

SUBCHAPTER J. STANDARDS OF CONDUCT FOR LICENSED AGENTS
28 TAC §19.901 and §19.902

INTRODUCTION. The Commissioner of Insurance adopts amendments to 28 TAC §19.901 and §19.902, relating to the licensing and regulation of insurance professionals. The amendments are adopted without changes to the proposed text published in the December 11, 2020, issue of the *Texas Register* (45 TexReg 8837).

REASONED JUSTIFICATION. The amendments to §19.901 and §19.902 remove the reference to "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, 2003 (SB 597), and nonprofit legal services, which were removed from TDI's regulation by Senate Bill 1623, 86th Legislature, 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.

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

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STATUTORY AUTHORITY. The Commissioner adopts the 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 nonprofit legal services providers removed 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.

TEXT.**§19.901. Definitions Concerning Conduct of Licensed Agents.**

The following words and terms, when used in this subchapter, 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 a license or a certificate of authority to act as an agent under any of the provisions of Insurance Code Chapter 4001; as a health maintenance organization agent under Insurance Code Chapter 843, the Texas Health Maintenance Organization Act; or as an agent for a single health care service plan under Insurance Code §843.075.

(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) Only one license of the same type permitted. No agent may hold more than one license of the same type currently in effect. An agent doing an insurance business subject to the provisions of this subchapter shall have the agent's license certificate issued in the agent's true name. If an individual is authorized to act as a particular type of agent, that individual need not obtain an additional license in order to participate in a licensed partnership or corporate agency of the same type, but the partnership or corporation must obtain a separate license. Any licensed agent may have additional offices or do an insurance business under assumed names without obtaining an additional license;

provided, however, each agent must furnish the State Board of Insurance with a certification identifying any and all offices from which the agent will conduct an insurance agency business, and showing any and all assumed names which the agent will utilize in doing an insurance agency business at each of those offices. Where such a filing is required under the Assumed Business or Professional Name Act (Texas Business and Commerce Code, §36.01, et seq.), or any similar statute, the agent shall provide the State Board of Insurance with a copy of the valid assumed name certificate reflecting proper registration of each assumed name utilized by the agent.

(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 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, 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 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 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";
- (xxi) "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 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. Any applicant or licensee whose proposed name has been disapproved pursuant to these standards may request a hearing before the Commissioner. Such request for hearing must be in writing and must be submitted to the 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 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 to order an agent to discontinue the use of a name that is shown to mislead the public and violate Insurance Code Chapter 541, or rules adopted thereunder; provided, however, that any such action by the department must be conducted in accordance with the Insurance Code.

(c) Name registration form to be used. The State Board of Insurance adopts by reference Form LDTL in effect on October 1, 1987. In order to comply with the requirements of this section, an agent must register any assumed name or additional office by filing with the Agents License Division of the State Board of Insurance a completed Form LDTL together

with the required fee. Any such filing of a Form LDTL shall be treated as an application for expansion of an agent's license authority, and, therefore, a fee equal to the highest license fee established by the State Board of Insurance for any license currently held by the agent shall be paid in support of such filings. Copies of Form LDTL for use under this subsection are available from the Agents License Division, Mail Code 014-3, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

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 April 5, 2021.

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James Person
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James Person, General Counsel
Texas Department of Insurance

The Commissioner adopts amendments to 28 TAC §19.901 and §19.902

Commissioner of Insurance

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Chief Deputy Commissioner
Tex. Gov't Code §601.002
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