

INSURANCE CODE

TITLE 10. PROPERTY AND CASUALTY INSURANCE

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 1806. PROHIBITED PRACTICES AND REBATES RELATED TO POLICIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1806.001. DEFINITION. In this chapter, "nonprofit business association" means a business association that is a nonprofit corporation exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments by being described as an exempt organization by Section 501(c)(6) of that code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER B. PROVISIONS APPLICABLE TO AUTOMOBILE INSURANCE

Sec. 1806.051. APPLICABILITY OF SUBCHAPTER. This subchapter applies to an insurer writing automobile insurance in this state, including an insurance company, corporation, reciprocal or interinsurance exchange, mutual insurance company, association, Lloyd's plan, or other insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1806.052. CONSTRUCTION OF SUBCHAPTER. This subchapter may not be construed to prohibit the modification of rates by a rating plan that is filed in accordance with the requirements of Chapter 2251 or Article 5.13-2, as applicable, that has not been disapproved by the commissioner, and that is designed to encourage the prevention of accidents, and to account for all relevant factors inside and outside this state, including the peculiar hazards and experience of past and prospective individual risks.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1806.053. DISCRIMINATIONS OR DISTINCTIONS. Except as provided by this subchapter, with respect to business written in this state:

(1) an insurer may not discriminate or make a distinction, or permit discrimination or a distinction to be made, among insureds having like hazards with respect to premiums charged for, or dividends or other benefits payable under, an insurance policy;

(2) an insurer or an insurer's agent may not make an insurance contract or an agreement relating to that insurance, other than as expressed in the policy; and

(3) an insurer or an insurer's agent or other representative may not directly or indirectly pay, allow, or give, or offer to pay, allow, or give, as an inducement to the insured, a rebate payable on the policy or a special favor or advantage in the dividends or other benefits to accrue, or anything of value, not specified in the policy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 28 (S.B. 840), Sec. 2, eff. September 1, 2013.

Sec. 1806.054. OTHER PROHIBITED INDUCEMENTS. Except as provided by Section 1806.055, 1806.056, or 1806.057, an insurer or an insurer's officer, director, agent, or other representative may not, for the purpose of writing the insurance of an insured, grant to the insured or contract with the insured for a special favor or advantage in dividends or other profits, or commissions or dividends of commissions or profits to accrue on the policy, or compensation or other valuable consideration not specified in the policy, or an inducement not specified in the policy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1806.055. PROFIT SHARING AUTHORIZED; CERTAIN PROHIBITIONS. (a) Section 1806.054 does not prohibit an insurer

from sharing earned profits with the insurer's policyholders under a profit sharing agreement contained in the policy if:

(1) the insurer shares profits uniformly among those insured under the policy; and

(2) the insurer distributes earnings equitably among those insureds under the terms of the policy.

(b) An insurer may not:

(1) discriminate in the distribution of profits among insureds of the same class;

(2) distribute the profit to an insured before the expiration of the policy; or

(3) establish a class of insureds for the distribution of profits, except on the commissioner's approval.

(c) A violation of this section is unjust discrimination and rebating.

(d) The commissioner may revoke the certificate of authority of an insurer that violates this section or the license of an agent who violates this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1806.056. PROFIT SHARING BASED ON COMBAT DUTY AUTHORIZED. (a) This subchapter does not prohibit an insurer from distributing to policyholders who are on active duty in the United States Armed Forces any estimated profits resulting from service by those policyholders in a foreign country in a combat theater of operations after January 1, 1990.

(b) An insurer that elects to make distributions under this section must:

(1) file a written application describing the insurer's distribution with the commissioner for approval of a policyholder dividend amount that exceeds 10 percent of surplus; or

(2) notify the commissioner in writing of each distribution of a policyholder dividend amount that is not greater than 10 percent of surplus.

(c) If the commissioner does not act on the application on or before the fifth business day after the date the commissioner

receives the application, the distribution is considered approved.

(d) An insurer may distribute estimated profits among policyholders under this section based on:

(1) the time served by a policyholder in a combat theater of operations;

(2) the location of the policyholder's military service;

(3) the duration of the applicable insurance policy;
or

(4) any other reasonable basis.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 463 (S.B. 1006), Sec. 2, eff. June 14, 2013.

Sec. 1806.057. PROFIT SHARING WITH MEMBERS OF CERTAIN ASSOCIATIONS AUTHORIZED. (a) Section 1806.054 does not prohibit an insurer from sharing profits with policyholders who are part of a group program established by a nonprofit business association and who participate in the group program because of membership in the association.

(b) An insurer that elects to make distributions under this section must:

(1) file a written application describing the insurer's distribution with the commissioner for approval of a policyholder dividend amount that exceeds 10 percent of surplus; or

(2) notify the commissioner in writing of each distribution of a policyholder dividend amount that is not greater than 10 percent of surplus.

(c) If the commissioner does not act on the application on or before the fifth business day after the date the commissioner receives the application, the distribution is considered approved.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 463 (S.B. 1006), Sec. 3, eff.

June 14, 2013.

Sec. 1806.058. PARTICIPATING POLICIES. (a) This subchapter, Subtitle C, and Subchapter A, Chapter 5, may not be construed to prohibit:

(1) a stock company, mutual insurance company, reciprocal or interinsurance exchange, or Lloyd's plan from operating under this subchapter, Subchapter A, Chapter 5, and Subtitle C; or

(2) a stock company, mutual insurance company, reciprocal or interinsurance exchange, or Lloyd's plan from issuing participating policies.

(b) An insurer must obtain commissioner approval before distributing a policyholder dividend if the dividend amount exceeds 10 percent of surplus. The commissioner may not approve a distribution of profits or dividends until the insurer has adequate reserves. The reserves must be computed on the same basis for all classes of insurers operating under this subchapter, Subtitle C, and Subchapter A, Chapter 5.

(c) The insurer must notify the commissioner in writing of each distribution if the insurer's policyholder dividend amount is not greater than 10 percent of surplus.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 463 (S.B. 1006), Sec. 4, eff. June 14, 2013.

Sec. 1806.059. CERTAIN PROMOTIONAL PRACTICES AUTHORIZED. Section 1806.053 does not prohibit an insurer or an insurer's agent or other representative from, in connection with an offer or sale of an insurance policy subject to this subchapter, giving, providing, or allowing or offering to give, provide, or allow an item that is a promotional advertising item, educational item, or traditional courtesy commonly extended to consumers and that is valued at \$25 or less.

Added by Acts 2013, 83rd Leg., R.S., Ch. 28 (S.B. 840), Sec. 3, eff.

September 1, 2013.

SUBCHAPTER C. PROVISIONS APPLICABLE TO CASUALTY INSURANCE
AND FIDELITY, GUARANTY, AND SURETY BONDS

Sec. 1806.101. DEFINITIONS. In this subchapter:

- (1) "Insurance" includes a suretyship.
- (2) "Insurer" means an insurance company or other legal entity described by Sections 1806.102(a) and (b).
- (3) "Policy" includes a bond.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.032(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.032(a), eff. September 1, 2007.

Sec. 1806.102. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies to an insurer, including a corporation, reciprocal or interinsurance exchange, mutual insurance company, association, Lloyd's plan, or other organization, writing casualty insurance or writing fidelity, surety, or guaranty bonds, on risks or operations in this state.

(b) This subchapter applies to:

- (1) a farm mutual insurance company with respect to each line of insurance that a farm mutual insurance company is authorized to write under Section 911.151; and
- (2) a county mutual insurance company with respect to each line of insurance that a county mutual insurance company is authorized to write under Section 912.151.

(c) Except as otherwise provided by this subchapter, this subchapter does not apply to the writing of:

- (1) automobile insurance;
- (2) life, health, or accident insurance;
- (3) professional liability insurance;
- (4) reinsurance;

(5) aircraft insurance;

(6) fraternal benefit insurance;

(7) fire insurance;

(8) workers' compensation insurance;

(9) marine insurance, including noncommercial inland marine insurance and ocean marine insurance;

(10) title insurance;

(11) explosion insurance, except insurance against loss from personal injury or property damage resulting accidentally from:

(A) a steam boiler;

(B) a heater or pressure vessel;

(C) an electrical device;

(D) an engine; or

(E) all machinery and appliances used in connection with or in the operation of a boiler, heater, vessel, electrical device, or engine described by Paragraphs (A)-(D); or

(12) insurance coverage for any of the following conditions or risks:

(A) weather or climatic conditions, including lightning, tornado, windstorm, hail, cyclone, rain, or frost and freeze;

(B) earthquake or volcanic eruption;

(C) smoke or smudge;

(D) excess or deficiency of moisture;

(E) flood;

(F) the rising water of an ocean or an ocean's tributary;

(G) bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, or any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe;

(H) vandalism or malicious mischief;

(I) strike or lockout;

(J) water or other fluid or substance resulting from:

(i) the breakage or leakage of a sprinkler,

pump, or other apparatus erected for extinguishing fire, or a water pipe or other conduit or container; or

(ii) casual water entering a building through a leak or opening in the building or by seepage through building walls; or

(K) accidental damage to a sprinkler, pump, fire apparatus, pipe, or other conduit or container described by Paragraph (J)(i).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 3B.033, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. [3167](#)), Sec. 9.033, eff. September 1, 2007.

Sec. 1806.103. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter does not limit in any manner the kinds or classes of insurance that an insurer may write under an appropriate statute or the insurer's charter or certificate of authority.

(b) This subchapter may not be construed to prohibit the modification of rates by a rating plan that complies with Chapter [2251](#) or Article 5.13-2, as applicable.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 2, eff. April 1, 2007.

Sec. 1806.104. PROHIBITED ACTS. (a) Except as otherwise provided by this subchapter, an insurer, an insurer's employee, or a broker or agent may not knowingly:

(1) issue an insurance policy that is not in accordance with an applicable filing; or

(2) charge, demand, or receive a premium on an insurance policy that is not in accordance with an applicable filing.

(b) Except as provided in an applicable filing, an insurer, an insurer's employee, or a broker or agent may not directly or indirectly pay, allow, or give, or offer to pay, allow, or give, as

an inducement to insurance, or after insurance has been written, a rebate, discount, abatement, credit or reduction of the premium stated in an insurance policy, or a special favor or advantage in the dividends or other benefits to accrue on the policy, or any valuable consideration or inducement, not specified in the policy.

(c) An insured named in an insurance policy or an employee of an insured may not knowingly receive or accept, directly or indirectly, a rebate, discount, abatement, credit, or reduction of the premium stated in an insurance policy, or a special favor or advantage or valuable consideration or inducement.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.032(b), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.032(b), eff. September 1, 2007.

Sec. 1806.1041. CERTAIN PROMOTIONAL PRACTICES AUTHORIZED. Section 1806.104 does not prohibit an insurer, an insurer's employee, or a broker or agent from, in connection with an offer or sale of an insurance policy subject to this subchapter, giving, providing, or allowing or offering to give, provide, or allow an item that is a promotional advertising item, educational item, or traditional courtesy commonly extended to consumers and that is valued at \$25 or less.

Added by Acts 2013, 83rd Leg., R.S., Ch. 28 (S.B. 840), Sec. 4, eff. September 1, 2013.

Sec. 1806.105. PROFIT SHARING AUTHORIZED; CERTAIN PROHIBITIONS. (a) This subchapter does not prohibit an insurer from sharing earned profits with the insurer's policyholders in accordance with a profit sharing agreement contained in the policy, provided that any profit sharing under the policy with those insureds must be uniform among the insureds and may consist only of the equitable distribution of earnings among the insureds in accordance with the terms of the policy.

(b) An insurer may not:

(1) discriminate in the distribution of profits among insureds of the same class;

(2) distribute the profit to an insured before the expiration of the policy; or

(3) establish a class of insureds for the distribution of profits, except on the commissioner's approval.

(c) A distribution of profits or dividends to an insured may not take effect or be distributed until:

(1) the insurer has adequate reserves, as computed on the same basis for all classes of insurers to which this subchapter applies; and

(2) if the policyholder dividend amount exceeds 10 percent of surplus, the commissioner approves the distribution.

(d) The insurer must notify the commissioner in writing of each distribution if the insurer's policyholder dividend amount is not greater than 10 percent of surplus.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 463 (S.B. 1006), Sec. 5, eff. June 14, 2013.

Sec. 1806.106. PROFIT SHARING WITH CERTAIN ASSOCIATIONS AUTHORIZED. (a) This subchapter does not prohibit an insurer from sharing profits with policyholders who are part of a group program established by a nonprofit business association and who participate in the group program because of membership in the association.

(b) An insurer that elects to make distributions under this section must:

(1) file a written application describing the insurer's distribution with the commissioner for approval of a policyholder dividend amount that exceeds 10 percent of surplus; or

(2) notify the commissioner in writing of each distribution of a policyholder dividend amount that is not greater than 10 percent of surplus.

(c) If the commissioner does not act on the application on

or before the fifth business day after the date the commissioner receives the application, the distribution is considered approved. Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 463 (S.B. 1006), Sec. 6, eff. June 14, 2013.

Sec. 1806.107. ENFORCEMENT. (a) A violation of this subchapter is unjust discrimination and rebating.

(b) The commissioner may revoke the certificate of authority of an insurer that violates this subchapter or the license of an agent who violates this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER D. PROVISIONS APPLICABLE TO FIRE INSURANCE
AND ALLIED LINES

Sec. 1806.151. APPLICABILITY OF SUBCHAPTER. (a) Each insurance policy or contract insuring property in this state against loss by fire, including a policy or contract or portion of a policy or contract that insures the shore end of a marine risk against loss by fire, must be issued in accordance with:

- (1) this subchapter;
- (2) Section 403.002;
- (3) Subchapter C, Chapter 5;
- (4) Subchapter H, Chapter 544; and
- (5) Chapters 252, 2001, 2002, 2003, 2004, 2005, 2006, and 2171.

(b) An insurer issuing an insurance policy or contract described by Subsection (a), including a fire insurance company, marine insurance company, fire and marine insurance company, and fire and tornado insurance company, is governed by the laws described by Subsection (a).

(c) This section applies to an insurer or to an insurance policy or contract regardless of:

- (1) the kind and character of property insured;
- (2) whether the property is:
 - (A) fixed or movable;
 - (B) stationary or in transit; or
 - (C) consigned or billed for shipment inside or outside the boundaries of this state or to a foreign country;
- (3) whether the insurer is organized:
 - (A) under the laws of this state, another state, territory, or possession of the United States, or a foreign country; or
 - (B) by authority of the federal government; or
- (4) the kind of insurer or the name of the insurer issuing the policy or contract.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1806.152. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter, Subtitle D, and Subchapter C, Chapter 5, may not be construed to deal with the collection of premiums, but each insurer may make rules and regulations the insurer considers just between the insurer and the insurer's agents and policyholders.

(b) A bona fide extension of credit may not be construed as discrimination or as a violation of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1806.153. UNJUST DISCRIMINATION; REBATES. (a) An insurer or an insurer's officer, director, agent, or other representative may not grant or contract for a special favor or advantage in:

- (1) dividends or other profits to accrue on an insurance policy;
- (2) commissions in the dividends or other profits to accrue on an insurance policy;
- (3) commissions or division of commission; or
- (4) a position, valuable consideration, or inducement not specified in an insurance policy.

(b) An insurer may not directly or indirectly give, sell, or purchase or offer to give, sell, or purchase as an inducement to insurance or in connection with insurance:

(1) stocks, bonds, or other securities of an insurer or other corporation, partnership, or individual;

(2) dividends or profits that have accrued or will accrue on stocks, bonds, or other securities of an insurer or other corporation, partnership, or individual; or

(3) anything of value not specified in the policy.

(c) An insurer or an insurer's officer, director, agent, or other representative that violates this section has engaged in unjust discrimination.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1806.154. PROFIT SHARING AUTHORIZED. (a) Section 1806.153 does not prohibit an insurer from sharing profits with the insurer's policyholders if:

(1) a profit sharing agreement is placed on or in the face of the policy;

(2) the profit sharing is uniform and does not discriminate among individuals or among classes; and

(3) the profit is not distributed to an insured before the expiration of the insurance policy.

(b) An insurer or an insurer's officer, director, agent, or other representative that violates this section has engaged in unjust discrimination.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1806.1541. CERTAIN PROMOTIONAL PRACTICES AUTHORIZED. Section 1806.153 does not prohibit an insurer from, in connection with an offer or sale of an insurance policy or contract subject to this subchapter, giving, providing, or allowing or offering to give, provide, or allow an item that is a promotional advertising item, educational item, or traditional courtesy commonly extended to consumers and that is valued at \$25 or less.

Added by Acts 2013, 83rd Leg., R.S., Ch. 28 (S.B. 840), Sec. 5, eff. September 1, 2013.

Sec. 1806.155. INSURER LIABILITY ON POLICY ISSUED WITHOUT AUTHORITY. (a) If an insurer or an insurer's agent issues an insurance policy without authority and the policyholder sustains a loss or damage covered under the policy, the insurer is liable to the policyholder under the policy in the same manner and to the same extent as if the insurer had been authorized to issue the policy, although the policy was issued in violation of this code.

(b) This section may not be construed to give an insurer the authority to issue an insurance policy or contract other than as provided by this code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1806.156. ACCEPTANCE OF REBATE OR OTHER INDUCEMENT; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly receives or accepts from an insurer, an insurer's agent, broker, or other representative, or any other person a rebate of premium payable on an insurance policy, or a special favor or advantage in dividends or other financial profits accrued or to accrue on the policy, or any valuable consideration, position or inducement not specified in the policy.

(b) An offense under this section is punishable by:

- (1) a fine of not more than \$100;
- (2) confinement in jail for not more than 90 days; or
- (3) both a fine and confinement under this subsection.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.