

CHAPTER 1. GENERAL ADMINISTRATION
SUBCHAPTER E. NOTICE OF TOLL-FREE TELEPHONE NUMBERS
AND PROCEDURES FOR OBTAINING INFORMATION
AND FILING COMPLAINTS
28 TAC §1.603

1. INTRODUCTION. The Texas Department of Insurance proposes amendments to 28 TAC §1.603 to establish the method of submitting policy count information for the purpose of complying with Insurance Code §521.052.

Texas Insurance Code §521.052 requires TDI to provide consumers with complaint ratios. The ratios must represent the number of “justified, verified as accurate, and documented as valid” complaints received against a company, “expressed as a percentage of the total number of insurance policies written by the insurer and in force on December 31 of the preceding year.” To satisfy this mandate, TDI must collect policy count information of in-force coverage of Texas risks.

TDI has historically collected the policy count information required for the purposes of complying with Insurance Code §521.052 through an annual bulletin to “All Licensed Carriers, Eligible Surplus Lines Companies, and Health Maintenance Organizations Authorized or Eligible to do Business in Texas.” The bulletin provides links to a form and instructions for making the filing. Making the requirement part of the annual report process and checklist will be more efficient for insurers and TDI than continuing with the bulletin based process.

The proposed policy count exhibit form and instructions are adopted by reference and are substantively the same as those used in prior years by TDI. Bracketed information in the policy count exhibit form and instructions, such as

the current year, prior year, and contact information, is subject to change over time, but does not change the substantive requirement to submit the policy count information. Following adoption, the forms will be referenced in TDI's annual statement checklist.

The policy count exhibit form requires the submitting individual's name, title, telephone and fax numbers, and email address. The individual may elect to allow release of their email address in response to a public information request. In addition the policy count form requires the entity's name, address, and TDI license number and policy count information by individual and group coverage and line of coverage, including life; annuities; Medicare supplement/select; all other health and accident; personal motor vehicle; commercial motor vehicle; dwelling; workers' compensation; and other property, casualty, surety and/or title. The lines are defined on the instruction form. Because the number of outstanding title insurance policies is difficult to determine, TDI will continue to use the method of determining a policy count that was used in the bulletins and require the submitting carrier to enter the total number of policies written during the preceding five calendar years.

The proposed policy count exhibit form and instructions are available for inspection on TDI's website at www.tdi.texas.gov/rules/2016/index.html and in the Compliance Division of the Texas Department of Insurance, William P. Hobby Jr. State Office Building, Tower Number I, 333 Guadalupe, Austin, Texas.

The amendments to §1.603 also make nonsubstantive changes in the text to reflect TDI style guidelines.

2. FISCAL NOTE. Mark Einfalt, deputy commissioner of the Compliance Division, has determined that, for each of the first five years the amended section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections, and there will be no effect on local employment or the local economy.

3. PUBLIC BENEFIT/COST NOTE. Mr. Einfalt also determined that for each of the first five years the amended sections are in effect, the public benefit of the amendments to §1.603 will be greater certainty and efficiency fulfilling the requirements to determine the complaint ratios under Insurance Code §521.052 and avoidance of the use of TDI's resources to engage in unnecessary issuing and tracking of compliance with the prior bulletin process.

Costs related to providing policy count information result from Insurance Code §521.052 and not this proposal. This is because the policy count information is necessary to complete the complaint ratio calculation, and it is not available from any other source. Further, the proposal does not substantively change the means by which insurers have been collecting and submitting policy count information under Insurance Code §521.052.

To the extent that additional costs result from preparing and submitting the policy count exhibit form under this proposal, TDI expects these costs to be minimal. The costs would result from personnel gathering the policy count information, preparing the form, and submitting the form. The costs would vary

for many reasons, including size of the insurer and its administrative structure.

While it is not feasible to determine the actual cost of preparing and submitting the policy count exhibit form for each insurer, TDI has provided factors that will generate costs under this proposal.

TDI estimates personnel costs would involve administrative and management personnel. The reporting insurer may choose to comply using its employees or third party contractors. It is not feasible for TDI to determine the actual employee costs for each reporting insurer. However, the United States Department of Labor, Bureau of Labor Statistics' May 2015, Occupational Employment Statistics report indicates that the hourly mean wages for the professions in Texas, as referenced in this cost analysis, are \$26.59 for office and administrative workers (www.bls.gov/oes/CURRENT/oes431011.htm), and \$61.99 for general and operations managers (www.bls.gov/oes/CURRENT/oes111021.htm). It is not feasible for TDI to estimate the cost for hiring contract labor to fulfill these roles. The method of compliance and ultimate cost of compliance is a business decision of the reporting insurer, not a requirement of this proposal.

TDI estimates that there are no measurable additional costs in the actual submission of the electronic form over the internet.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY

ANALYSIS FOR SMALL AND MICRO BUSINESSES. Under Government Code §2006.002(c), before adopting a rule that may have an adverse economic effect

on small or micro businesses, an agency is required to prepare, in addition to an economic impact statement, a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule.

Section 1.603(d) establishes a procedure to submit policy count information that is required to complete percentage complaint ratio Insurance Code §521.052(a)(1). TDI has determined the proposal may effect approximately 117 insurers and HMOs that are small or micro businesses required to comply with the proposed rules.

Section 2006.002(c)(2) requires a state agency, before adopting a rule that may have an adverse economic effect on small businesses, to prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Government Code §2006.002(c-1) requires that the regulatory flexibility analysis, "consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses." An agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro-businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

Insurance Code §521.051 requires TDI to maintain a toll-free number for the purpose of providing the public with the information listed in Insurance Code §521.052 and to receive and aid in resolving complaints against insurers. TDI is

required to calculate and provide the complaint ratio that must be provided to the public under Insurance Code §521.052. Other information required to be provided under Insurance Code §521.052 includes the rating of an insurer, if any, as published by a nationally recognized rating organization; the kinds of coverage available to a consumer through any insurer writing insurance in this state; an insurer's admitted assets-to-liabilities ratio; and other appropriate information collected and maintained by TDI.

In enacting Insurance Code §521.051 and §521.052 the legislature has stated the public policy of the state of Texas and that the information is necessary to the public economic welfare involved in the purchase of insurance. These sections are not limited by the size of the insurer, but are to provide information for the benefit and the protection of the interests of all policyholders, enrollees, and members, and the public generally.

Reporting policy count information under §1.603(d) is necessary to calculate the complaint ratio that must be provided to the public under Insurance Code §521.052. Although, TDI has determined that the costs to gather and submit the policy count information under proposed §1.603(d) will have an adverse economic effect on the small or micro business carriers, this information is only available from the insurer and TDI is not aware of an alternative source of collecting the information.

TDI has determined, in accord with Government Code §2006.002(c-1), that because the purpose of §1.603(d) and the authorizing statutes of the Insurance Code is to protect the public's economic welfare, there are no feasible

additional regulatory alternatives to the proposal that will sufficiently protect the economic interests of the public. Therefore, TDI is not required to consider alternative methods of achieving the purpose of these requirements in the proposed rule as required by Government Code §2006.002(c).

5. TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. TDI invites the public and affected persons to comment on this proposal. Submit your written comments on the proposal no later than 5 p.m., Central time, on November 28, 2016. Send written comments by mail to the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, or by email to chiefclerk@tdi.texas.gov. You must simultaneously submit an additional copy of the comments by mail to Valerie Brown, Director, Regulatory Projects, Consumer Protection, MC 111-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, or by email to Valerie.Brown@tdi.texas.gov. You must submit any request for a public hearing separately to the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, or by email to chiefclerk@tdi.texas.gov before the

close of the public comment period. If a hearing is held, written comments and public testimony presented at the hearing will be considered.

7. STATUTORY AUTHORITY. TDI proposes the new section pursuant to Insurance Code §§521.051, 521.052, and 36.001.

Section 521.051 requires TDI to maintain a toll-free telephone number to provide the information described by the Insurance Code §521.052.

Section 521.052 requires, in part, that TDI provide to the public through TDI's toll-free telephone number information collected or maintained by TDI relating to the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid, expressed as a percentage of the total number of insurance policies written by the insurer and in force on December 31 of the preceding year.

Section 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.

8. CROSS REFERENCE TO STATUTE. The proposed amendments to §1.603 affect the following statutes: Insurance Code §521.051 and §521.052.

9. TEXT.

§1.603. Complaint Information Available through the Texas Department of Insurance's Toll-Free Telephone Number.

(a) The Texas Department of Insurance (TDI) [~~(department)~~] will provide to the public through its toll-free telephone number the information specified by the Insurance Code §521.052, including information collected or maintained by TDI [~~the department~~] relating to the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid, expressed as a percentage of the total number of insurance policies written by the insurer and in force on December 31 of the preceding year.

(b) TDI [~~The department~~] considers a complaint justified if the complaint is a confirmed complaint.

(c) A "confirmed complaint" is a complaint for which TDI [~~the department~~] receives information indicating that:

(1) an insurer committed any violation of:

(A) an applicable state insurance law or regulation;

(B) a federal requirement TDI [~~the department~~] has authority to enforce; or

(C) the term or condition of an insurance policy or certificate;

or

(2) the complaint and insurer's response, considered together, suggest that the insurer was in error or that the complainant had a valid reason for the complaint.

(d) To determine the percentage described in subsection (a) of this section and required by Insurance Code §521.052, policy count information must be:

(1) prepared in accordance with the Policy Count Exhibit Form and Instructions, which are adopted by reference; and

(2) submitted only to TDI electronically as instructed on the policy count exhibit form and Instructions as part of the insurer's annual statement under §7.68 of this title.

10. CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's authority to adopt.

Issued at Austin, Texas, on October 12, 2016.



Norma Garcia
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Texas Department of Insurance