

HB 91 report: Review of criminal history requirements

The Texas Department of Insurance (TDI) regulates the eighth largest insurance market in the world, providing oversight of more than 2,800 companies and 630,000 professionals subject to licensing requirements that include criminal background. TDI includes the Division of Worker's Compensation and the State Fire Marshal's Office.

TDI is responsible for determining an applicant's fitness to hold an insurance license, authority, permit, or certification. When the applicant is an entity, TDI considers the fitness of the entity's principals, partners, officers, directors, and controlling persons.

Staff have reviewed license eligibility requirements related to an applicant's criminal history for the occupational licenses issued by TDI as required by House Bill (HB) 91, 85th Legislature, General Session. Except for one, all TDI-issued licenses requiring consideration of criminal history include one or more types of activity that require public trust to be conferred to the licensee. The activities are:

- Having access to personal financial information.
- Having access to personal health information.
- Having fiduciary responsibility for funds.
- Having access to homes and businesses.

See Page 3 for a chart with each license type requiring a criminal background check and the public trust activities associated with that license.

An applicant's criminal history is required before granting a license for these activities to protect consumers and ensure public trust. TDI's process for reviewing an applicant's

Why we did this report

HB 91 requires state agencies that issue occupational licenses to evaluate whether consideration of applicant criminal history should be retained, modified, or repealed.

Recommendation

TDI recommends statutory provisions and rules concerning criminal history reviews be retained, except those associated with workers' compensation networks. The agency will change its rules to remove criminal background checks for workers' compensation networks.

criminal history does not unnecessarily bar those with a criminal conviction from the insurance industry. The agency considers a range of information, including evidence of rehabilitation and other case-specific facts for each applicant.

Federal law prohibits an individual convicted of certain felonies from engaging in the business of insurance unless a state insurance regulator grants the individual a waiver. TDI's requirement to consider criminal history allows staff to identify applicants who require a waiver to meet the federal requirement.

Workers' compensation network certificates currently require consideration of criminal history. However, our review found that this certificate does not involve activities that warrant a criminal background review. TDI can amend its rule to remove the requirement for criminal history information. This does not require a change in state law. The agency will continue to collect and review biographical information for each applicant to determine the competence, fitness, and reputation of the person.

Recommendation

TDI reviewed every license, registration, permit, and authorization that requires consideration of criminal history. Except for workers' compensation networks, TDI recommends all statutory provisions and rules concerning criminal history reviews be retained to protect Texas consumers. TDI recommends the rules for workers' compensation networks be modified to remove consideration of criminal history.

License or registration requiring criminal history	License type		Activity necessitating background check			
	Person	Entity	Financial info	Health info	Physical access	Fiduciary role
Insurance companies		✓	●	●		●
HMOs		✓	●	●		●
Premium finance companies		✓	●			●
Continuing care facilities		✓	●	●	●	●
Third party administrator		✓	●	●		●
Utilization review agents		✓		●		
Independent review organizations		✓		●		
Workers' compensation network		✓				
General lines: Property & casualty	✓	✓	●		●	●
General Lines: Life, accident & health	✓	✓	●	●	●	●
County mutual agent	✓	✓	●		●	●
Pre-need agent	✓	✓	●		●	●
Life and health counselors	✓	✓	●	●		●
Risk managers	✓	✓	●		●	
Title agency	✓	✓	●			●
Escrow officers	✓	✓	●		●	●
Surplus lines agent	✓	✓	●			●
Managing general agent	✓	✓	●	●	●	●
Limited lines	✓		●			●
Adjusters	✓	✓	●	●	●	
Public insurance adjusters	✓	✓	●		●	●
Captive managers		✓				●
Discount health care operators		✓	●	●		
Fire alarm inspectors	✓				●	
Fire sprinkler system inspectors	✓				●	
Fire extinguisher inspector	✓				●	