

CHAPTER 19. LICENSING AND REGULATION OF INSURANCE PROFESSIONALS
28 TAC §19.901 and §19.902

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to amend 28 TAC §19.901 and §19.902, concerning the licensing and regulation of insurance professionals.

EXPLANATION. Proposed amendments to §19.901 and §19.902 remove the reference of "nonprofit legal services corporation" from the definition of "Agent" in Chapter 19 and "prepaid legal services organization" from a description of the standards of approval and disapproval of names to be used by licensed agents, respectively. "Prepaid legal services" include both for-profit legal services, which were removed from TDI's regulation by Senate Bill 597, 78th Legislature, Regular Session (2003) (SB 597), and nonprofit legal services, which were removed from TDI's regulation by Senate Bill 1623, 86th Legislature, Regular Session (2019) (SB 1623).

The proposed amendments include nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity, such as replacing "shall" with "will" or "must" and correcting instances of "State Board of Insurance" with "Texas Department of Insurance." The proposed amendments also capitalize "Commissioner" when referring to the Commissioner of Insurance and update citations to Insurance Code provisions that have changed due to the codification of Insurance Code articles.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Pat Brewer, team lead of the Regulatory Initiatives Office of the Life and Health Division, has determined that, for 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 the enforcement or administration of the repeal.

Ms. Brewer 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, Ms. Brewer expects that administering the proposed amendments will have the public benefit of ensuring that TDI's rules conform to Insurance Code Chapter 961 and Occupations Code Chapter 953.

Ms. Brewer expects that the proposed amendments will not impose a cost on stakeholders because they simply recognize that prepaid legal services have been removed from TDI's regulation, as required by Insurance Code §961.003 and Occupations Code §953.003. As a result, any unforeseen costs associated with this deregulation are a result of the statute and not the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. 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. No additional rule amendments are required under Government Code §2001.0045.

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

- 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 department;
- will not require an increase or decrease in fees paid to the department;
- will not create a new regulation;
- will not repeal existing regulations;
- will decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely 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 the department no later than 5:00 p.m., central time, on January 11, 2021. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

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 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. 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 January 11, 2021. If a public hearing is held, TDI will consider comments presented at the hearing.

SUBCHAPTER J. STANDARDS OF CONDUCT FOR LICENSED AGENTS

28 TAC §19.901 and §19.902

STATUTORY AUTHORITY. TDI proposes amendments to §19.901 and §19.902 under Occupations Code Chapter 953, as added by SB 597; Occupations Code §953.003; Insurance Code §§961.002 - 961.004, as amended by SB 1623; and Insurance Code §36.001.

Occupations Code Chapter 953, as added by SB 597, transferred regulation of for-profit legal services from TDI to the Texas Department of Licensing and Regulation.

Occupations Code §953.003 provides that the acts of marketing, selling, offering for sale, issuing, making, proposing to make, and administering a legal service contract that is regulated by Occupations Code Chapter 953 are exempt from the Insurance Code and other laws of Texas regulating the business of insurance.

Insurance Code §§961.002 - 961.004, as amended by SB 1623, has removed nonprofit legal services providers from TDI's regulation.

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. Section 19.901 and §19.902 implement Occupations Code Chapter 953, as added by SB 597, and Insurance Code §961.003, as amended by SB 1623.

TEXT.

§19.901. Definitions Concerning Conduct of Licensed Agents.

The following words and terms, when used in this subchapter, ~~shall~~ have the following meanings, unless the context clearly indicates otherwise.

(1) Agent--Any individual, partnership, or corporation which obtains from the Texas Department of Insurance ~~[State Board of Insurance]~~ a license or a certificate of authority to act as an agent under any of the provisions of ~~[the]~~ Insurance Code~~;~~ Chapter 4001 ~~[21, Subchapter A]; [as a variable contract agent of a nonprofit legal services corporation under the Insurance Code, Article 23.23;]~~ as a health maintenance organization agent under Insurance Code Chapter 843, the Texas Health Maintenance Organization Act, ~~§15~~; or as an agent for a single health care service plan under Insurance Code §843.075 ~~[the Texas Health Maintenance Organization Act, §15A]~~.

(2) Applicant--An individual, partnership, or corporation applying to do business as an agent.

(3) Assumed name--Any name other than a true name.

(4) Office--Any location regularly maintained as a place of business and operating as an insurance agency under the provisions of the Insurance Code applicable to this subchapter.

(5) True name--Present legal name.

§19.902. One Agent, One License.

(a) (No change.)

(b) Standards for approval and disapproval of names to be used by licensed agents.

(1) Name states or implies insurance capabilities not permitted under licenses applied for or held. No name proposed by an applicant or license will ~~shall~~ be approved if such name states or implies, or would lead reasonable persons to infer, that

the applicant or licensed agent is an insurer, motor club, hospital service plan, health maintenance organization, ~~[prepaid legal services organization,]~~ continuing care retirement community, or other entity entitled to engage in insurance activities which in fact are not permitted under licenses applied for or held.

(2) Name states or implies ability to act as an insurer or guarantor. No name proposed by an applicant or licensee will ~~[shall]~~ be approved if such name states or implies, or would lead reasonable persons to infer, that the applicant or licensee is an insurer or guarantor. Nothing in this subsection prohibits the following:

(A) any agent from indicating that such agent is an authorized representative of an admitted insurer if such agent is also clearly designated as an agent representing such insurer; or

(B) any agent from using a name which includes "underwriter," "underwriters," or "underwriting."

(3) When name is misleading. No name proposed by an applicant or licensee (other than the true name of an individual) will ~~[shall]~~ be approved if it appears that use of the proposed name may mislead the public in any respect. A disapproval under this paragraph may be based on one or more of the criteria listed in subparagraphs (A) - (C) of this paragraph.

(A) The name is the same as, closely resembles, borrows on the name of, or implies affiliation with or sponsorship by, a federal, state, or local governmental authority or program.

(B) The name fails to state or clearly indicate that the applicant or licensee is or will be an insurance agent and the name states or implies, or would lead reasonable persons to infer:

(i) that the applicant or licensee is primarily engaged in some line of business other than the insurance business;

(ii) that the applicant or licensee has expertise in the area of investment, tax shelter, financial or estate planning, or computer programming; or

(iii) that the applicant or licensee is a public interest organization seeking to educate consumers or perform research for the public's benefit.

(C) The name makes use of one or more of the following words or phrases or a derivation of one or more of such words or phrases in a misleading manner:

- (i) "administrator";
- (ii) "advisor";
- (iii) "agency";
- (iv) "America" or "American";
- (v) "analyst";
- (vi) "assigned risk";
- (vii) "associate";
- (viii) "association";
- (ix) "assurance company" or "assurance corporation" or "assurance, incorporated";
- (x) "benefit";
- (xi) "broker";
- (xii) "bureau";
- (xiii) "care";
- (xiv) "city";
- (xv) "company";
- (xvi) "compensation";
- (xvii) "consultant";
- (xviii) "consumer";
- (xix) "coop" or "cooperative";

- (xx) "corporation" or "Corp.";
- (xxi) "counselor";
- (xxii) "county";
- (xxiii) "credit union";
- (xxiv) "department";
- (xxv) "deposit insurance";
- (xxvi) "federal";
- (xxvii) "financial advisor" or "financial consultant" or "financial planner";
- (xxviii) "government";
- (xxix) "group";
- (xxx) "HMO" or "health maintenance organization";
- (xxxi) "incorporated" or "Inc.";
- (xxxii) "Indemnity Company" or "Indemnity Corporation" or "Indemnity Inc.";
- (xxxiii) "insurer" or "insuror";
- (xxxiv) "investment";
- (xxxv) "investor";
- (xxxvi) "Medi" when used as the first part of prefix of a word leg;
- (xxxvii) "mortgage guarantee" or "mortgage guaranty";
- (xxxviii) "national";
- (xxxix) "nationwide";
- (xl) "no fault";
- (xli) "plan";
- (xlii) "referral";

- (xliii) "research";
- (xliv) "reserve";
- (xlv) "savings";
- (xlvi) "senior";
- (xlvii) "service";
- (xlviii) "social security";
- (xlix) "state";
- (l) "statewide";
- (li) "Texas";
- (lii) "trust";
- (liii) "United States," "US," or "USA"; or
- (liv) "veteran."[:]

(D) The list of words and phrases appearing in subparagraph (C) of this paragraph is representative only. Such list is intended to serve as a standard or guideline and will ~~shall~~ not be considered as enumerating the only words or phrases which might be used in a manner that would be misleading or would have the capacity or tendency to mislead the public in any respect. Subparagraph (C) of this paragraph may be amended from time to time as conditions warrant revision.

(4) Review of disapproval of proposed name by Commissioner ~~commissioner~~. Any applicant or licensee whose proposed name has been disapproved pursuant to these standards may request a hearing before the Commissioner ~~commissioner of insurance~~. Such request for hearing must ~~shall~~ be in writing and must ~~shall~~ be submitted to the Commissioner ~~commissioner~~ no later than 30 days from written notice to the applicant or licensee of disapproval.

(5) Enforcement of standards. The standards established by these regulations are applicable to names filed with the Texas Department of Insurance ~~State~~

~~Board of Insurance~~] upon the effective date of these rules. Agents may continue to use the name(s) under which they are licensed. The adoption of these regulations does not affect the authority of the department ~~[State Board of Insurance]~~ to order an agent to discontinue the use of a name that is shown to mislead the public and violate ~~[the]~~ Insurance Code Chapter 541 ~~[, Article 21.21]~~, or rules adopted thereunder; provided, however, that any such action by the department ~~[State Board of Insurance]~~ must ~~[shall]~~ be conducted in accordance with the Insurance Code.

(c) (No change.)

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 November 23 2020.

DocuSigned by:

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James Person, General Counsel
Texas Department of Insurance