

SUBCHAPTER B. SURPLUS LINES AGENTS
28 TAC §15.101

INTRODUCTION. The Commissioner of Insurance adopts amendments to 28 TAC §15.101, relating to requirements for surplus lines agents. The amendments are adopted with nonsubstantive changes to the proposed text published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6701).

TDI revised §15.101(g)(2), as proposed, to correct a cross-reference and an error in punctuation. Specifically, section 15.101(g)(2) is corrected to refer to subsection (d)(2) instead of (d)(1), as was originally intended, and to change the "A" before "military spouse" to be a lowercase letter.

REASONED JUSTIFICATION. The amendments are necessary to implement legislation. Senate Bill 1200, 86th Legislature, Regular Session (2019), amended Occupations Code §55.0041 as it addresses authority of military spouses to engage in a business or occupation in this state. These amendments impact TDI licensing rules, which necessitates revisions to 28 TAC §15.101, as well as revisions to sections in other chapters of Title 28 of the Texas Administrative Code addressed in separate rule proposals and adoption orders.

Section 15.101(g). Section 15.101(g) describes the criteria for a military spouse to engage as a surplus lines agent in Texas. The military spouse must be licensed in a state with substantially equivalent requirements to those of Texas and the military service member to whom the military spouse is married must be stationed in Texas. The military spouse may engage as a surplus lines agent for three years from the date confirmation is received from TDI.

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Section 15.101(g)(1) describes what the military spouse must submit to TDI to engage as a surplus lines agent. Section §15.101(g)(1)(A) requires the military spouse submit an application notifying TDI of their intent to operate under the license in Texas. Section 15.101(g)(1)(B) requires the military spouse to submit to TDI proof of the military spouse's residency in Texas and a copy of the spouse's military identification card and §15.101(g)(1)(C) requires evidence of good standing from the jurisdiction with substantially equivalent requirements to the requirements of Texas.

Section 15.101(g)(2) states that the military spouse will not be assessed any application fees that are usually assessed under §15.101(d)(2), §19.801 and §19.802.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received one written comment from The Surety & Fidelity Association of America.

Comment on §15.101.

A commenter requests clarification on whether certain licensing requirements to furnish surety and fidelity bonds would still be required for military spouses seeking licensure through Occupations Code §55.0041 and the corresponding proposed rules.

Agency Response.

Surplus lines agents do not have a bond requirement.

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STATUTORY AUTHORITY. The Commissioner adopts the amendments to TAC §15.101 under Occupations Code §55.0041 and Insurance Code §36.001.

Occupations Code §55.0041 addresses licensing of military spouses with out of state licenses. This section also grants rule making authority to applicable state agencies.

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.

TEXT.

§15.101. Licensing of Surplus Lines Agents.

(a) Persons performing any of the following surplus lines insurance activities are required to have a surplus lines agent license:

(1) supervising unlicensed staff engaged in activities described in subsection (b) of this section, although unlicensed intermediary supervisors may supervise unlicensed staff engaging in these activities if the ultimate supervisor is licensed;

(2) negotiating, soliciting, effecting, procuring, or binding surplus lines insurance contracts for clients or offering advice, counsel, opinions, or explanations of surplus lines insurance products to agents or clients beyond the scope of underwriting policies or contracts, except for a general lines property and casualty agent making a referral of surplus lines business to a surplus lines agent that then completes the surplus lines transaction; or

(3) receiving any direct commission or variance in compensation based on the volume of surplus lines premiums taken and received from, or as a result of, another person selling, soliciting, binding, effecting, or procuring surplus lines insurance policies, contracts, or coverages, except for a general lines property and casualty agent making a

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referral of surplus lines business to a surplus lines agent that then completes the surplus lines transaction.

(b) The following activities, if supervised by a surplus lines agent, do not require a surplus lines agent license if the employee does not receive any direct commission from selling, soliciting, binding, effecting, or procuring insurance policies, contracts, or coverages, and the employee's compensation is not varied by the volume of premiums taken and received:

(1) full-time clerical and administrative services, including, but not limited to, the incidental taking of information from clients; receipt of premiums in the office of a licensed agent; or transmitting to clients, as directed by a licensed surplus lines agent, prepared marketing materials or other prepared information and materials including, without limitation, invoices and evidences of coverage;

(2) contacting clients to obtain or confirm information necessary to process an application for surplus lines insurance so long as the contact does not involve any activities for which a license would be required under subsection (a)(2) of this section;

(3) performing the task of underwriting any insurance policy, contract, or coverage, including and without limitation, pricing of the policy or contract; or

(4) contacting clients, insureds, agents, other persons, and insurers to gather and transmit information regarding claims and losses under the policy to the extent the contact does not require a licensed adjuster as set forth under Insurance Code Chapter 4101.

(c) This section must not be construed to prohibit distribution of agency profits to unlicensed persons, including shareholders, partners, and employees.

(d) Before TDI issues a surplus lines agent license, the applicant must submit the following:

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(1) an appropriate, fully completed written application; and

(2) the fee specified by §19.801 and §19.802 of this title (relating to General Provisions and Amount of Fees, respectively).

(e) Texas-resident applicants, and nonresident applicants who do not hold a surplus lines license in their state of residence or whose state of residence does not license Texas residents on a reciprocal basis as determined by TDI, must meet all licensing requirements set forth in Insurance Code Chapter 981. Nonresident applicants under this section must also comply with Insurance Code §4056.051.

(f) Nonresident applicants who hold a surplus lines agent license in good standing in the agent's state of residence and meet the requirements of Insurance Code §4056.052 must meet all the licensing requirements of Insurance Code Chapter 981 to the extent that the requirements are not waived by the Commissioner under Insurance Code §4056.055.

(g) Military spouses who are licensed in a state with substantially equivalent requirements to those of this state are eligible for a license while the military service member to whom the military spouse is married is stationed at a military installation in this state. This license is effective for a period of three years from the date the spouse receives the confirmation described by paragraph (1) of this subsection.

(1) The military spouse must:

(A) submit an application notifying TDI of the military spouse's intent to operate under the license in Texas;

(B) submit to TDI proof of the military spouse's residency in Texas and a copy of the spouse's military identification card; and

(C) show evidence of good standing from the jurisdiction with substantially equivalent requirements to the requirements of this state.

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(2) Notwithstanding subsection (d)(2) of this section and §19.801 and §19.802 of this title, a military spouse will not be assessed any application fees under those sections.

(h) Notwithstanding any other subsection of this section, nonresident applicants are not required to obtain a general property and casualty agent license if they meet the requirements of Insurance Code §981.203(a-1).

(i) Each surplus lines agent license issued to an agent will be valid for a term as established under Insurance Code §4003.001 and Chapter 19, Subchapter I of this title (relating to General Provisions Regarding Fees, Applications, and Renewals). The license may be renewed by submitting a renewal application and a nonrefundable license fee as specified by §19.801 and §19.802 of this title.

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

Issued at Austin, Texas, on January 17, 2020.

/s/ James Person

James Person, General Counsel
Texas Department of Insurance

The Commissioner adopts amendments to 28 TAC §15.101.

/s/ Kent C. Sullivan

Kent C. Sullivan
Commissioner of Insurance

Commissioner's Order No. **2020-6198**