

Property and Casualty Insurance

Texas

Effective March 1, 2016

State Law Supplement

Important: Check for Updates

States sometimes revise their exam content outlines unexpectedly or on short notice. To see whether there is an update for this product because of an exam change, go to www.kaplanfinancial.com and check the Insurance Licensing Blog. If there is an update, it will be clearly noted in the blog entries for this state.

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TEXAS PROPERTY AND CASUALTY INSURANCE LAW
SUPPLEMENT, EFFECTIVE MARCH 1, 2016
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Introduction

What is a State Law Supplement?

This book focuses on the state-specific statutes and regulations on the state exam content outline. In order to be fully prepared for the exam, you must understand completely both the national License Exam Manual and this supplement.

How is the supplement organized?

In order to make this book flexible and easy to use, we've divided it into four sections, and are each broken into topic areas as seen below.

Section	Topic Areas
Cram Sheets Cram sheets focus on very specific details for your state. The information is presented in an easy to understand table format primarily highlighting days, dates, and dollars.	■ General Insurance Law ■ Property Insurance Law ■ Casualty Insurance Law
Class Notes The class notes are meant to be a summary of the key topics in the law supplement, and are available to all students—classroom and self-study.	■ General Insurance Law ■ Property Insurance Law ■ Casualty Insurance Law
Detailed Text The text section is the most detailed section of the law supplement. All topics in your state's exam content outline law and regulations section are covered.	■ General Insurance Law ■ Property Insurance Law ■ Casualty Insurance Law
Practice Exams The practice exams test your retention of the law supplement material.	■ General Insurance Law ■ Property Insurance Law ■ Casualty Insurance Law

Do I have to learn everything in this book?

Not necessarily! The table below shows the sections you should study depending on the exam you are preparing for.

State Exam	Sections to Study
Property and Casualty Insurance	General (All Lines), Property, and Casualty Insurance
Property Insurance Only	General (All Lines), and Property Insurance only
Casualty Insurance Only	General (All Lines), and Casualty Insurance only

How should I study this information?

Below is a best study practice for the law and regulations section of your exam.

1. **Law Supplement Cram Sheet:** Your exam will probably ask about specific fine amounts or days' notice requirements (e.g., changing your address).
2. **Law Supplement Class Notes:** Reading the class notes exposes students to the majority of topics covered in the law supplement.
3. **Law Supplement Detailed Text:** Read this text for more in-depth descriptions of the state's insurance laws and regulations.
4. **Law Supplement Practice Exams:** There are two law supplement practice exams. One is in the back of the law supplement. State specific law questions can also be found in the InsurancePro™ QBank at www.kaplanfinancial.com.
5. In your final preparation for the exam take the time to again review the **cram sheet** and **class notes**. Use them as a last-minute refresher of the most important law and regulation testable topics.



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Cram Sheets

HOW TO USE: In your final preparations for your insurance exam use this cram sheet to memorize key days, dates, and dollars. A suggested technique is to cover the left hand column; read the right hand column; then uncover the left hand column to reveal the correct answer.

TEXAS STATUTES AND RULES COMMON TO PROPERTY, CASUALTY, LIFE, HEALTH AND ACCIDENT INSURANCE

Commissioner of Insurance

2 years 5 years \$50,000	Appointed by the governor for a term of ___ years Must have at least ___ years' experience in business or government Must provide a ___ surety bond
\$500,000 15 days	State fees in excess of ___ must be submitted by electronic transfer Persons must respond to Commissioner inquiries within ___ days
5 years	Insurers must be examined at least once every ___ years
14 days 20 days \$25,000	Penalties Department must send notice of violation within ___ days of findings Response from alleged violator must be within ___ days of receipt Maximum penalty for insurance code violations

Licensing

Age 18 5 years	Minimum age for license Waiting period to reapply if license is denied or revoked
90 days	Temporary License Valid for ___ up to days
90 days 90 days	Emergency License License is valid for ___ days May be renewed an additional ___ days
\$500,000	A managing general agent is one who accepts 50% of premium volume, or ___ or more of total annual business, whichever is less, from policies produced and sold by other agents
2 years 2 years	License Renewal Business entity agent licenses are renewed every ___ years after the license is issued Agent licenses for individuals are renewed every ___ years based on their birth year (even/odd numbered birth years renew in even/odd numbered years)
90 days 90 days 1 year	License Expiration and Reinstatement <ul style="list-style-type: none"> ■ If a license has been expired for ___ days or less, it may be renewed by paying the renewal fee plus and a 50% penalty ■ A license expired more than ___ days but less than one year cannot be renewed; a new license may be issued with no exam upon payment of license fee and penalty fee. ■ If the license is expired more than ___ year, all requirements for a new license (including an exam) must be met.
Monthly	Reporting of Actions Change of address, felony convictions, or administrative actions must be reported to the Commissioner on a ___ basis
24 hours 2 hours	Continuing Education (CE) Per Renewal Period <ul style="list-style-type: none"> ■ Total CE requirement ■ Ethics and consumer protection CE requirement
3 hour	Additional Training Requirements Flood insurance requires a ___-hour certification course
4 years	Continuing education records must be kept for ___ years

Unfair Trade Practices

25%	Controlled Business At least ___ of annual premiums must be derived from persons other than the applicant, applicant's family, and applicant's business associates
30 days	Suspected fraudulent acts must be reported to the Commissioner or law enforcement within ___ days

TEXAS STATUTES AND RULES PERTINENT TO PROPERTY AND CASUALTY INSURANCE

30 days	Property and Casualty Definitions Binders must be replaced by the insurance policy within ___ days
\$15 million	Surplus lines insurer's capital and surplus must be at least ___ million
60 days	Approval of Rates and Forms Forms must be filed ___ days before use
Homeowners Insurance	
10 days 30 days	Notice of Cancellation and Nonrenewal ■ ___ days in advance for cancellation ■ ___ days in advance for nonrenewal
6 months	Texas FAIR (Fair Access to Insurance Requirements) Plan Provides residential property insurance when coverage is unavailable in other markets or when there has been no insurance on the property in the past ___ months
Automobile Insurance	
\$30,000 \$60,000 \$25,000 "30/60/25"	Minimum Liability Limits Bodily injury or death of any one person Bodily injury or death of two or more people Property damage per accident
\$2,500 3 years 30 days	Personal Injury Protection (PIP) Minimum PIP limits of ___ per person Covers expenses incurred within ___ years of accident Claims must be paid within ___ days after proof of claim
Automobile Insurance Cancellation and Nonrenewal	
90 days 10 days 60 days 60 days 10 days 30 days	Commercial Automobile Policy: Policy may be canceled for any reason within the first ___ days of the policy Notice of cancellation or nonrenewal ■ ___ days in advance for cancellation ■ ___ days in advance for nonrenewal Personal Automobile Policy: Policy may be canceled for any reason within the first ___ days of the policy Notice of cancellation or nonrenewal ■ ___ days in advance for cancellation ■ ___ days in advance for nonrenewal, or cancellation on a 12-month anniversary date
Two	Texas Automobile Insurance Plan Association (TAIPA) To qualify, applicant must first be rejected by at least ___ insurers
Workers' Compensation	
5	An employee may waive being covered by workers' compensation (thus, retain the right to sue the employer for injuries) if notice is given within ___ days of being hired
13	Average weekly wage is based on the prior ___ consecutive weeks
8th Two weeks	Waiting Period Disability benefit payments do not begin until the ___ day If disability last for ___ weeks or longer, compensation for wages is from the date the disability began

\$10,000	Burial costs are covered up to ____
30 days	The employee must notify the employer within ____ days after the injury
1 year	The employee must file a claim for compensation within ____ year(s) of injury
8 days	The employer must notify the insurer within ____ days
15 days	Insurers must begin benefit payments within ____ days of notice

Property and Casualty Insurance Guaranty Association

\$25,000 Full amount \$300,000	The Association's maximum liability is as follows: \$____ for the return of unearned premium ____ for workers' compensation claims \$____ per claimant for all other covered claims
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Class Notes

HOW TO USE: The class notes are an excellent place to start when studying the state specific laws and regulations. The class notes are a summary of the key law supplement topics. For some students the class notes may be their primary section to study the law and regulation exam material.

Texas Laws, Rules, and Regulations

Life, Accident and Health, and Property and Casualty Insurance

Commissioner of Insurance

- The governor appoints the Commissioner for a two-year term.
- The Commissioner administers, enforces, and carries out the provisions of the Texas insurance code (the state's insurance laws) and other applicable laws.

Commissioner of Insurance

- **Electronic transfers**—The Commissioner regulates the electronic transfer of any fee, guaranteed fund, or other money owed to or held for the state.
 - The Commissioner will require the electronic transfer of any such amount that exceeds \$500,000.
- **Reinsurance reserves for certain insurers**—The Department of Insurance will compute annually the reinsurance reserve for all unexpired risks of every insurer (other than life insurance companies) doing business in Texas.

Commissioner of Insurance

- **Status of complaints**—If the Department of Insurance receives a written complaint filed against an insurer or agent, the Department will, at least quarterly and until the matter is resolved, notify each party to the complaint of its status unless doing so would jeopardize an undercover investigation.

Commissioner of Insurance

- **Inquiries**—A person receiving an inquiry from the Department must respond within 15 days.
 - If necessary, the Department may grant a 10-day extension of the time to respond to the inquiry.

Commissioner of Insurance

- Duties of the Department include the following:
 - Regulate the business of insurance in this state
 - Administer the Texas workers' compensation system
 - Ensure that the code and other laws regarding insurance and insurance companies are executed
 - Protect and ensure the fair treatment of consumers
 - Ensure a competitive insurance market

Examination of Records

- The Department will examine an insurer as often as considered necessary, but not less frequently than once every five years.
- The Department may subpoena documents and witnesses during the examination.
- Examinations analyze the insurer, its financial condition, its ability to meet its liabilities, and its compliance with state laws.

Investigations

- The Commissioner has the power to examine and investigate the affairs of every person engaged in the insurance business in Texas to determine whether the person has engaged in an unfair method of competition or in any unfair or deceptive trade practices, or has, in any other way, violated the insurance code.

Notice of Hearing

- The department must give written notice of an alleged violation to the affected person. The notice must include:
 - the alleged violation;
 - the recommended penalty; and
 - notice of the affected person's right to a hearing.
- Within 20 days after receiving the notice, the person may:
 - accept the department's determination and penalty; or
 - request a hearing regarding the violation, penalty, or both.

Notice of Hearing

- During a hearing, the Commissioner may:
 - subpoena witnesses and administer oaths;
 - examine and cross-examine witnesses;
 - receive oral and documentary evidence; and
 - require the production of books, papers, records, correspondence, or other documents relevant to the inquiry.
- If, following the hearing, the Commissioner finds that a violation did occur, the person may:
 - pay the penalty; or
 - petition for judicial review (appeal).

Penalties

- The Department may refuse to issue a license; revoke, suspend, or refuse to renew a license; or assess an administrative penalty for a violation of the insurance law of Texas or any other state, or a rule of the Commissioner.
- Depending on the nature and circumstances of the violation, the maximum penalty for a code violation is \$25,000.

Penalties

- **Restitution**—The Commissioner may order a licensee (whether insurer or agent) to make complete restitution to Texas residents, insureds, and entities harmed by an Insurance Code violation.
- **Notice to other states**—The Commissioner will notify other states of any illegal actions.

Certificate of Authority

- No insurer may conduct business in Texas unless it has received a certificate of authority from the Department of Insurance. A **certificate of authority** indicates that the insurer has met the Department's standards and is qualified to transact insurance business in Texas.
 - Carriers who do not have a certificate of authority are known as nonadmitted carriers.

Transacting Insurance

- **Transacting insurance** in Texas includes:
 - soliciting insurance;
 - taking or transmitting insurance applications;
 - receiving and delivering insurance policies;
 - examining and inspecting risks or adjusting losses for an insurer;
 - collecting premiums; and
 - performing any other acts in making insurance contracts.

Domestic, Foreign, and Alien

- A **domestic company** is an insurer incorporated, chartered, and organized under the laws of a state where it is licensed to conduct insurance business.
- A **foreign company** is an insurer licensed to conduct business in one state but incorporated, chartered, and organized under the laws of another state.
- An **alien company** is an insurer chartered, incorporated, and organized under the laws of another country.

Stock or Mutual Insurers

- A **stock company** is an insurer owned by its stockholders.
 - The capital stock of a stock insurance company cannot be impaired. The Commissioner will order an insurer to remedy an impairment of the insurer's surplus by restoring it to an acceptable level specified by the Commissioner, or cease doing business in Texas.
- A **mutual company** is an insurer owned by its policyholders.
 - Policyholders share in the company profits by receiving insurance dividends.

Texas Lloyds

- Texas Lloyds are insurance companies regulated by the Texas Insurance Code.
- A Lloyds company is an arrangement (Articles of Agreement and Power of Attorney) between an attorney-in-fact and at least 10 underwriters (individual, partnership, or association of individuals) to provide property and casualty insurance.
- Lloyds must be members of the Texas Windstorm Association (if applicable) and the guaranty association.

Licensing Requirements

- A company or individual may not conduct insurance business in Texas without being properly licensed and supervised by the Commissioner.
- Except for surplus lines insurers, all insurance companies must obtain a certificate of authority (license) to transact business in Texas.

Agent

- An *agent* is a person who is an authorized agent of an insurer or health maintenance organization (HMO), a subagent, or any other person who performs the acts of an agent.
- Agents solicit, negotiate, procure, or collect premiums on an insurance policy, annuity contract, or health maintenance organization.

Agent

- The term *agent* does not include:
 - a regular salaried officer or employee of an insurer, health maintenance organization, or agent who does not solicit insurance or receive a commission;
 - an employer or an employer's officer, or employee or trustee of an employee benefit plan; or
 - administrators of an HMO.

Charging Fees

- A property and casualty agent may charge a client a service fee to reimburse the agent for actual expenses such as phone, postage, and other items permitted by law.
- The client's written consent is required prior to the agent incurring an expense on behalf of the client.

Licensing Requirements

- A person who wishes to obtain a license must:
 - be at least 18 years old;
 - pass the state licensing examination;
 - have not committed an act for which a license may be denied under the Insurance Code;
 - provide a complete set of fingerprints, if requested by the insurance department; and
 - submit the application and appropriate fees.

Subagent

- A life, accident, and health agent; property and casualty agent; or personal lines property and casualty agent appointed by an authorized insurer must notify the Department if the agent appoints a subagent.
- The notice must be accompanied by a nonrefundable fee in an amount set by the Department.
- An insurer is not required to separately appoint a subagent.

Nonresident Agent

- A licensed nonresident agent has the same rights and privileges as a resident license holder.
- The Commissioner may enter into an agreement with the appropriate official of another state as necessary to implement reciprocal licensing of nonresident agents.

Temporary Agent's License

- The Department may issue a temporary agent's license to an applicant for a license who is being considered for appointment as an agent by another agent, an insurer, or an HMO.
- An applicant is not required to pass a written examination to obtain a temporary license.
- A temporary license is valid for 90 days.

Temporary Agent's License

- A temporary license does not permit an agent to:
 - write any personal or controlled business on the agent or a family member; or
 - replace any existing life or annuity contract.
- A temporary licensee may not receive a commission on sales to family, or persons with an employment or business relationship with the temporary licensee.

Emergency License

- If a property and casualty agent dies, becomes disabled, or is found to be insolvent, the Department may issue, without examination, an emergency license to preserve the agency assets of the deceased, disabled, or insolvent agent.
- An emergency license is valid for 90 days and may be renewed by the Department for an additional 90 days.

Managing General Agent

- A managing general agent (MGA) is any person, firm, or corporation who:
 - has supervisory responsibility for the local agency and field operations of an insurance company or carrier within Texas; or
 - is authorized on behalf of a company or carrier to accept or process insurance policies other agents produced and sold.
- A person, firm, or corporation may not act as a managing general agent unless the person, firm, or corporation holds an MGA license.

Insurance Services Representative

- A person is required to hold an insurance service representative license if the person is a salaried employee who performs assigned duties in a property and casualty agent's office, including:
 - explaining insurance coverage;
 - describing an insurance product;
 - quoting insurance premium rates; and
 - issuing insurance binders only with the express approval of the property and casualty agent who supervises the license holder.

Risk Manager

- A risk manager is paid to examine, assess, or evaluate risks for anyone who seeks to obtain or renew property and casualty coverage in Texas.
- A person may not act or hold himself out to be a risk manager unless the person is licensed.

Personal Lines Agent

- A person is required to hold a personal lines property and casualty license if the person acts as:
 - an agent who writes property and casualty insurance sold to individuals and families primarily for personal or household use; or
 - a subagent of a personal lines agent who solicits and binds insurance risks for that agent.

Limited Lines License

- A person can obtain a limited lines agent license for any one of the following types of insurance:
 - Lump-sum benefit for accidental death or dismemberment
 - Job protection insurance
 - Credit insurance
 - Crop insurance
 - Prepaid legal services
 - Prearranged funeral costs
 - Life insurance not to exceed a \$25,000 benefit, and health insurance sold by a stipulated premium insurance company

Criminal Backgrounds

- The Department may refuse to issue a license and may revoke, suspend, or refuse to renew a license if the applicant or licensee has:
 - committed a felony or misdemeanor; or
 - engaged in fraudulent or dishonest activity that directly relates to the licensee's duties and responsibilities.

Agent Appointment

- The agent and insurance company must notify the Commissioner of agent appointments.
- The agent must pay the appointment fee for each additional appointment.
- An agent's appointment continues in effect until it is terminated by the insurance company or agent.
- If an agent's appointment is terminated for cause, the insurer must immediately file with the Commissioner a statement of the facts related to the termination, date, and cause.

Subagent Appointment

- If an agent who has been appointed by an insurance carrier appoints a subagent, the general agent must give written notification to the Department about the appointment, along with a nonrefundable fee.
- The general agent must promptly report the termination of a subagent to the Department, and the subagent has no further authority to act for the agent or insurance carrier.
 - If termination was for cause, then the agent must include the reasons for termination.

License Renewal

- Business entity agent licenses are renewed every two years after the license is issued.
- Agent licenses for individuals are renewed every two years based on the individual's birthday.
 - Licenses for individual agents born in even-numbered years renew each even-numbered year.
 - Licenses for individual agents born in odd-numbered years renew each odd-numbered year.
- If a person holds more than one license, all licenses renew at the same time.

License Renewal

- An agent may renew a license by filing a renewal application and nonrefundable fee with the Department before the license expires.
 - If a license has been expired for 90 days or less, the applicant may renew by paying a renewal penalty fee of one-half of the renewal fee, in addition to the regular renewal fee.
 - A license expired for more than 90 days but less than one year cannot be renewed. However, the applicant may obtain a new license by paying the license fee and 50% penalty fee. Passing another license examination is not required.
 - If a license has been expired for one year or more, the applicant must meet all requirements for a new license.

License Termination

- The Commissioner may terminate, revoke, or suspend the license of anyone who:
 - has willfully violated any provision of the Texas Insurance Code;
 - has intentionally made a material misstatement in the licensing application;
 - has failed to maintain the qualifications necessary to obtain a license;
 - has obtained or attempted to obtain the license by fraud or misrepresentation;

License Termination

- The Commissioner may terminate, revoke, or suspend the license of anyone who (continued):
 - has misappropriated money belonging to an insurer, HMO, insured, or beneficiary;
 - has been guilty of fraudulent or dishonest practices;
 - has materially misrepresented the terms and conditions of insurance policies or contracts, including HMO contracts;
 - has been convicted of a felony;
 - has been guilty of rebating an insurance premium or commission to the insured;

License Termination

- The Commissioner may terminate, revoke, or suspend the license of anyone who (continued):
 - is not actively engaged in soliciting or writing insurance for the public; or
 - has obtained a license primarily for the purpose of soliciting controlled business (writing insurance on himself, family, or a business associate).

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License Termination

- A licensee whose license has been denied, refused, or revoked may not file another licensing application within five years from the effective date of the denial, refusal, or revocation.

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Continuing Education (CE)

- 24 credit hours every two years
 - 2 hours in ethics/consumer protection
- Licensees must keep CE records for four years after the date of CE course completion.
- Flood insurance: 3-hour initial certification course

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Continuing Education (CE)

- Exemptions from, and extensions of time for, a licensee to comply with CE requirements are granted under the following circumstances:
 - Long-term illness or military service in a theater of war
 - A person who has continuously held an agent license for at least 20 years (exempt)
 - Nonresident licensees who are in compliance with their resident state's CE requirements (exempt)

Continuing Education (CE)

- Licensees who currently hold a national designation certification or are members in good standing of a state or national insurance association may receive up to four hours of self-study continuing education credit per reporting period.
 - Continuing education hours under this section do not count toward the licensee's ethics, classroom, or classroom-equivalent continuing education requirements.

Unfair Trade Practices

- It is illegal to engage in any trade practice that involves unfair or unreasonably restrained competition, including acts that are misleading, deceptive, or unfairly discriminatory.
- The Commissioner reserves the right to investigate, hold hearings, issue cease and desist orders, and fine anyone engaged in unfair practices.

Unfair Claim Practices

- It is illegal to engage in any of the following unfair claims settlement practices:
 - Misrepresenting to claimants material facts or policy provisions
 - Not attempting in good faith to bring about prompt and fair settlements when liability has become reasonably clear
 - Failing to settle claims promptly, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage
 - Failing to promptly provide a reasonable explanation regarding any policy provisions for denial of a claim

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Unfair Claim Practices

- It is illegal to engage in any of the following unfair claims settlement practices (continued):
 - Failing within a reasonable time to affirm or deny coverage of a claim
 - Unreasonably delaying a settlement offer because other coverage may be available or because third parties are responsible for the damages
 - Attempting to enforce a full and final release of a claim when only a partial payment has been made
 - Refusing to pay a claim without conducting a reasonable claim investigation

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Unfair Claim Practices

- It is illegal to engage in any of the following unfair claims settlement practices (continued):
 - Requiring the claimant, as a condition of settling a claim, to produce the claimant's federal income tax returns for examination unless a court orders production of the returns, the claim involves a fire loss, or the claim involves lost profits or income
 - Attempting to steer claimants by suggesting, either verbally or in writing, that other reasonable repair costs might not be covered unless the claimants use a preferred repair shop or specific part to make the repairs

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False Advertising

- Insurance advertisements must not be untrue, deceptive, or misleading. *Advertisements* include the following:
 - Printed material and descriptive literature
 - Sales aids issued by an insurer for presentation to the public
 - Prepared sales talks, presentations, and material used by agents and brokers
- Advertisements may not state or imply that future dividends are guaranteed.

Testimonials

- Testimonials used in advertisements must be genuine and represent the current opinion of the author.
- If a person is compensated for making a testimonial, this must be disclosed in the advertisement.

Misrepresentation

- It is an unfair trade practice to:
 - misrepresent a policy's terms, benefits, or advantages;
 - misrepresent policy dividends;
 - misrepresent the financial condition of a person in the insurance business;
 - use a title of a policy or class of policies that misrepresents the true nature of the policy; or
 - make a misrepresentation to induce a policyholder to lapse, forfeit, exchange, convert, or surrender a policy (also called twisting).

Defamation

- It is an unfair trade practice to make an oral or written statement that is false or maliciously critical of, or derogatory to, the financial condition of any insurer, and that is calculated to injure any person engaged in the insurance business.

Controlled Business

- A person may not obtain a license to primarily insure risks of the licensee, family, or employer.
- An applicant for an original license must have a bona fide intention to engage in business in which, in any calendar year, at least 25% of the total volume of premiums is derived from persons other than the licensee, family, or employer.

Rebating

- It is illegal to offer anything of value as an inducement to purchase life insurance, life annuity, or accident and health insurance unless it is specified in the contract.
- It is illegal to offer any of the following to induce anyone to purchase insurance:
 - Rebates of premium
 - Special favors or advantages in the dividends or other benefits on the contracts
 - Other valuable considerations or inducements not specified in the contract

Unfair Discrimination

- Insurers and agents may not unfairly discriminate in eligibility, coverage, or premiums based on race, color, religion, or national origin; age, gender, marital status, or geographic location; or disability.

Fraud

- The Texas Department of Insurance has an Insurance Fraud Unit to enforce laws relating to fraudulent insurance acts.
- A fraudulent insurance act is any illegal act that is:
 - committed while engaging in the business of insurance;
 - committed as part of, or in support of, an insurance transaction; or
 - part of an attempt to defraud an insurer.

Fraud

- If the Commissioner believes a fraudulent insurance act has occurred, she will take the appropriate disciplinary measures and report the information to the proper law enforcement authorities.
- If any individual or entity determines that a fraudulent insurance act has been committed or is about to be committed, they must report this information to the Commissioner or authorized law enforcement agency in writing within 30 days.

Boycott and Coercion

- It is illegal to commit, or to enter into an agreement to commit, any act of boycott, coercion, or intimidation that results in the unreasonable restraint of, or monopoly in, the insurance business.

Fiduciary Capacity

- An agent is a *fiduciary*.
- A *fiduciary* is a person in a position of financial trust to the insurance buyer and the insurer.
- Whenever any person receives funds that belong to or should be paid to another person in connection with an insurance transaction, that person is deemed to have received the funds in a fiduciary capacity.
- Funds must be account for and paid to the person entitled to them.

Texas Statutes, Rules, and Regulations

Property and Casualty Insurance

Definitions

- **Binders** in Texas are valid for up to 30 days.
- **Total loss by fire:** In the case of a total loss by fire to real property, the full amount of the policy must be paid. This is referred to as a "liquidated demand" against the insurer.

Inland Marine Insurance

- Examples of risks covered by inland marine policies include the following:
 - Imports and exports
 - Domestic shipments
 - Block policies
 - Bailee customers' policies
 - Bridges, tunnel, and other instrumentalities of transportation and communication
 - Cotton buyers' transit policies
 - Live animal floaters
 - Musical instrument floaters
 - Valuable papers and records
 - Electronic equipment protection policy

Surplus Lines

- An eligible surplus lines insurer may provide surplus lines insurance only if:
 - the full amount of required insurance cannot be obtained, after a diligent effort, from an authorized insurer; and
 - the insurance is placed through a surplus lines agent.
- The surplus lines insurer may provide surplus lines insurance only in the amount that exceeds the amount of insurance obtainable from authorized insurers.

Surplus Lines

- A Texas agent may not place surplus lines insurance unless the agent has a surplus lines license.
- An eligible surplus lines insurer must maintain minimum capital and surplus in an amount of at least \$15 million.
 - This requirement does not apply to alien surplus lines insurers listed on the *Quarterly Listing of Alien Insurers* maintained by the National Association of Insurance Commissioners (NAIC).

Rates and Forms

- Except for surplus lines insurance, an insurance policy or endorsement may not be delivered or issued for delivery in Texas unless it is adopted or approved by the Commissioner.
- The Commissioner may adopt or approve the use of policy forms and endorsements of national insurers, or a national organization of insurance companies.

Rates and Forms

- Each policy form or endorsement filing must be made at least 60 days before the date of intended use.
- At the expiration of the 60-day period, a filed form or endorsement is approved unless, before the expiration of the 60 days, the Commissioner disapproves the form or endorsement.

Homeowners

- After a policy has been in force for 60 days, an insurer may not cancel a property or liability policy, except for the following reasons:
 - Fraud in obtaining coverage
 - Failure to pay premiums when due
 - Increase in hazard that would result in an increase in rate
 - Loss of the insurer’s reinsurance
 - The insurer being placed in conservatorship or receivership

Homeowners

- 10 days advance notice is required for a policy cancellation.
- 30 days advance notice is required for a policy nonrenewal.
- If requested by an applicant or a policyholder, an insurer must provide a written reason for the declination, cancellation, or nonrenewal of an insurance policy.

FAIR Plan

- The Fair Access to Insurance Requirements (FAIR) plan is designed to deliver residential property insurance to persons who are unable to obtain insurance through the voluntary market, or have been without insurance on the property in the past six months.
- Property insurers must participate in the FAIR plan.
- The FAIR plan may not provide windstorm and hail coverage for risks eligible for the Texas Windstorm Insurance Association coverage.

FAIR Plan

- Insurance on real or tangible personal property must have been declined by two Texas property insurers to be considered for the FAIR plan.
- The property will be inspected to see if eligible for the FAIR plan.

Windstorm Association

- The **Texas Windstorm Insurance Association** exists to provide a method whereby adequate windstorm, hail, and fire insurance may be obtained in certain designated portions of the state.
- All property insurers authorized to transact property insurance in Texas must be members, unless the company is prevented by law from writing coverages available through the pool on a statewide basis.

Joint Underwriting Association

- A joint underwriting association (JUA) is a voluntary, unincorporated association of admitted insurers authorized to do business in Texas.
- The JUA must have a certificate of authority.
- The JUA may act only on behalf of members of the association who are admitted and licensed to do business in Texas.
- The JUA may engage only in those activities it is authorized to perform by the members of the association.

Automobile Insurance

- A motor vehicle liability insurance policy must be an owner's or operator's policy issued by a Texas authorized motor vehicle liability insurer.

Uninsured/Underinsured Motorist

- All Texas automobile liability insurance policies must include uninsured and underinsured motorist coverage unless rejected by the insured.
- The insured may choose limits up to the bodily injury and property damage liability limits of the policy.
- Property damage coverage is subject to a \$250 deductible.

Minimum Liability Limits

- Proof of financial responsibility means the proof of ability to pay damages resulting from motor vehicle accidents in the following amounts (30/60/25):
 - \$30,000 bodily injury or death per person
 - \$60,000 bodily injury or death of two or more persons in any one accident
 - \$25,000 property damage per accident

Proof of Financial Responsibility

- Proof of financial responsibility for a vehicle may be provided by any of the following:
 - Motor vehicle liability insurance
 - Surety bond certificate
 - A certificate of a deposit with the comptroller
 - A certificate of self-insurance

Personal Injury Protection (PIP)

- All Texas automobile liability insurance policies must provide PIP coverage unless rejected by the insured.
- The minimum PIP limit is \$2,500 per person.
- PIP covers loss of income (or essential services if unemployed), medical expenses, and funeral expenses incurred within three years of the date of the accident.
- PIP benefits are payable without regard to fault.

Commercial Automobile

- An insurer may cancel a commercial auto liability policy at any time because of any of the following:
 - Fraud in obtaining coverage
 - Failure to pay premiums when due
 - Increase in hazard that would result in an increase in rate
 - Loss of the insurer's reinsurance
 - The insurer being placed in conservatorship or receivership

Commercial Automobile

- An insurer may cancel a commercial policy that has been in effect for less than 90 days for any reason.
- 10 days advance notice is required for a policy cancellation.
- 60 days advance notice is required for a policy nonrenewal.
- Cancellation and nonrenewal notices must state the reason.

Personal Automobile

- After a personal automobile policy has been in effect for 60 days, the company may cancel only for the following reasons:
 - Nonpayment of premium
 - Suspension or revocation of the drivers license or motor vehicle registration of the named insured or of any other resident operator
 - A fraudulent claim submitted by the insured

Personal Automobile

- 10 days advance notice is required for a policy cancellation.
- 30 days advance notice is required for a policy cancellation on the 12-month anniversary, or nonrenewal.
- If requested by the insured, cancellation and nonrenewal notices must state the reason.
- An insurer may not nonrenew a policy solely because of the insured's age.

TAIPA

- The Texas Automobile Insurance Plan Association (TAIPA) is a corporate body made up of all insurers licensed to write motor vehicle liability coverage in Texas.
- The association assigns risks to member insurers.
- To obtain insurance through the association, an applicant and the agent must certify that the applicant has been rejected for insurance by at least two licensed automobile insurers.

Workers' Compensation

- The Department of Insurance regulates the insurance companies' forms and rates charged for workers' compensation insurance.
- The Texas Department of Insurance Division of Workers' Compensation (DWC) has primary responsibility for promulgating rules that pertain to this line of business.
- An insurer is liable for compensation for an employee's covered injury without regard to fault or negligence if the injury arises out of and in the course and scope of employment.

Compulsory vs. Elective

- Texas is an elective state.
- Employers are not required to obtain workers' compensation insurance coverage.
 - Exception: Employers performing contract work for the government must have workers' compensation.
- Employees also have the right to reject coverage within five days of hire.

Exclusions

- The following injuries are not covered:
 - Injuries due to the employee's intoxication (.08% or higher) or illegal drug use
 - The employee's willful attempt to injure himself
 - Actions of a third person unrelated to employment (personal reasons)
 - Voluntary off-duty recreational, social, or athletic activity
 - An act of God, unless the employment exposes the employee to a greater risk
 - Horseplay

Benefits

- Texas workers' compensation benefits include:
 - Medical benefits
 - Disability/loss of income benefits
 - Survivor income
 - Burial benefits

Medical Benefits

- Pays reasonable and necessary medical expenses including the following:
 - Emergency services
 - Doctor, hospital, and surgical
 - Medical rehabilitation (physical therapy)
- No waiting period

Disability/Loss of Income

- Benefit is based on the employee's average weekly wage (for the 13 weeks prior to the injury)
- Subject to state maximums
- Eight-day waiting period (no benefits)
 - If disability lasts more than two weeks, benefits are retroactive back to the date of injury.
- Benefits paid weekly

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Vocational Rehabilitation Benefits

- Designed to assist injured workers with disabilities to return to the workforce by providing:
 - training, and
 - job placement assistance
- Provided by the Department of Assistive Rehabilitation Services (DARS)

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Second (Subsequent) Injury Fund

- If a subsequent injury added to a previous injury produces a lifetime income benefit, the second injury fund subsidizes the claim.
- Funded by unclaimed death benefits in Texas

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Survivor and Burial Benefits

- Survivor income is paid to beneficiary
- Up to \$10,000 for burial expenses

Important Deadlines

- Employee must notify employer within 30 days of when the employee knew or should have known about the injury or disease
- Employee must apply for benefits within one year of injury date
- Carrier must begin paying benefits within 15 days of injury report
- Legal beneficiary has one year to file a death claim

Texas Mutual Insurance Co.

- The Texas Mutual Insurance Company serves as a competitive force in the marketplace by:
 - guaranteeing the availability of workers' compensation insurance in Texas; and
 - serving as an insurer of last resort.
- Licensed property and casualty agents may write business with Texas Mutual.

Guaranty Association

- The Texas Property and Casualty Insurance Guaranty Association was created to help avoid financial loss to claimants or policyholders due to insurer insolvency.
- Authorized property and casualty insurers that write the types of insurance covered by the Association must be members of the Association.

Guaranty Association

- The Association is obligated to pay an insured's unpaid claim covered by the Association up to the following limits:
 - The full amount of a worker's compensation claim
 - \$25,000 for the return of unearned premium
 - \$300,000 for all other covered claims



3

Detailed Text

HOW TO USE: All state specific topics in your state's exam content outline law and regulation section are covered in this detailed text. Students are encouraged to read the text for in-depth descriptions of the state's insurance laws and regulations. In addition, some topics are not covered in the Cram Sheets and Class Notes, and are only covered in the Detailed Text.

I. TEXAS STATUTES AND RULES COMMON TO PROPERTY, CASUALTY, LIFE, HEALTH, AND ACCIDENT INSURANCE

A. COMMISSIONER OF INSURANCE The Commissioner is the Department of Insurance's chief executive and administrative officer. The governor appoints the Commissioner for a two-year term ending on February 1 of each odd-numbered year. The appointment is subject to the advice and consent of the state senate. The Commissioner must be a competent and experienced administrator, be well informed about insurance and insurance regulation, and have at least five years' experience as an executive in the administration of business or government, or as a practicing attorney or certified public accountant. The Commissioner must provide a \$50,000 surety bond.

1. General powers and duties [Ins. 31.001, .002, .021; Ins. 201.004; Ins. 404.051-.053; Ins. 481.001-.009; Ins. 401.051-.062; Ins. 521.003-.004, 4001.005; Ins. 38.001, 86.001-.002, 82.001-.056, 4005.102] The Commissioner administers, enforces, and carries out the provisions of the Texas Insurance Code (the state's insurance laws) and other applicable laws, including the calculation of insurance reserves.

a. Electronic transfers [Ins. 201.004] The Commissioner regulates the electronic transfer of any fee, guaranteed fund, or other money owed to or held for the state. The Commissioner will require the electronic transfer of any such amount that exceeds \$500,000.

b. Reinsurance reserves for certain insurers [Ins. 491.051-.052] On December 31 every year, the Department of Insurance will compute the reinsurance reserve for all unexpired risks of every insurer (other than life insurance, fire and lightning insurance, tornado, marine, or inland marine companies) doing business in Texas.

c. Status of complaints [Ins. 521.003, .004] If the Department of Insurance receives a written complaint filed against an insurer or producer, the department will, at least quarterly and until the matter is resolved, notify each party to the complaint of the complaint's status unless doing so would jeopardize an undercover investigation.

d. Inquiries [Ins. 38.001] The department may address a reasonable inquiry to any insurance company, including a Lloyd's plan or reciprocal or interinsurance exchange, or an agent or other holder of an authorization relating to, the person's business condition or any matter that the Commissioner considers necessary for the public good regarding this department.

A person receiving an inquiry shall respond to the inquiry in writing not later than the 15th day after the date the inquiry is received.

If the department receives written notice from the person that additional time is required to respond to the inquiry, the department shall grant a 10-day extension of the time to respond to the inquiry.

A response made under this section that is otherwise privileged or confidential by law remains privileged or confidential until introduced into evidence at an administrative hearing or in a court.

The department will keep record of all inquiries.

- e. Duties of Department [Ins. 31.002]** In addition to the other duties required of the Texas Department of Insurance, the department shall:
- regulate the business of insurance in this state;
 - administer the workers' compensation system of this state;
 - ensure that this code and other laws regarding insurance and insurance companies are executed;
 - protect and ensure the fair treatment of consumers; and
 - ensure fair competition in the insurance industry in order to foster a competitive market.

2. Examination of records [Ins. 401.051 to .062]

- a.** Examinations analyze the insurer, its financial condition, its ability to meet its liabilities, and its compliance with state laws.
- b.** This examination requirement applies to insurers authorized to transact business in Texas, including foreign insurers.
- c. Frequency of examination** The department may examine a carrier as frequently as necessary. At a minimum, the department must examine a carrier at least once every five years. Examinations will cover the insurer's activities from the date of the last examination until December 31 of the year preceding the year in which the examination is occurring.
- d. Powers related to examination** The department has the following powers regarding examinations:
- Free access to all books and papers that relate to the carrier's business and affairs
 - Authority to summon and examine under oath, if necessary, an officer, agent, or employee of the carrier or any other person in relation to the carrier's affairs and condition

- 3. Investigation/notice of hearing** The Commissioner has the power to examine and investigate the affairs of every person engaged in the insurance business in Texas to determine whether the person has engaged in an unfair method of competition or in any unfair or deceptive trade practices or has in any other way violated the insurance code.

- 4. Penalties [Ins. 82.001 to .056, 4005.102]** The Commissioner may impose an administrative penalty on a person licensed or regulated under Texas law who violates any law, rule, or order.

- a. Penalty amounts [Ins. 84.022]** The penalty for a violation may not exceed \$25,000 unless a greater or lesser penalty is specified by law. The amount of the penalty will be based on:
- the seriousness of the violation;
 - the economic harm to the public interest or public confidence caused by the violation;

- the history of previous violations;
- the amount necessary to deter a future violation;
- efforts to correct the violation;
- whether the violation was intentional; and
- any other matter that justice may require.

b. Notice of penalty [Ins. 84.041, .042]

- 1.) After reporting a violation to the Commissioner, the department must give written notice of the report to the affected person within 14 days. The notice must include:
 - the alleged violation;
 - the recommended penalty; and
 - notice of the affected person's right to a hearing.
- 2.) Within 20 days after receiving the notice, the person may:
 - accept the department's determination and recommended administrative penalty; or
 - request a hearing on
 - the occurrence of the violation,
 - the amount of the penalty, or
 - both.
- 3.) During a hearing, the Commissioner may:
 - administer oaths;
 - examine and cross-examine witnesses;
 - receive oral and documentary evidence;
 - subpoena witnesses; and
 - require the production of books, papers, records, correspondence, or other documents relevant to the inquiry.
- 4.) If, following the hearing, the Commissioner finds that a violation did occur, the person may:
 - pay the penalty; or
 - petition for judicial review (appeal).
- 5.) If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed pending review, the Commissioner may refer the matter to the attorney general for collection. In addition to imposing an administrative penalty, the Commissioner is authorized to:
 - suspend the violator's authorization for a specified time not to exceed one year;
 - order the holder of the authorization to cease and desist from prohibited activity;
 - direct the holder of the authorization to make restitution; or
 - take any combination of those actions.

6.) Notice to other states [Ins. 82.056] The Commissioner shall notify other states of any illegal actions.

- c. Restitution [Ins. 82.053]** The Commissioner may order a licensee (whether insurer or agent) to make complete restitution to every Texas resident, every Texas insured, and every entity operating in the state that is harmed by a violation of, or a failure to comply with, the Insurance Code or a rule of the Commissioner.
- d. Informal disposition [Ins. 82.055]** The Commissioner may informally dispose of a matter by agreement or stipulation with the party charged, or by default. The licensee may agree to certain sanctions without admitting guilt or that a violation has occurred.

B. INSURANCE DEFINITIONS [TAC 15.2]

- 1. Certificate of authority [Ins. 801.051 to .053]** No insurer may conduct business in Texas unless the insurer has received a certificate of authority from the Department of Insurance. A certificate of authority indicates that the insurer has met the Department's standards and is qualified to transact insurance business in Texas. Before granting a certificate of authority, the Department must be satisfied that the insurer is qualified.
 - a.** The Commissioner may ask about the competence, fitness, and reputation of an insurer's officers and directors before he issues a certificate of authority.
 - b.** If the Commissioner denies or revokes a certificate of authority, the insurer is granted a hearing to review the matter within 30 days.
 - c.** Insurance companies that have a certificate of authority from the Department of Insurance are known as *admitted* carriers in the state of Texas. Those carriers who don't have a certificate of authority are known as *nonadmitted* carriers.
 - d. Revocation or modification of certificate [Ins. 86.001, .002]** The Commissioner may revoke or modify a certificate of authority if the insurer no longer meets the conditions required for granting the certificate. If the Commissioner intends to revoke or modify a certificate, he must give the insurer written notice at least 10 days before taking action, and must specify the reasons for doing so.
- 2. Transacting insurance** Transacting insurance in Texas includes:
 - soliciting insurance;
 - taking or transmitting insurance applications;
 - receiving and delivering insurance policies;
 - examining and inspecting risks or adjusting losses for an insurer;
 - collecting premiums; and
 - performing any other acts in making insurance contracts.

3. Companies are classified by their state of domicile and are considered to be domestic, foreign, or alien insurers.
 - a. **Domestic company** A domestic company is an insurer incorporated, chartered, and organized under the laws of a state where it is licensed to conduct insurance business. In addition, it has its home office in the state where it is initially licensed. For example, Aetna Life and Casualty is incorporated and chartered in Hartford, Connecticut. Therefore, in the state of Connecticut, this insurer is considered a domestic company.
 - 1.) **Funds on deposit for benefit of other jurisdictions [Ins. 481.001-.009]** A domestic insurer required by another state, country, or province to maintain a deposit as a condition of doing business there may, at the insurer's discretion, deposit enough funds (in cash or securities) with the state comptroller to satisfy the conditions of the other state, country, or province.

The insurer may withdraw all or part of this deposit if similar securities in an equal amount replace those withdrawn, subject to the Commissioner's approval. However, an insurer may withdraw some of the deposit if it satisfies the Commissioner that it does not have any unsecured liabilities outstanding or potential liabilities to policyowners in other states, countries, or provinces, subject to the Commissioner's approval. An insurer may withdraw all of the deposit if it has stopped doing business and the Commissioner approves the withdrawal.
 - b. **Foreign company** A foreign company is an insurer licensed to conduct business in one state but incorporated, chartered, and organized under the laws of another state. For example, Aetna Life and Casualty Insurance Company is licensed to conduct insurance business in the state of Massachusetts, even though it is incorporated and chartered in the state of Connecticut. Therefore, in the state of Massachusetts, it is considered a foreign company.
 - c. **Alien company** An alien company is an insurer chartered, incorporated, and organized under the laws of another country but licensed to conduct insurance business in the United States. For example, Sun Life of Canada is chartered under the laws of Canada. However, it is also licensed to conduct life insurance business in the United States. Therefore, it is considered an alien company in the United States.
4. **Stock company** A stock company is an insurer owned by its stockholders. This type of company is profit-motivated and its stockholders share in its profits. These companies do not pay insurance dividends. Because this type of company is owned and controlled by its stockholders, policyowners are not entitled to receive insurance dividends, nor are they liable for any assessments.
 - a. **Impairment of capital stock [Ins. 404.051]** The capital stock of a stock insurance company cannot be impaired.

b. Determination of impairment [Ins. 404.052] When determining whether the surplus or minimum required aggregate surplus of an insurer is impaired, the Commissioner shall charge against the insurer the required reinsurance reserve and all other debts and claims against the insurer.

c. Remedy of impairment [Ins. 404.053] The Commissioner will order an insurer to remedy an impairment of the insurer's surplus by restoring it to an acceptable level specified by the Commissioner, or to cease doing business in Texas, if the Commissioner finds that the required surplus is impaired by more than 50%, or less than the required minimum level.

5. Mutual company A mutual company is an insurer owned by its policyholders. Policyholders share in the company profits by possibly receiving insurance dividends.

6. Texas Lloyds are insurance companies regulated by the Texas Insurance Code. A Lloyds company is an arrangement (Articles of Agreement and Power of Attorney) between an attorney-in-fact and at least 10 underwriters (individual, partnership, or association of individuals) to provide property and casualty insurance. Although the structure is different than an insurance corporation, Lloyds must maintain a minimum surplus, be members of the Texas Windstorm Association (if applicable), and be a member of the Guaranty Association. The attorney-in-fact for the Lloyd must receive a certificate of authority from the state of Texas.

C. LICENSING Generally, no company or individual can conduct insurance business in Texas without being properly licensed and supervised by the Commissioner. All insurance companies must obtain a *certificate of authority* (license) to transact business in Texas; all agents, brokers, and other producers must be licensed.

1. Types

a. Agent [Ins. 4001.003, .051–.156, .105, 4051.051; TAC 19.1501 to .1503, 19.902] An *agent* is a person who is an authorized agent of an insurer or health maintenance organization (HMO), a subagent, or any other person who performs the acts of an agent. Agents solicit, negotiate, procure, or collect premiums on an insurance policy, annuity contract, or health maintenance organization. The term does not include:

- a regular salaried officer or employee of an insurer, health maintenance organization, or agent who does not solicit insurance or receive a commission;
- an employer or an employer's officer or employee or a trustee of an employee benefit plan; or
- administrators of an HMO.

1.) Broadly speaking, an agent is anyone who transacts, solicits, or negotiates an insurance contract. Texas law defines an agent as a person who is authorized to:

- solicit insurance on behalf of an insurer;
- receive or transmit an application for insurance or an insurance policy to or from the insurer;

- advertise that he will receive or transmit an application for insurance or an insurance policy;
- receive or transmit an insurance policy;
- examine or inspect a risk;
- receive, collect, or transmit an insurance premium;
- take any other action in the making or consummation of an insurance; or
- examine, adjust, or aid in adjusting a loss for or on behalf of an insurer.

2.) Procedures for charging fees [TAC 19.1503]

- a.) A property and casualty agent may charge a client a service fee to reimburse the agent for actual costs as specifically enumerated in and in accordance with Texas law.
- b.) A property and casualty agent may also charge a client a reasonable service fee for expenses such as phone, postage, and other items permitted by law.
- c.) A property and casualty agent may not charge a service fee unless the agent notifies the client of the service fee (including for reimbursement of actual costs) and obtains the client's written consent for each item charged under the service fee prior to the local recording agent incurring an expense on behalf of the client.

3.) One agent, one license [TAC 19.902]

- a.) No agent may hold more than one license of the same type currently in effect.
- b.) If an individual is authorized to act as a particular type of agent, that individual need not obtain an additional license in order to participate in a licensed partnership or corporate agency of the same type, but the partnership or corporation must obtain a separate license.

4.) Licensing requirements [Ins. 4001.103, .105]

- a.) A person who wishes to obtain a license must:
 - be at least 18 years old;
 - pass the state licensing examination;
 - have not committed an act for which a license may be denied under the Insurance Code; and
 - submit the application, nonrefundable fee, and any other information required by the department.
- b.) The department may deny an application for an authorization if the applicant fails to provide a complete set of fingerprints on request by the department.

5.) Subagent [Ins. 4001.205] A life, accident and health agent, property and casualty agent, or personal lines property and casualty agent appointed by an authorized insurer must notify the Department if the agent appoints a subagent. The notice must be accompanied by a nonrefundable fee in an amount set by the Department. An insurer is not required to separately appoint a subagent.

b. Licensing corporations or partnerships [Ins. 4001.106, .107]

- 1.) For a corporation to be licensed, at least one officer of the corporation or one of its active partners and all other persons performing acts of an agent must be individually licensed.
- 2.) The corporation or partnership must also be able to pay up to \$25,000, which it may become obligated to pay by either an errors and omissions policy of at least \$250,000 with a deductible of no more than 10% of the benefit amount or by a \$25,000 surety bond. The following requirements must be met.
 - a.) The corporation or partnership must be organized under the laws of Texas or another state or territory of the United States.
 - b.) The corporation or partnership must be admitted to do business in Texas by the secretary of state.
 - c.) Its articles of incorporation or its partnership agreement must authorize it to act as an agent.

c. Nonresident agents [Ins. 4056.001 to .004]

- 1.) A licensed nonresident agent has the same rights and privileges as a resident license holder.
- 2.) The Commissioner may enter into an agreement with the appropriate official of another state as necessary to implement reciprocal licensing of nonresident agents.

d. Temporary license [TIC 4001.151 to .156] The Department may issue a temporary agent's license to an applicant for a license, who is being considered for appointment as an agent by another agent, an insurer, or a health maintenance organization. An applicant is not required to pass a written examination to obtain a temporary license.

- 1.) The Department shall issue a temporary license immediately on receipt of a properly completed application executed by the applicant and accompanied by:
 - the nonrefundable filing fee set by the department (\$150); and

- a certificate signed by an officer or properly authorized representative of an agent, insurer, or health maintenance organization stating that
 - the applicant is being considered for appointment by the agent, insurer, or health maintenance organization as its full-time agent,
 - the agent, insurer, or health maintenance organization desires that the applicant be issued a temporary license, and
 - the applicant will complete training under the agent's, insurer's, or health maintenance organization's supervision.

2.) A temporary license is valid for 90 days after the date of issuance.

3.) Restriction on issuance or renewal of temporary license

a.) A temporary license may not be issued to or renewed by the same person more than once in a consecutive six-month period.

b.) A temporary license may not be issued to a person who does not intend to apply for a license to sell insurance to the general public.

4.) If the Department has not been advised of any adverse action, the applicant can presume the temporary license is approved. He may begin working as an agent on the eighth day after the application was mailed to the Department.

5.) A temporary license does not permit an agent to:

- write any personal or controlled business on the agent or a family member; or
- replace any existing life or annuity contract.

6.) **Commissions [4001.157]**

a.) An agent, insurer, or health maintenance organization may not knowingly pay, directly or indirectly, a temporary license holder, and a temporary license holder may not receive or accept a commission on the sale of a contract of insurance or membership to a person who has a family, employment, or business relationship with the temporary license holder.

e. **Emergency license [Ins. 4051.054]**

1.) If a property and casualty agent dies, becomes disabled, or is found to be insolvent and unable to pay for premiums due, the department may issue, without examination, an emergency license on receipt of proof satisfactory to the department that the emergency license is necessary to preserve the agency assets of the deceased, disabled, or insolvent agent.

2.) An emergency license is valid for 90 days and may be renewed by the department for an additional 90 days.

f. Managing general agent [Ins. 4053.051, 19.1201 to .1206]

- 1.)** A managing general agent (MGA) is any person, firm, or corporation who:
 - has supervisory responsibility for the local agency and field operations of an insurance company or carrier within Texas; or
 - is authorized on behalf of a company or carrier to accept or process insurance policies other agents produced and sold.

- 2.)** The term does not include an agent licensed under another section of the Code unless the agent accepts 50% or more of his total annual business (as measured by premium volume) or \$500,000 or more of total annual business, whichever is less, from policies produced and sold by other agents.

- 3.)** An MGA may perform any of the following acts for a company or carrier:
 - receive and pass upon daily reports and monthly accounts;
 - receive and be responsible for agency balances;
 - handle the adjustment of losses; or
 - appoint or direct local recording agents, state agents, or special agents within Texas.

- 4.)** These managing general agent regulations do not apply to:
 - transacting life, health, and accident insurance, including variable life insurance and variable annuity contracts;
 - a full-time salaried employee of an insurer acting for and in connection with the insurance business of the insurer; or
 - an adjuster or inspector of risks for an insurer.

- 5.) License required; exemptions [Ins. 4053.051]** A person, firm, or corporation may not act as a managing general agent unless the person, firm, or corporation holds a license.
 - a.)** A business corporation is not required to hold a license to act as a managing general agent if:
 - the corporation is authorized to engage in business in this state;
 - all of the corporation's outstanding stock is solely owned by an insurer authorized to engage in business in this state and the corporation's business affairs are completely controlled by that insurer;
 - the principal purpose for which the corporation exists is to facilitate the accumulation of commissions from the insurer and its subsidiaries and affiliates for the account of and payment to an agent who could otherwise lawfully receive the commissions directly from the insurer and its subsidiaries and affiliates; and
 - the corporation does not engage in any other act of a managing general agent as provided by this chapter.

- g. Insurance service representative [Ins. 4051.151]** A person is required to hold an insurance service representative license if the person is a salaried employee who performs assigned duties only in an office of a property and casualty agent, including:
- explaining insurance coverage;
 - describing an insurance product;
 - quoting insurance premium rates; and
 - issuing insurance binders only with the express approval of the property and casualty agent who supervises the license holder.
- h. Risk manager [Ins. 4153.051, TAC 19.1301 to .1320]** A risk manager is paid to examine, assess, or evaluate risks for (and provide advice for reducing risks to) anyone who seeks to obtain or renew property and casualty coverage in Texas. A person may not act or hold himself out to be a risk manager unless the person is licensed as such in Texas.
- i. Personal lines agent [Ins. 4051.401]** A person is required to hold a personal lines property and casualty license if the person acts as:
- an agent who writes property and casualty insurance sold to individuals and families primarily for personal or household use; or
 - a subagent of a personal lines agent who solicits and binds insurance risks for that agent.
- j. Referral business and insurance company appointments [TAC 19.905, 4001.051, 4001.053]**
- 1.) The referral by an unlicensed person of a customer or potential customer to an agent is not an act of an agent unless the unlicensed person discusses specific insurance policy terms or conditions with the customer or potential customer.
 - 2.) An unlicensed person who violates this statute is personally liable to the holder of any insurance policy with respect to which the action was taken for any loss covered by the insurance policy.
 - 3.) When an agent who does not have an appointment from a particular insurance company has referred an application for insurance to an agent who does have an appointment with that company and the referral has resulted in the issuance of a policy of insurance written by that company, the agent who has the appointment may share the commission with the agent who does not have an appointment.
 - 4.) The agent, without an appointment from the company that issues a policy, may:
 - prepare an application for insurance;
 - collect and remit premium due to the agent issuing any such policy; or
 - deliver the policy and any endorsements to the insured.

- 5.) In this case, the agent is considered to be the agent of the insured and may not be considered to be the agent of the company for any purpose.
- 6.) Upon making the referral, the agent without an appointment from the company that takes the risk must make written disclosure to the insured that such agent is not authorized to bind coverage or to execute or issue a policy for the subject risk.
- 7.) An agent without an appointment from a particular insurer may not sign or execute policies or issue binders, endorsements, or any other indication or coverage on behalf of that insurer.

k. Limited lines license [Ins. 4051.101, 4054.101] A person can obtain a limited lines agent license for any one of the following types of insurance:

- Lump-sum benefit for accidental death or dismemberment
- Job protection insurance
- Credit insurance
- Crop insurance
- Prepaid legal services
- Life insurance and annuities for funding prearranged funeral costs
- Life insurance not to exceed a \$25,000 benefit, and health insurance sold by a stipulated premium insurance company

l. Adjuster license [Ins. 4101.051] A person may not act as or represent that the person is an adjuster in this state unless the person holds a license. An adjuster investigates or adjusts losses on behalf of an insurer. The Department may waive any license requirement imposed under this rule for an applicant who holds a valid license from another state if the state has license requirements substantially equivalent to the requirements for a license issued by this state.

m. Licensing persons with criminal backgrounds [28 TAC 1.502] The Department may refuse to issue a license and may revoke, suspend, or refuse to renew a license if the applicant or licensee has:

- committed a felony or misdemeanor; or
- engaged in fraudulent or dishonest activity that directly relates to the licensee's duties and responsibilities.

2. Appointment [Ins. 4001.201, .205] A licensed agent may represent more than one insurer at any time while the agent's license is in force. The agent and insurance company must notify the Commissioner of any additional appointments. The notice must be accompanied by a certificate from each insurer named in each additional appointment and must state that the insurance company wants to appoint the applicant as its agent. The agent must pay a nonrefundable fee for each additional appointment.

a. An agent's appointment continues in effect until it is terminated and withdrawn by the insurance company or agent. When an insurer terminates an agent's

appointment for cause, it must immediately file with the Commissioner a statement of the facts related to the termination and the date and cause.

- b. Each renewal license authorizes the agent to represent the insurers for which the agent holds appointments until the appointments are terminated. That agent is considered to be the agent of the appointing insurer.
- c. If an agent who has been appointed by an insurer appoints a subagent, the general agent must give written notification to the department about the appointment, along with a nonrefundable fee. If an agent terminates a subagent for any reason other than for cause, the agent must promptly report the termination to the department, and the subagent has no further authority to act for the agent or insurer.

3. License denial, renewal, expiration [Ins. 4003.001, .004, .006, .007, 4005.101, .102] Business entity agent licenses are renewed every two years after the license is issued. Agent licenses for individuals are renewed every two years based on their birthday. Licenses for individual agents born in even-numbered years renew each even-numbered year. Licenses for individual agents born in odd-numbered years renew each odd-numbered year. If a person holds more than one license, all licenses issued to the person expire on the earliest expiration date of the licenses held. Thereafter, all licenses renew at the same time. The Commissioner may discipline a license holder and revoke, suspend, or deny an application.

- a. No applicant or licensee whose license has been denied, refused, or revoked (except for failure to pass a required written exam or to submit a completed license application) may file another licensing application within five years from the effective date of the denial, refusal, or revocation or, if judicial review is sought, within five years from the date of final court order or decree affirming such action.
- b. The Commissioner may refuse the application unless the applicant shows good cause why the action on the previous license should not prevent a new license from being issued.
- c. **Reasons for license suspension, termination, denial, or refusal to renew [Ins. 4001.254, 4005.101, .102]** The Commissioner may terminate, revoke, or suspend the license of anyone who:
 - has willfully violated any provision of the Texas Insurance Code;
 - has intentionally made a material misstatement in the licensing application;
 - has failed to maintain the qualifications necessary to obtain a license;
 - has obtained or attempted to obtain the license by fraud or misrepresentation;
 - has misappropriated, converted to his own use, or illegally withheld money belonging to an insurer, health maintenance organization, insured, or beneficiary;
 - has been guilty of fraudulent or dishonest practices;
 - has materially misrepresented the terms and conditions of insurance policies or contracts, including HMO contracts;

- has made or issued any statement misrepresenting or making incomplete comparisons regarding the terms of an insurance or annuity contract in an attempt to induce the owner to forfeit or surrender the contract and replace it with another (also called *twisting*);
 - has been convicted of a felony;
 - has been guilty of rebating an insurance premium or commission to the insured;
 - is not actively engaged in soliciting or writing insurance for the public as required under the Texas Insurance Code; or
 - has obtained a license primarily for the purpose of soliciting *controlled business* (writing insurance on self, family, or a business associate).
- 1.) In addition to the above penalties, the Commissioner may:
- deny an application for an original license;
 - suspend, revoke, or deny renewal of a license;
 - place on probation a person whose license has been suspended;
 - assess an administrative penalty; or
 - reprimand a licensee.

d. License renewal [Ins. 4003.004, .006, .007] An agent may renew a license that has not expired or been suspended or revoked by filing a renewal application and fee with the department before the license expires with the following stipulations. An agent may not renew a license that has been suspended or revoked.

- 1.) The original license of an agent who has applied for renewal remains in effect until the department issues the renewal license or the license is revoked by the Commissioner.
- 2.) If a license has been expired for 90 days or less, the applicant may renew by paying a license renewal penalty of one-half of the maximum renewal fee allowed by law, in addition to the regular renewal fee.
- 3.) If a license has been expired for more than 90 days but less than one year, the license cannot be renewed, though the applicant may obtain a new license. The applicant will not be required to pass the license examination again but must pay the license fee and a penalty of 50% of the fee. Note that this does not apply to adjusters.
- 4.) If a license has been expired for more than one year, the applicant must meet all requirements for a new license.
- 5.) The department may renew, without examination, an expired license of a person who was licensed in Texas, moved to another state, and is currently licensed and in continual practice in that state.
- 6.) At least 30 days before the license expires, the department will send a written notice of the impending license expiration (with renewal form) to the address on file for the agent.

e. Reporting of actions [Ins. 4001.252, 4003.009, TAC 19.906]

- 1.) An agent must notify the department on a monthly basis of:
 - a change in his mailing address;
 - any felony conviction; or
 - an administrative action taken against the license holder by a financial or insurance regulator of Texas, another state, or the United States.

- 2.) A corporation or partnership licensed as an agent must file biographical information for:
 - each executive officer, director, or unlicensed partner who administers the entity's operations;
 - each shareholder who is in control of the corporation or partner who has the right or ability to control the partnership; and
 - if the corporation or partnership is owned, in whole or in part, by another entity, each individual who is in control of the parent entity.

- 3.) A corporation or partnership must notify the department no later than 30 days after:
 - a felony conviction of a licensed agent;
 - an agent's suspension or revocation in another state; or
 - the addition or removal of an officer, director, partner, member, or manager.

f. Interstate move by agent [Ins. 4003.009] No later than 30 days after moving from one state to another, an agent licensed in Texas must file:

- the agent's new address; and
- proof of authorization to engage in the business of insurance in the new state of residence.

4. License termination, revocation, suspension [Ins. 4001.254, 4005.101, .105] The Commissioner may discipline a license holder and revoke, suspend, or deny an application.

- a. No applicant or licensee whose license has been denied, refused, or revoked (except for failure to pass a required written exam or to submit a completed license application) can file another licensing application within five years from the effective date of the denial, refusal, or revocation or, if judicial review is sought, within five years from the date of final court order or decree affirming such action.
- b. The Commissioner may refuse the application unless the applicant shows good cause why the action on the previous license should not prevent a new license from being issued.
- c. The surrender of an agent's license to the Insurance Department will not negate any offense committed before the surrender's effective date.

D. CONTINUING EDUCATION [TIC 4004.051 TO .054; TAC 19.001 to .1030]

At least half the hours must be earned in a classroom or equivalent setting. There are only two acceptable topic groups: (1) general and (2) ethics/consumer protection. Any licensee may take courses from these two groups. Courses are not divided by license type.

1. The following table identifies the required hours of continuing education needed to maintain licenses.

a. The requirements based on type of license held are as follows.

- 1.) An individual who holds a general life, accident, and health license, a life agent license, a life and health insurance counselor license, an adjuster license, a managing general agent license, a general property and casualty license, or a personal lines property and casualty license must complete 24 hours of continuing education during the license period. If the individual holds more than one license, the individual is not required to complete more than 24 continuing education hours for all licenses during the license period. Of the 24 hours, two hours must be in ethics and consumer protection.
- 2.) An individual who holds a limited life, accident, and health license or a limited property and casualty license must complete five hours of continuing education annually.
- 3.) The Commissioner by rule may authorize the Department to grant not more than four hours of continuing education credit to an agent who is an active member of a state or national insurance association.

License	Requirement per Renewal Period
General Lines—Property and Casualty (PC)	24 hours, including 2 hours of ethics/consumer protection
Adjuster	24 hours, including 2 hours of ethics/consumer protection
MGA	24 hours, including 2 hours of ethics/consumer protection
Limited Lines (LAH, PC, Prepaid Legal, others)	10 hours, including 2 hours of ethics/consumer protection
County Mutual	10 hours, including 2 hours of ethics/consumer protection
Insurance Service Representative (ISR)	24 hours, including 2 hours of ethics/consumer protection

b. Training requirements also apply to agents who sell the following products.

- 1.) If selling Medicare-related products, an agent must complete eight hours of professional training related to a Medicare-related product before engaging in selling such and must complete four hours of continuing edu-

cation specifically relating to Medicare-related products every two years thereafter. This education may count toward the agent's overall continuing education requirements.

- 2.) If selling flood insurance a three-hour initial certification course is required.
 - 3.) If selling long-term care partnership policies, an eight-hour initial certification course and four hours of continuing education each subsequent reporting period are required.
 - 4.) If selling small employer health benefit plans, an eight-hour initial certification course and five hours of continuing education each subsequent reporting period are required.
- c. Licensees must keep records of every course completed for four years after the date of completion for the purpose of investigation or audit by the Department of Insurance. A licensee under investigation must maintain such records for at least as long as the investigation continues.

2. Exemptions from continuing education requirement Exemptions from and extensions of time, for a licensee to comply with continuing education requirements are granted under very limited circumstances.

- a. The request for an exemption must be presented on proper documentation and must be due to circumstances that are beyond the licensee's control. Examples might be long-term illness or military service in a theater of war. Reasons related to business or work load are never acceptable.
- b. An individual who has continuously held a license as an insurance agent for at least 20 years is exempt from the continuing education requirements.
- c. Nonresident licensees who are in compliance with their resident state's continuing education requirements are exempt from this state's continuing education requirement.

3. Failure to comply [28 TAC 19.1015]

- a. The department may investigate or audit a licensee's continuing education records. The Commissioner may, after notice and opportunity for hearing, discipline a licensee if the Commissioner determines that the license holder:
 - is in violation of or has failed to comply with the Insurance Code;
 - has filed any document which is false or deceptive for the purpose of providing evidence of complying with the continuing education statutes or in responding to any inquiry from the department concerning compliance;
 - has falsified records or participated in any activity that allows circumvention of the requirements of the Insurance Code;

- has received or used unauthorized materials or assistance or provided to another student unauthorized materials or assistance before or during an examination or interactive inquiry period; or
- has failed to pay within 90 days an automatic fine without properly requesting a hearing.

- b. If the Commissioner proposes action against a licensee or provider, the affected licensee or provider is entitled to a hearing.

4. Automatic fines [28 TAC 19.1016] The department establishes the following procedure for automatic fines.

- a. All automatic fines must be paid by check or money order made payable to the Texas Department of Insurance within 30 calendar days after the date of issuance of the automatic fine unless the fined party disputes the assessment and files a written request for contested case hearing within the 30-day period.
- b. If the assessment of the fine is disputed, the department may, in its discretion, assert other matters and claims against the fined party at a hearing and also seek any disciplinary action available under the Insurance Code, including additional fine amounts in excess of the automatic fine amount.

5. State and national insurance association credit [28 TAC 19.1020]

Licensees who currently hold a national designation certification or are members in good standing of a state or national insurance association may receive up to four hours of self-study continuing education credit per reporting period as follows:

- By accumulating up to two hours for reviewing educational materials provided by the national designation sponsor or state or national insurance association in which they hold a designation or are members
 - By accumulating up to four hours for attending educational presentations sponsored by the national designation sponsor or state or national association in which they hold a designation or are members
- a. Licensees may accumulate hours from different national designations or state or national insurance associations in which they hold a designation or membership to reach the four-hour limit, but regardless of the number of designations, association memberships, or hours accumulated, licensees may not claim more than four hours of credit under this section towards completing their continuing education requirement for any reporting period.
 - b. Continuing education hours under this section apply only as self-study credit and do not count towards the licensee's ethics, classroom, or classroom equivalent continuing education requirements.
 - c. A licensee claiming hours under this section may claim the actual time, up to an accumulated total of four hours, that the licensee needed to review the educational material or the duration of the educational presentation.

E. UNFAIR TRADE PRACTICES It is illegal to engage in any trade practice that involves unfair or unreasonably restrained competition, including acts that are misleading, deceptive, or unfairly discriminatory. The Commissioner reserves the right to investigate, hold hearings, issue cease and desist orders, and fine anyone violating these claim practices. In addition, the Department of Insurance may require the insurer to file periodic reports based on complaints of unfair claim settlement practices.

1. Claims methods and practices [Ins. 542.001-.014, 541.060, TAC 21.201 to .205] Texas insurance law offers protection to insurance consumers by prohibiting unfair claims settlement practices. It is illegal to engage in any of the following unfair claims settlement practices with respect to a claim by an insured or beneficiary:

- Misrepresenting to claimants material facts or policy provisions
- Not attempting in good faith to bring about prompt, fair, and equitable settlements when liability has become reasonably clear
- Failing to settle claims promptly, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage
- Failing to promptly provide a reasonable explanation regarding any policy provisions or law that caused a claim to be denied or for the offer of a compromise to settle a claim
- Failing within a reasonable time to affirm or deny coverage of a claim or to submit a reservation of rights to a policyholder
- Failing, refusing, or unreasonably delaying a settlement offer because other coverage may be available or because third parties are responsible for the damages
- Attempting to enforce a full and final release of a claim when only a partial payment has been made
- Refusing to pay a claim without conducting a reasonable investigation with respect to the claim
- With respect to a Texas personal auto policy, delaying or refusing settlement of a claim solely because there is other insurance of a different type available to satisfy all or part of the loss
- Requiring the claimant, as a condition of settling a claim, to produce the claimant's federal income tax returns for examination unless a court orders production of the returns, the claim involves a fire loss, or the claim involves lost profits or income
- Attempting to steer claimants indirectly by suggesting, either verbally or in writing, that other reasonable repair costs might not be covered unless claimants use a preferred repair shop or specific part to make the repairs

2. False advertising [Ins. 541.052, 28 TAC 21.115] It is illegal to make, publish, circulate, or disseminate any advertisement about the insurance business or any insurer that is untrue, deceptive, or misleading. Insurance advertisements must meet special regulations. In this context, advertisement means printed material and descriptive literature; sales aids issued by an insurer for presentation to the public; and prepared sales talks, presentations, and material used by agents and brokers.

- a.** No advertisement may use the word “dividends” or similar words or illustrations in such a manner as to state or to imply that future dividends are guaranteed or certain to occur. The word “dividends” includes every return of premium and payment to policyholders on a particular policy that is predicated on the financial performance or earnings of the insurer, but does not include the return of premium under a nondiscretionary provision or endorsement in a policy clearly providing for the payment under a rating plan approved or promulgated by the Texas Department of Insurance.
- 3. Testimonials [28 TAC 21.107]** Testimonials, appraisals, and analyses used in advertisements must be genuine, represent the current opinion of the author, be applicable to the policy advertised, and be accurately reproduced. The insurer or agent in using a testimonial makes all of the statements contained in them his own.
 - a.** An advertisement may not state or imply that the insurer, its financial condition or status, the payment of its claims, or the agent is recommended or endorsed by any division or agency in Texas or the US government.
 - b.** Except for a policyholder testimonial for which no consideration is paid, a testimonial of an insurer must be limited to a brief description of benefits, statements regarding the insurer, and the availability of coverage. It may not contain premiums or other policy provisions.
 - c.** If a person is compensated for making a testimonial, this must be disclosed in the advertisement.
- 4. Misrepresentation [Ins. 541.051, 28 TAC 21.4]** It is an unfair trade practice to:
 - misrepresent a policy’s terms, benefits, or advantages;
 - misrepresent the dividends or share of the surplus to be received or previously paid on a policy;
 - misrepresent the financial condition of a person in the insurance business;
 - use a title of a policy or class of policies that misrepresents the true nature of the policy;
 - misrepresent the legal reserve system on which any life insurer operates; or
 - make a misrepresentation to induce a policyholder to lapse, forfeit, exchange, convert, or surrender a policy (also called *twisting*).
- 5. Defamation [Ins. 541.053]** It is an unfair trade practice to make an oral or written statement that is false or maliciously critical of, or derogatory to, the financial condition of any insurer that is calculated to injure any person engaged in the insurance business.
- 6. Controlled business [Ins. 4001.104]** A person may not be licensed in order to engage in the insurance business to insure property in which he has an interest. This section prohibits coercion of insurance.
 - a.** A person cannot principally insure, as a licensed agent, business he controls through ownership, mortgage or sale, family relationship, or employment.

- b. An applicant for an original license must have a bona fide intention to engage in business in which, in any calendar year, at least 25% of the total volume of premiums is derived from persons other than the applicant and from property other than that on which the applicant controls the placing of insurance through ownership, mortgage, sale, family relationship, or employment.

7. Disparagements [28 TAC 21.110]

- a. An advertisement may not directly or indirectly unfairly disparage competitors or their policies, services, or business methods and may not unfairly disparage or minimize competing methods of marketing insurance.
- b. An advertisement may not contain statements that are untrue or misleading in portraying another insurer's assets, corporate structure, financial standing, age, or relative position of the insurer in the insurance business.

8. Rebating [Ins. 4005.053(c), 541.056]

- a. It is illegal to offer any of the following to induce anyone to purchase insurance:
 - rebates on the premium payable on the contract;
 - special favors or advantages in the dividends or other benefits on the contracts; and
 - other valuable considerations or inducements not specified in the contract.
- b. It is also illegal to issue or deliver stock, bonds, or other securities in any corporation, advisory board contracts, or any contract promising returns and profits as an inducement to buy insurance.
- c. The following, however, are not considered to be illegal rebates:
 - paying dividends or bonuses out of surplus, as long as the payments are fair to all policyholders; and
 - collecting expense savings on industrial debit insurance for payments made directly to an insurer's office.

9. Discrimination [Ins. 544.002] A person may not refuse to:

- insure or provide coverage to an individual;
- continue to insure or provide coverage;
- limit the amount, extent, or kind of coverage available; or
- charge an individual a rate that is different from the rate charged to other individuals for the same coverage because of
 - race, color, religion, or national origin,
 - age, gender, marital status, or geographic location, or
 - disability or partial disability.

This does not prohibit an insurer from considering marital status in defining persons eligible for dependent benefits.

10. Fraud [Ins. 701.001 to .154] The Texas Department of Insurance has an Insurance Fraud Unit to enforce laws relating to fraudulent insurance acts.

- a.** A fraudulent insurance act is any illegal act that is:
 - committed while engaging in the business of insurance;
 - committed as part of or in support of an insurance transaction; and
 - part of an attempt to defraud an insurer.
- b.** If the Commissioner has reason to believe that a person has engaged, is engaging in, or is about to engage in what may constitute a fraudulent insurance act or insurance fraud, the Commissioner may make any investigation to determine whether the act occurred or to aid in the enforcement of the insurance fraud laws. If the Commissioner believes a fraudulent insurance act has occurred, he will take the appropriate disciplinary measures as well as report the information to the proper law enforcement authorities.
- c.** Any individual, corporation, governmental agency, organization, or other legal entity that determines a fraudulent insurance act has been committed or is about to be committed, must report this information to the Commissioner or authorized law enforcement agency in writing within 30 days of determination.
- d.** A person is not liable in a civil action, including an action for libel or slander, for furnishing information relating to a suspected, anticipated, or completed fraudulent insurance act if the information is provided without malice, fraudulent intent, or bad faith.

11. False financial statements [Ins. 541.055] It is an unfair practice to, with intent to deceive:

- file a false statement of financial condition of an insurer;
- make or distribute a false statement of financial condition of an insurer; or
- make a false entry in an insurer's statement or willfully omit a true material fact with intent to deceive
 - an agent or examiner lawfully appointed to examine the insurer's condition or affairs, or
 - a public official who has authority to examine the insurer's condition or affairs.

12. Unfair comparisons [28 TAC 21.111] An advertisement may not make an unfair or incomplete comparison of policies, benefits, dividends, or rates or compare noncomparable policies.

- a.** An advertisement containing a comparison of policies of different insurers must prominently state the following:

The description of the other insurance company's policy was not furnished by that insurance company. If there are questions regarding the illustration, please contact a representative of the other insurance company.

- b.** The other insurance company's exact name must be stated in these references.

13. Boycott, coercion, intimidation [Ins. 541.054] It is illegal to commit or to enter into an agreement to commit any act of boycott, coercion, or intimidation that results in or tends to result in the unreasonable restraint of, or monopoly in, the insurance business.

F. AGENT DUTIES/RESPONSIBILITIES Licensed insurance agents must fulfill certain professional responsibilities while conducting insurance businesses, which are discussed in the following. Any violations of these are grounds for license denial, revocation, or disciplinary action.

- 1. Commissions [Ins. 4005.053–.054]** No insurer or licensed agent may pay a commission to or accept a commission from any person unless that person holds an insurance license. In addition, a licensed agent who receives a commission for services may not receive an additional fee for those services provided to the same client. This regulation does not apply to anyone who no longer holds a current license but still receives renewal or deferred commissions. A person who has had his license revoked may not solicit or in any way transact insurance business.
- 2. Fiduciary capacity** An agent is a *fiduciary*, a person in a position of financial trust to the insurance buyer and the insurer. Whenever any person receives funds that belong to or should be paid to another person in connection with an insurance transaction, that person is deemed to have received the funds in a fiduciary capacity. As a result, the licensee must promptly account for and pay the funds to the person entitled to them.

II. TEXAS STATUTES AND RULES PERTINENT TO PROPERTY AND CASUALTY INSURANCE

A. PROPERTY AND CASUALTY DEFINITIONS

- 1. Binders [Ins. 549.055]** A lender that requires a borrower to secure insurance coverage before the lender will provide a residential mortgage or commercial real estate loan must accept an insurance binder as evidence of the required insurance and may not require the borrower to provide an original insurance policy instead of a binder if:
 - the binder is issued by a licensed general property and casualty agent who is appointed to represent the insurer whose name appears on the binder and who is authorized to issue binders;
 - the binder is accompanied by evidence of payment of the required premium; and
 - the binder will be replaced by an original insurance policy for the required coverage on or before the 30th day after the date the binder is issued.

2. Fire insurance: total loss of real property and liquidated demand [Ins. 862.053]

- a. In case of a total loss by fire of real property, a fire insurance policy is considered to be a liquidated demand against the company for the full amount of such policy, regardless of the actual cash value of the property.
- b. An insurance company must include this provision verbatim in each fire insurance policy issued as coverage on real property.

3. Arbitration agreements valid [Civ. 171.001]

- a. A written agreement to arbitrate is valid and enforceable if the agreement is to arbitrate a controversy that:
 - exists at the time of the agreement; or
 - arises between the parties after the date of the agreement.
- b. A party may revoke the agreement only on a ground that exists at law or in equity for the revocation of a contract.

4. Concealment, misrepresentation, or fraud [Ins. 701.001, .052] A person is not liable in a civil action for furnishing information, in good faith, orally or in writing, relating to a suspected, anticipated, or completed fraudulent insurance act if the information is provided to:

- an authorized governmental agency or the department;
- a law enforcement officer or an agent or employee of the officer;
- the National Association of Insurance Commissioners or an employee of the association;
- a state or federal governmental agency established to detect and prevent fraudulent insurance acts or to regulate the business of insurance or an employee of the agency; or
- a special investigative unit of an insurer.

5. Residential community property—coverages for spouses and former spouses [2002.003] A homeowner's policy or fire policy must contain 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.

6. Inland marine insurance [28 TAC 5.5002] Policies can be written for the following:

- Imports and exports (may be insured under an inland marine policy, when the property is not subject to any other policy; this type of property can be covered wherever the property may be, and without any time restriction)
- Domestic shipments
- Block policies
- Bailee customers' policies
- Bridges, tunnel, and other instrumentalities of transportation and communication
- Accounts receivable
- Agricultural machinery and equipment (excluding dealers)
- Cold storage locker plant policies
- Cotton buyers' transit policies
- Fine arts policies
- Installation risks or builders' risk
- Live animal floaters
- Musical instrument floaters
- Travel baggage
- Valuable papers and records
- Wedding present floaters
- Wool growers' and wool buyers' floater policies
- Electronic equipment protection policy

B. SURPLUS LINES [INS. 981.001 to .004, 981.057, 28 TAC 15.2 to .6] To regulate and tax surplus lines insurance placed in accordance with this chapter within the meaning and intent of 15 U.S.C. Section 1011 and 15 U.S.C. Chapter 108, this chapter provides an orderly method for each person whose home state is this state for a particular transaction to affect insurance with eligible surplus lines insurers through qualified, licensed, and supervised surplus lines agents in this state, if coverage is not available from authorized and regulated insurers engaged in business in this state, under reasonable and practical safeguards.

- 1. Authorized insurer** An eligible surplus lines insurer may provide surplus lines insurance only if:
 - the full amount of required insurance cannot be obtained, after a diligent effort, from an insurer authorized to write that kind and class of insurance in this state;
 - the insurance is placed through a surplus lines agent; and
 - the insurer meets the state eligibility requirements as of the inception date and annual anniversary date of each insurance contract, cover note, or other confirmation of insurance. (Surplus rules will generally not apply to insurance procured for an exempt commercial purchaser.)
- 2. Amount of coverage** An eligible surplus lines insurer may provide surplus lines insurance only in the amount that exceeds the amount of insurance obtainable from authorized insurers.

3. Surplus lines license required [Ins. 981.202] An agent licensed in Texas may not issue an insurance contract with an eligible surplus lines insurer unless the agent possesses a surplus lines license issued by the department.

4. Capital and surplus requirements [Ins. 981.057] An eligible surplus lines insurer must maintain minimum capital and surplus in an amount of at least \$15 million. This requirement does not apply to alien surplus lines insurers listed on the *Quarterly Listing of Alien Insurers* maintained by the NAIC.

C. APPROVAL OF RATES AND FORMS [Ins. 5.35] An insurance policy or endorsement may not be delivered or issued for delivery in Texas unless it is adopted or approved by the Commissioner. The Commissioner may adopt or approve the use of policy forms and endorsements of national insurers or policy forms and endorsements adopted by a national organization of insurance companies or similar organization.

Each policy form or endorsement filing pursuant to this section must be made no later than the 60th day before the date of any use or delivery for use.

At the expiration of the 60-day period, a filed form or endorsement is approved unless, before the expiration of the 60 days, the Commissioner disapproves the form or endorsement.

For good cause shown, the Commissioner may withdraw the Commissioner's approval at any time after notice and hearing.

D. HOMEOWNERS INSURANCE

1. Cancellation and nonrenewal [Ins. 551.001 to .055; 28 TAC 5.7001]

An insurer may not cancel or refuse to renew an insurance policy based solely on the fact that the policyholder is an elected official. An insurer may not cancel a policy of property or liability insurance that is a renewal or continuation policy or a policy of liability insurance that is in its initial policy period after the 60th day following the date on which the policy was issued with the following exceptions.

a. Cancellation [Ins. 551.052] An insurer may cancel the policy at any time during the term of the policy for the following reasons, with at least 10 days' written notice before the date of cancellation:

- Fraud in obtaining coverage
- Failure to pay premiums when due
- On an increase in hazard within the control of the insured that would produce an increase in rate
- Loss of the insurer's reinsurance covering all or part of the risk covered by the policy
- On an insurer being placed in supervision, conservatorship, or receivership, if the cancellation or nonrenewal is approved or directed by the supervisor, conservator, or receiver

b. Nonrenewal [Ins. 551.105] An insurer may refuse to renew a policy if the insurer has mailed notice of nonrenewal to the insured at least 30 days before the policy's expiration date.

- c. Membership dues [551.005]** An insurer may require that membership dues in its sponsoring organization be paid as a condition for issuance or renewal of a policy.
- d. Written statement of reasons for declination, cancellation, or nonrenewal [Ins. 551.002, .055]** Property and casualty insurers must, on request by an applicant for insurance or a policyholder, provide a written statement of the reasons for the declination, cancellation, or nonrenewal of an insurance policy. The statement must:
- fully explain any decision that adversely affects an applicant for insurance or a policyholder by denying the applicant or policyholder insurance coverage or continued coverage;
 - state the precise incident, circumstance, or risk factors applicable to the applicant for insurance or the policyholder that violates any applicable guidelines;
 - state the source of information on which the insurer relied regarding the incident, circumstance, or risk factors; and
 - specify any other relevant information.
- e. Premium surcharge of standard fire, homeowners, or farm or ranch owners insurance policy [Ins. 551.107]**
- 1.) An insurer may assess a premium surcharge at the time an insurance policy is renewed if the insured has filed two or more claims in the preceding three policy years. The amount of the surcharge must be based on sound actuarial principles.
 - 2.) An insurer may refuse to renew an insurance policy if the insured has filed three or more claims under the policy in any three-year period.
 - 3.) An insurer may notify an insured who has filed two claims in a period of less than three years that the insurer may refuse to renew the policy if the insured files a third claim during the three-year period. If the insurer does not notify the insured in accordance with this subsection, the insurer may not refuse to renew the policy because of claims.
- f. Insurer records [Ins. 551.108]**
- 1.) An insurer must maintain information regarding cancellation or nonrenewal of insurance policies in accordance with the insurer's ordinary practices for maintaining records of expired policies.
 - 2.) The insurer must make the information available to the department on request.
- g. Insurer statement [Ins. 551.109]** Upon request, an insurer must provide a written statement of the reason for a declination, cancellation, or nonrenewal of an insurance policy.

- h. Liability for disclosure [Ins. 551.110]** An insurer or agent or an employee of an insurer or agent is not liable for a statement or disclosure made in good faith unless the statement or disclosure was:
- known to be false; or
 - made with malice or willful intent to injure any person.
- i. Declination prohibited; consideration of certain claims [Ins. 551.113]** When deciding to issue or to decline to issue a standard fire, home-owners, or farm policy, an insurer may not consider a customer inquiry as a basis for declination. An insurer also may not charge or change a rate charged based solely on a consumer inquiry.

2. FAIR plan [TIC 2211.001 to .252]

- a. Purpose** The Fair Access to Insurance Requirements (FAIR) plan is designed to deliver residential property insurance to citizens of Texas in underserved areas who are unable to procure such insurance through the voluntary market, or have been without insurance on the property in the past six months.
- b. Membership** Each insurer must participate in the FAIR Plan Association as a condition of its authority to transact residential property insurance in Texas.
- c.** The FAIR plan may not provide windstorm and hail insurance coverage for a risk eligible for that coverage under the Texas Windstorm Insurance Association.
- d. Powers of the association**
- 1.)** The association is authorized to:
 - issue policies of insurance and endorsements;
 - collect premiums;
 - issue cancellations; and
 - pay commissions, losses, judgments, and expenses.
 - 2.)** The association makes assessments against the participating insurers as required to meet expenses and liabilities.
 - 3.)** Each insurer must participate in the writings, expenses, 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.
- e. Property inspection**
- 1.)** Any person having an insurable interest in real or tangible personal property at a fixed location in an underserved area who has been unable to obtain residential property insurance, as evidenced by two current declinations from insurers licensed to write property insurance in Texas, is entitled upon application to the association to an inspection and evaluation of the property by representatives of the inspection bureau.

- 2.) If the inspection bureau finds that the residential property meets underwriting standards, the applicant will be informed in writing and a policy or binder will be issued by the association. If the residential property does not meet the criteria, the applicant will be informed, in writing, of the reasons for the failure of the residential property to meet the criteria.
- f. Approval of rates** Rates must be approved by the Commissioner and must be set in an amount sufficient to carry all claims to maturity and to meet the expenses incurred in the writing and servicing of the business.
- g. Appeals** Any applicant or affected insurer has the right of appeal to the association. A decision of the association may be appealed to the Commissioner within 30 days after such decision.
- h. Immunity from liability** The association, its member insurers, inspection bureau, governing committee, and the Commissioner are immune from liability for any acts or statements related to the insurability of property.
- i. Insolvency** When a participating insurer becomes insolvent, the association will assume and redistribute any uncollected sums among the remaining participating insurers.
- j. Premium surcharges** Each insurer may charge a premium surcharge on a policy insuring property in Texas equal to one-third of the ratio of the insurer's assessment to its direct earned premiums in the preceding year.
- k. Powers of the Commissioner** The association and inspection bureau are supervised by the Commissioner, who has the power to:
- examine any and all books, records, files, papers, and documents;
 - summon, qualify, and examine as witnesses anyone having knowledge of association operations, including the governing committee, officers, or employees;
 - enable the state of Texas and the association to participate in any federal program of reinsurance which may be enacted for purposes similar to the FAIR Plan Act;
 - require any necessary reports from the association concerning insured risks; and
 - adopt policy forms, endorsements, rates, and rating and rule manuals.
- l. Retention of Profits** Profits retained by the association must be used to mitigate losses, including the purchase of reinsurance and the offset of future assessments, and may not be distributed to insurers.

3. Texas Windstorm Insurance Association [TAC 5.4001, 7.22]

- a. Purpose** The association exists to provide a method whereby adequate windstorm, hail, and fire insurance may be obtained in certain designated portions of the state of Texas.

- b. Membership** The association consists of all property insurers authorized to transact property insurance in Texas, except those companies that are prevented by law from writing coverages available through the pool on a statewide basis. Each insurer remains a member of the association so long as the association is in existence, as a condition of its authority to transact the business of insurance. Any insurer which ceases to be a member of the association remains liable on contracts of insurance entered into during its membership in the association to the same extent and effect as if its membership in the association had not been terminated.
- c.** The assets of the association are used to:
- satisfy the liability of the association regarding a claim made on a policy written by the association;
 - make investments authorized under applicable law;
 - pay reasonable and necessary administrative expenses incurred in connection with the establishment and operation of the association and the processing of claims against the association; or
 - make remittances to
 - pay claims on policies written by the association,
 - purchase reinsurance covering losses under those policies, or
 - prepare for or mitigate the effects of catastrophic natural events.
- d.** The Commissioner of Insurance appoints nine voting members to the TWIA board, which include four representing the insurance industry, four representing the first tier coastal counties, and one representing the non-seacoast counties. The Commissioner also appoints one non-voting member who is an engineer.
- 4. Joint underwriting associations [Ins. 2202.001]** A joint underwriting association is a voluntary unincorporated association of admitted insurers authorized to do business in Texas that has been authorized by its member insurers to act on their behalf in joint underwriting or in the issuance of syndicate policies of insurance.
- a. Acting without license prohibited [Ins. 2202.051]** An association of insurers may not act as a joint underwriting association in this state on behalf of its member insurers unless it holds a certificate of authority issued under this article.
- b. Authority [Ins. 2202.101]**
- 1.)** A joint underwriting association may act only on behalf of members of the association who are admitted and licensed to do business in Texas.
 - 2.)** A joint underwriting association may engage in only those activities it is authorized to perform by the members of the association.

c. Maintenance of information [Ins. 2202.103]

- 1.) Each joint underwriting association must maintain at its principal administrative office adequate records of all transactions.
- 2.) The Commissioner is entitled to access to those records for examination, audit, and inspection.
- 3.) Trade secrets, including the identity and addresses of policyholders and certificate holders, are confidential, except that the Commissioner may use information otherwise confidential in proceedings instituted against an association.

d. Independent audits and examination [Ins. 2202.151, .152]

- 1.) The books of accounts of joint underwriting associations must be audited annually by an independent certified public accountant, and a copy of that audit must be filed with the Commissioner.
- 2.) The Commissioner may require an examination of each joint underwriting association as often as it considers necessary. The costs of the examination must be paid by the association. The officers and employees of the association may be examined at any time, under oath, and must exhibit on request all books, records, accounts, documents, or agreements governing the operations of the association.
- 3.) Instead of the examination, the Commissioner may accept the report of an examination made by the insurance supervisory official of another state under the laws of that state.

e. Licensing [Ins. 2202.055, .056, .201]

- 1.) Each joint underwriting association license expires three years from the date of issuance unless renewed.
- 2.) An applicant for an original or renewal joint underwriting association license must pay a nonrefundable fee when the application is filed in an amount set by the Commissioner, but not to exceed \$200.
- 3.) A license may be denied, suspended, or revoked or the renewal of the license refused if the license applicant or license holder has:
 - willfully violated or participated in the violation of the Joint Underwriting Association Licensing Act or any other insurance law of this state;
 - intentionally made a material misstatement in the original or renewal license application;
 - obtained or attempted to obtain the license by fraud or misrepresentation;

- misappropriated or illegally withheld money required to be held in a fiduciary capacity;
- been convicted of a felony or of any misdemeanor of which criminal fraud is an essential element; or
- been found by the Commissioner to be incompetent or untrustworthy.

f. Hearings [Ins. 2202.203–.206]

- 1.) Before a license may be denied, suspended, or revoked or the renewal of the license refused, the Commissioner must give notice by certified mail to the applicant or license holder and set a date on which the applicant or license holder may appear to be heard and to produce evidence.
- 2.) The hearing date must be not less than 20 days or more than 30 days after the date on which the notice is mailed. The notice must contain specific reasons for the hearing and a list of the matters to be considered at the hearing. At the hearing, the Commissioner may:
 - administer oaths;
 - require the appearance of witnesses;
 - examine any person under oath; and
 - require the production of books, records, or papers relevant to the inquiry.
- 3.) After the hearing, the findings will be filed with the department. The Commissioner will send the order by certified mail to the applicant or certificate holder.
- 4.) If the Commissioner refuses an application for a certificate of authority or suspends, revokes, or refuses to renew a certificate of authority at a hearing, the applicant or certificate holder may appeal.
- 5.) An applicant or certificate holder whose certificate has been denied, refused, or revoked may not file another certificate of authority application before the first anniversary of the denial, refusal, or revocation.

g. Disposition of fees [Ins. 2202.003] Fees collected under the Joint Underwriting Association Licensing Act are deposited in the state treasury to the credit of the Texas Department of Insurance operating account. Funds may not be appropriated from the general revenue fund to administer the act.

E. AUTOMOBILE INSURANCE [CH. 601; INS. 1952.101-110; 1952.151-.161; TAC ART. 5.204] Auto insurance accounts for a large percentage of casualty insurance premiums.

1. Provisions [TIC Art. 5.06-1, Transportation Code 601.001, 601.071, TAC 5.204]

- a. Coverage [Transportation Code 601.071]** A motor vehicle liability insurance policy must be an owner's or operator's policy that is:
- issued by an insurance company authorized to write motor vehicle liability insurance in Texas; and
 - written to or for the benefit of the person named in the policy as the insured.
- b. Uninsured/underinsured motorists [Ins. 1952.101-.110]** Every automobile liability insurance policy (including insurance issued to an assigned risk plan established by the Texas Motor Vehicle Safety Responsibility Act) issued in Texas must offer coverage to the policyowner for recovering damages resulting from accidents with owners or operators of uninsured or underinsured automobiles.
- 1.) The policyowner may reject this coverage but must do so in writing.
 - 2.) The term *uninsured motor vehicle* includes a motor vehicle insured by an insurer that is unable to meet its legal liability because of insolvency.
 - 3.) The term *underinsured motor vehicle* refers to an insured motor vehicle on which there is valid and collectible liability insurance coverage, but with limits of liability that are lower than the underinsured coverage of the insured's policy.
 - 4.) The coverage provides that, regardless of the number of persons insured, policies or bonds applicable, vehicles involved, or claims made, the total limit of liability to one or all claimants who sustain bodily injury or property damage will not exceed the limit of liability stated in the policy.
 - 5.) For the insured to recover under the uninsured motorist coverage, actual physical contact must have occurred between the unknown person's automobile and the insured's person or property.
 - 6.) The limits of liability for bodily injury, sickness, disease, or death must be offered to an insured in the amounts desired by the insured, but not in amounts greater than the limits of liability specified in the bodily injury liability provisions of the insured's policy.
 - 7.) Coverage for property damage is subject to a deductible amount of \$250, property damage must be offered to an insured in the amounts desired by the insured, but not in amounts greater than the limits of liability specified in the property damage liability provisions of the insured's policy.
 - 8.) If the insured has both collision coverage and uninsured/underinsured property damage liability coverage, the insured may choose which policy to recover under.
 - a.) In the event that neither coverage is sufficient to cover all damages resulting from an accident, the insured may recover under both coverages.

- b.) When doing so, the insured must designate one coverage as the primary coverage and apply the deductible to that coverage.
- c.) The primary coverage must be exhausted before any recovery is made under the secondary coverage.

2. Financial responsibility and required minimum liability limits [Transportation Code 601.051; 601.053; 601.056; 601.057; 601.071; 601.072] The financial responsibility law in Texas is the Motor Vehicle Safety Responsibility Law.

- a. A financial responsibility law protects citizens from financially irresponsible drivers and automobile owners.
 - 1.) It requires motorists to show evidence of their ability to pay damages (a valid automobile insurance policy, for instance) up to specific amounts for liability that results from accidents causing bodily injury or property damage.
 - 2.) The insurer must cover the injured party's loss, subject to the policy limits.

b. Minimum coverage amounts [Transportation Code 601.072]

Proof of financial responsibility in Texas means the proof of ability to pay damages resulting from motor vehicle accidents in the following amounts (30/60/25):

- \$30,000 due to bodily injury or death of any one person in any one accident;
- \$60,000 due to bodily injury or death of two or more persons in any one accident; and
- \$25,000 due to damage to all property of others in any one accident.

The coverage required under this section may exclude, with respect to one accident:

- the first \$250 of liability for bodily injury to or death of one person;
- the first \$500 of liability for bodily injury to or death of two or more persons; and
- the first \$250 of liability for property damage to or destruction of property of others.

c. Required proof of financial responsibility [Transportation Code 601.053] As a condition of operating an automobile, the operator of the vehicle must, upon request, provide to a police officer or a person involved in an accident:

- a motor vehicle liability insurance policy covering the vehicle, a photocopy of the policy, or an image displayed on a wireless communication device;
- a standard proof of motor vehicle liability insurance form prescribed by the Texas Department of Insurance and issued by the insurer of the automobile;
- an insurance binder that confirms the operator is in compliance with this law;

- a surety bond certificate;
- a certificate of a deposit with the comptroller covering the vehicle;
- a copy of a certificate of a deposit with the appropriate county judge covering the vehicle; or
- a certificate of self-insurance covering the vehicle or a photocopy of the certificate.

d. Cancellation, return, or waiver of evidence of financial responsibility [Transportation Code 601.056]

- 1.) The Department of Public Safety will consent to the cancellation of an insured's proof of financial responsibility if the insured:
 - has not had a traffic violation that would result in the suspension or revocation of the driver's license or vehicle registration for two years;
 - dies or becomes permanently incapacitated and is unable to operate a motor vehicle; or
 - surrenders his license and vehicle registration to the department.
- 2.) A cancellation, return, or waiver of the proof of financial responsibility may be made only after two years from the date the evidence of financial responsibility was required.
- 3.) The department may not cancel the proof or return the bond or certificate of deposit if:
 - an action for damages on a liability covered by the evidence of financial responsibility is pending;
 - a judgment for damages on a liability covered by the evidence of financial responsibility is not satisfied; or
 - the person for whom the bond has been filed or for whom money or securities have been deposited has, within the two years preceding the request for cancellation or return of the evidence of financial responsibility, been involved as an operator or owner in an accident resulting in bodily injury or property damage to another person.

e. Inadequate proof of financial responsibility [Transportation Code 601.057] If evidence filed with the department does not fulfill the proof of financial responsibility requirements, the department will suspend the driver's license and all vehicle registrations or nonresident's operating privilege of the person who filed the evidence pending the filing of other evidence of financial responsibility.

f. Mandatory liability insurance [Transportation Code 601.121 to .124] In Texas, no motor vehicle may be operated unless there is an auto liability policy in effect on the vehicle that provides the ability to respond to damages in the amounts the financial responsibility law requires.

- 1.) Certain vehicles are exempt from this requirement, including vehicles that are:
 - self-insured;
 - covered by a bond (in the same amounts required for a liability policy) filed with the Insurance Department; or
 - covered by a cash deposit of \$55,000 made to the state treasurer (or county judge of the county where the vehicle is registered).

2.) Exceptions to financial responsibility requirement

[Transportation Code 601.052] Exceptions to the financial responsibility requirement include the operation of a motor vehicle that:

- is a former military vehicle or is at least 25 years old;
- is used only for exhibitions, club activities, parades, and other functions of public interest and not for regular transportation;
- for which the owner files with the department an affidavit, signed by the owner, stating that the vehicle is a collector's item and is used only for parades, exhibitions and not for regular transportation;
- is a golf cart; and
- is used as part of the volunteer fire department.

g. Proof of financial responsibility [Transportation Code 601.081, TAC 5.204] Motor vehicle operators must be able to furnish evidence of financial responsibility upon request of a police officer or a person involved in an accident with the operator.

- 1.) A copy of a liability policy or binder in the required amounts or a proof of liability insurance form that a liability insurer issued is an acceptable form of proof.
- 2.) For each motor vehicle insurance policy issued, a liability insurer must issue a standard proof of liability form titled Texas Liability Insurance Card. The card must include:
 - the name and address of the insured or covered person;
 - the year, make, and model of each covered vehicle;
 - the effective date of the policy;
 - the expiration date of the policy;
 - the policy number;
 - the name of the insurer (and the insurer's toll-free phone number, if the insurer is required to maintain such a number); and
 - a statement that the policy provides the coverage required by Texas Motor Vehicle Safety Responsibility Act.

h. Penalties [Transportation Code 601.191, 601.231] Operating a motor vehicle without the required insurance is a misdemeanor punishable by a fine of between \$175 and \$350 for the first offense.

- 1.) Subsequent violations are punishable by a fine of between \$350 and \$1,000.
- 2.) In addition, a person convicted of violating this law for a second time will have his driver's license and motor vehicle registration suspended unless the person establishes and maintains proof of financial responsibility for two years.

3. Personal injury protection [Ins. 1952.151 to .161] All automobile liability insurance policies issued or delivered in Texas must provide personal injury protection (PIP) unless the insured rejects such coverage in writing.

- a. Once an insured has rejected such coverage in writing, renewal policies by the same or affiliated insurer need not contain PIP unless the named insured requests such coverage in writing.
- b. Personal injury protection provides minimum limits of \$2,500 per person for payment of all reasonable expenses arising from an auto accident.
- c. PIP covers medical expenses and funeral expenses.
- d. PIP also covers payment for loss of income related to the accident. If the injured party did not earn an income at the time of the accident, the insurer must reimburse necessary and reasonable expenses incurred for essential services ordinarily performed by that person for care and maintenance of the family or household.
- e. PIP covers any such expenses incurred within three years of the date of the accident.
- f. PIP benefits are payable without regard to the fault of the named insured (or other recipient of PIP benefits) in causing the accident. An insurer, however, may not pay benefits to any insured who contributed to or caused the injury he sustained:
 - by intentionally causing injury to himself; or
 - while committing a felony or while trying to avoid a lawful stop or arrest by a law enforcement official.

g. Payment of benefits [Ins. 1952.156]

- 1.) An insurer must pay PIP benefits periodically as claims for those benefits arise, but not later than the 30th day after the date the insurer receives satisfactory proof of a claim.
- 2.) The insurer may:
 - prescribe a period of no less than six months after the date of an accident within which the original proof of loss with respect to a claim for benefits must be presented to the insurer; and

- require reasonable medical proof of a recurrence of an injury for which an original claim for benefits was made if a lapse occurs in the period of total disability or in the medical treatment of an injured person who has received benefits under that coverage subsequently claims additional benefits based on the alleged recurrence.

- 3.) The aggregate benefits payable under the coverage required by this subchapter to any person may not exceed the maximum limits prescribed in the insurance policy.

h. Action for failure to pay benefits [Ins. 1952.157]

- 1.) If the insurer fails to pay PIP benefits when due, the person entitled to those benefits may bring an action in contract to recover the benefits.
- 2.) If the insurer is required to pay PIP benefits, the person entitled to the benefits is entitled to recover reasonable attorney's fees, a penalty of 12%, and interest at the legal rate from the date those amounts became overdue.

4. Renewal, nonrenewal, and cancellation [Ins. 551.101-.113, 551.151-.152, 28 TAC 5.7002] The cancellation and nonrenewal requirements that apply to commercial automobile policies are different from those that apply to personal automobile policies.

- a. An insurer may cancel a commercial auto liability policy at any time because:
 - there was fraud in obtaining coverage;
 - the insured failed to pay premiums when due;
 - there is an increase in hazard within the insured's control that would increase the insured's rates;
 - the insurer has lost the reinsurance covering all or part of the policy risk; or
 - the insurer is being placed under supervision, conservatorship, or receivership, if the cancellation or nonrenewal is approved or directed by the supervisor, conservator, or receiver.
- b. An insurer may cancel a commercial policy that has been in effect for less than 90 days for any reason.
- c. Insurers must give written notice to the insured at least 10 days before the cancellation date, and the notice must state the reason for cancellation.
- d. An insurer may refuse to renew a commercial auto liability policy if the insurer gives written notice to the insured at least 60 days before the policy expires.
 - 1.) If the insurer gives notice less than 60 days before the policy expires, the policy remains in effect until the 61st day after the notice is given.
 - 2.) The notice must state the reason for the nonrenewal.

- e. After a personal automobile policy has been in effect for 60 days, the company may cancel for the following reasons and none other:
 - The failure of the insured to pay the premium for the policy
 - The suspension or revocation of the driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy
 - A determination by the State Board of Insurance that the continuation of the policy would violate or place the company in violation of the Insurance Code
 - A fraudulent claim submitted by the insured
- f. Cancellation of a personal auto policy requires 10 days' notice to the insured. Cancellation on a 12-month anniversary date requires notice at least 30 days before the cancellation date. An insurer may not cancel or refuse to renew an insurance policy based solely on the fact that the policyholder is an elected official.
- g. **Nonrenewal [Ins. 551.106]** An insurer may refuse to renew a personal auto policy only if the insurer has mailed notice of nonrenewal to the insured at least 30 days before the policy's expiration date.
 - 1.) An insurer may not decline to renew a policy solely because of the insured's age.
 - 2.) An insurer must renew a policy that was written for less than one year, though an insurer may decline to renew the policy on any 12-month anniversary of the original effective date of the policy.
- h. **Insurer statement [Ins. 551.109]** An insurer shall, at the request of an applicant for insurance or an insured, provide a written statement of the reason for a declination, cancellation, or nonrenewal of an insurance policy.

5. Texas Automobile Insurance Plan Association (TAIPA) [Ins. 2151.051 to .154] The Texas Automobile Insurance Plan Association is a corporate body made up of all insurers licensed to write motor vehicle liability coverage in Texas.

- a. The association assigns member insurers to write auto liability policies to applicants who are required to demonstrate financial responsibility for the future.
- b. The association is administered by a governing committee of 15 members. The law sets out the composition of the governing board, as well as who is prohibited from serving on the board.
- c. To obtain insurance through the association, an applicant and his agent must certify that the applicant has been rejected for insurance by at least two licensed auto insurers.

F. WORKERS' COMPENSATION [TEXAS LABOR CODE TITLE 5: 401.011; 401.022; 406.031, .032, .034, 408.041, .082, .186] The Department of Insurance regulates the insurance companies' forms and rates charged for workers' compensation insurance. The Texas Department of Insurance—Division of Workers' Compensation (DWC) has primary responsibility for promulgating rules that pertain to this line of business.

1. Definitions [Texas Labor Code Title 5: 401.011, .013]

- a. Injury** This is defined as damage or harm to the body as well as any disease or infection resulting from the damage and harm. The term includes an occupational disease.
- b. Occupational disease** This is defined as a disease arising out of and in the course of employment that causes damage or harm to the body, including a repetitive trauma injury.
- 1.)** It includes a disease or infection that naturally results from the work-related disease.
 - 2.)** It does not include an ordinary disease of life to which the general public is exposed outside of employment unless the disease results from a compensable injury or occupational disease.
- c. Course and scope of employment** any kind of activity that has to do with and originates in the business of the employer and is performed by an employee while furthering the affairs or business of the employer.
- 1.)** The term includes activity carried out on the employer's premises and at other locations.
 - 2.)** Transportation to and from work is not included unless:
 - the transportation is paid for by the employer;
 - the means of transportation are controlled by the employer; or
 - the employee is directed to proceed from one place to another as part of his employment.
 - 3.)** Travel by the employee on behalf of the employer's business is not covered if the travel is also for personal or private affairs unless:
 - the travel to the place of occurrence of the injury would have been made even had there been no personal or private affairs of the employee; and
 - the travel would not have been made had there been no business of the employer to be furthered by the travel.
- d. Disability** the inability to obtain and retain employment at wages equivalent to the employee's preinjury wage.

- e. Maximum medical improvement** the date is the earlier of:
- the earliest date that, based on medical probability, further medical improvement to an injury can no longer reasonably be anticipated; or
 - 104 weeks (two years) from the date that income benefits begin to accrue.
- f. Intoxication** for the purposes of workers' compensation insurance regulations, *intoxication* is defined as a condition characterized by the absence of normal use of mental or physical faculties resulting from the voluntary introduction into the body of certain substances.
- 1.) These substances include:
 - alcohol, controlled substance, a drug, a dangerous drug, or a combination to two or more of these substances, or any other substance into the body or having an alcohol concentration of 0.08 or more;
 - abusable glue or aerosol paint; or
 - any similar substance, the use of which is regulated under state law.
 - 2.) The term does not include the loss of normal use of mental or physical faculties resulting from the ingestion into the body of a substance:
 - taken in accordance with a prescription written for the employee by the employee's doctor; or
 - listed as an inhalation or absorption incidental to the employee's work.
- g. Exclusive remedy [Texas Labor Code Title 5: 408.001]** The recovery of workers' compensation benefits is the exclusive remedy of an employee covered by workers' compensation insurance or a legal beneficiary against the employer or an agent of the employer for the death of or a work-related injury sustained by the employee.
- 1.) This provision does not prohibit the recovery of exemplary damages by the surviving spouse or heirs of the deceased employee whose death was caused by an intentional act or omission of the employer or by the employer's gross negligence.
- h. Subrogation [Texas Labor Code Title 5: 417.001, .002]** The net amount recovered by a claimant in a third-party action must be used to reimburse the insurer for benefits, including medical benefits, that have been paid for the compensable injury.
- 1.) Any amount recovered that exceeds the amount of the reimbursement will be treated as an advance against future benefits, including medical benefits that the claimant is entitled to receive.
 - 2.) If the advance is adequate to cover all future benefits, the insurer is not required to resume the payment of benefits. If the advance is insufficient, the insurer will resume the payment of benefits when the advance is exhausted.

2. Coverage

- a. Elective coverage [Texas Labor Code Title 5: 406.002]** Except for public employers and a few others, employers are not required to obtain workers' compensation insurance coverage.
- 1.) However, an employer who chooses not to obtain workers' compensation coverage may be sued for damages by an employee injured in the course of employment. The employer loses its common law defenses, such as contributory negligence, assumption of risk, or injury caused by a fellow employee. However, the injured worker must prove negligence on the part of the employer. (Intoxication is a defense.)
 - 2.) Many employers choose to transfer this risk rather than subject themselves to potentially high payments to injured employees.
- b. Employee election [Texas Labor Code Title 5: 406.034]** Unless an employee gives notice in writing within five days of being hired or of being notified of newly acquired coverage to his employer waiving workers' compensation coverage, the employee waives his right to sue for personal injuries or death sustained in the course and scope of employment. An employee who elects to retain the right of action or a legal beneficiary of that employee may bring a cause of action for damages for injuries sustained in the course and scope of the employment under common law or under a statute of this state. The cause of action is subject to all defenses available under common law and the statutes of this state unless the employee has waived coverage under an agreement with the employer.
- c. Coverage requirements [Texas Labor Code Title 5: 406.031]** An insurer is liable for compensation for an employee's injury without regard to fault or negligence if:
- the employee is covered by the workers' compensation law; and
 - the injury arises out of and in the course and scope of employment.
- d. Exceptions [Texas Labor Code Title 5: 406.032]** An insurer is not liable for compensation if the employee's "horseplay" was a cause of the injury or if the injury:
- occurred while the employee was intoxicated;
 - was caused by the employee's willful attempt to injure himself or to unlawfully injure another;
 - resulted from the actions of a third person who intended to injure the employee for personal reasons (and not for reasons related to his employment);
 - arose out of voluntary participation in an off-duty recreational, social, or athletic activity that did not constitute part of the employee's work-related duties (unless such participation is expected or required); or
 - arose out of an act of God, unless the employment exposes the employee to a greater risk of injury from an act of God than the general public faces.

e. Employment and employee [Texas Labor Code Title 5: 401.012]

A *covered employee* means each person in the service of another under a contract of hire, whether express or implied, oral or written. The term *employee* includes:

- an employee employed in the usual course and scope of the employer's business who is directed by the employer temporarily to perform services outside the usual course and scope of the employer's business;
- a person, other than an independent contractor or the employee of an independent contractor, who is engaged in construction, remodeling, or repair work for the employer at the premises of the employer; and
- a person who is a trainee under the Texans Work program.

3. Benefits The workers' compensation law in Texas provides for a variety of benefits. (Note that all the income benefits described below are subject to statutory limits.)

a. Discrimination prohibited [Texas Labor Code Title 5: 401.022]

These regulations may not be applied to discriminate because of race, sex, national origin, or religion.

- 1.) However, this section does not prohibit considering an anatomical difference when applying impairment guidelines in rating an injury or a disease such as, but not limited to, breast cancer or an inguinal hernia.
- 2.) If an impairment rating assigns different values to the same injury for males and females, the higher value will be applied.

b. Medical benefits [Texas Labor Code Title 5: 408.021, .022] An employee who suffers an injury covered by workers' compensation is entitled to all health care reasonably required for the injury.

- 1.) This includes health care that:
 - cures or relieves the effects resulting from the injury;
 - promotes recovery; or
 - enhances the ability of the employee to return to or retain employment.
- 2.) Except in an emergency, all health care must be approved or recommended by the employee's treating doctor.
- 3.) An insurer's liability for medical benefits may not be limited or terminated by agreement or settlement.
- 4.) Except in an emergency, an employee is required to receive medical treatment from a doctor chosen from a list of doctors approved by the DWC.
 - a.) A doctor may perform only those procedures that are within the scope of his practice.

- b.) The employee is entitled to his first choice of a doctor from the DWC's list.
- c.) If an employee is dissatisfied with the initial choice of a doctor, he may notify the DWC and request permission to select an alternate doctor.
- d.) The notification must be in writing and state the reasons for the change, except notification may be by telephone when a medical necessity exists for immediate change.

c. Average weekly wage [Texas Labor Code Title 5: 408.041] The average weekly wage of an employee who has worked for the employer for at least the 13 consecutive weeks immediately preceding an injury is computed by dividing the sum of the wages paid in the 13 consecutive weeks immediately preceding the date of the injury by 13.

- 1.) The average weekly wage of an employee whose wage at the time of injury has not been fixed, cannot be determined, or who has worked for the employer for less than the 13 weeks before the injury equals:
 - the usual wage that the employer pays a similar employee for similar services; or
 - if a similar employee does not exist, the usual wage paid in that vicinity for the same or similar services provided for remuneration.
- 2.) If the employee's employment has been irregular or if the employee has lost time from work during the 13-week period immediately before the injury because of illness, weather, or another cause beyond the control of the employee, the DWC may determine the employee's average weekly wage by any method that the DWC considers fair and reasonable to all parties.

d. Income benefits [Texas Labor Code Title 5: 408.081, .082]

An employee is entitled to income benefits paid weekly as and when they accrue.

- 1.) Interest on accrued but unpaid benefits must be paid, without order of the DWC, at the time the accrued benefits are paid.
- 2.) The DWC will establish requirements for income benefits to be paid monthly. Presently, income benefits may be paid monthly only:
 - on the request of the employee and the agreement of the employee and the insurer; and
 - in compliance with the requirements the DWC adopted.
- 3.) An employee's entitlement to income benefits ends when the employee dies.
- 4.) An interest in future income benefits does not survive after the employee's death.

- 5.) Income benefits are not paid for an injury that results in a disability that lasts less than one week.
 - 6.) If the disability continues for longer than one week, weekly income benefits begin to accrue on the eighth day after the injury.
 - a.) If the disability does not begin at once after the injury occurs or within eight days of the occurrence, weekly income benefits accrue on the eighth day after the date on which the disability began.
 - b.) If the disability continues for two weeks or longer, compensation will be computed from the date the disability begins.
- e. Temporary income benefits [Texas Labor Code Title 5: 408.101, .103]** An employee is entitled to temporary income benefits if he has a disability and has not attained maximum medical improvement.
- 1.) In general, temporary income benefits are equal to:
 - 70% of the difference between the employee's weekly earnings after the injury and the employee's average weekly wage (as determined by a formula set out in the law); or
 - for the first 26 weeks, 75% of the amount computed by subtracting the employee's weekly earnings after the injury from the employee's average weekly wage if the employee earns less than \$8.50 per hour.
 - 2.) The temporary income benefit may not exceed the employee's actual earnings for the previous year.
- f. Impairment income benefits [Texas Labor Code Title 5: 408.121, .126]** An employee is entitled to impairment income benefits beginning the day after he reaches maximum medical improvement.
- 1.) An employee's impairment income benefit is equal to 70% of the employee's average weekly wage.
 - 2.) The employee is entitled to benefits for a period based on the employee's impairment rating. The employee with an impairment rating receives three weeks of benefits for each percentage of impairment.
- g. Supplemental income benefits [Texas Labor Code Title 5: 408.142, .144]** In certain circumstances, an employee is entitled to supplemental income benefits after his impairment income benefits have expired.
- 1.) Most importantly, an employee must:
 - have an impairment rating of 15% or more as determined by law; and
 - not have returned to work or returned to work but at less than 80% of the employee's average weekly wage.

- 2.) Supplemental income benefits are equal to 80% of the difference between:
 - 80% of the employee's weekly earnings during a particular reporting period; and
 - 80% of the employee's average weekly wage; or
 - 80% (80% average weekly wage—current earned pay).

h. Vocational rehabilitation [Texas Labor Code Title 5: 408.150] The DWC will refer an employee who is receiving supplemental income benefits to the Division of Assistive & Rehabilitative Services (DARS) for treatment if it determines that the employee could return to work earlier if she received vocational rehabilitation or training.

- 1.) The DARS will also notify the appropriate insurers of the individual's need for vocational rehabilitation or training services.
- 2.) The insurer may provide services through a private provider.
- 3.) An employee who refuses services or refuses to cooperate with services provided by the Division of Assistive & Rehabilitative Services (DARS) or a private provider loses entitlement to supplemental income benefits.

i. Lifetime income benefits [Texas Labor Code Title 5: 408.161]

- 1.) Lifetime income benefits are paid until the employee's death for an employee's:
 - total and permanent loss of sight in both eyes;
 - loss of both feet at or above the ankle;
 - loss of both hands at or above the wrist;
 - loss of one foot at or above the ankle and the loss of one hand at or above the wrist;
 - injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg;
 - injury to the skull resulting in incurable insanity or imbecility; or
 - third-degree burns that cover at least 40% of the body and require grafting or that cover the majority of either both hands or one hand and the face.
- 2.) Total and permanent loss of use of a body part is considered the same as loss of that body part.
- 3.) Lifetime income benefits are paid at 75% of the employee's average weekly wage.

j. Subsequent injury fund [Texas Labor Code Title 5: 408.162; 403.006, .007] An employee may suffer an injury that, in combination with a previous injury, entitles the employee to lifetime income benefits. In these cases, the insurer is liable for this subsequent injury as if the previous injury did not occur.

- 1.) The carrier pays benefits to the employee as if only the subsequent injury had occurred.
- 2.) The remainder of the lifetime income benefits is paid by the subsequent injury fund.
- 3.) The subsequent injury fund is a special fund in the state treasury. It is funded by insurers in the following manner: in cases where a death would entitle someone to compensation but no claim is filed (or no legal beneficiary survives), the carrier pays the subsequent injury fund an amount equal to 364 weeks of death benefits.

k. Death and burial benefits [Texas Labor Code Title 5: 408.181, .186] If an injury covered by workers' compensation results in an employee's death, the insurer must pay death benefits to the employee's legal beneficiary.

- 1.) The death benefit amount is 75% of the employee's average weekly wage.
- 2.) If the death of an employee results from a compensable injury, the insurer must pay to the person who incurred liability for the costs of burial the lesser of:
 - the actual costs of reasonable burial expenses; or
 - \$10,000.
- 3.) If the employee died away from the usual place of employment, the insurer must pay the reasonable cost of transporting the body, not to exceed the cost of transporting the body to the employee's usual place of employment.

4. Compensation procedures

a. Injury reports, claims, and records [Texas Labor Code 409.001 to .013]

1.) Notice of injury to employer [Texas Labor Code 409.001, .002]

- a.) An employee must notify the employer of an injury not later than 30 days after the date on which:
 - the injury occurs; or
 - if the injury is an occupational disease, the employee knew or should have known that the injury may be related to the employment.

- b.)** Failure to notify an employer of an injury relieves the employer of liability unless:
 - the employer has actual knowledge of the employee's injury;
 - the DWC determines that good cause exists for failure to provide notice in a timely manner; or
 - the employer does not contest the claim.

2.) Claim for compensation [Texas Labor Code 409.003, .004]

- a.)** An employee must file a claim for compensation for an injury not later than one year after the date on which:
 - the injury occurred; or
 - if the injury is an occupational disease, the employee knew or should have known that the disease was related to the employee's employment.
- b.)** Failure to file a claim for compensation with the DWC relieves the employer of liability under this subtitle unless:
 - good cause exists for failure to file a claim in a timely manner; or
 - the employer carrier does not contest the claim.

3.) Report of injury [Texas Labor Code 409.005, .013]

- a.)** An employer must report to the employer's insurer within eight days if:
 - an injury results in the absence of an employee of that employer from work for more than one day; or
 - an employee of the employer notifies that employer of an occupational disease.
- b.)** The employer must deliver a written copy of the report to the injured employee at the time that the report is made to the insurer.
- c.)** An injury report may not be considered to be an admission by or evidence against an employer or an insurer in a proceeding before the DWC or a court in which the facts set out in the report are contradicted by the employer or insurer.
- d.)** The injury report must contain a summary of the employee's statutory rights and responsibilities under Texas law.
- e.)** The employer must, on request, notify the employee of opportunities for modified duty or a modified duty return-to-work program available through the employer.
- f.)** On receipt of a report, the DWC must contact the affected employee and provide any information that may be prepared by the DWC for public dissemination that relates to the employee's situation, such as information relating to back injuries or occupational diseases.

4.) Record of injuries [Texas Labor Code 409.006]

- a.) An employer must maintain a record of each reported employee injury, available to the DWC at reasonable times and under conditions prescribed by the DWC.
- b.) Information contained in a record is not an admission by the employer that:
 - the injury did in fact occur; or
 - a fact maintained in the record is true.

b. Payment of benefits

1.) Initiation of benefits [Texas Labor Code 409.021]

- a.) Insurers must begin payment of benefits within 15 days of receiving written notice of an injury, or notify the DWC and the employee in writing of its refusal to pay and advise the employee of:
 - the right to request a benefit review conference; and
 - the means to obtain additional information from the DARS.
- b.) Insurers must notify the DWC in writing of the initiation of income or death benefit payments.
- c.) If an insurer does not contest the compensability of an injury on or before the 60th day after notification, it waives its right to contest compensability. The initiation of payments by an insurer does not affect the right of the insurer to continue to investigate or deny the compensability of an injury during the 60-day period.
- d.) An insurer may reopen the issue of the compensability of an injury if there is a finding of evidence that could not reasonably have been discovered earlier.

5. Texas Mutual Insurance Company

- a. **Board of directors; composition [Ins. 2054.051]** The company is governed by a board composed of nine members, five appointed by the government and the remaining four elected by the company's policyholders.
- b. **Purposes of company [TIC 2054.151]** The purpose of the company is to:
 - serve as a competitive force in the marketplace;
 - guarantee the availability of workers' compensation insurance in Texas; and
 - serve as an insurer of last resort.

G. GUARANTY ASSOCIATIONS

1. Texas Property and Casualty Insurance Guaranty Association

[Ins. 462.001 to .351, 28 TAC 29.1] The Property and Casualty Insurance Guaranty Association was created to help avoid financial loss to claimants or policyholders due to insurer insolvency.

- a. Membership** The Association is made up of all authorized insurers writing any type of direct insurance except:
- life, annuity, health or disability insurance (there is a Life, Health and Hospital Service Insurance Guaranty Association for these insurers);
 - mortgage guaranty, financial guaranty insurance, or other insurance offering protection against investment risks;
 - fidelity or surety bonds (or other bonding obligations);
 - credit insurance or any insurance protecting a creditor's interest in a debtor-creditor transaction;
 - insurance of warranties or service contracts;
 - title insurance;
 - ocean marine insurance;
 - transactions between insurers and individuals where financial risk is transferred without a transfer of insurance risk; or
 - insurance provided by or guaranteed by government.

b. Definitions

- 1.) A member insurer is any insurer that writes any kind of insurance covered by this section and is licensed to transact insurance in Texas. Member insurers must remain members as a condition of their authority to transact insurance in Texas.
- 2.) An impaired insurer is a member insurer that is placed in:
 - receivership under a court order based on a finding of insolvency and that has been designated an impaired insurer by the Commissioner; or
 - conservatorship after the Commissioner has determined it to be insolvent and has designated it an impaired insurer.
- 3.) To be considered a covered claim, a claim must meet several requirements.
 - a.) It must be an unpaid claim within the insured's coverage under a policy of the type covered by the Association.
 - b.) The claim must be under a policy issued by an insurer licensed to do business in Texas.
 - c.) Finally, the claimant or insured must have been a resident of Texas at the time of the insured event.

- 4.) Unearned premiums up to \$25,000 are also considered covered claims under the law.
- 5.) In the case of workers' compensation claims under a workers' compensation policy, the Association pays the full amount of any covered claim.
- 6.) All other individual covered claims (including all claims arising from the same occurrence) are covered up to a limit of \$300,000.

c. Organization The Association exercises its powers through a nine-member board of directors.

- 1.) The board is made up of five members selected by member insurers (subject to Commissioner approval) and four members the Commissioner selects to represent the public.
- 2.) For purposes of assessment and administration, the Association is divided into three accounts:
 - the workers' compensation account;
 - the automobile insurance account; and
 - the account for all other lines the Association covers.

d. Powers and duties

- 1.) The Association pays covered claims that exist:
 - before the insurer is designated impaired or that arise within 30 days after the designation;
 - before the policy expiration date if that date is within 30 days after the impairment designation; or
 - before the insured replaces or cancels the policy if the insured does so within 30 days after the impairment designation.
- 2.) The Association also undertakes the policy obligations of the impaired insurer to the extent that these obligations are covered claims under this section.
 - a.) This includes obligations such as the duty to defend insureds under a liability policy.
 - b.) The Association may in turn enforce any duty imposed on the insured party (or beneficiary) by the policy.
- 3.) The Association assesses insurers to pay the Association's obligations.
 - a.) In general, members' assessments are set in proportion to their net direct written premiums when compared to the net direct written premiums of all members.

b.) The Commissioner may, after notice and a hearing, suspend or revoke the certificate of authority of any insurer who fails to pay its assessment.

c.) Alternatively, the Commissioner may fine the insurer.

4.) The Association must also investigate, adjust, compromise, settle, and pay covered claims to the extent of the Association's obligations and must deny all other claims. The Association may review settlements and judgments entered into by the impaired insurer or the insured to determine whether they may be contested.

5.) If the Commissioner requires the Association to do so, the Association must inform the insureds of impaired insurers (and any other interested parties) of the impairment designation and of their rights in such cases.

6.) In carrying out these duties and powers, the Association may:

- employ or retain people to perform its duties;
- borrow funds necessary to carry out its plan of operation;
- sue or be sued;
- enter into contracts necessary to carry out this section; and
- perform other acts necessary or proper to carry out this section.

e. Penalty for failure to pay assessments or comply with plan of operation [Ins. 462.016]

1.) The Commissioner will suspend or revoke the license of a member insurer that:

- fails to pay an assessment at the time the assessment is due; or
- otherwise fails to comply with the plan of operation.

2.) As an alternative to action, the Commissioner may assess a fine on a member insurer that fails to pay an assessment at the time the assessment is due. The fine may not exceed the lesser of:

- 5% of the unpaid assessment per month; or
- \$100 per month.

f. Examination of Association [Ins. 462.107] No later than April 30 of each year, the Association must submit an audited financial statement for the preceding calendar year to the state auditor.

g. Issuance of policies after release from receivership [Ins. 462.351]

1.) Except as provided below, an impaired insurer placed in receivership for which money has been advanced may not be authorized, on release from receivership, to issue new or renewal insurance policies until the insurer repays the advances to the Association.

- 2.) On application of the Association and after hearing, the Commissioner may permit the insurer to issue new insurance policies in accordance with the insurer's plan of operation for repayment of advances.
- 3.) The Commissioner, in approving the plan of operation, may place restrictions on the issuance of new or renewal insurance policies as necessary.

h. Maximum total assessment [Ins. 462.152]

- 1.) The total assessment of a member insurer in a year may not exceed 2% of the insurer's net direct written premiums for the calendar year preceding the assessment.
- 2.) If the maximum assessment and the Association's other assets are insufficient in a year to make all necessary payments, the money available shall be prorated, and the Association shall pay the unpaid portion as soon as money becomes available.

i. Maximum assessment of insurer; additional assessment authority under certain circumstances [Ins. 462.162]

- 1.) Assessments during a calendar year may not exceed 2% of each insurer's net direct written premiums for the preceding calendar year in the lines of business for which the assessments are made.
- 2.) In the event of a natural disaster or other catastrophe, the Association may apply to the governor for authority to assess each member insurer, other than automobile insurance or workers' compensation insurers, an additional amount not to exceed 2% of the insurer's net direct written premiums for the preceding calendar year.
- 3.) If the maximum assessment in a calendar year does not provide an amount sufficient for payment of covered claims of impaired insurers, the Association may make assessments in successive calendar years.

2. The Texas Certified Self-Insurer Guaranty Association [Texas Labor Code 407.001, .121, TAC 181.1]

- a. The membership of the Texas Certified Self-Insurer Guaranty Association consists of all certified self-insurers that hold a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission. Only certified self-insurers may be members of the Association.
- b. The Association's board levies assessments against each member to create and maintain the Texas Certified Self-Insurer Guaranty Trust Fund. Assessments are levied in amounts that will provide at least \$1 million, but not more than \$2 million. The amount assessed against each individual member is based on the ratio of the payments made by the member to the total payments made by or on behalf of all certified self-insurers.

- c. If the security deposit of an impaired certified self-insurer (or former self-insurer) is not adequate to cover its self-insured liabilities for workers' compensation benefits, the funds required to pay additional benefits are paid from the trust fund and reimbursed to the trust fund through assessment.

H. SPECIAL FORMS AND ENDORSEMENTS

1. **Dwelling policy** The Special Provisions—Texas endorsement (DP 01 42) must be attached to all dwelling policies issued to Texas policyholders. A summary of its major provisions follows.
 - The coverage for ordinance or law is amended to include Texas Windstorm Insurance Association coverage.
 - The intentional loss exclusion is expanded to exclude additional named insureds even if they did not contribute to the loss, except those that have filed a police report and cooperated with law enforcement officials.
 - An exclusion for fungi or microbes is added.
 - The insurable interest and limit of liability condition is revised to comply with Texas law addressing liquidated demand.
 - Duties After Loss is amended to allow 91 days for proof of loss to be filed, to require additional information in the case of replacement cost coverage, and to include insurer's duties after loss.
 - Loss Settlement and Loss to Pair or Set are amended to stipulate that jewelry losses are settled at replacement cost.
 - Suit Against Us is amended to allow action brought within two years and one day of cause of action.
 - Loss Payment is amended to stipulate that the insurer must make payment within five business days of notifying the insured of intent to pay the claim.
 - The mortgagee clause is expanded to address unearned premium.
 - The cancellation/nonrenewal provisions are revised to comply with Texas law.
2. **Homeowners policy** The Special Provisions—Texas endorsement (HO 01 42) must be attached to all homeowners policies issued to Texas policyholders. A summary of its major provisions follows.
 - Accidental Discharge or Overflow of Water or Steam is amended to allow coverage for mold, fungus, or wet rot.
 - The coverage for ordinance or law is amended to include Texas Windstorm Insurance Association coverage.
 - The intentional loss exclusion is expanded to exclude additional named insureds even if they did not contribute to the loss, except those that have filed a police report and cooperated with law enforcement officials.
 - The exclusion fungi or microbes is added.
 - The insurable interest and limit of liability condition is revised to comply with Texas law addressing liquidated demand.
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- Loss Payment is amended to stipulate that the insurer must make payment within five business days of notifying the insured of intent to pay the claim.
- The mortgagee clause is expanded to address provisions for unearned premium.
- The cancellation/nonrenewal provisions are revised to comply with Texas law.

3. Farm inland marine coverage forms Two inland marine floater forms are available for use with the farm coverage part: the mobile agricultural machinery and equipment coverage form and the livestock coverage form. These classes of property can be insured under the farm property coverage form through Coverage E or Coverage F, but when an insured wishes to insure these classes of farm business property and no others, the insurance must be written through the separate inland marine forms.

a. Mobile agricultural machinery and equipment coverage form

The mobile agricultural machinery and equipment coverage form insures eligible equipment for special causes of loss subject to policy limitations and exclusions.

b. Livestock coverage form The livestock coverage form is a named peril form, insuring loss resulting in the death or destruction of livestock caused by the basic causes of loss (except vehicles). Livestock coverage may be extended to include death or destruction by accidental shooting, drowning, electrocution, attack by dogs or wild animals, loading or unloading accidents, and building collapse.

4. Farm insurance endorsements

- a. Texas changes** This endorsement modifies the standard ISO farm policy coverages to comply with Texas law.
- b. Scheduled glass** This endorsement adds scheduled glass to the policy, subject to a deductible.
- c. Scheduled personal property** This endorsement provides coverage similar to the homeowners and inland marine scheduled personal property endorsements.
- d. Texas changes—personal liability** This endorsement expands personal liability coverage similar to the personal liability endorsement to the CGL policy.
- e. Farm employers liability and farm employees medical payments insurance** This endorsement adds farm employees' medical coverage where workers' compensation may not apply.

f. Custom farming liability coverage This form adds coverage for custom farming, which is generally excluded if receipts exceed \$2,000 in the previous year.

5. Personal auto policy The Amendment of Policy Provisions—Texas endorsement (PP 01 50) must be attached to all personal auto policies issued to Texas policyholders. A summary of its major provisions follows.

- The limits of liability provision under medical payments coverage is expanded to prohibit duplicate payments for the same element of loss and to provide for assignment of payments.
- Coverage for Damage to Your Auto is amended to exclude destruction or confiscation by government or civil authorities.
- The limits of liability provision under Coverage for Damage to Your Auto is expanded to prohibit duplicate payments for the same element of loss and to provide for assignment of payments.
- The cancellation/nonrenewal provisions are revised to comply with Texas law.
- The conditions Payment of First Party Claims and Notice of Settlement of Liability Claims are added to comply with Texas law.

6. Commercial auto policy The mandatory Texas Changes endorsement (CA 01 96) amends commercial auto policies as follows:

- Physical damage coverage is amended to exclude destruction or confiscation by government or civil authorities and the waiving of the deductible when glass is repaired rather than replaced.
- An exclusion for federal and state seizure is added in accordance with the Texas Controlled Substance Act.
- Claims handling provisions are added to changes in conditions.

7. Commercial general liability policy

- a. Texas changes (CG 01 03)** This endorsement modifies the CGL to exclude criminal acts.
- b. Texas changes—conditions requiring notice** This endorsement is mandatory for all commercial liability policies and stipulates that any policy requirements for the insured to provide notice of claims of occurrences will not bar coverage.
- c. Deductible liability insurance** This endorsement allows the insured to select a deductible on a per claim or per occurrence basis.
- d. Texas changes—employment-related practices exclusion** This endorsement excludes coverage for bodily injury arising out of the termination or refusal to hire an employee.

8. Equipment breakdown policy Texas has adopted the 2008 version of the ISO Equipment Breakdown policy, which adds an exclusion for loss due to “fungus, dry rot, or wet rot,” unless a direct result of a covered breakdown.

9. Businessowners policy

a. Texas changes This endorsement modifies the businessowners policy in the following ways.

- The section on appraisal is expanded to enumerate the policyholder’s rights.
- Duties in the Event of Loss or Damage is amended to allow 91 days for proof of loss to be filed.
- Loss Payment is revised to comply with Texas law addressing liquidated demand.
- The mortgagee clause is revised.
- The cancellation/nonrenewal provisions are revised to comply with Texas law.

b. Texas changes—amendment of cancellation provisions or coverage change This endorsement stipulates that the insurer will provide notice of cancellation or material change to the policy.



4

Practice Exam

HOW TO USE: The practice exam tests your retention of the law supplement material. After you have studied the Cram Sheets, Class Notes, and Detailed Text take the following practice exam, as well as the state specific law questions in the InsurancePro™ QBank at www.kaplanfinancial.com.

LAW SUPPLEMENT PRACTICE EXAM

Student instructions: Following your thorough study of this supplement, take this 50-question sample examination. Grade your performance using the answer key provided. Carefully review the topics pertaining to those questions answered incorrectly.

I. General Insurance

1. How many hours of ethics continuing education must an agent complete in any 2-year license period?
 - A. 4
 - B. 5
 - C. 3
 - D. 2
2. The Commissioner has the power to
 - A. appoint a stock insurance company board of directors
 - B. issue certificates of authority to insurers
 - C. authorize a mutual insurance company sale of stock
 - D. write and enact new legislation and statutes affecting the business of insurance
3. Following the date of issue, an agent's license expires in how many years?
 - A. 1
 - B. 2
 - C. 3
 - D. 5
4. An insurance company's license to do business in Texas is called
 - A. a certificate of authority
 - B. a notice of risk assignment
 - C. a mutual benefit card
 - D. a license to solicit registration
5. An agent licensed in Texas who moves from one state to another must file proof of authorization to conduct business in the new state within how many days?
 - A. 10
 - B. 20
 - C. 30
 - D. 60
6. A person who examines and assesses risks for persons seeking or renewing property and casualty insurance is
 - A. a reinsurer
 - B. a surplus lines agent
 - C. an insurance counselor
 - D. a risk manager
7. Insurance issued to Texas residents by companies not licensed to do business in Texas would be classified as
 - A. unlicensed insurance
 - B. unauthorized insurance
 - C. unlisted insurance
 - D. alien insurance
8. Agents who solicit and procure insurance for themselves, their families, and their business associates (and not for the general public) are said to engage in
 - A. rebating
 - B. surplus lines insurance
 - C. controlled business
 - D. unauthorized insurance
9. At a minimum, the department must examine a carrier at least once every
 - A. 6 months
 - B. year
 - C. 5 years
 - D. decade

10. Which of the following is a requirement for a temporary insurance license?
 - A. The applicant must complete a licensing course within 10 days of application filing.
 - B. The applicant must complete training supervised by an agent, insurer, or HMO.
 - C. The applicant must be sponsored by the Department.
 - D. The applicant must demonstrate high unethical standards.
11. How many hours of continuing education is an agent responsible to complete in any 2-year license period?
 - A. 15
 - B. 24
 - C. None if licensed less than 5 years
 - D. It depends on the agent's birth date
12. Which of the following is an example of misrepresentation?
 - A. An agent convinces a prospect to replace his existing homeowners policy with a new, more expensive policy that provides more coverage.
 - B. An insurer advertises a life insurance policy without mentioning that premiums may be paid quarterly instead of annually.
 - C. An agent leads a buyer of an auto policy to believe that she will be covered when driving others' cars when she will not.
 - D. An agent offers a housewarming present to anyone who purchases homeowners insurance from him.
13. Making a misrepresentation to induce a policyholder to lapse a policy is considered
 - A. coercion
 - B. intimidation
 - C. rebating
 - D. twisting
14. In the event of a total loss by fire of real property, the policyholder is entitled to be paid what amount?
 - A. The replacement value of the property
 - B. The full policy amount
 - C. The actual cash value of the property
 - D. The market value of the property
15. Which of the following acts is considered an unfair or deceptive act or practice?
 - A. Representing a binder as evidence of insurance
 - B. Encouraging an agent to sell only one type of businessowner's policy
 - C. Issuing policies at a higher premium rate for higher risk insureds
 - D. Providing for the payment of part of the agent's commission to the insured
16. General duties of the Commissioner include all of the following EXCEPT
 - A. calculating reinsurance reserves
 - B. publishing results of insurance investigations
 - C. enacting new laws
 - D. reporting to the governor
17. Which of the following acts constitutes an unfair practice involving false advertising?
 - A. Accepting an applicant's signed application without collecting an initial premium
 - B. Hinting that a competing insurer is suffering a financial crisis
 - C. Quoting the high school football coach's statements about his new car in your agency's advertisement
 - D. Using statistics about vehicle accidents in an advertisement for car insurance
18. All of the following are grounds for revoking an agent's license EXCEPT
 - A. defrauding a policyholder
 - B. defrauding an applicant
 - C. failing to remit premiums to the insurer
 - D. failing to compare his policies with a competitor's policies

19. Which of the following is NOT an example of an unfair claim settlement practice?
- Knowingly misrepresenting pertinent facts to claimants
 - Failing to acknowledge communication within a reasonably prompt period
 - Failing to examine a claimant under oath
 - Not attempting in good faith to promptly settle a claim when liability is clear
24. Which of the following statements concerning the Insurance Guaranty Association is NOT correct?
- Any claim that would not be covered by the insurer is not covered by the Association.
 - The Association is divided into three separate accounts.
 - Failure to pay an assessment when due may cost an insurer revocation of its certificate of authority.
 - Covered claims are covered up to a limit of \$750,000.

II. Auto Insurance

20. While personal injury protection (PIP) benefits under an auto policy are paid without regard to fault, an insurer may not pay benefits for any injury
- intentionally caused to the insured by the insured
 - caused by a public vehicle
 - caused by an underinsured driver
 - under \$1,500
21. An insurer may refuse to renew a commercial auto liability policy if the insurer gives written notice to the insured at least how many days before the policy expires?
- 7
 - 10
 - 30
 - 60
22. A temporary license is valid for how long?
- 90 days
 - 6 months
 - 1 year
 - 2 years
23. To obtain insurance through the Texas Automobile Insurance Plan Association, an applicant and his agent must certify that the applicant
- has been rejected for insurance by at least 2 licensed insurers actually writing auto insurance
 - has not been involved in an at fault accident within the last 12 months
 - has lived in the state for less than 3 months
 - is of good character and sound financial condition
25. Which of the following statements regarding automobile liability insurance is CORRECT?
- All insurers must offer policyowners the option of buying insurance for losses resulting from accidents involving both uninsured and underinsured motorists.
 - Not all insurers offer personal injury protection with automobile liability coverage.
 - Only owners of automobiles that are between 1 and 5 years old are required to carry automobile insurance.
 - The financial responsibility law protects automobile owners from drivers who obtain insurance from foreign insurers.
26. All of the following are acceptable forms of proof of financial responsibility EXCEPT
- a copy of a liability policy
 - a copy of a binder in the required amounts
 - a Texas Liability Insurance Card
 - a valid driver's license
27. Which of the following statements about canceling a homeowners policy is CORRECT?
- The insurer must give the insured a 90 day notice in order to find new insurance.
 - The insurer must inform the Texas Automobile Insurance Plan Association that it is canceling a policy.
 - The insurer may cancel a policy at any time if the insured fails to pay premiums when due.
 - The insurer must inform the agent who sold the policy that his commission must be returned.

28. An insurer that provides personal automobile policies may cancel a policy for each of the following reasons EXCEPT
- nonpayment of premium
 - the age of the insured
 - the insured submits a fraudulent claim
 - the continuance of the policy would violate the law
29. An insurer may cancel a personal automobile policy on its 12 month anniversary by providing how many days' advance notice of its intent?
- 5
 - 10
 - 20
 - 30
30. In order to nonrenew a personal automobile policy, an insurer must provide how many days' advance notice to the policyholder?
- 10
 - 20
 - 30
 - 45
31. The minimum limits under the Texas Motor Vehicle Safety Responsibility Law are
- 15/30/5
 - 20/30/5
 - 20/40/10
 - 30/60/25
32. All of the following vehicles are exempt from the compulsory insurance law EXCEPT
- vehicles that are self insured
 - vehicles for which a bond has been filed with the Department of Insurance
 - vehicles that are used exclusively on public highways
 - vehicles for which a cash deposit has been made with the state treasurer
33. Operating a motor vehicle without the required insurance is a misdemeanor punishable by a fine of between
- \$175 and \$350 for the first offense
 - \$175 and \$350 for subsequent offenses
 - \$350 and \$1,000 for the first offense
 - \$1,000 and \$3,000 for subsequent offenses
34. Under Texas law, an insured may do which of the following with regard to the provision of uninsured motorists property damage?
- Double the amount of the coverage upon written request to the insurer
 - Elect coverage for the same amount as the policy's liability limit
 - Reject the coverage by notifying the insurer of their intention to do so
 - Reduce the coverage below the liability limit of the policy
35. An insurer may cancel a commercial auto policy for any of the following reasons EXCEPT
- fraud in obtaining the policy
 - failure to pay parking fines when due
 - an increase in the hazard insured against
 - inability of the insurer to renew a reinsurance agreement
36. PIP covers medical and funeral expenses incurred within how long from the date of the accident?
- 1 year
 - 2 years
 - 3 years
 - Unlimited time

III. Workers' Compensation

37. To receive compensation for a work related injury, an employee (or someone acting for the employee) must notify his employer within how long after an injury?
- 24 hours
 - 7 days
 - 30 days
 - 1 year

38. Generally, to receive compensation for a work related injury, a claim for compensation must be filed with the DWC within
- A. 1 week of the date of injury
 - B. 1 year of the date of the injury
 - C. 1 year of the date the disability ends
 - D. 2 years of the date the disability ends
39. Under workers' compensation law, income benefits may not be paid for an injury unless the injury results in disability that lasts longer than
- A. 48 hours
 - B. 1 week
 - C. 1 month
 - D. 1 year
40. Under Texas workers' compensation law, lifetime income benefits are paid at what percentage of the employee's average weekly wage?
- A. 25%
 - B. 50%
 - C. 75%
 - D. 100%
41. Which of the following statements regarding workers' compensation insurance is NOT correct?
- A. All employers domiciled in Texas are required to obtain workers' compensation insurance coverage for their employees.
 - B. Workers' compensation's primary advantage for the injured employee is that it provides a quick and certain means of compensation.
 - C. Workers' compensation protects the employer from tort liability.
 - D. Workers' compensation provides compensation to employees who are injured on the job, without regard to fault or negligence on the part of either the employer or employee.
42. Which of the following is NOT an injury that would be covered by workers' compensation?
- A. An accident occurs while an employee is driving a forklift from a truck to the warehouse.
 - B. An injury occurs when an employee slips on a wet floor while changing clothes in the employee locker room.
 - C. Several workers are injured when the hydraulic lift that moves automobile parts collapses.
 - D. An employee who returns from lunch intoxicated cuts his hand with an electric saw.
43. An employee who suffers an injury covered by workers' compensation is entitled to all of the following health care services EXCEPT
- A. cosmetic surgery for aesthetic reasons
 - B. rehabilitation therapy
 - C. emergency treatment
 - D. vocational training
44. Lifetime income benefits are paid until the covered employee's death for all of the following EXCEPT
- A. total and permanent loss of sight in both eyes
 - B. loss of both feet at or above the ankle
 - C. loss of one finger
 - D. loss of both hands at or above the wrist
45. If an injury results in an employee's death, workers' compensation will pay up to what amount for burial costs?
- A. \$5,000
 - B. \$6,000
 - C. \$7,500
 - D. \$10,000
46. Which organization helps pay insolvent insurers' covered claims in Texas?
- A. Texas Property and Casualty Pool
 - B. Texas Insurers' Assistance Program
 - C. Texas Property and Casualty Insurance Guaranty Association
 - D. Texas Insurers' Federation

47. Which organization is considered the insurer of last resort for workers' compensation insurance?
- A. Texas Property and Casualty Pool
 - B. Texas Mutual Insurance Company
 - C. Texas Property and Casualty Insurance Guaranty Association
 - D. Texas Insurers' Federation
48. An employer must report an injury to the insurer within how many days?
- A. 5
 - B. 8
 - C. 15
 - D. 30
49. The length of time for which an injured employee will receive workers' compensation benefits depends on which of the following factors?
- A. Employee's average weekly earnings
 - B. Nature of the injury
 - C. Employer's payroll
 - D. Whether the employee has any dependents
50. An insurer must initiate workers' compensation benefits within how many days of being notified of an injury?
- A. 10
 - B. 15
 - C. 30
 - D. 60

ANSWERS TO TEXAS LAW PRACTICE EXAM

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|--------------|--------------|--------------|--------------|--------------|
| 1. D | 11. B | 21. D | 31. D | 41. A |
| 2. B | 12. C | 22. A | 32. C | 42. D |
| 3. B | 13. D | 23. A | 33. A | 43. A |
| 4. A | 14. B | 24. D | 34. B | 44. C |
| 5. C | 15. D | 25. A | 35. B | 45. D |
| 6. D | 16. C | 26. D | 36. C | 46. C |
| 7. B | 17. B | 27. C | 37. C | 47. B |
| 8. C | 18. D | 28. B | 38. B | 48. B |
| 9. C | 19. C | 29. D | 39. B | 49. B |
| 10. B | 20. A | 30. C | 40. C | 50. B |