

## **CHAPTER 21. TRADE PRACTICES** **28 TAC §21.102 and §21.104**

**INTRODUCTION.** The Texas Department of Insurance (TDI) proposes to amend 28 TAC §21.102 and §21.104, concerning the scope of insurance advertising regulations.

**EXPLANATION.** Amendments to §21.102 and §21.104 remove references to "nonprofit legal services corporations" from the definition of "Insurer" for advertising regulations in Chapter 21 and remove references to "prepaid legal services" from identification requirements for advertisements, respectively. "Prepaid legal services" are comprised of both for-profit legal services, which were removed from TDI's regulation by Senate Bill 597, 78th Legislature, Regular Session (2003), and nonprofit legal services, which were removed from TDI's regulation by Senate Bill 1623, 86th Legislature, Regular Session (2019) (SB 1623).

The proposed amendments also include nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity, including deleting unnecessary uses of the word "and".

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Pat Brewer, team lead of the Regulatory Initiatives Office of the Life and Health Division, has determined that, for each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of the enforcement or administration of the amendments.

Ms. Brewer does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendments are in effect, Ms. Brewer expects that administering the proposed amendments will have the public benefit of ensuring that TDI's rules conform to Insurance Code Chapter 961 and Occupations Code Chapter 953.

Ms. Brewer expects that the proposed amendments will not impose a cost on stakeholders because they simply recognize that prepaid legal services have been removed from TDI's regulation, as required by Insurance Code §961.003 and Occupations Code §953.003. As a result, any unforeseen costs associated with this deregulation are a result of the statute and not the proposed amendments.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.** TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that this proposal does not impose a possible cost on regulated persons. No additional rule amendments are required under Government Code §2001.0045.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the department;
- will not require an increase or decrease in fees paid to the department;
- will not create a new regulation;
- will not repeal existing regulations;
- will decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

**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. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TDI will consider any written comments on the proposal that are received by the department no later than 5:00 p.m., central time, on January 11, 2021. Send your comments to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov); or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov); or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on January 11, 2021. If a public hearing is held, TDI will consider comments presented at the hearing.

**STATUTORY AUTHORITY.** TDI proposes amendments to §21.102 and §21.104 under Occupations Code Chapter 953, as added by SB 597; Occupations Code §953.003; Insurance Code §§961.002 - 961.004, as amended by SB 1623; and Insurance Code §36.001.

Occupations Code Chapter 953, as added by SB 597, transferred regulation of for-profit legal services from TDI to the Texas Department of Licensing and Regulation.

Occupations Code §953.003 provides that the acts of marketing, selling, offering for sale, issuing, making, proposing to make, and administering a legal service contract that is regulated by Occupations Code Chapter 953 are exempt from the Insurance Code and other laws of Texas regulating the business of insurance.

Insurance Code §§961.002 - 961.004 as amended by SB 1623, has removed nonprofit legal services providers from TDI's regulation.

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.

**CROSS-REFERENCE TO STATUTE.** Section 21.102 and §21.104 implement Occupations Code Chapter 953, as added by SB 597, and Insurance Code §961.003, as amended by SB 1623.

## **TEXT.**

### **§21.102. Scope.**

For the purpose of this division:

(1) "Advertisement" includes, but is not limited to:

(A) printed and published material, audio visual material and electronic media, descriptive literature of an insurer or agent used in direct mail,

newspapers, magazines, radio, telephone and television scripts, billboards, and similar displays; [and]

(B) descriptive literature and sales aids of all kinds issued by an insurer or agent for presentation to members of the public, including circulars, leaflets, booklets, depictions, illustrations, and form letters; [and]

(C) prepared sales talks, presentations and materials for use by agents, and those representations recurrently made by agents to members of the public; [and]

(D) - (G) (No change.)

(2) - (3) (No change.)

(4) "Insurer" includes any individual, partnership, corporation, organization, or person issuing evidence of coverage or insurance, or any other entity acting as an insurer to which this division can be made legally applicable including, as applicable, Health Maintenance Organizations ~~and Nonprofit Legal Services Corporations~~, and all insurance companies doing the business of insurance in this state such as capital stock companies, mutual companies, title insurance companies, fraternal benefits societies, local mutual aid associations, local mutual burial associations, statewide mutual assessment companies, county mutual and farm mutual insurance companies, Lloyds' plan companies, reciprocal or interinsurance exchanges, stipulated premium insurance companies, and group hospital service companies and, as can be made appropriate, premium finance companies, and viatical and life settlement providers.

(5) - (8) (No change.)

**§21.104. Requirement of Identification of Policy or Insurer.**

(a) - (e) (No change.)

(f) An advertisement may not contain statements that avoid a clear and unequivocal statement that insurance or an annuity or HMO coverage [~~or prepaid legal services coverage~~] is the subject matter of the solicitation.

(g) - (i) (No change.)

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

Issued in Austin, Texas, on November 23, 2020.

DocuSigned by:  
  
James Person  
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James Person, General Counsel  
Texas Department of Insurance