

SUBCHAPTER K. GIFTS, GRANTS AND DONATIONS
28 TAC §§34.1101-34.1107

1. **INTRODUCTION.** The Texas Department of Insurance proposes new Subchapter K, §§34.1101-34.1107, concerning gifts, grants, and donations to the State Fire Marshal's Office. The proposal is necessary to implement legislation enacted by the 78th Regular Session Legislature in House Bill (HB) 2701 which amends Chapter 417, Government Code. HB 2701 requires the development of public educational programs which disseminate pertinent information about fire prevention and safety and allows the commissioner of insurance to accept gifts, grants, and donations for this purpose.

Proposed §34.1101 provides the purpose of the subchapter which is to establish the rules for acceptance of gifts, grants and donations for the State Fire Marshal's Office. Proposed §34.1102 states that the commissioner is authorized by statute to accept gifts, grants and donations for fire prevention and safety educational programs and materials. The definitions for the subchapter are set forth in proposed §34.1103. Proposed §34.1104 states that gifts to the State Fire Marshal must be accepted by the commissioner and that any goods donated to the State Fire Marshal become state property. Proposed §34.1105 prohibits the solicitation of any gift, grant or donation by the commissioner, officer or employee of the department, but makes clear that the fire marshal, with the approval of the commissioner, may make an application for a grant that would enhance the public welfare. Proposed §34.1106 sets forth the standards of conduct that govern the relationships between the commissioner and the donor and

between employees and donors, respectively. The procedures for accepting gifts, grants and donations are described in proposed §34.1107.

2. FISCAL NOTE. Paul Maldonado, State Fire Marshal, has determined that for each year of the first five years the proposed sections are in effect, there will be no fiscal impact to state government. There will be no fiscal implications for local government as a result of enforcing or administering the new standards, and no effect on the local economy or local employment.

3. PUBLIC BENEFIT/COST NOTE. Mr. Maldonado also has determined that for each year of the first five years the proposed sections are in effect, the anticipated public benefit from enforcing and administering the sections will be an increase in funds or property to use toward developing educational programs as well as generating and disseminating information to the public regarding fire prevention and safety. The result in the increase in funds will enable the state fire marshal to develop more education programs and information on fire prevention and safety which will be provided to the public and enable the public to become better educated about fire prevention and fire safety. Since provision of gifts and donations is voluntary any costs to individuals to comply with the proposed sections will be a part of the gift or donation and not a requirement of compliance with the proposed rule. There is minimal, to no cost to comply with the proposed rule, since it primarily pertains to procedures the department

will follow for the acceptance of gifts, grants, and donations. There are some provisions that the donor must follow, but those would be considered as part of the gift or donation and not a separate cost of compliance. As these are voluntary actions, there is no difference in impact on a person or entity qualifying as a small or micro-business under the Government Code §2006.001 compared to a large business.

4. REQUEST FOR PUBLIC COMMENT. To be considered, all comments on the proposal must be submitted in writing no later than 5:00 p.m. on August 8, 2005, to Gene C. Jarmon, General Counsel & Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to Paul Maldonado, State Fire Marshal, Mail Code 112-FM, Texas Department of Insurance, P.O. Box 149221, Austin, Texas 78714-9221. A request for a public hearing should be submitted separately to the Office of the Chief Clerk.

5. STATUTORY AUTHORITY. The new sections are proposed pursuant to the Government Code §§417.005, 417.0051 and Insurance Code §36.001. Government Code §417.005 allows the commissioner to adopt rules necessary to guide the fire marshal in the performance of other duties for the commissioner. Government Code §417.0051 allows the commissioner, through the fire marshal, to develop public education programs about fire prevention and safety. Section 36.001 of the Insurance

Code provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

6. **CROSS REFERENCE TO STATUTE.** The following statute is affected by the proposed sections:

<u>Rule Number</u>	<u>Statute</u>
§§34.1101 - 34.1107	Government Code §417.0051

7. **TEXT.**

§34.1101. Purpose. The purpose of this subchapter is to establish procedures for the acceptance of gifts, grants, and donations made to the State Fire Marshal's Office and to create standards of conduct to govern the relationships between employees of the department and donors or grantors.

§34.1102. General Authority to Accept Gifts, Grants, and Donations. The commissioner, through the state fire marshal, is statutorily authorized to accept gifts grants, and donations from any source to develop educational programs and disseminate materials necessary to educate the public effectively regarding methods of fire prevention and safety. It is the policy of the department to accept only those

donations and grants that advance the purposes of Government Code §417.0051, Fire Prevention and Safety Education.

§34.1103. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commissioner--The Commissioner of Insurance.

(2) Department--The Texas Department of Insurance.

(3) Donation--Money or other assistance from any source other than a grant.

(4) Donation agreement--A written document executed by the commissioner or his designee and the donor that identifies the name of the donor, a description of the donation, the purpose of the donation, and outlines any special conditions of the donation.

(5) Donor--Individuals or organizations that offer to give or give a donation to the department.

(6) Employee--An individual employed by the department in a full or part time capacity.

(7) Gift--Money or other assistance from any source other than a grant.

(8) Grantor--Public or private entity or agency that awards grants to the department.

(9) Grant--Money or other assistance from a grantor, given for a specific purpose.

§34.1104. Acceptance of Gifts, Grants, and Donations.

(a) All gifts, grants and donations made to the state fire marshal must be accepted by the commissioner on behalf of the state fire marshal. No employee of the department can accept gifts, grants, or donations in their individual capacity.

(b) Donated goods received by the state fire marshal become state property and will be treated as such.

§34.1105. Prohibition against Solicitation. No gifts, grants, or donations shall be solicited by the commissioner or any officer or employee of the department. This provision shall not be interpreted to prevent submission by the fire marshal of an application for a grant which would enhance the public welfare. Such submission shall be approved by the fire marshal and the commissioner.

§34.1106. Standards of Conduct between Commissioner and Donors or Grantors.

Any person or entity seeking to contract with the department on a competitive basis or otherwise shall disclose all previous donations and grants made to the state fire marshal or other state agency within the preceding two years. The disclosure shall include the nature and value of the donation or the grant and the date the donation or grant was

made. If the donation or grant is ongoing, the last date that the donation or grant was available to the department shall be used to determine the date of the donation or grant.

§34.1107. Procedures for Acceptance of Gifts, Grants, and Donations.

(a) Donation agreement. The donor and the commissioner shall execute a donation agreement that includes the following information:

(1) a description of the donation, including a determination of the value;

(2) a statement by the donor attesting to its ownership rights in the property, including intellectual property ownership rights;

(3) the signature of the donor if the donor is an individual or its official representative if the donor is a business organization;

(4) the signature of the commissioner;

(5) any conditions restricting the use of the donation;

(6) the mailing address of the donor and principal place of business if the donor is a business entity;

(7) a statement identifying any official relationship between the donor and the department; and

(8) a statement advising the donor to seek legal and/or tax advice from its own legal counsel.

(b) Grants. All grant money and other assistance shall be received after a written grant acceptance has been executed by the grantor, the fire marshal, and the commissioner.

(c) Deposited funds. The department shall deposit monetary contributions from gifts, grants or donations given pursuant to Government Code §417.0051, Fire Prevention and Safety Education, in accordance with state law. The money contributed shall be used for purposes consistent with Government Code §417.0051.

8. CERTIFICATION. This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on _____, 2005.

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance