, operate any checking office or offices deemed necessary or advisable.

(g) The writing of inland marine insurance, rain insurance and insurance against loss by hail on farm crops, shall be governed by the provisions of Articles 5.25 to 5.40, inclusive, and also Articles 5.50 to 5.51, inclusive, of this subchapter and Article 5.67 of Subchapter D. of this chapter, in the same manner and to the same extent as fire insurance and fire insurance rates are now affected by the provisions of said articles, except that wherever in any of said articles reference is made to making, fixing, prescribing, determination or promulgation by the Board of rates or policy forms or endorsements, the provisions of this article shall control. Notwithstanding any other provision of this subchapter, the flexible rating program created under Subchapter M of this chapter does not apply to this article.

(h) The provisions of Chapter 5 of this code, other than this article, shall not apply to marine insurance as defined [other than inland marine insurance governed] by this article.

SECTION 21.30. Subsection (a), Section 1, Article 5.53-A, Insurance Code, is amended to read as follows:

(a) Any company licensed to engage in the business of fire insurance and its allied lines, or inland marine insurance, or both, is authorized to write home warranty insurance or home protection insurance in this state.

SECTION 21.31. Subsection (a-1), Article 5.96, Insurance Code, is amended to read as follows:
This [Except as provided by Section 5(d), Article 5.101, of this code, this] article does not apply to the setting of [benchmark] rates for personal automobile [motor vehicle] insurance under Article 5.101 of this code, rates for [and] fire and allied lines insurance under Subchapter O [and] of this chapter or, on and after December 1, 2004, rates for personal automobile insurance and fire and allied lines insurance under Article 5.13-2 of this code.

SECTION 21.32. Subsections (a) through (d) and (f) through (m), Article 5.97, Insurance Code, are amended to read as follows:

(a) The department [State Board of Insurance] may take action on filings for standard and uniform rates, rating plans, manual rules, classification plans, statistical plans, and policy and endorsement forms, or any modification of any of these for the lines of insurance regulated in Subchapter B, Chapter 5, of this code [and for the regulated lines of insurance in Article 5.53 and Article 5.53-1 of this code] under the procedure specified in this article.

(b) Any interested person may initiate proceedings before the commissioner [board] with respect to any matter specified in Section (a) of this article by filing a petition with the department [State Board of Insurance] that includes the following:

(1) specific identification of the matter that is proposed to be adopted, approved, amended, or repealed;

(2) the wording of the matter proposed to be adopted, approved, amended, or repealed; and

(3) justification for the proposed action in
sufficient particularity to inform the commissioner [board] and any
interested person of the petitioner's reasons and arguments.

(c) A copy of each petition initiating a proceeding shall be
marked with the date it was received by the department [State Board
of Insurance] and shall be made available for public inspection at
the office of the chief clerk of the department [board] throughout
the period the petition is pending. Except for emergency matters
acted on under Section (j) of this article, the commissioner
[board] may not act on a petition until it has been available for
public inspection for at least 15 days after the date of filing and
notice has been given in accordance with this section. Not later
than the 10th day before the date the commissioner [board] takes
action on any rule, rating plan, classification plan, statistical
plan, or policy or endorsement form under this article, the
department [board] shall publish in the Texas Register [a notice of
the meeting or hearing at which the action will be taken. The
notice must include] a brief summary of the substance of the
proposed rule, rating plan, classification plan, statistical plan,
or policy or endorsement form, and a statement that the full text of
the rule, rating plan, classification plan, statistical plan, or
policy or endorsement form is available for review in the office of
the chief clerk of the department [State Board of Insurance].

(d) Any interested person may request [the board to hold] a
hearing before the commissioner [it] acts on a pending petition.
Except as provided by Article 5.97A of this code, the commissioner
[board] has discretion whether or not to hold such a hearing.

(f) The commissioner may [board shall] hold a hearing to
consider the proposal or may [shall] enter an order implementing or denying the proposal. If the commissioner [board] denies a proposal, the commissioner [its] shall specify the reasons for the denial in the commissioner's [its] order.

(g) On its own motion, the department [board] may initiate a proceeding with respect to any matter specified in Section (a) of this article.

(h) If a hearing is scheduled to consider a proposal, the department [board] shall publish notice in the Texas Register not less than 10 days before the hearing and shall state the time, place, and legal authority for the hearing and the matters to be considered.

(i) After entering an order with respect to any matter specified in Section (a) of this article, the department [board] shall file a notice of the commissioner's [its] action for publication in the adopted rule section of the Texas Register. In addition, before the effective date of the action, the department [board] shall cause notice of the order to be mailed to the applicant, to all insurers writing the affected line of insurance in this state, and to all other persons who have made timely written request for notification. Failure to mail this notice will not invalidate any action taken.

(j) The commissioner's [board's] action takes effect 15 days after the date that notice of the action is published in the Texas Register or on a later specified date. If the commissioner [board] finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires the
commissioner's [its] action to be effective before the end of the 15-day period, the commissioner [its] may take emergency action to be effective at an earlier time. The commissioner's [board's] action on an emergency matter may be effective for 120 days, and renewable once for a period not exceeding 60 days immediately following the 120-day period. The permanent adoption of an identical change is not precluded.

(k) Any person aggrieved by an order of the commissioner [board] is entitled to redress as provided by [Article 5.15, Article 5.23, Article 5.53, or Article 5.53-A] of this code[whichever is applicable to the line of insurance addressed in the order].


(m) The department [board] or the office of public insurance counsel may require that a person who has filed a petition under Subsection (b) of this article or who has otherwise presented materials to the department [board] in connection with a proceeding under this article provide additional information to the department [board] or office, including any statistical, actuarial, or other information on which the petition or other materials were based.

SECTION 21.33. Subsection (c), Article 21.28-E, Insurance Code, is amended to read as follows:

(c) The provisions of this article shall not apply to marine insurance as defined [other than inland marine insurance governed]
by Article 5.53.

SECTION 21.34. Subdivision (4), Subsection (b), Section 4, Article 21.49-3, Insurance Code, is amended to read as follows:

(4) After the initial year of operation, rates, rating plans, and rating rules, and any provision for recoupment should be based upon the association's loss and expense experience, together with such other information based upon such experience as the department [board] may deem appropriate. The resultant premium rates shall be on an actuarially sound basis and shall be calculated to be self-supporting.

SECTION 21.35. Subsection (a), Section 5, Article 21.55, Insurance Code, is amended to read as follows:

(a) This article does not apply to:

(1) workers' compensation insurance;
(2) mortgage guaranty insurance;
(3) title insurance;
(4) fidelity, surety, or guaranty bonds;
(5) marine insurance as defined [other than inland marine insurance governed] by Article 5.53 of this code; or
(6) a guaranty association created and operating under Article 9.48 of this code.

SECTION 21.36. Subsection (e), Article 21.56, Insurance Code, is amended to read as follows:

(e) The provisions of this article shall not apply to marine insurance as defined [other than inland marine insurance governed] by Article 5.53 of this code.

SECTION 21.37. Section 8, Article 21.77, Insurance Code, is
amended to read as follows:

Sec. 8. POLICY FORMS. All policy forms for insurance written under this article shall be prescribed by the commissioner [board] as provided in Article 5.06 of this code or filed and in effect as provided in Article 5.145 of this code[., Insurance Code].

SECTION 21.38. Article 21.79E, Insurance Code, is amended to read as follows:

Art. 21.79E. CREDIT INVOLUNTARY UNEMPLOYMENT INSURANCE. Any insurer authorized to write any form of casualty insurance in this state shall also be authorized to write group or individual credit involuntary unemployment insurance indemnifying a debtor for installment or other periodic payments on the indebtedness while the debtor is involuntarily unemployed, including policy forms and endorsements which define involuntary unemployment to provide coverage and a premium charge for interruption or reduction of a debtor's income during periods of leave (paid or otherwise) authorized by the Federal Family and Medical Leave Act of 1993 (29 U.S.C. Section 2601 et seq.), as amended, or other state or federal laws. Such insurance may be written alone or in conjunction with credit life insurance, credit accident and health insurance, or both, in policies issued by any authorized insurer, but not in contravention of the Texas Free Enterprise and Antitrust Act of 1983 (Chapter 15, Business & Commerce Code). Rates and forms for such insurance may be made and filed in accordance with Article 5.13-2 [Articles 5.14 and 5.15] of this code.

SECTION 21.39. Subdivision (2), Section 1, Article 21.81, Insurance Code, is amended to read as follows:
(2) "Authorized insurer" means any insurer authorized by the Texas Department of Insurance to write motor vehicle liability coverage under the provisions of Chapter 5 of this code. Except as provided by Section 13(f), Article 5.13-2 of this code, the term does not include an insurer organized under Chapter 17 of this code.

SECTION 21.40. (a) Effective June 1, 2003, Section 912.002, Insurance Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(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.

(c) Rate regulation for a residential fire and allied lines insurance policy written by a county mutual insurance company is subject to Subchapters Q and U, Chapter 5. On and after December 1, 2004, rate regulation for a personal automobile insurance policy and a residential fire and allied lines insurance policy written by a county mutual insurance company is subject to Article 5.13-2. A county mutual insurance company is subject to Subchapter U, Chapter 5. The commissioner may adopt rules as necessary to implement this subsection.

(b) Until June 1, 2003, Subsection (b), Article 17.22, Insurance Code, is amended to read as follows:

(b) Rate regulation for a residential fire and allied lines insurance policy written by a county mutual insurance company is
subject to Subchapters O and Q, Chapter 5 of this code. The commissioner may adopt rules as necessary to implement this subsection. The flexible rating program created under Subchapter M, Chapter 5, of this code does not apply to county mutual insurance companies. This subsection expires June 1, 2003.

SECTION 21.405. Subchapter A, Chapter 912, Insurance Code, is amended by adding Section 912.005 to read as follows:

Sec. 912.005. LIMITATION ON TRANSFER OF BUSINESS TO COUNTY MUTUAL INSURANCE COMPANY. An insurer may not transfer more than 10 percent of the insurer's insurance policies to a county mutual insurance company without the prior approval of the commissioner.

SECTION 21.41. Section 912.152, Insurance Code, is amended to read as follows:

Sec. 912.152. POLICY FORMS. (a) A county mutual insurance company is subject to Articles 5.06, [and] 5.35, and 5.145.

(b) County [The commissioner, in accordance with Article 5.35, may adopt for use by county] mutual insurance companies shall file policy forms under Article 5.145 or continue to use the standard policy forms and endorsements promulgated under Articles 5.06 and 5.35 on notification to the commissioner in writing in the manner prescribed by those articles that those forms will continue to be used 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(1) may use the policy forms adopted under this subsection; or
2(2) shall use the policy forms adopted for other
SECTION 21.42. (a) Effective June 1, 2003, Section 912.201, Insurance Code, is amended to read as follows:

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." A county mutual insurance company shall file premium, expense, and loss experience data with the department in the manner prescribed by the commissioner. An insurer shall file the schedules and data required under this section according to rules promulgated by the commissioner.

(b) Until June 1, 2003, Section 6, Article 17.25, Insurance Code, is amended to read as follows:

Sec. 6. FILE SCHEDULE OF CHARGES. 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. Items required under this section shall be filed according to rules promulgated by the commissioner.

SECTION 21.43. (a) Effective June 1, 2003, Subsection (b), Section 941.003, Insurance Code, is amended to read as follows:

(b) A Lloyd's plan is subject to:

(1) Section 5, Article 1.10;
(2) Article 1.15A;
(3) Subchapters [Subchapter] A, O, T, and U, Chapter
(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;
and
(7) Article 5.13-2, as provided by that article.
(b) Until June 1, 2003, Article 18.23, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) Rate regulation for a personal automobile insurance policy written by a Lloyd's plan is subject to Subchapter M, Chapter 5 of this code. Rate regulation for a homeowners or residential fire and allied lines insurance policy written by a Lloyd's plan is subject to Subchapter Q, Chapter 5 of this code. The commissioner may adopt rules as necessary to implement this subsection. A Lloyd's plan is subject to Subchapter Q, Chapter 5 of this code. This subsection expires June 1, 2003.

SECTION 21.44. (a) Effective June 1, 2003, Subsection (b), Section 942.003, Insurance Code, is amended to read as follows:

(b) An exchange is subject to:

(1) Section 5, Article 1.10;
(2) Articles 1.15, 1.15A, and 1.16;
(3) Subchapters [Subchapter] A, Q, T, and U, Chapter 5;
(4) Articles 5.35, 5.37, 5.38, 5.39, and 5.40;
(5) Articles 21.21 and 21.49-8; [and]
(6) Sections 822.203, 822.205, 822.210, 822.212, 861.254(a)-(f), 861.255, 862.001(b), and 862.003; and
(7) Article 5.13-2, as provided by that article.

(b) Until June 1, 2003, Article 19.12, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) Rate regulation for a personal automobile insurance policy written by a reciprocal or interinsurance exchange is subject to Subchapter M, Chapter 5 of this code. Rate regulation for a homeowners or residential fire and allied lines insurance policy written by a reciprocal or interinsurance exchange is subject to Subchapter Q, Chapter 5 of this code. The commissioner may adopt rules as necessary to implement this subsection. A reciprocal or interinsurance exchange is subject to Subchapter Q, Chapter 5 of this code. This subsection expires June 1, 2003.

SECTION 21.45. Subsection (d), Section 502.153, Transportation Code, is amended to read as follows:

(d) A personal automobile policy used as evidence of financial responsibility under this section must comply with Article 5.06 or 5.145, Insurance Code.

SECTION 21.46. Subsection (c), Section 521.143, Transportation Code, is amended to read as follows:

(c) A personal automobile insurance policy used as evidence of financial responsibility under this section must comply with Article 5.06 or 5.145, Insurance Code.

SECTION 21.47. The following laws are repealed:

(1) Articles 5.03-2, 5.03-3, 5.03-4, and 5.03-5, Insurance Code;

(2) Subsection (h), Article 5.26, and Articles 5.33c, 5.50, and 40.061, Insurance Code;
(3) Subsection (b), Section 5, Article 5.13-2, Insurance Code;

(4) Section 4C, Article 5.73, Insurance Code;

(5) Article 5.33B, Insurance Code, as added by Chapter 337, Acts of the 74th Legislature, Regular Session, 1995;

(6) Articles 5.14, 5.15, and 5.15B, Insurance Code;

(7) Subsection (e), Article 5.97, Insurance Code; and

(8) Subdivision (2), Subsection (b), Section 4, Article 21.49-3, Insurance Code.

SECTION 21.48. Article 5.33A, Insurance Code, is repealed.

ARTICLE 22. GENERAL TRANSITION; SEVERABILITY; EFFECTIVE DATE

SECTION 22.01. The amendment of statutory provisions by this Act does not affect the repeal of those provisions by Section 31, Chapter 1419, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 22.02. This Act applies to an insurance policy that is delivered, issued for delivery, or renewed on or after the effective date of this Act and to rates for such a policy. A policy delivered, issued for delivery, or renewed before the effective date of this Act and the rates for such a policy are governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 22.03. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared

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to be severable.

SECTION 22.04. Except as otherwise provided by this Act, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.
I hereby certify that S.B. No. 14 passed the Senate on April 2, 2003, by the following vote: Yeas 28, Nays 3; May 27, 2003, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 28, 2003, House granted request of the Senate; June 1, 2003, Senate adopted Conference Committee Report by the following vote: Yeas 26, Nays 4, one present not voting.

I hereby certify that S.B. No. 14 passed the House, with amendments, on May 24, 2003, by a non-record vote; May 28, 2003, House granted request of the Senate for appointment of Conference Committee; June 2, 2003, House adopted Conference Committee Report by the following vote: Yeas 113, Nays 34, one present not voting.

Approved: 11 Jun '03

 Rick Perry
 Governor