

Subchapter B. Surplus Lines Agents
28 TAC §15.101

INTRODUCTION. The commissioner of insurance adopts amendments to 28 TAC §15.101, concerning the licensing of surplus lines agents. The amendments are adopted without changes to the proposed text published in the December 1, 2023 issue of the *Texas Register* (48 TexReg 7002).

REASONED JUSTIFICATION. The amendments to §15.101 are necessary to remove redundant provisions and implement Senate Bill 422, 88th Legislature, 2023. Chapter 55 of the Occupations Code provides for alternative licensing procedures and requirements for military service members, military veterans, and military spouses. Before the passage of SB 422, Occupations Code §55.0041 required licensing agencies to recognize the out-of-state licenses of military spouses. SB 422 amended §55.0041 to also apply to military service members and to incorporate additional changes.

As part of the implementation of SB 422, TDI is separately adopting new 28 TAC §1.814, which provides alternative licensing procedures and requirements for license applications by military service members, military veterans, and military spouses, consistent with Occupations Code Chapter 55 and 50 USC §4025a. New §1.814 applies to all licenses, permits, certifications, and other authorizations issued by the Texas Department of Insurance (TDI), including surplus lines agent licenses.

Section 15.101 addresses requirements for the licensing of surplus lines agents, and subsection (g) provides licensing requirements for military spouses. The amendments remove subsection (g), which is made redundant by new §1.814, and redesignate the

subsections that follow subsection (g) to reflect its removal. In addition, amendments in subsections (b), (e), and (f) and redesignated subsections (g) and (h) add the titles of cited Insurance Code sections, and an amendment to subsection (f) revises the capitalization of the word "Commissioner," for consistency with current TDI rule drafting style.

SUMMARY OF COMMENTS. TDI provided an opportunity for public comment on the rule proposal for a period that ended on January 3, 2024. TDI did not receive any comments on the proposed amendments.

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STATUTORY AUTHORITY. The commissioner adopts amendments to 28 TAC §15.101 under Occupations Code §55.0041(e) and Insurance Code §36.001.

Occupations Code §55.0041, which addresses recognition of out-of-state licenses of military service members and military spouses, requires in subsection (e) that state agencies adopt rules to implement the section.

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 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, concerning Insurance Adjusters.

(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:

(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, concerning Surplus Lines Insurance. Nonresident applicants under this section must also comply with Insurance Code §4056.051, concerning Application for Nonresident Agent License; Criminal History.

(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, concerning Issuance of License to Nonresident Agent Licensed in Other State, 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, concerning Waiver of Requirements for Nonresident Agent Licensed in Other State or Jurisdiction.

(g) 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), concerning Qualifications for Surplus Lines License.

(h) Each surplus lines agent license issued to an agent will be valid for a term as established under Insurance Code §4003.001, concerning License Expiration, 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 a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on February 9, 2024.

2024-8523

TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 15. Surplus Lines Insurance

Adopted Section
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Jessica Barta

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Jessica Barta, General Counsel
Texas Department of Insurance

The amendments to 28 TAC §15.101 are adopted.

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C Brown

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Cassie Brown
Commissioner of Insurance

Commissioner's Order No. 2024-8523