

SUBCHAPTER E. Examinations and Annual Reports
28 TAC §25.88

1. INTRODUCTION. The Commissioner of Insurance (Commissioner) adopts 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 Department adopts the amendments with one change to the proposed text published in the December 2, 2011 issue of the *Texas Register* (36 TexReg 8168).

2. REASONED JUSTIFICATION. The 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 has made one change to the proposed language in the text of the rule as adopted. This change is a minor editorial correction to delete a comma in the first sentence of proposed §25.88 following the words "under the Insurance Code Chapter 651." The comma was removed because inclusion of it in this location is not grammatically correct. This change made to the proposed text does not materially alter

issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

The following paragraphs provide an explanation of the methodology used to determine examination 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 funds 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 adopted rate of assessment for premium finance.

The following paragraphs provide a brief summary and analysis of the reasons for the adopted amendments.

An adopted amendment in the first sentence of the section is necessary to update the reference to the year in the section to 2012. Another adopted amendment in the first sentence of the section is necessary to remove an unnecessary comma.

An adopted amendment in the second sentence of the section is necessary to change the sentence from passive to active voice. A second adopted amendment in the second sentence of the section is necessary to update the address to which insurance premium finance companies should send payment under the section.

An adopted amendment in paragraph (1) of the section is necessary to change the wording in the sentence in paragraph (1) from passive to active voice. A second adopted amendment in paragraph (1) is necessary to update the rate of assessment to the level necessary for 2012. Additionally, an adopted amendment in paragraph (1) is necessary to update a reference to the year from which data is used to "2011."

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

3. HOW THE SECTION WILL FUNCTION. 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 first sentence of §25.88 as amended specifies that on or before April 1, 2012, 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. The second sentence of §25.88 provides an amended address to which insurance premium finance companies shall send payment. The third sentence of §25.88 indicates that the assessment to general administrative expenses shall be computed as indicated in the section.

Paragraph (1) of §25.88 as amended provides that the amount of the assessment under the section is .01011 of 1.0 percent of the total loan dollar volume of the applicable insurance premium finance company for calendar year 2011.

Paragraph (2) of §25.88 as amended provides that if the amount of the assessment required by §25.88(1) is less than \$250, the amount of the assessment shall be \$250.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE. The Department did not receive any comments on the published proposal.

5. STATUTORY AUTHORITY. The amendments are adopted pursuant to 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

12-0036

TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 25. Insurance Premium Finance

Adopted Section
Page 7 of 8

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.

6. TEXT.

§25.88. General Administrative Expense Assessment. On or before April 1, 2012, 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 shall send payment to the Texas Department of Insurance, Financial, TPA/Premium Finance, Mail Code 999, 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 .01011 of 1.0 percent of the total loan dollar volume of the company for calendar year 2011.

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

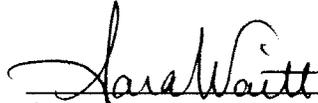
CERTIFICATION. This agency certifies that the adopted sections have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

12-0036

TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 25. Insurance Premium Finance

Adopted Section
Page 8 of 8

Issued at Austin, Texas, on January 11, 2012.

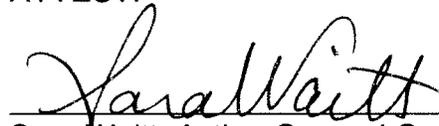

Sara Waitt
Acting General Counsel
Texas Department of Insurance

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that amendments to §25.88 specified herein, concerning an assessment which will be used to cover the general administrative expenses of the Department's regulation of insurance premium finance companies, are adopted.

AND IT IS SO ORDERED.


ELEANOR KITZMAN
COMMISSIONER OF INSURANCE

ATTEST:


Sara Waitt, Acting General Counsel

COMMISSIONER'S ORDER NO. 12-0036
JAN 12 2012