

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

1. **INTRODUCTION.** The Commissioner of Insurance adopts Subchapter K §§34.1101 - 34.1107, concerning gifts, grants and donations to the State Fire Marshal's Office. The sections are adopted without changes to the proposed text as published in the July 8, 2005 issue of the Texas Register (30 TexReg 3976).

2. **REASONED JUSTIFICATION.** The adoption of the rules is necessary to implement legislation enacted by the 78th Legislature Regular Session in House Bill (HB) 2701 which amended Chapter 417, Government Code. HB 2701 required 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. It is anticipated that the sections will result in 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 adoption of these rules ensures that the state will have created standards for the acceptance of gifts and donations intended to enhance the public welfare.

3. **HOW THE SECTIONS WILL FUNCTION.** Section 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. Section 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 §34.1103. Section 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. Section 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 apply for grants that would develop educational programs or enable the dissemination of materials necessary to educate the public effectively regarding methods of fire prevention and safety. Section 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 Section 34.1107.

4. **SUMMARY OF COMMENTS.** No comments were received.

5. **STATUTORY AUTHORITY.** The amendments are adopted under Government Code §§417.005 and 417.0051 and Insurance Code §36.001. Government Code §417.005 allows the Commissioner of Insurance to adopt rules necessary to guide the fire marshal in the performance of other duties for the commissioner. Section 417.0051 of the Government Code provides that the Commissioner of Insurance through the Fire

Marshal may accept donations, gifts and grants for the purposes of promoting fire safety and fire prevention education. Section 36.001 of the Insurance Code 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. 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.

CERTIFICATION. This agency certifies that the adopted sections have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on _____, 2005.

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

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that new Subchapter K, §§34.1101-34.1107, concerning gifts, grants and donations to the State Fire Marsal's Office, is adopted.

AND IT IS SO ORDERED.

MIKE GEESLIN
COMMISSIONER OF INSURANCE

ATTEST:

Gene C. Jarmon
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO. _____