

SUBCHAPTER D. EFFECT OF CRIMINAL CONDUCT
28 TAC §1.502

INTRODUCTION. The Texas Department of Insurance proposes amending 28 TAC §1.502, concerning licensing persons with criminal history. These amendments update the section for consistency with Occupations Code §§53.021, 53.022, and 53.023, amended by House Bill 1342, 86th Legislature, 2019.

EXPLANATION. HB 1342 amended Occupations Code §§53.021, 53.022, and 53.023, which contain factors to be considered by licensing agencies when contemplating how a criminal conviction relates to a licensed occupation. Section 1.502 incorporates elements of Occupations Code §§53.021, 53.022, and 53.023 regarding offenses and criteria to consider when licensing an individual with a criminal background. This proposal updates §1.502 to reflect criteria in the Occupations Code as amended by HB 1342.

In addition, the proposed amendments update the list of criminal offenses considered under §1.502 to reflect changes in the Code of Criminal Procedure and the Penal Code since the rule was last amended in 2010, and it makes additional updates to the section based on practical experience under the current text of the section.

The section's proposed amendments are described in the following paragraphs.

Section 1.502(a) - (c). The proposal makes nonsubstantive changes to the text for plain language purposes and to correct capitalization.

Section 1.502(d). The proposal amends subsection (d) to address factors currently included in subsections (f) and (g) of the section.

New text is also included in subsection (d) to address Code of Criminal Procedure provisions cited by Occupations Code §53.021 for which the department may refuse to issue an original license or revoke, suspend, or refuse to renew.

Section 1.502(e). The proposal adds new subsection (e), stating that the department will consider the factors specified in Occupations Code §53.022 and §53.023 in determining whether to issue an original license or authorization or revoke, suspend, or refuse to renew a license or authorization. This text replaces text in current subsection (h), which addresses the factors in Occupations Code §53.022 and §53.023 by listing them.

The subsections that follow new subsection (e) are redesignated as appropriate to reflect the addition of the new section.

Section 1.502(f). Current subsection (e), redesignated as subsection (f), provides a non-exhaustive list of crimes the department considers to be of such serious nature that they are directly related to the duties and responsibilities of the licensed occupation or of prime importance in determining fitness for licensure or authorization.

Proposed amendments to paragraph (2) clarify that the criminal violations considered under subsection (f)(2) include offenses pertaining to the financial industry or business of insurance under any state or federal law or any law of a foreign country or the Uniform Code of Military Justice. The amendments also add a non-exhaustive list of five criminal violations specifically contemplated by the paragraph.

Proposed amendments to paragraph (4) add clarifying language and reorganize the offenses listed in the paragraph to track the numeric order of the Penal Code chapters and sections in which they are addressed. Amendments also insert references to additional offenses in the Penal Code for which the department may revoke, suspend, or refuse to issue or renew a license or authorization.

Finally, amendments add new paragraphs (5) - (8) to clarify that the crimes that the department considers in determining fitness for licensure or authorization include any offense described by the Code of Criminal Procedure Article 42A.054; sexually violent offenses as defined by Code of Criminal Procedure Article 62.001; any attempt or conspiracy to commit any offense listed in §1.502 as described by the Penal Code; and

any offense under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice if the offense contains elements that are substantially similar to the elements of an offense listed under §1.502.

Section 1.502(f) - (h). Proposed amendments delete current subsections (f) - (h) because the provisions in these subsections are addressed in proposed amendments to subsections (d) and (e).

Section 1.502(g). Current subsection (i) is redesignated as subsection (g). In addition, the word "shall" is replaced with "will."

Section 1.502(h). Current subsection (j) is redesignated as subsection (h). In addition, the word "shall" is replaced with "will."

Section 1.502(i). Current subsection (k) is redesignated as subsection (i).

The proposal also includes additional nonsubstantive text changes for style and grammar, for consistency with current department rule drafting preferences.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Jodie Delgado, director of Agent and Adjuster Licensing, 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 because 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 because of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Delgado expects that administering them will have the public benefits of ensuring that the department's rules conform to Occupations Code §§53.021, 53.022, 53.023, and 53.025.

Ms. Delgado expects that the proposed amendments will not increase the cost of compliance because the proposal does not impose requirements beyond the regulations currently in place. The changes to §1.502 update the section for consistency with Occupations Code §§53.021, 53.022, and 53.023. This adds no cost and has no adverse economic impact.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The department has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to small and micro businesses and rural communities. The changes to §1.502 update the section for clarity and consistency with Occupations Code §§53.021, 53.022, and 53.023. They address criteria for license issuance, revocation, and suspension. This does not add or create costs for small or microbusinesses or rural communities. As a result, and in accordance with Texas Government Code §2006.002(c), the department is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The department has determined that this proposal does not impose a cost on regulated persons.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that for each year of the first five years that the proposed amendments are in effect, the amendments:

- 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. The department 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. The department will consider any written comments on the proposal that are received by the department no later than 5:00 p.m., central time, on June 5, 2023. 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 the department no later than 5:00 p.m., central time, on June 5, 2023. If the department holds a public hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The department proposes amendments to §1.502 under Occupations Code §§53.021, 53.022, 53.023, and 53.025 and Insurance Code §36.01.

Occupations Code §53.021 states grounds on which a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination.

Occupations Code §53.022 provides factors that a licensing authority must consider in determining whether a criminal conviction directly relates to the duties and responsibilities of a licensed occupation.

Occupations Code §53.023 provides additional factors that a licensing authority must consider in determining whether to take an action authorized by Occupations Code §53.021 if it determines that a criminal conviction directly relates to the duties and responsibilities of a licensed occupation.

Occupations Code §53.025 requires licensing authority to issue guidelines relating to the practice of the licensing authority under Occupations Code Chapter 53. The guidelines must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 1.502 implements Occupations Code §§53.021, 53.022, 53.023, 53.0231, and 53.025.

TEXT.

§1.502. Licensing Persons with Criminal Backgrounds.

(a) The special nature of the relationship between licensees, insurance companies, other insurance-related entities, discount health care programs, and the public with respect to insurance and related businesses regulated by the department requires that the public ~~[place]~~ trust ~~[in]~~ and rely on licensees because of ~~[reliance upon such persons due to]~~ the complex and varied nature of insurance, insurance-related products, and discount health care programs.

(b) Fire protection systems and equipment are often technically sophisticated beyond the knowledge or understanding of the average consumer. During times of imminent personal danger, the public relies on licensees to have correctly designed, installed, and serviced fire protection systems and equipment to operate the first time and each time they are needed. Additionally, licensees are often permitted to service these systems unescorted in nursing homes, schools, day care centers, and commercial facilities where children and those unable to protect themselves are present and valuables are

located. Finally, the manufacturing, storing, selling, and discharge of fireworks requires numerous special precautions to maintain a safe environment for the licensees and the public. Each of these factors requires the public to ~~[place]~~ trust ~~[in]~~ and rely on ~~[reliance upon]~~ these individuals.

(c) The department considers it very important that license and authorization holders and applicants, including those regulated under the State Fire Marshal's Office ~~[state fire marshal's office]~~, the officers, directors, members, managers, partners, and any other persons who have the right to control a license or authorization holder or applicant, and the members of boards of directors of insurance companies, be honest, trustworthy, and reliable.

(d) After notice and opportunity for hearing and, as applicable, consideration of the factors addressed in subsection (e) of this section, in accordance with Texas Occupations Code §53.021 the ~~[The]~~ department may refuse to issue an original license or authorization and may revoke, suspend, or refuse to renew a license or authorization if the department determines that the applicant or license or authorization holder, or any partner, officer, director, member, manager, or any other person who has the right to control the applicant or license or authorization holder, has been convicted of or placed on deferred adjudication for:

(1) an offense ~~[committed a felony or misdemeanor, or has engaged in fraudulent or dishonest activity]~~ that directly relates to the duties and responsibilities of the licensed occupation; ~~[-]~~

(2) an offense listed in Code of Criminal Procedure Article 42A.054; or

(3) a sexually violent offense as defined by Code of Criminal Procedure Article 62.001.

(e) The department will consider the factors specified in Occupations Code §53.022 and §53.023 in determining whether to issue an original license or authorization or revoke, suspend, or refuse to renew a license or authorization under subsection (d) of this section.

(f) [(e)] In accordance with the requirements of Texas Occupations Code §53.025, the department has developed guidelines relating to the matters [which] the department will consider in determining whether to grant, deny, suspend, or revoke any license or authorization under its jurisdiction. Those crimes that [which] the department considers to be of such serious nature that they are directly related to the duties and responsibilities of the licensed occupation or are of prime importance in determining fitness for licensure or authorization include [but are not limited to]:

(1) any offense for which fraud, dishonesty, or deceit is an essential element;

(2) any criminal violation of the Texas Insurance Code or an offense pertaining to the financial industry or business of insurance under any state or federal [insurance or security] law or any law of a foreign country or the Uniform Code of Military Justice, including: [regulating or pertaining to the business of insurance;]

(A) a fraud offense, as described by Penal Code Chapter 32;

(B) money laundering, as described by Penal Code Chapter 34;

(C) insurance fraud, as described by Penal Code Chapter 35;

(D) health care fraud, as described by Penal Code Chapter 35A; or

(E) engaging in the unauthorized business of insurance, as described by Insurance Code §101.106;

(3) any felony involving moral turpitude or breach of fiduciary duty; [ø]

(4) any [an] offense with the essential elements of:

(A) a criminal solicitation offense, as described by Penal Code §15.03 or §15.031;

- (B) ~~[(A)]~~ a criminal homicide offense, as described by Penal Code~~[r]~~
- Chapter 19;
- ~~[(B) a felony offense of assault, as described by Penal Code Chapter~~
~~22;]~~
- (C) a kidnapping or unlawful restraint offense, as described by Penal
Code Chapter 20;
- (D) an offense related to the smuggling of persons or the trafficking
of persons, as described by Penal Code Chapter 20 or 20A;
- (E) a sexual offense, as described by Penal Code Chapter 21;
- (F) an assaultive offense, as described by Penal Code Chapter 22;
- (G) an offense against the family, as described by Penal Code Chapter
25;
- (H) ~~[(C)]~~ an arson or property damage offense, as described by Penal
Code~~[r]~~ Chapter 28;
- (I) ~~[(D)]~~ a robbery offense, as described by Penal Code~~[r]~~ Chapter 29;
- (J) ~~[(E)]~~ a burglary offense, as described by Penal Code~~[r]~~ Chapter 30;
- (K) ~~[(F)]~~ a theft offense, as described by Penal Code~~[r]~~ Chapter 31;
- (L) online solicitation of a minor, as described by Penal Code §33.021;
- (M) a bribery or corrupt influence offense, as described by Penal
Code Chapter 36;
- (N) a perjury or falsification offense, as described by Penal Code
Chapter 37;
- (O) a stalking offense, as described by Penal Code §42.072;
- (P) an offense against public order and decency, as described by
Penal Code Chapter 43;
- (Q) a weapons offense, as described by Penal Code Chapter 46;

(R) an intoxication assault or manslaughter offense, as described by Penal Code §49.07 or §49.08;

(S) an organized crime offense, as described by Penal Code Chapter 71; or

(T) ~~[(G)]~~ an offense relating to the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance, a simulated controlled substance, ~~[or] a dangerous drug, or a volatile chemical;~~ ~~[and]~~

~~[(H) an offense against the person as described by Penal Code §§20.03, 20.04, 21.07, 21.08, or 21.11;]~~

~~[(I) an offense against the family as described by Penal Code §§25.02 or 25.07];~~

~~[(J) a stalking offense as described by Penal Code §42.072; or]~~

~~[(K) an offense against public order and decency as described by Penal Code §§43.25 or 43.26.]~~

(5) any offense described by Code of Criminal Procedure Article 42A.054;

(6) a sexually violent offense as described by Code of Criminal Procedure Article 62.001;

(7) any criminal attempt or conspiracy to commit any offense listed under this section, as described by Penal Code §15.01 or §15.02; or

(8) any offense under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice if the offense contains elements that are substantially similar to the elements of an offense listed under this section.

~~[(f) The department shall not issue a license or authorization if an applicant has committed a felony or misdemeanor, or engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation unless the commissioner finds that the matters set out in subsection (h) of this section outweigh the~~

~~serious nature of the criminal offense when viewed in light of the occupation being licensed.]~~

~~[(g) The department may, after notice and opportunity for hearing, revoke a license or authorization if the holder has committed a felony or misdemeanor, or engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation unless the commissioner finds that the matters set out in subsection (h) of this section outweigh the serious nature of the criminal offense when viewed in light of the occupation being licensed.]~~

~~[(h) The department will consider the factors specified in Texas Occupations Code §§53.022 and 53.023 in determining whether to grant, deny, suspend, or revoke any license or authorization under its jurisdiction.]~~

~~[(1) In determining whether a criminal offense directly relates to the duties and responsibilities of the licensed occupation, the department shall consider the following factors:]~~

~~[(A) the nature and seriousness of the crime;]~~

~~[(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;]~~

~~[(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and]~~

~~[(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.]~~

~~[(2) In addition to the factors listed in paragraph (1) of this subsection, the department shall consider the following evidence in determining the fitness to perform~~

~~the duties and discharge the responsibilities of the licensed occupation of a person who has committed a crime:]~~

~~[(A) the extent and nature of the person's past criminal activity;]~~

~~[(B) the age of the person when the crime was committed;]~~

~~[(C) the amount of time that has elapsed since the person's last criminal activity;]~~

~~[(D) the conduct and work activity of the person prior to and following the criminal activity;]~~

~~[(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and]~~

~~[(F) other evidence of the person's present fitness, including letters of recommendation from:]~~

~~[(i) prosecutor, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;]~~

~~[(ii) the sheriff or chief of police in the community where the person resides; and]~~

~~[(iii) any other persons in contact with the person.]~~

~~[(G) In addition to the factors and evidence listed in paragraphs (1) and (2) of this subsection, an applicant or license or authorization holder shall also furnish proof that the applicant or holder has:]~~

~~[(i) maintained a record of steady employment;]~~

~~[(ii) supported the applicant's or holder's dependents where applicable;]~~

~~[(iii) otherwise maintained a record of good conduct; and]~~

~~[(iv) paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which the applicant or holder has been convicted.]~~

~~[(3) It shall be the responsibility of the applicant or holder to the extent possible to secure and provide to the commissioner the information required by paragraph (2) of this subsection.]~~

(g) ~~[(f)]~~ The department will ~~[shall]~~ consider any specific criteria the legislature has set out for any license or authorization in considering whether to grant, deny, suspend, or revoke such license or authorization.

(h) ~~[(g)]~~ The department will ~~[shall]~~ revoke a license or authorization on the holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(i) ~~[(h)]~~ No person currently serving in prison for conviction of a felony under any state or federal law is eligible to obtain a license or authorization issued by the department.

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 April 17, 2023.

DocuSigned by:
Jessica Barta
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Jessica Barta, General Counsel
Texas Department of Insurance