

Subchapter J. Examination Expenses and Assessments

28 TAC §7.1012

1. INTRODUCTION. The Commissioner of Insurance adopts an amendment to §7.1012 concerning assessments to cover the expenses of examining insurance companies. The amendment is adopted without changes to the text as proposed in the November 19, 2004, issue of the *Texas Register* (29 TexReg 10693) and will not be republished.

2. REASONED JUSTIFICATION. The amendment is necessary to provide a rate of assessment for domestic and foreign insurance company examination expenses in 2005 which will provide the revenue necessary to fund the appropriations made by the Legislature.

3. HOW THE SECTION WILL FUNCTION. Section 7.1012 provides the method and rates of assessment for examination expenses of foreign and domestic insurance companies. Rates of assessment are levied against and collected from each domestic insurance company based on admitted assets and gross premium receipts for the 2004 calendar year, and from each foreign insurance company examined during the calendar year 2005 based on a percentage of the gross salary paid to an examiner for each month or part of a month during which the examination is made. The department anticipates that the adopted rate will produce revenue of \$1,481,201 to the state's

general revenue fund. The expenses and charges to be assessed are in addition to, and not in lieu of, any other charge which may be made under the law, including the Insurance Code Article 1.16.

4. SUMMARY OF COMMENTS. No comments were received regarding adoption of the amendment.

5. STATUTORY AUTHORITY. The amendment is adopted under the Insurance Code Article 1.16 and §36.001. Article 1.16(a) and (b) authorize the Commissioner of Insurance to make assessments necessary to cover the expenses of examining insurance companies and to comply with the provisions of the Insurance Code Articles 1.16, 1.17, and 1.18, in such amounts as the Commissioner certifies to be just and reasonable. In addition, Article 1.16(c) provides that expenses incurred in the examination of foreign insurers by Texas examiners shall be collected by the Commissioner by assessment. Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

6. TEXT.

§7.1012. Domestic and Foreign Insurance Company Examination Assessments, 2005.

(a) Foreign insurance companies examined during the 2005 calendar year shall pay for examination expenses according to the overhead rate of assessment specified

in this subsection in addition to all other payments required by law including, but not limited to, the Insurance Code Article 1.16. Each foreign insurance company examined shall pay 33% of the gross salary paid to each examiner for each month or partial month of the examination in order to cover the examiner's longevity pay; state contributions to retirement, social security, and the state paid portion of insurance premiums; and vacation and sick leave accruals. The overhead assessment will be levied with each month's billing.

(b) Domestic insurance companies shall pay according to this subsection and rates of assessment herein for examination expenses as provided in the Insurance Code Article 1.16.

(1) The actual salaries and expenses of the examiners allocable to such examination shall be paid. The annual salary of each examiner is to be divided by the total number of working days in a year, and the company is to be assessed the part of the annual salary attributable to each working day the examiner examines the company during 2005. The expenses assessed shall be those actually incurred by the examiner to the extent permitted by law.

(2) An overhead assessment to cover administrative departmental expenses attributable to examination of companies, which shall be paid and computed as follows:

(A) .00045 of 1.0% of the admitted assets of the company as of December 31, 2004, upon the corporations or associations to be examined taking into consideration the annual admitted assets that are not attributable to 90% of pension

plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)); and

(B) .00128 of 1.0% of the gross premium receipts of the company for the year 2004, upon the corporations or associations to be examined taking into consideration the annual premium receipts that are not attributable to 90% of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)).

(3) If the overhead assessment, as computed under paragraph (2)(A) and (B) of this subsection, produces an overhead assessment of less than a \$25 total, a minimum overhead assessment of \$25 shall be levied and collected.

(4) The overhead assessments are based on the assets and premium receipts reported in the annual statements, except where there has been an understating of assets and/or premium receipts.

(5) For the purpose of applying paragraph (2)(B) of this subsection, the term "gross premium receipts" does not include insurance premiums for insurance contracted for by a state or federal government entity to provide welfare benefits to designated welfare recipients or contracted for in accordance with or in furtherance of the Texas Human Resources Code, Title 2, or the federal Social Security Act (42 U.S.C. §301 et seq.)

(c) The overhead assessment assessed under subsections (b)(2) and (b)(3) of this section shall be payable and due to the Texas Department of Insurance, P.O. Box 149104, MC 108-3A, Austin, Texas 78714-9104 within 30 days of the invoice date.

CERTIFICATION. This agency hereby certifies that the section as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on _____, 2004.

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that §7.1012, concerning the rate of assessment and charges to cover expenses of examining insurance companies, is adopted.

JOSÉ MONTEMAYOR
COMMISSIONER OF INSURANCE

By: _____
David Durden
Temporary Acting Commissioner
Per Commissioner Order No. 04-1189

ATTEST:

Gene C. Jarmon
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO. _____