

SUBCHAPTER P. ADMINISTRATORS
28 TAC §7.1603

INTRODUCTION. The Texas Department of Insurance proposes to amend 28 TAC §7.1603, relating to the requirements for administrators. Amendments to §7.1603 implement Senate Bill 1200, 86th Legislature, Regular Session (2019), which amended Occupations Code §55.0041.

EXPLANATION. SB 1200 amended Occupations Code §55.0041 as it addresses authority of military spouses to engage in a business or occupation in this state. These amendments impact TDI's licensing rules, which necessitates revisions to 28 TAC §7.1603, as well as revisions to sections in other chapters of Title 28 of the Texas Administrative Code addressed in separate rule proposals.

Section 7.1603(a). Section 7.1603(a) requires any person acting or holding himself or herself out as an administrator to obtain a certificate authority, as required by Insurance Code Chapter 4151, unless the person meets an exemption described in Insurance Code §§4151.002, 4151.0021, or 4151.004. Proposed amendments to §7.1603(a) clarify that certain military spouses can engage as administrators by applying for a temporary certificate of authority.

Section 7.1603(c). New §7.1603(c) establishes an eligibility requirement that military spouses must be licensed in a jurisdiction with substantially equivalent licensing requirement as those described in §7.1604 and in Insurance Code Chapter 4151. Proposed new §7.1603(c) provides that a military spouse licensed in a jurisdiction outside of Texas will only be authorized to engage as an administrator in Texas for the period during which the military service member to whom the military spouse is married is stationed at a

military installation in Texas, but not to exceed three years from the date the spouse receives the confirmation described by §7.1603(d).

Section 7.1603(d). New §7.1603(d) details the criteria that must be met for a military spouse to engage as an administrator. This section will require the military spouse to submit an application notifying TDI of the military spouse's intent to practice in this state, submit to TDI proof of the spouse's residency in Texas, a copy of the spouse's military identification card, and evidence of good standing in the jurisdiction with substantially equivalent requirements. Proposed new §7.1603(d) will also require the military spouse to receive confirmation from TDI that indicates TDI has verified the spouse's license and that the spouse is authorized to engage in the business or occupation in accordance with this section.

Section 7.1603(e). New §7.1603(e) clarifies that no fees will be assessed in connection with the administrator license.

Section 7.1603(f). New §7.1603(f) clarifies that a military spouse engaged as an administrator under this authority is bound by all laws and rules applicable to the business and occupation in Texas.

The proposed new subsections and amendment also include nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Chris Herrick, deputy commissioner of the Office of Customer Operations, has determined that during each year of the first five years the proposed new subsections and amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering this section, other than that imposed by the statute. This

determination was made 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.

Mr. Herrick does not anticipate a 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, Mr. Herrick, expects that administering the proposed amendments will have the public benefits of ensuring that TDI's rules conform to Occupations Code §55.0041.

Mr. Herrick expects that the proposed amendments will not increase the cost of compliance with Occupations Code §55.0041 because they do not impose requirements beyond those in the statute. Occupations Code §55.0041 requires TDI to implement rules that execute the statute. Any costs that result from this implementation come from the statute itself. As a result, the cost associated with the rule do not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. TDI does not anticipate a significant increase in applications that would qualify for this exemption. 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, and no additional rule amendments are required under Government Code §2001.0045 because the proposed §7.1603 is necessary to implement legislation. The proposed rule implements Occupations Code §55.0041, as added by SB 1200 86th Legislature, Regular Session (2019).

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 not expand, limit, or repeal 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 December 9, 2019. Send your comments to ChiefClerk@tdi.texas.gov; or by mail 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, and separate from any comments, to ChiefClerk@tdi.texas.gov; or by mail 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 December 9, 2019. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

SUBCHAPTER P.

28 TAC §7.1603

STATUTORY AUTHORITY. TDI proposes amendments to 28 TAC §7.1603 under Occupations Code §55.0041 and Insurance Code §36.001.

Occupations Code §55.0041 addresses licensing of military spouses with out of state licenses. This section also grants rule-making authority to applicable state agencies.

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 7.1603 implements Occupations Code §55.0041, enacted by SB 1200, 86th Legislature, Regular Session, (2019).

TEXT.

§7.1603. Certificate of Authority Required.

(a) Unless a person meets an exemption under ~~[the]~~ Insurance Code §§4151.002, 4151.0021, or 4151.004, a person acting as or holding themselves ~~[itself]~~ out as an administrator must hold a certificate of authority under ~~[the]~~ Insurance Code Chapter 4151. A military spouse who meets the criteria described in subsection (c) of this section is eligible to apply for a temporary certificate of authority.

(b) An administrator contractor and an administrator subcontractor must hold a certificate of authority under ~~[the]~~ Insurance Code Chapter 4151.

(c) A military spouse who is licensed as an administrator in a state with substantially equivalent requirements as those found in §7.1604 of this title (relating to Application for Certificate of Authority) and Insurance Code Chapter 4151 may engage as an administrator while the military service member to whom the military spouse is married is stationed at a military installation in this state for a period of three years from the date the spouse receives the confirmation described by subsection (d) of this section.

(d) A military spouse seeking to engage as an administrator must:

(1) submit an application notifying TDI of the military spouse's intent to engage as an administrator in Texas;

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

(3) show evidence of good standing from a jurisdiction with substantially equivalent requirements as those found in §7.1604 of this title and Insurance Code Chapter 4151.

(e) Notwithstanding §7.1604 of this title, a military spouse seeking to engage as an administrator will not be assessed any application fees under that section.

(f) A military spouse authorized to engage as an administrator must comply and adhere to all other laws and rules applicable to administrators.

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 October 25, 2019.

/s/ James Person
James Person, General Counsel
Texas Department of Insurance