



Texas Department of Insurance

Office of the Commissioner, Mail Code 113-1C
333 Guadalupe • P.O. Box 149104, Austin, Texas 78714-9104
512 463-6464 telephone • 512 475-2005 fax • www.tdi.state.tx.us

José Montemayor
Commissioner of Insurance

July 1, 2003

RQ-0074-GA

RECEIVED

JUL 02 2003

OPINION COMMITTEE

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Re: Constitutionality of S.B. 14, Section 12.05

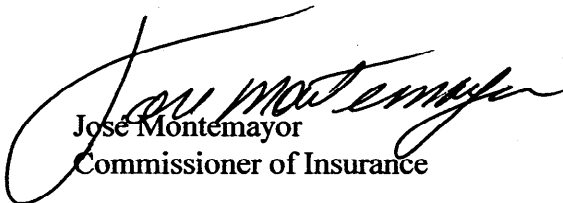
FILE # ML-43169-03
I.D. # 43169

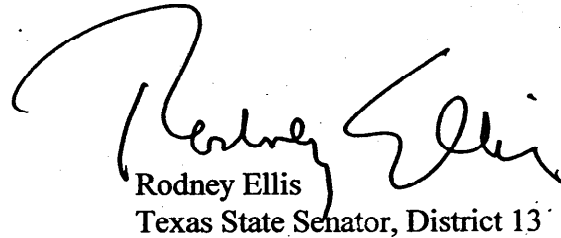
Dear General Abbott:

This request seeks your opinion regarding the constitutionality of Section 12.05 of S.B. 14. As you are aware, S.B. 14 was recently passed by the 78th Legislature and signed into law by Governor Perry on June 11, 2003. Section 12.05 amends TEX. INS. CODE, art. 21.74 by establishing a Holocaust Registry within the Texas Department of Insurance. Under this amendment, insurers engaging in business in the state that, directly or through a related company, sold insurance policies to individuals defined by the statute as "holocaust victims" are required to file certain information or make certifications to the Department. Section 12.07 of the bill requires that the filings be made not later than 180 days after the effective date of SB 14.

This legislation was largely patterned on a California statute which was recently struck down by the United States Supreme Court in *American Ins. Assn., et al. v. Garamendi*, 2003 WL 21433477 (U.S). We have attached a copy of the opinion for your convenience. The Court ruled that the statute "interferes with the President's conduct of the Nation's foreign policy" and therefore is preempted. Given the close kinship between the California and Texas statutes, I seek your opinion as to whether the Texas statute will pass constitutional muster in light of *Garamendi*. Also, given the Legislature's mandate that the required filings begin in December of this year and the Department's responsibility to implement a public registry system before that date, your prompt response to this request is greatly appreciated.

Sincerely,


José Montemayor
Commissioner of Insurance


Rodney Ellis
Texas State Senator, District 13

Attachment