

By: Nelson

S.B. No. 400

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the continuation and operation of the workers'  
3 compensation system of this state and to the abolition of the Texas  
4 Workers' Compensation Commission, the establishment of the office  
5 of employee assistance, and the transfer of the powers and duties of  
6 the Texas Workers' Compensation Commission to the Texas Department  
7 of Insurance, the Texas Workforce Commission, and the office of  
8 employee assistance; providing administrative violations.

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

10 ARTICLE 1. AMENDMENTS TO SUBTITLE A, TITLE 5, LABOR CODE

11 PART 1. AMENDMENTS TO CHAPTER 401, LABOR CODE

12 SECTION 1.001. The heading to Subchapter A, Chapter 401,  
13 Labor Code, is amended to read as follows:

14 SUBCHAPTER A. GENERAL PROVISIONS [~~SHORT TITLE, APPLICATION OF~~  
15 ~~SUNSET ACT~~]

16 SECTION 1.002. Section 401.003(a), Labor Code, is amended  
17 to read as follows:

18 (a) The department [~~commission~~] is subject to audit by the  
19 state auditor in accordance with Chapter 321, Government Code. The  
20 state auditor may audit the department's [~~commission's~~]:

- 21 (1) structure and internal controls;
- 22 (2) level and quality of service provided to  
23 employers, injured employees, insurance carriers, self-insured  
24 governmental entities, and other participants;

- 1 (3) implementation of statutory mandates;  
2 (4) employee turnover;  
3 (5) information management systems, including public  
4 access to nonconfidential information;  
5 (6) adoption and implementation of administrative  
6 rules by the commissioner; and  
7 (7) assessment of administrative violations and the  
8 penalties for those violations.

9 SECTION 1.003. Section 401.011, Labor Code, is amended by  
10 amending Subdivisions (1), (8), (14), (15), (28), (30), (37), (39),  
11 and (44) and adding Subdivisions (13-a) and (35-a) to read as  
12 follows:

13 (1) "Adjuster" means a person licensed under Chapter  
14 4101, Insurance Code [~~407, Acts of the 63rd Legislature, Regular~~  
15 ~~Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code)~~].

16 (8) "Commissioner" [~~"Commission"~~] means the  
17 commissioner of insurance [~~Texas Workers' Compensation~~  
18 ~~Commission~~].

19 (13-a) "Department" means the Texas Department of  
20 Insurance.

21 (14) "Dependent" means an individual who receives a  
22 regular or recurring economic benefit that contributes  
23 substantially to the individual's welfare and livelihood if the  
24 individual is eligible for distribution of benefits under this  
25 subtitle [~~Chapter 408~~].

26 (15) "Designated doctor" means a doctor appointed by  
27 mutual agreement of the parties or by the department [~~commission~~]

1 to recommend a resolution of a dispute as to the medical condition  
2 of an injured employee.

3 (28) "Insurance company" means a person authorized and  
4 admitted by the department [~~Texas Department of Insurance~~] to  
5 engage in the business of [~~de~~] insurance [~~business~~] in this state  
6 under a certificate of authority that includes authorization to  
7 write workers' compensation insurance.

8 (30) "Maximum medical improvement" means the earlier  
9 of:

10 (A) the earliest date after which, based on  
11 reasonable medical probability, further material recovery from or  
12 lasting improvement to an injury can no longer reasonably be  
13 anticipated;

14 (B) the expiration of 104 weeks from the date on  
15 which income benefits begin to accrue; or

16 (C) the date determined as provided by Section  
17 408C.054 [~~408.104~~].

18 (35-a) "Provider network" means an entity that  
19 operates a health benefit plan under which health care services are  
20 provided through contracts with health care providers to  
21 individuals covered under the plan and that requires those  
22 individuals to use health care providers participating in the plan.  
23 The term includes a network operated by:

24 (A) a health maintenance organization;

25 (B) a preferred provider benefit plan issuer; or

26 (C) another entity that offers a managed care  
27 plan, including an insurance company.

1 (37) "Representative" means a person, including an  
2 attorney, authorized by the department or the office of employee  
3 assistance [~~commission~~] to assist or represent an employee, a  
4 person claiming a death benefit, or an insurance carrier in a matter  
5 arising under this subtitle that relates to the payment of  
6 compensation.

7 (39) "Sanction" means a penalty or other punitive  
8 action or remedy imposed by the department or the Texas Workforce  
9 Commission [~~commission~~] on an insurance carrier, representative,  
10 employee, employer, or health care provider for an act or omission  
11 in violation of this subtitle or a rule or order of the commissioner  
12 or the Texas Workforce Commission [~~commission~~].

13 (44) "Workers' compensation insurance coverage" means  
14 coverage to secure the payment of compensation provided through:

15 (A) an approved insurance policy [~~to secure the~~  
16 ~~payment of compensation~~];

17 (B) [~~coverage to secure the payment of~~  
18 ~~compensation through~~] self-insurance, as provided by this  
19 subtitle; or

20 (C) [~~coverage provided by~~] a governmental  
21 entity, as provided by Subtitle C [~~to secure the payment of~~  
22 ~~compensation~~].

23 SECTION 1.004. Section 401.021, Labor Code, is amended to  
24 read as follows:

25 Sec. 401.021. APPLICATION OF OTHER ACTS. Except as  
26 otherwise provided by this subtitle:

27 (1) a proceeding, hearing, judicial review, or

1 enforcement of a commissioner [~~commission~~] order, decision, or rule  
2 under this title is governed by the following subchapters and  
3 sections of Chapter 2001, Government Code:

4 (A) Subchapters A, B, D, E, G, and H, excluding  
5 Sections 2001.004(3) and 2001.005;

6 (B) Sections 2001.051, 2001.052, and 2001.053;

7 (C) Sections 2001.056 through 2001.062; and

8 (D) Section 2001.141(c);

9 (2) a proceeding, hearing, judicial review, or  
10 enforcement of a commissioner [~~commission~~] order, decision, or rule  
11 under this title is governed by Subchapters A and B, Chapter 2002,  
12 Government Code, excluding Sections 2002.001(3) [~~2002.001(2)~~] and  
13 2002.023;

14 (3) Chapter 551, Government Code, applies to a  
15 proceeding under this subtitle, other than:

16 (A) [~~a benefit review conference,~~

17 [~~(B)~~] a contested case hearing;

18 (B) [~~(C) — an appeals panel proceeding,~~

19 [~~(D)~~] arbitration; or

20 (C) [~~(E)~~] another proceeding involving a  
21 determination on a workers' compensation claim; and

22 (4) Chapter 552, Government Code, applies to a  
23 workers' compensation record of the department, the office of  
24 employee assistance, or the Texas Workforce Commission [~~commission~~  
25 ~~or the research center~~].

26 SECTION 1.005. Section 401.023(b), Labor Code, is amended  
27 to read as follows:

1           (b) The department [~~commission~~] shall compute and publish  
2 the interest and discount rate quarterly, using the treasury  
3 constant maturity rate for one-year treasury bills issued by the  
4 United States government, as published by the Federal Reserve Board  
5 on the 15th day preceding the first day of the calendar quarter for  
6 which the rate is to be effective, plus 3.5 percent. For this  
7 purpose, calendar quarters begin January 1, April 1, July 1, and  
8 October 1.

9           SECTION 1.006. Sections 401.024(b)-(d), Labor Code, are  
10 amended to read as follows:

11           (b) Notwithstanding another provision of this subtitle that  
12 specifies the form, manner, or procedure for the transmission of  
13 specified information, the commissioner [~~commission~~] by rule may  
14 permit or require the use of an electronic transmission instead of  
15 the specified form, manner, or procedure. If the electronic  
16 transmission of information is not authorized or permitted by  
17 commissioner [~~commission~~] rule, the transmission of that  
18 information is governed by any applicable statute or rule that  
19 prescribes the form, manner, or procedure for the transmission,  
20 including standards adopted by the Department of Information  
21 Resources.

22           (c) The commissioner [~~commission~~] may designate and  
23 contract with a data collection agent to fulfill the data  
24 collection requirements of this subtitle.

25           (d) The commissioner [~~executive director~~] may prescribe the  
26 form, manner, and procedure for transmitting any authorized or  
27 required electronic transmission, including requirements related

1 to security, confidentiality, accuracy, and accountability.

2 SECTION 1.007. The following laws are repealed:

3 (1) Section 401.002, Labor Code; and

4 (2) Section 401.011(38), Labor Code.

5 PART 2. AMENDMENTS TO CHAPTER 402, LABOR CODE

6 SECTION 1.011. The heading to Chapter 402, Labor Code, is  
7 amended to read as follows:

8 CHAPTER 402. OPERATION AND ADMINISTRATION OF [TEXAS]

9 WORKERS' COMPENSATION SYSTEM [COMMISSION]

10 SECTION 1.012. The heading to Subchapter A, Chapter 402,  
11 Labor Code, is amended to read as follows:

12 SUBCHAPTER A. GENERAL ADMINISTRATION OF SYSTEM [ORGANIZATION]

13 SECTION 1.013. Section 402.001, Labor Code, is amended to  
14 read as follows:

15 Sec. 402.001. ADMINISTRATION OF SYSTEM: TEXAS DEPARTMENT OF  
16 INSURANCE. Except as provided by Sections 402.002 and 402.003, the  
17 Texas Department of Insurance is the state agency designated to  
18 oversee and operate the workers' compensation system of this state.

19 ~~[MEMBERSHIP REQUIREMENTS. (a) The Texas Workers' Compensation~~  
20 ~~Commission is composed of six members appointed by the governor~~  
21 ~~with the advice and consent of the senate.~~

22 ~~[(b) Appointments to the commission shall be made without~~  
23 ~~regard to the race, color, disability, sex, religion, age, or~~  
24 ~~national origin of the appointee. Section 401.011(16) does not~~  
25 ~~apply to the use of the term "disability" in this subsection.~~

26 ~~[(c) Three members of the commission must be employers of~~  
27 ~~labor and three members of the commission must be wage earners. A~~

1 ~~person is not eligible for appointment as a member of the commission~~  
2 ~~if the person provides services subject to regulation by the~~  
3 ~~commission or charges fees that are subject to regulation by the~~  
4 ~~commission.~~

5 ~~[(d) In making appointments to the commission, the governor~~  
6 ~~shall attempt to reflect the social, geographic, and economic~~  
7 ~~diversity of the state. To ensure balanced representation, the~~  
8 ~~governor may consider:~~

9 ~~[(1) the geographic location of a prospective~~  
10 ~~appointee's domicile,~~

11 ~~[(2) the prospective appointee's experience as an~~  
12 ~~employer or wage earner,~~

13 ~~[(3) the number of employees employed by a prospective~~  
14 ~~member who would represent employers, and~~

15 ~~[(4) the type of work performed by a prospective~~  
16 ~~member who would represent wage earners.~~

17 ~~[(c) The governor shall consider the factors listed in~~  
18 ~~Subsection (d) in appointing a member to fill a vacancy on the~~  
19 ~~commission.~~

20 ~~[(f) In making an appointment to the commission, the~~  
21 ~~governor shall consider recommendations made by groups that~~  
22 ~~represent employers or wage earners.]~~

23 SECTION 1.014. Section 402.002, Labor Code, is amended to  
24 read as follows:

25 Sec. 402.002. ADMINISTRATION OF SYSTEM: TEXAS WORKFORCE  
26 COMMISSION. The Texas Workforce Commission shall perform the  
27 functions regarding the provision of workers' compensation

1 benefits in this state designated by this subtitle as under the  
2 authority of that commission. [~~TERMS; VACANCY. (a) Members of the~~  
3 ~~commission hold office for staggered two-year terms, with the terms~~  
4 ~~of three members expiring on February 1 of each year.~~

5 [~~(b) If a vacancy occurs during a term, the governor shall~~  
6 ~~fill the vacancy for the unexpired term. The replacement must be~~  
7 ~~from the group represented by the member being replaced.]~~

8 SECTION 1.015. Section 402.003, Labor Code, is amended to  
9 read as follows:

10 Sec. 402.003. ADMINISTRATION OF SYSTEM: OFFICE OF EMPLOYEE  
11 ASSISTANCE. The office of employee assistance established under  
12 Chapter 404 shall perform the functions regarding the provision of  
13 workers' compensation benefits in this state designated by this  
14 subtitle as under the authority of that office. [~~EFFECT OF LOBBYING~~  
15 ~~ACTIVITY. A person may not serve as a member of the commission or~~  
16 ~~act as the general counsel to the commission if the person is~~  
17 ~~required to register as a lobbyist under Chapter 305, Government~~  
18 ~~Code, because of the person's activities for compensation on behalf~~  
19 ~~of a profession that is regulated by or that has fees regulated by~~  
20 ~~the commission.]~~

21 SECTION 1.016. The heading to Subchapter B, Chapter 402,  
22 Labor Code, is amended to read as follows:

23 SUBCHAPTER B. SYSTEM GOALS [~~ADMINISTRATION~~]

24 SECTION 1.017. Section 402.021, Labor Code, is renumbered  
25 as Section 402.051, Labor Code, and amended to read as follows:

26 Sec. 402.051 [~~402.021~~]. GOALS; LEGISLATIVE INTENT. (a)  
27 The basic goals of the workers' compensation system of this state

1 are as follows:

2 (1) each employee shall be treated with dignity and  
3 respect when injured on the job;

4 (2) each injured employee shall have access to a fair  
5 and accessible dispute resolution process;

6 (3) each injured employee shall have access to prompt,  
7 high-quality medical care within the framework established by this  
8 subtitle; and

9 (4) each injured employee shall receive services to  
10 facilitate the employee's return to employment as soon as it is  
11 considered safe and appropriate by the employee's health care  
12 provider.

13 (b) It is the intent of the legislature that, in implementing  
14 the goals described by Subsection (a), the workers' compensation  
15 system of this state must:

16 (1) promote safe and healthy workplaces through  
17 appropriate incentives, education, and other actions;

18 (2) encourage the safe and timely return of injured  
19 employees to productive roles in the workplace;

20 (3) provide appropriate income benefits and medical  
21 benefits in a manner that is timely and cost-effective;

22 (4) provide timely, appropriate, and high-quality  
23 medical care supporting restoration of the injured employee's  
24 physical condition and earning capacity;

25 (5) minimize the likelihood of disputes and resolve  
26 them promptly and fairly when identified;

27 (6) promote compliance with this subtitle and rules

1 adopted under this subtitle through performance-based incentives;

2 (7) promptly detect and appropriately address acts or  
3 practices of noncompliance with this subtitle and rules adopted  
4 under this subtitle;

5 (8) effectively educate and clearly inform each person  
6 who participates in the system as a claimant, employer, insurance  
7 carrier, health care provider, or other participant of the person's  
8 rights and responsibilities under the system and how to  
9 appropriately interact within the system; and

10 (9) take maximum advantage of technological advances  
11 to provide the highest levels of service possible to system  
12 participants and to promote communication among system  
13 participants. [~~COMMISSION DIVISIONS. (a) The commission shall~~  
14 ~~have:~~

15 [~~(1) a division of workers' health and safety,~~

16 [~~(2) a division of medical review,~~

17 [~~(3) a division of compliance and practices, and~~

18 [~~(4) a division of hearings.~~

19 [~~(b) In addition to the divisions listed by Subsection (a),~~  
20 ~~the executive director, with the approval of the commission, may~~  
21 ~~establish divisions within the commission for effective~~  
22 ~~administration and performance of commission functions. The~~  
23 ~~executive director may allocate and reallocate functions among the~~  
24 ~~divisions.~~

25 [~~(c) The executive director shall appoint the directors of~~  
26 ~~the divisions of the commission. The directors serve at the~~  
27 ~~pleasure of the executive director.]~~

1 SECTION 1.018. Subchapter B, Chapter 402, Labor Code, is  
2 amended by adding Section 402.052 to read as follows:

3 Sec. 402.052. WORKERS' COMPENSATION MISSION OF DEPARTMENT.  
4 As provided by this subtitle, the department shall work to promote  
5 and help ensure the safe and timely return of injured employees to  
6 productive roles in the workforce.

7 SECTION 1.019. The heading to Subchapter C, Chapter 402,  
8 Labor Code, is amended to read as follows:

9 SUBCHAPTER C. GENERAL POWERS AND DUTIES OF TEXAS  
10 WORKFORCE COMMISSION [~~EXECUTIVE DIRECTOR AND PERSONNEL~~]

11 SECTION 1.020. Subchapter C, Chapter 402, Labor Code, is  
12 amended by adding Sections 402.101-402.103 to read as follows:

13 Sec. 402.101. WORKERS' COMPENSATION MISSION OF COMMISSION.  
14 As provided by this subtitle, the commission shall work to promote  
15 and help ensure the safe and timely return of injured employees to  
16 productive roles in the workforce.

17 Sec. 402.102. GENERAL DUTIES; FUNDING. (a) The Texas  
18 Workforce Commission shall perform the workforce education and  
19 safety functions of the workers' compensation system of this state.

20 (b) The operations of the Texas Workforce Commission under  
21 this subtitle are funded through the maintenance tax assessed under  
22 Section 403.002.

23 Sec. 402.103. EDUCATIONAL PROGRAMS. (a) The Texas  
24 Workforce Commission shall provide education on best practices for  
25 return-to-work programs and workplace safety.

26 (b) The commission shall evaluate and develop the most  
27 efficient, cost-effective procedures for implementing this

1 section.

2 SECTION 1.021. Section 402.082, Labor Code, is transferred  
3 to Subchapter C, Chapter 402, Labor Code, renumbered as Section  
4 402.104, Labor Code, and amended to read as follows:

5 Sec. 402.104 [~~402.082~~]. INJURY INFORMATION MAINTAINED BY  
6 COMMISSION. (a) The Texas Workforce Commission [~~commission~~] shall  
7 maintain information on every compensable injury as to the:

- 8 (1) race, ethnicity, and sex of the claimant;  
9 (2) classification of the injury;  
10 (3) amount of wages earned by the claimant before the  
11 injury; and  
12 (4) amount of compensation received by the claimant.

13 (b) The commission shall provide information maintained  
14 under Subsection (a) to the department. The confidentiality  
15 requirements imposed under Section 402.202 apply to injury  
16 information maintained by the commission.

17 SECTION 1.022. The heading to Subchapter D, Chapter 402,  
18 Labor Code, is amended to read as follows:

19 SUBCHAPTER D. GENERAL POWERS AND DUTIES OF COMMISSIONER AND  
20 DEPARTMENT [~~COMMISSION~~]

21 SECTION 1.023. Section 402.042, Labor Code, is transferred  
22 to Subchapter D, Chapter 402, Labor Code, renumbered as Section  
23 402.151, Labor Code, and amended to read as follows:

24 Sec. 402.151 [~~402.042~~]. GENERAL POWERS AND DUTIES OF  
25 COMMISSIONER AND DEPARTMENT [~~EXECUTIVE DIRECTOR~~]. (a) The  
26 commissioner [~~executive director~~] shall conduct the [~~day-to-day~~]  
27 operations of the department under this subtitle [~~commission in~~]

1 ~~accordance with policies established by the commission and~~  
2 ~~otherwise implement commission policy].~~

3 (b) The commissioner or the commissioner's designee, acting  
4 under this subtitle, [executive director] may:

5 (1) investigate misconduct;

6 (2) hold hearings;

7 (3) issue subpoenas to compel the attendance of  
8 witnesses and the production of documents in accordance with  
9 Subchapter C, Chapter 36, Insurance Code;

10 (4) administer oaths;

11 (5) take testimony directly or by deposition or  
12 interrogatory;

13 (6) assess and enforce penalties established under  
14 this subtitle;

15 (7) enter appropriate orders as authorized by this  
16 subtitle;

17 (8) correct clerical errors in the entry of orders;

18 (9) institute an action [~~in the commission's name~~] to  
19 enjoin the violation of this subtitle;

20 (10) initiate an action under Section 410.254 to  
21 intervene in a judicial proceeding;

22 (11) prescribe the form, manner, and procedure for  
23 transmission of information to the department [~~commission~~]; and

24 (12) delegate all powers and duties as necessary.

25 (c) The commissioner [~~executive director~~] is the agent for  
26 service of process under this subtitle on out-of-state employers.

27 (d) The department shall operate regional offices

1 throughout this state as necessary to implement the duties of the  
2 department under this subtitle.

3 SECTION 1.024. Section 402.061, Labor Code, is renumbered  
4 as Section 402.152, Labor Code, and amended to read as follows:

5 Sec. 402.152 [~~402.061~~]. ADOPTION OF RULES. The  
6 commissioner [~~commission~~] shall adopt rules as necessary for the  
7 implementation and enforcement of this subtitle.

8 SECTION 1.025. Section 402.062, Labor Code, is renumbered  
9 as Section 402.153, Labor Code, and amended to read as follows:

10 Sec. 402.153 [~~402.062~~]. ACCEPTANCE OF CERTAIN GIFTS,  
11 GRANTS, OR [~~AND~~] DONATIONS. (a) The department [~~commission~~] may  
12 accept gifts, grants, or donations for the operation of this  
13 subtitle as provided by rules adopted by the commissioner  
14 [~~commission~~].

15 (b) Notwithstanding Chapter 575, Government Code, the  
16 department [~~commission~~] may accept a grant paid by the Texas Mutual  
17 Insurance Company established under Article 5.76-3, Insurance  
18 Code, to implement specific steps to control and lower medical  
19 costs in the workers' compensation system and to ensure the  
20 delivery of high-quality [~~quality~~] medical care. The department  
21 [~~commission~~] must publish the name of the grantor and the purpose  
22 and conditions of the grant in the Texas Register and provide for a  
23 20-day public comment period before the department [~~commission~~] may  
24 accept the grant. The department [~~commission~~] shall acknowledge  
25 acceptance of the grant at a public meeting. The minutes of the  
26 public meeting must include the name of the grantor, a description  
27 of the grant, and a general statement of the purposes for which the

1 grant will be used.

2 SECTION 1.026. Section 402.064, Labor Code, is renumbered  
3 as Section 402.154, Labor Code, and amended to read as follows:

4 Sec. 402.154 [~~402.064~~]. FEES. In addition to fees  
5 established by this subtitle, the commissioner [~~commission~~] shall  
6 set reasonable fees for services provided to persons requesting  
7 services from the department under this subtitle [~~commission~~],  
8 including services provided under Subchapter E.

9 SECTION 1.027. Section 402.065, Labor Code, is renumbered  
10 as Section 402.155, Labor Code, and amended to read as follows:

11 Sec. 402.155 [~~402.065~~]. EMPLOYMENT OF COUNSEL.  
12 Notwithstanding Article 1.09-1, Insurance Code, or any other law,  
13 the commissioner [~~The commission~~] may employ counsel to represent  
14 the department [~~commission~~] in any legal action the department  
15 [~~commission~~] is authorized to initiate under this subtitle.

16 SECTION 1.028. Section 402.066, Labor Code, is renumbered  
17 as Section 402.156, Labor Code, and amended to read as follows:

18 Sec. 402.156 [~~402.066~~]. RECOMMENDATIONS TO LEGISLATURE.  
19 (a) The commissioner [~~commission~~] shall consider and recommend to  
20 the legislature changes to this subtitle, including any statutory  
21 changes required by an evaluation conducted under Section 402.162.

22 (b) The commissioner [~~commission~~] shall forward the  
23 recommended changes to the legislature not later than December 1 of  
24 each even-numbered year.

25 SECTION 1.029. Section 402.067, Labor Code, is renumbered  
26 as Section 402.157, Labor Code, and amended to read as follows:

27 Sec. 402.157 [~~402.067~~]. ADVISORY COMMITTEES. The

1 commissioner [~~commission~~] may appoint advisory committees under  
2 this subtitle as the commissioner [~~it~~] considers necessary.

3 SECTION 1.030. Section 402.068, Labor Code, is renumbered  
4 as Section 402.158, Labor Code, and amended to read as follows:

5 Sec. 402.158 [~~402.068~~]. DELEGATION OF RIGHTS AND DUTIES.  
6 Except as expressly provided by this subchapter, the commissioner  
7 [~~commission~~] may not delegate rulemaking and policy-making  
8 functions [~~rights and duties~~] imposed on the commissioner and the  
9 department [~~it~~] by this subchapter.

10 SECTION 1.031. Section 402.022, Labor Code, is transferred  
11 to Subchapter D, Chapter 402, Labor Code, renumbered as Section  
12 402.159, Labor Code, and amended to read as follows:

13 Sec. 402.159 [~~402.022~~]. PUBLIC INTEREST INFORMATION. (a)  
14 The department [~~executive director~~] shall prepare information of  
15 public interest describing the functions of the commissioner and  
16 the department under this subtitle [~~commission~~] and the procedures  
17 by which complaints are filed with and resolved by the department  
18 under this subtitle [~~commission~~].

19 (b) The department [~~executive director~~] shall make the  
20 information available to the public and appropriate state agencies.

21 (c) The commissioner by rule shall ensure that each  
22 department form, standard letter, and brochure under this subtitle:

- 23 (1) is written in plain language;  
24 (2) is in a readable and understandable format; and  
25 (3) complies with all applicable requirements  
26 relating to minimum readability requirements.

27 (d) The department shall make informational materials

1 described by this section available in English and Spanish.

2 SECTION 1.032. Section 402.023, Labor Code, is transferred  
3 to Subchapter D, Chapter 402, Labor Code, renumbered as Section  
4 402.160, Labor Code, and amended to read as follows:

5 Sec. 402.160 [~~402.023~~]. COMPLAINT INFORMATION. (a) The  
6 commissioner shall:

7 (1) adopt rules regarding the filing of a complaint  
8 under this subtitle against an entity subject to regulation under  
9 this subtitle; and

10 (2) ensure that information regarding the complaint  
11 process is available on the department's Internet website.

12 (b) The rules adopted under this section must, at a minimum:

13 (1) ensure that the department clearly defines in rule  
14 the method for filing a complaint;

15 (2) for appropriate complaints, encourage informal  
16 resolution of complaints through the office of employee assistance  
17 and the department's other customer assistance functions before the  
18 formal complaint process is initiated; and

19 (3) define what constitutes a frivolous complaint  
20 under this subtitle.

21 (c) The department shall develop and post on the  
22 department's Internet website:

23 (1) a simple standardized form for filing complaints  
24 under this subtitle; and

25 (2) information regarding the complaint filing  
26 process.

27 (d) The department [~~executive director~~] shall keep an

1 information file about each written complaint filed with the  
2 department under this subtitle [~~commission~~] that is unrelated to a  
3 specific workers' compensation claim. The information must  
4 include:

- 5 (1) the date the complaint is received;
- 6 (2) the name of the complainant;
- 7 (3) the subject matter of the complaint;
- 8 (4) a record of all persons contacted in relation to  
9 the complaint;
- 10 (5) a summary of the results of the review or  
11 investigation of the complaint; and
- 12 (6) for complaints for which the department  
13 [~~commission~~] took no action, an explanation of the reason the  
14 complaint was closed without action.

15 (e) [~~(b)~~] For each written complaint that is unrelated to a  
16 specific workers' compensation claim that the department  
17 [~~commission~~] has authority to resolve, the department [~~executive~~  
18 ~~director~~] shall provide to the person filing the complaint and the  
19 person about whom the complaint is made information about the  
20 department's [~~commission's~~] policies and procedures under this  
21 subtitle relating to complaint investigation and resolution. The  
22 department [~~commission~~], at least quarterly and until final  
23 disposition of the complaint, shall notify those persons about the  
24 status of the complaint unless the notice would jeopardize an  
25 undercover investigation.

26 SECTION 1.033. Subchapter D, Chapter 402, Labor Code, is  
27 amended by adding Sections 402.161-402.166 to read as follows:

1       Sec. 402.161. PRIORITIES FOR COMPLAINT INVESTIGATIONS. (a)

2       The department shall assign priorities to complaint investigations  
3       under this subtitle based on risk. In developing priorities under  
4       this section, the department shall develop a formal, risk-based  
5       complaint investigation system that considers:

6               (1) the severity of the alleged violation;

7               (2) whether the alleged violator showed continued or  
8       wilful noncompliance; and

9               (3) whether a commissioner order has been violated.

10       (b) The commissioner may develop additional risk-based  
11       criteria as determined necessary.

12       Sec. 402.162. STRATEGIC MANAGEMENT; EVALUATION. (a) The  
13       commissioner shall implement a strategic management plan that:

14               (1) requires the department to evaluate and analyze  
15       the effectiveness of the department in implementing:

16                       (A) the statutory goals adopted under Section  
17       402.051, particularly goals established to encourage the safe and  
18       timely return of injured employees to productive work roles; and

19                       (B) the other standards and requirements adopted  
20       under this code, the Insurance Code, and other applicable laws of  
21       this state; and

22               (2) modifies the organizational structure and  
23       programs of the department as necessary to address shortfalls in  
24       the performance of the workers' compensation system of this state.

25       (b) The department shall conduct research regarding the  
26       system as provided by Chapter 405 to obtain the necessary data and  
27       analysis to perform the evaluations required by this section.

1       Sec. 402.163. INFORMATION TO EMPLOYERS. (a) The Texas  
2 Workforce Commission, in coordination with the department, shall  
3 provide employers with information on methods to enhance the  
4 ability of an injured employee to return to work. The information  
5 may include access to available research and best practice  
6 information regarding return-to-work programs for employers.

7       (b) The department shall augment return-to-work program  
8 information provided to employers to include information regarding  
9 methods for an employer to appropriately assist an injured employee  
10 to obtain access to doctors who:

11             (1) provide high-quality care; and

12             (2) use effective occupational medicine treatment  
13 practices that lead to returning employees to productive work.

14       (c) The information provided to employers under this  
15 section must help to foster:

16             (1) effective working relationships with local  
17 doctors and with insurance carriers or provider networks to improve  
18 return-to-work communication; and

19             (2) access to return-to-work coordination services  
20 provided by insurance carriers and provider networks.

21       (d) The Texas Workforce Commission shall work with the  
22 department to develop and make available the information described  
23 by this section.

24       Sec. 402.164. INFORMATION TO EMPLOYEES. The department  
25 shall provide injured employees with information regarding the  
26 benefits of early return to work. The information must include  
27 information on how to receive assistance in accessing high-quality

1 medical care through the workers' compensation system.

2 Sec. 402.165. SINGLE POINT OF CONTACT. To the extent  
3 determined feasible by the commissioner, the department shall  
4 establish a single point of contact for injured employees receiving  
5 services from the department.

6 Sec. 402.166. INCENTIVES; PERFORMANCE-BASED OVERSIGHT.

7 (a) The commissioner by rule shall adopt requirements that:

8 (1) provide incentives for overall compliance in the  
9 workers' compensation system of this state; and

10 (2) emphasize performance-based oversight linked to  
11 regulatory outcomes.

12 (b) The commissioner shall develop key regulatory goals to  
13 be used in assessing the performance of insurance carriers,  
14 provider networks, and health care providers. The goals adopted  
15 under this subsection must align with the general regulatory goals  
16 of the department under this subtitle, such as improving workplace  
17 safety and return-to-work outcomes, in addition to goals that  
18 support timely payment of benefits and increased communication.

19 (c) At least biennially, the department shall assess the  
20 performance of insurance carriers, provider networks, and health  
21 care providers in meeting the key regulatory goals. The department  
22 shall examine overall compliance records and dispute resolution  
23 practices to identify insurance carriers, provider networks, and  
24 health care providers who adversely impact the workers'  
25 compensation system and who may require enhanced regulatory  
26 oversight. The department shall conduct the assessment through  
27 analysis of data maintained by the department and through

1 self-reporting by insurance carriers, provider networks, and  
2 health care providers.

3 (d) Based on the performance assessment, the department  
4 shall develop regulatory tiers that distinguish among insurance  
5 carriers, provider networks, and health care providers who are poor  
6 performers, who generally are average performers, and who are  
7 consistently high performers. The department shall focus its  
8 regulatory oversight on insurance carriers, provider networks, and  
9 health care providers identified as poor performers.

10 (e) The commissioner by rule shall develop incentives  
11 within each tier under Subsection (d) that promote greater overall  
12 compliance and performance. The regulatory incentives may include  
13 modified penalties, self-audits, or flexibility based on  
14 performance.

15 (f) The department shall:

16 (1) ensure that high-performing entities are publicly  
17 recognized; and

18 (2) allow those entities to use that designation as a  
19 marketing tool.

20 (g) In conjunction with the department's accident  
21 prevention services under Subchapter E, Chapter 411, the department  
22 shall conduct audits of accident prevention services offered by  
23 insurance carriers based on the comprehensive risk assessment. The  
24 department shall periodically review those services, but may  
25 provide incentives for less regulation of carriers based on  
26 performance.

27 SECTION 1.034. Section 402.071, Labor Code, is renumbered

1 as Section 402.167, Labor Code, and amended to read as follows:

2       Sec. 402.167 [~~402.071~~]. REPRESENTATIVES.       (a)       The  
3 commissioner by rule [~~commission~~] shall establish qualifications  
4 for a representative and shall adopt rules establishing procedures  
5 for authorization of representatives.

6       (b) A representative may receive a fee for providing  
7 representation under this subtitle only if the representative [~~is~~]:

8           (1) is an adjuster representing an insurance carrier;

9 or

10           (2) is licensed to practice law.

11       SECTION 1.035. Section 402.072, Labor Code, is renumbered  
12 as Section 402.168, Labor Code, and amended to read as follows:

13       Sec. 402.168 [~~402.072~~]. SANCTIONS. Only the commissioner  
14 [~~commission~~] may impose:

15           (1) a sanction that deprives a person of the right to  
16 practice before the department under this subtitle [~~commission~~] or  
17 of the right to receive remuneration under this subtitle for a  
18 period exceeding 30 days; or

19           (2) another sanction suspending for more than 30 days  
20 or revoking a certificate of authority, license, certification, or  
21 permit required for practice in the field of workers' compensation.

22       SECTION 1.036. Section 402.073, Labor Code, is renumbered  
23 as Section 402.169, Labor Code, and amended to read as follows:

24       Sec. 402.169 [~~402.073~~]. COOPERATION WITH STATE OFFICE OF  
25 ADMINISTRATIVE HEARINGS. (a) The commissioner [~~commission~~] and  
26 the chief administrative law judge of the State Office of  
27 Administrative Hearings by rule shall adopt a memorandum of

1 understanding governing administrative procedure law hearings  
 2 under this subtitle conducted by the State Office of Administrative  
 3 Hearings in the manner provided for a contested case hearing under  
 4 Chapter 2001, Government Code [~~(the administrative procedure~~  
 5 ~~law)~~].

6 (b) [~~In a case in which a hearing is conducted by the State~~  
 7 ~~Office of Administrative Hearings under Section 411.049, 413.031,~~  
 8 ~~413.055, or 415.034, the administrative law judge who conducts the~~  
 9 ~~hearing for the State Office of Administrative Hearings shall enter~~  
 10 ~~the final decision in the case after completion of the hearing.~~

11 [~~(c)~~] In a case in which a hearing is conducted in  
 12 conjunction with Section 402.168 or [~~402.072,~~] 407.046, [~~or~~  
 13 ~~408.023,~~] and in other cases under this subtitle other than cases  
 14 subject to Subchapter C, Chapter 413 [~~that are not subject to~~  
 15 ~~Subsection (b)~~], the administrative law judge who conducts the  
 16 hearing for the State Office of Administrative Hearings shall  
 17 propose a decision to the commissioner [~~commission~~] for final  
 18 consideration and decision by the commissioner [~~commission~~].

19 SECTION 1.037. Section 402.081, Labor Code, is renumbered  
 20 as Section 402.201, Labor Code, and amended to read as follows:

21 Sec. 402.201 [~~402.081~~]. WORKERS' COMPENSATION [~~COMMISSION~~]  
 22 RECORDS. (a) The commissioner [~~executive director~~] is the  
 23 custodian of the department's [~~commission's~~] records under this  
 24 subtitle and shall perform the duties of a custodian required by  
 25 law, including providing copies and the certification of records.

26 (b) The department [~~executive director~~] may destroy a  
 27 record maintained by the department [~~commission~~] pertaining to an

1 injury after the 50th anniversary of the date of the injury to which  
2 the record refers unless benefits are being paid on the claim on  
3 that date.

4 (c) A record maintained by the department under this  
5 subtitle [~~commission~~] may be preserved in any format permitted by  
6 Chapter 441, Government Code, and rules adopted by the Texas State  
7 Library and Archives Commission under that chapter.

8 (d) The department [~~commission~~] may charge a reasonable fee  
9 for making available for inspection any of its information that  
10 contains confidential information that must be redacted before the  
11 information is made available. However, when a request for  
12 information is for the inspection of 10 or fewer pages, and a copy  
13 of the information is not requested, the department [~~commission~~]  
14 may charge only the cost of making a copy of the page from which  
15 confidential information must be redacted. The fee for access to  
16 information under Chapter 552, Government Code, shall be in accord  
17 with the rules of the Texas Building and Procurement [~~General~~  
18 ~~Services~~] Commission that prescribe the method for computing the  
19 charge for copies under that chapter.

20 SECTION 1.038. Section 402.083, Labor Code, is renumbered  
21 as Section 402.202, Labor Code, and amended to read as follows:

22 Sec. 402.202 [~~402.083~~]. CONFIDENTIALITY OF INJURY  
23 INFORMATION. (a) Information in or derived from a claim file  
24 regarding an employee is confidential and may not be disclosed by  
25 the department [~~commission~~] except as provided by this subtitle.

26 (b) Information concerning an employee who has been finally  
27 adjudicated of wrongfully obtaining payment under Section 415.008

1 is not confidential.

2 SECTION 1.039. Section 402.084, Labor Code, is renumbered  
3 as Section 402.203, Labor Code, and amended to read as follows:

4 Sec. 402.203 [~~402.084~~]. RECORD CHECK; RELEASE OF  
5 INFORMATION. (a) The department [~~commission~~] shall perform and  
6 release a record check on an employee, including current or prior  
7 injury information, to the parties listed in Subsection (b) if:

8 (1) the claim is:

9 (A) open or pending before the department  
10 [~~commission~~];

11 (B) on appeal to a court of competent  
12 jurisdiction; or

13 (C) the subject of a subsequent suit in which the  
14 insurance carrier or the subsequent injury fund is subrogated to  
15 the rights of the named claimant; and

16 (2) the requesting party requests the release on a  
17 form prescribed by the commissioner [~~commission~~] for this purpose  
18 and provides all required information.

19 (b) Information on a claim may be released as provided by  
20 Subsection (a) to:

21 (1) the employee or the employee's legal beneficiary;

22 (2) the employee's or the legal beneficiary's  
23 representative;

24 (3) the employer at the time of injury;

25 (4) the insurance carrier;

26 (5) the Texas Certified Self-Insurer Guaranty  
27 Association established under Subchapter G, Chapter 407, if that

1 association has assumed the obligations of an impaired employer;

2 (6) the Texas Property and Casualty Insurance Guaranty  
3 Association, if that association has assumed the obligations of an  
4 impaired insurance company;

5 (7) a third-party litigant in a lawsuit in which the  
6 cause of action arises from the incident that gave rise to the  
7 injury; or

8 (8) a subclaimant under Section 409.009 that is an  
9 insurance carrier that has adopted an antifraud plan under  
10 Subchapter B, Chapter 704 [~~Article 3.97-3~~], Insurance Code, or the  
11 authorized representative of such a subclaimant.

12 (c) The requirements of Subsection (a)(1) do not apply to a  
13 request from a third-party litigant described by Subsection (b)(7).

14 (d) Information on a claim relating to a subclaimant under  
15 Subsection (b)(8) may include information, in an electronic data  
16 format, on all workers' compensation claims necessary to determine  
17 if a subclaim exists. The information on a claim remains subject to  
18 confidentiality requirements while in the possession of a  
19 subclaimant or representative. The commissioner [~~commission~~] by  
20 rule may establish a reasonable fee for all information requested  
21 under this subsection in an electronic data format by subclaimants  
22 or authorized representatives of subclaimants. The commissioner  
23 [~~commission~~] shall adopt rules under Section 401.024(d) to  
24 establish:

25 (1) reasonable security parameters for all transfers  
26 of information requested under this subsection in electronic data  
27 format; and

1 (2) requirements regarding the maintenance of  
2 electronic data in the possession of a subclaimant or the  
3 subclaimant's representative.

4 SECTION 1.040. Section 402.085, Labor Code, is renumbered  
5 as Section 402.204, Labor Code, and amended to read as follows:

6 Sec. 402.204 [~~402.085~~]. EXCEPTIONS TO CONFIDENTIALITY.

7 (a) The department [~~commission~~] shall release information on a  
8 claim to:

9 (1) the Texas Workforce Commission [~~Department of~~  
10 ~~Insurance~~] for any statutory or regulatory purpose;

11 (2) a legislative committee for legislative purposes;

12 (3) a state or federal elected official requested in  
13 writing to provide assistance by a constituent who qualifies to  
14 obtain injury information under Section 402.203(b) [~~402.084(b)~~],  
15 if the request for assistance is provided to the department  
16 [~~commission~~];

17 (4) the workers' compensation research and evaluation  
18 group [~~Research and Oversight Council on Workers' Compensation~~] for  
19 research purposes; [~~or~~]

20 (5) the attorney general or another entity that  
21 provides child support services under Part D, Title IV, Social  
22 Security Act (42 U.S.C. Section 651 et seq.), relating to:

23 (A) establishing, modifying, or enforcing a  
24 child support or medical support obligation; or

25 (B) locating an absent parent; or

26 (6) the office of employee assistance for any  
27 statutory or regulatory purpose that relates to a duty of that

1 office.

2 (b) The department [~~commission~~] may release information on  
3 a claim to a governmental agency, political subdivision, or  
4 regulatory body to use to:

5 (1) investigate an allegation of a criminal offense or  
6 licensing or regulatory violation;

7 (2) provide:

8 (A) unemployment compensation benefits;

9 (B) crime victims compensation benefits;

10 (C) vocational rehabilitation services; or

11 (D) health care benefits;

12 (3) investigate occupational safety or health  
13 violations;

14 (4) verify income on an application for benefits under  
15 an income-based state or federal assistance program; or

16 (5) assess financial resources in an action, including  
17 an administrative action, to:

18 (A) establish, modify, or enforce a child support  
19 or medical support obligation;

20 (B) establish paternity;

21 (C) locate an absent parent; or

22 (D) cooperate with another state in an action  
23 authorized under Part D, Title IV, Social Security Act (42 U.S.C.  
24 Section 651 et seq.), or Chapter 231, Family [~~76, Human Resources~~]  
25 Code.

26 SECTION 1.041. Section 402.086, Labor Code, is renumbered  
27 as Section 402.205, Labor Code, to read as follows:

1           Sec. 402.205 [~~402.086~~]. TRANSFER OF CONFIDENTIALITY. (a)  
2 Information relating to a claim that is confidential under this  
3 subtitle remains confidential when released to any person, except  
4 when used in court for the purposes of an appeal.

5           (b) This section does not prohibit an employer from  
6 releasing information about a former employee to another employer  
7 with whom the employee has applied for employment, if that  
8 information was lawfully acquired by the employer releasing the  
9 information.

10           SECTION 1.042. Section 402.087, Labor Code, is renumbered  
11 as Section 402.206, Labor Code, and amended to read as follows:

12           Sec. 402.206 [~~402.087~~]. INFORMATION AVAILABLE TO  
13 PROSPECTIVE EMPLOYERS. (a) A prospective employer who has  
14 workers' compensation insurance coverage and who complies with this  
15 subchapter is entitled to obtain information from the department on  
16 the prior injuries of an applicant for employment if the employer  
17 obtains written authorization from the applicant before making the  
18 request.

19           (b) The employer must make the request by telephone or file  
20 the request in writing not later than the 14th day after the date on  
21 which the application for employment is made.

22           (c) The request must include the applicant's name, address,  
23 and social security number.

24           (d) If the request is made in writing, the authorization  
25 must be filed simultaneously. If the request is made by telephone,  
26 the employer must file the authorization not later than the 10th day  
27 after the date on which the request is made.

1 SECTION 1.043. Section 402.088, Labor Code, is renumbered  
2 as Section 402.207, Labor Code, and amended to read as follows:

3 Sec. 402.207 [~~402.088~~]. REPORT OF PRIOR INJURY. (a) In  
4 this section, "general injury" means an injury other than an injury  
5 limited to one or more of the following:

6 (1) an injury to a digit, limb, or member;

7 (2) an inguinal hernia; or

8 (3) vision or hearing loss.

9 (b) On receipt of a valid request made under and complying  
10 with Section 402.206 [~~402.087~~], the department [~~commission~~] shall  
11 review its records.

12 (c) [~~(b)~~] If the department [~~commission~~] finds that the  
13 applicant has made two or more general injury claims in the  
14 preceding five years, the department [~~commission~~] shall release the  
15 date and description of each injury to the employer.

16 (d) [~~(c)~~] The information may be released in writing or by  
17 telephone.

18 (e) [~~(d)~~] If the employer requests information on three or  
19 more applicants at the same time, the department [~~commission~~] may  
20 refuse to release information until it receives the written  
21 authorization from each applicant.

22 [~~(c) In this section, "general injury" means an injury other~~  
23 ~~than an injury limited to one or more of the following:~~

24 [~~(1) an injury to a digit, limb, or member;~~

25 [~~(2) an inguinal hernia; or~~

26 [~~(3) vision or hearing loss.]~~

27 SECTION 1.044. Section 402.089, Labor Code, is renumbered

1 as Section 402.208, Labor Code, and amended to read as follows:

2       Sec. 402.208 [~~402.089~~]. FAILURE TO FILE AUTHORIZATION;  
3 ADMINISTRATIVE VIOLATION. (a) An employer who receives  
4 information by telephone from the department [~~commission~~] under  
5 Section 402.207 [~~402.088~~] and who fails to file the necessary  
6 authorization in accordance with Section 402.206 [~~402.087~~] commits  
7 a Class C administrative violation.

8       (b) Each failure to file an authorization is a separate  
9 violation.

10       SECTION 1.045. Section 402.090, Labor Code, is renumbered  
11 as Section 402.209, Labor Code, and amended to read as follows:

12       Sec. 402.209 [~~402.090~~]. STATISTICAL INFORMATION. The  
13 department [~~commission~~], the workers' compensation research and  
14 evaluation group [~~center~~], or any other governmental agency may  
15 prepare and release statistical information if the identity of an  
16 employee is not explicitly or implicitly disclosed.

17       SECTION 1.046. Section 402.091, Labor Code, is renumbered  
18 as Section 402.210, Labor Code, and amended to read as follows:

19       Sec. 402.210 [~~402.091~~]. FAILURE TO MAINTAIN  
20 CONFIDENTIALITY; OFFENSE; PENALTY. (a) A person commits an  
21 offense if the person knowingly, intentionally, or recklessly  
22 publishes, discloses, or distributes information that is  
23 confidential under this subchapter to a person not authorized to  
24 receive the information directly from the department [~~commission~~].

25       (b) A person commits an offense if the person knowingly,  
26 intentionally, or recklessly receives information that is  
27 confidential under this subchapter and that the person is not

1 authorized to receive.

2 (c) An offense under this section is a Class A misdemeanor.

3 (d) An offense under this section may be prosecuted in a  
4 court in the county where the information was unlawfully received,  
5 published, disclosed, or distributed.

6 (e) A district court in Travis County has jurisdiction to  
7 enjoin the use, publication, disclosure, or distribution of  
8 confidential information under this section.

9 SECTION 1.047. Section 402.092, Labor Code, is renumbered  
10 as Section 402.211, Labor Code, and amended to read as follows:

11 Sec. 402.211 [~~402.092~~]. INVESTIGATION FILES CONFIDENTIAL;  
12 DISCLOSURE OF CERTAIN INFORMATION. (a) In this section,  
13 "investigation file" means any information compiled or maintained  
14 by the department with respect to a department investigation  
15 authorized under this subtitle or other workers' compensation law.  
16 The term does not include information or material acquired by the  
17 department that is relevant to an investigation by the insurance  
18 fraud unit and subject to Section 701.151, Insurance Code.

19 (b) Information maintained in the investigation files of  
20 the department [~~commission~~] is confidential and may not be  
21 disclosed except:

22 (1) in a criminal proceeding;

23 (2) in a hearing conducted by the department  
24 [~~commission~~];

25 (3) on a judicial determination of good cause; or

26 (4) to a governmental agency, political subdivision,  
27 or regulatory body if the disclosure is necessary or proper for the

1 enforcement of the laws of this or another state or of the United  
2 States.

3 (c) Department [~~(b) Commission~~] investigation files are  
4 not open records for purposes of Chapter 552, Government Code.

5 (d) [~~(e)~~] Information in an investigation file that is  
6 information in or derived from a claim file, or an employer injury  
7 report or occupational disease report, is governed by the  
8 confidentiality provisions relating to that information.

9 [~~(d) For purposes of this section, "investigation file"~~  
10 ~~means any information compiled or maintained by the commission with~~  
11 ~~respect to a commission investigation authorized by law.]~~

12 (e) The department [~~commission~~], upon request, shall  
13 disclose the identity of a complainant under this section if the  
14 department [~~commission~~] finds:

15 (1) the complaint was groundless or made in bad faith;  
16 [~~or~~]

17 (2) the complaint lacks any basis in fact or evidence;  
18 [~~or~~]

19 (3) the complaint is frivolous; or

20 (4) the complaint is done specifically for competitive  
21 or economic advantage.

22 (f) Upon completion of an investigation in which [~~where~~] the  
23 department [~~commission~~] determines a complaint is described by  
24 Subsection (e), [~~groundless, frivolous, made in bad faith, or is~~  
25 ~~not supported by evidence or is done specifically for competitive~~  
26 ~~or economic advantage~~] the department [~~commission~~] shall notify the  
27 person who was the subject of the complaint of its finding and the

1 identity of the complainant.

2 SECTION 1.048. Chapter 402, Labor Code, is amended by  
3 adding Subchapter F to read as follows:

4 SUBCHAPTER F. COOPERATION AMONG WORKERS' COMPENSATION AGENCIES

5 Sec. 402.251. COOPERATION WITH OFFICE OF EMPLOYEE  
6 ASSISTANCE. (a) The department shall cooperate with the office of  
7 employee assistance in providing services to claimants under this  
8 subtitle.

9 (b) The department shall provide facilities to the office of  
10 employee assistance in each regional department office operated to  
11 administer the duties of the department under this subtitle.

12 SECTION 1.049. The following laws are repealed:

- 13 (1) Section 402.0015, Labor Code;
- 14 (2) Sections 402.004-402.012, Labor Code;
- 15 (3) Sections 402.024 and 402.025, Labor Code;
- 16 (4) Section 402.041, Labor Code;
- 17 (5) Sections 402.043-402.045, Labor Code;
- 18 (6) Section 402.063, Labor Code;
- 19 (7) Section 402.0665, Labor Code; and
- 20 (8) Sections 402.069 and 402.070, Labor Code.

21 SECTION 1.0495. (a) The commissioner of insurance shall  
22 conduct a review of the rules, policies, and practices of the Texas  
23 Department of Insurance regarding the operation of the workers'  
24 compensation system of this state. The review must include  
25 analysis of the rules, policies, and practices of the Texas  
26 Workers' Compensation Commission, as that commission existed  
27 before abolishment under this Act, that are continued as rules,

1 policies, and practices of the Texas Department of Insurance until  
2 replaced by the commissioner of insurance. In the review, the  
3 commissioner shall:

4 (1) analyze the effectiveness of the rules, policies,  
5 and practices in implementing the goals of the workers'  
6 compensation system as described by Section 402.051, Labor Code, as  
7 added by this Act, especially the return-to-work goals; and

8 (2) evaluate the existence of any statutory barriers  
9 to the implementation of those goals.

10 (b) The commissioner of insurance shall report the results  
11 of the review, together with any recommendations for statutory  
12 changes, to the governor, the lieutenant governor, the speaker of  
13 the house of representatives, and the members of the 80th  
14 Legislature not later than December 1, 2006.

15 PART 3. AMENDMENTS TO CHAPTER 403, LABOR CODE

16 SECTION 1.051. The heading to Chapter 403, Labor Code, is  
17 amended to read as follows:

18 CHAPTER 403. [~~COMMISSION~~] FINANCING OF  
19 WORKERS' COMPENSATION SYSTEM

20 SECTION 1.052. Section 403.001, Labor Code, is amended to  
21 read as follows:

22 Sec. 403.001. [~~COMMISSION~~] FUNDS. (a) Except as provided  
23 by Sections 402.102(b), 403.006, and 403.007 or as otherwise  
24 provided by law, money collected under this subtitle, including  
25 administrative penalties and advance deposits for purchase of  
26 services, shall be deposited in the general revenue fund of the  
27 state treasury to the credit of the Texas Department of Insurance

1 operating account. Notwithstanding Section 202.101, Insurance  
2 Code, or any other law, money deposited in the account under this  
3 section may be appropriated only for the use and benefit of the  
4 department and the office of employee assistance as provided by the  
5 General Appropriations Act to pay salaries and other expenses  
6 arising from and in connection with the duties under this title of  
7 the department and the office [~~commission~~].

8 (b) The money may be spent as authorized by legislative  
9 appropriation on warrants issued by the comptroller under  
10 requisitions made by the commissioner [~~commission~~].

11 (c) Money deposited in the general revenue fund under this  
12 section:

13 (1) shall be used to satisfy the requirements of  
14 Section 402.102(b); and

15 (2) may be used to satisfy the requirements of Section  
16 201.052 [~~Article 4.19~~], Insurance Code.

17 SECTION 1.053. Section 403.003, Labor Code, is amended to  
18 read as follows:

19 Sec. 403.003. RATE OF ASSESSMENT. (a) The commissioner  
20 [~~commission~~] shall set and certify to the comptroller the rate of  
21 maintenance tax assessment not later than October 31 of each year,  
22 taking into account:

23 (1) any expenditure projected as necessary for the  
24 department [~~commission~~] to:

25 (A) administer this subtitle during the fiscal  
26 year for which the rate of assessment is set; and

27 (B) reimburse the general revenue fund as

1 provided by Section 201.052 [~~Article 4.19~~], Insurance Code;

2 (2) projected employee benefits paid from general  
3 revenues;

4 (3) a surplus or deficit produced by the tax in the  
5 preceding year;

6 (4) revenue recovered from other sources, including  
7 reappropriated receipts, grants, payments, fees, gifts, and  
8 penalties recovered under this subtitle; and

9 (5) expenditures projected as necessary to support the  
10 prosecution of workers' compensation insurance fraud.

11 (b) In setting the rate of assessment, the commissioner:

12 (1) shall consider expenditures made by the Texas  
13 Workforce Commission under this subtitle; and

14 (2) [~~commission~~] may not consider revenue or  
15 expenditures related to:

16 (A) [~~(1)~~] the State Office of Risk Management;

17 (B) [~~(2)~~] the workers' compensation research and  
18 evaluation group [~~oversight council on workers' compensation~~]; or

19 (C) [~~(3)~~] any other revenue or expenditure  
20 excluded from consideration by law.

21 SECTION 1.054. Section 403.004, Labor Code, is amended to  
22 read as follows:

23 Sec. 403.004. COLLECTION OF TAX AFTER WITHDRAWAL FROM  
24 BUSINESS. The [~~insurance~~] commissioner [~~or the executive director~~  
25 ~~of the commission~~] immediately shall proceed to collect taxes due  
26 under this chapter from an insurance carrier that withdraws from  
27 business in this state, using legal process as necessary.

1 SECTION 1.055. Section 403.005, Labor Code, is amended to  
2 read as follows:

3 Sec. 403.005. TAX RATE SURPLUS OR DEFICIT. (a) If the tax  
4 rate set by the commissioner [~~commission~~] for a year does not  
5 produce sufficient revenue to make all expenditures authorized by  
6 legislative appropriation, the deficit shall be paid from the  
7 general revenue fund.

8 (b) If the tax rate set by the commissioner [~~commission~~] for  
9 a year produces revenue that exceeds the amount required to make all  
10 expenditures authorized by the legislature, the excess shall be  
11 deposited in the general revenue fund to the credit of the Texas  
12 Department of Insurance operating account. Notwithstanding Section  
13 202.101, Insurance Code, or any other law, money deposited in the  
14 account under this section may be appropriated only for the use and  
15 benefit of the department as provided by the General Appropriations  
16 Act to pay salaries and other expenses arising from and in  
17 connection with the department's duties under this title  
18 [~~commission~~].

19 SECTION 1.056. Section 403.006, Labor Code, as amended by  
20 Chapters 211 and 1296, Acts of the 78th Legislature, Regular  
21 Session, 2003, is reenacted and amended to read as follows:

22 Sec. 403.006. SUBSEQUENT INJURY FUND. (a) The subsequent  
23 injury fund is a dedicated [~~general revenue~~] account in the general  
24 revenue fund [~~in the state treasury~~]. Money in the account may be  
25 appropriated only for the purposes of this section or as provided by  
26 other law. [~~Section 403.095, Government Code, does not apply to the~~  
27 ~~subsequent injury fund.~~]

1 (b) The subsequent injury fund is liable for:

2 (1) the payment of compensation as provided by Section  
3 408C.202 [~~408.162~~];

4 (2) reimbursement of insurance carrier claims of  
5 overpayment of benefits made under an interlocutory order or  
6 decision of the commissioner [~~commission~~] as provided by this  
7 subtitle, consistent with the priorities established by rule by the  
8 commissioner [~~commission~~]; and

9 (3) reimbursement of insurance carrier claims as  
10 provided by Sections 408.042 and 413.0141, consistent with the  
11 priorities established by rule by the commissioner [~~commission~~]; and

12 [~~(4) the payment of an assessment of feasibility and~~  
13 ~~the development of regional networks established under Section~~  
14 ~~408.0221~~].

15 (c) The commissioner [~~executive director~~] shall appoint an  
16 administrator for the subsequent injury fund.

17 (d) Based on an actuarial assessment of the funding  
18 available under Section 403.007(e), the department [~~commission~~]  
19 may make partial payment of insurance carrier claims under  
20 Subsection (b)(3).

21 SECTION 1.057. Section 403.007, Labor Code, is amended to  
22 read as follows:

23 Sec. 403.007. FUNDING OF SUBSEQUENT INJURY FUND. (a) If a  
24 compensable death occurs and no legal beneficiary survives or a  
25 claim for death benefits is not timely made, the insurance carrier  
26 shall pay to the department [~~commission~~] for deposit to the credit  
27 of the subsequent injury fund an amount equal to 364 weeks of the

1 death benefits otherwise payable.

2 (b) The insurance carrier may elect or the commissioner  
3 [~~commission~~] may order that death benefits payable to the fund be  
4 commuted [~~on written approval of the executive director~~]. The  
5 commutation may be discounted for present payment at the rate  
6 established in Section 401.023, compounded annually.

7 (c) If a claim for death benefits is not filed with the  
8 department [~~commission~~] by a legal beneficiary on or before the  
9 first anniversary of the date of the death of the employee, it is  
10 presumed, for purposes of this section only, that no legal  
11 beneficiary survived the deceased employee. The presumption does  
12 not apply against a minor beneficiary or an incompetent beneficiary  
13 for whom a guardian has not been appointed.

14 (d) If the insurance carrier makes payment to the subsequent  
15 injury fund and it is later determined by a final award of the  
16 department [~~commission~~] or the final judgment of a court of  
17 competent jurisdiction that a legal beneficiary is entitled to the  
18 death benefits, the commissioner [~~commission~~] shall order the fund  
19 to reimburse the insurance carrier for the amount overpaid to the  
20 fund.

21 (e) If the department [~~commission~~] determines that the  
22 funding under Subsection (a) is not adequate to meet the expected  
23 obligations of the subsequent injury fund established under Section  
24 403.006, the fund shall be supplemented by the collection of a  
25 maintenance tax paid by insurance carriers, other than a  
26 governmental entity, as provided by Sections 403.002 and 403.003.  
27 The rate of assessment must be adequate to provide 120 percent of

1 the projected unfunded liabilities of the fund for the next  
2 biennium as certified by an independent actuary or financial  
3 advisor.

4 (f) The department's [~~commission's~~] actuary or financial  
5 advisor shall report biannually to the workers' compensation  
6 research and evaluation group [~~Research and Oversight Council on~~  
7 ~~Workers' Compensation~~] on the financial condition and projected  
8 assets and liabilities of the subsequent injury fund. The  
9 department [~~commission~~] shall make the reports available to members  
10 of the legislature and the public. The department [~~commission~~] may  
11 purchase annuities to provide for payments due to claimants under  
12 this subtitle if the commissioner [~~commission~~] determines that the  
13 purchase of annuities is financially prudent for the administration  
14 of the fund.

15 PART 4. ADOPTION OF CHAPTER 404, LABOR CODE

16 SECTION 1.061. Subtitle A, Title 5, Labor Code, is amended  
17 by adding Chapter 404 to read as follows:

18 CHAPTER 404. OFFICE OF EMPLOYEE ASSISTANCE

19 SUBCHAPTER A. OFFICE; GENERAL PROVISIONS

20 Sec. 404.001. DEFINITIONS. In this chapter:

21 (1) "Director" means the director of the office.

22 (2) "Office" means the office of employee assistance.

23 Sec. 404.002. ESTABLISHMENT OF OFFICE; ADMINISTRATIVE  
24 ATTACHMENT TO DEPARTMENT. (a) The office of employee assistance is  
25 established to represent the interests of workers' compensation  
26 claimants in this state.

27 (b) The office is administratively attached to the

1 department but is independent of direction by the commissioner and  
2 the department.

3 (c) The department shall provide the staff and facilities  
4 necessary to enable the office to perform the duties of the office  
5 under this subtitle, including:

6 (1) administrative assistance and services to the  
7 office, including budget planning and purchasing;

8 (2) personnel services; and

9 (3) computer equipment and support.

10 (d) The director and the commissioner may enter into  
11 interagency contracts and other agreements as necessary to  
12 implement this chapter.

13 Sec. 404.003. SUNSET PROVISION. The office of employee  
14 assistance is subject to Chapter 325, Government Code (Texas Sunset  
15 Act). Unless continued in existence as provided by that chapter,  
16 the office is abolished and this chapter expires September 1, 2019.

17 Sec. 404.004. PUBLIC INTEREST INFORMATION. (a) The office  
18 shall prepare information of public interest describing the  
19 functions of the office.

20 (b) The office shall make the information available to the  
21 public and appropriate state agencies.

22 Sec. 404.005. ACCESS TO PROGRAMS AND FACILITIES. (a) The  
23 office shall prepare and maintain a written plan that describes how  
24 a person who does not speak English can be provided reasonable  
25 access to the office's programs.

26 (b) The office shall comply with federal and state laws for  
27 program and facility accessibility.

1       Sec. 404.006. RULEMAKING. (a) The director shall adopt  
2 rules as necessary to implement this chapter.

3       (b) Rulemaking under this section is subject to Chapter  
4 2001, Government Code.

5           [Sections 404.007-404.050 reserved for expansion]

6                   SUBCHAPTER B. DIRECTOR

7       Sec. 404.051. APPOINTMENT; TERM. (a) The governor, with  
8 the advice and consent of the senate, shall appoint the director of  
9 the office. The director serves a two-year term that expires on  
10 February 1 of each odd-numbered year.

11       (b) The governor shall appoint the director without regard  
12 to the race, color, disability, sex, religion, age, or national  
13 origin of the appointee.

14       Sec. 404.052. QUALIFICATIONS. To be eligible to serve as  
15 director, a person must:

16           (1) have demonstrated a strong commitment to and  
17 involvement in efforts to safeguard the rights of the public; and

18           (2) possess knowledge and experience in workers'  
19 compensation proceedings.

20       Sec. 404.053. BUSINESS INTEREST; SERVICE AS DIRECTOR. A  
21 person is not eligible for appointment as director if the person or  
22 the person's spouse:

23           (1) is employed by or participates in the management  
24 of a business entity or other organization regulated by or  
25 receiving funds from the department or the Texas Workforce  
26 Commission;

27           (2) owns or controls, directly or indirectly, more

1 than a 10 percent interest in a business entity or other  
2 organization regulated by or receiving funds from the department,  
3 the Texas Workforce Commission, or the office; or

4 (3) uses or receives a substantial amount of tangible  
5 goods, services, or funds from the department, the Texas Workforce  
6 Commission, or the office, other than compensation or reimbursement  
7 authorized by law.

8 Sec. 404.054. LOBBYING ACTIVITIES. A person may not serve  
9 as director or act as general counsel to the office if the person is  
10 required to register as a lobbyist under Chapter 305, Government  
11 Code, because of the person's activities for compensation related  
12 to the operation of the department, the Texas Workforce Commission,  
13 or the office.

14 Sec. 404.055. GROUNDS FOR REMOVAL. (a) It is a ground for  
15 removal from office that the director:

16 (1) does not have at the time of appointment or  
17 maintain during service as director the qualifications required by  
18 Section 404.052;

19 (2) violates a prohibition established by Section  
20 404.053, 404.054, 404.056, or 404.057; or

21 (3) cannot, because of illness or disability,  
22 discharge the director's duties for a substantial part of the  
23 director's term.

24 (b) The validity of an action of the office is not affected  
25 by the fact that the action is taken when a ground for removal of the  
26 director exists.

27 Sec. 404.056. PROHIBITED REPRESENTATION OR EMPLOYMENT. A

1 person who serves as director may not represent any person or  
2 receive compensation for services rendered on behalf of any person  
3 regarding a workers' compensation case pending before the  
4 department before the second anniversary of the date the person  
5 ceases to serve as director.

6 Sec. 404.057. TRADE ASSOCIATIONS. (a) In this section,  
7 "trade association" means a nonprofit, cooperative, and  
8 voluntarily joined association of business or professional  
9 competitors designed to assist its members and its industry or  
10 profession in dealing with mutual business or professional problems  
11 and in promoting their common interest.

12 (b) A person may not serve as director if the person is:

13 (1) an officer, employee, or paid consultant of a  
14 trade association in the field of workers' compensation; or

15 (2) the spouse of an officer, manager, or paid  
16 consultant of a trade association in the field of workers'  
17 compensation.

18 [Sections 404.058-404.100 reserved for expansion]

19 SUBCHAPTER C. GENERAL POWERS AND DUTIES OF OFFICE

20 Sec. 404.101. GENERAL DUTIES. (a) The office shall:

21 (1) provide legal representation to workers'  
22 compensation claimants as provided by this subtitle; and

23 (2) advocate on behalf of the public regarding  
24 rulemaking by the commissioner relating to workers' compensation.

25 (b) The office shall accept or reject cases for  
26 representation in disputes subject to Chapter 410 or 413 based on  
27 standards adopted by the director by rule.

1       (c) To the extent determined feasible by the director, the  
2 office shall establish a single point of contact for injured  
3 employees receiving services from the office.

4       (d) In determining how best to provide services for injured  
5 employees as required by this subtitle, the director may consider  
6 contracting with other legal assistance entities to provide some  
7 portion of the services, including contracting for the use of legal  
8 aid offices and legal service clinics operated at the law schools in  
9 this state.

10       Sec. 404.102. OPERATION OF OMBUDSMAN PROGRAM. The office  
11 shall operate the ombudsman program under Subchapter D.

12       Sec. 404.103. LITERACY AND BASIC SKILLS CURRICULUM. (a)  
13 The office shall coordinate with the Texas Workforce Commission and  
14 local workforce development boards to develop a workplace literacy  
15 and basic skills curriculum designed to eliminate the skills gap  
16 between employees and current and emerging jobs.

17       (b) The director may enter into memoranda of understanding  
18 or other agreements with the Texas Workforce Commission and local  
19 workforce development boards as necessary to implement Subsection  
20 (a).

21       SECTION 1.062. Subchapter C, Chapter 409, Labor Code, is  
22 redesignated as Subchapter D, Chapter 404, Labor Code, and Sections  
23 409.041-409.044, Labor Code, are renumbered as Sections  
24 404.151-404.154, Labor Code, and amended to read as follows:

25                   SUBCHAPTER D [~~C~~]. OMBUDSMAN PROGRAM

26       Sec. 404.151 [~~409.041~~]. OMBUDSMAN PROGRAM. (a) The office  
27 [~~commission~~] shall maintain an ombudsman program as provided by

1 this subchapter to assist injured employees [~~workers~~] and persons  
2 claiming death benefits in obtaining benefits under this subtitle.

3 (b) An ombudsman shall:

4 (1) meet with or otherwise provide information to  
5 injured employees [~~workers~~];

6 (2) investigate complaints;

7 (3) communicate with employers, insurance carriers,  
8 and health care providers on behalf of injured employees [~~workers~~];

9 (4) assist unrepresented claimants, employers, and  
10 other parties to enable those persons to protect their rights in the  
11 workers' compensation system; [~~and~~]

12 (5) coordinate services provided by the ombudsman with  
13 services provided by the Department of Assistive and Rehabilitative  
14 Services and the Texas Workforce Commission; and

15 (6) meet with an unrepresented claimant privately for  
16 a minimum of 15 minutes prior to any prehearing conference  
17 [~~informal~~] or formal hearing.

18 Sec. 404.152 [~~409.042~~]. DESIGNATION AS OMBUDSMAN;  
19 ELIGIBILITY AND TRAINING REQUIREMENTS; CONTINUING EDUCATION  
20 REQUIREMENTS. (a) At least one specially qualified employee in  
21 each department workers' compensation [~~commission~~] office shall be  
22 an ombudsman designated by the office [~~an ombudsman~~] who shall  
23 perform the duties under this subchapter [~~section~~] as the person's  
24 primary responsibility.

25 (b) To be eligible for designation as an ombudsman, a person  
26 must:

27 (1) demonstrate satisfactory knowledge of the

1 requirements of:

2 (A) this subtitle and the provisions of Subtitle  
3 C that relate to claims management;

4 (B) other laws relating to workers'  
5 compensation; and

6 (C) rules adopted under this subtitle and the  
7 laws described under Subdivision (1)(B);

8 (2) have demonstrated experience in handling and  
9 resolving problems for the general public;

10 (3) possess strong interpersonal skills; and

11 (4) have at least one year of demonstrated experience  
12 in the field of workers' compensation.

13 (c) The director shall [~~commission~~] by rule [~~shall~~] adopt  
14 training guidelines and continuing education requirements for  
15 ombudsmen. Training provided under this subsection must:

16 (1) include education regarding this subtitle and [~~7~~]  
17 rules adopted under this subtitle, [~~and appeals panel decisions,~~]  
18 with emphasis on benefits and the dispute resolution process; and

19 (2) require an ombudsman undergoing training to be  
20 observed and monitored by an experienced ombudsman during daily  
21 activities conducted under this subchapter.

22 Sec. 404.153 [~~409.043~~]. EMPLOYER NOTIFICATION;  
23 ADMINISTRATIVE VIOLATION. (a) Each employer shall notify its  
24 employees of the ombudsman program in the [~~a~~] manner prescribed by  
25 the office [~~commission~~].

26 (b) An employer commits a violation if the employer fails to  
27 comply with this section. A violation under this section is a Class

1 C administrative violation.

2 Sec. 404.154 [~~409.044~~]. PUBLIC INFORMATION. The office  
3 [~~commission~~] shall widely disseminate information about the  
4 ombudsman program.

5 SECTION 1.063. The ombudsman program operated by the office  
6 of employee assistance under Subchapter D, Chapter 404, Labor Code,  
7 as added by this Act, shall begin providing services under that  
8 subchapter not later than March 1, 2006.

9 PART 5. AMENDMENTS TO CHAPTER 405, LABOR CODE

10 SECTION 1.071. Section 405.001, Labor Code, is amended to  
11 read as follows:

12 Sec. 405.001. DEFINITION. In this chapter, "group"  
13 [~~"department"~~] means the workers' compensation research and  
14 evaluation group [~~Texas Department of Insurance~~].

15 SECTION 1.072. Section 405.002, Labor Code, is amended to  
16 read as follows:

17 Sec. 405.002. WORKERS' COMPENSATION RESEARCH DUTIES OF  
18 DEPARTMENT; RESEARCH AND EVALUATION GROUP. (a) The workers'  
19 compensation research and evaluation group is an advisory body to  
20 the commissioner located within the department. The commissioner  
21 shall designate appropriate department employees to serve as the  
22 members of the group [~~shall conduct professional studies and~~  
23 ~~research related to:~~

24 [~~(1) the delivery of benefits,~~

25 [~~(2) litigation and controversy related to workers'~~  
26 ~~compensation,~~

27 [~~(3) insurance rates and rate-making procedures,~~

1           ~~[(4) rehabilitation and reemployment of injured~~  
2 ~~workers;~~  
3           ~~[(5) workplace health and safety issues;~~  
4           ~~[(6) the quality and cost of medical benefits; and~~  
5           ~~[(7) other matters relevant to the cost, quality, and~~  
6 ~~operational effectiveness of the workers' compensation system].~~

7           (b) The group ~~[department]~~ may apply for and spend grant  
8 funds to implement this chapter.

9           (c) The group ~~[department]~~ shall ensure that all research  
10 reports prepared under this chapter or by the former Research and  
11 Oversight Council on Workers' Compensation are accessible to the  
12 public through the Internet to the extent practicable.

13           SECTION 1.073. Chapter 405, Labor Code, is amended by  
14 adding Sections 405.0025 and 405.0026 to read as follows:

15           Sec. 405.0025. POWERS AND DUTIES OF GROUP. (a) The group  
16 shall conduct professional studies and research related to:

- 17                   (1) the delivery of benefits;  
18                   (2) litigation and controversy related to workers'  
19 compensation;  
20                   (3) insurance rates and ratemaking procedures;  
21                   (4) rehabilitation and reemployment of injured  
22 employees;  
23                   (5) the quality and cost of medical benefits; and  
24                   (6) other matters relevant to the cost, quality, and  
25 operational effectiveness of the workers' compensation system.

26           (b) As directed by the Texas Workforce Commission, the group  
27 shall conduct professional research and studies related to

1 workplace health and safety issues.

2 (c) The group shall examine the use of electronic billing  
3 and payment programs in the operation of the workers' compensation  
4 system of this state and the impact of requiring use of those  
5 programs on the operation of the system.

6 (d) The group shall examine the use of fee guidelines for  
7 the provision of non-network health care services under the  
8 workers' compensation system of this state and the impact of the use  
9 of fee guidelines on the operation of the system. In conducting an  
10 examination under this subsection, the group shall evaluate:

11 (1) the fee guidelines used by the department under  
12 this subtitle as of the date of the examination; and

13 (2) any alternatives proposed to the use of those fee  
14 guidelines.

15 Sec. 405.0026. REPORT CARD. (a) The group shall develop  
16 and issue an annual informational report card that identifies and  
17 compares, on an objective basis, the quality, costs, provider  
18 availability, and other analogous factors of provider networks  
19 operating under the workers' compensation system of this state.

20 (b) The group may procure services as necessary to produce  
21 the report card. The report card, at a minimum, must be based on  
22 contracted reviews and must include a risk-adjusted evaluation of:

23 (1) employee access to care;

24 (2) coordination of care and return to work;

25 (3) communication among system participants;

26 (4) return-to-work outcomes;

27 (5) health-related outcomes;

- 1           (6) employee, health care provider, employer, and  
2 insurance carrier satisfaction;  
3           (7) disability and reinjury prevention;  
4           (8) appropriate clinical care;  
5           (9) health care costs;  
6           (10) utilization of health care; and  
7           (11) statistical outcomes of medical dispute  
8 resolution provided by independent review organizations.

9           (c) The report cards may be based on information or data  
10 from any person, agency, organization, or governmental entity that  
11 the group considers reliable. The group may not endorse or  
12 recommend a specific provider network or plan, or subjectively rate  
13 or rank provider networks or plans, other than through comparison  
14 and evaluation of objective criteria.

15           (d) The group shall survey each provider network providing  
16 services under this subtitle to obtain information for the report  
17 card. The survey must require the collection of data by the network  
18 from injured employees regarding the employees' satisfaction with  
19 the services provided by the network.

20           (e) The commissioner shall ensure that the report card is  
21 published and made available for inspection.

22           SECTION 1.074. Sections 405.003(a) and (e), Labor Code, are  
23 amended to read as follows:

24           (a) The group's [~~department's~~] duties under this chapter are  
25 funded through the assessment of a maintenance tax collected  
26 annually from all insurance carriers, and self-insurance groups  
27 that hold certificates of approval under Chapter 407A, except

1 governmental entities.

2 (e) Amounts received under this section shall be deposited  
3 in the general revenue fund [~~state treasury~~] in accordance with  
4 Section 251.004 [~~Article 5.68(e)~~], Insurance Code, to be used:

5 (1) for the operation of the group's [~~department's~~]  
6 duties under this chapter; and

7 (2) to reimburse the general revenue fund in  
8 accordance with Section 201.052 [~~Article 4.19~~], Insurance Code.

9 SECTION 1.075. Sections 405.004(a), (b), and (d), Labor  
10 Code, are amended to read as follows:

11 (a) As required to fulfill the group's [~~department's~~]  
12 objectives under this chapter, the group [~~department~~] is entitled  
13 to access to the files and records of:

14 (1) [~~the commission;~~

15 [~~2~~] the Texas Workforce Commission;

16 (2) [~~3~~] the [~~Texas~~] Department of Assistive and  
17 Rehabilitative [~~Human~~] Services;

18 (3) [~~4~~] the State Office of Risk Management; and

19 (4) [~~5~~] other appropriate state agencies.

20 (b) A state agency shall assist and cooperate in providing  
21 information to the group [~~department~~].

22 (d) Except as provided by this subsection, the [~~The~~]  
23 identity of an individual or entity selected to participate in a  
24 [~~department~~] survey conducted by the group or the department or by a  
25 provider network under Section 405.0026(d) or who participates in  
26 such a survey is confidential and is not subject to public  
27 disclosure under Chapter 552, Government Code. This subsection

1 does not prohibit the identification of a provider network or the  
2 inclusion of survey information obtained from a provider network  
3 under Section 405.0026 in a report card issued under Section  
4 405.0026, provided that the report card may not identify any  
5 injured employee or other individual.

6 PART 6. AMENDMENTS TO CHAPTER 406, LABOR CODE

7 SECTION 1.081. The heading to Section 406.004, Labor Code,  
8 is amended to read as follows:

9 Sec. 406.004. EMPLOYER NOTICE TO DEPARTMENT [~~COMMISSION~~];  
10 ADMINISTRATIVE VIOLATION.

11 SECTION 1.082. Sections 406.004(a)-(d), Labor Code, are  
12 amended to read as follows:

13 (a) An employer who does not obtain workers' compensation  
14 insurance coverage shall notify the department [~~commission~~] in  
15 writing, in the time and as prescribed by commissioner [~~commission~~]  
16 rule, that the employer elects not to obtain coverage.

17 (b) The commissioner [~~commission~~] shall prescribe forms to  
18 be used for the employer notification and shall require the  
19 employer to provide reasonable information to the department  
20 [~~commission~~] about the employer's business.

21 (c) The department [~~commission~~] may contract with the Texas  
22 Workforce [~~Employment~~] Commission or the comptroller for  
23 assistance in collecting the notification required under this  
24 section. Those agencies shall cooperate with the department  
25 [~~commission~~] in enforcing this section.

26 (d) The employer notification filing required under this  
27 section shall be filed with the department [~~commission~~] in

1 accordance with Section 406.009.

2 SECTION 1.083. Section 406.005(c), Labor Code, is amended  
3 to read as follows:

4 (c) Each employer shall post a notice of whether the  
5 employer has workers' compensation insurance coverage at  
6 conspicuous locations at the employer's place of business as  
7 necessary to provide reasonable notice to the employees. The  
8 commissioner [~~commission~~] may adopt rules relating to the form and  
9 content of the notice. The employer shall revise the notice when  
10 the information contained in the notice is changed.

11 SECTION 1.0835. Subchapter A, Chapter 406, Labor Code, is  
12 amended by adding Sections 406.0055 and 406.0056 to read as  
13 follows:

14 Sec. 406.0055. CAPACITY ASSESSMENT; ADMINISTRATIVE  
15 VIOLATION. (a) An employer who obtains workers' compensation  
16 insurance coverage may require a new employee to participate in a  
17 functional capacity assessment to:

18 (1) establish the base capacity of the employee if the  
19 employee should later sustain a compensable injury; and

20 (2) ensure that the employee has the physical capacity  
21 to safely perform the duties of a task related to the employment.

22 (b) An employer shall pay all costs associated with the  
23 assessment, including the fees of any physicians or other health  
24 care providers who perform physical examinations related to the  
25 assessment.

26 (c) An employer may not use the results of a capacity  
27 assessment performed under this section in a manner that violates

1 the Americans with Disabilities Act (42 U.S.C. Section 12101 et  
2 seq.).

3 Sec. 406.0056. INSURANCE DISCOUNT. (a) An insurance  
4 company may grant a premium discount for a workers' compensation  
5 insurance policy for an employer who requires employee capacity  
6 assessments in a manner that complies with Section 406.0055.

7 (b) If determined appropriate by the commissioner in the  
8 administration of the workers' compensation system of this state,  
9 the commissioner may adopt rules under which each insurance company  
10 is required to offer the premium discount described under  
11 Subsection (a).

12 SECTION 1.084. Sections 406.006(a)-(c), Labor Code, are  
13 amended to read as follows:

14 (a) An insurance company from which an employer has obtained  
15 workers' compensation insurance coverage, a certified  
16 self-insurer, and a political subdivision shall file notice of the  
17 coverage and claim administration contact information with the  
18 department [~~commissioner~~] not later than the 10th day after the date  
19 on which the coverage or claim administration agreement takes  
20 effect, unless the commissioner [~~commissioner~~] adopts a rule  
21 establishing a later date for filing. Coverage takes effect on the  
22 date on which a binder is issued, a later date and time agreed to by  
23 the parties, on the date provided by the certificate of  
24 self-insurance, or on the date provided in an interlocal agreement  
25 that provides for self-insurance. The commissioner [~~commissioner~~]  
26 may adopt rules that establish the coverage and claim  
27 administration contact information required under this subsection.

1 (b) The notice required under this section shall be filed  
2 with the department [~~commission~~] in accordance with Section  
3 406.009.

4 (c) An insurance company, certified self-insurer, or  
5 political subdivision commits a violation if the person fails to  
6 file notice with the department [~~commission~~] as provided by this  
7 section. A violation under this subsection is a Class C  
8 administrative violation. Each day of noncompliance constitutes a  
9 separate violation.

10 SECTION 1.085. Sections 406.007(a)-(c), Labor Code, are  
11 amended to read as follows:

12 (a) An employer who terminates workers' compensation  
13 insurance coverage obtained under this subtitle shall file a  
14 written notice with the department [~~commission~~] by certified mail  
15 not later than the 10th day after the date on which the employer  
16 notified the insurance carrier to terminate the coverage. The  
17 notice must include a statement certifying the date that notice was  
18 provided or will be provided to affected employees under Section  
19 406.005.

20 (b) The notice required under this section shall be filed  
21 with the department [~~commission~~] in accordance with Section  
22 406.009.

23 (c) Termination of coverage takes effect on the later of:

24 (1) the 30th day after the date of filing of notice  
25 with the department [~~commission~~] under Subsection (a); or

26 (2) the cancellation date of the policy.

27 SECTION 1.086. Section 406.008, Labor Code, is amended to

1 read as follows:

2           Sec. 406.008. CANCELLATION OR NONRENEWAL OF COVERAGE BY  
3 INSURANCE COMPANY; NOTICE. (a) An insurance company that cancels a  
4 policy of workers' compensation insurance or that does not renew  
5 the policy by the anniversary date of the policy shall deliver  
6 notice of the cancellation or nonrenewal by certified mail or in  
7 person to the employer and the department [~~commission~~] not later  
8 than:

9                   (1) the 30th day before the date on which the  
10 cancellation or nonrenewal takes effect; or

11                   (2) the 10th day before the date on which the  
12 cancellation or nonrenewal takes effect if the insurance company  
13 cancels or does not renew because of:

14                           (A) fraud in obtaining coverage;

15                           (B) misrepresentation of the amount of payroll  
16 for purposes of premium calculation;

17                           (C) failure to pay a premium when due;

18                           (D) an increase in the hazard for which the  
19 employer seeks coverage that results from an act or omission of the  
20 employer and that would produce an increase in the rate, including  
21 an increase because of a failure to comply with:

22                                   (i) reasonable recommendations for loss  
23 control; or

24                                   (ii) recommendations designed to reduce a  
25 hazard under the employer's control within a reasonable period; or

26                           (E) a determination made by the commissioner [~~of~~  
27 ~~insurance~~] that the continuation of the policy would place the

1 insurer in violation of the law or would be hazardous to the  
2 interest of subscribers, creditors, or the general public.

3 (b) The notice required under this section shall be filed  
4 with the department [~~commission~~].

5 (c) Failure of the insurance company to give notice as  
6 required by this section extends the policy until the date on which  
7 the required notice is provided to the employer and the department  
8 [~~commission~~].

9 SECTION 1.087. Sections 406.009(a)-(d), Labor Code, are  
10 amended to read as follows:

11 (a) The department [~~commission~~] shall collect and maintain  
12 the information required under this subchapter and shall monitor  
13 compliance with the requirements of this subchapter.

14 (b) The commissioner [~~commission~~] may adopt rules as  
15 necessary to enforce this subchapter.

16 (c) The commissioner [~~commission~~] may:

17 (1) designate a data collection agent, implement an  
18 electronic reporting and public information access program, and  
19 adopt rules as necessary to implement the data collection  
20 requirements of this subchapter; and

21 (2) [~~.—The executive director may~~] establish the  
22 form, manner, and procedure for the transmission of information to  
23 the department [~~commission— as authorized by Section~~  
24 ~~402.042(b)(11)]].~~

25 (d) The commissioner [~~commission~~] may require an employer  
26 or insurance carrier subject to this subtitle to identify or  
27 confirm an employer's coverage status and claim administration

1 contact information as necessary to achieve the purposes of this  
2 subtitle.

3 SECTION 1.088. Section 406.010(c), Labor Code, is amended  
4 to read as follows:

5 (c) The commissioner [~~commission~~] by rule shall further  
6 specify the requirements of this section.

7 SECTION 1.089. Section 406.011(a), Labor Code, is amended  
8 to read as follows:

9 (a) The commissioner [~~commission~~] by rule may require an  
10 insurance carrier to designate a representative in Austin to act as  
11 the insurance carrier's agent before the department [~~commission~~] in  
12 Austin. Notice to the designated representative [~~agent~~]  
13 constitutes notice under this subtitle or the Insurance Code to the  
14 insurance carrier.

15 SECTION 1.090. Section 406.012, Labor Code, is amended to  
16 read as follows:

17 Sec. 406.012. ENFORCEMENT OF SUBCHAPTER. The department  
18 [~~commission~~] shall enforce the administrative penalties  
19 established under this subchapter in accordance with Chapter 415.

20 SECTION 1.091. Sections 406.051(b) and (c), Labor Code, are  
21 amended to read as follows:

22 (b) The contract for coverage must be written on a policy  
23 and endorsements approved by the department [~~Texas Department of~~  
24 ~~Insurance~~].

25 (c) The employer may not transfer:

26 (1) the obligation to accept a report of injury under  
27 Section 409.001;

1           (2) the obligation to maintain records of injuries  
2 under Section 409.006;

3           (3) the obligation to report injuries to the insurance  
4 carrier under Section 409.005;

5           (4) liability for a violation of Section 415.006 or  
6 415.008 or of Chapter 451; or

7           (5) the obligation to comply with a commissioner  
8 [~~commission~~] order.

9           SECTION 1.092. Section 406.053, Labor Code, is amended to  
10 read as follows:

11           Sec. 406.053. ALL STATES COVERAGE. The department [~~Texas~~  
12 ~~Department of Insurance~~] shall coordinate with the appropriate  
13 agencies of other states to:

14           (1) share information regarding an employer who  
15 obtains all states coverage; and

16           (2) ensure that the department has knowledge of an  
17 employer who obtains all states coverage in another state but fails  
18 to file notice with the department.

19           SECTION 1.0925. Section 406.073(b), Labor Code, is amended  
20 to read as follows:

21           (b) The employer shall file the agreement with the  
22 department [~~executive director~~] on request.

23           SECTION 1.093. Sections 406.074(a) and (b), Labor Code, are  
24 amended to read as follows:

25           (a) The commissioner [~~executive director~~] may enter into an  
26 agreement with an appropriate agency of another jurisdiction with  
27 respect to:

1 (1) conflicts of jurisdiction;

2 (2) assumption of jurisdiction in a case in which the  
3 contract of employment arises in one state and the injury is  
4 incurred in another;

5 (3) procedures for proceeding against a foreign  
6 employer who fails to comply with this subtitle; and

7 (4) procedures for the appropriate agency to use to  
8 proceed against an employer of this state who fails to comply with  
9 the workers' compensation laws of the other jurisdiction.

10 (b) An executed agreement that has been adopted as a rule by  
11 the commissioner [~~commission~~] binds all subject employers and  
12 employees.

13 SECTION 1.094. Section 406.093(b), Labor Code, is amended  
14 to read as follows:

15 (b) The commissioner [~~commission~~] by rule shall adopt  
16 procedures relating to the method of payment of benefits to legally  
17 incompetent employees.

18 SECTION 1.095. Section 406.095(b), Labor Code, is amended  
19 to read as follows:

20 (b) The commissioner [~~commission~~] by rule shall establish  
21 the procedures and requirements for an election under this section.

22 SECTION 1.096. Section 406.098(c), Labor Code, is amended  
23 to read as follows:

24 (c) The commissioner [~~Texas Department of Insurance~~] shall  
25 adopt rules governing the method of calculating premiums for  
26 workers' compensation insurance coverage for volunteer members who  
27 are covered pursuant to this section.

1 SECTION 1.097. Section 406.123(f), Labor Code, is amended  
2 to read as follows:

3 (f) A general contractor shall file a copy of an agreement  
4 entered into under this section with the general contractor's  
5 workers' compensation insurance carrier not later than the 10th day  
6 after the date on which the contract is executed. If the general  
7 contractor is a certified self-insurer, the copy must be filed with  
8 the department [~~division of self-insurance regulation~~].

9 SECTION 1.098. Sections 406.144(c) and (d), Labor Code, are  
10 amended to read as follows:

11 (c) An agreement under this section shall be filed with the  
12 department [~~commission~~] either by personal delivery or by  
13 registered or certified mail and is considered filed on receipt by  
14 the department [~~commission~~].

15 (d) The hiring contractor shall send a copy of an agreement  
16 under this section to the hiring contractor's workers' compensation  
17 insurance carrier on filing of the agreement with the department  
18 [~~commission~~].

19 SECTION 1.0985. Sections 406.145(a)-(d) and (f), Labor  
20 Code, are amended to read as follows:

21 (a) A hiring contractor and an independent subcontractor  
22 may make a joint agreement declaring that the subcontractor is an  
23 independent contractor as defined in Section 406.141(2) and that  
24 the subcontractor is not the employee of the hiring contractor. If  
25 the joint agreement is signed by both the hiring contractor and the  
26 subcontractor and filed with the department [~~commission~~], the  
27 subcontractor, as a matter of law, is an independent contractor and

1 not an employee, and is not entitled to workers' compensation  
2 insurance coverage through the hiring contractor unless an  
3 agreement is entered into under Section 406.144 to provide workers'  
4 compensation insurance coverage. The commissioner [~~commission~~]  
5 shall prescribe forms for the joint agreement.

6 (b) A joint agreement shall be delivered to the department  
7 [~~commission~~] by personal delivery or registered or certified mail  
8 and is considered filed on receipt by the department [~~commission~~].

9 (c) The hiring contractor shall send a copy of a joint  
10 agreement signed under this section to the hiring contractor's  
11 workers' compensation insurance carrier on filing of the joint  
12 agreement with the department [~~commission~~].

13 (d) The department [~~commission~~] shall maintain a system for  
14 accepting and maintaining the joint agreements.

15 (f) If a subsequent hiring agreement is made to which the  
16 joint agreement does not apply, the hiring contractor and  
17 independent contractor shall notify the department [~~commission~~]  
18 and the hiring contractor's workers' compensation insurance carrier  
19 in writing.

20 PART 7. AMENDMENTS TO CHAPTER 407, LABOR CODE

21 SECTION 1.101. Sections 407.001(3) and (5), Labor Code, are  
22 amended to read as follows:

23 (3) "Impaired employer" means a certified  
24 self-insurer:

25 (A) who has suspended payment of compensation as  
26 determined by the department [~~commission~~];

27 (B) who has filed for relief under bankruptcy

1 laws;

2 (C) against whom bankruptcy proceedings have  
3 been filed; or

4 (D) for whom a receiver has been appointed by a  
5 court of this state.

6 (5) "Qualified claims servicing contractor" means a  
7 person who provides claims service for a certified self-insurer,  
8 who is a separate business entity from the affected certified  
9 self-insurer, and who is:

10 (A) an insurance company authorized by the  
11 department [~~Texas Department of Insurance~~] to write workers'  
12 compensation insurance;

13 (B) a subsidiary of an insurance company that  
14 provides claims service under contract; or

15 (C) a third-party administrator that has on its  
16 staff an individual licensed under Chapter 4101, Insurance Code  
17 [~~407, Acts of the 63rd Legislature, Regular Session, 1973 (Article~~  
18 ~~21.07-4, Vernon's Texas Insurance Code)~~].

19 SECTION 1.102. Subchapter A, Chapter 407, Labor Code, is  
20 amended by adding Section 407.002 to read as follows:

21 Sec. 407.002. CLAIM; SUIT. (a) A claim or suit brought by a  
22 claimant or a certified self-insurer shall be styled "in re: [name  
23 of employee] and [name of certified self-insurer]."

24 (b) The commissioner is the agent for service of process for  
25 a claim or suit brought by a workers' compensation claimant against  
26 the qualified claims servicing contractor of a certified  
27 self-insurer.

1 SECTION 1.103. Sections 407.041(a)-(c), Labor Code, are  
2 amended to read as follows:

3 (a) An employer who desires to self-insure under this  
4 chapter must submit an application to the department [~~commission~~]  
5 for a certificate of authority to self-insure.

6 (b) The application must be:

7 (1) submitted on a form adopted by the commissioner  
8 [~~commission~~]; and

9 (2) accompanied by a nonrefundable \$1,000 application  
10 fee.

11 (c) Not later than the 60th day after the date on which the  
12 application is received, the commissioner [~~director~~] shall approve  
13 or deny [~~recommend approval or denial of~~] the application [~~to the~~  
14 ~~commission~~].

15 SECTION 1.104. Section 407.042, Labor Code, is amended to  
16 read as follows:

17 Sec. 407.042. ISSUANCE OF CERTIFICATE OF AUTHORITY. With  
18 the approval of the Texas Certified Self-Insurer Guaranty  
19 Association, [~~and by majority vote,~~] the commissioner [~~commission~~]  
20 shall issue a certificate of authority to self-insure to an  
21 applicant who meets the certification requirements under this  
22 chapter and pays the required fee.

23 SECTION 1.105. Section 407.043, Labor Code, is amended to  
24 read as follows:

25 Sec. 407.043. PROCEDURES ON DENIAL OF APPLICATION. (a) If  
26 the commissioner [~~commission~~] determines that an applicant for a  
27 certificate of authority to self-insure does not meet the

1 certification requirements, the department [~~commission~~] shall  
2 notify the applicant in writing of the [~~its~~] determination, stating  
3 the specific reasons for the denial and the conditions to be met  
4 before approval may be granted.

5 (b) The applicant is entitled to a reasonable period, as  
6 determined by the commissioner [~~commission~~], to meet the conditions  
7 for approval before the application is considered rejected for  
8 purposes of appeal.

9 SECTION 1.106. Section 407.044, Labor Code, is amended to  
10 read as follows:

11 Sec. 407.044. TERM OF CERTIFICATE OF AUTHORITY; RENEWAL.

12 (a) A certificate of authority to self-insure is valid for one year  
13 after the date of issuance and may be renewed under procedures  
14 prescribed by the commissioner [~~commission~~].

15 (b) The commissioner [~~director~~] may stagger the renewal  
16 dates of certificates of authority to self-insure to facilitate the  
17 work load of the department [~~division~~].

18 SECTION 1.107. Section 407.045, Labor Code, is amended to  
19 read as follows:

20 Sec. 407.045. WITHDRAWAL FROM SELF-INSURANCE. (a) A  
21 certified self-insurer may withdraw from self-insurance at any time  
22 with the approval of the commissioner [~~commission~~]. The  
23 commissioner [~~commission~~] shall approve the withdrawal if the  
24 certified self-insurer shows to the satisfaction of the  
25 commissioner [~~commission~~] that the certified self-insurer has  
26 established an adequate program to pay all incurred losses,  
27 including unreported losses, that arise out of accidents or

1 occupational diseases first distinctly manifested during the  
2 period of operation as a certified self-insurer.

3 (b) A certified self-insurer who withdraws from  
4 self-insurance shall surrender to the department [~~commission~~] the  
5 certificate of authority to self-insure.

6 SECTION 1.108. Sections 407.046(a), (b), and (d), Labor  
7 Code, are amended to read as follows:

8 (a) The commissioner [~~commission by majority vote~~] may  
9 revoke the certificate of authority to self-insure of a certified  
10 self-insurer who fails to comply with requirements or conditions  
11 established by this chapter or a rule adopted by the commissioner  
12 [~~commission~~] under this chapter.

13 (b) If the commissioner [~~commission~~] believes that a ground  
14 exists to revoke a certificate of authority to self-insure, the  
15 commissioner [~~commission~~] shall refer the matter to the State  
16 Office of Administrative Hearings. That office shall hold a hearing  
17 to determine if the certificate should be revoked. The hearing  
18 shall be conducted in the manner provided for a contested case  
19 hearing under Chapter 2001, Government Code [~~(the administrative~~  
20 ~~procedure law)~~].

21 (d) If the certified self-insurer fails to show cause why  
22 the certificate should not be revoked, the commissioner  
23 [~~commission~~] immediately shall revoke the certificate.

24 SECTION 1.109. Section 407.047(b), Labor Code, is amended  
25 to read as follows:

26 (b) The security required under Sections 407.064 and  
27 407.065 shall be maintained with the department [~~commission~~] or

1 under the department's [~~commission's~~] control until each claim for  
2 workers' compensation benefits is paid, is settled, or lapses under  
3 this subtitle.

4 SECTION 1.110. Sections 407.061(a), (c), (e), and (f),  
5 Labor Code, are amended to read as follows:

6 (a) To be eligible for a certificate of authority to  
7 self-insure, an applicant for an initial or renewal certificate  
8 must present evidence satisfactory to the commissioner  
9 [~~commission~~] and the association of sufficient financial strength  
10 and liquidity, under standards adopted by the commissioner  
11 [~~commission~~], to ensure that all workers' compensation obligations  
12 incurred by the applicant under this chapter are met promptly.

13 (c) The applicant must present a plan for claims  
14 administration that is acceptable to the commissioner [~~commission~~]  
15 and that designates a qualified claims servicing contractor.

16 (e) The applicant must provide to the department  
17 [~~commission~~] a copy of each contract entered into with a person that  
18 provides claims services, underwriting services, or accident  
19 prevention services if the provider of those services is not an  
20 employee of the applicant. The contract must be acceptable to the  
21 department [~~commission~~] and must be submitted in a standard form  
22 adopted by the commissioner [~~commission~~], if the commissioner  
23 [~~commission~~] adopts such a form.

24 (f) The commissioner [~~commission~~] shall adopt rules for the  
25 requirements for the financial statements required by Subsection  
26 (b)(2).

27 SECTION 1.111. Section 407.062, Labor Code, is amended to

1 read as follows:

2           Sec. 407.062. FINANCIAL           STRENGTH           AND           LIQUIDITY  
3 REQUIREMENTS. In assessing the financial strength and liquidity of  
4 an applicant, the department [~~commission~~] shall consider:

5           (1) the applicant's organizational structure and  
6 management background;

7           (2) the applicant's profit and loss history;

8           (3) the applicant's compensation loss history;

9           (4) the source and reliability of the financial  
10 information submitted by the applicant;

11           (5) the number of employees affected by  
12 self-insurance;

13           (6) the applicant's access to excess insurance  
14 markets;

15           (7) financial ratios, indexes, or other financial  
16 measures that the commissioner considers [~~commission finds~~]  
17 appropriate; and

18           (8) any other information considered appropriate by  
19 the commissioner [~~commission~~].

20           SECTION 1.112. Section 407.063(a), Labor Code, is amended  
21 to read as follows:

22           (a) In addition to meeting the other certification  
23 requirements imposed under this chapter, an applicant for an  
24 initial certificate of authority to self-insure must present  
25 evidence satisfactory to the department [~~commission~~] of a total  
26 unmodified workers' compensation insurance premium in this state in  
27 the calendar year of application of at least \$500,000.

1 SECTION 1.113. Sections 407.064(a), (b), and (e), Labor  
2 Code, are amended to read as follows:

3 (a) Each applicant shall provide security for incurred  
4 liabilities for compensation through a deposit with the department  
5 [~~director~~], in a combination and from institutions approved by the  
6 commissioner [~~director~~], of the following security:

7 (1) cash or negotiable securities of the United States  
8 or of this state;

9 (2) a surety bond that names the commissioner  
10 [~~director~~] as payee; or

11 (3) an irrevocable letter of credit that names the  
12 commissioner [~~director~~] as payee.

13 (b) If an applicant who has provided a letter of credit as  
14 all or part of the security required under this section desires to  
15 cancel the existing letter of credit and substitute a different  
16 letter of credit or another form of security, the applicant shall  
17 notify the department [~~commission~~] in writing not later than the  
18 60th day before the effective date of the cancellation of the  
19 original letter of credit.

20 (e) If an applicant is granted a certificate of authority to  
21 self-insure, any interest or other income that accrues from cash or  
22 negotiable securities deposited by the applicant as security under  
23 this section while the cash or securities are on deposit with the  
24 department [~~director~~] shall be paid to the applicant quarterly.

25 SECTION 1.114. Sections 407.065(b)-(f), Labor Code, are  
26 amended to read as follows:

27 (b) A surety bond, irrevocable letter of credit, or document

1 indicating issuance of an irrevocable letter of credit must be in a  
2 form approved by the commissioner [~~director~~] and must be issued by  
3 an institution acceptable to the commissioner [~~director~~]. The  
4 instrument may be released only according to its terms but may not  
5 be released by the deposit of additional security.

6 (c) The certified self-insurer shall deposit the security  
7 with the comptroller on behalf of the department [~~director~~]. The  
8 comptroller may accept securities for deposit or withdrawal only on  
9 the written order of the commissioner [~~director~~].

10 (d) On receipt by the department [~~director~~] of a request to  
11 renew, submit, or increase or decrease a security deposit, a  
12 perfected security interest is created in the certified  
13 self-insurer's assets in favor of the commissioner [~~director~~] to  
14 the extent of any then unsecured portion of the self-insurer's  
15 incurred liabilities for compensation. That perfected security  
16 interest transfers to cash or securities deposited by the  
17 self-insurer with the department [~~director~~] after the date of the  
18 request and may be released only on:

19 (1) the acceptance by the commissioner [~~director~~] of a  
20 surety bond or irrevocable letter of credit for the full amount of  
21 the incurred liabilities for compensation; or

22 (2) the return of cash or securities by the department  
23 [~~director~~].

24 (e) The certified self-insurer loses all right to, title to,  
25 interest in, and control of the assets or obligations submitted or  
26 deposited as security. The commissioner [~~director~~] may liquidate  
27 the deposit and apply it to the certified self-insurer's incurred

1 liabilities for compensation either directly or through the  
2 association.

3 (f) If the commissioner [~~director~~] determines that a  
4 security deposit is not immediately available for the payment of  
5 compensation, the commissioner [~~director~~] shall determine the  
6 appropriate method of payment and claims administration, which may  
7 include payment by the surety that issued the bond or by the issuer  
8 of an irrevocable letter of credit, and administration by a surety,  
9 an adjusting agency, the association, or through any combination of  
10 those entities approved by the commissioner [~~director~~].

11 SECTION 1.115. Sections 407.066(a) and (b), Labor Code, are  
12 amended to read as follows:

13 (a) The commissioner [~~director~~], after notice to the  
14 concerned parties and an opportunity for a hearing, shall resolve a  
15 dispute concerning the deposit, renewal, termination, release, or  
16 return of all or part of the security, liability arising out of the  
17 submission or failure to submit security, or the adequacy of the  
18 security or reasonableness of the administrative costs, including  
19 legal fees, that arises among:

- 20 (1) a surety;
- 21 (2) an issuer of an agreement of assumption and  
22 guarantee of workers' compensation liabilities;
- 23 (3) an issuer of a letter of credit;
- 24 (4) a custodian of the security deposit;
- 25 (5) a certified self-insurer; or
- 26 (6) the association.

27 (b) A party aggrieved by a decision of the commissioner

1 ~~[director]~~ is entitled to judicial review. Venue for an appeal is  
2 in Travis County.

3 SECTION 1.116. Sections 407.067(a)-(c), Labor Code, are  
4 amended to read as follows:

5 (a) Each applicant shall obtain excess insurance or  
6 reinsurance to cover liability for losses not paid by the  
7 self-insurer in an amount not less than the amount required by the  
8 commissioner ~~[director]~~.

9 (b) The commissioner ~~[director]~~ shall require excess  
10 insurance or reinsurance in at least the amount of \$5 million per  
11 occurrence.

12 (c) A certified self-insurer shall notify the department  
13 ~~[director]~~ not later than the 10th day after the date on which the  
14 certified self-insurer has notice of the cancellation or  
15 termination of excess insurance or reinsurance coverage required  
16 under this section.

17 SECTION 1.117. Sections 407.081(a)-(d), (f), and (g), Labor  
18 Code, are amended to read as follows:

19 (a) Each certified self-insurer shall file an annual report  
20 with the department ~~[commission]~~. The commissioner ~~[commission]~~  
21 shall prescribe the form of the report and shall furnish blank forms  
22 for the preparation of the report to each certified self-insurer.

23 (b) The report must:

24 (1) include payroll information, in the form  
25 prescribed by this chapter and the commissioner ~~[commission]~~;

26 (2) state the number of injuries sustained in the  
27 three preceding calendar years; and

1           (3) indicate separately the amount paid during each  
2 year for income benefits, medical benefits, death benefits, burial  
3 benefits, and other proper expenses related to worker injuries.

4           (c) Each certified self-insurer shall file with the  
5 department [~~commission~~] as part of the annual report annual  
6 independent financial statements that reflect the financial  
7 condition of the self-insurer. The department [~~commission~~] shall  
8 make a financial statement filed under this subsection available  
9 for public review.

10          (d) The commissioner [~~commission~~] may require that the  
11 report include additional financial and statistical information.

12          (f) The report must include an estimate of future liability  
13 for compensation. The estimate must be signed and sworn to by a  
14 certified casualty actuary every third year, or more frequently if  
15 required by the commissioner [~~commission~~].

16          (g) If the commissioner [~~commission~~] considers it  
17 necessary, the commissioner [~~it~~] may order a certified self-insurer  
18 whose financial condition or claims record warrants closer  
19 supervision to report as provided by this section more often than  
20 annually.

21          SECTION 1.118. Sections 407.082(a), (c), and (d), Labor  
22 Code, are amended to read as follows:

23          (a) Each certified self-insurer shall maintain the books,  
24 records, and payroll information necessary to compile the annual  
25 report required under Section 407.081 and any other information  
26 reasonably required by the commissioner [~~commission~~].

27          (c) The material maintained by the certified self-insurer

1 shall be open to examination by an authorized agent or  
2 representative of the department [~~commission~~] at reasonable times  
3 to ascertain the correctness of the information.

4 (d) The examination may be conducted at any location,  
5 including the department's [~~commission's~~] Austin offices, or, at  
6 the certified self-insurer's option, in the offices of the  
7 certified self-insurer. The certified self-insurer shall pay the  
8 reasonable expenses, including travel expenses, of an inspector who  
9 conducts an inspection at its offices.

10 SECTION 1.119. Section 407.101(b), Labor Code, is amended  
11 to read as follows:

12 (b) The department [~~commission~~] shall deposit the  
13 application fee for a certificate of authority to self-insure in  
14 the state treasury to the credit of the workers' compensation  
15 self-insurance fund.

16 SECTION 1.120. Section 407.102, Labor Code, is amended to  
17 read as follows:

18 Sec. 407.102. REGULATORY FEE. (a) Each certified  
19 self-insurer shall pay an annual fee to cover the administrative  
20 costs incurred by the department [~~commission~~] in implementing this  
21 chapter.

22 (b) The department [~~commission~~] shall base the fee on the  
23 total amount of income benefit payments made in the preceding  
24 calendar year. The department [~~commission~~] shall assess each  
25 certified self-insurer a pro rata share based on the ratio that the  
26 total amount of income benefit payments made by that certified  
27 self-insurer bears to the total amount of income benefit payments

1 made by all certified self-insurers.

2 SECTION 1.121. Sections 407.103(a), (b), and (d), Labor  
3 Code, are amended to read as follows:

4 (a) Each certified self-insurer shall pay a self-insurer  
5 maintenance tax for the administration of the department  
6 [~~commission~~] and to support the prosecution of workers'  
7 compensation insurance fraud in this state. Not more than two  
8 percent of the total tax base of all certified self-insurers, as  
9 computed under Subsection (b), may be assessed for a maintenance  
10 tax under this section.

11 (b) To determine the tax base of a certified self-insurer  
12 for purposes of this chapter, the department [~~director~~] shall  
13 multiply the amount of the certified self-insurer's liabilities for  
14 workers' compensation claims incurred in the previous year,  
15 including claims incurred but not reported, plus the amount of  
16 expense incurred by the certified self-insurer in the previous year  
17 for administration of self-insurance, including legal costs, by  
18 1.02.

19 (d) In setting the rate of maintenance tax assessment for  
20 insurance companies, the department [~~commission~~] may not consider  
21 revenue or expenditures related to the operation of the  
22 self-insurer program under this chapter [~~division~~].

23 SECTION 1.122. Sections 407.104(b), (c), and (e), Labor  
24 Code, are amended to read as follows:

25 (b) The department [~~commission~~] shall compute the fee and  
26 taxes of a certified self-insurer and notify the certified  
27 self-insurer of the amounts due. The taxes and fees shall be

1 remitted to the department [~~commission~~].

2 (c) The regulatory fee imposed under Section 407.102 shall  
3 be deposited in the state treasury to the credit of the workers'  
4 compensation self-insurance fund. The self-insurer maintenance  
5 tax shall be deposited in the state treasury to the credit of the  
6 Texas Department of Insurance operating account. Notwithstanding  
7 Section 202.101, Insurance Code, or any other law, money deposited  
8 in the account under this section may be appropriated only for the  
9 use and benefit of the department as provided by the General  
10 Appropriations Act to pay salaries and other expenses arising from  
11 and in connection with the department's duties under this title  
12 [~~commission~~].

13 (e) If the certificate of authority to self-insure of a  
14 certified self-insurer is terminated, the [~~insurance~~] commissioner  
15 [~~or the executive director of the commission~~] shall proceed  
16 immediately to collect taxes due under this subtitle, using legal  
17 process as necessary.

18 SECTION 1.123. Section 407.122(b), Labor Code, is amended  
19 to read as follows:

20 (b) The board of directors is composed of the following  
21 voting members:

22 (1) four [~~three~~] certified self-insurers;

23 (2) the commissioner [~~one commission member~~  
24 ~~representing wage earners,~~

25 [~~(3) one commission member representing employers~~];

26 and

27 (3) [~~(4)~~] the public counsel of the office of public

1 insurance counsel.

2 SECTION 1.124. Section 407.123(b), Labor Code, is amended  
3 to read as follows:

4 (b) Rules adopted by the board are subject to the approval  
5 of the commissioner [~~commission~~].

6 SECTION 1.125. Section 407.124, Labor Code, is amended to  
7 read as follows:

8 Sec. 407.124. IMPAIRED EMPLOYER; ASSESSMENTS. (a) On  
9 determination by the department [~~commission~~] that a certified  
10 self-insurer has become an impaired employer, the commissioner  
11 [~~director~~] shall secure release of the security deposit required by  
12 this chapter and shall promptly estimate:

13 (1) the amount of additional funds needed to  
14 supplement the security deposit;

15 (2) the available assets of the impaired employer for  
16 the purpose of making payment of all incurred liabilities for  
17 compensation; and

18 (3) the funds maintained by the association for the  
19 emergency payment of compensation liabilities.

20 (b) The commissioner [~~director~~] shall advise the board of  
21 directors of the association of the estimate of necessary  
22 additional funds, and the board shall promptly assess each  
23 certified self-insurer to collect the required funds. An  
24 assessment against a certified self-insurer shall be made in  
25 proportion to the ratio that the total paid income benefit payment  
26 for the preceding reported calendar year for that self-insurer  
27 bears to the total paid income benefit payment by all certified

1 self-insurers, except impaired employers, in this state in that  
2 calendar year.

3 (c) A certified self-insurer designated as an impaired  
4 employer is exempt from assessments beginning on the date of the  
5 designation until the department [~~commission~~] determines that the  
6 employer is no longer impaired.

7 SECTION 1.126. Section 407.125, Labor Code, is amended to  
8 read as follows:

9 Sec. 407.125. PAYMENT OF ASSESSMENTS. Each certified  
10 self-insurer shall pay the amount of its assessment to the  
11 association not later than the 30th day after the date on which the  
12 department [~~division~~] notifies the self-insurer of the assessment.  
13 A delinquent assessment may be collected on behalf of the  
14 association through suit. Venue is in Travis County.

15 SECTION 1.127. Section 407.126(d), Labor Code, is amended  
16 to read as follows:

17 (d) The board of directors shall administer the trust fund  
18 in accordance with rules adopted by the commissioner [~~commission~~].

19 SECTION 1.128. Section 407.127(a), Labor Code, is amended  
20 to read as follows:

21 (a) If the commissioner [~~commission~~] determines that the  
22 payment of benefits and claims administration shall be made through  
23 the association, the association assumes the workers' compensation  
24 obligations of the impaired employer and shall begin the payment of  
25 the obligations for which it is liable not later than the 30th day  
26 after the date of notification by the department [~~director~~].

27 SECTION 1.129. Section 407.128, Labor Code, is amended to

1 read as follows:

2           Sec. 407.128. POSSESSION OF SECURITY BY ASSOCIATION. On  
3 the assumption of obligations by the association under the  
4 commissioner's [~~director's~~] determination, the association is  
5 entitled to immediate possession of any deposited security, and the  
6 custodian, surety, or issuer of an irrevocable letter of credit  
7 shall deliver the security to the association with any accrued  
8 interest.

9           SECTION 1.130. Section 407.132, Labor Code, is amended to  
10 read as follows:

11           Sec. 407.132. SPECIAL FUND. Funds advanced by the  
12 association under this subchapter do not become assets of the  
13 impaired employer but are a special fund advanced to the  
14 commissioner [~~director~~], trustee in bankruptcy, receiver, or other  
15 lawful conservator only for the payment of compensation  
16 liabilities, including the costs of claims administration and legal  
17 costs.

18           SECTION 1.131. Section 407.133(a), Labor Code, is amended  
19 to read as follows:

20           (a) The commissioner [~~commission~~], after notice and hearing  
21 [~~and by majority vote~~], may suspend or revoke the certificate of  
22 authority to self-insure of a certified self-insurer who fails to  
23 pay an assessment. The association promptly shall report such a  
24 failure to the department [~~director~~].

25           SECTION 1.132. The following laws are repealed:

- 26           (1) Section 407.001(2), Labor Code;  
27           (2) Section 407.122(c), Labor Code; and

1 (3) Subchapter B, Chapter 407, Labor Code.

2 PART 8. AMENDMENTS TO CHAPTER 407A, LABOR CODE

3 SECTION 1.141. Section 407A.053(d), Labor Code, is amended  
4 to read as follows:

5 (d) Any securities posted must be deposited in the state  
6 treasury and must be assigned to and made negotiable by the  
7 commissioner [~~executive director of the commission~~] under a trust  
8 document acceptable to the commissioner. Interest accruing on a  
9 negotiable security deposited under this subsection shall be  
10 collected and transmitted to the depositor if the depositor is not  
11 in default.

12 SECTION 1.142. Section 407A.201(c), Labor Code, is amended  
13 to read as follows:

14 (c) The membership of an individual member of a group is  
15 subject to cancellation by the group as provided by the bylaws of  
16 the group. An individual member may also elect to terminate  
17 participation in the group. The group shall notify the  
18 commissioner [~~and the commission~~] of the cancellation or  
19 termination of a membership not later than the 10th day after the  
20 date on which the cancellation or termination takes effect and  
21 shall maintain coverage of each canceled or terminated member until  
22 the 30th day after the date of the notice, at the terminating  
23 member's expense, unless before that date the commissioner  
24 [~~commission~~] notifies the group that the canceled or terminated  
25 member has:

26 (1) obtained workers' compensation insurance  
27 coverage;

1 (2) become a certified self-insurer; or

2 (3) become a member of another group.

3 SECTION 1.143. The heading to Section 407A.301, Labor Code,  
4 is amended to read as follows:

5 Sec. 407A.301. MAINTENANCE TAX FOR DEPARTMENT [~~COMMISSION~~]  
6 AND WORKERS' COMPENSATION RESEARCH AND EVALUATION GROUP [~~OVERSIGHT~~  
7 ~~COUNCIL~~].

8 SECTION 1.144. Sections 407A.301(a) and (c), Labor Code,  
9 are amended to read as follows:

10 (a) Each group shall pay a self-insurance group maintenance  
11 tax under this section for:

12 (1) the administration of the department  
13 [~~commission~~];

14 (2) the prosecution of workers' compensation insurance  
15 fraud in this state; and

16 (3) the workers' compensation research and evaluation  
17 group [~~Research and Oversight Council on Workers' Compensation~~].

18 (c) The tax liability of a group under Subsection (a)(3) is  
19 based on gross premium for the group's retention multiplied by the  
20 rate assessed insurance carriers under Section 405.003 [~~404.003~~].

21 SECTION 1.145. Section 407A.303(c), Labor Code, is amended  
22 to read as follows:

23 (c) If the certificate of approval of a group is terminated,  
24 the commissioner [~~or the executive director of the commission~~]  
25 shall immediately notify the comptroller to collect taxes as  
26 directed under Sections 407A.301 and 407A.302.

27 SECTION 1.146. Section 407A.357(b), Labor Code, is amended

1 to read as follows:

2 (b) The guaranty association advisory committee is composed  
3 of the following voting members:

4 (1) three members who represent different groups under  
5 this chapter, subject to Subsection (c);

6 (2) one [~~commission~~] member designated by the  
7 commissioner who represents wage earners;

8 (3) one member designated by the commissioner who  
9 represents employers; and

10 (4) the public counsel of the office of public  
11 insurance counsel.

12 PART 9. AMENDMENTS TO CHAPTER 408, LABOR CODE

13 SECTION 1.151. The heading to Chapter 408, Labor Code, is  
14 amended to read as follows:

15 CHAPTER 408. WORKERS' COMPENSATION BENEFITS: GENERAL PROVISIONS

16 SECTION 1.152. Sections 408.003(b) and (c), Labor Code, are  
17 amended to read as follows:

18 (b) If an injury is found to be compensable and an insurance  
19 carrier initiates compensation, the insurance carrier shall  
20 reimburse the employer for the amount of benefits paid by the  
21 employer to which the employee was entitled under this subtitle.  
22 Payments that are not reimbursed or reimbursable under this section  
23 may be reimbursed under Section 408C.107 [~~408.127~~].

24 (c) The employer shall notify the department [~~commission~~]  
25 and the insurance carrier on forms prescribed by the commissioner  
26 [~~commission~~] of the initiation of and amount of payments made under  
27 this section.

1 SECTION 1.153. Section 408.004, Labor Code, is amended to  
2 read as follows:

3 Sec. 408.004. REQUIRED MEDICAL EXAMINATIONS;  
4 ADMINISTRATIVE VIOLATION. (a) The commissioner [~~commission~~] may  
5 require an employee to submit to medical examinations to resolve  
6 any question about:

7 (1) the appropriateness of the health care received by  
8 the employee; or

9 (2) similar issues.

10 (b) The commissioner [~~commission~~] may require an employee  
11 to submit to a medical examination at the request of the insurance  
12 carrier, but only after the insurance carrier has attempted and  
13 failed to receive the permission and concurrence of the employee  
14 for the examination. Except as otherwise provided by this  
15 subsection, the insurance carrier is entitled to the examination  
16 only once in a 180-day period. The commissioner [~~commission~~] may  
17 adopt rules that require an employee to submit to not more than  
18 three medical examinations in a 180-day period under specified  
19 circumstances, including to determine whether there has been a  
20 change in the employee's condition, whether it is necessary to  
21 change the employee's diagnosis, and whether treatment should be  
22 extended to another body part or system. The commissioner  
23 [~~commission~~] by rule shall adopt a system for monitoring requests  
24 made under this subsection by insurance carriers. That system must  
25 ensure that good cause exists for any additional medical  
26 examination allowed under this subsection that is not requested by  
27 the employee. A subsequent examination must be performed by the

1 same doctor unless otherwise approved by the commissioner  
2 [~~commission~~].

3 (b-1) In addition to an examination under Subsection (b), in  
4 the case of a compensable injury that results in time lost from  
5 employment, the insurance carrier may require the injured employee  
6 to obtain a physical examination from a treating doctor to identify  
7 the full extent of the injuries related to the compensable injury.

8 (b-2) Unless a further examination determines an additional  
9 related injury, the insurance carrier may limit benefits for future  
10 claims by the injured employee to claims related to the injuries  
11 identified under Subsection (a).

12 (c) The insurance carrier shall pay for:

13 (1) an examination required under Subsection (a), ~~[or]~~  
14 (b), or (b-1); and

15 (2) the reasonable expenses incident to the employee  
16 in submitting to the examination.

17 (d) An injured employee is entitled to have a doctor of the  
18 employee's choice present at an examination required by the  
19 commissioner [~~commission~~] at the request of an insurance carrier.  
20 The insurance carrier shall pay a fee set by the commissioner  
21 [~~commission~~] to the doctor selected by the employee.

22 (e) An employee who, without good cause as determined by the  
23 commissioner [~~commission~~], fails or refuses to appear at the time  
24 scheduled for an examination under Subsection (a), ~~[or]~~ (b), or  
25 (b-1) commits a violation. A violation under this subsection is a  
26 Class D administrative violation. An employee is not entitled to  
27 temporary income benefits, and an insurance carrier may suspend the

1 payment of temporary income benefits, during and for a period in  
2 which the employee fails to submit to an examination under  
3 Subsection (a), ~~[or]~~ (b), or (b-1) unless the commissioner  
4 ~~[commission]~~ determines that the employee had good cause for the  
5 failure to submit to the examination. The commissioner  
6 ~~[commission]~~ may order temporary income benefits to be paid for the  
7 period that the commissioner ~~[commission]~~ determines the employee  
8 had good cause. The commissioner ~~[commission]~~ by rule shall ensure  
9 that an employee receives reasonable notice of an examination and  
10 of the insurance carrier's basis for suspension of payment, and  
11 that the employee is provided a reasonable opportunity to  
12 reschedule an examination missed by the employee for good cause.

13 (f) If the report of a doctor selected by an insurance  
14 carrier indicates that an employee can return to work immediately  
15 or has reached maximum medical improvement, the insurance carrier  
16 may suspend or reduce the payment of temporary income benefits on  
17 the 14th day after the date on which the insurance carrier files a  
18 notice of suspension with the department ~~[commission]~~ as provided  
19 by this subsection. ~~[The commission shall hold an expedited  
20 benefit review conference, by personal appearance or by telephone,  
21 not later than the 10th day after the date on which the commission  
22 receives the insurance carrier's notice of suspension. If a  
23 benefit review conference is not held by the 14th day after the date  
24 on which the commission receives the insurance carrier's notice of  
25 suspension, an interlocutory order, effective from the date of the  
26 report certifying maximum medical improvement, is automatically  
27 entered for the continuation of temporary income benefits until a~~

1 ~~benefit review conference is held, and the insurance carrier is~~  
2 ~~eligible for reimbursement for any overpayment of benefits as~~  
3 ~~provided by Chapter 410. The commission is not required to~~  
4 ~~automatically schedule a contested case hearing as required by~~  
5 ~~Section 410.025(b) if a benefit review conference is scheduled~~  
6 ~~under this subsection. If a benefit review conference is held not~~  
7 ~~later than the 14th day, the commission may enter an interlocutory~~  
8 ~~order for the continuation of benefits, and the insurance carrier~~  
9 ~~is eligible for reimbursement for any overpayments of benefits as~~  
10 ~~provided by Chapter 410.] The commissioner [~~commission~~] shall~~

11 adopt rules as necessary to implement this subsection under which:

12 (1) an insurance carrier is required to notify the  
13 employee and the treating doctor of the suspension of benefits  
14 under this subsection by certified mail or another verifiable  
15 delivery method;

16 (2) the department [~~commission~~] makes a reasonable  
17 attempt to obtain the treating doctor's opinion before the  
18 commissioner or a hearings officer [~~commission~~] makes a  
19 determination regarding the entry of an interlocutory order under  
20 this subtitle requiring continuation of benefits; and

21 (3) the commissioner [~~commission~~] may allow  
22 abbreviated contested case hearings by personal appearance or  
23 telephone to consider issues relating to overpayment of benefits  
24 under this section.

25 (g) An insurance carrier who unreasonably requests a  
26 medical examination under Subsection (b) or (b-1) commits a  
27 violation. A violation under this subsection is a Class B

1 administrative violation.

2 SECTION 1.154. Sections 408.0041(a), (b), (d), (e), (f),  
3 and (h), Labor Code, are amended to read as follows:

4 (a) At the request of an insurance carrier or an employee,  
5 the commissioner [~~commission~~] shall order a medical examination to  
6 resolve any question about:

7 (1) the impairment caused by the compensable injury;

8 or

9 (2) the attainment of maximum medical improvement.

10 (b) A medical examination requested under Subsection (a)  
11 shall be performed by the next available doctor on the department's  
12 [~~commission's~~] list of designated doctors whose credentials are  
13 appropriate for the issue in question and the injured employee's  
14 medical condition. The designated doctor doing the review must be  
15 trained and experienced with the treatment and procedures used by  
16 the doctor treating the patient's medical condition, and the  
17 treatment and procedures performed must be within the scope of  
18 practice of the designated doctor. The department [~~commission~~]  
19 shall assign a designated doctor not later than the 10th day after  
20 the date on which the request under Subsection (a) is received, and  
21 the examination must be conducted not later than the 21st day after  
22 the date on which the department [~~commission~~] issues the order  
23 under Subsection (a). An examination under this section may not be  
24 conducted more frequently than every 60 days, unless good cause for  
25 more frequent examinations exists, as defined by commissioner  
26 [~~commission~~] rules.

27 (d) To avoid undue influence on a person selected as a

1 designated doctor under this section, and except as provided by  
2 Subsection (c), only the injured employee or an appropriate member  
3 of the staff of the department [~~commission~~] may communicate with  
4 the designated doctor about the case regarding the injured  
5 employee's medical condition or history before the examination of  
6 the injured employee by the designated doctor. After that  
7 examination is completed, communication with the designated doctor  
8 regarding the injured employee's medical condition or history may  
9 be made only through appropriate department [~~commission~~] staff  
10 members. The designated doctor may initiate communication with any  
11 doctor who has previously treated or examined the injured employee  
12 for the work-related injury or with peer reviewers identified by  
13 the insurance carrier.

14 (e) The designated doctor shall report to the department  
15 [~~commission~~]. The report of the designated doctor has presumptive  
16 weight unless the great weight of the evidence is to the contrary.  
17 An employer may make a bona fide offer of employment subject to  
18 Sections 408C.053(e) [~~408.103(e)~~] and 408C.156(c) [~~408.144(c)~~]  
19 based on the designated doctor's report.

20 (f) If an insurance carrier is not satisfied with the  
21 opinion rendered by a designated doctor under this section, the  
22 insurance carrier may request the commissioner [~~commission~~] to  
23 order an employee to attend an examination by a doctor selected by  
24 the insurance carrier. The commissioner [~~commission~~] shall allow  
25 the insurance carrier reasonable time to obtain and present the  
26 opinion of the doctor selected under this subsection before the  
27 commissioner [~~commission~~] makes a decision on the merits of the

1 issue in question.

2 (h) An employee is not entitled to compensation, and an  
3 insurance carrier is authorized to suspend the payment of temporary  
4 income benefits, during and for a period in which the employee fails  
5 to submit to an examination required by this chapter unless the  
6 commissioner [~~commission~~] determines that the employee had good  
7 cause for the failure to submit to the examination. The  
8 commissioner [~~commission~~] may order temporary income benefits to be  
9 paid for the period for which the commissioner [~~commission~~]  
10 determined that the employee had good cause. The commissioner  
11 [~~commission~~] by rule shall ensure that:

12 (1) an employee receives reasonable notice of an  
13 examination and the insurance carrier's basis for suspension; and

14 (2) the employee is provided a reasonable opportunity  
15 to reschedule an examination for good cause.

16 SECTION 1.155. Sections 408.005(a)-(g), Labor Code, are  
17 amended to read as follows:

18 (a) A settlement may not provide for payment of benefits in  
19 a lump sum except as provided by Section 408C.108 [~~408.128~~].

20 (b) An employee's right to medical benefits as provided by  
21 Section 408A.001 [~~408.021~~] may not be limited or terminated.

22 (c) A settlement or agreement resolving an issue of  
23 impairment:

24 (1) may not be made before the employee reaches  
25 maximum medical improvement; and

26 (2) must adopt an impairment rating using the  
27 impairment rating guidelines described by Section 408C.104

1 ~~[408.124]~~.

2 (d) A settlement must be signed by the commissioner  
3 ~~[director of the division of hearings]~~ and all parties to the  
4 dispute.

5 (e) The commissioner ~~[director of the division of hearings]~~  
6 shall approve a settlement if the commissioner ~~[director]~~ is  
7 satisfied that:

8 (1) the settlement accurately reflects the agreement  
9 between the parties;

10 (2) the settlement reflects adherence to all  
11 appropriate provisions of law and the policies of the department  
12 ~~[commission]~~; and

13 (3) under the law and facts, the settlement is in the  
14 best interest of the claimant.

15 (f) A settlement that is not approved or rejected before the  
16 16th day after the date the settlement is submitted to the  
17 commissioner ~~[director of the division of hearings]~~ is considered  
18 to be approved by the commissioner ~~[director]~~ on that date.

19 (g) A settlement takes effect on the date it is approved by  
20 the commissioner ~~[director of the division of hearings]~~.

21 SECTION 1.156. Section 413.021, Labor Code, is transferred  
22 to Subchapter A, Chapter 408, Labor Code, renumbered as Section  
23 408.009, Labor Code, and amended to read as follows:

24 Sec. 408.009 ~~[413.021]~~. RETURN-TO-WORK COORDINATION  
25 SERVICES. (a) An insurance carrier shall, with the agreement of a  
26 participating employer, provide each ~~[the]~~ employer with  
27 return-to-work coordination services as necessary to facilitate an

1 injured employee's return to employment.

2       **(b)** The insurance carrier shall notify the employer of the  
3 availability of return-to-work coordination services. In offering  
4 the services, insurance carriers and the department [~~commission~~]  
5 shall target employers without return-to-work programs and shall  
6 focus return-to-work efforts on workers who begin to receive  
7 temporary income benefits. The carrier shall provide skilled case  
8 management as early as is practicable for a compensable injury in  
9 which the injured employee sustains a disability that results in  
10 lost time from employment that extends for more than six weeks.

11       **(c)** These services may be offered by insurance carriers in  
12 conjunction with the accident prevention services provided under  
13 Section 411.061. Nothing in this section:

14       **(1)** supersedes the provisions of a collective  
15 bargaining agreement between an employer and the employer's  
16 employees; or

17       **(2)** [~~, and nothing in this section~~] authorizes or  
18 requires an employer to engage in conduct that would otherwise be a  
19 violation of the employer's obligations under the National Labor  
20 Relations Act (29 U.S.C. Section 151 et seq.) [~~, and its subsequent~~  
21 ~~amendments~~].

22       **(d)** [~~(b)~~] Return-to-work coordination services under this  
23 section may include:

24       **(1)** job analysis to identify the physical demands of a  
25 job;

26       **(2)** job modification and restructuring assessments as  
27 necessary to match job requirements with the functional capacity of

1 an employee; and

2 (3) medical or vocational case management to  
3 coordinate the efforts of the employer, the treating doctor, and  
4 the injured employee to achieve timely return to work.

5 (e) [~~(e)~~] An insurance carrier is not required to provide  
6 physical workplace modifications under this section and is not  
7 liable for the cost of modifications made under this section to  
8 facilitate an employee's return to employment.

9 (f) [~~(d)~~] The department [~~commission~~] shall use certified  
10 rehabilitation counselors or other appropriately trained or  
11 credentialed specialists to provide training to department  
12 [~~commission~~] staff regarding the coordination of return-to-work  
13 services under this section.

14 (g) [~~(e)~~] The commissioner [~~commission~~] shall adopt rules  
15 necessary to collect data on return-to-work outcomes to allow full  
16 evaluations of successes and of barriers to achieving timely return  
17 to work after an injury.

18 SECTION 1.157. Section 408.041(c), Labor Code, is amended  
19 to read as follows:

20 (c) If Subsection (a) or (b) cannot reasonably be applied  
21 because the employee's employment has been irregular or because the  
22 employee has lost time from work during the 13-week period  
23 immediately preceding the injury because of illness, weather, or  
24 another cause beyond the control of the employee, the department  
25 [~~commission~~] may determine the employee's average weekly wage by  
26 any method that the commissioner [~~commission~~] considers fair, just,  
27 and reasonable to all parties and consistent with the methods

1 established under this section.

2 SECTION 1.158. Sections 408.042(d), (f), and (g), Labor  
3 Code, are amended to read as follows:

4 (d) The commissioner [~~commission~~] shall:

5 (1) prescribe a form to collect information regarding  
6 the wages of employees with multiple employment; and

7 (2) by rule, determine the manner by which the  
8 department [~~commission~~] collects and distributes wage information  
9 to implement this section.

10 (f) If the department [~~commission~~] determines that  
11 computing the average weekly wage for an employee as provided by  
12 Subsection (c) is impractical or unreasonable, the department  
13 [~~commission~~] shall set the average weekly wage in a manner that more  
14 fairly reflects the employee's average weekly wage and that is fair  
15 and just to both parties or is in the manner agreed to by the  
16 parties. The commissioner [~~commission~~] by rule may define methods  
17 to determine a fair and just average weekly wage consistent with  
18 this section.

19 (g) An insurance carrier is entitled to apply for and  
20 receive reimbursement at least annually from the subsequent injury  
21 fund for the amount of income benefits paid to a worker under this  
22 section that are based on employment other than the employment  
23 during which the compensable injury occurred. The commissioner  
24 [~~commission~~] may adopt rules that govern the documentation,  
25 application process, and other administrative requirements  
26 necessary to implement this subsection.

27 SECTION 1.159. Section 408.043(c), Labor Code, is amended

1 to read as follows:

2 (c) If, for good reason, the commissioner [~~commission~~]  
3 determines that computing the average weekly wage for a seasonal  
4 employee as provided by this section is impractical, the department  
5 [~~commission~~] shall compute the average weekly wage as of the time of  
6 the injury in a manner that is fair and just to both parties.

7 SECTION 1.160. Section 408.0445, Labor Code, is amended to  
8 read as follows:

9 Sec. 408.0445. AVERAGE WEEKLY WAGE FOR MEMBERS OF STATE  
10 MILITARY FORCES AND TEXAS TASK FORCE 1. (a) For purposes of  
11 computing income benefits or death benefits under Section 431.104,  
12 Government Code, the average weekly wage of a member of the state  
13 military forces as defined by Section 431.001, Government Code, who  
14 is engaged in authorized training or duty is an amount equal to the  
15 sum of the member's regular weekly wage at any employment the member  
16 holds in addition to serving as a member of the state military  
17 forces, disregarding any period during which the member is not  
18 fully compensated for that employment because the member is engaged  
19 in authorized military training or duty, and the member's regular  
20 weekly wage as a member of the state military forces, except that  
21 the amount may not exceed 130 [~~100~~] percent of the state average  
22 weekly wage as determined under Section 408.047.

23 (b) For purposes of computing income benefits or death  
24 benefits under Section 88.303, Education Code, the average weekly  
25 wage of a Texas Task Force 1 member, as defined by Section 88.301,  
26 Education Code, who is engaged in authorized training or duty is an  
27 amount equal to the sum of the member's regular weekly wage at any

1 employment, including self-employment, that the member holds in  
2 addition to serving as a member of Texas Task Force 1, except that  
3 the amount may not exceed 130 [~~100~~] percent of the state average  
4 weekly wage as determined under Section 408.047. A member for whom  
5 an average weekly wage cannot be computed shall be paid the minimum  
6 weekly benefit established by the department [~~commission~~].

7 SECTION 1.161. Sections 408.0446(d) and (e), Labor Code,  
8 are amended to read as follows:

9 (d) If the department [~~commission~~] determines that  
10 computing the average weekly wage of a school district employee as  
11 provided by this section is impractical because the employee did  
12 not earn wages during the 12 months immediately preceding the date  
13 of the injury, the department [~~commission~~] shall compute the  
14 average weekly wage in a manner that is fair and just to both  
15 parties.

16 (e) The commissioner [~~commission~~] shall adopt rules as  
17 necessary to implement this section.

18 SECTION 1.162. Section 408.045, Labor Code, is amended to  
19 read as follows:

20 Sec. 408.045. NONPECUNIARY WAGES. The department  
21 [~~commission~~] may not include nonpecuniary wages in computing an  
22 employee's average weekly wage during a period in which the  
23 employer continues to provide the nonpecuniary wages.

24 SECTION 1.163. Section 408.047, Labor Code, is amended to  
25 read as follows:

26 Sec. 408.047. STATE AVERAGE WEEKLY WAGE. The state average  
27 weekly wage for a state [~~the~~] fiscal year is the amount computed by

1 the Texas Workforce Commission under Section 207.002 as the average  
2 weekly wage in covered employment in this state [~~beginning~~  
3 ~~September 1, 2003, and ending August 31, 2004, is \$537, and for the~~  
4 ~~fiscal year beginning September 1, 2004, and ending August 31,~~  
5 ~~2005, is \$539~~].

6 SECTION 1.164. Sections 408.061(a), (d), (e), and (f),  
7 Labor Code, are amended to read as follows:

8 (a) A weekly temporary income benefit may not exceed 130  
9 [~~100~~] percent of the state average weekly wage under Section  
10 408.047 rounded to the nearest whole dollar.

11 (d) A weekly death benefit may not exceed 130 [~~100~~] percent  
12 of the state average weekly wage rounded to the nearest whole  
13 dollar.

14 (e) A weekly lifetime income benefit may not exceed 130  
15 [~~100~~] percent of the state average weekly wage rounded to the  
16 nearest whole dollar.

17 (f) The department [~~commission~~] shall compute the maximum  
18 weekly income benefits for each state fiscal year not later than  
19 September 1 of each year.

20 SECTION 1.165. Section 408.062(b), Labor Code, is amended  
21 to read as follows:

22 (b) The department [~~commission~~] shall compute the minimum  
23 weekly income benefit for each state fiscal year not later than  
24 September 1 of each year.

25 SECTION 1.166. Section 408.063(a), Labor Code, is amended  
26 to read as follows:

27 (a) To expedite the payment of income benefits, the

1 commissioner [~~commission~~] may by rule establish reasonable  
2 presumptions relating to the wages earned by an employee, including  
3 the presumption that an employee's last paycheck accurately  
4 reflects the employee's usual wage.

5 SECTION 1.167. Section 408.202, Labor Code, is amended to  
6 read as follows:

7 Sec. 408.202. ASSIGNABILITY OF BENEFITS. Benefits are not  
8 assignable, except a legal beneficiary may, with department  
9 [~~commission~~] approval, assign the right to death benefits.

10 SECTION 1.168. Sections 408.221(a), (b), (d)-(g), and (i),  
11 Labor Code, are amended to read as follows:

12 (a) An attorney's fee, including a contingency fee, for  
13 representing a claimant before the department [~~commission~~] or court  
14 under this subtitle must be approved by the department [~~commission~~]  
15 or court.

16 (b) Except as otherwise provided, an attorney's fee under  
17 this section is based on the attorney's time and expenses according  
18 to written evidence presented to the department [~~commission~~] or  
19 court. Except as provided by Subsection (c) or Section 408C.159(c)  
20 [~~408.147(c)~~], the attorney's fee shall be paid from the claimant's  
21 recovery.

22 (d) In approving an attorney's fee under this section, the  
23 department [~~commission~~] or court shall consider:

- 24 (1) the time and labor required;
- 25 (2) the novelty and difficulty of the questions  
26 involved;
- 27 (3) the skill required to perform the legal services

1 properly;

2 (4) the fee customarily charged in the locality for  
3 similar legal services;

4 (5) the amount involved in the controversy;

5 (6) the benefits to the claimant that the attorney is  
6 responsible for securing; and

7 (7) the experience and ability of the attorney  
8 performing the services.

9 (e) The commissioner [~~commission~~] by rule or the court may  
10 provide for the commutation of an attorney's fee, except that the  
11 attorney's fee shall be paid in periodic payments in a claim  
12 involving death benefits if the only dispute is as to the proper  
13 beneficiary or beneficiaries.

14 (f) The commissioner [~~commission~~] by rule shall provide  
15 guidelines for maximum attorney's fees for specific services in  
16 accordance with this section.

17 (g) An attorney's fee may not be allowed in a case involving  
18 a fatal injury or lifetime income benefit if the insurance carrier  
19 admits liability on all issues and tenders payment of maximum  
20 benefits in writing under this subtitle while the claim is pending  
21 before the department [~~commission~~].

22 (i) Except as provided by Subsection (c) or Section  
23 408C.159(c) [~~408.147(c)~~], an attorney's fee may not exceed 25  
24 percent of the claimant's recovery.

25 SECTION 1.169. Section 408.222, Labor Code, is amended to  
26 read as follows:

27 Sec. 408.222. ATTORNEY'S FEES PAID TO DEFENSE COUNSEL. (a)

1 The amount of an attorney's fee for defending an insurance carrier  
2 in a workers' compensation action brought under this subtitle must  
3 be approved by the department [~~commission~~] or court and determined  
4 by the department [~~commission~~] or court to be reasonable and  
5 necessary.

6 (b) In determining whether a fee is reasonable under this  
7 section, the department [~~commission~~] or court shall consider issues  
8 analogous to those listed under Section 408.221(d). The defense  
9 counsel shall present written evidence to the department  
10 [~~commission~~] or court relating to:

11 (1) the time spent and expenses incurred in defending  
12 the case; and

13 (2) other evidence considered necessary by the  
14 department [~~commission~~] or court in making a determination under  
15 this section.

16 PART 10. ADOPTION OF CHAPTERS 408A AND 408B, LABOR CODE

17 SECTION 1.201. The heading to Subchapter B, Chapter 408,  
18 Labor Code, and Sections 408.021, 408.022, and 408.025-408.030,  
19 Labor Code, are designated as Chapter 408A, Labor Code, and that  
20 chapter is amended to read as follows:

21 CHAPTER 408A. WORKERS' COMPENSATION

22 [~~SUBCHAPTER B. MEDICAL~~] BENEFITS: GENERAL PROVISIONS REGARDING

23 MEDICAL BENEFITS

24 Sec. 408A.001 [~~408.021~~]. ENTITLEMENT TO MEDICAL BENEFITS.

25 (a) An employee who sustains a compensable injury is entitled to  
26 all health care reasonably required by the nature of the injury as  
27 and when needed. The employee is specifically entitled to health

1 care that:

2 (1) cures or relieves the effects naturally resulting  
3 from the compensable injury;

4 (2) promotes recovery; or

5 (3) enhances the ability of the employee to return to  
6 or retain employment.

7 (b) Medical benefits are payable from the date of the  
8 compensable injury.

9 (c) Except in an emergency, all health care must be approved  
10 or recommended by the employee's treating doctor.

11 (d) An insurance carrier's liability for medical benefits  
12 may not be limited or terminated by agreement or settlement.

13 Sec. 408A.002 [~~408.022~~]. SELECTION OF DOCTOR. (a) An  
14 [~~Except in an emergency, the commission shall require an employee~~  
15 ~~to receive medical treatment from a doctor chosen from a list of~~  
16 ~~doctors approved by the commission. A doctor may perform only those~~  
17 ~~procedures that are within the scope of the practice for which the~~  
18 ~~doctor is licensed. The~~] employee is entitled to the employee's  
19 initial choice of a doctor as provided by this section [~~from the~~  
20 ~~commission's list~~].

21 (b) If an employee is dissatisfied with the initial choice  
22 of a doctor [~~from the commission's list~~], the employee may notify  
23 the department [~~commission~~] and request authority to select an  
24 alternate doctor. The notification must be in writing stating the  
25 reasons for the change, except notification may be by telephone  
26 when a medical necessity exists for immediate change.

27 (c) The commissioner [~~commission~~] shall prescribe criteria

1 to be used by the department [~~commission~~] in granting the employee  
2 authority to select an alternate doctor. The criteria may include:

3 (1) whether treatment by the current doctor is  
4 medically inappropriate;

5 (2) the professional reputation of the doctor;

6 (3) whether the employee is receiving appropriate  
7 medical care to reach maximum medical improvement; and

8 (4) whether a conflict exists between the employee and  
9 the doctor to the extent that the doctor-patient relationship is  
10 jeopardized or impaired.

11 (d) A change of doctor may not be made to secure a new  
12 impairment rating or medical report.

13 (e) For purposes of this section, the following is not a  
14 selection of an alternate doctor:

15 (1) a referral made by the doctor chosen by the  
16 employee if the referral is medically reasonable and necessary;

17 (2) the receipt of services ancillary to surgery;

18 (3) the obtaining of a second or subsequent opinion  
19 only on the appropriateness of the diagnosis or treatment;

20 (4) the selection of a doctor because the original  
21 doctor:

22 (A) dies;

23 (B) retires; or

24 (C) becomes unavailable or unable to provide  
25 medical care to the employee; or

26 (5) a change of doctors required because of a change of  
27 residence by the employee.

1       (f) Notwithstanding Subsections (a)-(e), if health care  
2 services are provided under a provider network established under  
3 Chapter 408B, the employee's choice of an initial treating doctor  
4 is limited to a primary care physician who is a member of that  
5 provider network.

6       Sec. 408A.003. TREATING DOCTOR DUTIES. (a)  
7 Notwithstanding Section 4(h), Article 21.58A, Insurance Code, a  
8 utilization review agent that uses doctors to perform reviews of  
9 health care services provided under this subtitle may use doctors  
10 licensed by another state to perform the reviews, but those reviews  
11 must be performed under the direction of a doctor licensed to  
12 practice in this state.

13       (b) The injured employee's treating doctor is responsible  
14 for the efficient management of medical care as required by Section  
15 408A.004(c) and commissioner rules. The department shall collect  
16 information regarding:

17               (1) return-to-work outcomes;  
18               (2) patientsatisfaction; and  
19               (3) cost and utilization of health care provided or  
20 authorized by a treating doctor.

21       (c) The commissioner may adopt rules to define the role of  
22 the treating doctor and to specify outcome information to be  
23 collected for a treating doctor.

24       (d) A doctor who provides health care services under this  
25 subtitle may perform only those procedures that are within the  
26 scope of the practice for which the doctor is licensed.

27       Sec. 408A.004 [408.025]. REPORTS AND RECORDS REQUIRED FROM

1 HEALTH CARE PROVIDERS. (a) The commissioner [~~commission~~] by rule  
2 shall adopt requirements for reports and records that are required  
3 to be filed with the department [~~commission~~] or provided to the  
4 injured employee, the employee's attorney, or the insurance carrier  
5 by a health care provider.

6 (b) The commissioner [~~commission~~] by rule shall adopt  
7 requirements for reports and records that are to be made available  
8 by a health care provider to another health care provider to prevent  
9 unnecessary duplication of tests and examinations.

10 (c) The treating doctor is responsible for maintaining  
11 efficient utilization of health care.

12 (d) On the request of an injured employee, the employee's  
13 attorney, or the insurance carrier, a health care provider shall  
14 furnish records relating to treatment or hospitalization for which  
15 compensation is being sought. The department [~~commission~~] may  
16 regulate the charge for furnishing a report or record, but the  
17 charge may not be less than the fair and reasonable charge for  
18 furnishing the report or record. A health care provider may  
19 disclose to the insurance carrier of an affected employer records  
20 relating to the diagnosis or treatment of the injured employee  
21 without the authorization of the injured employee to determine the  
22 amount of payment or the entitlement to payment.

23 Sec. 408A.005 [~~408.026~~]. SPINAL SURGERY. Except in a  
24 medical emergency, an insurance carrier is liable for medical costs  
25 related to spinal surgery only as provided by Section 413.014 and  
26 commissioner [~~commission~~] rules.

27 Sec. 408A.006 [~~408.027~~]. PAYMENT OF HEALTH CARE PROVIDER.

1 (a) An insurance carrier shall pay the fee allowed under Section  
2 413.011 for a service rendered by a health care provider not later  
3 than the 45th day after the date the insurance carrier receives the  
4 charge unless the amount of the payment or the entitlement to  
5 payment is disputed.

6 (b) If an insurance carrier disputes the amount charged by a  
7 health care provider and requests an audit of the services  
8 rendered, the insurance carrier shall pay 50 percent of the amount  
9 charged by the health care provider not later than the 45th day  
10 after the date the insurance carrier receives the statement of  
11 charge.

12 (c) If an insurance carrier denies liability or the health  
13 care provider's entitlement to payment and an accident or health  
14 insurance company provides benefits to the employee for medical or  
15 other health care services, the right to recover that amount may be  
16 assigned by the employee to the accident or health insurance  
17 company.

18 (d) If an insurance carrier disputes the amount of payment  
19 or the health care provider's entitlement to payment, the insurance  
20 carrier shall send to the department [~~commission~~], the health care  
21 provider, and the injured employee a report that sufficiently  
22 explains the reasons for the reduction or denial of payment for  
23 health care services provided to the employee[~~. The insurance~~  
24 ~~carrier is entitled to a hearing as provided by Section~~  
25 ~~413.031(d)~~].

26 (e) An insurance carrier that uses a provider network under  
27 Chapter 408B to provide medical benefits under this subtitle shall

1 pay health care providers promptly in the manner prescribed by  
2 Subchapter C, Chapter 1301, Insurance Code.

3 Sec. 408A.007 [~~408.028~~]. PHARMACEUTICAL SERVICES. (a) A  
4 physician providing care to an injured employee under this subtitle  
5 [~~subchapter~~] shall prescribe for the employee any necessary  
6 prescription drugs, and order over-the-counter alternatives to  
7 prescription medications as clinically appropriate and applicable,  
8 in accordance with applicable state law and as provided by  
9 Subsection (b). A doctor providing care may order over-the-counter  
10 alternatives to prescription medications, when clinically  
11 appropriate, in accordance with applicable state law and as  
12 provided by Subsection (b).

13 (b) The commissioner [~~commission~~] by rule shall develop an  
14 open formulary under Section 413.011 that requires the use of  
15 generic pharmaceutical medications and clinically appropriate  
16 over-the-counter alternatives to prescription medications unless  
17 otherwise specified by the prescribing doctor, in accordance with  
18 applicable state law.

19 (c) Except as otherwise provided by this subtitle, an  
20 insurance carrier may not require an injured employee to use  
21 pharmaceutical services designated by the carrier.

22 (d) The commissioner [~~commission~~] shall adopt rules to  
23 allow an injured employee to purchase over-the-counter  
24 alternatives to prescription medications prescribed or ordered  
25 under Subsection (a) or (b) and to obtain reimbursement from the  
26 insurance carrier for those medications.

27 (e) Notwithstanding Subsection (b), the commissioner

1 ~~[commission]~~ by rule shall allow an injured employee to purchase a  
2 brand name drug rather than a generic pharmaceutical medication or  
3 over-the-counter alternative to a prescription medication if a  
4 health care provider prescribes a generic pharmaceutical  
5 medication or an over-the-counter alternative to a prescription  
6 medication. The employee shall be responsible for paying the  
7 difference between the cost of the brand name drug and the cost of  
8 the generic pharmaceutical medication or of an over-the-counter  
9 alternative to a prescription medication. The employee may not  
10 seek reimbursement for the difference in cost from an insurance  
11 carrier and is not entitled to use the medical dispute resolution  
12 provisions of Chapter 413 with regard to the prescription. A  
13 payment described by this subsection by an employee to a health care  
14 provider does not violate Section 413.042. This subsection does  
15 not affect the duty of a health care provider to comply with the  
16 requirements of Subsection (b) when prescribing medications or  
17 ordering over-the-counter alternatives to prescription  
18 medications.

19 Sec. 408A.008 [~~408.029~~]. NURSE FIRST ASSISTANT SERVICES.  
20 An insurance carrier may not refuse to reimburse a health care  
21 practitioner solely because that practitioner is a nurse first  
22 assistant, as defined by Section 301.1525, Occupations Code, for a  
23 covered service that a physician providing health care services  
24 under this subtitle has requested the nurse first assistant to  
25 perform.

26 Sec. 408A.009 [~~408.030~~]. REPORTS OF PHYSICIAN VIOLATIONS.  
27 If the department ~~[commission]~~ discovers an act or omission by a

1 physician that may constitute a felony, a misdemeanor involving  
2 moral turpitude, a violation of a state or federal narcotics or  
3 controlled substance law, an offense involving fraud or abuse under  
4 the Medicare or Medicaid program, or a violation of this subtitle,  
5 the commissioner [~~commission~~] shall immediately report that act or  
6 omission to the Texas State Board of Medical Examiners.

7 SECTION 1.202. Subtitle A, Title 5, Labor Code, is amended  
8 by adding Chapter 408B to read as follows:

9 CHAPTER 408B. WORKERS' COMPENSATION BENEFITS: USE  
10 OF PROVIDER NETWORKS FOR PROVISION OF MEDICAL BENEFITS

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Sec. 408B.001. DEFINITION. In this chapter, "utilization  
13 review" has the meaning assigned by Section 2, Article 21.58A,  
14 Insurance Code.

15 [Sections 408B.002-408B.050 reserved for expansion]

16 SUBCHAPTER B. USE OF PROVIDER NETWORKS

17 Sec. 408B.051. USE OF PROVIDER NETWORKS. (a) Insurance  
18 carriers may establish or contract with provider networks to  
19 provide health care services under this subtitle.

20 (b) If an insurance carrier elects to use a provider  
21 network, an injured employee whose employer contracts with that  
22 insurance carrier for the provision of workers' compensation  
23 insurance coverage is required to obtain treatment within the  
24 provider network.

25 (c) Except as otherwise provided by this subtitle, all  
26 health care services received by an injured employee must be  
27 ordered by the primary care physician selected by the injured

1 employee, who serves as the employee's treating doctor and primary  
2 care provider. Any change of primary care physician requires  
3 authorization by the insurance carrier. Any treatment referral  
4 must be made by the primary care physician and, except as provided  
5 by Section 1301.005, Insurance Code, must be to a participating  
6 network provider.

7 (d) Except as otherwise provided by this subtitle, and after  
8 notice and opportunity for hearing, the department may relieve an  
9 insurance carrier for liability for health care that is furnished  
10 by a health care provider selected in a manner inconsistent with the  
11 requirements of this subchapter.

12 Sec. 408B.052. STANDARDS. (a) The standards adopted for  
13 preferred provider networks under Chapter 1301, Insurance Code,  
14 apply as minimum standards for provider networks under this chapter  
15 and are adopted by reference except to the extent those standards  
16 are inconsistent with this subtitle.

17 (b) Each provider network and insurance carrier subject to  
18 this subtitle shall provide for continuity of care and emergency  
19 care for injured employees receiving health care services through  
20 the network or carrier in the manner prescribed by Chapter 1301,  
21 Insurance Code.

22 Sec. 408B.053. RULES. The commissioner may adopt rules as  
23 necessary to implement additional standards for provider networks  
24 providing health care services under this subtitle.

25 Sec. 408B.054. UNDERSERVED AREAS. The commissioner by rule  
26 shall identify areas of this state in which access to health care  
27 providers is less available and shall adopt appropriate standards

1 and guidelines regarding the use of provider networks in those  
2 areas.

3 Sec. 408B.055. ELIGIBILITY REQUIREMENTS; PROVIDER  
4 PARTICIPATION. (a) To be eligible to provide medical benefits  
5 under this subtitle, a provider network must:

6 (1) contract with a number and type of health care  
7 providers sufficient to provide adequate competition and a broad  
8 choice of health care providers within the network structure;

9 (2) use a process for verifying the professional  
10 credentials of participating health care providers that is  
11 consistent with Chapter 1452, Insurance Code;

12 (3) use standard health care provider service  
13 agreements consistent with Chapter 1301, Insurance Code, that  
14 include provisions regarding:

15 (A) conditions for participation in the network;

16 (B) the respective obligations and requirements  
17 of all parties to the agreement;

18 (C) health care provider billing and  
19 reimbursement procedures and standards;

20 (D) processes, procedures, standards, and  
21 guidelines for utilization review;

22 (E) guidelines and procedures relating to the  
23 confidentiality of patient information;

24 (F) procedures for filing a complaint with the  
25 provider network;

26 (G) standards and requirements for pattern of  
27 practice review and utilization review; and

1           (H) procedures, standards, and guidelines  
2 promoting the maximum physical recovery and timely return to  
3 employment of an employee who sustains a compensable injury.

4           (b) Each provider network shall give health care providers  
5 an opportunity to apply to the network for inclusion as  
6 participating providers in the network.

7           Sec. 408B.056. UTILIZATION REVIEW FOR IN-NETWORK CARE. (a)  
8 Provider networks, health care providers, and insurance carriers  
9 shall enter into agreements to use utilization review programs and  
10 may adopt requirements regarding those programs.

11           (b) The entity performing utilization review under a  
12 program described by Subsection (a) must be a certified utilization  
13 review agent under Article 21.58A, Insurance Code.

14           (c) Except as provided by Section 413.0135, utilization  
15 review conducted under this section must be performed in accordance  
16 with Article 21.58A, Insurance Code.

17           Sec. 408B.057. PREAUTHORIZATION; UTILIZATION REVIEW FOR  
18 OUT-OF-NETWORK CARE. (a) The preauthorization requirements of  
19 Section 413.014 apply to out-of-network care.

20           (b) For out-of-network care, an insurance carrier may:

21               (1) perform utilization review itself if the carrier  
22 is a certified utilization review agent under Article 21.58A,  
23 Insurance Code; or

24               (2) contract for utilization review services with a  
25 certified utilization review agent.

26           Sec. 408B.058. DISPUTE RESOLUTION FOR UTILIZATION REVIEW  
27 DECISIONS: IN-NETWORK CARE. (a) Except as provided by Section

1 413.0135, utilization review regarding in-network care must meet  
2 the requirements of Article 21.58A, Insurance Code. An adverse  
3 determination may be appealed to the utilization review agent for  
4 reconsideration in the manner provided by Section 6, Article  
5 21.58A, Insurance Code.

6 (b) After reconsideration by the utilization review agent,  
7 any remaining dispute is subject to review by an independent review  
8 organization as provided by Subchapter C, Chapter 413.

9 Sec. 408B.059. DISPUTE RESOLUTION FOR OUT-OF-NETWORK CARE.  
10 The medical dispute resolution requirements of Subchapter C,  
11 Chapter 413, apply to a dispute regarding out-of-network care.

12 SECTION 1.203. The following laws are repealed:

- 13 (1) Sections 408.0221-408.0223, Labor Code;  
14 (2) Section 408.023, Labor Code;  
15 (3) Section 408.0231, Labor Code; and  
16 (4) Section 408.024, Labor Code.

17 PART 11. ADOPTION OF CHAPTERS 408C AND 408D, LABOR CODE

18 SECTION 1.251. Subchapters E, F, G, H, and I, Chapter 408,  
19 Labor Code, are redesignated as Chapter 408C, Labor Code, and that  
20 chapter is amended to read as follows:

21 CHAPTER 408C. WORKERS' COMPENSATION BENEFITS: INCOME BENEFITS

22 SUBCHAPTER A ~~[E]~~. INCOME BENEFITS: ~~[IN]~~ GENERAL PROVISIONS

23 Sec. 408C.001 ~~[408.081]~~. INCOME BENEFITS. (a) An employee  
24 is entitled to income benefits as provided by ~~[in]~~ this subtitle  
25 ~~[chapter]~~.

26 (b) Except as otherwise provided by this section or this  
27 subtitle, income benefits shall be paid weekly as and when they

1 accrue without order from the commissioner [~~commission~~]. Interest  
2 on accrued but unpaid benefits shall be paid, without order of the  
3 commissioner [~~commission~~], at the time the accrued benefits are  
4 paid.

5 (c) The commissioner [~~commission~~] by rule shall establish  
6 requirements for agreements under which income benefits may be paid  
7 monthly. Income benefits may be paid monthly only:

8 (1) on the request of the employee and the agreement of  
9 the employee and the insurance carrier; and

10 (2) in compliance with the requirements adopted by the  
11 commissioner [~~commission~~].

12 (d) An employee's entitlement to income benefits under this  
13 chapter terminates on the death of the employee. An interest in  
14 future income benefits does not survive after the employee's death.

15 Sec. 408C.002 [~~408.082~~]. ACCRUAL OF RIGHT TO INCOME  
16 BENEFITS. (a) Income benefits may not be paid under this subtitle  
17 for an injury that does not result in disability for at least one  
18 week.

19 (b) If the disability continues for longer than one week,  
20 weekly income benefits begin to accrue on the eighth day after the  
21 date of the injury. If the disability does not begin at once after  
22 the injury occurs or within eight days of the occurrence but does  
23 result subsequently, weekly income benefits accrue on the eighth  
24 day after the date on which the disability began.

25 (c) If the disability continues for 14 days [~~four weeks~~] or  
26 longer after the date the disability [~~it~~] begins, compensation  
27 shall be computed from the date the disability begins.

1 (d) This section does not preclude the recovery of medical  
2 benefits as provided by this subtitle [~~Subchapter B~~].

3 Sec. 408C.003 [~~408.083~~]. TERMINATION OF RIGHT TO TEMPORARY  
4 INCOME, IMPAIRMENT INCOME, AND SUPPLEMENTAL INCOME BENEFITS. (a)  
5 Except as provided by Subsection (b), an employee's eligibility for  
6 temporary income benefits, impairment income benefits, and  
7 supplemental income benefits terminates on the expiration of 401  
8 weeks after the date of injury.

9 (b) If an employee incurs an occupational disease, the  
10 employee's eligibility for temporary income benefits, impairment  
11 income benefits, and supplemental income benefits terminates on the  
12 expiration of 401 weeks after the date on which benefits began to  
13 accrue.

14 Sec. 408C.004 [~~408.084~~]. CONTRIBUTING INJURY. (a) At the  
15 request of the insurance carrier, the commissioner [~~commission~~] may  
16 order that impairment income benefits and supplemental income  
17 benefits be reduced in a proportion equal to the proportion of a  
18 documented impairment that resulted from earlier compensable  
19 injuries.

20 (b) The department [~~commission~~] shall consider the  
21 cumulative impact of the compensable injuries on the employee's  
22 overall impairment in determining a reduction under this section.

23 (c) If the combination of the compensable injuries results  
24 in an injury compensable under Section 408C.201 [~~408.161~~], the  
25 benefits for that injury shall be paid as provided by Section  
26 408C.202 [~~408.162~~].

27 Sec. 408C.005 [~~408.085~~]. ADVANCE OF BENEFITS FOR HARDSHIP.

1 (a) If there is a likelihood that income benefits will be paid, the  
2 department [~~commission~~] may grant an employee suffering financial  
3 hardship advances as provided by this subtitle against the amount  
4 of income benefits to which the employee may be entitled. An  
5 advance may be ordered before or after the employee attains maximum  
6 medical improvement. An insurance carrier shall pay the advance  
7 ordered.

8 (b) An employee must apply to the department [~~commission~~]  
9 for an advance on a form prescribed by the commissioner  
10 [~~commission~~]. The application must describe the hardship that is  
11 the grounds for the advance.

12 (c) An advance under this section may not exceed an amount  
13 equal to four times the maximum weekly benefit for temporary income  
14 benefits as computed under [~~in~~] Section 408.061. The department  
15 [~~commission~~] may not grant more than three advances to a particular  
16 employee based on the same injury.

17 (d) The department [~~commission~~] may not grant an advance to  
18 an employee who is receiving, on the date of the application under  
19 Subsection (b), at least 90 percent of the employee's net preinjury  
20 wages under Section 408.003 or 408C.109 [~~408.129~~].

21 Sec. 408C.006 [~~408.086~~]. DEPARTMENT [~~COMMISSION~~]  
22 DETERMINATION OF EXTENDED UNEMPLOYMENT OR UNDEREMPLOYMENT. (a)  
23 During the period that impairment income benefits or supplemental  
24 income benefits are being paid to an employee, the department  
25 [~~commission~~] shall determine at least annually whether any extended  
26 unemployment or underemployment is a direct result of the  
27 employee's impairment.

1 (b) To make this determination, the department [~~commission~~]  
2 may require periodic reports from the employee and the insurance  
3 carrier and, at the insurance carrier's expense, may require  
4 physical or other examinations, vocational assessments, or other  
5 tests or diagnoses necessary to perform the department's duties  
6 [~~its duty~~] under this section and Subchapter D [~~H~~].

7 SUBCHAPTER B [~~F~~]. TEMPORARY INCOME BENEFITS

8 Sec. 408C.051 [~~408.101~~]. TEMPORARY INCOME BENEFITS. (a)  
9 An employee is entitled to temporary income benefits if the  
10 employee has a disability and has not attained maximum medical  
11 improvement.

12 (b) On the initiation of compensation as provided by Section  
13 409.021, the insurance carrier shall pay temporary income benefits  
14 as provided by this subchapter.

15 Sec. 408C.052 [~~408.102~~]. DURATION OF TEMPORARY INCOME  
16 BENEFITS. (a) Temporary income benefits continue until the  
17 employee reaches maximum medical improvement.

18 (b) The commissioner [~~commission~~] by rule shall establish a  
19 presumption that maximum medical improvement has been reached based  
20 on a lack of medical improvement in the employee's condition.

21 Sec. 408C.053 [~~408.103~~]. AMOUNT OF TEMPORARY INCOME  
22 BENEFITS. (a) Subject to Sections 408.061 and 408.062, the amount  
23 of a temporary income benefit is equal to:

24 (1) 70 percent of the amount computed by subtracting  
25 the employee's weekly earnings after the injury from the employee's  
26 average weekly wage; or

27 (2) for the first 26 weeks, 75 percent of the amount

1 computed by subtracting the employee's weekly earnings after the  
2 injury from the employee's average weekly wage if the employee  
3 earns less than \$8.50 an hour.

4 (b) A temporary income benefit under Subsection (a)(2) may  
5 not exceed the employee's actual earnings for the previous year. It  
6 is presumed that the employee's actual earnings for the previous  
7 year are equal to:

8 (1) the sum of the employee's wages as reported in the  
9 most recent four quarterly wage reports to the Texas Workforce  
10 [~~Employment~~] Commission divided by 52;

11 (2) the employee's wages in the single quarter of the  
12 most recent four quarters in which the employee's earnings were  
13 highest, divided by 13, if the department [~~commission~~] finds that  
14 the employee's most recent four quarters' earnings reported in the  
15 Texas Workforce [~~Employment~~] Commission wage reports are not  
16 representative of the employee's usual earnings; or

17 (3) the amount the department [~~commission~~] determines  
18 from other credible evidence to be the actual earnings for the  
19 previous year if the Texas Workforce [~~Employment~~] Commission does  
20 not have a wage report reflecting at least one quarter's earnings  
21 because the employee worked outside the state during the previous  
22 year.

23 (c) A presumption under Subsection (b) may be rebutted by  
24 other credible evidence of the employee's actual earnings.

25 (d) The Texas Workforce [~~Employment~~] Commission shall  
26 provide information required under this section in the manner most  
27 efficient for transferring the information.

1 (e) For purposes of Subsection (a), if an employee is  
2 offered a bona fide position of employment that the employee is  
3 reasonably capable of performing, given the physical condition of  
4 the employee and the geographic accessibility of the position to  
5 the employee, the employee's weekly earnings after the injury are  
6 equal to the weekly wage for the position offered to the employee.

7 Sec. 408C.054 [~~408.104~~]. MAXIMUM MEDICAL IMPROVEMENT AFTER  
8 SPINAL SURGERY. (a) On application by either the employee or the  
9 insurance carrier, the commissioner [~~commission~~] by order may  
10 extend the 104-week period described by Section 401.011(30)(B) if  
11 the employee has had spinal surgery, or has been approved for spinal  
12 surgery under Section 408A.005 [~~408.026~~] and commissioner  
13 [~~commission~~] rules, within 12 weeks before the expiration of the  
14 104-week period. If an order is issued under this section, the  
15 order shall extend the statutory period for maximum medical  
16 improvement to a date certain, based on medical evidence presented  
17 to the department [~~commission~~].

18 (b) Either the employee or the insurance carrier may dispute  
19 an application for extension made under this section. A dispute  
20 under this subsection is subject to Chapter 410.

21 (c) The commissioner [~~commission~~] shall adopt rules to  
22 implement this section, including rules establishing procedures  
23 for requesting and disputing an extension.

24 Sec. 408C.055 [~~408.105~~]. SALARY CONTINUATION IN LIEU OF  
25 TEMPORARY INCOME BENEFITS. (a) In lieu of payment of temporary  
26 income benefits under this subchapter, an employer may continue to  
27 pay the salary of an employee who sustains a compensable injury

1 under a contractual obligation between the employer and employee,  
2 such as a collective bargaining agreement, written agreement, or  
3 policy.

4 (b) Salary continuation may include wage supplementation  
5 if:

6 (1) employer reimbursement is not sought from the  
7 carrier as provided by Section 408C.107 [~~408.127~~]; and

8 (2) the supplementation does not affect the employee's  
9 eligibility for any future income benefits.

10 SUBCHAPTER C [~~G~~]. IMPAIRMENT INCOME BENEFITS

11 Sec. 408C.101 [~~408.121~~]. IMPAIRMENT INCOME BENEFITS. (a)  
12 An employee's entitlement to impairment income benefits begins on  
13 the day after the date the employee reaches maximum medical  
14 improvement and ends on the earlier of:

15 (1) the date of expiration of a period computed at the  
16 rate of three weeks for each percentage point of impairment; or

17 (2) the date of the employee's death.

18 (b) The insurance carrier shall begin to pay impairment  
19 income benefits not later than the fifth day after the date on which  
20 the insurance carrier receives the doctor's report certifying  
21 maximum medical improvement. Impairment income benefits shall be  
22 paid for a period based on the impairment rating, unless that rating  
23 is disputed under Subsection (c).

24 (c) If the insurance carrier disputes the impairment rating  
25 used under Subsection (a), the carrier shall pay the employee  
26 impairment income benefits for a period based on the carrier's  
27 reasonable assessment of the correct rating.

1           Sec. 408C.102 [~~408.122~~]. ELIGIBILITY FOR IMPAIRMENT INCOME  
2 BENEFITS; DESIGNATED DOCTOR. (a) A claimant may not recover  
3 impairment income benefits unless evidence of impairment based on  
4 an objective clinical or laboratory finding exists. If the finding  
5 of impairment is made by a doctor chosen by the claimant and the  
6 finding is contested, a designated doctor or a doctor selected by  
7 the insurance carrier must be able to confirm the objective  
8 clinical or laboratory finding on which the finding of impairment  
9 is based.

10           (b) To be eligible to serve as a designated doctor, a doctor  
11 must meet specific qualifications, including training in the  
12 determination of impairment ratings. The department [~~executive~~  
13 ~~director~~] shall develop qualification standards and administrative  
14 policies to implement this subsection, and the commissioner  
15 [~~commission~~] may adopt rules as necessary. If medical benefits are  
16 provided through a provider network, the designated doctor must be  
17 a health care practitioner under the provider network. The  
18 designated doctor doing the review must be trained and experienced  
19 with the treatment and procedures used by the doctor treating the  
20 patient's medical condition, and the treatment and procedures  
21 performed must be within the scope of practice of the designated  
22 doctor. A designated doctor's credentials must be appropriate for  
23 the issue in question and the injured employee's medical condition.

24           (c) The report of the designated doctor has presumptive  
25 weight, and the department [~~commission~~] shall base its  
26 determination of whether the employee has reached maximum medical  
27 improvement on the report unless the great weight of the other

1 medical evidence is to the contrary.

2       Sec. 408C.103 [~~408.123~~]. CERTIFICATION OF MAXIMUM MEDICAL  
3 IMPROVEMENT; EVALUATION OF IMPAIRMENT RATING. (a) After an  
4 employee has been certified by a doctor as having reached maximum  
5 medical improvement, the certifying doctor shall evaluate the  
6 condition of the employee and assign an impairment rating using the  
7 impairment rating guidelines described by Section 408C.104  
8 [~~408.124~~]. If the certification and evaluation are performed by a  
9 doctor other than the employee's treating doctor, the certification  
10 and evaluation shall be submitted to the treating doctor, and the  
11 treating doctor shall indicate agreement or disagreement with the  
12 certification and evaluation.

13       (b) A certifying doctor shall issue a written report  
14 certifying that maximum medical improvement has been reached,  
15 stating the employee's impairment rating, and providing any other  
16 information required by the department [~~commission~~] to:

- 17           (1) the department [~~commission~~];  
18           (2) the employee; and  
19           (3) the insurance carrier.

20       (c) If an employee is not certified as having reached  
21 maximum medical improvement before the expiration of 102 weeks  
22 after the date income benefits begin to accrue, the department  
23 [~~commission~~] shall notify the treating doctor of the requirements  
24 of this subchapter.

25       (d) Except as otherwise provided by this section, an  
26 employee's first valid certification of maximum medical  
27 improvement and first valid assignment of an impairment rating is

1 final if the certification or assignment is not disputed before the  
2 91st day after the date written notification of the certification  
3 or assignment is provided to the employee and the carrier by  
4 verifiable means.

5 (e) An employee's first certification of maximum medical  
6 improvement or assignment of an impairment rating may be disputed  
7 after the period described by Subsection (d) if:

8 (1) compelling medical evidence exists of:

9 (A) a significant error by the certifying doctor  
10 in applying the appropriate American Medical Association  
11 guidelines or in calculating the impairment rating;

12 (B) a clearly mistaken diagnosis or a previously  
13 undiagnosed medical condition; or

14 (C) improper or inadequate treatment of the  
15 injury before the date of the certification or assignment that  
16 would render the certification or assignment invalid; or

17 (2) other compelling circumstances exist as  
18 prescribed by commissioner [~~commission~~] rule.

19 (f) If an employee has not been certified as having reached  
20 maximum medical improvement before the expiration of 104 weeks  
21 after the date income benefits begin to accrue or the expiration  
22 date of any extension of benefits under Section 408C.054 [~~408.104~~],  
23 the impairment rating assigned after the expiration of either of  
24 those periods is final if the impairment rating is not disputed  
25 before the 91st day after the date written notification of the  
26 certification or assignment is provided to the employee and the  
27 carrier by verifiable means. A certification or assignment may be

1   disputed after the 90th day only as provided by Subsection (e).

2           (g) If an employee's disputed certification of maximum  
3 medical improvement or assignment of impairment rating is finally  
4 modified, overturned, or withdrawn, the first certification or  
5 assignment made after the date of the modification, overturning, or  
6 withdrawal becomes final if the certification or assignment is not  
7 disputed before the 91st day after the date notification of the  
8 certification or assignment is provided to the employee and the  
9 carrier by verifiable means. A certification or assignment may be  
10 disputed after the 90th day only as provided by Subsection (e).

11           Sec. 408C.104 [~~408.124~~]. IMPAIRMENT RATING GUIDELINES.

12   (a) An award of an impairment income benefit, whether by the  
13 department [~~commission~~] or a court, must be based [~~shall be made~~] on  
14 an impairment rating determined using the impairment rating  
15 guidelines described by [~~in~~] this section.

16   (b) For determining the existence and degree of an  
17 employee's impairment, the department [~~commission~~] shall use  
18 "Guides to the Evaluation of Permanent Impairment," third edition,  
19 second printing, dated February 1989, published by the American  
20 Medical Association.

21   (c) Notwithstanding Subsection (b), the commissioner  
22 [~~commission~~] by rule may adopt the fourth edition of the "Guides to  
23 the Evaluation of Permanent Impairment," published by the American  
24 Medical Association, or a subsequent edition of those guides, for  
25 determining the existence and degree of an employee's impairment.

26           Sec. 408C.105 [~~408.125~~]. DISPUTE AS TO IMPAIRMENT RATING;

27 ADMINISTRATIVE VIOLATION. (a) If an impairment rating is

1 disputed, the department [~~commission~~] shall direct the employee to  
2 the next available doctor on the department's [~~commission's~~] list  
3 of designated doctors, as provided by Section 408.0041.

4 (b) The designated doctor shall report in writing to the  
5 department [~~commission~~].

6 (c) The report of the designated doctor shall have  
7 presumptive weight, and the department [~~commission~~] shall base the  
8 impairment rating on that report unless the great weight of the  
9 other medical evidence is to the contrary. If the great weight of  
10 the medical evidence contradicts the impairment rating contained in  
11 the report of the designated doctor chosen by the department  
12 [~~commission~~], the department [~~commission~~] shall adopt the  
13 impairment rating of one of the other doctors.

14 (d) To avoid undue influence on a person selected as a  
15 designated doctor under this section, only the injured employee or  
16 an appropriate member of the staff of the department [~~commission~~]  
17 may communicate with the designated doctor about the case regarding  
18 the injured employee's medical condition or history before the  
19 examination of the injured employee by the designated doctor.  
20 After that examination is completed, communication with the  
21 designated doctor regarding the injured employee's medical  
22 condition or history may be made only through appropriate  
23 department [~~commission~~] staff members. The designated doctor may  
24 initiate communication with any doctor who has previously treated  
25 or examined the injured employee for the work-related injury.

26 (e) Notwithstanding Subsection (d), the treating doctor and  
27 the insurance carrier are both responsible for sending to the

1 designated doctor all the injured employee's medical records that  
2 are in their possession and that relate to the issue to be evaluated  
3 by the designated doctor. The treating doctor and the insurance  
4 carrier may send the records without a signed release from the  
5 employee. The designated doctor is authorized to receive the  
6 employee's confidential medical records to assist in the resolution  
7 of disputes. The treating doctor and the insurance carrier may also  
8 send the designated doctor an analysis of the injured employee's  
9 medical condition, functional abilities, and return-to-work  
10 opportunities.

11 (f) A violation of Subsection (d) is a Class C  
12 administrative violation.

13 Sec. 408C.106 [~~408.126~~]. AMOUNT OF IMPAIRMENT INCOME  
14 BENEFITS. Subject to Sections 408.061 and 408.062, an impairment  
15 income benefit is equal to 70 percent of the employee's average  
16 weekly wage.

17 Sec. 408C.107 [~~408.127~~]. REDUCTION OF IMPAIRMENT INCOME  
18 BENEFITS. (a) An insurance carrier shall reduce impairment income  
19 benefits to an employee by an amount equal to employer payments made  
20 under Section 408.003 that are not reimbursed or reimbursable under  
21 that section.

22 (b) The insurance carrier shall remit the amount of a  
23 reduction under this section to the employer who made the payments.

24 (c) The commissioner [~~commission~~] shall adopt rules and  
25 forms to ensure the full reporting and the accuracy of reductions  
26 and reimbursements made under this section.

27 Sec. 408C.108 [~~408.128~~]. COMMUTATION OF IMPAIRMENT INCOME

1 BENEFITS. (a) An employee may elect to commute the remainder of  
2 the impairment income benefits to which the employee is entitled if  
3 the employee has returned to work for at least three months, earning  
4 at least 80 percent of the employee's average weekly wage.

5 (b) An employee who elects to commute impairment income  
6 benefits is not entitled to additional income benefits for the  
7 compensable injury.

8 Sec. 408C.109 [~~408.129~~]. ACCELERATION OF IMPAIRMENT INCOME  
9 BENEFITS. (a) On approval by the commissioner [~~commission~~] of a  
10 written request received from an employee, an insurance carrier  
11 shall accelerate the payment of impairment income benefits to the  
12 employee. The accelerated payment may not exceed a rate of payment  
13 equal to that of the employee's net preinjury wage.

14 (b) The commissioner [~~commission~~] shall approve the request  
15 and order the acceleration of the benefits if the commissioner  
16 [~~commission~~] determines that the acceleration is:

- 17 (1) required to relieve hardship; and  
18 (2) in the overall best interest of the employee.

19 (c) The duration of the impairment income benefits to which  
20 the employee is entitled shall be reduced to offset the increased  
21 payments caused by the acceleration taking into consideration the  
22 discount for present payment computed at the rate provided under  
23 Section 401.023.

24 (d) The commissioner [~~commission~~] may prescribe forms  
25 necessary to implement this section.

26 SUBCHAPTER D [~~H~~]. SUPPLEMENTAL INCOME BENEFITS

27 Sec. 408C.151 [~~408.141~~]. AWARD OF SUPPLEMENTAL INCOME

1 BENEfits. An award of a supplemental income benefit, whether by the  
2 department [~~commission~~] or a court, shall be made in accordance  
3 with this subchapter.

4 Sec. 408C.152 [~~408.142~~]. SUPPLEMENTAL INCOME BENEFITS.

5 (a) An employee is entitled to supplemental income benefits if on  
6 the expiration of the impairment income benefit period computed  
7 under Section 408C.101(a)(1) [~~408.121(a)(1)~~] the employee:

8 (1) has an impairment rating of 15 percent or more as  
9 determined by this subtitle from the compensable injury;

10 (2) has not returned to work or has returned to work  
11 earning less than 80 percent of the employee's average weekly wage  
12 as a direct result of the employee's impairment;

13 (3) has not elected to commute a portion of the  
14 impairment income benefit under Section 408C.108 [~~408.128~~]; and

15 (4) has complied with the requirements adopted under  
16 Section 408C.153 [~~attempted in good faith to obtain employment~~  
17 ~~commensurate with the employee's ability to work~~].

18 (b) If an employee is not entitled to supplemental income  
19 benefits at the time of payment of the final impairment income  
20 benefit because the employee is earning at least 80 percent of the  
21 employee's average weekly wage, the employee may become entitled to  
22 supplemental income benefits at any time within one year after the  
23 date the impairment income benefit period ends if:

24 (1) the employee earns wages for at least 90 days that  
25 are less than 80 percent of the employee's average weekly wage;

26 (2) the employee meets the requirements of Subsections  
27 (a)(1), (3), and (4); and

1 (3) the decrease in earnings is a direct result of the  
2 employee's impairment from the compensable injury.

3 Sec. 408C.153. WORK SEARCH COMPLIANCE STANDARDS. (a) The  
4 commissioner by rule shall adopt compliance standards for  
5 supplemental income benefit recipients that require each recipient  
6 to demonstrate an active effort to obtain employment. To be  
7 eligible to receive supplemental income benefits under this  
8 chapter, a recipient must provide evidence satisfactory to the  
9 department of:

10 (1) active participation in a vocational  
11 rehabilitation program conducted by the Department of Assistive and  
12 Rehabilitative Services or a private vocational rehabilitation  
13 provider;

14 (2) active participation in work search efforts  
15 conducted through the Texas Workforce Commission; or

16 (3) active work search efforts documented by job  
17 applications submitted by the recipient.

18 (b) In adopting rules under this section, the commissioner  
19 shall:

20 (1) establish the level of activity that a recipient  
21 should have with the Texas Workforce Commission and the Department  
22 of Assistive and Rehabilitative Services;

23 (2) define the number of job applications required to  
24 be submitted by a recipient to satisfy the work search  
25 requirements; and

26 (3) consider factors affecting the availability of  
27 employment, including recognition of access to employment in rural

1 areas, economic conditions, and other appropriate employment  
2 availability factors.

3 (c) The commissioner may consult with the Texas Workforce  
4 Commission, the Department of Assistive and Rehabilitative  
5 Services, and other appropriate entities in adopting rules under  
6 this section.

7 Sec. 408C.154. RETURN-TO-WORK GOALS AND ASSISTANCE. (a) The  
8 department shall assist recipients of supplemental income benefits  
9 to return to the workforce. The department shall develop improved  
10 data sharing, within the standards of federal privacy requirements,  
11 with all appropriate state agencies and workforce programs to  
12 inform the department of changes needed to assist supplemental  
13 income benefit recipients to successfully reenter the workforce.

14 (b) The department shall train staff dealing with  
15 supplemental income benefits to respond to questions and assist  
16 injured employees in their effort to return to the workforce. If the  
17 department determines that an injured employee is unable to ever  
18 return to the workforce, the department shall inform the employee  
19 of possible eligibility for other forms of benefits, such as social  
20 security disability income benefits.

21 (c) As necessary to implement the requirements of this  
22 section, the department shall:

23 (1) attempt to remove any barriers to successful  
24 employment that are identified at the department, the Texas  
25 Workforce Commission, the Department of Assistive and  
26 Rehabilitative Services, and private vocational rehabilitation  
27 programs;

1           (2) ensure that data is tracked among the department,  
2 the Texas Workforce Commission, the Department of Assistive and  
3 Rehabilitative Services, and insurance carriers, including outcome  
4 data;

5           (3) establish a mechanism to refer supplemental income  
6 benefit recipients to the Texas Workforce Commission and local  
7 workforce development centers for employment opportunities; and

8           (4) develop a mechanism to promote employment success  
9 that includes post-referral contacts by the department with  
10 supplemental income benefit recipients.

11           Sec. 408C.155 [~~408.143~~]. EMPLOYEE STATEMENT. (a) After  
12 the department's [~~commission's~~] initial determination of  
13 supplemental income benefits, the employee must file a statement  
14 with the insurance carrier stating:

15           (1) that the employee has earned less than 80 percent  
16 of the employee's average weekly wage as a direct result of the  
17 employee's impairment;

18           (2) the amount of wages the employee earned in the  
19 filing period provided by Subsection (b); and

20           (3) that the employee has complied with the  
21 requirements adopted under Section 408C.153 [~~in good faith sought~~  
22 ~~employment commensurate with the employee's ability to work~~].

23           (b) The statement required under this section must be filed  
24 quarterly on a form and in the manner provided by the department  
25 [~~commission~~]. The department [~~commission~~] may modify the filing  
26 period as appropriate to an individual case.

27           (c) Failure to file a statement under this section relieves

1 the insurance carrier of liability for supplemental income benefits  
2 for the period during which a statement is not filed.

3 Sec. 408C.156 [~~408.144~~]. COMPUTATION OF SUPPLEMENTAL  
4 INCOME BENEFITS. (a) Supplemental income benefits are calculated  
5 quarterly and paid monthly.

6 (b) Subject to Section 408.061, the amount of a supplemental  
7 income benefit for a week is equal to 80 percent of the amount  
8 computed by subtracting the weekly wage the employee earned during  
9 the reporting period provided by Section 408C.155(b) [~~408.143(b)~~]  
10 from 80 percent of the employee's average weekly wage determined  
11 under Section 408.041, 408.042, 408.043, [~~or~~] 408.044, 408.0445, or  
12 408.0446.

13 (c) For the purposes of this subchapter, if an employee is  
14 offered a bona fide position of employment that the employee is  
15 capable of performing, given the physical condition of the employee  
16 and the geographic accessibility of the position to the employee,  
17 the employee's weekly wages are considered to be equal to the weekly  
18 wages for the position offered to the employee.

19 Sec. 408C.157 [~~408.145~~]. PAYMENT OF SUPPLEMENTAL INCOME  
20 BENEFITS. An insurance carrier shall pay supplemental income  
21 benefits beginning not later than the seventh day after the  
22 expiration date of the employee's impairment income benefit period  
23 and shall continue to pay the benefits in a timely manner.

24 Sec. 408C.158 [~~408.146~~]. TERMINATION OF SUPPLEMENTAL  
25 INCOME BENEFITS; REINITIATION. (a) If an employee earns wages that  
26 are at least 80 percent of the employee's average weekly wage for at  
27 least 90 days during a time that the employee receives supplemental

1 income benefits, the employee ceases to be entitled to supplemental  
2 income benefits for the filing period.

3 (b) Supplemental income benefits terminated under this  
4 section shall be reinitiated when the employee:

5 (1) satisfies the conditions of Section 408C.152(b)  
6 [~~408.142(b)~~]; and

7 (2) files the statement required under Section  
8 408C.155 [~~408.143~~].

9 (c) Notwithstanding any other provision of this section, an  
10 employee who is not entitled to supplemental income benefits for 12  
11 consecutive months ceases to be entitled to any additional income  
12 benefits for the compensable injury.

13 Sec. 408C.159 [~~408.147~~]. CONTEST OF SUPPLEMENTAL INCOME  
14 BENEFITS BY INSURANCE CARRIER; ATTORNEY'S FEES. (a) An insurance  
15 carrier may request a contested case hearing [~~benefit review~~  
16 ~~conference~~] to contest an employee's entitlement to supplemental  
17 income benefits or the amount of supplemental income benefits.

18 (b) If an insurance carrier fails to [~~make a~~] request [~~for~~]  
19 a contested case hearing [~~benefit review conference~~] within 10 days  
20 after the date of the expiration of the impairment income benefit  
21 period or within 10 days after receipt of the employee's statement,  
22 the insurance carrier waives the right to contest entitlement to  
23 supplemental income benefits and the amount of supplemental income  
24 benefits for that period of supplemental income benefits.

25 (c) If an insurance carrier disputes a department  
26 [~~commission~~] determination that an employee is entitled to  
27 supplemental income benefits or the amount of supplemental income

1 benefits due and the employee prevails on any disputed issue, the  
2 insurance carrier is liable for reasonable and necessary attorney's  
3 fees incurred by the employee as a result of the insurance carrier's  
4 dispute and for supplemental income benefits accrued but not paid  
5 and interest on that amount, according to Section 408.064.  
6 Attorney's fees awarded under this subsection are not subject to  
7 Sections 408.221(b), (f), and (i).

8 Sec. 408C.160 [~~408.148~~]. EMPLOYEE DISCHARGE AFTER  
9 TERMINATION. The department [~~commission~~] may reinstate  
10 supplemental income benefits to an employee who is discharged  
11 within 12 months of the date of losing entitlement to supplemental  
12 income benefits under Section 408C.158(c) [~~408.146(e)~~] if the  
13 department [~~commission~~] finds that the employee was discharged at  
14 that time with the intent to deprive the employee of supplemental  
15 income benefits.

16 Sec. 408C.161 [~~408.149~~]. STATUS REVIEW; HEARING [~~BENEFIT~~  
17 ~~REVIEW CONFERENCE~~]. (a) Not more than once in each period of 12  
18 calendar months, an employee and an insurance carrier each may  
19 request the department [~~commission~~] to review the status of the  
20 employee and determine whether the employee's unemployment or  
21 underemployment is a direct result of impairment from the  
22 compensable injury. The department shall conduct the review not  
23 later than the 10th day after the date on which the department  
24 receives the request.

25 (b) Either party may request a contested case hearing  
26 [~~benefit review conference~~] to contest a determination of the  
27 department [~~commission~~] at any time, subject only to the limits

1 placed on the insurance carrier by Section 408C.159 [~~408.147~~].

2       Sec. 408C.162 [~~408.150~~]. VOCATIONAL REHABILITATION. (a)  
3 The department [~~commission~~] shall refer an employee to the  
4 Department of Assistive and Rehabilitative Services [~~Texas~~  
5 ~~Rehabilitation Commission~~] with a recommendation for appropriate  
6 services if the department [~~commission~~] determines that an employee  
7 entitled to supplemental income benefits could be materially  
8 assisted by vocational rehabilitation or training in returning to  
9 employment or returning to employment more nearly approximating the  
10 employee's preinjury employment. The department [~~commission~~]  
11 shall also notify insurance carriers of the need for vocational  
12 rehabilitation or training services. The insurance carrier may  
13 provide services through a private provider of vocational  
14 rehabilitation services under Section 409.012.

15       (b) An employee who refuses services or refuses to cooperate  
16 with services provided under this section by the Department of  
17 Assistive and Rehabilitative Services [~~Texas Rehabilitation~~  
18 ~~Commission~~] or a private provider loses entitlement to supplemental  
19 income benefits.

20       Sec. 408C.163 [~~408.151~~]. MEDICAL EXAMINATIONS FOR  
21 SUPPLEMENTAL INCOME BENEFITS. (a) On or after the second  
22 anniversary of the date the department [~~commission~~] makes the  
23 initial award of supplemental income benefits, an insurance carrier  
24 may not require an employee who is receiving supplemental income  
25 benefits to submit to a medical examination more than annually if,  
26 in the preceding year, the employee's medical condition resulting  
27 from the compensable injury has not improved sufficiently to allow

1 the employee to return to work.

2 (b) If a dispute exists as to whether the employee's medical  
3 condition has improved sufficiently to allow the employee to return  
4 to work, the department [~~commission~~] shall direct the employee to  
5 be examined by a designated doctor chosen by the department  
6 [~~commission~~]. The designated doctor shall report to the department  
7 [~~commission~~]. The report of the designated doctor has presumptive  
8 weight, and the department [~~commission~~] shall base its  
9 determination of whether the employee's medical condition has  
10 improved sufficiently to allow the employee to return to work on  
11 that report unless the great weight of the other medical evidence is  
12 to the contrary.

13 (c) The department [~~commission~~] may require an employee to  
14 whom Subsection (a) applies to submit to a medical examination  
15 under Section 408.004 only to determine whether the employee's  
16 medical condition is a direct result of impairment from a  
17 compensable injury.

18 SUBCHAPTER E [~~F~~]. LIFETIME INCOME BENEFITS

19 Sec. 408C.201 [~~408.161~~]. LIFETIME INCOME BENEFITS. (a)  
20 Lifetime income benefits are paid until the death of the employee  
21 for:

- 22 (1) total and permanent loss of sight in both eyes;  
23 (2) loss of both feet at or above the ankle;  
24 (3) loss of both hands at or above the wrist;  
25 (4) loss of one foot at or above the ankle and the loss  
26 of one hand at or above the wrist;  
27 (5) an injury to the spine that results in permanent

1 and complete paralysis of both arms, both legs, or one arm and one  
2 leg;

3 (6) a physically traumatic injury to the brain  
4 resulting in incurable insanity or imbecility; or

5 (7) third degree burns that cover at least 40 percent  
6 of the body and require grafting, or third degree burns covering the  
7 majority of either both hands or one hand and the face.

8 (b) For purposes of Subsection (a), the total and permanent  
9 loss of use of a body part is the loss of that body part.

10 (c) Subject to Section 408.061, the amount of lifetime  
11 income benefits is equal to 75 percent of the employee's average  
12 weekly wage. Benefits being paid shall be increased at a rate of  
13 three percent a year notwithstanding Section 408.061.

14 (d) An insurance carrier may pay lifetime income benefits  
15 through an annuity if the annuity agreement meets the terms and  
16 conditions for annuity agreements adopted by the commissioner  
17 [~~commission~~] by rule. The establishment of an annuity under this  
18 subsection does not relieve the insurance carrier of the liability  
19 under this title for ensuring that the lifetime income benefits are  
20 paid.

21 Sec. 408C.202 [~~408.162~~]. SUBSEQUENT INJURY FUND BENEFITS.

22 (a) If a subsequent compensable injury, with the effects of a  
23 previous injury, results in a condition for which the injured  
24 employee is entitled to lifetime income benefits, the insurance  
25 carrier is liable for the payment of benefits for the subsequent  
26 injury only to the extent that the subsequent injury would have  
27 entitled the employee to benefits had the previous injury not

1 existed.

2 (b) The subsequent injury fund shall compensate the  
3 employee for the remainder of the lifetime income benefits to which  
4 the employee is entitled.

5 SECTION 1.252. Subchapter J, Chapter 408, Labor Code, is  
6 redesignated as Chapter 408D, Labor Code, and amended to read as  
7 follows:

8 CHAPTER 408D. WORKERS' COMPENSATION BENEFITS:

9 [~~SUBCHAPTER J.~~] DEATH AND BURIAL BENEFITS

10 Sec. 408D.001 [~~408.181~~]. DEATH BENEFITS. (a) An insurance  
11 carrier shall pay death benefits to the legal beneficiary if a  
12 compensable injury to the employee results in death.

13 (b) Subject to Section 408.061, the amount of a death  
14 benefit is equal to 75 percent of the employee's average weekly  
15 wage.

16 (c) The commissioner [~~commission~~] by rule shall establish  
17 requirements for agreements under which death benefits may be paid  
18 monthly. Death benefits may be paid monthly only:

19 (1) on the request of the legal beneficiary and the  
20 agreement of the legal beneficiary and the insurance carrier; and

21 (2) in compliance with the requirements adopted by the  
22 commissioner [~~commission~~].

23 (d) An insurance carrier may pay death benefits through an  
24 annuity if the annuity agreement meets the terms and conditions for  
25 annuity agreements adopted by the commissioner [~~commission~~] by  
26 rule. The establishment of an annuity under this subsection does  
27 not relieve the insurance carrier of the liability under this title

1 for ensuring that the death benefits are paid.

2 Sec. 408D.002 [~~408.182~~]. DISTRIBUTION OF DEATH BENEFITS.

3 (a) In this section:

4 (1) "Eligible child" means a child of a deceased  
5 employee if the child:

6 (A) is a minor;

7 (B) is enrolled as a full-time student in an  
8 accredited educational institution and is less than 25 years of  
9 age; or

10 (C) is a dependent of the deceased employee at  
11 the time of the employee's death.

12 (2) "Eligible grandchild" means a grandchild of a  
13 deceased employee who is a dependent of the deceased employee and  
14 whose parent is not an eligible child.

15 (3) "Eligible spouse" means the surviving spouse of a  
16 deceased employee unless the spouse abandoned the employee for  
17 longer than the year preceding the death without good cause, as  
18 determined by the department.

19 (b) If there is an eligible child or grandchild and an  
20 eligible spouse, half of the death benefits shall be paid to the  
21 eligible spouse and half shall be paid in equal shares to the  
22 eligible children. If an eligible child has predeceased the  
23 employee, death benefits that would have been paid to that child  
24 shall be paid in equal shares per stirpes to the children of the  
25 deceased child.

26 (c) [~~(b)~~] If there is an eligible spouse and no eligible  
27 child or grandchild, all the death benefits shall be paid to the

1 eligible spouse.

2 (d) [~~(c)~~] If there is an eligible child or grandchild and no  
3 eligible spouse, the death benefits shall be paid to the eligible  
4 children or grandchildren.

5 (e) [~~(d)~~] If there is no eligible spouse, no eligible child,  
6 and no eligible grandchild, the death benefits shall be paid in  
7 equal shares to surviving dependents of the deceased employee who  
8 are parents, stepparents, siblings, or grandparents of the  
9 deceased.

10 (f) [~~(e)~~] If an employee is not survived by legal  
11 beneficiaries, the death benefits shall be paid to the subsequent  
12 injury fund under Section 403.007.

13 [~~(f)~~ ~~In this section:~~

14 [~~(1)~~ ~~"Eligible child" means a child of a deceased~~  
15 ~~employee if the child is:~~

16 [~~(A)~~ ~~a minor,~~

17 [~~(B)~~ ~~enrolled as a full-time student in an~~  
18 ~~accredited educational institution and is less than 25 years of~~  
19 ~~age, or~~

20 [~~(C)~~ ~~a dependent of the deceased employee at the~~  
21 ~~time of the employee's death.~~

22 [~~(2)~~ ~~"Eligible grandchild" means a grandchild of a~~  
23 ~~deceased employee who is a dependent of the deceased employee and~~  
24 ~~whose parent is not an eligible child.~~

25 [~~(3)~~ ~~"Eligible spouse" means the surviving spouse of a~~  
26 ~~deceased employee unless the spouse abandoned the employee for~~  
27 ~~longer than the year immediately preceding the death without good~~

1 ~~cause, as determined by the commission.]~~

2           Sec. 408D.003 [~~408.183~~]. DURATION OF DEATH BENEFITS. (a)  
3 Entitlement to death benefits begins on the day after the date of an  
4 employee's death.

5           (b) An eligible spouse is entitled to receive death benefits  
6 for life or until remarriage. On remarriage, the eligible spouse is  
7 entitled to receive 104 weeks of death benefits, commuted as  
8 provided by commissioner [~~commission~~] rule.

9           (c) A child who is eligible for death benefits because the  
10 child is a minor on the date of the employee's death is entitled to  
11 receive benefits until the child attains the age of 18.

12           (d) A child eligible for death benefits under Subsection (c)  
13 who at age 18 is enrolled as a full-time student in an accredited  
14 educational institution or a child who is eligible for death  
15 benefits because on the date of the employee's death the child is  
16 enrolled as a full-time student in an accredited educational  
17 institution is entitled to receive or to continue to receive, as  
18 appropriate, benefits until the earliest of:

19                   (1) the date the child ceases, for a second  
20 consecutive semester, to be enrolled as a full-time student in an  
21 accredited educational institution;

22                   (2) the date the child attains the age of 25; or

23                   (3) the date the child dies.

24           (e) A child who is eligible for death benefits because the  
25 child is a dependent of the deceased employee on the date of the  
26 employee's death is entitled to receive benefits until the earlier  
27 of:

1 (1) the date the child dies; or

2 (2) if the child is dependent:

3 (A) because the child is an individual with a  
4 physical or mental disability, the date the child no longer has the  
5 disability; or

6 (B) because of a reason other than a physical or  
7 mental disability, the date of the expiration of 364 weeks of death  
8 benefit payments.

9 (f) An eligible grandchild is entitled to receive death  
10 benefits until the earlier of:

11 (1) the date the grandchild dies; or

12 (2) if the grandchild is:

13 (A) a minor at the time of the employee's death,  
14 the date the grandchild ceases to be a minor; or

15 (B) not a minor at the time of the employee's  
16 death, the date of the expiration of 364 weeks of death benefit  
17 payments.

18 (g) Any other person entitled to death benefits is entitled  
19 to receive death benefits until the earlier of:

20 (1) the date the person dies; or

21 (2) the date of the expiration of 364 weeks of death  
22 benefit payments.

23 (h) Section 401.011(16) does not apply to the use of the  
24 term "disability" in this section.

25 Sec. 408D.004 [~~408.184~~]. REDISTRIBUTION OF DEATH BENEFITS.

26 (a) If a legal beneficiary dies or otherwise becomes ineligible for  
27 death benefits, benefits shall be redistributed to the remaining

1 legal beneficiaries as provided by Sections 408D.002 [~~408.182~~] and  
2 408D.003 [~~408.183~~].

3 (b) If a spouse ceases to be eligible because of remarriage,  
4 the benefits payable to the remaining legal beneficiaries remain  
5 constant for 104 weeks. After the 104th week, the spouse's share of  
6 benefits shall be redistributed as provided by Sections 408D.002  
7 [~~408.182~~] and 408D.003 [~~408.183~~].

8 (c) If all legal beneficiaries, other than the subsequent  
9 injury fund, cease to be eligible and the insurance carrier has not  
10 made 364 weeks of full death benefit payments, including the  
11 remarriage payment, the insurance carrier shall pay to the  
12 subsequent injury fund an amount computed by subtracting the total  
13 amount paid from the amount that would be paid for 364 weeks of  
14 death benefits.

15 Sec. 408D.005 [~~408.185~~]. EFFECT OF BENEFICIARY DISPUTE;  
16 ATTORNEY'S FEES. On settlement of a case in which the insurance  
17 carrier admits liability for death benefits but a dispute exists as  
18 to the proper beneficiary or beneficiaries, the settlement shall be  
19 paid in periodic payments as provided by law, with a reasonable  
20 attorney's fee not to exceed 25 percent of the settlement, paid  
21 periodically, and based on time and expenses.

22 Sec. 408D.006 [~~408.186~~]. BURIAL BENEFITS. (a) If the  
23 death of an employee results from a compensable injury, the  
24 insurance carrier shall pay to the person who incurred liability  
25 for the costs of burial the lesser of:

26 (1) the actual costs incurred for reasonable burial  
27 expenses; or

1 (2) \$6,000.

2 (b) If the employee died away from the employee's usual  
3 place of employment, the insurance carrier shall pay the reasonable  
4 cost of transporting the body, not to exceed the cost of  
5 transporting the body to the employee's usual place of employment.

6 Sec. 408D.007 [~~408.187~~]. AUTOPSY. (a) If in a claim for  
7 death benefits based on an occupational disease an autopsy is  
8 necessary to determine the cause of death, the department  
9 [~~commission~~] may, after opportunity for hearing, order the legal  
10 beneficiaries of a deceased employee to permit an autopsy.

11 (b) A legal beneficiary is entitled to have a representative  
12 present at an autopsy ordered under this section.

13 (c) The department [~~commission~~] shall require the insurance  
14 carrier to pay the costs of a procedure ordered under this section.

15 PART 12. AMENDMENTS TO CHAPTER 409, LABOR CODE

16 SECTION 1.301. Section 409.002, Labor Code, is amended to  
17 read as follows:

18 Sec. 409.002. FAILURE TO FILE NOTICE OF INJURY. Failure to  
19 notify an employer as required by Section 409.001(a) relieves the  
20 employer and the employer's insurance carrier of liability under  
21 this subtitle unless:

22 (1) the employer, a person eligible to receive notice  
23 under Section 409.001(b), or the employer's insurance carrier has  
24 actual knowledge of the employee's injury;

25 (2) the department [~~commission~~] determines that good  
26 cause exists for failure to provide notice in a timely manner; or

27 (3) the employer or the employer's insurance carrier

1 does not contest the claim.

2 SECTION 1.302. Section 409.003, Labor Code, is amended to  
3 read as follows:

4 Sec. 409.003. CLAIM FOR COMPENSATION. An employee or a  
5 person acting on the employee's behalf shall file with the  
6 department [~~commission~~] a claim for compensation for an injury not  
7 later than one year after the date on which:

- 8 (1) the injury occurred; or  
9 (2) if the injury is an occupational disease, the  
10 employee knew or should have known that the disease was related to  
11 the employee's employment.

12 SECTION 1.303. Section 409.004, Labor Code, is amended to  
13 read as follows:

14 Sec. 409.004. EFFECT OF FAILURE TO FILE CLAIM FOR  
15 COMPENSATION. Failure to file a claim for compensation with the  
16 department [~~commission~~] as required under Section 409.003 relieves  
17 the employer and the employer's insurance carrier of liability  
18 under this subtitle unless:

19 (1) good cause exists for failure to file a claim in a  
20 timely manner; or

21 (2) the employer or the employer's insurance carrier  
22 does not contest the claim.

23 SECTION 1.304. Sections 409.005(d)-(f) and (h)-(k), Labor  
24 Code, are amended to read as follows:

25 (d) The insurance carrier shall file the report of the  
26 injury on behalf of the policyholder. Except as provided by  
27 Subsection (e), the insurance carrier must electronically file the

1 report with the department [~~commission~~] not later than the seventh  
2 day after the date on which the carrier receives the report from the  
3 employer.

4 (e) The commissioner [~~executive director~~] may waive the  
5 electronic filing requirement under Subsection (d) and allow an  
6 insurance carrier to mail or deliver the report to the department  
7 [~~commission~~] not later than the seventh day after the date on which  
8 the carrier receives the report from the employer.

9 (f) A report required under this section may not be  
10 considered to be an admission by or evidence against an employer or  
11 an insurance carrier in a proceeding before the department  
12 [~~commission~~] or a court in which the facts set out in the report are  
13 contradicted by the employer or insurance carrier.

14 (h) The commissioner [~~commission~~] may adopt rules relating  
15 to:

16 (1) the information that must be contained in a report  
17 required under this section, including the summary of rights and  
18 responsibilities required under Subsection (g); and

19 (2) the development and implementation of an  
20 electronic filing system for injury reports under this section.

21 (i) An employer and insurance carrier shall file subsequent  
22 reports as required by commissioner [~~commission~~] rule.

23 (j) The employer shall, on the written request of the  
24 employee, a doctor, the insurance carrier, or the department  
25 [~~commission~~], notify the employee, the employee's treating doctor  
26 if known to the employer, and the insurance carrier of the existence  
27 or absence of opportunities for modified duty or a modified duty

1 return-to-work program available through the employer. If those  
2 opportunities or that program exists, the employer shall identify  
3 the employer's contact person and provide other information to  
4 assist the doctor, the employee, and the insurance carrier to  
5 assess modified duty or return-to-work options.

6 (k) This section does not prohibit the commissioner  
7 [~~commission~~] from imposing requirements relating to return-to-work  
8 under other authority granted to the department [~~commission~~] in  
9 this subtitle.

10 SECTION 1.305. Sections 409.006(b) and (c), Labor Code, are  
11 amended to read as follows:

12 (b) The record shall be available to the department  
13 [~~commission~~] at reasonable times and under conditions prescribed by  
14 the commissioner [~~commission~~].

15 (c) The commissioner [~~commission~~] may adopt rules relating  
16 to the information that must be contained in an employer record  
17 under this section.

18 SECTION 1.306. Section 409.007(a), Labor Code, is amended  
19 to read as follows:

20 (a) A person must file a claim for death benefits with the  
21 department [~~commission~~] not later than the first anniversary of the  
22 date of the employee's death.

23 SECTION 1.307. Section 409.009, Labor Code, is amended to  
24 read as follows:

25 Sec. 409.009. SUBCLAIMS. A person may file a written claim  
26 with the department [~~commission~~] as a subclaimant if the person  
27 has:

1 (1) provided compensation, including health care  
2 provided by a health care insurer, directly or indirectly, to or for  
3 an employee or legal beneficiary; and

4 (2) sought and been refused reimbursement from the  
5 insurance carrier.

6 SECTION 1.308. Section 409.010, Labor Code, is amended to  
7 read as follows:

8 Sec. 409.010. INFORMATION PROVIDED TO EMPLOYEE OR LEGAL  
9 BENEFICIARY. Immediately on receiving notice of an injury or death  
10 from any person, the department [~~commission~~] shall mail to the  
11 employee or legal beneficiary a clear and concise description of:

12 (1) the services provided by:

13 (A) the department; and

14 (B) the office of employee assistance  
15 [~~commission~~], including the services of the ombudsman program;

16 (2) the department's [~~commission's~~] procedures under  
17 this subtitle; and

18 (3) the person's rights and responsibilities under  
19 this subtitle.

20 SECTION 1.309. Sections 409.011(a) and (c), Labor Code, are  
21 amended to read as follows:

22 (a) Immediately on receiving notice of an injury or death  
23 from any person, the department [~~commission~~] shall mail to the  
24 employer a description of:

25 (1) the services provided by the department and the  
26 office of employee assistance [~~commission~~];

27 (2) the department's [~~commission's~~] procedures under

1 this subtitle; and

2 (3) the employer's rights and responsibilities under  
3 this subtitle.

4 (c) The department [~~commission~~] is not required to provide  
5 the information to an employer more than once during a calendar  
6 year.

7 SECTION 1.310. Section 409.012, Labor Code, is amended to  
8 read as follows:

9 Sec. 409.012. SKILLED CASE MANAGEMENT; VOCATIONAL  
10 REHABILITATION [~~INFORMATION~~]. (a) The department shall require  
11 skilled case management as early as is practicable for a  
12 compensable injury in which the injured employee sustains an injury  
13 that results in lost time from employment.

14 (b) The department [~~commission~~] shall analyze each report  
15 of injury received from an employer under this chapter to determine  
16 whether the injured employee would be assisted by vocational  
17 rehabilitation. [~~(b)~~] If the department [~~commission~~] determines  
18 that an injured employee would be assisted by vocational  
19 rehabilitation, the department [~~commission~~] shall notify:

20 (1) the injured employee in writing of the services  
21 and facilities available through the Department of Assistive and  
22 Rehabilitative Services [~~Texas Rehabilitation Commission~~] and  
23 private providers of vocational rehabilitation; and

24 (2) [~~The commission shall notify~~] the Department of  
25 Assistive and Rehabilitative Services [~~Texas Rehabilitation~~  
26 ~~Commission~~] and the affected insurance carrier that the injured  
27 employee has been identified as one who could be assisted by

1 vocational rehabilitation.

2 (c) The department [~~commission~~] shall cooperate with the  
3 office of employee assistance, the Department of Assistive and  
4 Rehabilitative Services, [~~Texas Rehabilitation Commission~~] and  
5 private providers of vocational rehabilitation in the provision of  
6 services and facilities to employees by the Department of Assistive  
7 and Rehabilitative Services [~~Texas Rehabilitation Commission~~].

8 (d) A private provider of vocational rehabilitation  
9 services may register with the department [~~commission~~].

10 (e) The commissioner [~~commission~~] by rule may require that a  
11 private provider of vocational rehabilitation services maintain  
12 certain credentials and qualifications in order to provide services  
13 in connection with a workers' compensation insurance claim.

14 SECTION 1.311. Section 409.013, Labor Code, is amended to  
15 read as follows:

16 Sec. 409.013. PLAIN LANGUAGE INFORMATION; NOTIFICATION OF  
17 INJURED EMPLOYEE [~~WORKER~~]. (a) The department [~~commission~~] shall  
18 develop information for public dissemination about the benefit  
19 process and the compensation procedures established under this  
20 chapter. The information must be written in plain language and must  
21 be available in English and Spanish.

22 (b) On receipt of a report under Section 409.005, the  
23 department [~~commission~~] shall contact the affected employee by mail  
24 or by telephone and shall provide the information required under  
25 Subsection (a) to that employee, together with any other  
26 information that may be prepared by the office of employee  
27 assistance or the department [~~commission~~] for public dissemination

1 that relates to the employee's situation, such as information  
2 relating to back injuries or occupational diseases.

3 SECTION 1.312. Section 409.021, Labor Code, is amended to  
4 read as follows:

5 Sec. 409.021. INITIATION OF BENEFITS; DUTIES OF INSURANCE  
6 CARRIER [~~CARRIER'S REFUSAL~~]; ADMINISTRATIVE VIOLATION. (a) An  
7 insurance carrier shall initiate compensation under this subtitle  
8 promptly. Not later than the 15th day after the date on which an  
9 insurance carrier receives written notice of an injury, the  
10 insurance carrier shall:

11 (1) begin the payment of benefits as required by this  
12 subtitle; or

13 (2) notify the department [~~commission~~] and the  
14 employee in writing of its refusal to pay and advise the employee  
15 of:

16 (A) the right to request a contested case hearing  
17 [~~benefit review conference~~]; and

18 (B) the means to obtain additional information  
19 from the department [~~commission~~].

20 (b) [~~(a-1)~~] An insurance carrier that fails to comply with  
21 Subsection (a) does not waive the carrier's right to contest the  
22 compensability of the injury as provided by Subsection (e) [~~(c)~~]  
23 but commits an administrative violation subject to Subsection (g)  
24 [~~(e)~~].

25 (c) [~~(a-2)~~] An insurance carrier is not required to comply  
26 with Subsection (a) if the insurance carrier has accepted the claim  
27 as a compensable injury and income or death benefits have not yet

1 accrued but will be paid by the insurance carrier when the benefits  
2 accrue and are due.

3 (d) [~~(b)~~] An insurance carrier shall notify the department  
4 [~~commission~~] in writing of the initiation of income or death  
5 benefit payments in the manner prescribed by commissioner  
6 [~~commission~~] rules.

7 (e) [~~(c)~~] If an insurance carrier does not contest the  
8 compensability of an injury on or before the 60th day after the date  
9 on which the insurance carrier is notified of the injury, the  
10 insurance carrier waives its right to contest compensability. The  
11 initiation of payments by an insurance carrier does not affect the  
12 right of the insurance carrier to continue to investigate or deny  
13 the compensability of an injury during the 60-day period.

14 (f) [~~(d)~~] An insurance carrier may reopen the issue of the  
15 compensability of an injury if there is a finding of evidence that  
16 could not reasonably have been discovered earlier.

17 (g) [~~(e)~~] An insurance carrier commits a violation if the  
18 insurance carrier does not initiate payments or file a notice of  
19 refusal as required by this section. A violation under this  
20 subsection shall be assessed at \$500 if the carrier initiates  
21 compensation or files a notice of refusal within five working days  
22 of the date required by Subsection (a), \$1,500 if the carrier  
23 initiates compensation or files a notice of refusal more than five  
24 and less than 16 working days of the date required by Subsection  
25 (a), \$2,500 if the carrier initiates compensation or files a notice  
26 of refusal more than 15 and less than 31 working days of the date  
27 required by Subsection (a), or \$5,000 if the carrier initiates

1 compensation or files a notice of refusal more than 30 days after  
2 the date required by Subsection (a). The administrative penalties  
3 are not cumulative.

4 (h) [~~(f)~~] For purposes of this section, "written notice" to  
5 a certified self-insurer occurs only on written notice to the  
6 qualified claims servicing contractor designated by the certified  
7 self-insurer under Section 407.061(c).

8 (i) [~~(f)~~] For purposes of this section:

9 (1) a certified self-insurer receives notice on the  
10 date the qualified claims servicing contractor designated by the  
11 certified self-insurer under Section 407.061(c) receives notice;  
12 and

13 (2) a political subdivision that self-insures under  
14 Section 504.011, either individually or through an interlocal  
15 agreement with other political subdivisions, receives notice on the  
16 date the intergovernmental risk pool or other entity responsible  
17 for administering the claim for the political subdivision receives  
18 notice.

19 (j) Each insurance carrier shall establish a single point of  
20 contact in the carrier's office for an injured employee for whom the  
21 carrier receives a notice of injury.

22 SECTION 1.313. Section 409.023(a), Labor Code, is amended  
23 to read as follows:

24 (a) An insurance carrier shall continue to pay benefits  
25 promptly as and when the benefits accrue without a final decision,  
26 order, or other action of the commissioner [~~commissioner~~], except as  
27 otherwise provided.

1 SECTION 1.314. Section 409.0231(b), Labor Code, is amended  
2 to read as follows:

3 (b) The commissioner [~~commission~~] shall adopt rules in  
4 consultation with the [~~Texas~~] Department of Information Resources  
5 as necessary to implement this section, including rules prescribing  
6 a period of benefits that is of sufficient duration to allow payment  
7 by electronic funds transfer.

8 SECTION 1.315. Section 409.024, Labor Code, is amended to  
9 read as follows:

10 Sec. 409.024. TERMINATION OR REDUCTION OF BENEFITS; NOTICE;  
11 ADMINISTRATIVE VIOLATION. (a) An insurance carrier shall file  
12 with the department [~~commission~~] a notice of termination or  
13 reduction of benefits, including the reasons for the termination or  
14 reduction, not later than the 10th day after the date on which  
15 benefits are terminated or reduced.

16 (b) An insurance carrier commits a violation if the  
17 insurance carrier does not have reasonable grounds to terminate or  
18 reduce benefits, as determined by the department [~~commission~~]. A  
19 violation under this subsection is a Class B administrative  
20 violation.

21 PART 13. AMENDMENTS TO CHAPTER 410, LABOR CODE

22 SECTION 1.351. Section 410.002, Labor Code, is amended to  
23 read as follows:

24 Sec. 410.002. LAW GOVERNING LIABILITY PROCEEDINGS. A  
25 proceeding before the department [~~commission~~] to determine the  
26 liability of an insurance carrier for compensation for an injury or  
27 death under this subtitle is governed by this chapter.

1 SECTION 1.352. Section 410.005(a), Labor Code, is amended  
2 to read as follows:

3 (a) Unless the department [~~commission~~] determines that good  
4 cause exists for the selection of a different location, a  
5 prehearing [~~benefit review~~] conference or a contested case hearing  
6 may not be conducted at a site more than 75 miles from the  
7 claimant's residence at the time of the injury.

8 SECTION 1.353. Section 410.006(a), Labor Code, is amended  
9 to read as follows:

10 (a) A claimant may be represented at a prehearing [~~benefit~~  
11 ~~review~~] conference, a contested case hearing, or arbitration by an  
12 attorney or may be assisted by an individual of the claimant's  
13 choice who does not work for an attorney or receive a fee. An  
14 employee of an attorney may represent a claimant if that employee:

- 15 (1) is a relative of the claimant; and  
16 (2) does not receive a fee.

17 SECTION 1.354. Subchapter A, Chapter 410, Labor Code, is  
18 amended by adding Sections 410.007 and 410.008 to read as follows:

19 Sec. 410.007. INFORMATION LIST. (a) The department shall  
20 determine the type of information that is most useful to parties to  
21 help resolve disputes regarding income benefits. That information  
22 may include:

- 23 (1) reports regarding the compensable injury;  
24 (2) medical information regarding the injured  
25 employee; and  
26 (3) wage records.

27 (b) The department shall publish a list developed of the

1 information under Subsection (a) in appropriate media, including  
2 the department's Internet website, to provide guidance to parties  
3 to a dispute on the type of information they should have available  
4 at a prehearing conference or a contested case hearing.

5 (c) At the time a prehearing conference is scheduled, the  
6 department shall provide a copy of the list under Subsection (b) to  
7 each party to the dispute.

8 Sec. 410.008. PRECEDENT MANUAL. (a) The commissioner by  
9 rule shall adopt a precedent manual for workers' compensation  
10 disputes to establish better and more consistent decisions at each  
11 level of the dispute resolution process. In developing the  
12 precedent manual, the commissioner shall use as a model the  
13 precedent manual developed by the Texas Workforce Commission for  
14 appealed unemployment insurance cases.

15 (b) The commissioner may adopt key contested case decisions  
16 and court decisions as precedent decisions.

17 (c) The department shall:

18 (1) publish the decisions adopted under Subsection (b)  
19 in the precedent manual by subject areas; and

20 (2) make the precedent manual available on the  
21 department's Internet website.

22 (d) The department shall instruct each department employee  
23 involved in dispute resolution under this subtitle in the use of the  
24 manual and ensure that decisions at each stage of the dispute  
25 resolution process are made based on the precedents, as  
26 appropriate.

27 SECTION 1.355. The heading to Subchapter B, Chapter 410,

1 Labor Code, is amended to read as follows:

2 SUBCHAPTER B. INITIAL DISPUTE RESOLUTION

3 [~~BENEFIT REVIEW CONFERENCE~~]

4 SECTION 1.356. Subchapter B, Chapter 410, Labor Code, is  
5 amended by adding Sections 410.051 and 410.052 to read as follows:

6 Sec. 410.051. INFORMAL DISPUTE RESOLUTION AT CARRIER. (a)  
7 Before filing a dispute regarding income benefits with the  
8 department, the parties to the dispute, including the claimant,  
9 employer, and insurance carrier, must try to resolve the dispute  
10 among themselves through an informal process conducted by the  
11 insurance carrier.

12 (b) The commissioner shall adopt rules that specify the  
13 requirements for documentation of the initial attempt under  
14 Subsection (a) to resolve the dispute, including documentation of  
15 telephone calls or written correspondence.

16 (c) If a claimant notifies an insurance carrier of a  
17 complaint requiring dispute resolution under this chapter, the  
18 carrier, not later than the fifth business day after the date of  
19 receiving the notice, shall send to the claimant a letter  
20 acknowledging receipt of the complaint.

21 (d) An insurance carrier shall acknowledge, investigate,  
22 and resolve a complaint under this section not later than the 30th  
23 calendar day after the date the carrier receives a written  
24 statement of the complaint from the claimant.

25 Sec. 410.052. REQUEST FOR ARBITRATION OR CONTESTED CASE  
26 HEARING. If the parties are unable to timely resolve a dispute  
27 regarding income benefits through the informal dispute resolution

1 process required under Section 410.051, the claimant may file with  
2 the department a request for:

- 3           (1) arbitration under Subchapter C; or  
4           (2) a contested case hearing under Subchapter D.

5           SECTION 1.357. Section 410.102, Labor Code, is amended to  
6 read as follows:

7           Sec. 410.102. ARBITRATORS; QUALIFICATIONS. (a) An  
8 arbitrator must be an employee of the department [~~commission~~],  
9 except that the department [~~commission~~] may contract with qualified  
10 arbitrators on a determination of special need.

11           (b) An arbitrator must:

12           (1) be a member of the National Academy of  
13 Arbitrators;

14           (2) be on an approved list of the American Arbitration  
15 Association or Federal Mediation and Conciliation Service; or

16           (3) meet qualifications established by the  
17 commissioner [~~commission~~] by rule [~~and be approved by an~~  
18 ~~affirmative vote of at least two commission members representing~~  
19 ~~employers of labor and at least two commission members representing~~  
20 ~~wage earners~~].

21           (c) The department [~~commission~~] shall require that each  
22 arbitrator have appropriate training in the workers' compensation  
23 laws of this state. The commissioner by rule [~~commission~~] shall  
24 establish procedures to carry out this subsection.

25           SECTION 1.358. Section 410.103, Labor Code, is amended to  
26 read as follows:

27           Sec. 410.103. DUTIES OF ARBITRATOR. An arbitrator shall:

- 1 (1) protect the interests of all parties;
- 2 (2) ensure that all relevant evidence has been  
3 disclosed to the arbitrator and to all parties; and
- 4 (3) render an award consistent with this subtitle and  
5 the policies of the department [~~commission~~].

6 SECTION 1.359. Section 410.104, Labor Code, is amended to  
7 read as follows:

8 Sec. 410.104. ELECTION OF ARBITRATION; EFFECT. (a) If  
9 issues remain unresolved after the informal dispute resolution  
10 process required under Section 410.051 [~~a benefit review~~  
11 ~~conference~~], the parties, by agreement, may elect to engage in  
12 arbitration in the manner provided by this subchapter. Arbitration  
13 may be used only to resolve disputed benefit issues and is an  
14 alternative to a contested case hearing. [~~A contested case hearing~~  
15 ~~scheduled under Section 410.025(b) is canceled by an election under~~  
16 ~~this subchapter.~~]

17 (b) To elect arbitration, the parties must file the election  
18 with the department on a form prescribed by the commissioner  
19 [~~commissioner~~] not later than the 20th day after the date the  
20 insurance carrier is required to resolve the complaint under  
21 Section 410.051(d) [~~last day of the benefit review conference. The~~  
22 ~~commission shall prescribe a form for that purpose~~].

23 (c) An election to engage in arbitration under this  
24 subchapter is irrevocable and binding on all parties for the  
25 resolution of all disputes regarding income benefits under this  
26 subtitle arising out of the claims that are under the jurisdiction  
27 of the department [~~commission~~].

1 (d) An agreement to elect arbitration binds the parties to  
2 the provisions of Chapters 408-408D [~~Chapter 408~~] relating to  
3 income benefits, and any award, agreement, or settlement after  
4 arbitration is elected must comply with those chapters [~~that~~  
5 ~~chapter~~].

6 SECTION 1.360. Section 410.105, Labor Code, is amended to  
7 read as follows:

8 Sec. 410.105. LISTS OF ARBITRATORS. (a) The department  
9 [~~commission~~] shall establish regional lists of arbitrators who meet  
10 the qualifications prescribed under Sections 410.102(a) and (b).  
11 Each regional list shall be initially prepared in a random name  
12 order, and subsequent additions to a list shall be added  
13 chronologically.

14 (b) The department [~~commission~~] shall review the lists of  
15 arbitrators annually and determine if each arbitrator is fair and  
16 impartial and makes awards that are consistent with and in  
17 accordance with this subtitle and the rules of the commissioner  
18 [~~commission~~]. The commissioner [~~commission~~] shall remove an  
19 arbitrator if, after the review, the commissioner determines that  
20 the arbitrator is not fair and impartial or does not make awards  
21 consistent with this subtitle and the commissioner's rules  
22 [~~arbitrator does not receive an affirmative vote of at least two~~  
23 ~~commission members representing employers of labor and at least two~~  
24 ~~commission members representing wage earners~~].

25 (c) The department's [~~commission's~~] lists are confidential  
26 and are not subject to disclosure under Chapter 552, Government  
27 Code. The lists may not be revealed by any department [~~commission~~]

1 employee to any person who is not a department [~~commission~~]  
2 employee. The lists are exempt from discovery in civil litigation  
3 unless the party seeking the discovery establishes reasonable cause  
4 to believe that a violation of the requirements of this section or  
5 Section 410.106, 410.107, 410.108, or 410.109(b) occurred and that  
6 the violation is relevant to the issues in dispute.

7 SECTION 1.361. Section 410.106, Labor Code, is amended to  
8 read as follows:

9 Sec. 410.106. SELECTION OF ARBITRATOR. (a) The department  
10 [~~commission~~] shall assign the arbitrator for a particular case by  
11 selecting the next name after the previous case's selection in  
12 consecutive order.

13 (b) The department [~~commission~~] may not change the order of  
14 names once the order is established under this subchapter, except  
15 that once each arbitrator on the list has been assigned to a case,  
16 the names shall be randomly reordered.

17 SECTION 1.362. Section 410.107(a), Labor Code, is amended  
18 to read as follows:

19 (a) The department [~~commission~~] shall assign an arbitrator  
20 to a pending case not later than the 30th day after the date on which  
21 the election for arbitration is filed with the department  
22 [~~commission~~].

23 SECTION 1.363. Section 410.108(a), Labor Code, is amended  
24 to read as follows:

25 (a) Each party is entitled, in its sole discretion, to one  
26 rejection of the arbitrator in each case. If a party rejects the  
27 arbitrator, the department [~~commission~~] shall assign another

1 arbitrator as provided by Section 410.106.

2 SECTION 1.364. Section 410.109, Labor Code, is amended to  
3 read as follows:

4 Sec. 410.109. SCHEDULING OF ARBITRATION. (a) The  
5 arbitrator shall schedule arbitration to be held not later than the  
6 30th day after the date of the arbitrator's assignment and shall  
7 notify the parties and the department [~~commission~~] of the scheduled  
8 date.

9 (b) If an arbitrator is unable to schedule arbitration in  
10 accordance with Subsection (a), the department [~~commission~~] shall  
11 appoint the next arbitrator on the applicable list. Each party is  
12 entitled to reject the arbitrator appointed under this subsection  
13 in the manner provided under Section 410.108.

14 SECTION 1.365. Section 410.110, Labor Code, is amended to  
15 read as follows:

16 Sec. 410.110. CONTINUANCE. (a) A request by a party for a  
17 continuance of the arbitration to another date must be directed to  
18 the department [~~director~~]. The department [~~director~~] may grant a  
19 continuance only if the department [~~director~~] determines, giving  
20 due regard to the availability of the arbitrator, that good cause  
21 for the continuance exists.

22 (b) If the department [~~director~~] grants a continuance under  
23 this section, the rescheduled date may not be later than the 30th  
24 day after the original date of the arbitration.

25 (c) Without regard to whether good cause exists, the  
26 department [~~director~~] may not grant more than one continuance to  
27 each party.

1 SECTION 1.366. Section 410.111, Labor Code, is amended to  
2 read as follows:

3 Sec. 410.111. RULES. The commissioner [~~commission~~] shall  
4 adopt rules for arbitration consistent with generally recognized  
5 arbitration principles and procedures.

6 SECTION 1.367. Section 410.114(b), Labor Code, is amended  
7 to read as follows:

8 (b) The department [~~commission~~] shall make an electronic  
9 recording of the proceeding.

10 SECTION 1.368. Section 410.118(d), Labor Code, is amended  
11 to read as follows:

12 (d) The arbitrator shall file a copy of the award as part of  
13 the permanent claim file at the department [~~commission~~] and shall  
14 notify the parties in writing of the decision.

15 SECTION 1.369. Section 410.119(b), Labor Code, is amended  
16 to read as follows:

17 (b) An arbitrator's award is a final order of the  
18 commissioner [~~commission~~].

19 SECTION 1.370. Sections 410.121(a) and (b), Labor Code, are  
20 amended to read as follows:

21 (a) On application of an aggrieved party, a court of  
22 competent jurisdiction shall vacate an arbitrator's award on a  
23 finding that:

24 (1) the award was procured by corruption, fraud, or  
25 misrepresentation;

26 (2) the decision of the arbitrator was arbitrary and  
27 capricious; or

1 (3) the award was outside the jurisdiction of the  
2 department [~~commission~~].

3 (b) If an award is vacated, the case shall be remanded to the  
4 department [~~commission~~] for another arbitration proceeding.

5 SECTION 1.371. Section 410.151, Labor Code, is amended to  
6 read as follows:

7 Sec. 410.151. CONTESTED CASE HEARING; PREHEARING  
8 CONFERENCE REQUIRED [~~SCOPE~~]. (a) If arbitration is not elected  
9 under Section 410.104, a party to a claim [~~for which a benefit~~  
10 ~~review conference is held or a party eligible to proceed directly to~~  
11 ~~a contested case hearing as provided by Section 410.024]~~ is  
12 entitled to obtain a contested case hearing by filing a request with  
13 the department in the manner prescribed by the commissioner by rule  
14 not later than the 20th day after the date the insurance carrier is  
15 required to resolve the complaint under Section 410.051(d).

16 (b) On receipt of a request for a contested case hearing,  
17 the department shall:

18 (1) direct the parties to meet in a prehearing  
19 conference to establish the disputed issues involved in the claim;

20 (2) schedule the prehearing conference to be held not  
21 later than the 10th day after the date of receipt of the claimant's  
22 request;

23 (3) schedule the contested case hearing to be held not  
24 later than the 60th day after the date of receipt of the claimant's  
25 request; and

26 (4) notify the office of employee assistance that a  
27 request for administrative resolution of the dispute has been filed

1 with the department.

2 (c) The department shall send written notice of the  
3 prehearing conference and the contested case hearing to the parties  
4 to the claim.

5 (d) An issue that was not raised at a prehearing [~~benefit~~  
6 ~~review~~] conference [~~or that was resolved at a benefit review~~  
7 ~~conference~~] may not be considered at a contested case hearing under  
8 this subchapter unless:

9 (1) the parties consent; or

10 (2) [~~if the issue was not raised,~~] the department  
11 [~~commission~~] determines that good cause existed for not raising the  
12 issue at the conference.

13 SECTION 1.372. Section 410.153, Labor Code, is amended to  
14 read as follows:

15 Sec. 410.153. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.  
16 Chapter 2001, Government Code, applies to a contested case hearing  
17 to the extent that the commissioner determines [~~commission finds~~]  
18 appropriate, except that the following do not apply:

19 (1) Section 2001.054;

20 (2) Sections 2001.061 and 2001.062;

21 (3) Section 2001.202; and

22 (4) Subchapters F, G, I, and Z, except for Section  
23 2001.141(c).

24 SECTION 1.373. Section 410.154, Labor Code, is amended to  
25 read as follows:

26 Sec. 410.154. SCHEDULING OF HEARING. The department  
27 [~~commission~~] shall schedule a contested case hearing in accordance

1 with Section 410.151 [~~410.024 or 410.025(b)~~].

2 SECTION 1.374. Section 410.155, Labor Code, is amended to  
3 read as follows:

4 Sec. 410.155. CONTINUANCE. (a) A written request by a  
5 party for a continuance of a contested case hearing to another date  
6 must be directed to the department [~~commission~~].

7 (b) The department [~~commission~~] may grant a continuance  
8 only if the department [~~commission~~] determines that there is good  
9 cause for the continuance.

10 SECTION 1.375. Section 410.157, Labor Code, is amended to  
11 read as follows:

12 Sec. 410.157. RULES. The commissioner [~~commission~~] shall  
13 adopt rules governing procedures under which contested case  
14 hearings are conducted.

15 SECTION 1.376. Section 410.158(a), Labor Code, is amended  
16 to read as follows:

17 (a) Except as provided by Section 410.162, discovery is  
18 limited to:

19 (1) depositions on written questions to any health  
20 care provider;

21 (2) depositions of other witnesses as permitted by the  
22 hearing officer for good cause shown; and

23 (3) interrogatories as prescribed by the commissioner  
24 [~~commission~~].

25 SECTION 1.377. Section 410.159, Labor Code, is amended to  
26 read as follows:

27 Sec. 410.159. STANDARD INTERROGATORIES. (a) The

1 commissioner [~~commission~~] by rule shall prescribe standard form  
2 sets of interrogatories to elicit information from claimants and  
3 insurance carriers.

4 (b) Standard interrogatories shall be answered by each  
5 party and served on the opposing party within the time prescribed by  
6 commissioner [~~commission~~] rule, unless the parties agree  
7 otherwise.

8 SECTION 1.378. Section 410.160, Labor Code, is amended to  
9 read as follows:

10 Sec. 410.160. EXCHANGE OF INFORMATION. Within the time  
11 prescribed by commissioner [~~commission~~] rule, the parties shall  
12 exchange:

13 (1) all medical reports and reports of expert  
14 witnesses who will be called to testify at the hearing;

15 (2) all medical records;

16 (3) any witness statements;

17 (4) the identity and location of any witness known to  
18 the parties to have knowledge of relevant facts; and

19 (5) all photographs or other documents that a party  
20 intends to offer into evidence at the hearing.

21 SECTION 1.379. Section 410.161, Labor Code, is amended to  
22 read as follows:

23 Sec. 410.161. FAILURE TO DISCLOSE INFORMATION. A party who  
24 fails to disclose information known to the party or documents that  
25 are in the party's possession, custody, or control at the time  
26 disclosure is required by Sections 410.158-410.160 may not  
27 introduce the evidence at any subsequent proceeding before the

1 department [~~commission~~] or in court on the claim unless good cause  
2 is shown for not having disclosed the information or documents  
3 under those sections.

4 SECTION 1.380. Sections 410.168(c)-(f), Labor Code, are  
5 amended to read as follows:

6 (c) The hearing officer may enter an interlocutory order for  
7 the payment of all or part of medical benefits or income benefits.  
8 The order may address accrued benefits, future benefits, or both  
9 accrued benefits and future benefits. The order is binding unless a  
10 party seeks judicial review as provided by this chapter [~~during the~~  
11 ~~pendency of an appeal to the appeals panel~~].

12 (d) On a form prescribed by rule by the commissioner [~~that~~  
13 ~~the commission by rule prescribes~~], the hearing officer shall issue  
14 a separate written decision regarding attorney's fees and any  
15 matter related to attorney's fees. The decision regarding  
16 attorney's fees and the form may not be made known to a jury in a  
17 judicial review of an award, including an appeal.

18 (e) The commissioner [~~commission~~] by rule shall prescribe  
19 the times within which the hearing officer shall [~~must~~] file the  
20 decisions with the department after the date the contested case  
21 hearing is concluded. The commissioner may issue an order for  
22 payment of benefits on receipt of the decision [~~division~~].

23 (f) The department [~~division~~] shall send a copy of the  
24 decision to each party.

25 SECTION 1.381. Section 410.169, Labor Code, is amended to  
26 read as follows:

27 Sec. 410.169. EFFECT OF DECISION. A decision of a hearing

1 officer regarding benefits is final unless [~~in the absence of a~~  
2 ~~timely appeal by~~] a party seeks judicial review as provided by this  
3 chapter [~~and is binding during the pendency of an appeal to the~~  
4 ~~appeals panel~~].

5 SECTION 1.382. Subchapter D, Chapter 410, Labor Code, is  
6 amended by adding Sections 410.170-410.173 to read as follows:

7 Sec. 410.170. CLERICAL ERROR. The commissioner may revise  
8 a decision in a contested case hearing on a finding of clerical  
9 error.

10 Sec. 410.171. CONTINUATION OF DEPARTMENT JURISDICTION.  
11 During judicial review of a hearing officer's decision on any  
12 disputed issue relating to a workers' compensation claim, the  
13 department retains jurisdiction of all other issues related to the  
14 claim.

15 Sec. 410.172. JUDICIAL ENFORCEMENT OF ORDER OR DECISION;  
16 ADMINISTRATIVE VIOLATION. (a) If a person refuses or fails to  
17 comply with an interlocutory order, final order, or decision of the  
18 department under this subtitle, the department may bring suit in  
19 Travis County to enforce the order or decision.

20 (b) If an insurance carrier refuses or fails to comply with  
21 an interlocutory order, final order, or decision of the department  
22 under this subtitle, the claimant may bring suit in the county of  
23 the claimant's residence or the county in which the injury occurred  
24 to enforce the order or decision.

25 (c) If the department brings suit to enforce an  
26 interlocutory order, final order, or decision, the department is  
27 entitled to reasonable attorney's fees and costs for the

1 prosecution and collection of the claim, in addition to a judgment  
2 enforcing the order or decision and any other remedy provided by  
3 law.

4 (d) A claimant who brings suit to enforce an interlocutory  
5 order, final order, or decision of the department under this  
6 subtitle is entitled to a penalty equal to 12 percent of the amount  
7 of benefits recovered in the judgment, interest, and reasonable  
8 attorney's fees for the prosecution and collection of the claim, in  
9 addition to a judgment enforcing the order or decision.

10 (e) A person commits a violation if the person fails or  
11 refuses to comply with an interlocutory order, final order, or  
12 decision of the department before the 21st day after the date the  
13 order or decision becomes final. A violation under this subsection  
14 is a Class A administrative violation.

15 Sec. 410.173. REIMBURSEMENT FOR CERTAIN OVERPAYMENTS. The  
16 subsequent injury fund shall reimburse an insurance carrier for any  
17 overpayment of benefits made under an interlocutory order or  
18 decision if that order or decision is reversed or modified by final  
19 arbitration, order, or decision of the commissioner or a court.

20 SECTION 1.383. Section 410.251, Labor Code, is amended to  
21 read as follows:

22 Sec. 410.251. EXHAUSTION OF REMEDIES. A party that has  
23 exhausted the party's [~~its~~] administrative remedies under this  
24 subtitle and that is aggrieved by a final decision of the department  
25 [~~appeals panel~~] may seek judicial review under this subchapter and  
26 Subchapter G, if applicable.

27 SECTION 1.384. Section 410.252, Labor Code, is amended by

1 amending Subsections (a) and (b) and adding Subsection (e) to read  
2 as follows:

3 (a) A party may seek judicial review by filing suit not  
4 later than the 40th day after the date on which the decision of the  
5 hearings officer [~~appeals panel~~] was filed with the department  
6 [~~division~~].

7 (b) The party bringing suit to appeal the decision must file  
8 a petition in district [~~with the appropriate~~] court in:

9 (1) the county where the employee resided at the time  
10 of the injury or death, if the employee is deceased; or

11 (2) in the case of an occupational disease, in the  
12 county where the employee resided on the date disability began or  
13 any county agreed to by the parties.

14 (e) A district court described by Subsection (b) has  
15 exclusive jurisdiction of a suit described by this section.

16 SECTION 1.385. Section 410.253, Labor Code, is amended to  
17 read as follows:

18 Sec. 410.253. SERVICE; NOTICE. (a) A party seeking  
19 judicial review shall simultaneously:

20 (1) file a copy of the party's petition with the court;

21 (2) serve any opposing party to the suit; and

22 (3) provide written notice of the suit or notice of  
23 appeal to the department [~~commission~~].

24 (b) A party may not seek judicial review under Section  
25 410.251 unless the party has provided written notice of the suit to  
26 the department [~~commission~~] as required by this section.

27 SECTION 1.386. Section 410.254, Labor Code, is amended to

1 read as follows:

2 Sec. 410.254. DEPARTMENT [~~COMMISSION~~] INTERVENTION. On  
3 timely motion initiated by the commissioner [~~executive director~~],  
4 the department may [~~commission shall be permitted to~~] intervene in  
5 any judicial proceeding under this subchapter or Subchapter G.

6 SECTION 1.387. Sections 410.256(a), (c), (d), and (f),  
7 Labor Code, are amended to read as follows:

8 (a) A claim or issue may not be settled contrary to the  
9 provisions of the contested case hearing [~~an appeals panel~~]  
10 decision issued on the claim or issue unless a party to the  
11 proceeding has filed for judicial review under this subchapter or  
12 Subchapter G. The trial court must approve a settlement made by the  
13 parties after judicial review of an award is sought and before the  
14 court enters judgment.

15 (c) A settlement may not provide for:

16 (1) payment of any benefits in a lump sum except as  
17 provided by Section 408C.108 [~~408.128~~]; or

18 (2) limitation or termination of the claimant's right  
19 to medical benefits under Section 408A.001 [~~408.021~~].

20 (d) A settlement or agreement that resolves an issue of  
21 impairment may not be made before the claimant reaches maximum  
22 medical improvement and must adopt one of the impairment ratings  
23 under Subchapter C [~~E~~], Chapter 408C [~~408~~].

24 (f) Settlement of a claim or issue under this section does  
25 not constitute a modification or reversal of the decision awarding  
26 benefits for the purpose of Section 410.173 [~~410.209~~].

27 SECTION 1.388. Sections 410.257(a), (b), (c), and (e),

1 Labor Code, are amended to read as follows:

2 (a) A judgment entered by a court on judicial review of a a [~~an~~  
3 ~~appeals panel~~] decision of a hearing officer under this subchapter  
4 or Subchapter G must comply with all appropriate provisions of the  
5 law.

6 (b) A judgment under this section may not provide for:

7 (1) payment of benefits in a lump sum except as  
8 provided by Section 408C.108 [~~408.128~~]; or

9 (2) the limitation or termination of the claimant's  
10 right to medical benefits under Section 408A.001 [~~408.021~~].

11 (c) A judgment that resolves an issue of impairment may not  
12 be entered before the date the claimant reaches maximum medical  
13 improvement. The judgment must adopt an impairment rating under  
14 Subchapter C [~~G~~], Chapter 408C [~~408~~], except to the extent Section  
15 410.307 applies.

16 (e) A judgment under this section based on default or on an  
17 agreement of the parties does not constitute a modification or  
18 reversal of a decision awarding benefits for the purpose of Section  
19 410.173 [~~410.209~~].

20 SECTION 1.389. The heading to Section 410.258, Labor Code,  
21 is amended to read as follows:

22 Sec. 410.258. NOTIFICATION OF DEPARTMENT [~~COMMISSION~~] OF  
23 PROPOSED JUDGMENTS AND SETTLEMENTS; RIGHT TO INTERVENE.

24 SECTION 1.390. Sections 410.258(a)-(e), Labor Code, are  
25 amended to read as follows:

26 (a) The party who initiated a proceeding under this  
27 subchapter or Subchapter G must file any proposed judgment or

1 settlement made by the parties to the proceeding, including a  
2 proposed default judgment, with the department [~~executive director~~  
3 ~~of the commission~~] not later than the 30th day before the date on  
4 which the court is scheduled to enter the judgment or approve the  
5 settlement. The proposed judgment or settlement must be mailed to  
6 the commissioner [~~executive director~~] by certified mail, return  
7 receipt requested.

8 (b) The department [~~commission~~] may intervene in a  
9 proceeding under Subsection (a) not later than the 30th day after  
10 the date of receipt of the proposed judgment or settlement.

11 (c) The commissioner [~~commission~~] shall review the proposed  
12 judgment or settlement to determine compliance with all appropriate  
13 provisions of the law. If the commissioner [~~commission~~] determines  
14 that the proposal is not in compliance with the law, the department  
15 [~~commission~~] may intervene as a matter of right in the proceeding  
16 not later than the 30th day after the date of receipt of the  
17 proposed judgment or settlement. The court may limit the extent of  
18 the department's [~~commission's~~] intervention to providing the  
19 information described by Subsection (e).

20 (d) If the department [~~commission~~] does not intervene  
21 before the 31st day after the date of receipt of the proposed  
22 judgment or settlement, the court shall enter the judgment or  
23 approve the settlement if the court determines that the proposed  
24 judgment or settlement is in compliance with all appropriate  
25 provisions of the law.

26 (e) If the department [~~commission~~] intervenes in the  
27 proceeding, the commissioner [~~commission~~] shall inform the court of

1 each reason the commissioner [~~commission~~] believes the proposed  
2 judgment or settlement is not in compliance with the law. The court  
3 shall give full consideration to the information provided by the  
4 commissioner [~~commission~~] before entering a judgment or approving a  
5 settlement.

6 SECTION 1.3905. Section 410.301(a), Labor Code, is amended  
7 to read as follows:

8 (a) Judicial review [~~of a final decision of a commission~~  
9 ~~appeals panel~~] regarding compensability or eligibility for or the  
10 amount of income or death benefits shall be conducted as provided by  
11 this subchapter.

12 SECTION 1.391. Section 410.302, Labor Code, is amended to  
13 read as follows:

14 Sec. 410.302. LIMITATION OF ISSUES. A trial under this  
15 subchapter is limited to issues decided by the hearing officer at  
16 the contested case hearing [~~commission appeals panel~~] and on which  
17 judicial review is sought. The pleadings must specifically set  
18 forth the determinations of the hearing officer [~~appeals panel~~] by  
19 which the party is aggrieved.

20 SECTION 1.392. Section 410.304, Labor Code, is amended to  
21 read as follows:

22 Sec. 410.304. CONSIDERATION OF [~~APPEALS PANEL~~] DECISION.

23 (a) In a jury trial, the court, before submitting the case to the  
24 jury, shall inform the jury in the court's instructions, charge, or  
25 questions to the jury of the hearing officer's [~~commission appeals~~  
26 ~~panel~~] decision on each disputed issue described by Section  
27 410.301(a) that is submitted to the jury.

1 (b) In a trial to the court without a jury, the court in  
2 rendering its judgment on an issue described by Section 410.301(a)  
3 shall consider the decision of the hearing officer [~~commission~~  
4 ~~appeals panel~~].

5 SECTION 1.393. Sections 410.306(b) and (c), Labor Code, are  
6 amended to read as follows:

7 (b) The department [~~commission~~] on payment of a reasonable  
8 fee shall make available to the parties a certified copy of the  
9 department's [~~commission's~~] record. All facts and evidence the  
10 record contains are admissible to the extent allowed under the  
11 Texas Rules of [~~Civil~~] Evidence.

12 (c) Except as provided by Section 410.307, evidence of  
13 extent of impairment shall be limited to that presented to the  
14 department [~~commission~~]. The court or jury, in its determination  
15 of the extent of impairment, shall adopt one of the impairment  
16 ratings under Subchapter C [~~G~~], Chapter 408C [~~408~~].

17 SECTION 1.394. Sections 410.307(a) and (d), Labor Code, are  
18 amended to read as follows:

19 (a) Evidence of the extent of impairment is not limited to  
20 that presented to the department [~~commission~~] if the court, after a  
21 hearing, finds that there is a substantial change of condition. The  
22 court's finding of a substantial change of condition may be based  
23 only on:

24 (1) medical evidence from the same doctor or doctors  
25 whose testimony or opinion was presented to the department  
26 [~~commission~~];

27 (2) evidence that has come to the party's knowledge

1 since the contested case hearing;

2 (3) evidence that could not have been discovered  
3 earlier with due diligence by the party; and

4 (4) evidence that would probably produce a different  
5 result if it is admitted into evidence at the trial.

6 (d) If the court finds a substantial change of condition  
7 under this section, new medical evidence of the extent of  
8 impairment must be from and is limited to the same doctor or doctors  
9 who made impairment ratings [~~before the commission~~] under Section  
10 408C.103 [~~408.123~~].

11 SECTION 1.395. Section 410.308(a), Labor Code, is amended  
12 to read as follows:

13 (a) The department [~~commission or the Texas Department of~~  
14 ~~Insurance~~] shall furnish any interested party in the claim with a  
15 certified copy of the notice of the employer securing compensation  
16 with the insurance carrier, filed with the department [~~commission~~].

17 SECTION 1.396. The following laws are repealed:

- 18 (1) Section 410.001, Labor Code;  
19 (2) Section 410.004, Labor Code;  
20 (3) Section 410.005(c), Labor Code;  
21 (4) Sections 410.021-410.034, Labor Code; and  
22 (5) Subchapter E, Chapter 410, Labor Code.

23 PART 14. AMENDMENTS TO CHAPTER 411, LABOR CODE

24 SECTION 1.401. Section 411.001(1), Labor Code, is amended  
25 to read as follows:

26 (1) "Commission" [~~"Division"~~] means the Texas  
27 Workforce Commission [~~division of workers' health and safety of the~~]

1 ~~commission~~].

2 SECTION 1.402. Section 411.003(a), Labor Code, is amended  
3 to read as follows:

4 (a) An insurance company, the agent, servant, or employee of  
5 the insurance company, or a safety consultant who performs a safety  
6 consultation under this chapter [~~Subchapter D or E~~] has no  
7 liability for an accident, injury, or occupational disease based on  
8 an allegation that the accident, injury, or occupational disease  
9 was caused or could have been prevented by a program, inspection, or  
10 other activity or service undertaken by the insurance company for  
11 the prevention of accidents in connection with operations of the  
12 employer.

13 SECTION 1.403. Section 411.011, Labor Code, is amended to  
14 read as follows:

15 Sec. 411.011. COORDINATION AND ENFORCEMENT OF STATE LAWS  
16 AND RULES. The commission [~~division~~] shall coordinate and enforce  
17 the implementation of state laws and rules relating to workers'  
18 health and safety issues.

19 SECTION 1.404. Section 411.012, Labor Code, is amended to  
20 read as follows:

21 Sec. 411.012. COLLECTION AND ANALYSIS OF INFORMATION. (a)  
22 The commission [~~division~~] shall collect and serve as a repository  
23 for statistical information on workers' health and safety. The  
24 commission [~~division~~] shall analyze and use that information to:

25 (1) identify and assign priorities to safety needs;  
26 and

27 (2) better coordinate the safety services provided by

1 public or private organizations, including insurance carriers.

2 (b) The commission [~~division~~] shall coordinate or supervise  
3 the collection by state or federal entities of information relating  
4 to job safety, including information collected for the  
5 supplementary data system and the annual survey of the Bureau of  
6 Labor Statistics of the United States Department of Labor.

7 SECTION 1.405. Section 411.013, Labor Code, is amended to  
8 read as follows:

9 Sec. 411.013. FEDERAL CONTRACTS AND PROGRAMS. The [~~With~~  
10 ~~the approval of the~~] commission [~~, the division~~] may:

11 (1) enter into contracts with the federal government  
12 to perform occupational safety projects; and

13 (2) apply for federal funds through any federal  
14 program relating to occupational safety.

15 SECTION 1.406. Section 411.014, Labor Code, is amended to  
16 read as follows:

17 Sec. 411.014. EDUCATIONAL PROGRAMS; COOPERATION WITH OTHER  
18 ENTITIES. (a) The commission [~~division~~] shall promote workers'  
19 health and safety through educational and other innovative programs  
20 developed by the commission or other state agencies [~~division~~].

21 (b) The commission [~~division~~] shall cooperate with other  
22 entities in the development and approval of safety courses, safety  
23 plans, and safety programs.

24 (c) The commission [~~division~~] shall cooperate with business  
25 and industry trade associations, labor organizations, and other  
26 entities to develop means and methods of educating employees and  
27 employers concerning workplace safety.

1 SECTION 1.407. Sections 411.015(a), (d), and (e), Labor  
2 Code, are amended to read as follows:

3 (a) The commission [~~division~~] shall publish or procure and  
4 issue educational books, pamphlets, brochures, films, videotapes,  
5 and other informational and educational material.

6 (d) The commission [~~division~~] shall make specific decisions  
7 regarding the issues and problems to be addressed by the  
8 educational materials after assigning appropriate priorities based  
9 on frequency of injuries, degree of hazard, severity of injuries,  
10 and similar considerations.

11 (e) The educational materials provided under this section  
12 must include specific references to:

13 (1) the requirements of state and federal laws and  
14 regulations;

15 (2) recommendations and practices of business,  
16 industry, and trade associations; and

17 (3) if needed, recommended work practices based on  
18 recommendations made by the commission [~~division~~] for the  
19 prevention of injury.

20 SECTION 1.408. Section 411.016, Labor Code, is amended to  
21 read as follows:

22 Sec. 411.016. PEER REVIEW SAFETY PROGRAM. The commission  
23 [~~division~~] shall certify safe employers to provide peer review  
24 safety programs.

25 SECTION 1.409. Section 411.017, Labor Code, is amended to  
26 read as follows:

27 Sec. 411.017. ADVISORY SERVICE TO INSURANCE CARRIERS. The

1 commission [~~division~~] shall advise insurance carrier loss control  
2 service organizations of safety needs and priorities developed by  
3 the commission [~~division~~] and of:

4 (1) hazard classifications, specific employers,  
5 industries, occupations, or geographic regions to which loss  
6 control services should be directed; or

7 (2) the identity and types of injuries or occupational  
8 diseases and means and methods for prevention of those injuries or  
9 diseases to which loss control services should be directed.

10 SECTION 1.410. Section 411.018, Labor Code, is amended to  
11 read as follows:

12 Sec. 411.018. FEDERAL OSHA COMPLIANCE. In accordance with  
13 Section 7(c), Occupational Safety and Health Act of 1970 (29 U.S.C.  
14 Section 656), the commission [~~division~~] shall:

15 (1) consult with employers regarding compliance with  
16 federal occupational safety laws and rules; and

17 (2) collect information relating to occupational  
18 safety as required by federal laws, rules, or agreements.

19 SECTION 1.411. Section 411.031, Labor Code, is amended to  
20 read as follows:

21 Sec. 411.031. JOB SAFETY INFORMATION SYSTEM; COOPERATION  
22 WITH OTHER AGENCIES. (a) The commission [~~division~~] shall maintain  
23 a job safety information system.

24 (b) The commission [~~division~~] shall obtain from any  
25 appropriate state agency, including the Texas Department of  
26 Insurance, the [~~Texas~~] Department of State Health Services, and the  
27 Department of Assistive and Rehabilitative Services [~~Texas~~

1 ~~Employment Commission~~], data and statistics, including data and  
2 statistics compiled for rate-making purposes.

3 (c) The commission [~~division~~] shall consult with the Texas  
4 Department of Insurance [~~and the Texas Employment Commission~~] in  
5 the design of data information and retrieval systems to accomplish  
6 the mutual purposes of the department [~~those agencies~~] and [~~of~~] the  
7 commission [~~division~~].

8 SECTION 1.412. Section 411.035, Labor Code, is amended to  
9 read as follows:

10 Sec. 411.035. USE OF INJURY REPORT. A report made under  
11 Section 411.032 may not be considered to be an admission by or  
12 evidence against an employer or an insurance carrier in a  
13 proceeding before the department [~~commission~~] or a court in which  
14 the facts set out in the report are contradicted by the employer or  
15 insurance carrier.

16 SECTION 1.413. Section 411.064, Labor Code, is amended to  
17 read as follows:

18 Sec. 411.064. INSPECTIONS. (a) The department, in  
19 conjunction with the audits conducted under Section 402.166(g), may  
20 [~~division shall~~] conduct inspections [~~an inspection at least every~~  
21 ~~two years~~] to determine the adequacy of the accident prevention  
22 services required by Section 411.061 for each insurance company  
23 writing workers' compensation insurance in this state.

24 (b) If, after an inspection under Subsection (a), an  
25 insurance company's accident prevention services are determined to  
26 be inadequate, the department [~~division~~] shall reinspect the  
27 accident prevention services of the insurance company not earlier

1 than the 180th day or later than the 270th day after the date the  
2 accident prevention services were determined by the department  
3 [~~division~~] to be inadequate.

4 (c) The insurance company shall reimburse the department  
5 [~~commission~~] for the reasonable cost of the reinspection, including  
6 a reasonable allocation of the department's [~~commission's~~]  
7 administrative costs incurred in conducting the inspections.

8 SECTION 1.414. Section 411.065, Labor Code, is amended to  
9 read as follows:

10 Sec. 411.065. ANNUAL INFORMATION SUBMITTED BY INSURANCE  
11 COMPANY. (a) Each insurance company writing workers' compensation  
12 insurance in this state shall submit to the department [~~division~~]  
13 at least once a year detailed information on the type of accident  
14 prevention facilities offered to that insurance company's  
15 policyholders.

16 (b) The information must include:

17 (1) the amount of money spent by the insurance company  
18 on accident prevention services;

19 (2) [~~the number and qualifications of field safety~~  
20 ~~representatives employed by the insurance company,~~

21 [~~3~~] the number of site inspections performed;

22 (3) [~~4~~] accident prevention services for which the  
23 insurance company contracts;

24 (4) [~~5~~] a breakdown of the premium size of the risks  
25 to which services were provided;

26 (5) [~~6~~] evidence of the effectiveness of and  
27 accomplishments in accident prevention; and

1           (6) [~~7~~] any additional information required by the  
2 department [~~commission~~].

3           SECTION 1.415. Section 411.067, Labor Code, is amended to  
4 read as follows:

5           Sec. 411.067. DEPARTMENT [~~COMMISSION~~] PERSONNEL. [~~(a)~~]  
6 The department [~~commission~~] shall employ the personnel necessary to  
7 enforce this subchapter, including at least 10 safety inspectors to  
8 perform inspections at a job site and at an insurance company to  
9 determine the adequacy of the accident prevention services provided  
10 by the insurance company.

11           ~~[(b) A safety inspector must have the qualifications~~  
12 ~~required for a field safety representative by Section 411.062.]~~

13           SECTION 1.416. Section 411.081(a), Labor Code, is amended  
14 to read as follows:

15           (a) The commission [~~division~~] shall maintain a 24-hour  
16 toll-free telephone service for reports of violations of  
17 occupational health or safety law.

18           SECTION 1.417. Section 411.104, Labor Code, is amended to  
19 read as follows:

20           Sec. 411.104. ADMINISTRATION BY COMMISSION. [~~DIVISION~~  
21 ~~DUTIES. (a)~~] The commission [~~division~~] shall administer this  
22 subchapter.

23           ~~[(b) In addition to the duties specified in this chapter,~~  
24 ~~the division shall perform other duties as required by the~~  
25 ~~commission.]~~

26           SECTION 1.418. The following laws are repealed:

27           (1) Subchapters D and G, Chapter 411, Labor Code;

- (2) Section 411.062, Labor Code;
- (3) Section 411.063(b), Labor Code; and
- (4) Section 411.102(1), Labor Code.

PART 15. AMENDMENTS TO CHAPTER 412, LABOR CODE

SECTION 1.451. Sections 412.041(g), (i), and (l), Labor Code, are amended to read as follows:

(g) The director shall act as an adversary before the department [~~commission~~] and courts and present the legal defenses and positions of the state as an employer and insurer, as appropriate.

(i) In administering Chapter 501, the director is subject to the rules, orders, and decisions of the commissioner [~~commission~~] in the same manner as a private employer, insurer, or association.

(l) The director shall furnish copies of all rules to:

- (1) the Texas Workforce Commission [~~commission~~];
- (2) the commissioner [~~of the Texas Department of Insurance~~]; and

(3) the administrative heads of all state agencies affected by this chapter and Chapter 501.

PART 16. AMENDMENTS TO CHAPTER 413, LABOR CODE

SECTION 1.501. The heading to Subchapter A, Chapter 413, Labor Code, is amended to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS [~~DIVISION OF MEDICAL REVIEW~~]

SECTION 1.502. Section 413.001, Labor Code, is amended to read as follows:

Sec. 413.001. APPLICABILITY. Except as otherwise provided by this chapter, this chapter applies to the provision of health

1 care services by an insurance carrier who does not use a provider  
2 network. [~~DEFINITION. In this chapter, "division" means the~~  
3 ~~division of medical review of the commission.~~]

4 SECTION 1.503. Section 413.002, Labor Code, is amended to  
5 read as follows:

6 Sec. 413.002. [~~DIVISION OF~~] MEDICAL REVIEW. (a) [~~The~~  
7 ~~commission shall maintain a division of medical review to ensure~~  
8 ~~compliance with the rules and to implement this chapter under the~~  
9 ~~policies adopted by the commission.~~

10 [(b)] The department [~~division~~] shall monitor health care  
11 providers, insurance carriers, and workers' compensation claimants  
12 who receive medical services to ensure the compliance of those  
13 persons with rules adopted by the commissioner [~~commission~~]  
14 relating to health care, including medical policies and fee  
15 guidelines.

16 (b) [(c)] In monitoring health care providers who serve as  
17 designated doctors under this subtitle [~~Chapter 408~~], the  
18 department [~~division~~] shall evaluate the compliance of those  
19 providers with this subtitle and with rules adopted by the  
20 commissioner [~~commission~~] relating to medical policies, fee  
21 guidelines, and impairment ratings.

22 SECTION 1.504. Section 413.003, Labor Code, is amended to  
23 read as follows:

24 Sec. 413.003. AUTHORITY TO CONTRACT. The commissioner  
25 [~~commission~~] may contract with a private or public entity to  
26 perform a duty or function of the department under this chapter  
27 [~~division~~].

1 SECTION 1.505. Section 413.004, Labor Code, is amended to  
2 read as follows:

3 Sec. 413.004. COORDINATION WITH PROVIDERS. The department  
4 [~~division~~] shall coordinate the department's [~~its~~] activities with  
5 health care providers as necessary to perform the department's  
6 [~~its~~] duties under this chapter. The coordination may include:

7 (1) conducting educational seminars on commissioner  
8 [~~commissioner~~] rules and procedures; or

9 (2) providing information to and requesting  
10 assistance from professional peer review organizations.

11 SECTION 1.506. Section 413.007, Labor Code, is amended to  
12 read as follows:

13 Sec. 413.007. INFORMATION MAINTAINED BY DEPARTMENT  
14 [~~DIVISION~~]. (a) The department [~~division~~] shall maintain a  
15 statewide data base of medical charges, actual payments, and  
16 treatment protocols that may be used by:

17 (1) the commissioner [~~commissioner~~] in adopting [~~the~~]  
18 medical policies and fee guidelines; and

19 (2) the department [~~division~~] in administering [~~the~~]  
20 medical policies, fee guidelines, or rules.

21 (b) The department [~~division~~] shall ensure that the data  
22 base:

23 (1) contains information necessary to detect  
24 practices and patterns in medical charges, actual payments, and  
25 treatment protocols; and

26 (2) may [~~can~~] be used in a meaningful way to allow the  
27 [~~commissioner to~~] control of medical costs as provided by this

1 subtitle.

2 (c) The department [~~division~~] shall ensure that the data  
3 base is available for public access for a reasonable fee  
4 established by the department [~~commission~~]. The identities of  
5 injured employees [~~workers~~] and beneficiaries may not be disclosed.

6 (d) The department [~~division~~] shall take appropriate action  
7 to be aware of and to maintain the most current information on  
8 developments in the treatment and cure of injuries and diseases  
9 common in workers' compensation cases.

10 SECTION 1.507. Sections 413.008(a) and (b), Labor Code, are  
11 amended to read as follows:

12 (a) On request from the department [~~commission~~] for  
13 specific information, an insurance carrier, including a carrier who  
14 uses a provider network, shall provide to the department [~~division~~]  
15 any information in the carrier's [~~its~~] possession, custody, or  
16 control that reasonably relates to the department's [~~commission's~~]  
17 duties under this subtitle and to health care:

- 18 (1) treatment;  
19 (2) services;  
20 (3) fees; and  
21 (4) charges.

22 (b) The department [~~commission~~] shall maintain the  
23 confidentiality of information received under this section [~~keep~~  
24 ~~confidential information~~] that is confidential by law.

25 SECTION 1.508. Section 413.011, Labor Code, is amended to  
26 read as follows:

27 Sec. 413.011. REIMBURSEMENT POLICIES FOR NON-NETWORK

1 HEALTH CARE; FEE [AND] GUIDELINES; MEDICAL POLICIES; TREATMENT  
2 GUIDELINES AND PROTOCOLS. (a) The commissioner [~~commission~~] shall  
3 adopt [~~use~~] health care reimbursement policies and fee guidelines  
4 for health care that is not provided through a provider network  
5 under Chapter 408B that reflect the standardized reimbursement  
6 structures found in other health care delivery systems, with  
7 minimal modifications to those reimbursement methodologies as  
8 necessary to meet occupational injury requirements. To achieve  
9 standardization, the commissioner may [~~commission shall~~] adopt the  
10 most current reimbursement methodologies, models, and values or  
11 weights used by the federal Centers for Medicare & Medicaid  
12 Services [~~Health Care Financing Administration~~], including  
13 applicable payment policies relating to coding, billing, and  
14 reporting, and may modify documentation requirements as necessary  
15 to meet the requirements of Section 413.053.

16 (b) In determining the appropriate fees, the commissioner  
17 [~~commission~~] shall also develop conversion factors or other payment  
18 adjustment factors taking into account economic indicators in  
19 health care and the requirements of Subsection (d). The department  
20 [~~commission~~] shall also provide for reasonable fees for the  
21 evaluation and management of care as required by Section  
22 408A.003(b) [~~408.025(c)~~] and commissioner [~~commission~~] rules.  
23 This section does not adopt the Medicare fee schedule, and the  
24 commissioner [~~commission~~] shall not adopt conversion factors or  
25 other payment adjustment factors based solely on those factors as  
26 developed by the federal Centers for Medicare & Medicaid Services  
27 [~~Health Care Financing Administration~~].

1 (c) This section may not be interpreted in a manner that  
2 would discriminate in the amount or method of payment or  
3 reimbursement for services in a manner prohibited by Section  
4 1451.104 [~~3(d), Article 21.52~~], Insurance Code, or as restricting  
5 the ability of chiropractors to serve as treating doctors as  
6 authorized by this subtitle. The commissioner [~~commission~~] shall  
7 also develop guidelines relating to fees charged or paid for  
8 providing expert testimony relating to an issue arising under this  
9 subtitle.

10 (d) Fee guidelines [~~Guidelines for medical services fees~~]  
11 must be fair and reasonable and designed to ensure the quality of  
12 medical care and to achieve effective medical cost control. The fee  
13 guidelines may not provide for payment [~~of a fee~~] in excess of the  
14 amount [~~fee~~] charged for similar treatment of an injured individual  
15 of an equivalent standard of living and paid by that individual or  
16 by someone acting on that individual's behalf. The commissioner  
17 [~~commission~~] shall consider the increased security of payment  
18 afforded by this subtitle in establishing the fee guidelines.

19 (e) The commissioner [~~commission~~] by rule may adopt  
20 treatment guidelines, including return-to-work guidelines, and  
21 individual treatment protocols. Except as otherwise provided by  
22 this subsection, the treatment guidelines and protocols must be  
23 nationally recognized, scientifically valid, and outcome-based and  
24 designed to reduce excessive or inappropriate medical care while  
25 safeguarding necessary medical care. If a nationally recognized  
26 treatment guideline or protocol is not available for adoption by  
27 the commissioner [~~commission~~], the commissioner [~~commission~~] may

1 adopt another treatment guideline or protocol as long as it is  
2 scientifically valid and outcome-based.

3 (f) The commissioner [~~commission~~] by rule may establish  
4 medical policies or treatment guidelines or protocols relating to  
5 necessary treatments for injuries.

6 (g) Any medical policies or guidelines adopted by the  
7 commissioner [~~commission~~] must be:

8 (1) designed to ensure the quality of medical care and  
9 to achieve effective medical cost control;

10 (2) designed to enhance a timely and appropriate  
11 return to work; and

12 (3) consistent with Sections 413.013, 413.020,  
13 413.052, and 413.053.

14 SECTION 1.509. Section 413.013, Labor Code, is amended to  
15 read as follows:

16 Sec. 413.013. PROGRAMS. The commissioner [~~commission~~] by  
17 rule shall establish:

18 (1) for health care that is not provided through a  
19 provider network under Chapter 408B:

20 (A) a program for prospective, concurrent, and  
21 retrospective review and resolution of a dispute regarding health  
22 care treatments and services; and

23 (B) [~~(2)~~] a program for the systematic  
24 monitoring of the necessity of treatments administered and fees  
25 charged and paid for medical treatments or services, including the  
26 authorization of prospective, concurrent, or retrospective review  
27 under the medical policies of the commissioner [~~commission~~] to

1 ensure that the medical policies or guidelines are not exceeded;

2           (2) [(3)] a program to detect practices and patterns  
3 by insurance carriers, including carriers who use provider  
4 networks, in unreasonably denying authorization of payment for  
5 medical services requested or performed if authorization is  
6 required by the medical policies of the commissioner [~~commission~~];  
7 and

8           (3) [(4)] a program to increase the intensity of  
9 review for compliance with the medical policies or fee guidelines  
10 for any health care provider that has established a practice or  
11 pattern in charges and treatments inconsistent with the medical  
12 policies and fee guidelines.

13           SECTION 1.510. Subchapter B, Chapter 413, Labor Code, is  
14 amended by adding Section 413.0135 to read as follows:

15           Sec. 413.0135. RETROSPECTIVE REVIEW FOR PROVIDER NETWORKS.

16 (a) The commissioner by rule shall provide for limited  
17 retrospective review of the medical necessity and appropriateness  
18 of a health care service provided under this subtitle by an  
19 insurance carrier who uses provider networks.

20 (b) The retrospective review must be based on written  
21 screening criteria established by the department and periodically  
22 updated with appropriate involvement from physicians, including  
23 practicing physicians, and other health care providers. The  
24 insurance carrier's system for retrospective review under this  
25 section must be under the direction of a physician.

26 (c) The commissioner by rule shall specify the scope of  
27 retrospective review under this section.

1 SECTION 1.511. Sections 413.014(b)-(e), Labor Code, are  
2 amended to read as follows:

3 (b) The commissioner [~~commission~~] by rule shall specify  
4 which health care treatments and services provided by an insurance  
5 carrier who does not use a provider network under Chapter 408B  
6 require express preauthorization or concurrent review by the  
7 insurance carrier. Treatments and services for a medical emergency  
8 do not require express preauthorization.

9 (c) The commissioner [~~commission~~] rules adopted under this  
10 section must provide that preauthorization and concurrent review  
11 are required at a minimum for:

12 (1) spinal surgery, as provided by Section 408A.005  
13 [~~408.026~~];

14 (2) work-hardening or work-conditioning services  
15 provided by a health care facility that is not credentialed by an  
16 organization recognized by commissioner [~~commission~~] rules;

17 (3) inpatient hospitalization, including any  
18 procedure and length of stay;

19 (4) outpatient or ambulatory surgical services, as  
20 defined by commissioner [~~commission~~] rule; and

21 (5) any investigational or experimental services or  
22 devices.

23 (d) The insurance carrier is not liable for those specified  
24 treatments and services requiring preauthorization unless  
25 preauthorization is sought by the claimant or health care provider  
26 and either obtained from the insurance carrier or ordered by the  
27 department [~~commission~~].

1           (e) The department [~~commission~~] may not prohibit an  
2 insurance carrier and a health care provider from voluntarily  
3 discussing health care treatment and treatment plans and  
4 pharmaceutical services, either prospectively or concurrently, and  
5 may not prohibit an insurance carrier from certifying or agreeing  
6 to pay for health care consistent with those agreements. The  
7 insurance carrier is liable for health care treatment and treatment  
8 plans and pharmaceutical services that are voluntarily  
9 preauthorized and may not dispute the certified or agreed-on  
10 preauthorized health care treatment and treatment plans and  
11 pharmaceutical services at a later date.

12           SECTION 1.512. Section 413.0141, Labor Code, is amended to  
13 read as follows:

14           Sec. 413.0141. INITIAL PHARMACEUTICAL COVERAGE. (a) The  
15 commissioner [~~commission may~~] by rule shall provide that an  
16 insurance carrier, including a carrier who provides health care  
17 services through a provider network, shall provide for payment of  
18 specified pharmaceutical services sufficient for the first seven  
19 days following the date of injury if the health care provider  
20 requests and receives verification of insurance coverage and a  
21 verbal confirmation of an injury from the employer or from the  
22 insurance carrier [~~as provided by Section 413.014~~].

23           (b) The commissioner rules must [~~adopted by the commission~~  
24 ~~shall~~] provide that an insurance carrier is eligible for  
25 reimbursement for pharmaceutical services paid under this section  
26 from the subsequent injury fund in the event the injury is  
27 determined not to be compensable.

1 SECTION 1.513. Sections 413.015(a) and (b), Labor Code, are  
2 amended to read as follows:

3 (a) Insurance carriers who do not provide health care  
4 services through a provider network under Chapter 408B shall make  
5 appropriate payment of charges for medical services provided under  
6 this subtitle. An insurance carrier may contract with a separate  
7 entity to forward payments for medical services. Any payment due  
8 the insurance carrier from the separate entity must be made in  
9 accordance with the contract. The separate entity is subject to the  
10 direction of the insurance carrier, and the insurance carrier is  
11 responsible for the actions of the separate entity under this  
12 subsection. An insurance carrier who provides health care services  
13 through a provider network under Chapter 408B is subject to the  
14 provisions of that chapter.

15 (b) The commissioner [~~commission~~] shall provide by rule for  
16 the review and audit of the payment by insurance carriers subject to  
17 this section of charges for medical services provided under this  
18 subtitle to ensure compliance of health care providers and  
19 insurance carriers with the medical policies and fee guidelines  
20 adopted by the commissioner [~~commission~~].

21 SECTION 1.514. Section 413.016, Labor Code, is amended to  
22 read as follows:

23 Sec. 413.016. PAYMENTS IN VIOLATION OF MEDICAL POLICIES AND  
24 FEE GUIDELINES. (a) The commissioner [~~division~~] shall order a  
25 refund of charges paid to a health care provider in excess of those  
26 allowed by the medical policies or fee guidelines. [~~The division~~  
27 ~~shall also refer the health care provider alleged to have violated~~

1 ~~this subtitle to the division of compliance and practices.]~~

2 (b) ~~[If the division determines that an insurance carrier~~  
3 ~~has paid medical charges that are inconsistent with the medical~~  
4 ~~policies or fee guidelines adopted by the commission, the division~~  
5 ~~shall refer the insurance carrier alleged to have violated this~~  
6 ~~subtitle to the division of compliance and practices.]~~ If the  
7 insurance carrier making a payment under Section 413.015 reduced a  
8 charge of a health care provider that was within the fee guidelines,  
9 the insurance carrier shall be directed to submit the difference to  
10 the provider unless the reduction is in accordance with an  
11 agreement between the health care provider and the insurance  
12 carrier.

13 (c) A health care provider or an insurance carrier who  
14 violates this section is subject to disciplinary action under  
15 Chapter 415.

16 SECTION 1.515. Section 413.017, Labor Code, is amended to  
17 read as follows:

18 Sec. 413.017. PRESUMPTION OF REASONABLENESS. The following  
19 medical services are presumed reasonable:

20 (1) medical services consistent with the medical  
21 policies and fee guidelines adopted by the commissioner  
22 ~~[commission]~~; and

23 (2) medical services that are provided subject to  
24 prospective, concurrent, or retrospective review as required by the  
25 medical policies of the commissioner ~~[commission]~~ and that are  
26 authorized by an insurance carrier.

27 SECTION 1.516. Section 413.018, Labor Code, is amended to

1 read as follows:

2           Sec. 413.018. REVIEW OF MEDICAL CARE; RETURN TO WORK  
3 PROGRAMS [~~IF GUIDELINES EXCEEDED~~]. (a) The commissioner  
4 [~~commission~~] by rule shall provide for the periodic review of  
5 medical care provided in claims in which guidelines for expected or  
6 average return to work time frames are exceeded.

7           (b) The commissioner [~~division~~] shall review the medical  
8 treatment provided in a claim that exceeds the guidelines and may  
9 take appropriate action to ensure that necessary and reasonable  
10 care is provided.

11           (c) The department [~~commission~~] shall implement a program  
12 to encourage employers and treating doctors to discuss the  
13 availability of modified duty to encourage the safe and more timely  
14 return to work of injured employees. The department [~~commission~~]  
15 may require a treating or examining doctor, on the request of the  
16 employer, insurance carrier, or commissioner [~~commission~~], to  
17 provide a functional capacity evaluation of an injured employee and  
18 to determine the employee's ability to engage in physical  
19 activities found in the workplace or in activities that are  
20 required in a modified duty setting.

21           (d) The Texas Workforce Commission [~~commission~~] shall  
22 provide through the commission's health and safety information [~~and~~  
23 ~~medical review outreach~~] programs information to employers  
24 regarding effective return to work programs.

25           (e) This section does not require an employer to provide  
26 modified duty or an employee to accept a modified duty assignment.  
27 An employee who does not accept an employer's offer of modified duty

1 determined by the commissioner [~~commission~~] to be a bona fide job  
2 offer is subject to Section 408C.053(e) [~~408.103(e)~~].

3 (f) [~~(e)~~] The commissioner [~~commission~~] may adopt rules and  
4 forms as necessary to implement this section.

5 SECTION 1.517. Section 413.020, Labor Code, is amended to  
6 read as follows:

7 Sec. 413.020. DEPARTMENT [~~COMMISSION~~] CHARGES. The  
8 commissioner [~~commission~~] by rule shall establish procedures to  
9 enable the department [~~commission~~] to charge:

10 (1) an insurance carrier a reasonable fee for access  
11 to or evaluation of health care treatment, fees, or charges under  
12 this subtitle; and

13 (2) a health care provider who exceeds a fee or  
14 utilization guideline established under this subtitle or an  
15 insurance carrier who unreasonably disputes charges that are  
16 consistent with a fee or utilization guideline established under  
17 this subtitle a reasonable fee for review of health care treatment,  
18 fees, or charges under this subtitle.

19 SECTION 1.518. Subchapter C, Chapter 413, Labor Code, is  
20 amended to read as follows:

21 SUBCHAPTER C. DISPUTE RESOLUTION REGARDING MEDICAL BENEFITS

22 Sec. 413.031. MEDICAL DISPUTE: RIGHT TO REVIEW  
23 [~~RESOLUTION~~]. (a) A party, including a health care provider, is  
24 entitled to a review of a medical service provided or for which  
25 authorization of payment is sought if a health care provider is:

26 (1) denied payment or paid a reduced amount for the  
27 medical service rendered;

1 (2) denied authorization for the payment for the  
2 service requested or performed if authorization is required or  
3 allowed by this subtitle or commissioner [~~commission~~] rules;

4 (3) ordered by the commissioner [~~commission~~] to refund  
5 a payment received; or

6 (4) ordered to make a payment that was refused or  
7 reduced for a medical service rendered.

8 (b) A health care provider who submits a charge in excess of  
9 the fee guidelines or treatment policies is entitled to a review of  
10 the medical service to determine if reasonable medical  
11 justification exists for the deviation. A claimant is entitled to a  
12 review of a medical service for which preauthorization is sought by  
13 the health care provider and denied by the insurance carrier. The  
14 commissioner [~~commission~~] shall adopt rules to notify claimants of  
15 their rights under this subsection.

16 Sec. 413.032. INFORMAL DISPUTE RESOLUTION AT CARRIER. (a)  
17 Before bringing a dispute regarding medical benefits to the  
18 department, the parties to the dispute must try to resolve the  
19 dispute among themselves through an informal process conducted by  
20 the insurance carrier.

21 (b) If a claimant notifies an insurance carrier of a  
22 complaint requiring dispute resolution under this subchapter, the  
23 carrier, not later than the fifth business day after the date of  
24 receiving the notice, shall send to the claimant a letter  
25 acknowledging receipt of the complaint.

26 (c) An insurance carrier shall acknowledge, investigate,  
27 and resolve a complaint under this section not later than the 30th

1 calendar day after the date the carrier receives a written  
2 statement of the complaint from the claimant.

3 (d) The commissioner shall adopt rules that specify the  
4 requirements for documentation of the initial attempt under  
5 Subsection (a) to resolve the dispute, including documentation of  
6 telephone calls or written correspondence.

7 Sec. 413.033. FEE DISPUTES. [(e)] In resolving disputes  
8 over the amount of payment due for services determined to be  
9 medically necessary and appropriate for treatment of a compensable  
10 injury, the role of the department [~~commission~~] is to adjudicate  
11 the payment given the relevant statutory provisions and  
12 commissioner [~~commission~~] rules. The department [~~commission~~]  
13 shall publish on its Internet website its medical dispute  
14 decisions, including decisions of independent review  
15 organizations[, ~~and any subsequent decisions by the State Office of~~  
16 ~~Administrative Hearings~~]. Before publication, the department  
17 [~~commission~~] shall redact only that information necessary to  
18 prevent identification of the injured employee [~~worker~~].

19 Sec. 413.034. REVIEW BY INDEPENDENT REVIEW ORGANIZATION.

20 (a) If the parties are unable to resolve a dispute regarding  
21 medical benefits through the informal dispute resolution process  
22 required under Section 413.032, the claimant may file with the  
23 department a request for review by an independent review  
24 organization certified under Article 21.58C, Insurance Code.

25 (b) An [(d)] ~~A review of the medical necessity of a health~~  
26 ~~care service requiring preauthorization under Section 413.014 or~~  
27 ~~commission rules under that section shall be conducted by an]~~

1 independent review organization shall conduct a review of the  
2 medical necessity of a health care service:

3 (1) requiring preauthorization under Section 413.014  
4 or commissioner rules under that section; or

5 (2) provided under this chapter or Chapter 408 or  
6 408A.

7 (c) An independent review organization shall conduct a  
8 review under this section [~~Article 21.58C, Insurance Code,~~] in the  
9 same manner as reviews of utilization review decisions [~~by health~~  
10 ~~maintenance organizations~~]. It is a defense for the insurance  
11 carrier if the carrier timely complies with the decision of the  
12 independent review organization.

13 (d) In performing a review of medical necessity, the  
14 independent review organization shall consider the department's  
15 health care reimbursement policies and fee guidelines adopted under  
16 Section 413.011 if those policies and guidelines are raised by one  
17 of the parties to the dispute. If the independent review  
18 organization's decision is contrary to the department's policies or  
19 guidelines adopted under Section 413.011, the independent review  
20 organization must indicate in the decision the specific basis for  
21 its divergence in the review of medical necessity. This subsection  
22 does not prohibit an independent review organization from  
23 considering the payment policies adopted under Section 413.011 in  
24 any dispute, regardless of whether those policies are raised by a  
25 party to the dispute.

26 (e) In performing a review of medical necessity, an  
27 independent review organization may request that the department

1 order an examination by a designated doctor.

2 Sec. 413.035. INDEPENDENT REVIEW ORGANIZATION DECISION;  
3 APPEAL. (a) An independent review organization that conducts a  
4 review under this subchapter shall specify the elements on which  
5 the decision of the organization is based. At a minimum, the  
6 decision must include:

7 (1) a list of all medical records and other documents  
8 reviewed by the organization;

9 (2) a description and the source of the screening  
10 criteria or clinical basis used in making the decision;

11 (3) an analysis of and explanation for the decision,  
12 including the findings and conclusions used to support the  
13 decision; and

14 (4) a description of the qualifications of each  
15 physician or other health care provider who reviews the decision.

16 (b) The independent review organization shall certify that  
17 each physician or other health care provider who reviews the  
18 decision certifies that no known conflicts of interest exist  
19 between that provider and any of the treating doctors or insurance  
20 carrier health care providers who reviewed the case for decision  
21 before referral to the independent review organization.

22 (c) The decision of the independent review organization is  
23 binding on the insurance carrier. A claimant may appeal the  
24 decision of the independent review organization to district court  
25 for judicial review. Judicial review under this section shall be  
26 conducted in the manner provided for judicial review of contested  
27 cases under Subchapter G, Chapter 2001, Government Code.

1           Sec. 413.036. ALTERNATIVE PROCESS.     ~~[(e) Except as~~  
2 ~~provided by Subsections (d), (f), and (m), a review of the medical~~  
3 ~~necessity of a health care service provided under this chapter or~~  
4 ~~Chapter 408 shall be conducted by an independent review~~  
5 ~~organization under Article 21.58C, Insurance Code, in the same~~  
6 ~~manner as reviews of utilization review decisions by health~~  
7 ~~maintenance organizations. It is a defense for the insurance~~  
8 ~~carrier if the carrier timely complies with the decision of the~~  
9 ~~independent review organization.~~

10           ~~[(e-1) In performing a review of medical necessity under~~  
11 ~~Subsection (d) or (e), the independent review organization shall~~  
12 ~~consider the commission's health care reimbursement policies and~~  
13 ~~guidelines adopted under Section 413.011 if those policies and~~  
14 ~~guidelines are raised by one of the parties to the dispute. If the~~  
15 ~~independent review organization's decision is contrary to the~~  
16 ~~commission's policies or guidelines adopted under Section 413.011,~~  
17 ~~the independent review organization must indicate in the decision~~  
18 ~~the specific basis for its divergence in the review of medical~~  
19 ~~necessity. This subsection does not prohibit an independent review~~  
20 ~~organization from considering the payment policies adopted under~~  
21 ~~Section 413.011 in any dispute, regardless of whether those~~  
22 ~~policies are raised by a party to the dispute.~~

23           ~~[(f)]~~     The commissioner ~~[commission]~~ by rule may prescribe  
24 an alternative ~~[shall specify the appropriate]~~ dispute resolution  
25 process for disputes:

26           (1)     in which a claimant has paid for medical services  
27 and seeks reimbursement; or

1           (2) regarding medical services costing less than the  
2 cost of a review of the medical necessity of a health care service  
3 by an independent review organization.

4           Sec. 413.037. PAYMENT OF COSTS. (a) [~~(g)~~ In performing a  
5 review of medical necessity under Subsection (d) or (e), an  
6 independent review organization may request that the commission  
7 order an examination by a designated doctor under Chapter 408.

8           ~~[(h)]~~ The insurance carrier shall pay the cost of the review  
9 if the dispute arises in connection with a request for health care  
10 services that require preauthorization under Section 413.014 or  
11 commissioner ~~[commission]~~ rules under that section.

12           (b) [~~(i)~~ Except as provided by Subsection (a) [~~(h)~~], the  
13 cost of the review shall be paid by the nonprevailing party.

14           (c) [~~(j)~~ Notwithstanding Subsections (a) and (b) [~~(h)~~ and  
15 (i)], an employee may not be required to pay any portion of the cost  
16 of a review.

17           (d) The cost of a review under an alternative dispute  
18 resolution process under Section 413.036 shall be paid by the  
19 nonprevailing party.

20           ~~[(k) Except as provided by Subsection (l), a party to a~~  
21 ~~medical dispute that remains unresolved after a review of the~~  
22 ~~medical service under this section is entitled to a hearing. The~~  
23 ~~hearing shall be conducted by the State Office of Administrative~~  
24 ~~Hearings within 90 days of receipt of a request for a hearing in the~~  
25 ~~manner provided for a contested case under Chapter 2001, Government~~  
26 ~~Code (the administrative procedure law). A party who has exhausted~~  
27 ~~the party's administrative remedies under this subtitle and who is~~

1 ~~aggrieved by a final decision of the State Office of Administrative~~  
2 ~~Hearings may seek judicial review of the decision. Judicial review~~  
3 ~~under this subsection shall be conducted in the manner provided for~~  
4 ~~judicial review of contested cases under Subchapter C, Chapter~~  
5 ~~2001, Government Code.~~

6 ~~[(1) A party to a medical dispute regarding spinal surgery~~  
7 ~~that remains unresolved after a review by an independent review~~  
8 ~~organization as provided by Subsections (d) and (e) is entitled to~~  
9 ~~dispute resolution as provided by Chapter 410.~~

10 ~~[(m) The commission by rule may prescribe an alternate~~  
11 ~~dispute resolution process to resolve disputes regarding medical~~  
12 ~~services costing less than the cost of a review of the medical~~  
13 ~~necessity of a health care service by an independent review~~  
14 ~~organization. The cost of a review under the alternate dispute~~  
15 ~~resolution process shall be paid by the nonprevailing party.]~~

16 SECTION 1.519. Sections 413.041(a), (b), and (d), Labor  
17 Code, are amended to read as follows:

18 (a) Each health care practitioner shall disclose to the  
19 department ~~[commission]~~ the identity of any health care provider in  
20 which the health care practitioner, or the health care provider  
21 that employs the health care practitioner, has a financial  
22 interest. The health care practitioner shall make the disclosure  
23 in the manner provided by commissioner ~~[commission]~~ rule.

24 (b) The commissioner ~~[commission]~~ shall require by rule  
25 that a doctor disclose financial interests in other health care  
26 providers ~~[as a condition of registration for the approved doctor~~  
27 ~~list established under Section 408.023]~~ and shall define "financial

1 interest" for purposes of this subsection as provided by analogous  
2 federal regulations. The commissioner [~~commission~~] by rule shall  
3 adopt the federal standards that prohibit the payment or acceptance  
4 of payment in exchange for health care referrals relating to fraud,  
5 abuse, and antikickbacks.

6 (d) The department [~~commission~~] shall publish all final  
7 disclosure enforcement orders issued under this section on the  
8 department's [~~commission's~~] Internet website.

9 SECTION 1.520. Section 413.042(a), Labor Code, is amended  
10 to read as follows:

11 (a) A health care provider may not pursue a private claim  
12 against a workers' compensation claimant for all or part of the cost  
13 of a health care service provided to the claimant by the provider  
14 unless:

15 (1) the injury is finally adjudicated not compensable  
16 under this subtitle; or

17 (2) the employee violates Section 408A.002 [~~408.022~~]  
18 relating to the selection of a doctor and the doctor did not know of  
19 the violation at the time the services were rendered.

20 SECTION 1.521. Section 413.044, Labor Code, is amended to  
21 read as follows:

22 Sec. 413.044. SANCTIONS ON DESIGNATED DOCTOR. In addition  
23 to or in lieu of an administrative penalty under Section 415.021 or  
24 a sanction imposed under Section 415.023, the department  
25 [~~commission~~] may impose sanctions against a person who serves as a  
26 designated doctor under this subtitle, including a designated  
27 doctor who serves under a provider network, [~~Chapter 408~~] who,

1 after an evaluation conducted under Section 413.002(b)  
2 [~~413.002(c)~~], is determined by the department [~~division~~] to be out  
3 of compliance with this subtitle or with rules adopted by the  
4 commissioner [~~commission~~] relating to medical policies, fee  
5 guidelines, and impairment ratings.

6 SECTION 1.522. The heading to Subchapter E, Chapter 413,  
7 Labor Code, is amended to read as follows:

8 SUBCHAPTER E. IMPLEMENTATION OF DEPARTMENT [~~COMMISSION~~]

9 POWERS AND DUTIES

10 SECTION 1.523. Section 413.051, Labor Code, is amended to  
11 read as follows:

12 Sec. 413.051. CONTRACTS WITH REVIEW ORGANIZATIONS AND  
13 HEALTH CARE PROVIDERS. (a) In this section, "health care provider  
14 professional review organization" includes an independent review  
15 organization.

16 (b) The department [~~commission~~] may contract with a health  
17 care provider, health care provider professional review  
18 organization, or other entity to develop, maintain, or review  
19 medical policies or fee guidelines or to review compliance with the  
20 medical policies or fee guidelines.

21 (c) [~~(b)~~] For purposes of review or resolution of a dispute  
22 as to compliance with the medical policies or fee guidelines, the  
23 department [~~commission~~] may contract with a health care provider,  
24 health care provider professional review organization, or other  
25 entity that includes in the review process health care  
26 practitioners who are licensed in the category under review and are  
27 of the same field or specialty as the category under review.

1            (d) [~~(c)~~] The department [~~commission~~] may contract with a  
2 health care provider, health care provider professional review  
3 organization, or other entity for medical consultant services,  
4 including:

- 5                    (1) independent medical examinations;  
6                    (2) medical case reviews; or  
7                    (3) establishment of medical policies and fee  
8 guidelines.

9            (e) [~~(d)~~] The commissioner [~~commission~~] shall establish  
10 standards for contracts under this section.

11            [~~(c) For purposes of this section, "health care provider  
12 professional review organization" includes an independent review  
13 organization.~~]

14            SECTION 1.524. Section 413.0511, Labor Code, is amended to  
15 read as follows:

16            Sec. 413.0511. MEDICAL ADVISOR. (a) The department  
17 [~~commission~~] shall employ or contract with a medical advisor, who  
18 must be a physician [~~doctor as that term is defined by Section  
19 401.011~~].

20            (b) The medical advisor shall make recommendations  
21 regarding the adoption of rules to:

- 22                    (1) develop, maintain, and review guidelines as  
23 provided by Section 413.011, including rules regarding impairment  
24 ratings;

25                    (2) review compliance with those guidelines;

26                    (3) regulate or perform other acts related to medical  
27 benefits as required by the commissioner [~~commission~~];

1           (4) impose sanctions [~~or delete doctors from the~~  
2 ~~commission's list of approved doctors under Section 408.023]~~ for[+  
3           ~~[(A) any reason described by Section 408.0231, or~~  
4           ~~[(B)]~~ noncompliance with commissioner  
5 ~~[commission]~~ rules;

6           (5) [~~impose conditions or restrictions as authorized~~  
7 ~~by Section 408.0231(f),~~

8           ~~[(6)]~~ receive, and share with the medical quality  
9 review panel established under Section 413.0512, confidential  
10 information, and other information to which access is otherwise  
11 restricted by law, as provided by Sections 413.0512, 413.0513, and  
12 413.0514 from the Texas State Board of Medical Examiners, the Texas  
13 Board of Chiropractic Examiners, or other occupational licensing  
14 boards regarding a physician, chiropractor, or other type of doctor  
15 ~~[who applies for registration or is registered with the commission~~  
16 ~~on the list of approved doctors]; and~~

17           (6) ~~[(7)]~~ determine minimal modifications to the  
18 reimbursement methodology and model used by the Medicare system as  
19 necessary to meet occupational injury requirements.

20           SECTION 1.525. Sections 413.0512(a), (c), and (d), Labor  
21 Code, are amended to read as follows:

22           (a) The commissioner, with the advice of the medical  
23 advisor, shall establish a medical quality review panel of health  
24 care providers to assist the medical advisor in performing the  
25 duties required under Section 413.0511. The panel is [~~independent~~  
26 ~~of the medical advisory committee created under Section 413.005 and~~  
27 ~~is]~~ not subject to Chapter 2110, Government Code.

1 (c) The medical quality review panel shall recommend to the  
2 medical advisor:

3 (1) appropriate action regarding doctors, other  
4 health care providers, insurance carriers, and utilization review  
5 agents; and

6 (2) the addition or deletion of doctors from the list  
7 of ~~approved doctors under Section 408.023 or the list of~~  
8 designated doctors established under Section 408C.102 ~~[408.122]~~.

9 (d) A person who serves on the medical quality review panel  
10 is immune from suit and from civil liability for an act performed,  
11 or a recommendation made, within the scope of the person's  
12 functions as a member of the panel if the person acts without malice  
13 and in the reasonable belief that the action or recommendation is  
14 warranted by the facts known to that person. In the event of a civil  
15 action brought against a member of the panel that arises from the  
16 person's participation on the panel, the person is entitled to the  
17 same protections afforded the commissioner or a department employee  
18 ~~[commission member]~~ under Section 34.001, Insurance Code  
19 ~~[402.010]~~.

20 SECTION 1.526. Section 413.0513, Labor Code, is amended to  
21 read as follows:

22 Sec. 413.0513. CONFIDENTIALITY REQUIREMENTS. (a)  
23 Information collected, assembled, or maintained by or on behalf of  
24 the department ~~[commission]~~ under Section 413.0511 or 413.0512  
25 constitutes an investigation file for purposes of Section 402.211  
26 ~~[402.092]~~ and may not be disclosed under Section 413.0511 or  
27 413.0512 except as provided by that section.

1 (b) Confidential information, and other information to  
2 which access is restricted by law, developed by or on behalf of the  
3 department [~~commission~~] under Section 413.0511 or 413.0512 is not  
4 subject to discovery or court subpoena in any action other than:

5 (1) an action to enforce this subtitle brought by the  
6 department [~~commission~~], an appropriate licensing or regulatory  
7 agency, or an appropriate enforcement authority; or

8 (2) a criminal proceeding.

9 SECTION 1.527. Section 413.0514, Labor Code, is amended to  
10 read as follows:

11 Sec. 413.0514. INFORMATION SHARING WITH OCCUPATIONAL  
12 LICENSING BOARDS. (a) This section applies only to information  
13 held by or for the department [~~commission~~], the Texas State Board of  
14 Medical Examiners, and Texas Board of Chiropractic Examiners that  
15 relates to a person who is licensed or otherwise regulated by any of  
16 those state agencies.

17 (b) The department [~~commission~~] and the Texas State Board of  
18 Medical Examiners on request or on its own initiative, may share  
19 with each other confidential information or information to which  
20 access is otherwise restricted by law. The department [~~commission~~]  
21 and the Texas State Board of Medical Examiners shall cooperate with  
22 and assist each other when either agency is conducting an  
23 investigation by providing information to each other that the  
24 sending agency determines is relevant to the investigation. Except  
25 as provided by this section, confidential information that is  
26 shared under this section remains confidential under law and legal  
27 restrictions on access to the information remain in effect.

1 Furnishing information by the Texas State Board of Medical  
2 Examiners to the department [~~commission~~] or by the department  
3 [~~commission~~] to the Texas State Board of Medical Examiners under  
4 this subsection does not constitute a waiver of privilege or  
5 confidentiality as established by law.

6 (c) Information that is received by the department  
7 [~~commission~~] from the Texas State Board of Medical Examiners or by  
8 the Texas State Board of Medical Examiners from the department  
9 [~~commission~~] remains confidential, may not be disclosed by the  
10 department [~~commission~~] except as necessary to further the  
11 investigation, and shall be exempt from disclosure under Sections  
12 402.211 [~~402.092~~] and 413.0513.

13 (d) The department [~~commission~~] and the Texas Board of  
14 Chiropractic Examiners, on request or on either agency's [~~its own~~]  
15 initiative, may share with each other confidential information or  
16 information to which access is otherwise restricted by law. The  
17 department [~~commission~~] and the Texas Board of Chiropractic  
18 Examiners shall cooperate with and assist each other when either  
19 agency is conducting an investigation by providing information to  
20 each other that is relevant to the investigation. Except as  
21 provided by this section, confidential information that is shared  
22 under this section remains confidential under law and legal  
23 restrictions on access to the information remain in effect unless  
24 the agency sharing the information approves use of the information  
25 by the receiving agency for enforcement purposes. Furnishing  
26 information by the Texas Board of Chiropractic Examiners to the  
27 department [~~commission~~] or by the department [~~commission~~] to the

1 Texas Board of Chiropractic Examiners under this subsection does  
2 not constitute a waiver of privilege or confidentiality as  
3 established by law.

4 (e) Information that is received by the department  
5 [~~commission~~] from the Texas Board of Chiropractic Examiners or by  
6 the Texas Board of Chiropractic Examiners remains confidential and  
7 may not be disclosed by the department [~~commission~~] except as  
8 necessary to further the investigation unless the agency sharing  
9 the information and the agency receiving the information agree to  
10 use of the information by the receiving agency for enforcement  
11 purposes.

12 (f) The department [~~commission~~] and the Texas State Board of  
13 Medical Examiners shall provide information to each other on all  
14 disciplinary actions taken.

15 (g) The department [~~commission~~] and the Texas Board of  
16 Chiropractic Examiners shall provide information to each other on  
17 all disciplinary actions taken.

18 SECTION 1.528. Section 413.0515, Labor Code, is amended to  
19 read as follows:

20 Sec. 413.0515. REPORTS OF PHYSICIAN AND CHIROPRACTOR  
21 VIOLATIONS. (a) If the department [~~commission~~] or the Texas State  
22 Board of Medical Examiners discovers an act or omission by a  
23 physician that may constitute a felony, a misdemeanor involving  
24 moral turpitude, a violation of state or federal narcotics or  
25 controlled substance law, an offense involving fraud or abuse under  
26 the Medicare or Medicaid program, or a violation of this subtitle,  
27 the agency shall report that act or omission to the other agency.

1 (b) If the department [~~commission~~] or the Texas Board of  
2 Chiropractic Examiners discovers an act or omission by a  
3 chiropractor that may constitute a felony, a misdemeanor involving  
4 moral turpitude, a violation of state or federal narcotics or  
5 controlled substance law, an offense involving fraud or abuse under  
6 the Medicare or Medicaid program, or a violation of this subtitle,  
7 the agency shall report that act or omission to the other agency.

8 SECTION 1.529. Subchapter E, Chapter 413, Labor Code, is  
9 amended by adding Section 413.0516 to read as follows:

10 Sec. 413.0516. MEDICAL WORK GROUPS. The medical advisor  
11 may appoint ad hoc medical work groups as necessary to assist the  
12 department in developing and reviewing medical policies and fee  
13 guidelines.

14 SECTION 1.530. Section 413.052, Labor Code, is amended to  
15 read as follows:

16 Sec. 413.052. PRODUCTION OF DOCUMENTS; SUBPOENA. The  
17 commissioner [~~commission~~] by rule shall establish procedures to  
18 enable the department [~~commission~~] to compel the production of  
19 documents under this subtitle. The commissioner shall exercise  
20 subpoena powers under this section in the manner provided by  
21 Subchapter C, Chapter 36, Insurance Code.

22 SECTION 1.531. Section 413.053, Labor Code, is amended to  
23 read as follows:

24 Sec. 413.053. STANDARDS OF REPORTING AND BILLING. The  
25 commissioner [~~commission~~] by rule shall establish standards of  
26 reporting and billing governing both form and content.

27 SECTION 1.532. Section 413.054(a), Labor Code, is amended

1 to read as follows:

2 (a) A person who performs services for the commission as a  
3 designated doctor, an independent medical examiner, a doctor  
4 performing a medical case review, or a member of a peer review panel  
5 has the same immunity from liability as the commissioner or a  
6 department employee [~~commission member~~] under Section 34.001,  
7 Insurance Code [~~402.010~~].

8 SECTION 1.533. Sections 413.055(a) and (b), Labor Code, are  
9 amended to read as follows:

10 (a) The commissioner [~~executive director, as provided by~~  
11 ~~commission rule,~~] may enter an interlocutory order for the payment  
12 of all or part of medical benefits. The order may address accrued  
13 benefits, future benefits, or both accrued benefits and future  
14 benefits.

15 (b) The subsequent injury fund shall reimburse an insurance  
16 carrier for any overpayments of benefits made under an order  
17 entered under Subsection (a) if the order is reversed or modified by  
18 final arbitration, order, or decision of the commissioner  
19 [~~commission~~] or a court. The commissioner [~~commission~~] shall adopt  
20 rules to provide for a periodic reimbursement schedule, providing  
21 for reimbursement at least annually.

22 SECTION 1.534. The following laws are repealed:

23 (1) Section 413.005, Labor Code; and

24 (2) Section 413.006, Labor Code.

25 PART 17. AMENDMENTS TO CHAPTER 414, LABOR CODE

26 SECTION 1.551. The heading to Chapter 414, Labor Code, is  
27 amended to read as follows:

1 CHAPTER 414. ENFORCEMENT [~~DIVISION~~] OF COMPLIANCE

2 AND PRACTICE REQUIREMENTS [~~PRACTICES~~]

3 SECTION 1.552. Section 414.002, Labor Code, is amended to  
4 read as follows:

5 Sec. 414.002. MONITORING DUTIES. (a) The department  
6 [~~division~~] shall monitor for compliance with commissioner  
7 [~~commission~~] rules, this subtitle, and other laws relating to  
8 workers' compensation the conduct of persons subject to this  
9 subtitle[~~, other than persons monitored by the division of medical~~  
10 ~~review~~]. Persons to be monitored under this chapter include:

- 11 (1) persons claiming benefits under this subtitle;
- 12 (2) employers;
- 13 (3) insurance carriers; and
- 14 (4) attorneys and other representatives of parties.

15 (b) The department [~~division~~] shall monitor conduct  
16 described by Sections 415.001, 415.002, and 415.003 and refer  
17 persons engaging in that conduct for [~~to the division of~~] hearings.

18 (c) The department [~~division~~] shall monitor payments made  
19 to health care providers on behalf of workers' compensation  
20 claimants who receive medical services to ensure that the payments  
21 are made on time as required by Section 408A.006 [~~408.027~~].

22 SECTION 1.553. Section 414.003, Labor Code, is amended to  
23 read as follows:

24 Sec. 414.003. COMPILATION AND USE OF INFORMATION. (a) The  
25 department [~~division~~] shall compile and maintain statistical and  
26 other information as necessary to detect practices or patterns of  
27 conduct by persons subject to monitoring under this chapter that:

1 (1) violate this subtitle or commissioner  
2 [~~commission~~] rules; or

3 (2) otherwise adversely affect the workers'  
4 compensation system of this state.

5 (b) The commissioner [~~commission~~] shall use the information  
6 compiled under this section to impose appropriate penalties and  
7 other sanctions under Chapters 415 and 416.

8 SECTION 1.554. Section 414.004, Labor Code, is amended to  
9 read as follows:

10 Sec. 414.004. PERFORMANCE REVIEW OF INSURANCE CARRIERS.

11 (a) The department [~~division~~] shall review regularly the workers'  
12 compensation records of insurance carriers as required to ensure  
13 compliance with this subtitle.

14 (b) Each insurance carrier, the carrier's agents, and those  
15 with whom the carrier has contracted to provide, review, or monitor  
16 services under this subtitle shall:

17 (1) cooperate with the department [~~division~~];

18 (2) make available to the department [~~division~~] any  
19 records or other necessary information; and

20 (3) allow the department [~~division~~] access to the  
21 information at reasonable times at the person's offices.

22 (c) The insurance carrier, other than a governmental  
23 entity, shall pay the reasonable expenses, including travel  
24 expenses, of an auditor who audits for the department an insurance  
25 carrier's workers' compensation records at the office of the  
26 insurance carrier.

27 SECTION 1.555. Section 414.005, Labor Code, is amended to

1 read as follows:

2           Sec. 414.005. WORKERS' COMPENSATION INVESTIGATION UNIT;  
3 FRAUD INVESTIGATIONS. (a) The department [~~division~~] shall  
4 maintain an investigation unit to conduct investigations relating  
5 to alleged violations of this subtitle or commissioner [~~commission~~]  
6 rules adopted under this subtitle [~~, with particular emphasis on~~  
7 ~~violations of Chapters 415 and 416~~].

8           (b) The department shall conduct investigations of fraud  
9 involving participants in the workers' compensation system. In  
10 conducting investigations under this subsection, the department  
11 may operate under the insurance fraud unit established under  
12 Chapter 701, Insurance Code.

13           (c) The department's duties in conducting and prosecuting  
14 fraud investigations under this section are funded through the  
15 maintenance tax assessed under Section 403.002.

16           SECTION 1.5551. Chapter 414, Labor Code, is amended by  
17 adding Section 414.0055 to read as follows:

18           Sec. 414.0055. DUTY TO REPORT; ADMINISTRATIVE VIOLATION.

19           (a) In this section, "authorized governmental agency" means:

20                   (1) a municipal, county, or state law enforcement  
21 agency of this state or another state or a law enforcement agency of  
22 the United States; or

23                   (2) the prosecuting attorney of a municipality,  
24 county, or judicial district of this state or another state or the  
25 prosecuting attorney of the United States.

26           (b) This section applies only to a person who is:

27                   (1) an injured employee or other claimant under this

1 subtitle;

2 (2) an insurance carrier; or

3 (3) a doctor or other health care provider who  
4 provides health care services regarding a claim for workers'  
5 compensation benefits.

6 (c) A person subject to this section who determines that a  
7 fraudulent act has been or is about to be committed by another in  
8 conjunction with a workers' compensation claim shall report the  
9 information in writing to the department or an authorized  
10 governmental agency not later than the 30th day after the date the  
11 person makes the determination. A report made to one authorized  
12 governmental agency or the department constitutes notice to each  
13 other authorized governmental agency and the department.

14 (d) A person subject to this section commits a violation if  
15 the person violates Subsection (c). A violation under this  
16 subsection is a Class B administrative violation.

17 SECTION 1.556. Section 414.006, Labor Code, is amended to  
18 read as follows:

19 Sec. 414.006. REFERRAL TO OTHER AUTHORITIES. For further  
20 investigation or the institution of appropriate proceedings, the  
21 department [~~division~~] may refer the persons involved in a case  
22 subject to an investigation to [~~+~~

23 [~~(1) the division of hearings, or~~

24 [~~(2)~~] other appropriate authorities, including  
25 licensing agencies, district and county attorneys, or the attorney  
26 general.

27 SECTION 1.557. Section 414.007, Labor Code, is amended to

1 read as follows:

2           Sec. 414.007. [~~REVIEW OF REFERRALS FROM DIVISION OF~~  
3 MEDICAL REVIEW. The department [~~division~~] shall review information  
4 [~~and referrals received from the division of medical review~~]  
5 concerning alleged violations of this subtitle regarding the  
6 provision of medical benefits and, under Sections 414.005 and  
7 414.006 and Chapters 415 and 416, may conduct investigations, make  
8 referrals to other authorities, and initiate administrative  
9 violation proceedings.

10           SECTION 1.558. Section 414.001, Labor Code, is repealed.

11           PART 18. AMENDMENTS TO CHAPTER 415, LABOR CODE

12           SECTION 1.601. Section 415.001, Labor Code, is amended to  
13 read as follows:

14           Sec. 415.001. ADMINISTRATIVE VIOLATION BY REPRESENTATIVE  
15 OF EMPLOYEE OR LEGAL BENEFICIARY. A representative of an employee  
16 or legal beneficiary commits an administrative violation if the  
17 person wilfully or intentionally:

18           (1) fails without good cause to attend a dispute  
19 resolution proceeding under this subtitle [~~within the commission~~];

20           (2) attends a dispute resolution proceeding under this  
21 subtitle [~~within the commission~~] without complete authority or  
22 fails to exercise authority to effectuate an agreement or  
23 settlement;

24           (3) commits an act of barratry under Section 38.12,  
25 Penal Code;

26           (4) withholds from the employee's or legal  
27 beneficiary's weekly benefits or from advances amounts not

1 authorized to be withheld by the department [~~commission~~];

2 (5) enters into a settlement or agreement without the  
3 knowledge, consent, and signature of the employee or legal  
4 beneficiary;

5 (6) takes a fee or withholds expenses in excess of the  
6 amounts authorized by the department [~~commission~~];

7 (7) refuses or fails to make prompt delivery to the  
8 employee or legal beneficiary of funds belonging to the employee or  
9 legal beneficiary as a result of a settlement, agreement, order, or  
10 award;

11 (8) violates the Texas Disciplinary Rules of  
12 Professional Conduct of the State Bar of Texas;

13 (9) misrepresents the provisions of this subtitle to  
14 an employee, an employer, a health care provider, or a legal  
15 beneficiary;

16 (10) violates a commissioner [~~commission~~] rule; or

17 (11) fails to comply with this subtitle.

18 SECTION 1.602. Section 415.002, Labor Code, is amended to  
19 read as follows:

20 Sec. 415.002. ADMINISTRATIVE VIOLATION BY [~~AN~~] INSURANCE  
21 CARRIER. (a) An insurance carrier or its representative commits an  
22 administrative violation if that person wilfully or intentionally:

23 (1) misrepresents a provision of this subtitle to an  
24 employee, an employer, a health care provider, or a legal  
25 beneficiary;

26 (2) terminates or reduces benefits without  
27 substantiating evidence that the action is reasonable and

1 authorized by law;

2 (3) instructs an employer not to file a document  
3 required to be filed with the department or the Texas Workforce  
4 Commission [~~commission~~];

5 (4) instructs or encourages an employer to violate a  
6 claimant's right to medical benefits under this subtitle;

7 (5) fails to tender promptly full death benefits if a  
8 legitimate dispute does not exist as to the liability of the  
9 insurance carrier;

10 (6) allows an employer, other than a self-insured  
11 employer, to dictate the methods by which and the terms on which a  
12 claim is handled and settled;

13 (7) fails to confirm medical benefits coverage to a  
14 person or facility providing medical treatment to a claimant if a  
15 legitimate dispute does not exist as to the liability of the  
16 insurance carrier;

17 (8) fails, without good cause, to attend a dispute  
18 resolution proceeding under this subtitle [~~within the commission~~];

19 (9) attends a dispute resolution proceeding under this  
20 subtitle [~~within the commission~~] without complete authority or  
21 fails to exercise authority to effectuate agreement or settlement;

22 (10) adjusts a workers' compensation claim in a manner  
23 contrary to license requirements for an insurance adjuster,  
24 including the requirements of Chapter 4101, Insurance Code [~~407,~~  
25 ~~Acts of the 63rd Legislature, Regular Session, 1973 (Article~~  
26 ~~21.07-4, Vernon's Texas Insurance Code)~~], or commissioner [~~the~~  
27 ~~rules [of the State Board of Insurance]~~];

1           (11) fails to process claims promptly in a reasonable  
2 and prudent manner;

3           (12) fails to initiate or reinstate benefits when due  
4 if a legitimate dispute does not exist as to the liability of the  
5 insurance carrier;

6           (13) misrepresents the reason for not paying benefits  
7 or terminating or reducing the payment of benefits;

8           (14) dates documents to misrepresent the actual date  
9 of the initiation of benefits;

10          (15) makes a notation on a draft or other instrument  
11 indicating that the draft or instrument represents a final  
12 settlement of a claim if the claim is still open and pending before  
13 the department [~~commission~~];

14          (16) fails or refuses to pay benefits from week to week  
15 as and when due directly to the person entitled to the benefits;

16          (17) fails to pay an order awarding benefits;

17          (18) controverts a claim if the evidence clearly  
18 indicates liability;

19          (19) unreasonably disputes the reasonableness and  
20 necessity of health care;

21          (20) violates a commissioner [~~commission~~] rule; or

22          (21) fails to comply with a provision of this  
23 subtitle.

24          (b) An insurance carrier or its representative does not  
25 commit an administrative violation under Subsection (a)(6) by  
26 allowing an employer to:

27           (1) freely discuss a claim;

1 (2) assist in the investigation and evaluation of a  
2 claim; or

3 (3) attend a proceeding [~~of the commission~~] and  
4 participate at the proceeding in accordance with this subtitle.

5 SECTION 1.603. Section 415.003, Labor Code, is amended to  
6 read as follows:

7 Sec. 415.003. ADMINISTRATIVE VIOLATION BY HEALTH CARE  
8 PROVIDER. A health care provider commits an administrative  
9 violation if the person wilfully or intentionally:

10 (1) submits a charge for health care that was not  
11 furnished;

12 (2) administers improper, unreasonable, or medically  
13 unnecessary treatment or services;

14 (3) makes an unnecessary referral;

15 (4) violates the department's [~~commission's~~] fee [~~and~~  
16 ~~treatment~~] guidelines;

17 (5) violates a commissioner [~~commission~~] rule; or

18 (6) fails to comply with a provision of this subtitle.

19 SECTION 1.604. Sections 415.0035(a), (b), (e), and (f),  
20 Labor Code, are amended to read as follows:

21 (a) An insurance carrier or its representative commits an  
22 administrative violation if that person:

23 (1) fails to submit to the department [~~commission~~] a  
24 settlement or agreement of the parties;

25 (2) fails to timely notify the department [~~commission~~]  
26 of the termination or reduction of benefits and the reason for that  
27 action; or

1 (3) denies preauthorization in a manner that is not in  
2 accordance with Section 408B.057 or 413.014 or with commissioner  
3 rules adopted [~~by the commission~~] under Section 413.014.

4 (b) A health care provider commits an administrative  
5 violation if that person:

6 (1) fails or refuses to timely file required reports  
7 or records; or

8 (2) fails to file with the department [~~commission~~] the  
9 [~~annual~~] disclosure statement required by Section 413.041.

10 (e) An insurance carrier or health care provider commits an  
11 administrative violation if that person violates this subtitle or a  
12 rule, order, or decision of the commissioner [~~commission~~].

13 (f) A subsequent administrative violation under this  
14 section, after prior notice to the insurance carrier or health care  
15 provider of noncompliance, is subject to penalties as provided by  
16 Section 415.021. Prior notice under this subsection is not  
17 required if the violation was committed wilfully or intentionally,  
18 or if the violation was of a decision or order of the commissioner  
19 [~~commission~~].

20 SECTION 1.605. Section 415.007(a), Labor Code, is amended  
21 to read as follows:

22 (a) An attorney who represents a claimant before the  
23 department [~~commission~~] may not lend money to the claimant during  
24 the pendency of the workers' compensation claim.

25 SECTION 1.606. Section 415.008(e), Labor Code, is amended  
26 to read as follows:

27 (e) If an administrative violation proceeding is pending

1 under this section against an employee or person claiming death  
2 benefits, the department [~~commission~~] may not take final action on  
3 the person's benefits.

4 SECTION 1.607. Sections 415.021(a)-(c), Labor Code, are  
5 amended to read as follows:

6 (a) The department [~~commission~~] may assess an  
7 administrative penalty against a person who commits an  
8 administrative violation. Notwithstanding Subsection (c), the  
9 commissioner [~~commission~~] by rule shall adopt a schedule of  
10 specific monetary administrative penalties for specific violations  
11 under this subtitle.

12 (b) The department [~~commission~~] may assess an  
13 administrative penalty not to exceed \$10,000 and may enter a cease  
14 and desist order against a person who:

- 15 (1) commits repeated administrative violations;
- 16 (2) allows, as a business practice, the commission of  
17 repeated administrative violations; or
- 18 (3) violates an order or decision of the commissioner  
19 [~~commission~~].

20 (c) In assessing an administrative penalty, the department  
21 [~~commission~~] shall consider:

22 (1) the seriousness of the violation, including the  
23 nature, circumstances, consequences, extent, and gravity of the  
24 prohibited act;

25 (2) the history and extent of previous administrative  
26 violations;

27 (3) the demonstrated good faith of the violator,

1 including actions taken to rectify the consequences of the  
2 prohibited act;

3 (4) the economic benefit resulting from the prohibited  
4 act;

5 (5) the penalty necessary to deter future violations;  
6 and

7 (6) other matters that justice may require.

8 SECTION 1.608. Section 415.023(b), Labor Code, is amended  
9 to read as follows:

10 (b) The commissioner [~~commission~~] may adopt rules providing  
11 for:

12 (1) a reduction or denial of fees;

13 (2) public or private reprimand by the commissioner  
14 [~~commission~~];

15 (3) suspension from practice before the department  
16 [~~commission~~];

17 (4) restriction, suspension, or revocation of the  
18 right to receive reimbursement under this subtitle; or

19 (5) referral and petition to the appropriate licensing  
20 authority for appropriate disciplinary action, including the  
21 restriction, suspension, or revocation of the person's license.

22 SECTION 1.609. Section 415.024, Labor Code, is amended to  
23 read as follows:

24 Sec. 415.024. BREACH OF SETTLEMENT AGREEMENT;  
25 ADMINISTRATIVE VIOLATION. A material and substantial breach of a  
26 settlement agreement that establishes a compliance plan is a Class  
27 A administrative violation. In determining the amount of the

1 penalty, the department [~~commission~~] shall consider the total  
2 volume of claims handled by the insurance carrier.

3 SECTION 1.610. Section 415.031, Labor Code, is amended to  
4 read as follows:

5 Sec. 415.031. INITIATION OF ADMINISTRATIVE VIOLATION  
6 PROCEEDINGS. Any person may request the initiation of  
7 administrative violation proceedings by filing a written  
8 allegation with the department [~~director of the division of~~  
9 ~~compliance and practices~~].

10 SECTION 1.611. Section 415.032, Labor Code, is amended to  
11 read as follows:

12 Sec. 415.032. NOTICE OF POSSIBLE ADMINISTRATIVE VIOLATION;  
13 RESPONSE. (a) If investigation by the department [~~division of~~  
14 ~~compliance and practices~~] indicates that an administrative  
15 violation has occurred, the department [~~division~~] shall notify the  
16 person alleged to have committed the violation in writing of:

- 17 (1) the charge;  
18 (2) the proposed penalty;  
19 (3) the right to consent to the charge and the penalty;  
20 and  
21 (4) the right to request a hearing.

22 (b) Not later than the 20th day after the date on which  
23 notice is received, the charged party shall:

24 (1) remit the amount of the penalty to the department  
25 [~~commission~~]; or

26 (2) submit to the department [~~commission~~] a written  
27 request for a hearing.

1 SECTION 1.612. Section 415.033, Labor Code, is amended to  
2 read as follows:

3 Sec. 415.033. FAILURE TO RESPOND. If, without good cause, a  
4 charged party fails to respond as required under Section 415.032,  
5 the penalty is due and the department [~~commission~~] shall initiate  
6 enforcement proceedings.

7 SECTION 1.613. Section 415.034(a), Labor Code, is amended  
8 to read as follows:

9 (a) On the request of the charged party or the commissioner  
10 [~~executive director~~], the State Office of Administrative Hearings  
11 shall set a hearing. The hearing shall be conducted in the manner  
12 provided for a contested case under Chapter 2001, Government Code  
13 [~~(the administrative procedure law)~~].

14 SECTION 1.614. Sections 415.035(b) and (d), Labor Code, are  
15 amended to read as follows:

16 (b) If an administrative penalty is assessed, the person  
17 charged shall:

18 (1) forward the amount of the penalty to the  
19 department [~~executive director~~] for deposit in an escrow account;  
20 or

21 (2) post with the department [~~executive director~~] a  
22 bond for the amount of the penalty, effective until all judicial  
23 review of the determination is final.

24 (d) If the court determines that the penalty should not have  
25 been assessed or reduces the amount of the penalty, the department  
26 [~~executive director~~] shall:

27 (1) remit the appropriate amount, plus accrued

1 interest, if the administrative penalty was paid; or

2 (2) release the bond.

3 PART 19. AMENDMENT TO CHAPTER 416, LABOR CODE

4 SECTION 1.651. Section 416.001, Labor Code, is amended to  
5 read as follows:

6 Sec. 416.001. CERTAIN CAUSES OF ACTION PRECLUDED. An  
7 action taken by an insurance carrier under an order of the  
8 commissioner [~~commission or recommendations of a benefit review~~  
9 ~~officer under Section 410.031, 410.032, or 410.033~~] may not be the  
10 basis of a cause of action against the insurance carrier for a  
11 breach of the duty of good faith and fair dealing.

12 PART 20. AMENDMENTS TO CHAPTER 417, LABOR CODE

13 SECTION 1.701. Sections 417.001(c) and (d), Labor Code, are  
14 amended to read as follows:

15 (c) If a claimant receives benefits from the subsequent  
16 injury fund, the department [~~commission~~] is:

17 (1) considered to be the insurance carrier under this  
18 section for purposes of those benefits;

19 (2) subrogated to the rights of the claimant; and

20 (3) entitled to reimbursement in the same manner as  
21 the insurance carrier.

22 (d) The department [~~commission~~] shall remit money recovered  
23 under this section to the comptroller for deposit to the credit of  
24 the subsequent injury fund.

25 SECTION 1.702. Section 417.003(b), Labor Code, is amended  
26 to read as follows:

27 (b) An attorney who represents the claimant and is also to

1 represent the subrogated insurance carrier shall make a full  
2 written disclosure to the claimant before employment as an attorney  
3 by the insurance carrier. The claimant must acknowledge the  
4 disclosure and consent to the representation. A signed copy of the  
5 disclosure shall be furnished to all concerned parties and made a  
6 part of the department [~~commission~~] file. A copy of the disclosure  
7 with the claimant's consent shall be filed with the claimant's  
8 pleading before a judgment is entered and approved by the court.  
9 The claimant's attorney may not receive a fee under this section to  
10 which the attorney is otherwise entitled under an agreement with  
11 the insurance carrier unless the attorney complies with the  
12 requirements of this subsection.

13 ARTICLE 2. AMENDMENTS TO SUBTITLE C, TITLE 5, LABOR CODE

14 PART 1. AMENDMENTS TO CHAPTER 501, LABOR CODE

15 SECTION 2.001. Section 501.001(1), Labor Code, is amended  
16 to read as follows:

17 (1) "Department" [~~"Commission"~~] means the Texas  
18 Department of Insurance [~~Workers' Compensation Commission~~].

19 SECTION 2.002. Section 501.002, Labor Code, is amended by  
20 amending Subsections (a) and (c) and adding Subsection (a-1) to  
21 read as follows:

22 (a) The following provisions of Subtitles A and B apply to  
23 and are included in this chapter except to the extent that they are  
24 inconsistent with this chapter:

25 (1) Chapter 401, other than Section 401.012 defining  
26 "employee";

27 (2) Chapter 402;

1 (3) Chapter 403, other than Sections 403.001-403.005;

2 (4) Chapters 404 and ~~[Chapter]~~ 405;

3 (5) Subchapters B and D through H, Chapter 406, other  
4 than Sections 406.071(a), 406.073, and 406.075;

5 (6) Chapter 408, other than Sections 408.001(b) and  
6 (c);

7 (7) Chapters 408A, 408C, and 408D, except as provided  
8 by Subsection (a-1);

9 (8) Chapters 409 and 410;

10 (9) ~~[(8)]~~ Subchapters A and G, Chapter 411, other than  
11 Sections 411.003 and 411.004;

12 (10) ~~[(9)]~~ Chapters 412-417; and

13 (11) ~~[(10)]~~ Chapter 451.

14 (a-1) Each state agency shall provide workers' compensation  
15 medical benefits for the agency's employees through a provider  
16 network under Chapter 408B if the commissioner of insurance  
17 determines that provision of those benefits through a network is  
18 available to the employees and practical for the state. To that  
19 extent, Chapter 408B applies to this chapter.

20 (c) For the purpose of applying the provisions listed by  
21 Subsections ~~[Subsection]~~ (a) and (a-1) to this chapter, "insurer"  
22 or "employer" means "state," "office," "director," or "state  
23 agency," as applicable.

24 SECTION 2.003. Section 501.026(d), Labor Code, is amended  
25 to read as follows:

26 (d) A person entitled to benefits under this section may  
27 receive the benefits only if the person seeks medical attention

1 from a doctor for the injury not later than 48 hours after the  
2 occurrence of the injury or after the date the person knew or should  
3 have known the injury occurred. The person shall comply with the  
4 requirements of Section 409.001 by providing notice of the injury  
5 to the department [~~commission~~] or the state agency with which the  
6 officer or employee under Subsection (b) is associated.

7 SECTION 2.004. Sections 501.050(a), (b), and (d), Labor  
8 Code, are amended to read as follows:

9 (a) In each case appealed from the department [~~commission~~]  
10 to a [~~county or~~] district court:

11 (1) the clerk of the court shall mail to the department  
12 [~~commission~~]:

13 (A) not later than the 20th day after the date the  
14 case is filed, a notice containing the style, number, and date of  
15 filing of the case; and

16 (B) not later than the 20th day after the date the  
17 judgment is rendered, a certified copy of the judgment; and

18 (2) the attorney preparing the judgment shall file the  
19 original and a copy of the judgment with the clerk.

20 (b) An attorney's failure to comply with Subsection (a)(2)  
21 does not excuse the failure of a [~~county or~~] district clerk to  
22 comply with Subsection (a)(1)(B).

23 (d) A [~~county or~~] district clerk who violates this section  
24 commits an offense. An offense under this subsection is a  
25 misdemeanor punishable by a fine not to exceed \$250.

26 PART 2. AMENDMENTS TO CHAPTER 502, LABOR CODE

27 SECTION 2.051. Section 502.001(1), Labor Code, is amended

1 to read as follows:

2 (1) "Department" [~~"Commission"~~] means the Texas  
3 Department of Insurance [~~Workers' Compensation Commission~~].

4 SECTION 2.052. Section 502.002, Labor Code, is amended by  
5 amending Subsections (a) and (b) and adding Subsection (a-1) to  
6 read as follows:

7 (a) The following provisions of Subtitle A apply to and are  
8 included in this chapter except to the extent that they are  
9 inconsistent with this chapter:

10 (1) Chapter 401, other than Section 401.012 defining  
11 "employee";

12 (2) Chapter 402;

13 (3) Chapter 403, other than Sections 403.001-403.005;

14 (4) Chapters 404 and [~~Chapter~~] 405;

15 (5) Sections 406.031-406.033; Subchapter D, Chapter  
16 406; Sections 406.092 and 406.093;

17 (6) Chapter 408, other than Sections 408.001(b) and  
18 (c);

19 (7) Chapters 408A, 408C, and 408D, except as provided  
20 by Subsection (a-1);

21 (8) Chapters 409 and 410;

22 (9) [~~(8)~~] Subchapters A and G, Chapter 411, other than  
23 Sections 411.003 and 411.004; and

24 (10) [~~(9)~~] Chapters 412-417.

25 (a-1) Each institution shall provide workers' compensation  
26 medical benefits for the institution's employees through a provider  
27 network under Chapter 408B if the commissioner of insurance

1 determines that provision of those benefits through a network is  
2 available to the employees and practical for the state. To that  
3 extent, Chapter 408B applies to this chapter.

4 (b) For the purpose of applying the provisions listed by  
5 Subsections [Subsection] (a) and (a-1) to this chapter, "employer"  
6 means "the institution."

7 SECTION 2.053. The heading to Section 502.063, Labor Code,  
8 is amended to read as follows:

9 Sec. 502.063. CERTIFIED COPIES OF [~~COMMISSION~~] DOCUMENTS.

10 SECTION 2.054. Sections 502.063(a) and (c), Labor Code, are  
11 amended to read as follows:

12 (a) The department [~~commission~~] shall furnish a certified  
13 copy of an order, award, decision, or paper on file in the  
14 department's [~~commission's~~] office to a person entitled to the copy  
15 on written request and payment of the fee for the copy. The fee is  
16 the same as that charged for similar services by the secretary of  
17 state's office.

18 (c) A fee or salary may not be paid to a department [~~member~~  
19 ~~or~~] employee [~~of the commission~~] for making a copy under Subsection  
20 (a) that exceeds the fee charged for the copy.

21 SECTION 2.055. Section 502.065, Labor Code, is amended to  
22 read as follows:

23 Sec. 502.065. REPORTS OF INJURIES. (a) In addition to a  
24 report of an injury filed with the department [~~commission~~] under  
25 Section 409.005(a), an institution shall file a supplemental report  
26 that contains:

27 (1) the name, age, sex, and occupation of the injured

1 employee;

2 (2) the character of work in which the employee was  
3 engaged at the time of the injury;

4 (3) the place, date, and hour of the injury; and

5 (4) the nature and cause of the injury.

6 (b) The institution shall file the supplemental report on a  
7 form prescribed by the commissioner of insurance [~~obtained for that~~  
8 ~~purpose~~]:

9 (1) on the termination of incapacity of the injured  
10 employee; or

11 (2) if the incapacity extends beyond 60 days.

12 SECTION 2.056. Sections 502.066(a) and (e), Labor Code, are  
13 amended to read as follows:

14 (a) The department [~~commission~~] may require an employee who  
15 claims to have been injured to submit to an examination by the  
16 department [~~commission~~] or a person acting under the department's  
17 [~~commission's~~] authority at a reasonable time and place in this  
18 state.

19 (e) The institution shall pay the fee set by the department  
20 for the services [~~commission~~] of a physician or chiropractor  
21 selected by the employee under Subsection (b) or (d).

22 SECTION 2.057. Section 502.067(a), Labor Code, is amended  
23 to read as follows:

24 (a) The commissioner of insurance [~~commission~~] may order or  
25 direct the institution to reduce or suspend the compensation of an  
26 injured employee who:

27 (1) persists in insanitary or injurious practices that

1 tend to imperil or retard the employee's recovery; or

2 (2) refuses to submit to medical, surgical,  
3 chiropractic, or other remedial treatment recognized by the state  
4 that is reasonably essential to promote the employee's recovery.

5 SECTION 2.058. Section 502.068, Labor Code, is amended to  
6 read as follows:

7 Sec. 502.068. POSTPONEMENT OF HEARING. If an injured  
8 employee is receiving benefits under this chapter and the  
9 institution is providing hospitalization, medical treatment, or  
10 chiropractic care to the employee, the department [~~commission~~] may  
11 postpone the hearing on the employee's claim. An appeal may not be  
12 taken from an [~~a commission~~] order of the commissioner of insurance  
13 under this section.

14 SECTION 2.059. Section 502.069, Labor Code, is amended to  
15 read as follows:

16 Sec. 502.069. NOTICE OF APPEAL; NOTICE OF TRIAL COURT  
17 JUDGMENT; OFFENSE. (a) In each case appealed from the department  
18 [~~commission~~] to a [~~county or~~] district court:

19 (1) the clerk of the court shall mail to the department  
20 [~~commission~~]:

21 (A) not later than the 20th day after the date the  
22 case is filed, a notice containing the style, number, and date of  
23 filing of the case; and

24 (B) not later than the 20th day after the date the  
25 judgment is rendered, a certified copy of the judgment; and

26 (2) the attorney preparing the judgment shall file the  
27 original and a copy of the judgment with the clerk.

1 (b) An attorney's failure to comply with Subsection (a)(2)  
2 does not excuse the failure of a [~~county or~~] district clerk to  
3 comply with Subsection (a)(1)(B).

4 (c) The duties of a [~~county or~~] district clerk under  
5 Subsection (a)(1) are part of the clerk's ex officio duties, and the  
6 clerk is not entitled to a fee for the services.

7 (d) A [~~county or~~] district clerk who violates this section  
8 commits an offense. An offense under this section is a misdemeanor  
9 punishable by a fine not to exceed \$250.

10 PART 3. AMENDMENTS TO CHAPTER 503, LABOR CODE

11 SECTION 2.101. Section 503.001(1), Labor Code, is amended  
12 to read as follows:

13 (1) "Department" [~~"Commission"~~] means the Texas  
14 Department of Insurance [~~Workers' Compensation Commission~~].

15 SECTION 2.102. Section 503.002, Labor Code, is amended by  
16 amending Subsections (a) and (b) and adding Subsection (a-1) to  
17 read as follows:

18 (a) The following provisions of Subtitle A apply to and are  
19 included in this chapter except to the extent that they are  
20 inconsistent with this chapter:

21 (1) Chapter 401, other than Section 401.012 defining  
22 "employee";

23 (2) Chapter 402;

24 (3) Chapter 403, other than Sections 403.001-403.005;

25 (4) Chapters 404 and [~~Chapter~~] 405;

26 (5) Sections 406.031-406.033; Subchapter D, Chapter  
27 406; Sections 406.092 and 406.093;

1           (6) Chapter 408, other than Sections 408.001(b) and  
2 (c);

3           (7) Chapters 408A, 408C, and 408D, except as provided  
4 by Subsection (a-1);

5           (8) Chapters 409 and 410;

6           (9) [~~8~~] Subchapters A and G, Chapter 411, other than  
7 Sections 411.003 and 411.004; and

8           (10) [~~9~~] Chapters 412-417.

9           (a-1) Each institution shall provide workers' compensation  
10 medical benefits for the institution's employees through a provider  
11 network under Chapter 408B if the commissioner of insurance  
12 determines that provision of those benefits through a network is  
13 available to the employees and practical for the state. To that  
14 extent, Chapter 408B applies to this chapter.

15           (b) For the purpose of applying the provisions listed by  
16 Subsections [~~Subsection~~] (a) and (a-1) to this chapter, "employer"  
17 means "the institution."

18           SECTION 2.103. The heading to Section 503.063, Labor Code,  
19 is amended to read as follows:

20           Sec. 503.063. CERTIFIED COPIES OF [~~COMMISSION~~] DOCUMENTS.

21           SECTION 2.104. Sections 503.063(a) and (c), Labor Code, are  
22 amended to read as follows:

23           (a) The department [~~commission~~] shall furnish a certified  
24 copy of an order, award, decision, or paper on file in the  
25 department's [~~commission's~~] office to a person entitled to the copy  
26 on written request and payment of the fee for the copy. The fee is  
27 the same as that charged for similar services by the secretary of

1 state's office.

2 (c) A fee or salary may not be paid to a department [~~member~~  
3 ~~or~~] employee [~~of the commission~~] for making a copy under Subsection  
4 (a) that exceeds the fee charged for the copy.

5 SECTION 2.105. Section 503.065, Labor Code, is amended to  
6 read as follows:

7 Sec. 503.065. REPORTS OF INJURIES. (a) In addition to a  
8 report of an injury filed with the department [~~commission~~] under  
9 Section 409.005(a), an institution shall file a supplemental report  
10 that contains:

11 (1) the name, age, sex, and occupation of the injured  
12 employee;

13 (2) the character of work in which the employee was  
14 engaged at the time of the injury;

15 (3) the place, date, and hour of the injury; and

16 (4) the nature and cause of the injury.

17 (b) The institution shall file the supplemental report on a  
18 form prescribed by the commissioner of insurance [~~obtained for that~~  
19 ~~purpose~~]:

20 (1) on the termination of incapacity of the injured  
21 employee; or

22 (2) if the incapacity extends beyond 60 days.

23 SECTION 2.106. Sections 503.066(a) and (e), Labor Code, are  
24 amended to read as follows:

25 (a) The department [~~commission~~] may require an employee who  
26 claims to have been injured to submit to an examination by the  
27 department [~~commission~~] or a person acting under the department's

1 ~~[commission's]~~ authority at a reasonable time and place in this  
2 state.

3 (e) The institution shall pay the fee, as set by the  
4 department ~~[commission]~~, for the services of a physician selected  
5 by the employee under Subsection (b) or (d).

6 SECTION 2.107. Section 503.067(a), Labor Code, is amended  
7 to read as follows:

8 (a) The commissioner of insurance ~~[commission]~~ may order or  
9 direct the institution to reduce or suspend the compensation of an  
10 injured employee who:

11 (1) persists in insanitary or injurious practices that  
12 tend to imperil or retard the employee's recovery; or

13 (2) refuses to submit to medical, surgical, or other  
14 remedial treatment recognized by the state that is reasonably  
15 essential to promote the employee's recovery.

16 SECTION 2.108. Section 503.068, Labor Code, is amended to  
17 read as follows:

18 Sec. 503.068. POSTPONEMENT OF HEARING. If an injured  
19 employee is receiving benefits under this chapter and the  
20 institution is providing hospitalization or medical treatment to  
21 the employee, the department ~~[commission]~~ may postpone the hearing  
22 on the employee's claim. An appeal may not be taken from an ~~[a~~  
23 ~~commission]~~ order of the commissioner of insurance under this  
24 section.

25 SECTION 2.109. Section 503.069, Labor Code, is amended to  
26 read as follows:

27 Sec. 503.069. NOTICE OF APPEAL; NOTICE OF TRIAL COURT

1 JUDGMENT; OFFENSE. (a) In each case appealed from the department  
2 [~~commission~~] to a [~~county or~~] district court:

3 (1) the clerk of the court shall mail to the department  
4 [~~commission~~]:

5 (A) not later than the 20th day after the date the  
6 case is filed, a notice containing the style, number, and date of  
7 filing of the case; and

8 (B) not later than the 20th day after the date the  
9 judgment is rendered, a certified copy of the judgment; and

10 (2) the attorney preparing the judgment shall file the  
11 original and a copy of the judgment with the clerk.

12 (b) An attorney's failure to comply with Subsection (a)(2)  
13 does not excuse the failure of a [~~county or~~] district clerk to  
14 comply with Subsection (a)(1)(B).

15 (c) The duties of a [~~county or~~] district clerk under  
16 Subsection (a)(1) are part of the clerk's ex officio duties, and the  
17 clerk is not entitled to a fee for the services.

18 (d) A [~~county or~~] district clerk who violates this section  
19 commits an offense. An offense under this section is a misdemeanor  
20 punishable by a fine not to exceed \$250.

21 SECTION 2.110. Section 503.070(a), Labor Code, is amended  
22 to read as follows:

23 (a) A party who does not consent to abide by the final  
24 decision of the department [~~commission~~] shall file notice with the  
25 department [~~commission~~] as required by Section 410.253 and bring  
26 suit in the county in which the injury occurred to set aside the  
27 final decision of the department [~~commission~~].

PART 4. AMENDMENTS TO CHAPTER 504, LABOR CODE

SECTION 2.151. Section 504.001(1), Labor Code, is amended to read as follows:

(1) "Department" [~~"Commission"~~] means the Texas Department of Insurance [~~Workers' Compensation Commission~~].

SECTION 2.152. Section 504.002, Labor Code, is amended by amending Subsections (a) and (b) and adding Subsection (a-1) to read as follows:

(a) The following provisions of Subtitles A and B apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:

(1) Chapter 401, other than Section 401.011(18) defining "employer" and Section 401.012 defining "employee";

(2) Chapter 402;

(3) Chapter 403, other than Sections 403.001-403.005;

(4) Sections 406.006-406.009 and Subchapters B and D-G, Chapter 406, other than Sections 406.033, 406.034, 406.035, 406.091, and 406.096;

(5) Chapter 408, other than Sections 408.001(b) and (c);

(6) Chapters 408A, 408C, and 408D, except as provided by Subsection (a-1);

(7) Chapters 409-417; and

(8) [~~(7)~~] Chapter 451.

(a-1) Chapter 408B applies to this chapter as provided by Section 504.011(b).

(b) For the purpose of applying the provisions listed by

1 Subsections [~~Subsection~~] (a) and (a-1) to this chapter, "employer"  
2 means "political subdivision."

3 SECTION 2.153. Section 504.011, Labor Code, is amended to  
4 read as follows:

5 Sec. 504.011. METHOD OF PROVIDING COVERAGE. (a) A  
6 political subdivision shall provide [~~extend~~] workers' compensation  
7 benefits to its employees by:

8 (1) becoming a self-insurer;

9 (2) providing insurance under a workers' compensation  
10 insurance policy; or

11 (3) entering into an interlocal agreement with other  
12 political subdivisions providing for self-insurance.

13 (b) A political subdivision shall provide workers'  
14 compensation medical benefits for the political subdivision's  
15 employees through a provider network under Chapter 408B if the  
16 governing body of the political subdivision determines that  
17 provision of those benefits through a network is available to the  
18 employees and practical for the political subdivision. A  
19 political subdivision may enter into interlocal agreements and  
20 other agreements with other political subdivisions to establish or  
21 contract with provider networks under this section.

22 SECTION 2.154. Sections 504.016(d) and (e), Labor Code, are  
23 amended to read as follows:

24 (d) A joint insurance fund created under this section may  
25 provide to the department [~~Texas Department of Insurance~~] loss data  
26 in the same manner as an insurance company writing workers'  
27 compensation insurance. The department [~~State Board of Insurance~~]

1 shall use the loss data as provided by Subchapter D, Chapter 5,  
2 Insurance Code.

3 (e) Except as provided by Subsection (d), a joint insurance  
4 fund created under this section is not considered insurance for  
5 purposes of any state statute and is not subject to [~~State Board of~~  
6 ~~Insurance~~] rules adopted by the commissioner of insurance.

7 SECTION 2.155. Section 504.017, Labor Code, is amended to  
8 read as follows:

9 Sec. 504.017. FEDERAL AND STATE FUNDED TRANSPORTATION  
10 ENTITIES. An entity is eligible to participate under Section  
11 504.016 or Chapter 791 or 2259, Government Code, if the entity  
12 provides transportation subsidized in whole or in part by and  
13 provided to clients of:

14 (1) the [~~Texas~~] Department of [~~on~~] Aging and  
15 Disability Services;

16 (2) the Department of Assistive and Rehabilitative  
17 Services [~~Texas Commission on Alcohol and Drug Abuse~~];

18 (3) the Department of State Health Services [~~Texas~~  
19 ~~Commission for the Blind~~];

20 (4) the Texas Cancer Council;

21 (5) the Department of Family and Protective Services  
22 [~~Texas Commission for the Deaf and Hard of Hearing~~];

23 (6) the Texas Department of Housing and Community  
24 Affairs;

25 (7) the Health and Human Services Commission [~~Texas~~  
26 ~~Department of Human Services~~]; or

27 (8) [~~the Texas Department of Mental Health and Mental~~

1 ~~Retardation;~~

2 ~~[(9) the Texas Rehabilitation Commission; or~~

3 ~~[(10)]~~ the Texas Youth Commission.

4 SECTION 2.156. The heading to Section 504.018, Labor Code,  
5 is amended to read as follows:

6 Sec. 504.018. NOTICE TO DEPARTMENT [~~COMMISSION~~] AND  
7 EMPLOYEES; EFFECT ON COMMON-LAW OR STATUTORY LIABILITY.

8 SECTION 2.157. Section 504.018(a), Labor Code, is amended  
9 to read as follows:

10 (a) A political subdivision shall notify the department  
11 [~~commission~~] of the method by which the [~~its~~] employees of the  
12 political subdivision will receive benefits, the approximate  
13 number of employees covered, and the estimated amount of payroll.

14 PART 5. AMENDMENTS TO CHAPTER 505, LABOR CODE

15 SECTION 2.201. Section 505.002, Labor Code, is amended by  
16 amending Subsections (a) and (b) and adding Subsection (a-1) to  
17 read as follows:

18 (a) The following provisions of Subtitles A and B apply to  
19 and are included in this chapter except to the extent that they are  
20 inconsistent with this chapter:

21 (1) Chapter 401, other than Section 401.012, defining  
22 "employee";

23 (2) Chapter 402;

24 (3) Chapter 403, other than Sections 403.001-403.005;

25 (4) Chapters 404 and [~~Chapter~~] 405;

26 (5) Subchapters B, D, E, and H, Chapter 406, other than  
27 Sections 406.071-406.073, and 406.075;

1 (6) Chapter 408, other than Sections 408.001(b) and  
2 (c);

3 (7) Chapters 408A, 408C, and 408D, except as provided  
4 by Subsection (a-1);

5 (8) Chapters 409 and 410;

6 (9) [~~8~~] Subchapters A and G, Chapter 411, other than  
7 Sections 411.003 and 411.004;

8 (10) [~~9~~] Chapters 412-417; and

9 (11) [~~10~~] Chapter 451.

10 (a-1) The department shall provide workers' compensation  
11 medical benefits for the department's employees through a provider  
12 network under Chapter 408B if the commissioner of insurance  
13 determines that provision of those benefits through a network is  
14 available to the employees and practical for the state. To that  
15 extent, Chapter 408B applies to this chapter.

16 (b) For the purpose of applying the provisions listed by  
17 Subsections [~~Subsection~~] (a) and (a-1) to this chapter, "employer"  
18 means "department."

19 SECTION 2.202. The heading to Section 505.053, Labor Code,  
20 is amended to read as follows:

21 Sec. 505.053. CERTIFIED COPIES OF [~~COMMISSION~~] DOCUMENTS.

22 SECTION 2.203. Sections 505.053(a) and (c), Labor Code, are  
23 amended to read as follows:

24 (a) The Texas Department of Insurance [~~commission~~] shall  
25 furnish a certified copy of an order, award, decision, or paper on  
26 file in that department's [~~the commission's~~] office to a person  
27 entitled to the copy on written request and payment of the fee for

1 the copy. The fee shall be the same as that charged for similar  
2 services by the secretary of state's office.

3 (c) A fee or salary may not be paid to an employee of the  
4 Texas Department of Insurance [~~a person in the commission~~] for  
5 making the copies that exceeds the fee charged for the copies.

6 SECTION 2.204. Section 505.054(d), Labor Code, is amended  
7 to read as follows:

8 (d) A physician designated under Subsection (c) who  
9 conducts an examination shall file with the department a complete  
10 transcript of the examination on a form furnished by the  
11 department. The department shall maintain all reports under this  
12 subsection as part of the department's permanent records. A report  
13 under this subsection is admissible in evidence before the Texas  
14 Department of Insurance [~~commission~~] and in an appeal from a final  
15 award or ruling of the Texas Department of Insurance [~~commission~~]  
16 in which the individual named in the examination is a claimant for  
17 compensation under this chapter. A report under this subsection  
18 that is admitted is prima facie evidence of the facts stated in the  
19 report.

20 SECTION 2.205. Section 505.055, Labor Code, is amended to  
21 read as follows:

22 Sec. 505.055. REPORTS OF INJURIES. (a) A report of an  
23 injury filed with the Texas Department of Insurance [~~commission~~]  
24 under Section 409.005, in addition to the information required by  
25 [~~commission~~] rules of the commissioner of insurance, must contain:

26 (1) the name, age, sex, and occupation of the injured  
27 employee;

1 (2) the character of work in which the employee was  
2 engaged at the time of the injury;

3 (3) the place, date, and hour of the injury; and

4 (4) the nature and cause of the injury.

5 (b) In addition to subsequent reports of an injury filed  
6 with the Texas Department of Insurance [~~commission~~] under Section  
7 409.005(i) [~~409.005(e)~~], the department shall file a subsequent  
8 report on a form prescribed by the commissioner of insurance  
9 [~~obtained for that purpose~~]:

10 (1) on the termination of incapacity of the injured  
11 employee; or

12 (2) if the incapacity extends beyond 60 days.

13 SECTION 2.206. Sections 505.056(a) and (d), Labor Code, are  
14 amended to read as follows:

15 (a) The Texas Department of Insurance [~~commission~~] may  
16 require an employee who claims to have been injured to submit to an  
17 examination by that department [~~the commission~~] or a person acting  
18 under the [~~commission's~~] authority of the commissioner of insurance  
19 at a reasonable time and place in this state.

20 (d) On the request of an employee or the department, the  
21 employee or the department is entitled to have a physician selected  
22 by the employee or the department present to participate in an  
23 examination under Subsection (a) or Section 408.004. The employee  
24 is entitled to have a physician selected by the employee present to  
25 participate in an examination under Subsection (c). The department  
26 shall pay the fee set by the Texas Department of Insurance for the  
27 services [~~commission~~] of a physician selected by the employee under

1 this subsection.

2 SECTION 2.207. Section 505.057(a), Labor Code, is amended  
3 to read as follows:

4 (a) The Texas Department of Insurance [~~commission~~] may  
5 order or direct the department to reduce or suspend the  
6 compensation of an injured employee if the employee:

7 (1) persists in insanitary or injurious practices that  
8 tend to imperil or retard the employee's recovery; or

9 (2) refuses to submit to medical, surgical, or other  
10 remedial treatment recognized by the state that is reasonably  
11 essential to promote the employee's recovery.

12 SECTION 2.208. Section 505.058, Labor Code, is amended to  
13 read as follows:

14 Sec. 505.058. POSTPONEMENT OF HEARING. If an injured  
15 employee is receiving benefits under this chapter and the  
16 department is providing hospitalization or medical treatment to the  
17 employee, the Texas Department of Insurance [~~commission~~] may  
18 postpone the hearing of the employee's claim. An appeal may not be  
19 taken from an [~~a commission~~] order of the commissioner of insurance  
20 under this section.

21 SECTION 2.209. Section 505.059, Labor Code, is amended to  
22 read as follows:

23 Sec. 505.059. NOTICE OF APPEAL; NOTICE OF TRIAL COURT  
24 JUDGMENT; OFFENSE. (a) In each case appealed from the Texas  
25 Department of Insurance [~~commission~~] to a [~~county or~~] district  
26 court:

27 (1) the clerk of the court shall mail to the Texas

1 Department of Insurance [~~commission~~]:

2 (A) not later than the 20th day after the date the  
3 case is filed, a notice containing the style, number, and date of  
4 filing of the case; and

5 (B) not later than the 20th day after the date the  
6 judgment is rendered, a certified copy of the judgment; and

7 (2) the attorney preparing the judgment shall file the  
8 original and a copy of the judgment with the clerk.

9 (b) An attorney's failure to comply with Subsection (a)(2)  
10 does not excuse the failure of a [~~county or~~] district clerk to  
11 comply with Subsection (a)(1)(B).

12 (c) The duties of a [~~county or~~] district clerk under  
13 Subsection (a)(1) are part of the clerk's ex officio duties, and the  
14 clerk is not entitled to a fee for the services.

15 (d) A [~~county or~~] district clerk who violates this section  
16 commits an offense. An offense under this section is a misdemeanor  
17 punishable by a fine not to exceed \$250.

18 SECTION 2.210. Section 505.001(a)(1), Labor Code, is  
19 repealed.

20 ARTICLE 3. CONFORMING AMENDMENTS

21 PART 1. CONFORMING AMENDMENTS--GOVERNMENT CODE

22 SECTION 3.001. Section 23.101(a), Government Code, is  
23 amended to read as follows:

24 (a) The trial courts of this state shall regularly and  
25 frequently set hearings and trials of pending matters, giving  
26 preference to hearings and trials of the following:

27 (1) temporary injunctions;

1           (2) criminal actions, with the following actions given  
2 preference over other criminal actions:

3           (A) criminal actions against defendants who are  
4 detained in jail pending trial;

5           (B) criminal actions involving a charge that a  
6 person committed an act of family violence, as defined by Section  
7 71.004, Family Code; and

8           (C) an offense under:

9                 (i) Section 21.11, Penal Code;

10                (ii) Chapter 22, Penal Code, if the victim  
11 of the alleged offense is younger than 17 years of age;

12                (iii) Section 25.02, Penal Code, if the  
13 victim of the alleged offense is younger than 17 years of age; or

14                (iv) Section 25.06, Penal Code;

15           (3) election contests and suits under the Election  
16 Code;

17           (4) orders for the protection of the family under  
18 Subtitle B, Title 4, Family Code;

19           (5) appeals of final rulings and decisions of the  
20 Texas Department of Insurance regarding workers' compensation  
21 claims [~~Workers' Compensation Commission~~] and claims under the  
22 Federal Employers' Liability Act and the Jones Act; and

23           (6) appeals of final orders of the commissioner of the  
24 General Land Office under Section 51.3021, Natural Resources Code.

25           SECTION 3.002. Section 25.0003(c), Government Code, is  
26 amended to read as follows:

27           (c) In addition to other jurisdiction provided by law, a

1 statutory county court exercising civil jurisdiction concurrent  
2 with the constitutional jurisdiction of the county court has  
3 concurrent jurisdiction with the district court in[+]

4 [~~(1)~~] civil cases in which the matter in controversy  
5 exceeds \$500 but does not exceed \$100,000, excluding interest,  
6 statutory or punitive damages and penalties, and attorney's fees  
7 and costs, as alleged on the face of the petition[+and

8 [~~(2)~~ appeals of final rulings and decisions of the  
9 Texas Workers' Compensation Commission, regardless of the amount in  
10 controversy].

11 SECTION 3.003. Section 25.0222(a), Government Code, is  
12 amended to read as follows:

13 (a) In addition to the jurisdiction provided by Section  
14 25.0003 and other law, a statutory county court in Brazoria County  
15 has concurrent jurisdiction with the district court in:

16 (1) civil cases in which the matter in controversy  
17 exceeds \$500 but does not exceed \$100,000, excluding interest,  
18 statutory damages and penalties, and attorney's fees and costs, as  
19 alleged on the face of the petition; and

20 (2) [~~appeals of final rulings and decisions of the~~  
21 ~~Texas Workers' Compensation Commission, regardless of the amount in~~  
22 ~~controversy, and~~

23 [~~(3)~~] family law cases and proceedings and juvenile  
24 jurisdiction under Section 23.001.

25 SECTION 3.004. Section 25.0862(i), Government Code, is  
26 amended to read as follows:

27 (i) The clerk of the statutory county courts and statutory

1 probate court shall keep a separate docket for each court. The  
2 clerk shall tax the official court reporter's fees as costs in civil  
3 actions in the same manner as the fee is taxed in civil cases in the  
4 district courts. The district clerk serves as clerk of the county  
5 courts in a cause of action arising under the Family Code [~~and an~~  
6 ~~appeal of a final ruling or decision of the Texas Workers'~~  
7 ~~Compensation Commission~~], and the county clerk serves as clerk of  
8 the court in all other cases.

9 SECTION 3.005. Section 25.2222(b), Government Code, as  
10 amended by Chapter 22, Acts of the 72nd Legislature, Regular  
11 Session, 1991, is amended to read as follows:

12 (b) A county court at law has concurrent jurisdiction with  
13 the district court in:

14 (1) civil cases in which the matter in controversy  
15 exceeds \$500 and does not exceed \$100,000, excluding mandatory  
16 damages and penalties, attorney's fees, interest, and costs;

17 (2) nonjury family law cases and proceedings;

18 (3) [~~final rulings and decisions of the Texas Workers'~~  
19 ~~Compensation Commission, regardless of the amount in controversy,~~

20 [~~(4)~~] eminent domain proceedings, both statutory and  
21 inverse, regardless of the amount in controversy;

22 (4) [~~(5)~~] suits to decide the issue of title to real or  
23 personal property;

24 (5) [~~(6)~~] suits to recover damages for slander or  
25 defamation of character;

26 (6) [~~(7)~~] suits for the enforcement of a lien on real  
27 property;

1           (7) [~~(8)~~] suits for the forfeiture of a corporate  
2 charter;

3           (8) [~~(9)~~] suits for the trial of the right to property  
4 valued at \$200 or more that has been levied on under a writ of  
5 execution, sequestration, or attachment; and

6           (9) [~~(10)~~] suits for the recovery of real property.

7           SECTION 3.006. Section 551.044(b), Government Code, is  
8 amended to read as follows:

9           (b) Subsection (a) does not apply to:

10           (1) the Texas Department of Insurance, as regards  
11 proceedings and activities of the department or commissioner of  
12 insurance under Title 5, Labor Code [~~Workers' Compensation~~  
13 ~~Commission~~]; or

14           (2) the governing board of an institution of higher  
15 education.

16           SECTION 3.007. Section 2001.003(7), Government Code, is  
17 amended to read as follows:

18           (7) "State agency" means a state officer, board,  
19 commission, or department with statewide jurisdiction that makes  
20 rules or determines contested cases. The term includes the State  
21 Office of Administrative Hearings for the purpose of determining  
22 contested cases. The term does not include:

23           (A) a state agency wholly financed by federal  
24 money;

25           (B) the legislature;

26           (C) the courts;

27           (D) the Texas Department of Insurance, as regards

1 proceedings and activities of the department or commissioner of  
2 insurance under Title 5, Labor Code [~~Workers' Compensation~~  
3 ~~Commission~~]; or

4 (E) an institution of higher education.

5 SECTION 3.008. Section 2002.001(3), Government Code, is  
6 amended to read as follows:

7 (3) "State agency" means a state officer, board,  
8 commission, or department with statewide jurisdiction that makes  
9 rules or determines contested cases other than:

10 (A) an agency wholly financed by federal money;

11 (B) the legislature;

12 (C) the courts;

13 (D) the Texas Department of Insurance, as regards  
14 proceedings and activities of the department or commissioner of  
15 insurance under Title 5, Labor Code [~~Workers' Compensation~~  
16 ~~Commission~~]; or

17 (E) an institution of higher education.

18 SECTION 3.009. Section 2003.001(4), Government Code, is  
19 amended to read as follows:

20 (4) "State agency" means:

21 (A) a state board, commission, department, or  
22 other agency that is subject to Chapter 2001; and

23 (B) to the extent provided by Title 5, Labor  
24 Code, the Texas Department of Insurance, as regards proceedings and  
25 activities of the department or commissioner of insurance under  
26 Title 5, Labor Code [~~Workers' Compensation Commission~~].

27 SECTION 3.010. Section 2003.021(c), Government Code, is

1 amended to read as follows:

2 (c) The office shall conduct hearings under Title 5, Labor  
 3 Code, as provided by that title. In conducting hearings under Title  
 4 5, Labor Code, the office shall consider the applicable substantive  
 5 rules and policies of the Texas Department of Insurance regarding  
 6 workers' compensation claims [~~Workers' Compensation Commission~~].  
 7 The office and the Texas Department of Insurance [~~Workers'~~  
 8 ~~Compensation Commission~~] shall enter into an interagency contract  
 9 under Chapter 771 to pay the costs incurred by the office in  
 10 implementing this subsection.

11 SECTION 3.011. Section 2054.021(c), Government Code, is  
 12 amended to read as follows:

13 (c) Two groups each composed of three ex officio members  
 14 serve on the board on a rotating basis. The ex officio members  
 15 serve as nonvoting members of the board. Only one group serves at a  
 16 time. The first group is composed of the commissioner of insurance  
 17 [~~executive director of the Texas Workers' Compensation~~  
 18 ~~Commission~~], the executive commissioner of the Health and Human  
 19 Services Commission [~~health and human services~~], and the executive  
 20 director of the Texas Department of Transportation. Members of the  
 21 first group serve for two-year terms that begin February 1 of every  
 22 other odd-numbered year and that expire on February 1 of the next  
 23 odd-numbered year. The second group is composed of the  
 24 commissioner of education, the executive director of the Texas  
 25 Department of Criminal Justice, and the executive director of the  
 26 Parks and Wildlife Department. Members of the second group serve  
 27 for two-year terms that begin February 1 of the odd-numbered years

1 in which the terms of members of the first group expire and that  
2 expire on February 1 of the next odd-numbered year.

3 PART 2. CONFORMING AMENDMENTS--INSURANCE CODE

4 SECTION 3.051. Section 31.002, Insurance Code, is amended  
5 to read as follows:

6 Sec. 31.002. DUTIES OF DEPARTMENT. In addition to the other  
7 duties required of the Texas Department of Insurance, the  
8 department shall:

9 (1) regulate the business of insurance in this state;  
10 [~~and~~]

11 (2) administer the workers' compensation system of  
12 this state as provided by Title 5, Labor Code; and

13 (3) ensure that this code and other laws regarding  
14 insurance and insurance companies are executed.

15 SECTION 3.052. Section 31.004, Insurance Code, is amended  
16 to read as follows:

17 Sec. 31.004. SUNSET PROVISION. (a) The Texas Department of  
18 Insurance is subject to Chapter 325, Government Code (Texas Sunset  
19 Act). Unless continued in existence as provided by that chapter,  
20 the department is abolished September 1, 2007.

21 (b) In conducting its review of the Texas Department of  
22 Insurance as required by Subsection (a), the Sunset Advisory  
23 Commission shall limit its review to the operations of that  
24 department under the Insurance Code. Unless continued as provided  
25 by Chapter 325, Government Code, the duties of the Texas Department  
26 of Insurance under Title 5, Labor Code, expire September 1, 2019, or  
27 another date designated by the legislature.

1 SECTION 3.053. Section 31.021(b), Insurance Code, is  
2 amended to read as follows:

3 (b) The commissioner has the powers and duties vested in the  
4 department by:

5 (1) this code and other insurance laws of this state;  
6 and

7 (2) Title 5, Labor Code, and other workers'  
8 compensation insurance laws of this state.

9 SECTION 3.054. Section 33.007(a), Insurance Code, is  
10 amended to read as follows:

11 (a) A person who served as the commissioner, the general  
12 counsel to the commissioner, or the public insurance counsel, or as  
13 an employee of the State Office of Administrative Hearings who was  
14 involved in hearing cases under this code, [or] another insurance  
15 law of this state, or Title 5, Labor Code, commits an offense if the  
16 person represents another person in a matter before the department  
17 or receives compensation for services performed on behalf of  
18 another person regarding a matter pending before the department  
19 during the one-year period after the date the person ceased to be  
20 the commissioner, the general counsel to the commissioner, the  
21 public insurance counsel, or an employee of the State Office of  
22 Administrative Hearings.

23 SECTION 3.055. Section 36.104, Insurance Code, is amended  
24 to read as follows:

25 Sec. 36.104. INFORMAL DISPOSITION OF CERTAIN CONTESTED  
26 CASES [~~CASE~~]. (a) The commissioner may, on written agreement or  
27 stipulation of each party and any intervenor, informally dispose of

1 a contested case in accordance with Section 2001.056, Government  
2 Code, notwithstanding any provision of this code that requires a  
3 hearing before the commissioner.

4 (b) This section does not apply to a contested case under  
5 Title 5, Labor Code.

6 SECTION 3.056. Subchapter D, Chapter 36, Insurance Code, is  
7 amended by adding Section 36.2015 to read as follows:

8 Sec. 36.2015. ACTIONS UNDER TITLE 5, LABOR CODE.  
9 Notwithstanding Section 36.201, a decision, order, rule, form, or  
10 administrative or other ruling of the commissioner under Title 5,  
11 Labor Code, is subject to judicial review as provided by Title 5,  
12 Labor Code.

13 SECTION 3.057. Section 40.003(c), Insurance Code, is  
14 amended to read as follows:

15 (c) This chapter does not apply to a proceeding conducted  
16 under Chapter 201 [~~Article 1.04D~~] or to a proceeding relating to:

17 (1) approving or reviewing rates or rating manuals  
18 filed by an individual company, unless the rates or manuals are  
19 contested;

20 (2) adopting a rule;

21 (3) adopting or approving a policy form or policy form  
22 endorsement;

23 (4) adopting or approving a plan of operation for an  
24 organization subject to the jurisdiction of the department; [~~or~~]

25 (5) adopting a presumptive rate under Chapter 1153; or

26 (6) a workers' compensation claim brought under Title  
27 5, Labor Code [~~Article 3.53~~].

1 SECTION 3.058. Section 81.001(c), Insurance Code, is  
2 amended to read as follows:

3 (c) This section does not apply to conduct that is:

4 (1) a violation that is ongoing at the time the  
5 department seeks to impose the sanction, penalty, or fine; ~~[or]~~

6 (2) a violation of Subchapter A, Chapter 544 ~~[Article~~  
7 ~~21.21-6 of this code, as added by Chapter 415, Acts of the 74th~~  
8 ~~Legislature, Regular Session, 1995]~~, or Section 541.057 ~~[4(7)(a),~~  
9 ~~Article 21.21 of this code]~~, as those provisions relate to  
10 discrimination on the basis of race or color, regardless of the time  
11 the conduct occurs; or

12 (3) a violation of Title 5, Labor Code.

13 SECTION 3.059. Section 84.002, Insurance Code, is amended  
14 by adding Subsection (c) to read as follows:

15 (c) This chapter applies to a monetary penalty the  
16 department or commissioner imposes under Title 5, Labor Code, only  
17 as provided by that title.

18 SECTION 3.060. Section 1301.056(b), Insurance Code, as  
19 effective April 1, 2005, is amended to read as follows:

20 (b) A party to a preferred provider contract, including a  
21 contract with a preferred provider organization, may not sell,  
22 lease, or otherwise transfer information regarding the payment or  
23 reimbursement terms of the contract without the express authority  
24 of and prior adequate notification to the other contracting  
25 parties. This subsection does not affect the authority of the  
26 commissioner ~~[or the Texas Workers' Compensation Commission]~~ under  
27 this code or Title 5, Labor Code, to request and obtain information.

1 SECTION 3.061. Subchapter D, Chapter 5, Insurance Code, is  
2 amended by adding Articles 5.55A and 5.55D to read as follows:

3 Art. 5.55A. WORKERS' COMPENSATION COVERAGE WRITTEN BY GROUP  
4 HEALTH INSURERS AUTHORIZED. (a) A person authorized by the  
5 department to engage in the business of insurance in this state  
6 under a certificate of authority that includes authorization to  
7 write group health insurance may also write workers' compensation  
8 insurance in this state.

9 (b) A person writing workers' compensation insurance under  
10 this article is, with respect to that insurance, subject to each  
11 duty imposed on a workers' compensation insurer under this code and  
12 under Title 5, Labor Code, including provisions relating to the  
13 payment of premium and maintenance taxes and maintenance of  
14 reserves, and is a member insurer under Article 21.28-C of this  
15 code.

16 (c) Notwithstanding Subsection (b) of this article, the  
17 commissioner by rule may provide that a person writing workers'  
18 compensation insurance under this article may instead comply with  
19 specified regulatory provisions otherwise applicable to the  
20 person, such as provisions relating to authorized investments and  
21 transactions for a life, health, and accident insurance company, if  
22 the commissioner finds that those provisions provide at least as  
23 much protection to insureds, insurers, creditors, and the public as  
24 the comparable provisions otherwise applicable to a workers'  
25 compensation insurer.

26 Art. 5.55D. DISCOUNTS FOR CERTAIN PROGRAMS

27 Sec. 1. DEFINITION. In this article, "insurer" means a

1 person authorized and admitted by the department to engage in the  
2 business of insurance in this state under a certificate of  
3 authority that includes authorization to write workers'  
4 compensation insurance. The term includes the Texas Mutual  
5 Insurance Company.

6 Sec. 2. REQUIRED FILING OF DISCOUNT INFORMATION. (a) Each  
7 insurer shall file with the department in the manner prescribed by  
8 the commissioner by rule information regarding any premium  
9 discounts offered by the insurer to an employer who is a  
10 policyholder under a policy of workers' compensation insurance for  
11 the use by the employer of:

12 (1) return-to-work programs for injured employees;

13 and

14 (2) employee safety programs.

15 (b) The insurer shall include in the filing the percentage  
16 amount discounted from the premium for each program described under  
17 Subsection (a) of this section.

18 Sec. 3. DEPARTMENT ANALYSIS; RULES. The department shall  
19 analyze the information contained in filings made under this  
20 article and shall determine whether the mandatory use of the  
21 workers' compensation insurance premium discounts would improve  
22 the operation of the workers' compensation system of this state. If  
23 the department does so determine, the commissioner by rule may  
24 establish a mandatory premium discount program under this article.

25 SECTION 3.062. Article 5.58(b), Insurance Code, is amended  
26 to read as follows:

27 (b) Standards and Procedures. For purposes of Subsection

1 (c) of this article, the commissioner shall establish standards and  
2 procedures for categorizing insurance and medical benefits  
3 reported on each workers' compensation claim. The commissioner  
4 shall [~~consult with the Texas Workers' Compensation Commission and~~  
5 ~~the Research and Oversight Council on Workers' Compensation in~~  
6 ~~establishing these standards to~~] ensure that the data collection  
7 methodology will also yield data necessary for research and medical  
8 cost containment efforts.

9 SECTION 3.063. Article 5.60A(c), Insurance Code, is amended  
10 to read as follows:

11 (c) To assist the commissioner [~~Board~~] in making rates and  
12 to provide additional information on certain trends that may affect  
13 the costs of workers' compensation insurance, the [~~executive~~]  
14 director of the office of employee assistance [~~Texas Workers'~~  
15 ~~Compensation Commission~~] or a person designated by that officer  
16 shall testify at any rate hearing conducted under this article.  
17 [~~The testimony shall relate to trends in:~~

- 18 [~~(1) claims resolution of workers' compensation cases,~~  
19 ~~and~~  
20 [~~(2) cost components in workers' compensation cases.~~]

21 SECTION 3.064. Article 5.65A(a), Insurance Code, is amended  
22 to read as follows:

23 (a) A company or association that writes workers'  
24 compensation insurance in this state shall notify each policyholder  
25 of any claim that is filed against the policy. Thereafter a company  
26 shall notify the policyholder of any proposal to settle a claim or,  
27 on receipt of a written request from the policyholder, of any

1 administrative or judicial proceeding relating to the resolution of  
2 a claim[~~, including a benefit review conference conducted by the~~  
3 ~~Texas Workers' Compensation Commission~~].

4 SECTION 3.065. Sections 8(a), (e), (g)-(i), (k), and (l),  
5 Article 5.76-3, Insurance Code, are amended to read as follows:

6 (a) The company may make and enforce requirements for the  
7 prevention of injuries to employees of its policyholders or  
8 applicants for insurance under this article. For this purpose,  
9 representatives of the company[~~, representatives of the~~  
10 ~~commission,~~] or representatives of the department on reasonable  
11 notice shall be granted free access to the premises of each  
12 policyholder or applicant during regular working hours.

13 (e) The policyholder shall obtain the safety consultation  
14 not later than the 30th day after the effective date of the policy  
15 and shall obtain the safety consultation from the department  
16 [~~division of workers' health and safety of the commission~~], the  
17 company, or another professional source approved for that purpose  
18 by the department [~~division of workers' health and safety~~]. The  
19 safety consultant shall file a written report with the department  
20 [~~commission~~] and the policyholder setting out any hazardous  
21 conditions or practices identified by the safety consultation.

22 (g) The department [~~division of workers' health and safety~~  
23 ~~of the commission~~] may investigate accidents occurring at the work  
24 sites of a policyholder for whom a plan has been developed under  
25 Subsection (f) of this section, and [~~the division~~] may otherwise  
26 monitor the implementation of the accident prevention plan as it  
27 finds necessary.

1           (h) In accordance with rules adopted by the commissioner  
2 ~~[commission]~~, not earlier than 90 days or later than six months  
3 after the development of an accident prevention plan under  
4 Subsection (f) of this section, the department ~~[division of~~  
5 ~~workers' health and safety of the commissioner]~~ shall conduct a  
6 follow-up inspection of the policyholder's premises. The  
7 department ~~[commission]~~ may require the participation of the safety  
8 consultant who performed the initial consultation and developed the  
9 safety plan. If the commissioner ~~[division]~~ determines that the  
10 policyholder has complied with the terms of the accident prevention  
11 plan or has implemented other accepted corrective measures, the  
12 commissioner ~~[division]~~ shall so certify. If a policyholder fails  
13 or refuses to implement the accident prevention plan or other  
14 suitable hazard abatement measures, the policyholder may elect to  
15 cancel coverage not later than the 30th day after the date of the  
16 ~~[division]~~ determination. If the policyholder does not elect to  
17 cancel, the company may cancel the coverage or the commissioner  
18 ~~[commission]~~ may assess an administrative penalty not to exceed  
19 \$5,000. Each day of noncompliance constitutes a separate violation.  
20 Penalties collected under this section shall be deposited in the  
21 general revenue fund and may be appropriated ~~[to the credit of the~~  
22 ~~commission or reappropriated]~~ to the department ~~[commission]~~ to  
23 offset the costs of implementing and administering this section.

24           (i) In assessing an administrative penalty, the  
25 commissioner ~~[commission]~~ may consider any matter that justice may  
26 require and shall consider:

27           (1) the seriousness of the violation, including the

1 nature, circumstances, consequences, extent, and gravity of the  
2 prohibited act;

3 (2) the history and extent of previous administrative  
4 violations;

5 (3) the demonstrated good faith of the violator,  
6 including actions taken to rectify the consequences of the  
7 prohibited act;

8 (4) any economic benefit resulting from the prohibited  
9 act; and

10 (5) the penalty necessary to deter future violations.

11 (k) The department [~~commission~~] shall charge the  
12 policyholder for the reasonable cost of services provided under  
13 Subsections (e), (f), and (h) of this section. The fees for those  
14 services shall be set at a cost-reimbursement level including a  
15 reasonable allocation of the department's [~~commission's~~]  
16 administrative costs.

17 (l) The department [~~compliance and practices division of~~  
18 ~~the commission~~] shall enforce compliance with this section through  
19 the administrative violation proceedings under Chapter 415, Labor  
20 Code.

21 SECTION 3.066. Sections 9(a), (b), and (e), Article 5.76-3,  
22 Insurance Code, are amended to read as follows:

23 (a) The company shall develop and implement a program to  
24 identify and investigate fraud and violations of this code relating  
25 to workers' compensation insurance by an applicant, policyholder,  
26 claimant, agent, insurer, health care provider, or other person.  
27 The company shall cooperate with the department [~~commission~~] to

1 compile and maintain information necessary to detect practices or  
2 patterns of conduct that violate this code relating to the workers'  
3 compensation insurance or Subtitle A, Title 5, Labor Code (the  
4 Texas Workers' Compensation Act).

5 (b) The company may conduct investigations of cases of  
6 suspected fraud and violations of this code relating to workers'  
7 compensation insurance. The company may:

8 (1) coordinate its investigations with those  
9 conducted by the department [~~commission~~] to avoid duplication of  
10 efforts; and

11 (2) refer cases that are not otherwise resolved by the  
12 company to the department [~~commission~~] to:

13 (A) perform any further investigations that are  
14 necessary under the circumstances;

15 (B) conduct administrative violation  
16 proceedings; and

17 (C) assess and collect penalties and  
18 restitution.

19 (e) Penalties collected under Subsection (b) of this  
20 section shall be deposited in the Texas Department of Insurance  
21 operating account [~~general revenue fund to the credit of the~~  
22 ~~commission~~] and shall be appropriated to the department  
23 [~~commission~~] to offset the costs of this program.

24 SECTION 3.067. Section 10(a), Article 5.76-3, Insurance  
25 Code, is amended to read as follows:

26 (a) Information maintained in the investigation files of  
27 the company is confidential and may not be disclosed except:

- 1 (1) in a criminal proceeding;
- 2 (2) in a hearing conducted by the department
- 3 ~~[commission]~~;
- 4 (3) on a judicial determination of good cause; or
- 5 (4) to a governmental agency, political subdivision,
- 6 or regulatory body if the disclosure is necessary or proper for the
- 7 enforcement of the laws of this or another state or of the United
- 8 States.

9 SECTION 3.068. Section 12(e), Article 5.76-3, Insurance

10 Code, is amended to read as follows:

11 (e) The company shall file annual statements with the

12 department ~~[and the commission]~~ in the same manner as required of

13 other workers' compensation insurance carriers, and the

14 commissioner shall include a report on the company's condition in

15 the commissioner's annual report under Section 32.021 of this code.

16 SECTION 3.069. Section 16(b), Article 5.76-3, Insurance

17 Code, is amended to read as follows:

18 (b) The company shall file with the department ~~[and the~~

19 ~~commission]~~ all reports required of other workers' compensation

20 insurers.

21 SECTION 3.070. Sections 10(a) and (c), Article 5.76-5,

22 Insurance Code, are amended to read as follows:

- 23 (a) A maintenance tax surcharge is assessed against:
- 24 (1) each insurance company writing workers'
- 25 compensation insurance in this state;
- 26 (2) each certified self-insurer under Chapter 407,
- 27 Labor Code ~~[as provided in Chapter D, Article 3, Texas Workers'~~

1 ~~Compensation Act (Article 8308-3.51 et seq., Vernon's Texas Civil~~  
2 ~~Statutes)]; and~~

3 (3) the fund.

4 (c) On determining [~~receiving notice of~~] the rate of  
5 assessment [~~set by the Texas Workers' Compensation Commission~~]  
6 under Section 403.003, Labor Code [~~2.23, Texas Workers'~~  
7 ~~Compensation Act (Article 8308-2.23, Vernon's Texas Civil~~  
8 ~~Statutes)]], the commissioner [~~State Board of Insurance~~] shall  
9 increase the tax rate to a rate sufficient to pay all debt service  
10 on the bonds subject to the maximum tax rate established by Section  
11 403.002, Labor Code [~~2.22, Texas Workers' Compensation Act (Article~~  
12 ~~8308-2.22, Vernon's Texas Civil Statutes)]. If the resulting tax  
13 rate is insufficient to pay all costs for the department under this  
14 article [~~Texas Workers' Compensation Commission~~] and all debt  
15 service on the bonds, the commissioner [~~State Board of Insurance~~]  
16 may assess an additional surcharge not to exceed one percent of  
17 gross workers' compensation premiums to cover all debt service on  
18 the bonds. In this code, the maintenance tax surcharge includes the  
19 additional maintenance tax assessed under this subsection and the  
20 surcharge assessed under this subsection to pay all debt service of  
21 the bonds.~~~~

22 SECTION 3.071. Section 3A, Article 21.28, Insurance Code,  
23 is amended to read as follows:

24 Sec. 3A. WORKERS' COMPENSATION CARRIER: NOTIFICATION [~~OF~~  
25 ~~TEXAS WORKERS' COMPENSATION COMMISSION~~]. (a) The liquidator shall  
26 notify the department [~~Texas Workers' Compensation Commission~~]  
27 immediately upon a finding of insolvency or impairment upon any

1 insurance company which has in force any workers' compensation  
2 coverage in Texas.

3 (b) The department [~~Texas Workers' Compensation Commission~~]  
4 shall, upon said notice, submit to the liquidator a list of active  
5 cases pending before the department [~~Texas Workers' Compensation~~  
6 ~~Commission~~] in which there has been an acceptance of liability by  
7 the carrier, where it appears that no bona fide dispute exists and  
8 where payments were commenced prior to the finding of insolvency or  
9 impairment and where future or past indemnity or medical payments  
10 are due.

11 (c) Notwithstanding the provisions of Section 3 of this  
12 Article, the liquidator is authorized to commence or continue the  
13 payment of claims based upon the list submitted in Subsection (b)  
14 above.

15 (d) In order to avoid undue delay in the payment of covered  
16 workers' compensation claims, the liquidator shall contract with  
17 [~~the Texas Workers' Compensation Pool or~~] any [~~other~~] qualified  
18 organization for claims adjusting. Files and information delivered  
19 by the department [~~Texas Workers' Compensation Commission~~] to the  
20 liquidator may be delivered to the [~~Texas Workers' Compensation~~  
21 ~~Pool or any~~] organization with which the liquidator has contracted  
22 for claims adjusting services.

23 [~~(c) The Texas Workers' Compensation Commission shall report~~  
24 ~~to the State Board of Insurance any occasion when a workers'~~  
25 ~~compensation insurer has committed acts that may indicate insurer~~  
26 ~~financial impairment, delinquency or insolvency.]~~

27 SECTION 3.072. Section 8(d), Article 21.28-C, Insurance

1 Code, is amended to read as follows:

2 (d) The association shall investigate and adjust,  
3 compromise, settle, and pay covered claims to the extent of the  
4 association's obligation and deny all other claims. The  
5 association may review settlements, releases, and judgments to  
6 which the impaired insurer or its insureds were parties to  
7 determine the extent to which those settlements, releases, and  
8 judgments may be properly contested. Any judgment taken before the  
9 designation of impairment in which an insured under a liability  
10 policy or the insurer failed to exhaust all appeals, any judgment  
11 taken by default or consent against an insured or the impaired  
12 insurer, and any settlement, release, or judgment entered into by  
13 the insured or the impaired insurer, is not binding on the  
14 association, and may not be considered as evidence of liability or  
15 of damages in connection with any claim brought against the  
16 association or any other party under this Act. Notwithstanding any  
17 other provision of this Act, a covered claim shall not include any  
18 claim filed with the guaranty association on a date that is later  
19 than eighteen months after the date of the order of liquidation,  
20 except that a claim for workers' compensation benefits is governed  
21 by Title 5, Labor Code, and the applicable rules of the commissioner  
22 [~~Texas Workers' Compensation Commission~~].

23 SECTION 3.073. Section 4(1), Article 21.58A, Insurance  
24 Code, is amended to read as follows:

25 (1) Unless precluded or modified by contract, a utilization  
26 review agent shall reimburse health care providers for the  
27 reasonable costs for providing medical information in writing,

1 including copying and transmitting any requested patient records or  
2 other documents. A health care provider's charges for providing  
3 medical information to a utilization review agent shall not exceed  
4 the cost of copying set by rule of the commissioner [~~Texas Workers'~~  
5 ~~Compensation Commission~~] for records regarding a workers'  
6 compensation claim and may not include any costs that are otherwise  
7 recouped as a part of the charge for health care.

8 SECTION 3.074. Section 14(c), Article 21.58A, Insurance  
9 Code, is amended to read as follows:

10 (c) Except as otherwise provided by this subsection, this  
11 article applies to utilization review of health care services  
12 provided to persons eligible for workers' compensation medical  
13 benefits under Title 5, Labor Code. The commissioner shall  
14 regulate in the manner provided by this article a person who  
15 performs review of a medical benefit provided under Title 5  
16 [~~Chapter 408~~], Labor Code. [~~This subsection does not affect the~~  
17 ~~authority of the Texas Workers' Compensation Commission to exercise~~  
18 ~~the powers granted to that commission under Title 5, Labor Code.~~]  
19 In the event of a conflict between this article and Title 5, Labor  
20 Code, Title 5, Labor Code, prevails. The commissioner [~~and the~~  
21 ~~Texas Workers' Compensation Commission~~] may adopt rules [~~and enter~~  
22 ~~into memoranda of understanding~~] as necessary to implement this  
23 subsection.

24 SECTION 3.075. The following laws are repealed:

- 25 (1) Section 31.006, Insurance Code; and  
26 (2) Section 1(2), Article 5.76-3, Insurance Code.

27 PART 3. CONFORMING AMENDMENTS--OTHER CODES

1 SECTION 3.101. Section 92.009, Health and Safety Code, is  
2 amended to read as follows:

3 Sec. 92.009. COORDINATION WITH TEXAS DEPARTMENT OF  
4 INSURANCE [~~WORKERS' COMPENSATION COMMISSION~~]. The department and  
5 the Texas Department of Insurance [~~Workers' Compensation~~  
6 ~~Commission~~] shall enter into a memorandum of understanding which  
7 shall include the following:

8 (1) the department and the Texas Department of  
9 Insurance [~~commission~~] shall exchange relevant injury data on an  
10 ongoing basis notwithstanding Section 92.006;

11 (2) confidentiality of injury data provided to the  
12 department by the Texas Department of Insurance [~~commission~~] is  
13 governed by Subtitle A, Title 5, Labor Code;

14 (3) confidentiality of injury data provided to the  
15 Texas Department of Insurance [~~commission~~] by the department is  
16 governed by Section 92.006; and

17 (4) cooperation in conducting investigations of  
18 work-related injuries.

19 SECTION 3.102. Section 91.003(b), Labor Code, is amended to  
20 read as follows:

21 (b) In particular, the Texas Workforce Commission, the  
22 Texas Department of Insurance, [~~the Texas Workers' Compensation~~  
23 ~~Commission~~], and the attorney general's office shall assist in the  
24 implementation of this chapter and shall provide information to the  
25 department on request.

26 SECTION 3.103. Section 160.006(a), Occupations Code, is  
27 amended to read as follows:

1 (a) A record, report, or other information received and  
2 maintained by the board under this subchapter or Subchapter B,  
3 including any material received or developed by the board during an  
4 investigation or hearing and the identity of, and reports made by, a  
5 physician performing or supervising compliance monitoring for the  
6 board, is confidential. The board may disclose this information  
7 only:

8 (1) in a disciplinary hearing before the board or in a  
9 subsequent trial or appeal of a board action or order;

10 (2) to the physician licensing or disciplinary  
11 authority of another jurisdiction, to a local, state, or national  
12 professional medical society or association, or to a medical peer  
13 review committee located inside or outside this state that is  
14 concerned with granting, limiting, or denying a physician hospital  
15 privileges;

16 (3) under a court order;

17 (4) to qualified personnel for bona fide research or  
18 educational purposes, if personally identifiable information  
19 relating to any physician or other individual is first deleted; or

20 (5) to the Texas Department of Insurance [~~Workers'~~  
21 ~~Compensation Commission~~] as provided by Section 413.0514, Labor  
22 Code.

23 ARTICLE 4. TRANSITION; EFFECTIVE DATE

24 SECTION 4.001. ABOLITION OF TEXAS WORKERS' COMPENSATION  
25 COMMISSION; GENERAL TRANSFER OF AUTHORITY TO TEXAS DEPARTMENT OF  
26 INSURANCE. (a) The Texas Workers' Compensation Commission is  
27 abolished March 1, 2006.

1 (b) Except as otherwise provided by this article, all  
2 powers, duties, obligations, rights, contracts, funds, unspent  
3 appropriations, records, real or personal property, and personnel  
4 of the Texas Workers' Compensation Commission shall be transferred  
5 to the Texas Department of Insurance not later than February 28,  
6 2006.

7 SECTION 4.002. OFFICE OF EMPLOYEE ASSISTANCE. (a) The  
8 office of employee assistance created under Chapter 404, Labor  
9 Code, as added by this Act, is established September 1, 2005.

10 (b) The governor shall appoint the director of the office of  
11 employee assistance not later than October 1, 2005.

12 (c) The director of the office of employee assistance shall  
13 adopt initial rules for the office under Section 404.006, Labor  
14 Code, as added by this Act, not later than March 1, 2006.

15 (d) The Texas Department of Insurance shall provide, in  
16 Austin and in each regional office operated by the department to  
17 administer Subtitle A, Title 5, Labor Code, as amended by this Act,  
18 suitable office space, personnel, computer support, and other  
19 administrative support to the office of employee assistance as  
20 required by Chapter 404, Labor Code, as added by this Act. The  
21 department shall provide the facilities and support not later than  
22 March 1, 2006.

23 (e) All powers, duties, obligations, rights, contracts,  
24 funds, unspent appropriations, records, real or personal property,  
25 and personnel of the Texas Workers' Compensation Commission  
26 relating to the operation of the workers' compensation ombudsman  
27 program under Subchapter C, Chapter 409, Labor Code, as that

1 subchapter existed before amendment by this Act, shall be  
2 transferred to the office of employee assistance not later than  
3 March 1, 2006.

4 SECTION 4.003. TEXAS WORKFORCE COMMISSION. All powers,  
5 duties, obligations, rights, contracts, funds, unspent  
6 appropriations, records, real or personal property, and personnel  
7 of the Texas Workers' Compensation Commission relating to the  
8 operation of the workforce education and safety functions of the  
9 workers' compensation system of this state as described by  
10 Subchapter C, Chapter 402, Labor Code, as amended by this Act, shall  
11 be transferred to the Texas Workforce Commission not later than  
12 March 1, 2006.

13 SECTION 4.004. WORKERS' COMPENSATION RESEARCH AND  
14 EVALUATION GROUP. The commissioner of insurance shall designate  
15 the members of the workers' compensation research and evaluation  
16 group established under Chapter 405, Labor Code, as amended by this  
17 Act, not later than October 1, 2005.

18 SECTION 4.005. CONTINUATION OF CERTAIN POLICIES,  
19 PROCEDURES, OR DECISIONS. (a) A policy, procedure, or decision of  
20 the Texas Workers' Compensation Commission relating to a duty of  
21 that commission that is transferred to the authority of the Texas  
22 Department of Insurance under Subtitle A, Title 5, Labor Code, as  
23 amended by this Act, continues in effect as a policy, procedure, or  
24 decision of the commissioner of insurance until superseded by an  
25 act of the commissioner of insurance.

26 (b) A policy, procedure, or decision of the Texas Workers'  
27 Compensation Commission relating to a duty of that commission that

1 is transferred to the authority of the office of employee  
2 assistance established under Chapter 404, Labor Code, as added by  
3 this Act, continues in effect as a policy, procedure, or decision of  
4 the office of employee assistance until superseded by an act of the  
5 director of that office.

6 (c) A policy, procedure, or decision of the Texas Workers'  
7 Compensation Commission relating to a duty of that commission that  
8 is transferred to the authority of the Texas Workforce Commission  
9 under Subtitle A, Title 5, Labor Code, as amended by this Act,  
10 continues in effect as a policy, procedure, or decision of the Texas  
11 Workforce Commission until superseded by an act of that commission.

12 (d) Except as otherwise provided by this article, the  
13 validity of a plan or procedure adopted, contract or acquisition  
14 made, proceeding begun, grant or loan awarded, obligation incurred,  
15 right accrued, or other action taken by or in connection with the  
16 authority of the Texas Workers' Compensation Commission before that  
17 commission is abolished under Section 4.001 of this article is not  
18 affected by the abolishment.

19 SECTION 4.006. RULES. (a) The commissioner of insurance  
20 shall adopt rules relating to the transfer of the programs assigned  
21 to the Texas Department of Insurance under Subtitle A, Title 5,  
22 Labor Code, as amended by this Act, not later than December 1, 2005.

23 (b) The director of the office of employee assistance  
24 established under Chapter 404, Labor Code, as added by this Act,  
25 shall adopt rules relating to the transfer of the programs assigned  
26 to the office of employee assistance under Subtitle A, Title 5,  
27 Labor Code, as amended by this Act, not later than March 1, 2006.

1           (c) The Texas Workforce Commission shall adopt rules  
2 relating to the transfer of the programs assigned to that  
3 commission under Subtitle A, Title 5, Labor Code, as amended by this  
4 Act, not later than December 1, 2005.

5           (d) A rule of the Texas Workers' Compensation Commission  
6 relating to a duty of that commission that is transferred to the  
7 authority of the Texas Department of Insurance under Subtitle A,  
8 Title 5, Labor Code, as amended by this Act, continues in effect as  
9 a rule of the commissioner of insurance until the earlier of:

10                 (1) September 1, 2006; or

11                 (2) the date on which the rule is superseded by a rule  
12 adopted by the commissioner of insurance.

13           (e) A rule of the Texas Workers' Compensation Commission  
14 relating to a duty of that commission that is transferred to the  
15 authority of the office of employee assistance under Subtitle A,  
16 Title 5, Labor Code, as amended by this Act, continues in effect as  
17 a rule of the director of the office of employee assistance until  
18 the earlier of:

19                 (1) September 1, 2006; or

20                 (2) the date on which the rule is superseded by a rule  
21 adopted by the director of the office of employee assistance.

22           (f) A rule of the Texas Workers' Compensation Commission  
23 relating to a duty of that commission that is transferred to the  
24 authority of the Texas Workforce Commission under Subtitle A, Title  
25 5, Labor Code, as amended by this Act, continues in effect as a rule  
26 of the Texas Workforce Commission until the earlier of:

27                 (1) September 1, 2006; or

1           (2) the date on which the rule is superseded by a rule  
2 adopted by the Texas Workforce Commission.

3           SECTION 4.007. EFFECT ON ACTION OR PROCEEDING. (a) Except  
4 as otherwise provided by this section, any action or proceeding  
5 before the Texas Workers' Compensation Commission or to which the  
6 commission is a party is transferred without change in status to the  
7 Texas Department of Insurance.

8           (b) Benefit review conferences, as established under  
9 Subchapter B, Chapter 410, Labor Code, as that subchapter existed  
10 before amendment by this Act, are abolished September 1, 2005. A  
11 benefit review officer conducting a benefit review conference that  
12 is in progress on September 1, 2005, shall terminate the conference  
13 and file with the Texas Workers' Compensation Commission the  
14 written agreement required under Section 410.034, Labor Code, as  
15 that section existed before repeal by this Act, not later than  
16 October 1, 2005. A claimant regarding workers' compensation  
17 benefits whose claim is not heard by a benefit review officer under  
18 Subchapter B, Chapter 410, Labor Code, as that subchapter existed  
19 before amendment by this Act, on or before August 31, 2005, is  
20 entitled to a contested case hearing or arbitration on the claim  
21 without compliance with the informal dispute resolution procedures  
22 established under Chapter 410, Labor Code, as amended by this Act.  
23 If the claimant elects to proceed to a contested case hearing, the  
24 claimant may elect to participate in a prehearing conference under  
25 Section 410.151, Labor Code, as amended by this Act, or may proceed  
26 directly to a contested case hearing. This subsection expires  
27 March 1, 2006.

1           (c) The workers' compensation appeals panels established  
2 under Subchapter E, Chapter 410, Labor Code, as that subchapter  
3 existed before repeal by this Act, are abolished March 1, 2006, or  
4 on an earlier date specified by the commissioner of insurance. An  
5 appeals panel may not accept a new appeal of the decision of a  
6 hearing officer under Chapter 410, Labor Code, as that chapter  
7 existed before amendment by this Act, on or after September 1, 2005.  
8 A party to a dispute regarding the decision of a hearing officer  
9 that is filed with the Texas Workers' Compensation Commission or  
10 the Texas Department of Insurance on or after September 1, 2005, may  
11 seek judicial review under Chapter 410, Labor Code, as amended by  
12 this Act.

13           SECTION 4.008. APPEAL. Section 410.252(e), Labor Code, as  
14 added by this Act, and Sections 25.0003, 25.0222, and 25.0862,  
15 Government Code, as amended by this Act, apply only to an appeal  
16 filed on or after the effective date of this Act. An appeal filed  
17 before the effective date of this Act is governed by the law in  
18 effect on the date the appeal was filed, and the former law is  
19 continued in effect for that purpose.

20           SECTION 4.009. CHANGE IN CRIMINAL PENALTY. (a) The changes  
21 in law made by this Act apply only to the punishment for an offense  
22 committed on or after the effective date of this Act. For purposes  
23 of this section, an offense is committed before the effective date  
24 of this Act if any element of the offense occurs before the  
25 effective date.

26           (b) An offense committed before the effective date of this  
27 Act is governed by the law in effect on the date the offense was

1 committed, and the former law is continued in effect for that  
2 purpose.

3 SECTION 4.010. ABOLITION OF HEALTH CARE NETWORK ADVISORY  
4 COMMITTEE. (a) The Health Care Network Advisory Committee is  
5 abolished on the effective date of this Act.

6 (b) Except as otherwise provided by this article, all  
7 powers, duties, obligations, rights, contracts, funds, records,  
8 and real or personal property of the Health Care Network Advisory  
9 Committee shall be transferred to the Texas Department of Insurance  
10 not later than February 28, 2006.

11 SECTION 4.011. REFERENCE IN LAW. A reference in law to the  
12 Texas Workers' Compensation Commission means the Texas Department  
13 of Insurance, the Texas Workforce Commission, or the office of  
14 employee assistance as consistent with the respective duties of  
15 those state governmental entities under the Labor Code, the  
16 Insurance Code, and other laws of this state, as amended by this  
17 Act.

18 SECTION 4.012. BUDGET EXECUTION AUTHORITY.  
19 Notwithstanding Section 317.005(e), Government Code, the  
20 Legislative Budget Board may adopt an order under Section 317.005,  
21 Government Code, affecting any portion of the total appropriation  
22 of the Texas Department of Insurance or the Texas Workforce  
23 Commission if necessary to implement the provisions of this Act.  
24 This section expires March 31, 2006.

25 SECTION 4.013. EFFECTIVE DATE. Except as otherwise  
26 provided by this article, this Act takes effect September 1, 2005.