

SUBCHAPTER I. LICENSING FEES **28 TAC §19.802**

1. INTRODUCTION. The Texas Department of Insurance proposes amending 28 Texas Administrative Code §19.802, establishing licensing fees for applicants seeking a provisional permit. The proposed amendments to §19.802 are necessary to implement House Bill (HB) 2145, 84th Legislature, Regular Session, effective September 1, 2015, which authorizes the provisional permit.

HB 2145 enacts Insurance Code Chapter 4001, Subchapter H, §§4001.351 – 4001.359. The provisional permit is available to individual applicants under Insurance Code Chapter 4051, Subchapters B and E and Chapter 4054, Subchapters B, D, and E. The applicants must have passed the required licensing examination, met the requirements described in Insurance Code §4001.353, including submitting a completed application and fingerprints for criminal history, and paid the required licensing application fee and provisional permit fee.

TDI proposes amending §19.802(b)(21) to establish the provisional permit application fee in the amount of \$50.

The amendment replaces the fee for a temporary public insurance adjuster certificate. The authority to issue a temporary public insurance adjuster certificate was withdrawn under Senate Bill (SB) 1060, 84th Legislature, Regular Session, effective

September 1, 2015. TDI has also proposed a nonsubstantive change in §19.802(a) to reflect TDI style guidelines.

2. FISCAL NOTE. Ms. Jamie Walker, associate commissioner, Licensing Services Section, Financial Regulation Division, has determined that, for each year of the first five years the proposed amended section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section. This is because although TDI will collect additional fees under this proposal, TDI has a self-leveling budget under the maintenance tax. The amended section will have no effect on local employment or the local economy.

3. PUBLIC BENEFIT/COST NOTE. Ms. Walker has also determined that for each year of the first five years the proposed amended section is in effect, the anticipated public benefit will be that applicants, their agency employers, and insurers will have greater certainty concerning when applicants may begin work if temporary delays occur in the overall licensing process.

Insurance Code §4001.353 authorizes TDI to set a nonrefundable fee in an amount that is reasonable and necessary to implement Insurance Code Chapter 4001, Subchapter H, but that does not exceed the amount of the fee required for an application for a permanent license. To implement the subchapter, TDI anticipates that processing provisional permit applications will cause changes to TDI's processes and activities resulting in additional costs.

These additional activities and costs are similar to those TDI experiences with the issuance of a temporary license under Insurance Code §4001.151. Specifically,

processing the applications will cause TDI to revise workflow within the Agent and Adjuster Licensing Office to maintain the level of consumer and industry protection that is currently available, including designating staff to process applications and review responses to background screening questions and prior criminal history activity. Staff will also be assigned new duties related to corresponding with applicants and appointing agents, insurers, and HMOs. TDI also expects increased enforcement activity and costs will result from the provisional permit process.

The reasonable and necessary cost for these activities would be similar to those for a temporary license. The current temporary license fee is \$100 per application. The license application fee for each license under Insurance Code Chapter 4051, Subchapters B and E and Chapter 4054, Subchapters B, D, and E is \$50. Because the provisional permit application fee may not exceed the license application fee, TDI has set the nonrefundable permit application fee at \$50.

The permit is not required to obtain a license. Whether an applicant chooses to incur the nonrefundable permit application fee is a business decision of the applicant.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY

ANALYSIS FOR SMALL AND MICRO-BUSINESSES. Government Code §2006.002(c) requires that if a proposed rule may have an adverse economic impact on small and micro-businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule.

TDI has determined that because this amendment affects individual applicants, all persons seeking a provisional permit would be a small or micro-business. TDI does not consider that alternative methods of achieving the purpose of the rule would be viable or practical when distinguishing between applicants who are individuals.

Further, Insurance Code §4001.353 authorizes TDI to set a nonrefundable fee that is reasonable and necessary to implement Insurance Code Chapter 4001, Subchapter H, but that does not exceed the amount of the fee required for an application for a permanent license. To implement the subchapter, TDI anticipates that processing provisional permit applications will cause TDI to perform additional activities and result in an additional costs. Processing the applications will cause TDI to revise workflow within the Agent and Adjuster Licensing Office to maintain the level of consumer and industry protection currently available, including designating staff to process applications and review responses to background screening questions and prior criminal history activity and corresponding with applicants and appointing agents, insurers, and HMOs.

The reasonable and necessary cost for these activities would be similar to those for a temporary license. The current temporary license fee is \$100 per application. The license application fee for each license under Insurance Code Chapter 4051, Subchapters B and E and Chapter 4054, Subchapters B, D, and E is \$50. Because the provisional permit application fee may not exceed the license application fee, TDI has set the nonrefundable permit application fee at \$50.

In accord with Government Code §2006.002(c-1), TDI has determined that because the purpose of performing the background review under Insurance Code §4001.353 is to protect insurer and consumer economic interests and the state's economic welfare, there are no regulatory alternatives to the requirement to perform applicant reviews on an expedited basis that will sufficiently protect the economic interests of insurers and consumers and the economic welfare of the state.

5. 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, so this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. TDI will consider written comments received no later than 5:00 p.m., Central time, on October 5, 2015. Submit all comments to the chief clerk by email at chiefclerk@tdi.texas.gov, or by mail to Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of your comments by email to Jamie Walker at jamie.walker@tdi.texas.gov, or by mail to Jamie Walker, Associate Commissioner, Licensing Services Section, Financial Regulation Division, Texas Department of Insurance, Mail Code 305-2A, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, you must submit the request separately to the chief clerk before the close of the public comment period. If a hearing is held, attendees may present written comments and public testimony at the hearing.

7. STATUTORY AUTHORITY. TDI proposes the amendments under Insurance Code §§4001.353 and 36.001. Section 4001.353 provides that the department shall establish a nonrefundable fee in an amount that is reasonable and necessary to implement Insurance Code Chapter 4001, Subchapter H, and does not exceed the amount of the fee required for an application for a permanent license. Section 36.001 authorizes the commissioner to adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

8. CROSS REFERENCE TO STATUTE. The proposal affects Insurance Code §§4001.353.

9. TEXT.

§19.802 Amount of Fees.

(a) With each application for original license or renewal, notice of appointment, request for examination, or registration or renewal of registration, the applicant, licensee, or registrant must submit the amount shown in this section. The fees for examinations and reexaminations only apply if TDI [~~the Texas Department of Insurance~~] does not contract with a testing service for the provisions of these examinations.

(b) The amounts of fees are as follows:

(1) – (20) (No change.)

(21) Provisional permit application fee is \$50 in addition to the original license application fee for each license type. [~~Public insurance adjuster temporary training certificate:~~]

~~[(A) training certificate--\$50;]~~

~~[(B) renewal--\$50.]~~

(22) – (24) (No change.)

(c) – (e) (No Change.)

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

Issued at Austin, Texas on August 11, 2015.



Sara Waitt
General Counsel
Texas Department of Insurance