

CHAPTER 23. PREPAID LEGAL SERVICE

28 TAC §§23.1 - 23.7

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to repeal 28 TAC Chapter 23, consisting of §§23.1 - 23.7, relating to prepaid legal services regulated by the department. "Prepaid legal services" include both for-profit legal services, which were removed from TDI's regulation by Senate Bill 597, 78th Legislature, Regular Session (2003) (SB 597), and nonprofit legal services, which were removed from TDI's regulation by Senate Bill 1623, 86th Legislature, Regular Session (2019) (SB 1623). The repeal is necessary because these bills made 28 TAC §§23.1 - 23.7 obsolete.

TDI also proposes amendments to 28 TAC §§3.1, 3.5, 7.25, 7.88, 7.1403, 7.1909, 19.901, 19.902, 21.102, and 21.104 to be consistent with the proposed repeal. The proposed amendments are published elsewhere in this issue of the *Texas Register*.

EXPLANATION. Repealing Chapter 23 removes sections made obsolete by SB 1623, which states that nonprofit legal services corporations are not in the practice of insurance. In addition, for-profit legal services corporations were removed from TDI's regulation by SB 597. The proposed repeal removes any references to "prepaid legal services," which would include both nonprofit and for-profit legal services corporations, to reflect current law.

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 repeal is in effect, there will be no measurable fiscal impact on state and local governments as a result of the enforcement or administration of the repeal.

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 repeal is in effect, Ms. Brewer expects that administering the proposed repeal 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 repeal will not impose a cost on stakeholders because they simply recognize that prepaid legal services were 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 repeal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. TDI has determined that the proposed repeal 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 repeal is in effect, the proposed repeal:

- 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 require a decrease in fees paid to the department;
- will not create a new regulation;
- will repeal existing regulations in order to reflect a change in statute removing prepaid legal services from the department's regulation;
- will not increase or 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; 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; 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.

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STATUTORY AUTHORITY. The repeal of 28 TAC §§23.1 - 23.7 is proposed 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.

Insurance Code §§961.002 - 961.004 as amended by SB 1623, has removed nonprofit legal services 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. The proposed repeal of §§23.1 - 23.7 implements SB 1623 and SB 597.

TEXT.

§23.1. Scope and Definitions.

§23.2. Procedures for Issuance of a Certificate of Authority for Chapter 23 Corporations.

§23.3. General Provisions for Chapter 23 Corporations.

§23.4. Authorized Insurers.

§23.5. Licensing of Agents.

§23.6. Forms, Rates, and Advertising.

§23.7. Appendices A through G.

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

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

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James Person, General Counsel
Texas Department of Insurance