

SUBCHAPTER D. EFFECT OF CRIMINAL CONDUCT

DIVISION 1. FITNESS FOR LICENSING
28 TAC §§1.501 – 1.509

DIVISION 2. PROCEDURES GOVERNING PERSONS SUBJECT TO 18 U.S.C. §1033
AND §1034
28 TAC §§1.520 – 1.530

1. INTRODUCTION. The Texas Department of Insurance (TDI) proposes new Division 2, entitled Procedures Governing Persons Subject to 18 U.S.C. §1033 and §1034, to include new proposed 28 TAC §§1.520 – 1.530, concerning standard procedures for persons convicted of certain felony offenses to obtain written consent to engage in the business of insurance. The department is adding “Division 1 Fitness and Licensing” to existing §§1.501 – 1.509 which outlines TDI’s procedures in determining whether persons applying for a license or authorization are honest, trustworthy, reliable, and fit to hold those positions. No amendments are proposed to existing §§1.501 – 1.509. TDI will not consider any comments, including requests for amendments, regarding existing §§1.501 – 1.509.

Sections 1.520 – 1.530 are necessary to: (i) implement the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103 - 322, H.R. 3355, Title 18 United States Code §1033 and §1034, effective September 13, 1994, which prohibits any individual convicted of a criminal felony of dishonesty, a breach of trust, or an offense under 18 U.S.C. §1033, from engaging or participating in the business of insurance without written consent from an insurance regulatory official authorized to regulate the insurer; and (ii) set forth the procedures by which the commissioner will

determine whether individuals convicted of a criminal felony involving dishonesty or a breach of trust, or an offense under 18 U.S.C. Section 1033, should be granted, denied, or revoked written consent to engage or participate in the business of insurance in Texas.

The Violent Crime Control and Law Enforcement Act of 1994, effective September 13, 1994, H.R. 4092(103rd), provides that the legislative intent of the Act is to control and prevent crime. The Act creates criminal penalties and authorizes the U.S. Attorney General to bring civil or criminal actions against offenders. The Act makes it a federal crime for certain individuals convicted of a state or federal felony involving dishonesty or a breach of trust from engaging in the business of insurance unless the individual is specifically authorized by written consent from an insurance regulatory official authorized to regulate the insurer. The commissioner is TDI's chief executive and administrative officer with the authority to enforce laws applicable to TDI, and therefore, the regulatory official at TDI authorized to regulate the insurer. The commissioner has the discretion to determine the method of inquiry regarding the determination of whether to grant or deny an individual's request for written consent because the Act does not specify the method.

Sections 1.520 – 1.530 set forth the scope of the convicted person's consent process, clarify the procedure for consent application submission, outline the criteria that the commissioner will review in determining whether to grant written consent, and addresses denials and administrative appeals of such denials. The proposal is necessary to maintain effective regulation of the business of insurance in Texas by establishing requirements and procedures to further ensure that persons granted written

consent are honest, trustworthy, reliable, and fit. This proposal does not impose additional requirements or costs on persons with current licenses or authorizations, nor should it affect the status of that current license or authorization, to the extent the person has made full disclosure to TDI of all criminal conduct. An individual that maintains a current license or authorization may incur additional costs under this proposal as a result of a subsequent criminal conviction.

The use of criminal history information is necessary to confirm that an applicant is subject to the Act and TDI's rules, as well as to assist the commissioner in determining whether to grant or deny written consent under 18 U.S.C. §1033. The proposal utilizes TDI's standard requirement for obtaining an individual's criminal history information by using the individual's fingerprints. Generally, the proposal does not require any individual who has previously provided TDI fingerprints as part of an earlier submission that was granted or approved to resubmit fingerprints. However, TDI has the authority to request additional information from applicants under §1.525 and an applicant has a duty to disclose to TDI certain information under §1.527. Any fingerprints submitted as part of a request for written consent that is granted may also be used for subsequent license or authorization application submissions.

The Act specifies that any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under 18 U.S.C §1033, may engage in the business of insurance or participate in the business if the person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to 18 U.S.C §1033(e). The prohibition under the Act applies to individuals who willfully engage or

participate in the writing of insurance, or the reinsuring of risks, by an insurer, including all acts necessary or incidental to writing or reinsuring, and the activities of persons who act as, or are, officers, directors, agents, or employees of insurers, or other persons authorized to act on their behalf, whose activities affect interstate commerce. Under the proposal, TDI has the discretion to determine whether Texas is the appropriate state from which an applicant should request written consent.

Section-By-Section Overview of the Proposal.

Section 1.520 addresses **Purpose and Scope**. Section 1.520(a) provides that the purpose of Division 2 is to implement 18 U.S.C. §1033 by establishing procedures for TDI and the commissioner to (i) obtain criminal history information; (ii) obtain background information; and (iii) determine the fitness of applicants. Section 1.520(b) mirrors the broad application of the Act by specifying that the rules reach to any individual who engages or participates in the business of insurance whose activities affect interstate commerce and who has been convicted of any criminal felony involving dishonesty or a breach of trust, or an offense under the Act. The Act covers all acts necessary or incidental to the writing of insurance or reinsurance and the activities of persons who act as or are officers, directors, producers, or employees and the activities of persons who act as or are officers, directors, producers, or employees and includes those authorized to act on their behalf. These subsections are necessary to describe the applicability of Division 2.

Section 1.520(c) tracks §1.501(b) and identifies the persons to whom these sections apply. Section 1.520(d) clarifies that the laws and regulations regarding the fitness of individuals to apply for a license or authorization with TDI and other states are

not preempted by these rules. These proposed rules are separate and in addition to state statutory and regulatory licensing qualifications. This section is necessary to explain that even though a person may obtain written consent from the commissioner under these rules, the person may still be barred from the insurance industry by state law. The Act does not provide for automatic letters of consent for individuals who possess a state insurance license, does not contain grandfather provisions for individuals already transacting the business of insurance, and does not provide a time limit on how far back the felony conviction triggering the requirement to request written consent must have occurred. Section 1.520(d) further provides that an individual could violate state statutory and regulatory licensing requirements, as well as Division 2, by failing to inform TDI of a prior criminal conviction on a license application.

Section 1.520(e) incorporates severability clause language to conform to current agency style.

Section §1.521 addresses **Definitions**. The §1.521(1) definition of “Act” means the Violent Crime Control and Law Enforcement Act of 1994, Title 18 United States Code §1033 and §1034. In §1.521(2) the term “applicant” clarifies that the term includes any person subject to the Act requesting written consent from TDI, as opposed to an applicant for a license, and refers to the definitions in §1.521(10) and (11).

The §1.521(3) definition of “business of insurance” is as defined in 18 U.S.C. §1033(f)(1), which provides that “business of insurance” means (i) the writing of insurance; (ii) the reinsuring of risks; (iii) all acts necessary or incidental to such writing or reinsuring; and (iv) the activities of persons who act as, or are, officers, directors,

agents, or employees of insurers, or other persons authorized to act on their behalf.

The term also includes acts provided in Insurance Code §101.051.

The §1.521(4) definition of “commissioner” clarifies that the term means the commissioner of insurance or her or his designee. This definition is necessary to define the term as used in Division 2.

The §1.521(5) definition of “control” is as defined in Insurance Code §823.005, which provides in §823.005(a), that for purposes of Insurance Code Chapter 823, control is the power to direct, or cause the direction of, the management and policies of a person, other than power deriving from an official position with or corporate office held by the person. The power may be possessed directly or indirectly by any means, including through the ownership of voting securities or by contract, other than a commercial contract for goods or nonmanagement services. Insurance Code §823.005(b) provides that, for purposes of this chapter, a person controls another if the person possesses the power described by Subsection (a) with regard to the other person. Insurance Code §823.005(c) provides that, after providing notice and opportunity for hearing to each person in interest, the commissioner may determine that, notwithstanding the absence of a presumption under §823.151, a person controls an authorized insurer if the person, directly or indirectly and alone or under an agreement with one or more other persons, exercises such a controlling influence over the management or policies of the insurer that it is necessary or appropriate in the public interest or for the protection of the insurer’s policyholders that the person be considered to control the insurer. The commissioner will make specific findings of fact

to support a determination under this subsection. This definition is necessary to define the term as used in the definition of “person subject to the Act” in §1.521(11) of this title.

The §1.521(6) definition of “criminal felony involving dishonesty or a breach of trust” incorporates the list of crimes that may contain an element of dishonesty or breach of trust, as outlined in the Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994: United States Code Sections 1033 and 1034, adopted by the NAIC in 2011. The list of crimes is not exhaustive and there is no time limit on how long ago the felony conviction may have occurred.

In §1.521(7), the term “domestic” means an entity organized under the laws of Texas or a commercially domiciled insurer as defined in Insurance Code §823.004. This definition is necessary to define the term as used in the definition of “person subject to the Act” in §1.521(11) of this title.

In §1.521(8), the term “insurer” is as defined in 18 U.S.C. §1033(f)(2). Title 18 U.S.C. §1033(f)(2) provides that the term “insurer” means any entity, the business activity of which is the writing of insurance or the reinsuring of risks, and includes any person who acts as, or is, an officer, director, agent, or employee of that business.

The §1.521(9) definition of “interstate commerce” is as defined in 18 U.S.C. §1033(f)(3), which provides that the term means commerce within the District of Columbia, or any territory or possession of the United States; all commerce between any point in the State, territory, possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; or all other commerce over which the United States has jurisdiction.

The §1.521(10) definition of “offense under the Act” means the enumerated offenses in 18 U.S.C. §1033.

In §1.521(11) the term “person subject to the Act” includes any individual who has been convicted of a criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under the Act, who intends to engage or participate in the business of insurance in Texas, whose activities affect interstate commerce. This definition is necessary to incorporate the broad scope of individuals to whom the Act applies. Title 18 U.S.C. §1033(f)(1) provides that the “business of insurance” includes, in relevant part, all acts necessary or incidental to the writing or reinsuring of risks and the activities of persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons. The group of “other persons” authorized to act on behalf of officers, directors, agents, or employees of insurers would include any subcontractors, third-party administrators, consultants, professionals, and those who receive compensation or remuneration from such business.

The §1.521(12) definition of “request for written consent” clarifies that only a completed request for written consent form submitted to TDI by a person subject to the Act, as defined in §1.521(11), constitutes a request for written consent that may be considered the commissioner.

Section 1.521(13) defines the term “TDI” as the Texas Department of Insurance.

Section 1.521(14) defines “written consent” as the commissioner’s granting of authorization for a person subject to the Act to engage or participate in the business of insurance in Texas to implement 18 U.S.C. §1033(e)(1)(A).

Section 1.522 addresses **Written Consent Required**. Section 1.522(a) explains that any person subject to the Act is required to obtain written consent from the commissioner to participate or engage in the business of insurance in Texas. TDI considered the NAIC Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994, adopted to be effective 2011, that stated, in part, that it could not have been the intent of Congress to allow one state to extend its statutory power into other jurisdictions. Therefore, Texas requires individuals participating or engaging in the business of insurance in Texas to request written consent from the commissioner. If the commissioner determines that another state is the appropriate state from which an individual must request written consent, or TDI does not regulate the insurer, the request for written consent will be denied and a notice explaining the reasons for denial will be sent to the applicant as provided under §1.529 of this title.

Section 1.522(b) is necessary to explain that the current regulations regarding licensing individuals with criminal backgrounds in Chapter I, Subchapter D, (relating to effect of criminal conduct) are in addition to the requirements under Division 2. A person subject to the Act must be granted written consent to retain a license or authorization, and before any new or renewal license or authorization will be issued. Title 18 U.S.C. §1033 does not provide for any grandfather provisions by which an individual already licensed may be exempt from the requirements under the Act. A person currently licensed is still required to obtain written consent from the commissioner to engage or participate in the business of insurance in Texas.

Section 1.522 (c) explains that a person subject to the Act must be granted written consent from the commissioner, as opposed to merely submitting a request for written consent, before engaging or participating in the business of insurance in Texas.

Section 1.522(d) provides that TDI may share information with other states regarding an individual's request for written consent. The NAIC guidelines provide for the exchange of data regarding applicants for written consent under 18 U.S.C. §1033. Participating state insurance departments established the National Special Activities Database which can be used to securely share data on applicants requesting written consent. This section is necessary to ensure that accurate information is exchanged among states where the person subject to the Act engages in the business of insurance in multiple jurisdictions.

Section 1.523 addresses **Insurer Responsibility under the Act**. The Act provides that it is a federal crime for any individual who is engaged in the business of insurance whose activities affect interstate commerce to willfully permit a person subject to the Act to willfully engage or participate in the business of insurance without written consent. This section is necessary to clarify that under the Act, insurers have an obligation not to willfully permit a person convicted of a felony crime of dishonesty or a breach of trust to engage or participate in the business of insurance without written consent.

Section 1.524 addresses **Request for Written Consent**. Section 1.524(a) and (b) are necessary to address the availability of the request for written consent form and the process by which the request for written consent form may be submitted to TDI. The request for written consent form is necessary because, under 18 U.S.C. §1033, the

commissioner developed guidelines relating to the matters that TDI will consider in determining whether to grant, deny, or revoke written consent. These matters include criminal background checks for each applicant. Section 1.524(c) is necessary to inform applicants that assistance with submitting a request for written consent is available by calling TDI.

Section 1.524(d) - (f) provide the screening criteria and factors by which the commissioner will evaluate whether to grant or deny written consent. Section 1.502 provides the guidelines used by TDI to determine a person's fitness for holding a license, authorization, certification, permit, or registration, and the person's fitness to have the ability to control licensed, registered, permitted, certificate holding, and authorized entities, when that person has committed a criminal offense or has engaged in fraudulent or dishonest activity. The commissioner employs the same principles as are set forth in §1.502 to determine whether the mitigating or extenuating factors provided to TDI in the screening criteria outweigh the serious nature of the criminal offense when viewed in light of the applicant's occupation. The commissioner determined that, in addition to other factors, the screening criteria for applicants for licensure and authorization under §1.502 should be utilized in determining whether a person subject to the Act should be granted written consent under Division 2. Although the Act also applies to other persons without a license or authorization from TDI, the commissioner determined that the same principles set forth in §1.502 are the best means to determine whether a person subject to the Act is fit to be granted written consent and worthy of public confidence.

Occupations Code Chapter 53 states the general procedure a licensing authority must employ when considering the consequences of a criminal record on granting or continuing a person's license, registration, or authorization. Occupations Code §53.025 authorizes a licensing authority to issue guidelines relating to its practice under Chapter 53. Insurance Code §§801.101, 801.102, and 801.151 - 801.155 authorize the commissioner to review the fitness and reputation of officers, directors, and persons in control of insurance companies and to refuse or revoke a certificate of authority to any company based on a determination that such officer, director, or controlling person is not worthy of public confidence.

Section 1.524(g) clarifies that it is the responsibility of the person subject to the Act to secure and provide to TDI the information and documentation required by this section.

Section 1.525 addresses **Requirement to Provide Fingerprints and Documents**. Section 1.525(a) requires an applicant to submit all additional requested information to TDI within 30 days of the date the request is mailed to the applicant by TDI. This 30-day provision allows the applicant adequate time to submit the additional information and specifies a uniform minimum time period for all applicants. TDI will send the applicant a notice of deficiency if the requested information is not submitted to TDI. If TDI does not receive the information within 180 days of the date the notice of deficiency was mailed by TDI, the request for written consent may be denied or deemed incomplete. This section is consistent with 28 TAC §1.806 regarding a deficient application for an agent's license and provides uniform procedures by which TDI will notify applicants of deficiencies in the request for written consent.

Section 1.525(b) requires an applicant to submit to TDI a complete set of the applicant's fingerprints, full payment for all processing fees charged by the Texas Department of Public Safety and the Federal Bureau of Investigation, and all additional identifying information required by the Texas Department of Public Safety and the Federal Bureau of Investigation for processing fingerprints. The individual's fingerprints will either be submitted directly to DPS, if captured by the DPS electronic vendor, or to TDI and then to DPS if captured on paper. The fingerprint processing fee charged by DPS is set by Government Code §411.088(a)(2). The associated fingerprint processing fee charged by the FBI is set by federal authority and is made known to TDI by DPS. This section is necessary because fingerprints are the only method the FBI will accept to produce identity and criminal history information. The proposed section utilizes the secure and uniform procedures by which TDI already obtains a complete criminal history from individuals applying for a license or authorization and from individuals who are seeking to be associated with a regulated entity. These same procedures will be utilized for other persons not seeking a license from TDI, but who are engaged or participating in the business of insurance in Texas.

Section 1.525(c) clarifies that the procedures and requirements for fingerprint application, format, use, and confidentiality in Division 1 of this subchapter (relating to Fitness for Licensing) apply to persons subject to the Act requesting written consent.

Section 1.526 addresses **Effect of False or Misleading Statements**. The truth and veracity of documents and information submitted by or on behalf of the person subject to the Act are essential in identifying the fitness of the applicant to engage or participate in the business of insurance in Texas. If TDI determines that the person

subject to the Act, or her or his representative, has made false or misleading statements, or has failed to disclose information, the commissioner may deny the request for written consent or revoke the written consent. Section 1.526 further provides that TDI's Fraud Section will make an independent determination whether TDI should pursue an investigation of fraudulent insurance acts under the Insurance Code or these rules, or whether referral to another law enforcement agency or federal prosecutor should be made. This section is necessary because ultimately, only a federal prosecutor or court will determine how restrictive or broadly to apply the statute. Additionally, these rules do not and cannot establish a crime under federal law. However, TDI has the authority to provide for the financial soundness and the economic safety of insurers and consumers by ensuring that insurers regulated by TDI are not in violation of federal criminal law.

Section 1.527 addresses **Disclosure**. Section 1.527 requires a person subject to the Act granted written consent under Division 2 to notify TDI within 30 days of certain information, including (i) a felony conviction; (ii) an administrative action taken against the person subject to the Act by a financial or insurance regulator of a state or the United States; (iii) increased job duties; (iv) administrative or other legal proceedings filed regarding her or his authorized or unauthorized insurance activities; (v) revocations and suspensions of any license or authorization, receivership, and administrative sanctions; and (vi) if written consent is revoked, suspended, terminated, granted, or altered by another regulatory official. This section is necessary because written consent granted by the commissioner is conditioned upon the person remaining in the same or similar job position with the same duties. The occurrence of the events

required to be disclosed to TDI in §1.527 requires the person subject to the Act to request a new written consent from the commissioner. This section is necessary because the commissioner considers it important that persons subject to the Act granted written consent are honest, trustworthy, and reliable.

Section 1.528 addresses **Burden of Proof**. Section 1.528 provides that the burden of proof is on the person subject to the Act to show that, although he or she has been convicted of a criminal felony involving dishonesty or a breach of trust, or an offense under the Act, circumstances, facts, and conditions are present that allow the commissioner to grant written consent. This section is necessary because the person subject to the Act is seeking affirmative relief. The person subject to the Act also has relative access to and control over information pertinent to the merits of her or his case.

Section 1.529 addresses **Revocation or Denial of Written Consent**. In §1.529(a) and (b) the commissioner developed guidelines relating to the matters that the commissioner will consider in determining whether to deny or revoke any written consent under the commissioner or TDI's jurisdiction. These matters include if the applicant moves insurance activities to another state; has a license or authorization denied, suspended, revoked, surrendered, forfeited, cancelled, terminated, or altered in Texas or another state, or by any association; is convicted of a criminal felony involving dishonesty or a breach of trust or an offense under the Act after written consent was granted; or violates the terms, conditions, or restrictions of the written consent. In addition to the factors and screening criteria considered in §1.524, the commissioner may deny a request for written consent if the individual is not a person subject to the Act as defined in §1.521 of this title; the applicant violates Division 2; Texas is not the

appropriate state to grant written consent; or the applicant's request for written consent was denied or revoked by another state. TDI may utilize the NAIC National Special Activities Database as provided under §1.522(d) of this title to share information regarding a request for written consent from a person that is not subject to Division 2, or if Texas is not the appropriate state due to a lack of regulatory interest over the applicant's proposed insurance activities, as reflected in her or his request for written consent.

Section 1.529(c) provides that if written consent is denied or revoked, TDI will send the applicant a notice setting forth a statement of legal authority and a short, plain statement of the factors pertinent to the denial or revocation. Section 1.529(d) provides that if written consent is denied or revoked, TDI will not grant a license or authorization to any person subject to the Act or permit a person subject to the Act to retain a license or authorization. This provision does not alter the statutes and rules regulating denial and revocation of a license. Section 1.529(e) provides that a person subject to the Act will have 30 days from the date of notice to make a written request for a hearing. Section 1.529(f) explains that if a written request for hearing is not made, the notice of denial or revocation will constitute a final agency decision. This section is necessary to explain that the commissioner has the discretion to determine whether to grant or deny an individual's request for written consent. It also clarifies that written consent from the commissioner is a prerequisite to retain or obtain an insurance license. The laws and regulations regarding the fitness of individuals to apply for or retain a license or authorization issued by TDI are not preempted by these rules.

Section 1.530 addresses **Hearing**. If a person subject to the Act requests a hearing, the hearing will be conducted by the State Office of Administrative Hearings. The hearing is subject to the procedures for contested cases under Government Code Chapter 2001 and Insurance Code Chapter 40.

2. FISCAL NOTE. Chris Bean, director, Agent and Adjuster Licensing, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. TDI estimates that there will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Mr. Bean also has determined that for each year of the first five years the new proposed §§1.520 – 1.530, are in effect, there are several public benefits anticipated because of the enforcement and administration of the proposal, as well as potential costs for persons required to comply with the proposal.

ANTICIPATED PUBLIC BENEFITS

The public benefits anticipated as a result of the proposal include: (i) providing a concise procedural overview to prohibited persons requesting written consent from the commissioner, including their rights to administrative review and responsibilities in providing documentation as requested in a timely manner; (ii) the opportunity for the reintroduction of rehabilitated convicted offenders into employment in the business of insurance; and (iii) providing for the exchange of information by states regarding

requests for written consent to promote efficient application processes and prevent applicants from shopping among states.

ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL

TDI anticipates that there will be probable costs to persons required to comply with several of the proposed new sections during each year of the first five years that the rules will be in effect. The total probable economic costs to individuals required to comply with the fingerprint requirement in §1.525 is approximately \$41.45 for an electronic fingerprint submission and \$51.45 for a paper fingerprint card submission for an individual fingerprinted at a law enforcement agency in Texas. An individual is required to use TDI's form for electronic fingerprint submission to TDI, available at: https://www.tdi.state.tx.us/forms/finagentlicense/FAST_form_final.pdf. There is an electronic fingerprinting processing and collection fee of \$41.45 payable to the participating vendor. The fee includes consolidated DPS and FBI records electronically processed and collected at a participating vendor and submitted to TDI on behalf of the applicant.

While TDI anticipates that most individuals in Texas will utilize the convenience and reliability offered by authorized electronic fingerprint services, an individual may choose to submit a paper fingerprint card instead of an electronic submission. Human Resources Code §80.001(b) authorizes a criminal law enforcement agency to charge an amount not to exceed \$10 for capturing fingerprints on a paper fingerprint card. Based on this information, TDI anticipates that an individual choosing to submit her or his fingerprints on a paper fingerprint card may be subject to a fingerprint collection fee of \$0.00 to \$10 charged by a criminal law enforcement agency in Texas. An individual in a

state other than Texas will be subject to the fees in the state in which they have their fingerprints captured on a paper fingerprint card, which may vary from state to state. In addition to a fee of \$41.45 charged by an authorized company processing the fingerprints on behalf of DPS, an individual must pay the fee associated with the local law enforcement agency capturing their fingerprints on a paper fingerprint card, for a total estimated cost of \$51.45 for a paper fingerprint card submission. TDI's form for paper fingerprint card submission is available at:

https://www.tdi.state.tx.us/forms/finagentlicense/FAST_CARD.pdf.

According to <http://www.traviscountyclerk.org/eclerk/Content.do?code=M.18>, certified copies in Travis County may be requested by phone, email, or in person with a \$5.00 per document charge for the certification service plus an additional cost of \$5.00 per document search. This cost will vary depending on the county in which the individual requests certified copies and the total number of pages per record.

Any additional information that must be supplied by an individual at the time of fingerprinting is minimal and TDI does not anticipate an associated cost with providing the required information. TDI anticipates that an individual should only have to submit a complete set of fingerprints under the proposed rules one time, so long as the applicant maintains a continuous authorization with TDI.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. The costs to comply will not vary between the smallest and largest businesses because individual prohibited persons are required to submit and provide all required documentation for consideration by TDI in the

granting or denying of a letter of consent. Different business models or personnel benefits offered may result in cost differences between entities. These differences, however, are a matter of choice and are not a result of the proposed rules. Although TDI does not believe that the proposed amendments will have an adverse effect on small and micro businesses, TDI considered the purpose of the applicable statutes, which is to prevent and control crime, and has determined that it is neither legal nor feasible to waive the provisions of the proposed amendments for small or micro businesses. To waive or modify the requirements of the proposed amendments for small and micro businesses would result in a disparate effect on policyholders and other persons affected by the amendments.

5. TAKINGS IMPACT ASSESSMENT. TDI 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 and, therefore, does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on November 5, 2012 to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Chris Bean, Director, Agent and Adjuster Licensing, Financial Regulation Division, MC 107-1A, P.O. Box 149104, Austin, Texas 78714-

9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

7. STATUTORY AUTHORITY. The new sections are proposed under Title 18 U.S.C. §1033(e) (Crimes by or Affecting Persons Engaged in the Business of Insurance whose Activities Affect Interstate Commerce), Occupations Code Chapter 53 (Consequences Of Criminal Conviction), Government Code Chapter 411 (Department of Public Safety of The State Of Texas), including §411.106 (Access to Criminal History Record Information: Texas Department of Insurance); §411.083 (Dissemination of Criminal History Record Information); and §411.087 (Access to Criminal History Record Information Maintained by Federal Bureau of Investigation or Local Criminal Justice Agency).

Additionally, the new sections are proposed under Insurance Code §36.001 (General Rulemaking Authority), §82.051 (Cancellation or Revocation of Authorization), §801.056 (Failure to Provide Complete Set of Fingerprints: Ground for Denial of Application), §801.101 (Department Inquiry), §4001.005 (Rules), §4001.103 (Failure to Provide Complete Set of Fingerprints: Ground for Denial of Application), and §4005.101 (Grounds for License Denial or Disciplinary Action).

Title 18 U.S.C. §1033(e)(1)(A) provides that any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under this section, and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in the

business, will be fined as provided in this title or imprisoned not more than five years, or both. Title 18 U.S.C. §1033(e)(1)(B) states any individual who is engaged in the business of insurance whose activities affect interstate commerce and who willfully permits the participation described in subparagraph (A) will be fined as provided in this title or imprisoned not more than five years, or both. Title 18 U.S.C. §1033(e)(2) provides that a person described in paragraph (1)(A) may engage in the business of insurance or participate in the business if the person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to this subsection.

Occupations Code Chapter 53 states the general procedure a licensing authority must employ when considering the consequences of a criminal record on granting or continuing a person's license, authorization, certificate, permit, or registration.

Government Code §411.106 authorizes TDI to receive criminal history information from the DPS regarding insurance company principals and officers and applicants for any entity holding or seeking a license, certificate, permit, registration, or other authorization issued by TDI to engage in a regulated activity under the Insurance Code. Government Code §§411.083 and 411.087 authorize TDI to obtain, through DPS, criminal history information from the FBI on those individuals described in Government Code §411.106.

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.

Insurance Code §82.051 provides that after notice and opportunity for a hearing, the commissioner may cancel or revoke an authorization if the holder of the authorization is found to be in violation of, or to have failed to comply with, this code or a rule of the commissioner. Insurance Code §801.056 authorizes TDI to request a complete set of fingerprints from individuals controlling an insurance company, an insurance company's corporate officers, and individual applicants for any license, permit, registration, certification, or other authorization issued by TDI to engage in a regulated activity under the Insurance Code.

Insurance Code §§801.101, 801.102, and 801.151 - 801.155 authorize the commissioner to review the fitness and reputation of officers, directors, and persons in control of insurance companies and to refuse or revoke a certificate of authority to any company based on a determination that such officer, director, or controlling person is not worthy of public confidence.

Insurance Code §4001.005 authorizes the commissioner to adopt rules necessary to implement Insurance Code Title 13.

Insurance Code §4001.103 also authorizes TDI to request a complete set of fingerprints from individual applicants for any license, permit, or other authorization issued by TDI to engage in a regulated activity under Insurance Code Title 13.

Insurance Code §4005.101 provides that TDI may deny or revoke a license to an individual licensed under Insurance Code Title 13, if that individual has been convicted of a felony or has engaged in fraudulent or dishonest activities.

8. CROSS REFERENCE TO STATUTE. Division 2 rules affect the following statutes:

18 U.S.C. §1033; Insurance Code §§82.051 - 82.053, 101.051, 823.005, 4005.101 - 4005.103, Chapter 40, Chapter 701, and Article 21.47; Occupations Code Chapter 53; and Government Code Chapter 2001.

9. TEXT.

DIVISION 1. FITNESS FOR LICENSING

§§1.501 – 1.509. (No change.)

DIVISION 2. PROCEDURES GOVERNING PERSONS SUBJECT TO 18 U.S.C. §1033 AND §1034

§1.520. Purpose and Scope.

(a) Purpose. The purpose of this division is to implement 18 United States Code §1033 and §1034 that authorize any individual who has been convicted of a criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under 18 U.S.C. §1033, to request written consent from the commissioner to engage or participate in the business of insurance in Texas. This division establishes the procedures by which TDI may obtain criminal history information and any additional documentation on applicants. To effect this implementation, TDI developed guidelines to determine the fitness of applicants. TDI considers it important that authorization holders be honest, trustworthy, and reliable.

(b) Scope. This division applies to any individual who engages or participates in the business of insurance whose activities affect interstate commerce and who has

been convicted of any criminal felony involving dishonesty or a breach of trust, or an offense under 18 U.S.C. §1033.

(c) Use of terms. As used in this division:

(1) the terms “license holder,” “licensee,” and “authorization holder” include all persons listed in §1.501(b) of this title (relating to Purpose and Application); and

(2) the terms “license” and “authorization” include all types of licenses, registrations, certificates, permits, or authorizations listed in §1.501(b) of this title.

(d) Applicability of other laws. State statutory and regulatory licensing qualifications and requirements are separate from requirements under the Act and this division. Failure to inform TDI of a prior criminal conviction on a license application could result in a violation of this division, as well as constitute grounds for denial or revocation of an insurance license. State laws limiting the ability of certain persons with criminal records to engage in the business of insurance operate independently from the Act, and are not preempted or modified by the Act.

(e) Severability. If a court of competent jurisdiction holds that any provision of this subchapter or its application to any person or circumstance is invalid for any reason, the invalidity does not affect other provisions or applications of this subchapter that can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable.

§1.521. Definitions. The following words and terms, when used in this division, have the following meanings, unless the context clearly indicates otherwise:

(1) Act--The Violent Crime Control and Law Enforcement Act of 1994,
Title 18 United States Code (U.S.C.) §1033 and §1034.

(2) Applicant--Any person subject to the Act requesting written consent.

(3) Business of insurance--

(A) as defined in 18 U.S.C. §1033, means:

(i) the writing of insurance;

(ii) the reinsuring of risks;

(iii) all acts necessary or incidental to such writing or
reinsuring; and

(iv) the activities of persons who act as, or are, officers,
directors, agents, or employees of insurers, or who are other persons authorized to act
on behalf of such persons; and

(B) acts provided in Insurance Code §101.051.

(4) Commissioner--The commissioner of insurance or her or his designee.

(5) Control--As defined in Insurance Code §823.005.

(6) Criminal felony involving dishonesty or a breach of trust--A felony
offense with elements of:

(A) any type of fraud, including insurance fraud, mail fraud,
mortgage fraud, Medicare fraud, land fraud, tax fraud, securities fraud, and criminal
fraud;

(B) counterfeiting or passing counterfeit money;

(C) bribery and bribe receipt;

(D) any crime involving false pretenses;

(E) money laundering;

(F) extortion;

(G) forgery or any crime involving the falsification of documents;

(H) embezzlement;

(I) criminal impersonation;

(J) fraudulent conveyance of property;

(K) fraudulent use of credit or debit card;

(L) knowingly issuing a bad check;

(M) any crime involving the making or utterance of a false

statement;

(N) perjury and subornation of perjury;

(O) knowingly possessing a forged instrument;

(P) knowingly receiving or possessing stolen property;

(Q) theft by deception;

(R) witness or evidence tampering; or

(S) crimes of financial exploitation.

(7) Domestic--A commercially domiciled insurer as defined in Insurance

Code §823.004 or an entity organized under the laws of Texas.

(8) Insurer--As defined in 18 U.S.C. §1033(f)(2).

(9) Interstate commerce--As defined in 18 U.S.C. §1033(f)(3).

(10) Offense under the Act--As defined in 18 U.S.C. §1033, including:

(A) knowingly, with the intent to deceive, making any false material statement or report or willfully and materially overvaluing any land, property, or security

in connection with any financial reports or documents presented to any regulatory official or agency for the purposes of influencing the actions of that official, agency, or appointed agent or examiner;

(B) willfully embezzling, abstracting, purloining, or misappropriating any of the money, funds, premiums, credits, or other property of any person engaged in the business of insurance;

(C) knowingly making any false entry of material fact in any book, report, or statement with intent to deceive any person about the financial condition or solvency of a business;

(D) corruptly influencing, obstructing, or impeding, or endeavoring corruptly to influence, obstruct, or impede the due and proper administration of the law, by threats or force or by any threatening letter or communication under which any proceeding is pending before any insurance regulatory official or agency.

(11) Person subject to the Act--Any individual who has been convicted of a criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under the Act, who intends to engage or participate in the business of insurance in Texas, whose activities affect interstate commerce. This includes an individual who is engaged or participating in the business of insurance in Texas and who:

(A) is, becomes, or has responsibilities similar to a principal, partner, officer, owner, director, or controlling shareholder of a domestic insurer;

(B) is a person in control of a domestic entity;

(C) is a domestic limited liability company member, manager, or consultant;

(D) is an employee, solicitor, broker, consultant, subcontractor, independent contractor, actuary, reinsurer, or underwriter for a domestic insurer or resident licensee;

(E) is an applicant for, or holder of, any type of license, registration, certification, permit, or authorization that TDI may deny or revoke; or

(F) does not have written consent from any regulatory official authorized to regulate the insurer.

(12) Request for written consent--A completed request for written consent form submitted to TDI by a person subject to the Act.

(13) TDI--The Texas Department of Insurance

(14) Written consent--The commissioner's granting of authorization for a person subject to the Act to engage or participate in the business of insurance in Texas.

§1.522. Written Consent Required.

(a) Written consent required. A person subject to the Act must not engage or participate in the business of insurance in Texas without written consent from the commissioner. Any person subject to the Act who intends to engage or participate in the business of insurance in Texas must submit to TDI a request for written consent. TDI has the sole discretion to determine whether Texas is the appropriate state for a person subject to the Act to request written consent.

(b) Licensees subject to the Act. A person subject to the Act must be granted written consent from the commissioner to retain a license or authorization, and before any new or renewal license or authorization will be issued.

(c) Restriction of action. Nothing in this division may be construed to permit a person subject to the Act to engage or participate in the business of insurance while that individual is applying for written consent from the commissioner.

(d) Sharing of information with other states. TDI may share information and materials with other states and agencies in accord with procedures established by the NAIC National Special Activities Database for the sharing of information pertaining to requests for written consent under the Act.

§1.523. Insurer Responsibility Under the Act. Title 18 U.S.C. §1033(e)(1)(B) provides that any individual who is engaged in the business of insurance whose activities affect interstate commerce and who willfully permits a person subject to the Act to engage or participate in the business of insurance without written consent may be in violation of the Act. It is the responsibility of persons authorizing anyone to conduct the business of insurance not to willfully permit a person subject to the Act to engage or participate in the business of insurance without written consent.

§1.524. Request for Written Consent.

(a) Request for written consent form. A request for written consent form is available online at <http://www.tdi.texas.gov/forms/> and by mail from the Texas Department of Insurance, Agent and Adjuster Licensing, Financial Regulation Division,

MC 107-1A, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas 78701.

(b) Submission of request. A person subject to the Act may request written consent by completing and submitting a request for written consent form as provided in paragraphs (1) and (2) of this subsection.

(1) The request for written consent form may be submitted by mail to the Texas Department of Insurance, Agent and Adjuster Licensing, Financial Regulation Division, MC 107-1A, P.O. Box 149104, Austin, Texas, 78714-9104.

(2) Upon TDI's making available the Request for Written Consent Form in a format that may be completed and submitted online, an applicant may submit the request in this manner.

(c) Assistance. Assistance with submitting a request for written consent form is available by calling Agent and Adjuster Licensing at 512-322-3503.

(d) Screening criteria. A person subject to the Act requesting written consent from the commissioner under this section must submit to TDI a signed and notarized application on a form prescribed and provided by TDI, and include, as part of or in connection with the application, the following information:

(1) name, official and business mailing addresses, and social security number of the applicant and any other names and social security numbers used by the applicant and dates of such use;

(2) place and date of birth. If the applicant was not born in the United States, the date of first entry and port of entry, whether he or she is a citizen of the

United States, and if naturalized, when, where, and how he or she became naturalized.

The number of the Certificate of Naturalization must be provided:

(3) names of any relatives by blood or marriage who are currently serving in any capacity in the same business of insurance or with any sponsoring insurer;

(4) history of employment and business associations, including any military service, in chronological order;

(5) professional licenses or authorizations presently held or held at any date in the past relating to the business of insurance, including as a producer, agent, broker, solicitor, or third-party administrator;

(6) whether the applicant has ever had a consumer complaint, administrative, or other legal proceeding filed regarding her or his authorized or unauthorized insurance activities. This includes a list of all revocations and suspensions of any license or authorization, receivership, and administrative sanctions;

(7) the applicant's current or proposed job description and insurance activities, as well as the name and address of the current or proposed sponsoring insurer, agency officer, or employer, to which the request for written consent will apply, supported by an affidavit from the insurer's or agency president (or her or his lawfully delegated designee) stating that: the applicant will only perform those insurance activities as fully described in the application, the application is to the best of her or his knowledge true and correct, and the applicant will not be placed in a position in which the person's activities will constitute a risk or threat to insurance consumers or the insurer;

(8) a life-long listing by date and place of all arrests together with a statement of the circumstances of each violation which led to each arrest. Also list by date and place all convictions for felonies, misdemeanors, or offenses and all imprisonment or jail terms, together with a statement of the circumstances of each violation which led to each conviction;

(9) whether the applicant has received a full pardon or other type of pardon from any conviction;

(10) a statement of the details of any conviction for a criminal felony involving dishonesty or a breach of trust, or any offense under the Act. This includes the date of each offense, applicant's age at the date of each offense, and the time that has since elapsed;

(11) names and location of all insurers, together with a description of the activities performed for each insurer, for which the person subject to the Act has:

(A) been appointed to act as an agent, advised, represented, or in any manner worked for;

(B) engaged or participated in an act necessary or incidental to the business of insurance, including any activity or act as an officer, director, agent, or employee of an insurer, or as a person authorized to act on behalf of such persons;

(12) whether the applicant has ever applied for written consent from any other state, and if so, the outcome of that preceding, the state's determination, and all supporting documentation;

(13) a full explanation of the reasons or grounds the applicant's insurance activities for which written consent is sought will not be contrary to the intent and

purpose of 18 U.S.C. §1033, and thus will not pose a risk or threat to insurance

consumers or the insurer;

(14) the bearing, if any, the criminal offense or offenses will have on the applicant's fitness or ability to perform one or more of the duties, activities, or responsibilities presented on the application;

(15) whether the applicant has made full payment of outstanding court costs, supervision fees, fines, and restitution concerning the offense or offenses;

(16) whether there exists any evidence of mitigating or extenuating circumstances surrounding the applicant's commission of the offense or offenses;

(17) what evidence exists of the applicant's rehabilitation;

(18) character endorsements, letters, or other forms of statement addressed to the commissioner, attesting to the character and reputation of the applicant. The statements as to character should indicate the length of time the writer has known the applicant and should describe the applicant's character traits as they relate to the employment, position, or activities for which written consent is sought and the duties and responsibilities thereof. The statement as to reputation should attest to the applicant's reputation in her or his community, circle of business, or social acquaintances. The statement must state that the reference is being provided in connection with a request for written consent to engage or participate in the business of insurance despite the existence of a conviction of a criminal felony involving dishonesty or a breach of trust, or an offense under the Act; and

(19) any other information the applicant believes will assist the commissioner in determining whether to grant written consent.

(e) Serious nature of criminal offense. The commissioner will not grant a request for written consent if the applicant has been convicted of a criminal felony involving dishonesty or a breach of trust, or an offense under the Act unless the commissioner finds that the matters set out in subsection (f) of this section outweigh the serious nature of the criminal offense when viewed in light of the applicant's occupation.

(f) Factors considered.

(1) The commissioner will consider the factors specified in 18 U.S.C. §1033, Occupations Code §53.022 and §53.023, §1.502 of this title (relating to Licensing Persons with Criminal Backgrounds), and mitigating and aggravating circumstances, in determining whether to grant a request for written consent to a person subject to the Act listed in §1.501(b) of this title (relating to Purpose and Application).

(2) For persons who are not applicants for, or holders of, a license or authorization issued by TDI, or a person listed in §1.501(b) of this title, the commissioner will consider the following factors in determining whether the applicant's conviction of a criminal felony involving dishonesty or a breach of trust directly relates to the duties and responsibilities of the applicant's occupation:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requesting written consent to engage in the occupation;

(C) the extent to which written consent 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 occupation.

(3) In addition to the factors listed in paragraph (1) and (2) of this subsection, the commissioner will consider the following evidence in determining the fitness to perform the duties and discharge the responsibilities of the occupation of a person who has been convicted of a criminal felony involving dishonesty or a breach of trust, or an offense under the Act:

(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 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 efforts 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 subparagraphs (A) through (F) of this subsection, an applicant must also furnish proof that the applicant has:

(i) maintained of a record of steady employment;
(ii) supported the applicant'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.

(4) In addition to the factors listed in paragraphs (1), (2), and (3) of this subsection, the commissioner will consider the following factors in determining whether the applicant poses a risk or threat to insurance consumers or the insurer:

(A) whether and to what extent the person has made a material false statement in an application, renewal, or other documents filed with the commissioner; and

(B) whether and to what extent the person has made material false statements in applications or other documents filed with other state or federal agencies.

(g) Requirement to provide information. It will be the responsibility of the person subject to the Act to secure and provide to TDI the information and documentation required by subsection (d) of this section.

§1.525. Requirement to Provide Fingerprints and Documents.

(a) Submission of documents. An applicant must submit all requested information to TDI within 30 days of the date TDI mails a request for additional information, including any requested additional documents, certified copies of all court documents, and fingerprints.

(1) If an applicant fails to submit all requested information as provided in this section, TDI will submit a written notice of deficiency to the applicant which sets out the specific additional information required for completion. After one written notice of deficiency has been issued, another is not required.

(2) TDI may deny or deem incomplete any request for written consent that is not complete within 180 days of the date TDI mails the written notice of deficiency, and TDI may:

(A) close a pending request for written consent and application files for a license or authorization; and

(B) take actions available under Insurance Code §§82.051 - 82.053 and §§4005.101 - 4005.103.

(b) Fingerprint requirement. In the manner described in §1.509 of this title (relating to Fingerprint Format and Complete Application), an applicant must, at or near the same time that he or she sends her or his request for written consent, also send:

(1) a complete set of the individual's fingerprints;

(2) full payment for all processing fees charged by the Texas Department of Public Safety and the Federal Bureau of Investigation; and

(3) all additional identifying information required by the Texas Department of Public Safety and the Federal Bureau of Investigation for processing fingerprints.

(c) Confidentiality, format, use, and application of fingerprint requirement. Except as otherwise provided, the procedures and requirements for fingerprint application, format, use, and confidentiality in Division 1 of this subchapter (relating to Fitness for Licensing) apply to persons subject to the Act requesting written consent.

§1.526. Effect of False or Misleading Statements. Any written consent granted by the commissioner will be conditioned upon the truth and veracity of the documents and information submitted by or on behalf of the person subject to the Act. If TDI determines that the person subject to the Act, or her or his representative, has made false or misleading statements, or has failed to disclose information, the commissioner may deny the request for written consent or revoke the written consent. TDI's Fraud Section will make an independent determination whether TDI should pursue an investigation of fraudulent insurance acts under the Insurance Code or these rules, or whether referral to another law enforcement agency or federal prosecutor should be made.

§1.527. Disclosure. A person subject to the Act granted written consent under this division must notify TDI within 30 days of a felony conviction, an administrative action taken against the person subject to the Act by a financial or insurance regulator of a state or the United States, increased job duties, and administrative or other legal proceedings filed regarding her or his authorized or unauthorized insurance activities. This includes revocations and suspensions of any license or authorization, receivership, and administrative sanctions. If written consent is revoked, suspended, terminated,

granted, or altered by another regulatory official, the person subject to the Act is required to submit written notification and all supporting documentation to TDI immediately.

§1.528. Burden of Proof. The burden of proof is on the person subject to the Act to show that, although he or she has been convicted of a criminal felony involving dishonesty or a breach of trust, or an offense under the Act, circumstances, facts, and conditions are present that allow the commissioner to grant the request for written consent. The person subject to the Act is not entitled as a matter of right to be granted written consent.

§1.529. Revocation or Denial of Consent.

(a) Revocation. TDI may revoke any written consent that it has issued and may notify the Fraud Section of TDI if the applicant:

(1) moves insurance activities to another state;

(2) has a license or authorization denied, suspended, revoked, surrendered, forfeited, cancelled, terminated, or altered in Texas or another state, or by any association;

(3) is convicted of a criminal felony involving dishonesty or a breach of trust or an offense under the Act after written consent was granted;

(4) violates the terms, conditions, or restrictions of the written consent; or

(5) violates this division.

(b) Denial. In addition to the factors and screening criteria considered in §1.524 of this title (relating to Request for Written Consent), the commissioner may deny a request for written consent for the following reasons, including if:

(1) the applicant is not a person subject to the Act as defined in §1.521 of this title (relating to Definitions);

(2) the applicant violates this division;

(3) TDI determines that Texas is not the appropriate state for the applicant to request written consent; or

(4) the applicant's request for written consent was denied or revoked by another state.

(c) Written notice. If the commissioner determines that the request for written consent should be denied or the written consent should be revoked, TDI will issue a notice setting forth a statement of legal authority and a short, plain statement of the factors pertinent to the denial or revocation.

(d) Effect of denial or revocation. TDI will not grant a license or authorization to any person subject to the Act or permit a person subject to the Act to retain a license or authorization if the commissioner has denied a request for written consent or revoked the written consent.

(e) Request for hearing. The person subject to the Act will have 30 days from the date of notice to make a written request for a hearing.

(f) Final agency decision. If a written request for hearing is not made, the notice of denial or revocation will constitute a final agency decision.

§1.530. Hearing. If a person subject to the Act requests a hearing, the hearing shall be conducted by the State Office of Administrative Hearings. The hearing is subject to the procedures for contested cases under Government Code Chapter 2001 and Insurance Code Chapter 40.

10. 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 at Austin, Texas, on September 19, 2012.



Sara Waitt, General Counsel
Texas Department of Insurance