

Subchapter D. Effect of Criminal Conduct
28 TAC §1.502

INTRODUCTION. The commissioner of insurance adopts amendments to 28 TAC §1.502, concerning licensing persons with criminal history. These amendments update the section for consistency with Occupations Code §§53.021, 53.022, and 53.023. The amendments are adopted without changes to the proposed text published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2316).

REASONED JUSTIFICATION. House Bill 1342, 86th Legislature, 2019, amended Occupations Code §§53.021, 53.022, and 53.023, which contain factors to be considered by licensing agencies when contemplating how a criminal conviction relates to a licensed occupation. Section 1.502 incorporates elements of Occupations Code §§53.021, 53.022, and 53.023 regarding offenses and criteria to consider when licensing an individual with a criminal background. In addition, the adopted amendments update the list of criminal offenses considered under §1.502 to reflect changes in the Code of Criminal Procedure and the Penal Code since the rule was last amended in 2010, and it makes additional updates to the section based on practical experience under the current text of the section.

The adopted amendments are described in the following paragraphs.

Section 1.502(a) - (c). The adoption makes nonsubstantive changes to the text for plain language purposes and to correct capitalization.

Section 1.502(d). The adoption amends subsection (d) to address factors currently included in subsections (f) and (g) of the section.

New text is also included in subsection (d) to address Code of Criminal Procedure provisions cited by Occupations Code §53.021 for which the department may refuse to issue an original license or revoke, suspend, or refuse to renew.

Section 1.502(e). The adoption adds new subsection (e), stating that the department will consider the factors specified in Occupations Code §53.022 and §53.023 in determining whether to issue an original license or authorization or revoke, suspend, or refuse to renew a license or authorization. This text replaces text in current subsection (h), which addresses the factors in Occupations Code §53.022 and §53.023 by listing them.

The subsections that follow new subsection (e) are redesignated as appropriate to reflect the addition of the new section.

Section 1.502(f). The former subsection (e), redesignated as subsection (f), provides a non-inclusive list of crimes the department considers to be of such serious nature that they are directly related to the duties and responsibilities of the licensed occupation or of prime importance in determining fitness for licensure or authorization.

Adopted amendments to paragraph (2) clarify that the criminal violations considered under subsection (f)(2) include offenses pertaining to the financial industry or business of insurance under any state or federal law or any law of a foreign country or the Uniform Code of Military Justice. The amendments also add a non-inclusive list of five criminal violations specifically contemplated by the paragraph.

Adopted amendments to paragraph (4) add clarifying language and reorganize the offenses listed in the paragraph to track the numeric order of the Penal Code chapters and sections in which they are addressed. Amendments also insert references to additional offenses in the Penal Code for which the department may revoke, suspend, or refuse to issue or renew a license or authorization.

Finally, amendments add new paragraphs (5) - (8) to clarify that the crimes that the department considers in determining fitness for licensure or authorization include any offense described by the Code of Criminal Procedure Article 42A.054; sexually violent offenses as defined by Code of Criminal Procedure Article 62.001; any attempt or conspiracy to commit any offense listed in §1.502 as described by the Penal Code; and any offense under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice if the offense contains elements that are substantially similar to the elements of an offense listed under §1.502.

Section 1.502(f) - (h). Adopted amendments delete the former subsections (f) - (h) because the provisions in these subsections are addressed in adopted amendments to subsections (d) and (e).

Section 1.502(g). Former subsection (i) is redesignated as subsection (g). In addition, the word "shall" is replaced with "will."

Section 1.502(h). Former subsection (j) is redesignated as subsection (h). In addition, the word "shall" is replaced with "will."

Section 1.502(i). Former subsection (k) is redesignated as subsection (i). The adoption also includes additional nonsubstantive text changes for style and grammar, for consistency with current department rule drafting preferences.

SUMMARY OF COMMENTS. The department did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The commissioner adopts the amendments to 28 TAC §1.502 under Occupations Code §§53.021, 53.022, 53.023, and 53.025 and Insurance Code §36.001.

Occupations Code §53.021 states grounds on which a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination.

Occupations Code §53.022 provides factors that a licensing authority must consider in determining whether a criminal conviction directly relates to the duties and responsibilities of a licensed occupation.

Occupations Code §53.023 provides additional factors that a licensing authority must consider in determining whether to take an action authorized by Occupations Code §53.021 if it determines that a criminal conviction directly relates to the duties and responsibilities of a licensed occupation.

Occupations Code §53.025 requires a licensing authority to issue guidelines relating to the practice of the licensing authority under Occupations Code Chapter 53. The guidelines must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority.

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

TEXT.**§1.502. Licensing Persons with Criminal Backgrounds.**

(a) The special nature of the relationship between licensees, insurance companies, other insurance-related entities, discount health care programs, and the public with respect to insurance and related businesses regulated by the department requires that

the public trust and rely on licensees because of the complex and varied nature of insurance, insurance-related products, and discount health care programs.

(b) Fire protection systems and equipment are often technically sophisticated beyond the knowledge or understanding of the average consumer. During times of imminent personal danger, the public relies on licensees to have correctly designed, installed, and serviced fire protection systems and equipment to operate the first time and each time they are needed. Additionally, licensees are often permitted to service these systems unescorted in nursing homes, schools, day care centers, and commercial facilities where children and those unable to protect themselves are present and valuables are located. Finally, the manufacturing, storing, selling, and discharge of fireworks requires numerous special precautions to maintain a safe environment for the licensees and the public. Each of these factors requires the public to trust and rely on these individuals.

(c) The department considers it very important that license and authorization holders and applicants, including those regulated under the State Fire Marshal's Office, the officers, directors, members, managers, partners, and any other persons who have the right to control a license or authorization holder or applicant, and the members of boards of directors of insurance companies, be honest, trustworthy, and reliable.

(d) After notice and opportunity for hearing and, as applicable, consideration of the factors addressed in subsection (e) of this section, in accordance with Texas Occupations Code §53.021, the department may refuse to issue an original license or authorization and may revoke, suspend, or refuse to renew a license or authorization if the department determines that the applicant or license or authorization holder, or any partner, officer, director, member, manager, or any other person who has the right to

control the applicant or license or authorization holder, has been convicted of or placed on deferred adjudication for:

(1) an offense that directly relates to the duties and responsibilities of the licensed occupation;

(2) an offense listed in Code of Criminal Procedure Article 42A.054; or

(3) a sexually violent offense as defined by Code of Criminal Procedure Article 62.001.

(e) The department will consider the factors specified in Occupations Code §53.022 and §53.023 in determining whether to issue an original license or authorization or revoke, suspend, or refuse to renew a license or authorization under subsection (d) of this section.

(f) In accordance with the requirements of Texas Occupations Code §53.025, the department has developed guidelines relating to the matters the department will consider in determining whether to grant, deny, suspend, or revoke any license or authorization under its jurisdiction. Those crimes that the department considers to be of such serious nature that they are directly related to the duties and responsibilities of the licensed occupation or are of prime importance in determining fitness for licensure or authorization include:

(1) any offense for which fraud, dishonesty, or deceit is an essential element;

(2) any criminal violation of the Texas Insurance Code or an offense pertaining to the financial industry or business of insurance under any state or federal law or any law of a foreign country or the Uniform Code of Military Justice, including:

(A) a fraud offense, as described by Penal Code Chapter 32;

(B) money laundering, as described by Penal Code Chapter 34;

(C) insurance fraud, as described by Penal Code Chapter 35;

- (D) health care fraud, as described by Penal Code Chapter 35A; or
- (E) engaging in the unauthorized business of insurance, as described by Insurance Code §101.106;
- (3) any felony involving moral turpitude or breach of fiduciary duty;
- (4) any offense with the essential elements of:
 - (A) a criminal solicitation offense, as described by Penal Code §15.03 or §15.031;
 - (B) a criminal homicide offense, as described by Penal Code Chapter 19;
 - (C) a kidnapping or unlawful restraint offense, as described by Penal Code Chapter 20;
 - (D) an offense related to the smuggling of persons or the trafficking of persons, as described by Penal Code Chapter 20 or 20A;
 - (E) a sexual offense, as described by Penal Code Chapter 21;
 - (F) an assaultive offense, as described by Penal Code Chapter 22;
 - (G) an offense against the family, as described by Penal Code Chapter 25;
 - (H) an arson or property damage offense, as described by Penal Code Chapter 28;
 - (I) a robbery offense, as described by Penal Code Chapter 29;
 - (J) a burglary offense, as described by Penal Code Chapter 30;
 - (K) a theft offense, as described by Penal Code Chapter 31;
 - (L) online solicitation of a minor, as described by Penal Code §33.021;

(M) a bribery or corrupt influence offense, as described by Penal Code Chapter 36;

(N) a perjury or falsification offense, as described by Penal Code Chapter 37;

(O) a stalking offense, as described by Penal Code §42.072;

(P) an offense against public order and decency, as described by Penal Code Chapter 43;

(Q) a weapons offense, as described by Penal Code Chapter 46;

(R) an intoxication assault or manslaughter offense, as described by Penal Code §49.07 or §49.08;

(S) an organized crime offense, as described by Penal Code Chapter 71; or

(T) an offense relating to the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance, a simulated controlled substance, a dangerous drug, or a volatile chemical;

(5) any offense described by Code of Criminal Procedure Article 42A.054;

(6) a sexually violent offense as described by Code of Criminal Procedure Article 62.001;

(7) any criminal attempt or conspiracy to commit any offense listed under this section, as described by Penal Code §15.01 or §15.02; or

(8) any offense under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice if the offense contains elements that are substantially similar to the elements of an offense listed under this section.

(g) The department will consider any specific criteria the legislature has set out for any license or authorization in considering whether to grant, deny, suspend, or revoke such license or authorization.

(h) The department will revoke a license or authorization on the holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(i) No person currently serving in prison for conviction of a felony under any state or federal law is eligible to obtain a license or authorization issued by the department.

CERTIFICATION. This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on September 5, 2023.

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The amendments to 28 TAC §1.502 are adopted.

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Cassie Brown
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Commissioner of Insurance