

**SUBCHAPTER B. INSURANCE CODE, CHAPTER 5, SUBCHAPTER B
DIVISION 2. REGULATION OF EXCESS LIABILITY INSURANCE
28 TAC §5.1201**

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to repeal Division 2 of 28 TAC Chapter 5, consisting of §5.1201, concerning the regulation of umbrella liability insurance. The repeal is necessary because Senate Bill 14, 78th Legislature, 2003, made the requirements in §5.1201 obsolete, and §5.1201 is the only section in Division 2.

EXPLANATION. Section 5.1201 was adopted to ensure that umbrella liability insurance requirements aligned with promulgated forms. However, under changes made to the Insurance Code by SB 14, insurers are no longer restricted to promulgated forms for the underlying policies. Therefore, it is not necessary to have a rule that aligns the requirements for umbrella policies with promulgated forms.

In addition, §5.1201 requires each insurer writing personal or commercial umbrella liability insurance to file rates and rules on a prior-approval basis, and file policy forms and statistical data. However, SB 14 repealed the prior-approval requirements in Insurance Code art. 5.15, which applied to personal umbrella liability insurance, and it also repealed Insurance Code art. 5.13-2, which applied to commercial liability insurance. Currently, rates and rules for both types of umbrella liability insurance must be filed under Insurance Code §2251.101, policy forms must be filed under Insurance Code §2301.006, and statistical data must be filed under Insurance Code §38.205. Considering these statutory requirements, the provisions in §5.1201 addressing this are no longer necessary.

As a result, TDI proposes to repeal §5.1201. Because this section is the only one in Division 2, TDI also proposes the repeal of the entire division.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Marianne Baker, director, Property and Casualty Lines Office, has determined that during each year of the first five years the proposed repeal is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the section. Ms. Baker 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 proposed amendments.

Ms. Baker does not anticipate any measurable effect on local employment or the local economy because of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed repeal is in effect, Ms. Baker expects that the proposed repeal will have the public benefits of eliminating an obsolete regulation and ensuring that TDI's rules conform to Insurance Code Chapters 2251 and 2301.

Ms. Baker expects that the proposed repeal will not increase the cost of compliance for insurers because the repeal does not create or impose any requirements and reduces regulatory burdens on insurers.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed repeal will not have an adverse economic effect on small or micro businesses, or on rural communities. There are no additional costs as a result of this proposal because it only repeals an existing regulation. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. This proposal repeals an existing regulation, eliminating requirements on insurers.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed repeal is in effect, the proposal:

- 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 repeal an existing regulation;
- will decrease the number of individuals subject to the rule's applicability; and
- will positively affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI 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. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on May 17, 2021. Send your comments to ChiefClerk@tdi.texas.gov or to the Office

of the Chief Clerk, MC GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, TX 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, P.O. Box 12030, Austin, TX 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on May 17, 2021. If a public hearing is held, TDI will consider comments presented at the hearing.

SUBCHAPTER B. INSURANCE CODE, CHAPTER 5, SUBCHAPTER B

Repeal of 28 TAC §5.1201.

STATUTORY AUTHORITY. TDI proposes the repeal of 28 TAC §5.1201 under Insurance Code §§2251.003, 2301.003, and 36.001.

Insurance Code §2251.003, which provides that Insurance Code Chapter 2251, Subchapters B, C, and D, concerning Rate Standards, Rate Filings, and Prior Approval of Rates Under Certain Circumstances, applies to personal umbrella insurance and general liability insurance, which includes commercial umbrella insurance.

Insurance Code §2301.003, which provides that Insurance Code Chapter 2301, Subchapter A, concerning Policy Forms Generally, applies to personal umbrella insurance and general liability insurance, which includes commercial umbrella insurance.

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. The proposed repeal of Division 2 and §5.1201 implements SB 14, 78th Legislature, 2003, and affects Insurance Code Chapters 2251 and 2301.

TEXT.

Division 2. Regulation of Excess Liability Insurance.

§5.1201. Regulation of Umbrella Liability Insurance.

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 April 5, 2021.

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James Person, General Counsel
Texas Department of Insurance