

SUBCHAPTER D. EFFECT OF CRIMINAL CONDUCT
28 TAC §§1.504, 1.508, and 1.509

INTRODUCTION. The Texas Department of Insurance (TDI or the department) proposes to amend 28 TAC §§1.504, 1.508, and 1.509 to establish a new process for license applicants and others to complete the fingerprinting process.

EXPLANATION. The proposal adds language that updates the fingerprinting process procedure in order to restrict access to the Texas Department of Public Safety (DPS) fingerprint code on TDI's website. The DPS fingerprint code can currently be accessed by anyone who visits TDI's website. After this rule is adopted, the DPS fingerprint code will be available only to those who request a fingerprint service code through TDI's new online portal. TDI is updating the fingerprinting process procedure at the request of DPS.

The proposed amendments to the sections are described in the following paragraphs.

Section 1.504. Fingerprint Requirement. The proposal adds language that states for a natural person, agency, or company to be eligible to apply for a license, registration, certification, or association with a regulated agency or company, the applicant must start the application or registration process by submitting a formal request for a fingerprint service code by completing the fingerprinting process information required on the department's website at www.tdi.texas.gov/agent/fingerprinting-process.html.

There are also nonsubstantive text changes that update statutory citations to remove redundant information and insert titles of referenced provisions; remove redundant information in an internal reference; replace "pursuant to" with "under," "prior to" with "before," "commissioner" with "Commissioner," and "subchapter" with "title"; and correct punctuation.

Section 1.508. Use and Confidentiality of Fingerprints. The proposal includes nonsubstantive text changes that update statutory citations to insert titles of referenced provisions and replace "pursuant to" with "under" and "shall" with "will."

Section 1.509. Fingerprint Format and Complete Application. The proposal adds language that requires individuals having their fingerprints captured by a criminal law enforcement agency to coordinate with the vendor acceptable to DPS to obtain a fingerprint card, including paying any upfront processing fees. The proposal also requires those same individuals to mail the completed card to the vendor acceptable to DPS.

The proposal removes language that allows the department's examination vendor to capture fingerprints. The proposal also removes language that requires (1) certain individuals to pay the department's examination vendor; and (2) individuals having their fingerprints captured by a criminal law enforcement agency to submit to the department payment for all applicable fingerprint processing fees in the amount and in the manner stated on the department's application or biographical submission form, or as otherwise posted by the department if the individual is not using a department form. The proposal also removes language that specifies that fingerprint cards may be obtained by sending a written request to the department's Licensing Division and that criminal history processing time and rejection rates for applications and submissions using paper fingerprint cards may be greater than with electronic fingerprints.

There are also nonsubstantive text changes that replace "shall" with "will" or "must," as appropriate, and delete the words "of time." The word "subchapter" is also replaced with "title."

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Randall Evans, deputy commissioner of the Customer Operations Division, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable

fiscal impact on state and local governments as a result of enforcing or administering the amendments other than those imposed by the statute. Mr. Evans made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the amendments.

Mr. Evans does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Evans expects that administering them will have the public benefit of ensuring that the department's rules are accurate and transparent and that the rules include the updated fingerprinting process requirements as well as updated department contact information and vendor information.

Mr. Evans does not expect that the proposed amendments will impose new economic costs on persons required to comply with them. Any associated costs are due to statute or other current regulatory requirements.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The department has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. The cost analysis in the Public Benefit and Cost Note section of this proposal, which explains that associated costs are attributable to statute or other current regulatory requirements and not the proposed amendments, also applies to these small and micro businesses and rural communities. As a result, and in accordance with Government Code §2006.002(c), the department is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The department has determined that this rule proposal does not impose a possible cost on regulated persons.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that for each year of the first five years that the proposed amendments are in effect, the amendments:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. The department will consider any written comments on the proposal that are received by no later than 5:00 p.m., central time, on February 6, 2023. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, PO Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, PO Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by no later than 5:00 p.m., central time, on February 6, 2023. If a public hearing is held, the department will consider written and oral comments presented at the hearing.

SUBCHAPTER D. EFFECT OF CRIMINAL CONDUCT **28 TAC §§1.504, 1.508, and 1.509**

STATUTORY AUTHORITY. The department proposes the amendments to §§1.504, 1.508, and 1.509 under Insurance Code §§801.056, 801.155, 981.009, 1305.007, 4001.005, 4056.005, 4101.005, 4102.004, 4151.006, 4152.004, 4153.003, 4201.003, 4202.004(d), and 36.001.

Insurance Code §801.056 provides that the department may deny an application for an authorization if the applicant or a corporate officer of the applicant fails to provide a complete set of fingerprints on request by the department.

Insurance Code §801.155 provides that the department may adopt rules under Chapter 801, Subchapter D prescribing the contents of a petition for issuance or reinstatement of a certificate of authority.

Insurance Code §981.009 provides that the Commissioner may adopt rules to implement Chapter 981 or satisfy requirements under federal law or regulations.

Insurance Code §1305.007 provides that the Commissioner may adopt rules as necessary to implement Chapter 1305.

Insurance Code §4001.005 provides that the Commissioner may adopt rules necessary to implement Insurance Code Title 13 and to meet the minimum requirements of federal law, including regulations.

Insurance Code §4056.005 provides that the Commissioner may adopt rules as necessary to implement Chapter 4056, Subchapter A and Subchapter B and to meet the minimum requirements of federal law, including regulations.

Insurance Code §4101.005 provides that the Commissioner may adopt rules necessary to implement Chapter 4101 and to meet the minimum requirements of federal law, including regulations.

Insurance Code §4102.004 specifies that the Commissioner may adopt reasonable and necessary rules to implement Chapter 4102.

Insurance Code §4151.006 specifies that the Commissioner may adopt, in the manner prescribed by Chapter 36, Subchapter A, rules that are fair, reasonable, and appropriate to augment and implement Chapter 4151.

Insurance Code §4152.004 specifies that the Commissioner may adopt reasonable rules as necessary to implement Chapter 4152.

Insurance Code §4153.003 specifies that the Commissioner may adopt rules necessary to carry out Chapter 4153 and to regulate risk managers.

Insurance Code §4201.003 specifies that the Commissioner may adopt rules to implement Chapter 4201.

Insurance Code §4202.004(d) provides that the Commissioner will require that each officer of an applicant and each owner or shareholder of the applicant or, if a purchaser is publicly held, each owner or shareholder described by §4202.004(a)(1), submit a complete and legible set of fingerprints to the department for the purpose of obtaining

criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The department will conduct a criminal history check of each applicant using information (1) provided under Insurance Code §4202.004; and (2) made available to the department by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Government Code Chapter 411.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Sections 1.504, 1.508, and 1.509 implement Insurance Code §§801.0056, 801.155, 981.009, 1305.007, 4001.005, 4056.005, 4101.005, 4102.004, 4151.006, 4152.004, 4153.003, 4201.003, and 4202.004(d).

TEXT.

§1.504. Fingerprint Requirement.

(a) In the manner described in §1.509 of this title [~~subchapter~~] (relating to Fingerprint Format and Complete Application), each individual listed in §1.503 of this title [~~subchapter~~] (relating to Application of Fingerprint Requirement) must, at or near the same time that they submit their biographical information or application for licensure, registration, authorization, certification, or permit, also submit:

- (1) a complete set of the individual's fingerprints;
- (2) full payment for all processing fees charged by the Texas Department of Public Safety and the Federal Bureau of Investigation; and
- (3) all additional identifying information required by the Texas Department of Public Safety and the Federal Bureau of Investigation for processing fingerprints.

(b) An individual listed in §1.503 of this subchapter is exempt from the requirement set forth in subsection (a) of this section if the individual satisfies the requirements ~~[of paragraphs (1), (2), (3), (4), (5) or (6)]~~ of this subsection.

(1) Except as provided in subsection (d) of this section, the individual is submitting an application or biographical information, and:

(A) previously provided the department a complete, legible fingerprint card or electronic set of fingerprints as part of an earlier submission which was granted or approved; and

(B) maintains that prior license, or licensed entity association, in good standing on the date of the subsequent application.

(2) The individual is licensed, or associated with an entity licensee, under Insurance Code Chapter 981, Subchapter E, concerning Surplus Lines Agents, or Title 13, concerning Regulation of Professionals, ~~[Subtitles A—D,]~~ and is:

(A) renewing an unexpired license or license that has been expired for not more than 90 days; or

(B) applying for a license that has been expired for more than 90 days but not more than one year.

(3) The individual is applying for an original emergency license under ~~[pursuant to]~~ Insurance Code ~~Chapter~~ ~~[Chapters]~~ 4051, concerning Property and Casualty Agents; Chapter 4053, concerning Managing General Agents; or Chapter 4101, concerning Insurance Adjusters. Emergency licensees who later qualify for a permanent license by examination must submit a complete set of fingerprints and payment of all fingerprint processing fees before ~~[prior to]~~ issuance of the permanent license.

(4) The individual, or the entity with which the individual is associated, is renewing an unexpired license, certification, registration, or authorization.

(5) The individual is licensed under Insurance Code Chapter 2651, Subchapter A, concerning Title Insurance Agent's License, or Chapter 2652, concerning Escrow Officers, and is renewing an unexpired license or license that has been expired for not more than 90 days.

(6) The individual is submitting an application under Insurance Code Chapter 2651, Subchapter A, or Chapter 2652 and has previously provided the department a complete, legible fingerprint card or electronic set of fingerprints as part of an earlier Insurance Code Chapter 2651, Subchapter A, or Chapter 2652 submission that was granted or approved; and either:

(A) maintains that prior license in good standing on the date of the current application; or

(B) held a prior Insurance Code Chapter 2651, Subchapter A, or Chapter 2652 license that has not been canceled for more than 60 days and maintained that license in good standing at the time of cancellation.

(c) The Commissioner [~~commissioner~~] may waive the requirement in subsection (a) of this section if the Commissioner [~~commissioner~~] determines that the individual is unable to provide fingerprints due to permanent physical injury or illness. The individual seeking a waiver under this subsection must submit evidence of such a condition to the satisfaction of the Commissioner [~~commissioner~~].

(d) The exemption set forth in subsection (b)(1) of this section is subject to the department's ability to maintain an individual's previously submitted set of fingerprints, and the department may require a complete set of fingerprints and payment of all fingerprint processing fees from an individual notwithstanding the exemption.

(e) This subchapter does not limit the department's statutory authority to require the submission of fingerprints or obtain criminal history information.

(f) For a natural person, agency, or company to be eligible for a license, registration, certification, or association with a regulated agency or company, the natural person, agency, or company must start the application or association process by submitting a formal request for a fingerprint service code by completing the fingerprinting process information required on the department's website at www.tdi.texas.gov/agent/fingerprinting-process.html. The requesting agency, company, or natural person must submit information necessary to complete the fingerprint service code request, including:

(1) the agency's name, agency representative's name, agency's email address, and license type the agency is applying for, if applying for association with an agency;

(2) the company's name, company representative's name, and company's email address, if applying for association with a company; and

(3) the natural person's name, state of residence, email address, and license type the natural person is applying for, if applying for a license as a natural person.

§1.508. Use and Confidentiality of Fingerprints.

(a) The department will [~~shall~~] submit all fingerprints received under this subchapter to the Texas Department of Public Safety and the Federal Bureau of Investigation to obtain criminal history information on the individual for the purpose of determining the individual's fitness for licensure, authorization, certification, permit, or registration, or control of an entity holding or seeking a license, authorization, certificate, permit, or registration.

(b) The department will [~~shall~~] use and maintain all criminal history information obtained under [~~pursuant to~~] this subchapter in accordance with state and federal laws, including:

(1) Texas Government Code §411.106, concerning Access to Criminal History Record Information: Texas Department of Insurance;

(2) Texas Government Code §411.084, concerning Use of Criminal History Record Information;

(3) United States Public Law 92-544; and

(4) Code of Federal Regulations 28 CFR 50.12.

§1.509. Fingerprint Format and Complete Application.

(a) Each individual described in §1.503 of this title ~~[subchapter]~~ (relating to Application of Fingerprint Requirement) and who is required to submit fingerprints under §1.504 of this title ~~[subchapter]~~ (relating to Fingerprint Requirement) must ~~[shall]~~ have a complete set of their fingerprints captured by:

(1) an electronic fingerprint vendor acceptable to the Texas Department of Public Safety; or

~~[(2) the department's examination vendor; or]~~

(2) ~~[(3)]~~ a criminal law enforcement agency, including a sheriff's office or police department.

(b) Individuals having their fingerprints captured by a vendor acceptable to the Texas Department of Public Safety must ~~[shall]~~ pay, in a manner acceptable to the vendor, all fingerprint capture and processing fees directly to the vendor at the time the fingerprints are captured or at such time as is acceptable to the vendor.

~~[(c) Individuals having their fingerprints captured by the department's examination vendor shall pay, in a manner acceptable to the vendor, all fingerprint capture and processing fees directly to the vendor at the time the fingerprints are captured or at such time as is acceptable to the vendor.]~~

(c) ~~[(d)]~~ Individuals having their fingerprints captured by a criminal law enforcement agency must ~~[shall]~~:

(1) coordinate with the vendor acceptable to the Texas Department of Public Safety to obtain a fingerprint card, including paying any upfront processing fees;

(2) [(1)] pay that agency any associated charges that may apply to the capture of their fingerprints in a manner acceptable to that agency; and

(3) mail the completed card to the vendor acceptable to the Texas Department of Public Safety.

~~[(2) submit to the department payment for all applicable fingerprint processing fees in the amount and in the manner set forth on the department's application or biographical submission form, or as otherwise posted by the department if the individual is not using a department form.]~~

~~[(e) Fingerprint cards may be obtained by sending a written request to the Licensing Division, Mail Code 107-1B, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; by telecopy or facsimile to (512) 475-1819; or by e-mail to LICENSE@tdi.state.tx.us.]~~

(d) ~~[(f)]~~ All fingerprint impressions must be legible and suitable for use by the Texas Department of Public Safety and Federal Bureau of Investigation.

(e) ~~[(g)]~~ Individuals required to submit fingerprints must ~~[shall]~~ submit them within the time frame indicated on the specific application or biographical submission form. Individuals may request an extension ~~[of time]~~ by contacting the division of the department that will process the application or biographical submission.

(f) ~~[(h)]~~ The application or submission of a person required to submit fingerprints will ~~[shall]~~ not be complete until the department receives the criminal history information. ~~[Criminal history processing time and rejection rates for applications and submissions with paper fingerprint cards may be substantially greater than with electronic fingerprints.]~~

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

Issued in Austin, Texas, on December 21, 2022.

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Allison Eberhart, Deputy General Counsel
Texas Department of Insurance