

Subchapter B. Surplus Lines Agents
28 TAC §15.101

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to amend 28 TAC §15.101, concerning the licensing of surplus lines agents. Amendments to §15.101 implement Senate Bill 422, 88th Legislature, 2023.

EXPLANATION. Chapter 55 of the Occupations Code provides for alternative licensing procedures and requirements for military service members, military veterans, and military spouses. Before the passage of SB 422, Occupations Code §55.0041 required licensing agencies to recognize the out-of-state licenses of military spouses. SB 422 amended §55.0041 to also apply to military service members and to incorporate additional changes.

As part of the implementation of SB 422, TDI has separately proposed new 28 TAC §1.814, which provides alternative licensing procedures and requirements for license applications by military service members, military veterans, and military spouses, consistent with Occupations Code Chapter 55 and 50 USC §4025a. Proposed new §1.814 applies to all licenses, permits, certifications, and other authorizations issued by TDI, including surplus lines agent licenses.

Section 15.101 addresses requirements for the licensing of surplus lines agents, and subsection (g) provides licensing requirements for military spouses. Proposed amendments remove subsection (g), which is made redundant by proposed new §1.814, and redesignate the subsections that follow subsection (g) to reflect its removal. In addition, amendments in subsections (b), (e), and (f) and redesignated subsections (g) and (h) add the titles of cited Insurance Code sections, and an amendment to subsection (f) revises the capitalization of the word "commissioner," for consistency with current TDI rule drafting style.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Jodie Delgado, director of the Agent and Adjuster Licensing Office, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments other than that imposed by the statute. Ms. Delgado 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. Delgado 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 amended section is in effect, Ms. Delgado expects that administering and enforcing the proposed amendments will have the public benefits of eliminating a redundant provision and ensuring that TDI's rules conform to Occupations Code §55.0041 in a consistent way.

Ms. Delgado expects that the proposed amendments will not increase the cost of compliance because the amendments do not create or impose any requirements.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. 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. There are no additional costs as a result of this proposal because it only removes existing regulations made redundant by new regulations. 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 agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will limit an existing regulation;
- will not increase or 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 TDI no later than 5:00 p.m., central time, on January 3, 2024. 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, Texas 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, Texas 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 January 3, 2024. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

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STATUTORY AUTHORITY. TDI proposes amendments to §15.101 under Occupations Code §55.0041(e) and Insurance Code §36.001.

Occupations Code §55.0041, which addresses recognition of out-of-state licenses of military service members and military spouses, requires in subsection (e) that state agencies adopt rules to implement the section.

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 amendment of §15.101 implements Occupations Code §§55.004(d), 55.0041, and 55.005(a).

TEXT.

§15.101. Licensing of Surplus Lines Agents.

(a) Persons performing any of the following surplus lines insurance activities are required to have a surplus lines agent license:

(1) supervising unlicensed staff engaged in activities described in subsection (b) of this section, although unlicensed intermediary supervisors may supervise unlicensed staff engaging in these activities if the ultimate supervisor is licensed;

(2) negotiating, soliciting, effecting, procuring, or binding surplus lines insurance contracts for clients or offering advice, counsel, opinions, or explanations of surplus lines insurance products to agents or clients beyond the scope of underwriting policies or contracts, except for a general lines property and casualty agent making a referral of surplus lines business to a surplus lines agent that then completes the surplus lines transaction; or

(3) receiving any direct commission or variance in compensation based on the volume of surplus lines premiums taken and received from, or as a result of, another person selling, soliciting, binding, effecting, or procuring surplus lines insurance policies, contracts, or coverages, except for a general lines property and casualty agent making a referral of surplus lines business to a surplus lines agent that then completes the surplus lines transaction.

(b) The following activities, if supervised by a surplus lines agent, do not require a surplus lines agent license if the employee does not receive any direct commission from selling, soliciting, binding, effecting, or procuring insurance policies, contracts, or coverages, and the employee's compensation is not varied by the volume of premiums taken and received:

(1) full-time clerical and administrative services, including, but not limited to, the incidental taking of information from clients; receipt of premiums in the office of

a licensed agent; or transmitting to clients, as directed by a licensed surplus lines agent, prepared marketing materials or other prepared information and materials including, without limitation, invoices and evidences of coverage;

(2) contacting clients to obtain or confirm information necessary to process an application for surplus lines insurance so long as the contact does not involve any activities for which a license would be required under subsection (a)(2) of this section;

(3) performing the task of underwriting any insurance policy, contract, or coverage, including and without limitation, pricing of the policy or contract; or

(4) contacting clients, insureds, agents, other persons, and insurers to gather and transmit information regarding claims and losses under the policy to the extent the contact does not require a licensed adjuster as set forth under Insurance Code Chapter 4101, concerning Insurance Adjusters.

(c) This section must not be construed to prohibit distribution of agency profits to unlicensed persons, including shareholders, partners, and employees.

(d) Before TDI issues a surplus lines agent license, the applicant must submit the following:

(1) an appropriate, fully completed written application; and

(2) the fee specified by §19.801 and §19.802 of this title (relating to General Provisions and Amount of Fees, respectively).

(e) Texas-resident applicants, and nonresident applicants who do not hold a surplus lines license in their state of residence or whose state of residence does not license Texas residents on a reciprocal basis as determined by TDI, must meet all licensing requirements set forth in Insurance Code Chapter 981, concerning Surplus Lines Insurance. Nonresident applicants under this section must also comply with Insurance Code §4056.051, concerning Application for Nonresident Agent License; Criminal History.

(f) Nonresident applicants who hold a surplus lines agent license in good standing in the agent's state of residence and meet the requirements of Insurance Code §4056.052, concerning Issuance of License to Nonresident Agent Licensed in Other State, must meet all the licensing requirements of Insurance Code Chapter 981 to the extent that the requirements are not waived by the commissioner [~~Commissioner~~] under Insurance Code §4056.055, concerning Waiver of Requirements for Nonresident Agent Licensed in Other State or Jurisdiction.

~~[(g) Military spouses who are licensed in a state with substantially equivalent requirements to those of this state are eligible for a license while the military service member to whom the military spouse is married is stationed at a military installation in this state. This license is effective for a period of three years from the date the spouse receives the confirmation described by paragraph (1) of this subsection.]~~

~~[(1) The military spouse must:]~~

~~[(A) submit an application notifying TDI of the military spouse's intent to operate under the license in Texas;]~~

~~[(B) submit to TDI proof of the military spouse's residency in Texas and a copy of the spouse's military identification card; and]~~

~~[(C) show evidence of good standing from the jurisdiction with substantially equivalent requirements to the requirements of this state.]~~

~~[(2) Notwithstanding subsection (d)(2) of this section and §19.801 and §19.802 of this title, a military spouse will not be assessed any application fees under those sections.]~~

(g) ~~[(h)]~~ Notwithstanding any other subsection of this section, nonresident applicants are not required to obtain a general property and casualty agent license if they meet the requirements of Insurance Code §981.203(a-1), concerning Qualifications for Surplus Lines License.

(h) [(+)] Each surplus lines agent license issued to an agent will be valid for a term as established under Insurance Code §4003.001, concerning License Expiration, and Chapter 19, Subchapter I of this title (relating to General Provisions Regarding Fees, Applications, and Renewals). The license may be renewed by submitting a renewal application and a nonrefundable license fee as specified by §19.801 and §19.802 of this title.

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

Issued in Austin, Texas, on November 14, 2023.

DocuSigned by:

Jessica Barta

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Jessica Barta, General Counsel
Texas Department of Insurance