

INSURANCE CODE

TITLE 3. DEPARTMENT FUNDS, FEES, AND TAXES

SUBTITLE E. OTHER TAXES

CHAPTER 281. RETALIATORY PROVISIONS

SUBCHAPTER A. RETALIATORY TAXES AND OTHER CHARGES

Sec. 281.001. DEFINITIONS. In this subchapter:

(1) "Domestic insurer" means an insurer organized in this state.

(2) "Foreign insurer" means an insurer organized in another state.

(3) "Tax or other charge" includes:

(A) a tax, including an income, corporate franchise, or maintenance tax;

(B) a fee, including a regulatory fee similar to a maintenance tax;

(C) a license;

(D) a fine;

(E) a penalty;

(F) a deposit requirement; and

(G) any other obligation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 281.002. TREATMENT OF ALIEN INSURER AS FOREIGN INSURER. For purposes of this subchapter, an alien insurer is considered to be organized in the state designated by the insurer in which the insurer:

(1) has established its principal office or agency in the United States;

(2) maintains the greatest amount of its assets held in trust or on deposit for the security of its policyholders or policyholders and creditors in the United States; or

(3) was admitted to engage in business in the United States.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 281.003. EXCEPTION. This subchapter does not apply to a person, company, firm, association, group, corporation, or insurance organization of any kind from another state that engages in business in this state if:

(1) at least 15 percent of the voting stock of the person, company, firm, association, group, corporation, or insurance organization is owned by a corporation organized under the laws of and domiciled in this state; and

(2) the person, company, firm, association, group, corporation, or insurance organization met the requirements of Subdivision (1) before January 30, 1957.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 281.004. RETALIATORY TAXES OR OTHER CHARGES, PROHIBITIONS, AND RESTRICTIONS. (a) The comptroller shall impose and collect a tax or other charge or a prohibition or restriction on a foreign insurer authorized to engage in business in this state if:

(1) the foreign insurer's state of organization by law imposes a tax or other charge or a prohibition or restriction on a similar domestic insurer that is or may be authorized to engage in business in that other state; and

(2) the sum of the taxes or other charges, prohibitions, and restrictions imposed by that other state is more than the sum of the taxes or other charges, prohibitions, and restrictions that this state directly imposes on the foreign insurer.

(b) The comptroller shall impose and collect the tax or other charge, prohibition, or restriction under Subsection (a) in the same manner and for the same purpose as the foreign insurer's state of organization.

(c) The sum of the taxes or other charges that this state imposes on a foreign insurer under this subchapter may not exceed the sum of the taxes or other charges imposed by the foreign insurer's state of organization on a similar domestic insurer that is or may be authorized to engage in business in that other state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 281.005. EXCLUSION OF CERTAIN TAXES OR CHARGES. In determining an insurer's taxes or other charges under this subchapter, the comptroller may not consider:

- (1) an ad valorem tax on property;
- (2) a personal income tax;
- (3) a sales tax;
- (4) a surcharge that an insurer may recover directly from policyholders; or

(5) an assessment for a special purpose, such as an assessment for a guaranty association, high risk health pool, joint underwriting association, or windstorm association, under the law of this or another state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 281.006. TREATMENT OF CERTAIN TAX REDUCTIONS AND CREDITS. (a) Repealed by Acts 2007, 80th Leg., R.S., Ch. 932, Sec. 22(b), eff. June 15, 2007.

(b) For purposes of this subchapter, a tax offset or credit related to an assessment described by Section 281.005 is considered a tax paid in this or another state, as appropriate.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 22(b), eff. June 15, 2007.

Sec. 281.007. TAX REPORT; ADMINISTRATION AND COLLECTION OF TAX. The comptroller shall prescribe a due date for filing a report and paying a tax imposed under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 281.008. RECIPROCITY AGREEMENTS. The comptroller by rule may enter into a reciprocity agreement with another state under which the parties agree to mutually set aside retaliatory provisions in situations in which this state and the other state determine that retaliation is not the preferred approach to protect their domestic insurers from excessive taxation or other financial obligations. In adopting rules under this section, the

comptroller may not adopt a rule that does not specifically implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 16, eff. June 15, 2007.

SUBCHAPTER B. RETALIATORY PENALTIES OR OTHER OBLIGATIONS

Sec. 281.051. DEFINITIONS. In this subchapter:

(1) "Domestic insurer" and "foreign insurer" have the meanings assigned by Section 281.001.

(2) "Penalty or other obligation" includes a sanction, fine, financial, deposit, or regulatory requirement, and any other obligation, prohibition, or restriction.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 281.052. IMPOSITION OF PENALTY OR OTHER OBLIGATION.

(a) The Texas Department of Insurance shall impose a penalty or other obligation on a foreign insurer authorized to engage in the business of insurance in this state if:

(1) the insurance department or an insurance regulatory official of the foreign insurer's state of organization imposes a penalty or other obligation on any domestic insurer authorized to engage in the business of insurance in that state; and

(2) the penalty or other obligation is imposed because the Texas Department of Insurance did not:

(A) obtain or maintain accreditation certification or a similar form of approval, compliance, or acceptance from or as a member of the National Association of Insurance Commissioners or a committee, task force, working group, or advisory committee of the association; or

(B) comply with a model act, regulation, report, or requirement of the National Association of Insurance Commissioners or a committee, task force, working group, or advisory committee of the association, including a market conduct, financial examination, or annual financial statement.

(b) A penalty or other obligation imposed by the Texas

Department of Insurance on a foreign insurer under this section must be the same as the penalty or other obligation imposed on the domestic insurer by the insurance department or regulatory official of the foreign insurer's state of organization.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.