SUBCHAPTER E. Examinations and Annual Reports
28 TAC §25.88

1. INTRODUCTION. The Texas Department of Insurance adopts amendments to §25.88, concerning an assessment which will be used to cover the general administrative expenses of the department's regulation of insurance premium finance companies. The amendments are adopted without changes to the proposed text published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9464).

2. REASONED JUSTIFICATION. The amendments are necessary to adjust the rate of assessment to ensure that there are sufficient funds to meet the expenses of performing the department's statutory responsibilities for examining, investigating, and regulating insurance premium finance companies. Under §25.88, the department levies a rate of assessment to cover the department's general administrative expenses for fiscal year 2013.

The following paragraphs provide an explanation of the methodology the department used to determine its assessments for insurance premium finance companies for 2013.

In general, the department's 2013 revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; the department's self-directed budget account, as established pursuant to the Insurance Code §401.252; and premium finance exam assessments) is determined by calculating

the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2012.

To determine its total cost need, the department combined costs from the following: (i) appropriations set out in Chapter 1355 (H.B. 1), Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by the Insurance Code Subchapters D and F of Chapter 401 as approved by the commissioner for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the 2013 fiscal year until the next assessment collection period in 2014. From these combined costs, the department subtracted costs attributable to the Division of Workers' Compensation and the workers' compensation research and evaluation group.

The department determined how to allocate the revenue need to be attributed to each funding source using the following method:

For each section within the department that provides services directly to the public or the insurance industry, the department allocated the costs for providing those

direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the examination assessment, the self-directed budget account as limited by the Insurance Code §401.252, or another funding source.

The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated a percentage for each funding source by dividing the total directly allocated to each funding source by the total of the direct cost. The department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the commissioner's administration, and information technology. The department calculated the total of direct costs and administrative support costs for each funding source.

In regard to premium finance company examinations, the department's examination division based its current allocation on the number of hours market conduct staff performs examinations on the premium finance companies. In previous years, the department's examination based its allocation methodology for premium finance company examinations on a pro rata share of the total number of examinations. This change in the cost allocations reduced the revenue need for premium finance company examinations significantly.

To complete the calculation of the revenue need, the department combined the costs allocated to the premium finance assessment source and the self-directed source

attributable to regulation of premium finance insurance companies. The department subtracted the fiscal year 2013 estimated amount of premium finance fee revenue and the estimated combined 2012 ending funding balance of the premium finance assessment source and the self-directed budget account attributable to premium finance from the amount of the combined costs for regulation of premium finance insurance companies. The resulting balance was the amount of revenue need for the purpose of calculating the premium finance assessment rate. The department divided the revenue need by the estimated loan dollar volume to determine the proposed rate of assessment for premium finance insurance companies. Based on this, the department determined that the estimated revenue need requires the collection of the minimum assessment amount of $250 from each insurance premium finance company.

The following paragraphs provide a brief summary and analysis of the reasons for the adopted amendments.

The department amends the first sentence of the section to update the reference to the year in the section to 2013.

The department amends the third sentence of the section to update the rate of assessment to the level necessary for 2013. Additionally, the department deletes paragraphs (1) and (2) of the section because the way the assessment is structured for 2013 does not necessitate subdivisions within the section.

Finally, the department amends the first and second sentences of the section for consistency with current department rule drafting style. In the first sentence, the department changes the words “on or before” to “no later than.” In the first and second

sentences of the section, the department changes the word "shall" to "must" in each place that it appears.

3. HOW THE SECTION WILL FUNCTION. Under §25.88, the department levies a rate of assessment to cover the department's general administrative expenses for fiscal year 2013.

The first sentence of §25.88 as amended specifies that no later than April 1, 2013, each insurance premium finance company holding a license issued by the department under the Insurance Code Chapter 651 must pay an assessment to cover the general administrative expenses attributable to the regulation of insurance premium finance companies. The second sentence of §25.88 provides that insurance premium finance companies must send payment to the department at the address shown in the section. The third sentence of §25.88 indicates that the assessment to general administrative expenses is $250.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE. The Department did not receive any comments on the published proposal.

5. STATUTORY AUTHORITY. The amendments are adopted under the Insurance Code §§201.001(a)(1), (b), and (c); 651.003; 651.005(b); 651.006(a); and 36.001.

The Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the

account includes taxes and fees received by the commissioner or comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) states that the commissioner must administer money in the Texas Department of Insurance operating account and may spend money from the account in accord with state law, rules adopted by the commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

The Insurance Code §651.003 authorizes the commissioner to adopt and enforce rules necessary to administer the Insurance Code Chapter 651.

The Insurance Code §651.005(b) requires that the department deposit an assessment or fee associated with examination costs, as defined by §401.251, to the account described by §401.156(a).

The Insurance Code §651.006(a) requires each insurance premium finance company licensed by the department to pay an amount imposed by the department to cover the direct and indirect costs of examinations and investigations and a proportionate share of general administrative expenses attributable to regulation of insurance premium finance companies.

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

6. TEXT.

§25.88. General Administrative Expense Assessment. No later than April 1, 2013, each insurance premium finance company holding a license issued by the department under the Insurance Code Chapter 651 must pay an assessment to cover the general administrative expenses attributable to the regulation of insurance premium finance companies. An insurance premium finance company must send payment to the Texas Department of Insurance, Financial, TPA/Premium Finance, Mail Code 999, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78701-9104. The assessment to cover general administrative expenses is $250.

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

Issued at Austin, Texas, on January 7, 2013.

Sara Waitt
General Counsel
Texas Department of Insurance

The commissioner adopts §25.88.

Eleanor Kitzman
Commissioner of Insurance

Commissioner's Order No. 2179
JAN 09 2013