

SUBCHAPTER E. Examinations and Annual Reports
28 TAC §25.88

1. INTRODUCTION. The Texas Department of Insurance proposes 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 proposed 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 2012 and collects the assessment from each insurance premium finance company on the basis of a percentage of the company's total loan dollar volume for the 2011 calendar year.

The Department proposes an amendment in the first sentence of the section to update the reference to the year in the section to 2012. The Department also proposes an amendment in the first sentence of the section to remove an unnecessary comma.

The Department proposes an amendment in the second sentence of the section to change the sentence from passive to active voice. The Department also proposes an amendment in the second sentence of the section to update the address to which insurance premium finance companies should send payment under the section.

The Department proposes an amendment in paragraph (1) of the section to change the wording in the sentence in paragraph (1) from passive to active voice. The Department also proposes an amendment in paragraph (1) to update the rate of

assessment to the level necessary for 2012. Additionally, the Department proposes an amendment in paragraph (1) to update a reference to the year from which data is used to 2011.

Finally, the Department proposes an amendment in paragraph (2) of the section to revise the wording to reflect the wording change proposed in paragraph (1).

Explanation of methodology used to determine exam overhead assessments for 2012

In general, the Department's 2012 revenue need (the amount that must be funded by maintenance taxes or fees, examination overhead assessments, 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 remaining from fiscal year 2011.

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) an estimate of other costs statutorily required to be paid from those two funds, such as fringe benefits and statewide allocated costs; (iii) an estimate of the cash amount necessary to finance both funds from the end of the 2012 fiscal year until the next assessment collection period in 2013; and (iv) costs associated with implementation of Senate Bill 1291, 82nd Legislature, Regular Session, effective September 1, 2011 (SB 1291), which requires

the creation of an account with the Texas Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses.

To complete the calculation of revenue need, the Department reduced the total cost need by subtracting the estimated ending fund balance for fiscal year 2011 (August 31, 2011) and estimated fee revenue to be collected in fiscal year 2012. The resulting balance is the estimated revenue need that must be supported during the 2012 fiscal year by the following funding sources: the maintenance taxes or fees, exam overhead assessments, and premium finance exam assessments.

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, 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.

The Department subtracted the fiscal year 2012 estimated amount of premium finance fee revenue from the amount of the total costs for the premium finance funding source. The resulting balance was the amount of premium finance 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.

2. FISCAL NOTE. Joe Meyer, Assistant Chief Financial Officer, has determined that for the first five-year period the proposal will be in effect, the expected fiscal impact on state government is estimated income of \$271,196 to the state's general revenue fund. There will be no fiscal implications for local government as a result of enforcing or administering the proposed section, and there will be no effect on local employment or local economy.

3. PUBLIC BENEFIT/COST NOTE. Mr. Meyer also has determined that for each year of the first five years the proposed amended section is in effect, the public benefit expected as a result of enforcing the section will be sufficient funds to cover the Department's expenses for regulating insurance premium finance companies.

There are two components of costs for entities required to comply with the proposal: the cost to gather the information, calculate the assessment, and complete the required forms; and the cost of the assessment.

The actual cost of gathering the information required to fill out the form, calculate the assessment, and complete the form will be the same for micro, small and large businesses. Generally, a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. Such persons are similarly compensated by micro, small and large insurance premium finance companies. The compensation is generally between \$23 – \$34 an hour. The Department estimates that, regardless of whether the company is micro, small, or large, the required form can be completed in two hours.

The requirement to pay the assessment is the result of the legislative enactment of the statute that imposes the assessment and is not a result of the adoption or enforcement of this proposal.

There is no difference in proposed rates of assessment for micro, small and large businesses. The cost of the assessment to a premium finance company in 2012, regardless of whether the company is micro, small, or large, will be .01011 of 1.0 percent of calendar year 2011 total loan dollar volume of the insurance premium finance company. The minimum assessment cost under the section is \$250.

The Department, after considering the purpose of the authorizing statute, does not believe it is legal or feasible to waive or modify the statutorily mandated requirements of the proposal for small and micro businesses.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by the Government Code §2006.002(c), the Department has determined that the proposal may have an adverse

economic effect on approximately 107 – 128 licensed insurance premium finance companies that are small or micro businesses required to comply with the proposed rules. Adverse economic impact may result from costs associated with the amount of the required examination fee resulting from this proposal. The cost of compliance will not vary between large businesses and small or micro businesses, and the Department's cost analysis and resulting estimated costs in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro businesses. The total cost of compliance to large businesses and small or micro businesses is not dependent upon the size of the business, but rather is dependent upon the total loan dollar volume of the insurance premium finance company.

In accordance with the Government Code §2006.002(c-1), the Department has considered other regulatory methods to accomplish the objectives of the proposal that will also minimize any adverse impact on small and micro businesses.

The primary objective of the proposal is to promulgate a rule addressing the rate of assessment to cover the Department's statutory responsibilities for examining, investigating, and regulating insurance premium finance companies in 2012.

The other regulatory methods considered by the Department to accomplish the objectives of the proposal and to minimize any adverse impact on small and micro businesses include: (i) not adopting the proposed rule, (ii) adopt different assessment for small and micro businesses, and (iii) exempt small and micro businesses from the assessment requirements.

Not adopting the proposed rule. The impact of not adopting a rule would be that the Department would not be able to collect the necessary funds to cover the

examination function of the Department. The purpose of conducting examinations is to monitor the activities and solvency of premium finance companies. Failure of the Department to perform its examination functions could result in public harm if an insurance premium finance company was to cease compliance with the Insurance Code or become insolvent and this was not detected because of the lack of regular examinations. Not adopting the rule would also result in premium finance companies being out of compliance with the Insurance Code §651.006, which requires a licensed insurance premium finance company to pay an amount that covers the direct and indirect costs of an examination or investigation and a proportionate share of the general administrative expense attributable to the regulation of licensed insurance premium finance companies. For these reasons, this option has been rejected.

Adopt different assessment for small and micro businesses. The proposed assessment is already based on the most equitable methodology the Department can develop. The Department applies an assessment methodology that results in a smaller assessment, down to the minimum assessment of \$250 required by the current rule and required by previous versions of the rule extending back to its initial adoption in 1995, for small or micro businesses because the assessment is determined based on loan dollar volume. The Department anticipates that a small or micro business that would be most susceptible to economic harm would be one that has a lower loan dollar volume. However, based upon the proposed rule, such a small or micro business would pay a smaller assessment, thereby reducing its risk of economic harm. For these reasons, this option has been rejected.

Exemption of small and micro businesses from the assessment requirements.

As previously noted, the current methodology used to develop the proposed amendments is already the most equitable that the Department can develop. The Department applies an assessment that contemplates a small or micro business paying less of an assessment if it has a lower loan dollar volume, thereby reducing its risk of economic harm. However, if the assessment were completely eliminated for small or micro businesses, TDI would need to completely revise its calculations to shift costs to other insurers and entities, which would result in a less balanced methodology. For these reasons, this option has been rejected.

5. 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, and, therefore, does not constitute a taking or require a takings impact assessment under the 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 January 3, 2012 to Sara Waitt, Acting General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be simultaneously submitted to Joe Meyer, Assistant Chief Financial Officer, Financial Services, Mail Code 108-3A, Texas Department of Insurance, 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, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, 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 amendments are proposed under the Insurance Code §§201.001(a)(1), (b), and (c); 651.003, 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 shall administer money in the Texas Department of Insurance operating account and may spend money from the account in accordance 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 §651.006(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.

8. CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal:

Rule	Statute
28 TAC §25.88	Insurance Code §§201.001(a)(1), (b), and (c); 651.003, and 651.006(a)

9. TEXT.

§25.88. General Administrative Expense Assessment. On or before April 1, 2012 [~~2006~~], each insurance premium finance company holding a license issued by the department under the Insurance Code[;] Chapter 651, shall pay an assessment to cover the general administrative expenses attributable to the regulation of insurance premium finance companies. An insurance premium finance company [~~Payment~~] shall send payment [~~be sent~~] to the Texas Department of Insurance, Financial, TPA/Premium Finance [~~Examinations Division~~], Mail Code 999 [~~#305-2E~~], 333 Guadalupe, P.O. Box 149104, Austin, Texas 78701-9104. The assessment to cover general administrative expenses shall be computed and paid as follows.

(1) The amount of the assessment is [~~shall be computed as~~] .01011 [~~-.00337~~] of 1.0 percent [%] of the total loan dollar volume of the company for calendar year 2011 [~~2005~~].

(2) If the amount of the assessment required by [~~computed under~~] paragraph (1) of this section is less than \$250, the amount of the assessment shall be \$250.