

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 7. TEXAS FINANCIAL EDUCATION ENDOWMENT FUND

7 TAC §7.102

The Finance Commission of Texas (commission) adopts amendments to §7.102 (relating to TFEE Responsibilities), in 7 TAC, Chapter 7, concerning Texas Financial Education Endowment Fund.

The commission adopts the amendments to §7.102 without changes to the proposed text as published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5493). The rule will not be republished.

The commission received no written comments relating to the proposed amendments to 7 TAC §7.102.

The rules in 7 TAC Chapter 7 govern the Texas Financial Education Endowment (TFEE). The Texas Legislature established TFEE under Texas Finance Code, §393.628(c), in order to "support statewide financial education and consumer credit building activities and programs."

In general, the purpose of the rule changes to 7 TAC Chapter 7 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 7 was published in the *Texas Register* on May 28, 2021 (46 TexReg 3425). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received no informal precomments on the rule text draft.

The amendments to §7.102 relate to the consumer credit commissioner's authority to designate other persons to perform functions related to TFEE. New text in subsection (a) explains that the investment officer's responsibilities include maintaining compliance. Subsection (a) will also be amended to move text on executing grant agreements into a new sentence. The updated text will provide some flexibility and clarify the commissioner's authority to designate another person (not necessarily the investment officer) to execute grant agreements.

The rule changes are adopted under Texas Finance Code, §393.622, which authorizes the commission to adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G (governing credit access businesses). In

addition, Texas Finance Code, §393.628 authorizes the commission to adopt rules regarding TFEE.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 52. DEPARTMENT ADMINISTRATION

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts new rules in 7 TAC Chapter 52, Department Administration: §§52.100 - 52.104, 52.200 - 52.205, and 52.300 - 52.306. The commission's proposal was published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5494). The following rules are adopted with changes to the published text and are republished to reflect such changes: §§52.102, 52.103, 52.202, 52.205, 52.302, 52.303, 52.305, and 52.306. The changes regulate no new parties and affect no new subjects of regulation. As a result, the rules will not be republished as proposed rules for comment. The remaining rules in the proposal are adopted without changes to the proposed text as published in the *Texas Register* and will not be republished.

Explanation of and Justification for the Rules

The rules under 7 TAC Chapter 52 generally govern the department's internal processes and procedures including existing rules concerning consumer complaints filed with the department, the resolution of contested cases by informal settlement conference, and the use of advisory committees as provided by Finance Code §13.018. The adopted rules establish new rules governing certain other internal processes and procedures related to: (i) the recovery fund administered by the department's

commissioner (commissioner) under Finance Code Chapter 156, Subchapter F (recovery fund); (ii) the mortgage grant fund administered by the commissioner under Finance Code Chapter 156, Subchapter G (mortgage grant fund); and (iii) claims made against the mortgage grant fund as provided by Finance Code §156.555.

New Rules Concerning the Recovery Fund

Pursuant to Finance Code §13.016 and Chapter 156, Subchapter F, the commissioner is required to administer and maintain a fund against which persons may make a claim to recover actual out-of-pocket damages incurred because of acts committed by an individual licensed by the department as a residential mortgage loan originator under Finance Code Chapter 157. The adopted rules: (i) create definitions necessary to administer the recovery fund, derived from similar definitions contained in existing 7 TAC §81.2 (relating to Definitions); (ii) clarify that a person seeking to make a claim against the recovery fund must file a sworn written application using the current form prescribed by the commissioner and posted on the department's website; (iii) clarify when the commissioner disburses funds on an approved claim (after the opportunity to appeal the commissioner's decision has lapsed); (iv) clarify that, in order to get paid from the recovery fund, a claimant must provide the necessary information and documentation necessary to be a valid payee for the purposes of the Texas Comptroller of Public Accounts; (v) clarify that a licensed residential mortgage loan originator against whom a claim was made and approved may have an administrative penalty imposed on him or her; and (vi) establish a process and procedure for paying approved claims in the event funds in the recovery fund are unavailable at the time the claim is approved.

New Rules Concerning the Mortgage Grant Fund

During the 87th Legislature (Regular Session), House Bill 3617 (HB3617) was enacted into law (eff. September 1, 2021) which, among other things, amended Finance Code Chapter 156 to create a new Subchapter G, creating a new mortgage grant fund for the commissioner to administer, funded primarily by excess contributions made to the recovery fund. The primary purpose of the mortgage grant fund is to promote financial education relating to mortgage loans and to support other statewide financial education, activities, and programs. The adopted rules: (i) create definitions necessary to administer the mortgage grant fund; (ii) clarify the commissioner's role as manager of the mortgage grant fund, including providing periodic reports to the commissioner; (iii) provide for the creation of a manual reflecting the commissioner's policies and procedures governing administration of the mortgage grant fund; (iv) provide for the appointment of an employee of the department to serve as a grant coordinator to assist the commissioner in managing the mortgage grant fund; (v) provide for the creation of an advisory committee to make recommendations to the commissioner and the grant coordinator concerning management of the mortgage grant fund; and (vi) establish various processes and procedures for grantees to apply for, receive disbursements, and return misused funds, from the mortgage grant fund.

New Rules Concerning Recovery Claims Made Against the Mortgage Grant Fund

HB3617 further amended Finance Code Chapter 156 by creating a new Section 156.555, allowing for claims to be made against the mortgage grant fund to compensate persons for actual out-of-pocket damages incurred because of fraud committed

by an individual who acted in the capacity of a residential mortgage loan originator but did not hold the license required under Finance Code Chapter 157. The adopted rules: (i) create definitions necessary to administer claims made against the mortgage grant fund; (ii) clarify that a person seeking to make a claim against the mortgage grant fund must file a sworn written application using the current form prescribed by the commissioner and posted on the department's website; (iii) clarify when the commissioner disburses funds on an approved claim (after the opportunity to appeal the commissioner's decision has lapsed); (iv) clarify that, in order to get paid from the mortgage grant fund, a claimant must provide the necessary information and documentation to be a valid payee for the purposes of the Texas Comptroller of Public Accounts; (v) clarify that an unlicensed individual against whom a claim was made and approved may have an administrative penalty imposed on him or her, and that failure to pay such penalty constitutes grounds for denial of licensure under Finance Code Chapter 157; (vi) establish a process and procedure for paying approved claims in the event funds in the mortgage grant fund are unavailable at the time the claim is approved; (vii) clarify certain eligibility requirements for making a claim against the mortgage grant fund required by application of the requirements for making a claim against the mortgage grant fund as provided by Finance Code §156.555(b); and (viii) clarify how the statute of limitations period for making claims on the recovery fund applies to claims made on the mortgage grant fund, thereby expressly allowing for claims prior to the effective date of Finance Code §156.555 and inception of the mortgage grant fund.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or October 3, 2021. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

SUBCHAPTER D. RECOVERY FUND

7 TAC §§52.100 - 52.104

Statutory Authority

The rules are adopted under the authority of Finance Code §156.102(a) which authorizes the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156. The rules are also adopted under the authority of Finance Code §156.102(b-1) which authorizes the commission to adopt rules to promote the fair and orderly administration of the recovery fund consistent with the purposes of Finance Code Chapter 156, Subchapter F.

The adopted rules affect the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensure and Registration Act.

§52.102. Claims.

(a) Application Required. As provided by Tex. Fin. Code §156.504, a claimant seeking to recover from the recovery fund must file a sworn written application with the Department which must be made on the current form prescribed by the Commissioner and posted on the Department's website (sml.texas.gov).

(b) Payment of Approved Claims. Upon approval of a claim made on the recovery fund, the Commissioner will issue an order disbursing funds from the recovery fund. The Commissioner will direct Department staff to cause disbursement of the funds after the date upon which such order becomes final and unappealable for purposes of Finance Code §156.504(d), or if the Department's preliminary determi-

nation under Finance Code §156.504(c)(2) was disputed and an adjudicative hearing required, for purposes of Government Code Chapter 2001.

(c) Cooperation by Claimant Required. The claimant must cooperate with Department staff's instructions for effectuating disbursement of an approved claim from the recovery fund. Among other things, the claimant must provide such information and complete such documentation required in order to cause the claimant to be a valid payee for purposes of the Texas Comptroller of Public Accounts.

§52.103. *Administrative Penalty Against Originator.*

If the Commissioner approves a claim made under Tex. Fin. Code §156.504, the Commissioner may impose an administrative penalty on the originator whose acts or omissions caused the claim.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. MORTGAGE GRANT FUND

7 TAC §§52.200 - 52.205

Statutory Authority

The rules are adopted under the authority of Finance Code §156.102(a) which authorizes the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156. The rules are also adopted under the authority of Finance Code §156.556 which authorizes the commission to adopt rules to administer Finance Code Chapter 156, Subchapter G including rules to: (i) ensure that a grant awarded from the mortgage grant fund is used for a public purpose; and (ii) provide a means of recovering money awarded from the mortgage grant fund that is not used for a public purpose.

The adopted rules affect the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§52.202. *Commissioner as Manager.*

(a) Manager. As provided by Tex. Fin. Code §156.553, the Commissioner serves as manager of the fund and administers all aspects of the fund.

(b) Periodic Reports to the Finance Commission. Unless the Finance Commission directs otherwise, the Commissioner or his or her designee (including but not limited to the Grant Coordinator) will report to the Finance Commission audit committee concerning the status and activities of the fund at each regularly called meeting of the Finance Commission audit committee, or otherwise at the request of the Finance Commission or its audit committee.

(c) Mortgage Grant Administration Manual. The Commissioner will develop and create a manual reflecting the Commissioner's policies and procedures governing administration of the fund and the Mortgage Grant Fund grant program to be known and referred to as the Mortgage Grant Administration Manual (MGAM). The MGAM, and any amendments to the MGAM, must be approved by the Finance Commission audit committee.

§52.205. *Grant Program.*

(a) Scope. This section governs the administration of and disbursements from the fund (each of which is considered a grant disbursement) for purposes of:

(1) Tex. Fin. Code §156.554(b)(1), concerning grants to an auxiliary mortgage loan activity company or another nonprofit organization to promote financial education relating to mortgage loans; and

(2) Tex. Fin. Code §156.554(b)(3), concerning disbursements to provide support for statewide financial education, activities, and programs specifically related to mortgage loans for consumers, or for the purposes provided by Tex. Fin. Code §393.628(c).

(b) Grant Cycle. The fund may have one competitive grant cycle every two years.

(1) Funding determination. The grant funding determination is made by the Commissioner by December 31 of each odd-numbered year. The Commissioner will determine the separate funding available and allocated to each of the purposes of Tex. Fin. Code §156.554(b)(1) and (3).

(2) Programming cycle. A new fund grant programming cycle may open on January 1 of every even-numbered year. An applicant may choose to apply for a one-year grant programming cycle, or a two-year grant programming cycle. The grant programming cycle for a one-year grantee begins on January 1 and ends on December 31 of the even-numbered year for the applicable cycle. The grant programming cycle for a two-year grantee begins on January 1 of the even-numbered year and ends on December 31 of the following odd-numbered year for the applicable cycle.

(c) Eligibility. A grant made under Tex. Fin. Code §156.554(b)(1) and subsection (a)(1) of this section may only be given to a company licensed by the Department as an auxiliary mortgage loan activity company, or a nonprofit organization. A grant made under Tex. Fin. Code §156.554(b)(3) and subsection (a)(2) of this section may be given to a nonprofit organization, school, or for-profit entity. Grant funding is not available to entities licensed or registered by the Department other than auxiliary mortgage loan activity companies in accordance with Tex. Fin. Code §156.554(b)(1) and subsection (a)(1) of this section.

(d) Grant Application. To be considered for the grant program, an applicant must complete and submit the grant application by the deadline and in accordance with the instructions for the applicable grant cycle. Late or incomplete grant applications will not be accepted. Meeting eligibility criteria and timely submission of a grant application does not guarantee award of a grant in any amount.

(e) Review and Approval. The Commissioner, upon receipt of advice from MGAC and the Grant Coordinator, will review timely and complete applications and determine the grants to be awarded.

(f) Grant Agreement. To participate in the grant program, a grantee approved by the Commissioner to receive a grant must execute the grant agreement approved by the Commissioner for the applicable grant cycle (grant agreement).

(g) Grantee Compliance. A grantee must comply with applicable financial, administrative, and programmatic terms and conditions, and exercise proper stewardship over grant program funds. A grantee must use awarded funds in compliance with the following in effect for the applicable grant cycle:

- (1) all applicable state laws and regulations;
- (2) all applicable federal laws and regulations;
- (3) the Mortgage Grant Administration Manual;
- (4) the grant application, including all application guidelines and instructions at the time of application;
- (5) the grant agreement signed by the Commissioner or the Commissioner's designee and the grantee;
- (6) all reporting and monitoring requirements, as outlined in the grant agreement; and
- (7) any other guidance documents posted on the Mortgage Grant Fund website for the applicable grant cycle.

(h) Reporting and Monitoring.

(1) General reporting requirements. To receive reimbursement of grant expenses a grantee must:

- (A) submit periodic grant reports as provided by the grant agreement;
- (B) maintain satisfactory compliance with the grant agreement and the grant activities as proposed by the grantee in its grant application;
- (C) identify, track and report performance measures; and
- (D) track and report participant demographic information.

(2) Progress reports. A grantee must submit progress reports that demonstrate performance outcomes and financial information over the term of the grant in accordance with and by the deadlines set forth in the grant agreement.

(3) Six-month longitudinal report. A grantee must submit a six-month longitudinal report after program completion to demonstrate program objectives.

(4) Monitoring. The Grant Coordinator or MGAC may use the following methods to monitor a grantee's performance and expenditures:

(A) Desk review. The Grant Coordinator or MGAC may conduct a desk review of a grantee to review and compare individual source documentation and materials to summary data provided during the reporting process; or

(B) Site visits and inspection reviews. The Grant Coordinator or MGAC may conduct a scheduled site visit to a grantee's place of business to review compliance and performance issues. Site visits may be comprehensive or limited in scope.

(i) Reimbursement.

(1) Eligibility. To be eligible for reimbursement, a grantee must comply with all terms of the grant agreement, as well as all other items provided in subsection (g) of this section. To ensure that grant funds are used for a public purpose as provided by Tex. Fin. Code §156.556(1), grant funds will only be awarded on a cost reimbursement basis for all actual, allowable, and allocable costs incurred by a grantee pursuant to the grant agreement. Expenses that were incurred

before the beginning or after termination of the grant agreement are not eligible for reimbursement.

(2) Procedure. To request reimbursement for work performed on grant activities, a grantee must submit a grant reimbursement report in accordance with and by the deadlines set forth in the grant agreement. A grantee must submit a detailed expense report with supporting documentation to justify the reimbursement request. The Department will review and approve requests for reimbursement that satisfy the requirements and promptly disburse funds in response to approved requests.

(j) Misuse of Grant Funds. The Commissioner may require a refund of grant funds already disbursed to the grantee and may cancel the grant agreement or disqualify the grantee from receiving future grants from the fund if:

- (1) grant funds are not used for a public purpose allowable under Tex. Fin. Code §156.554;
- (2) grant funds are used in an illegal manner;
- (3) the grantee violates the terms or conditions of the grant agreement or otherwise violates the requirements of subsection (g) of this section; or
- (4) the Commissioner discovers the grantee made any material misrepresentations in obtaining the grant or in seeking reimbursement of grant funds.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. MORTGAGE GRANT FUND: RECOVERY CLAIMS FOR UNLICENSED ACTIVITY

7 TAC §§52.300 - 52.306

Statutory Authority

The rules are adopted under the authority of Finance Code §156.102(a) which authorizes the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156. The rules are also adopted under the authority of Finance Code §156.556 which authorizes the commission to adopt rules to administer Finance Code Chapter 156, Subchapter G.

The adopted rules affect the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§52.302. *Claims.*

(a) **Application Required.** As provided by Tex. Fin. Code §156.555, adopting by reference the procedural requirements for making a claim on the Commissioner's recovery fund in accordance with Finance Code Chapter 156, Subchapter F, a claimant must file a sworn written application with the Department and must be made on the current form prescribed by the Commissioner and posted on the Department's website (sml.texas.gov).

(b) **Payment of Approved Claims.** Upon approval of a claim on the Mortgage Grant Fund for purposes of Tex. Fin. Code §156.555, the Commissioner will issue an order disbursing funds from the Mortgage Grant Fund. The Commissioner will direct Department staff to cause disbursement of the funds after the date upon which such order becomes final and unappealable for purposes of Finance Code §156.504(d) (by application of Finance Code §156.555), or if the Department's preliminary determination letter under §156.504(c)(2) was disputed and an adjudicative hearing required, for purposes of Government Code Chapter 2001.

(c) **Cooperation by Claimant Required.** The claimant must cooperate with Department staff's instructions for effectuating disbursement of an approved claim from the Mortgage Grant Fund for purposes of Tex. Fin. Code §156.555. Among other things, the claimant must provide such information and complete such documentation required in order to cause the claimant to be a valid payee for purposes of the Texas Comptroller of Public Accounts.

§52.303. *Consequences for Unlicensed Individual.*

(a) **Administrative Penalty.** If the Commissioner approves a claim made under Tex. Fin. Code §156.555, the Commissioner may impose an administrative penalty on the unlicensed individual whose fraudulent acts caused the claim.

(b) **Grounds for Denial.** As provided by Tex. Fin. Code §180.201(1), failure by the unlicensed individual to pay the administrative penalty imposed by this section is a violation of an order of the Commissioner and therefore constitutes grounds for denial of an application from such individual for a residential mortgage loan originator license under Finance Code Chapter 157.

§52.305. *Eligibility.*

(a) **Application of Finance Code Chapter 156, Subchapter F.** Tex. Fin. Code §156.555(b), adopts by reference the eligibility and procedural requirements for making a claim on the Commissioner's recovery fund in accordance with Finance Code Chapter 156, Subchapter F. This section clarifies how certain of such requirements apply to a claim made on the Mortgage Grant Fund in accordance with Tex. Fin. Code §156.555.

(b) **Actions by an Unlicensed Individual Acting as an Originator.** To be eligible to recover from the Mortgage Grant Fund, the individual alleged to have caused harm to the claimant must have been acting or attempting to act in the capacity of an originator - actions for which a license under Finance Code Chapter 157 was required as provided by Tex. Fin. Code §157.012 and §81.100 of this title (relating to Licensing - General).

(c) **Fraudulent Acts.** Recovery under Tex. Fin. Code §156.555 is limited to acts of fraud committed by an individual who acted as a residential mortgage loan originator but who did not hold the license required by Finance Code Chapter 157. Tex. Fin. §156.501(b), applicable to claims made on the recovery fund, provides that recovery is limited to acts by a licensed originator that constitute a violation of specific, enumerated provisions of Tex. Fin. Code §§157.024(a) and 156.304(b). As a result, in order to recover under Tex. Fin. Code §156.555, a claimant must establish that the acts of the unlicensed

individual, had he or she been licensed as a residential mortgage loan originator at the time of such acts, would have constituted fraudulent dealings for purposes of Tex. Fin. Code §157.024(a)(3).

§52.306. *Statute of Limitations at Inception.*

Tex. Fin. Code §156.555(b) adopts by reference the statute of limitations period for making claims on the recovery fund under Finance Code Chapter 156, Subchapter F and applies it to claims made against the Mortgage Grant Fund in accordance with Tex. Fin. Code §156.555. Specifically, pursuant to Tex. Fin. Code §156.503, a claim made on the recovery fund may not be filed after the fourth anniversary of the date the acts causing the actual damages occurred or should reasonably have been discovered. Tex. Fin. Code §156.555 and the Mortgage Grant Fund came into existence effective September 1, 2021. As a result, the earliest possible date for a claim to have accrued for purposes of the limitations period applicable to claims made under Tex. Fin. Code §156.555 is September 1, 2017, and any claim accruing prior to that date is barred.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 76. MISCELLANEOUS SUBCHAPTER F. FEES AND CHARGES

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of and a new rule at 7 TAC §76.95 without changes to the proposed text as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5679). The rules will not be republished.

Explanation of and Justification for the Rule

The existing rules under 7 TAC Chapter 76 partially implement Finance Code Subtitle C, the Texas Savings Bank Act.

Changes Concerning Special Examination Fees

Existing §76.95 (relating to Fee for Special Examination or Audit), establishes a fee for examination of a savings bank occurring outside of a savings bank's regular periodic examination (special examination). During the 87th Legislature (Regular Session), Senate Bill 1900 (SB 1900) was enacted into law (eff. September 1, 2021) which, among other things, amended Finance Code Chapter 96 to provide to the department's commissioner (commissioner) examination authority over savings bank affiliates and third-party service providers. The Finance Code, as amended by SB 1900 (Tex. Fin. Code §96.0551(c)), authorizes the commissioner to collect a fee for conducting examinations on savings bank affiliates and third-party service providers. New §76.95: (i) clarifies the commissioner's existing authority to

perform examinations of savings bank holding companies, affiliates, and third-party service providers; (ii) classifies the examination of a savings bank holding company, affiliate, or third-party service provider as a special examination subject to the rule; and (iii) changes the calculation for the fee assessed for a special examination from a daily fee (\$325) to an hourly fee (\$75). The department asserts an hourly fee more accurately reflects the actual work performed by the department's examiners and will result in fees that are more equitable and will better reflect the true cost of regulation. The existing daily fee of \$325 has been in place since the rule was originally adopted on January 5, 2012. Existing §76.95 is also patterned after a previous rule adopted by the Department (at that time, the Texas Savings and Loan Department) effective September 23, 1993 (18 TexReg 4808; 1993 rule) which was repealed and replaced by existing §76.95. The 1993 rule similarly imposed a daily fee of \$325 to conduct a special examination. Assuming a standard workday of eight hours, this \$325 daily figure amounts to an hourly fee of approximately \$42.63. According to an inflation calculator provided by the United States Bureau of Labor Statistics on its website, based on the consumer price inflation index, an hourly fee of \$42.63 in September of 1993 would equate to a fee of \$76.44 in July of 2021 (more than the \$75 in the adopted rule). As a result, the increased rate in the adopted rule is likely in keeping with the requirements of the original rule in 1993.

Other Modernization and Update Changes

New §76.95 makes changes to modernize and update existing §76.95 including: (i) adding and replacing language to improve clarity and readability; (ii) removing unnecessary or duplicative provisions; and (iii) updating terminology.

Summary of Public Comments

Publication of the commission's proposal to repeal and adopt a new rule at 7 TAC §76.95 recited a deadline of 30 days to receive public comments, or October 10, 2021. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received in response to the proposal.

7 TAC §76.95

Statutory Authority

The rule repeal is adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The rule repeal is also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

The adopted rule repeal affects the statutes contained in Finance Code Title 3, Subtitle C, the Texas State Savings Bank Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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7 TAC §76.95

Statutory Authority

The rule is adopted under the authority of Finance Code §11.302(a), which authorizes the commission to adopt rules applicable to state savings banks. The rule is also adopted under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

The adopted rule affects the statutes contained in Finance Code Title 3, Subtitle C, the Texas State Savings Bank Act.

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CHAPTER 80. RESIDENTIAL MORTGAGE LOAN COMPANIES

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts amendments, new rules, and rule repeals in 7 TAC Chapter 80, Texas Residential Mortgage Loan Companies. The commission's proposal was published in the September 3, 2021 issue of the *Texas Register* (46 TexReg 5501). 7 TAC §80.206 is adopted with changes to the published text and is republished to reflect such changes. The changes regulate no new parties and affect no new subjects of regulation. As a result, the rule will not be republished as a proposed rule for comment. The remaining rules sections in the proposal are adopted without changes to the text as published in the *Texas Register*, and will not be republished.

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 80 implement Finance Code Chapter 156, Residential Mortgage Loan Companies (Chapter 156).

Changes Concerning Office Requirements and Remote Work

Prior to September 1, 2021, pursuant to now former Finance Code Sections 156.2041(7) and 156.2042(6), a residential mort-

gage loan company or credit union subsidiary organization licensed by the department under Finance Code Chapter 156 was required to "maintain a physical office in Texas" (physical office requirement). During the 87th Legislature (Regular Session), Senate Bill 1900 (SB1900) and House Bill 3617 (HB3617) were enacted into law (eff. September 1, 2021) which, among things, amended Finance Code Sections 156.2041 and 156.2042 to eliminate the physical office requirement. One stated purpose for HB3617, as reflected by the bill's House Committee Report was to address "a rise in demand for remote working." The adopted rules implement those portions of HB3617 addressing elimination of the physical office requirement and further seek to fulfill the stated purpose of HB3617 by formalizing and clarifying in rule existing authority for the employees and sponsored originators of a "residential mortgage loan company" (as defined by Finance Code §156.002(13); mortgage company) to work remotely. The adopted rules also formalize and clarify in rule existing requirements concerning what constitutes the main office or a branch office of a mortgage company such that the office must be licensed by the department. The adopted rules: (i) eliminate use of the term "physical office" throughout Chapter 80 and instead use the terms "main office" and "branch office" - terms that are used in Chapter 156; (ii) eliminate existing requirements for a mortgage company to maintain records tied to the now defunct physical office requirement; (iii) create definitions for the terms "administrative office," "branch office," "licensed office," and "main office" for purposes of administering the adopted rules, including to clarify which offices of a mortgage company must be licensed by the department; (iv) clarify that the main office or a branch office must be established by the mortgage company and not a sponsored originator; (v) describe conditions under and parameters by which the employees and sponsored originators of a mortgage company are authorized to work from a remote location; (vi) establish a new requirement for a mortgage company to provide appropriate training to its employees and sponsored originators to ensure that remote work is conducted in an environment conducive and appropriate to consumer privacy; (vii) establish a new requirement for a mortgage company to establish, adopt, maintain, and follow written procedures concerning its employees and sponsored originators working remotely; (viii) establish a new requirement for a mortgage company to create and maintain a list of its offices constituting an "administrative office" as defined by the adopted rules; and (xi) establish a new requirement for a mortgage company to maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage company to work remotely.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or October 3, 2021. A public hearing in accordance with Government Code §2001.029 was not required. The commission received one comment in response to the proposal from Black Mann & Graham L.L.P. (commenter). The commenter suggested proposed §80.206 (relating to Office Locations; Remote Work) be adopted with changes to define use of the terms "residential mortgage loan business" (as used in proposed §80.206(a)(5)) or "business and work" (as used in proposed §80.206(c)), or otherwise clarify the scope of work that an employee or sponsored originator of a mortgage company may perform remotely. The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §80.2

Statutory Authority

The rule is adopted under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rule affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§80.203, 80.204, 80.206

Statutory Authority

The rules are adopted under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rules affect the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§80.206. *Office Locations; Remote Work.*

(a) Definitions. The following terms, when used in this section, will have the following meanings, unless the context clearly indicates otherwise.

(1) "Administrative office" means any office of a mortgage company that is separate and distinct from its main office or a branch office, whether located in Texas or not, at which the mortgage company conducts residential mortgage loan business in Texas. The term does not include a "remote location" as defined by this section. The term includes:

(A) an office or location at which the employees of the mortgage company act solely in the capacity of a "loan processor or underwriter," as that term is defined by Tex. Fin. Code §180.002;

(B) an office or location at which the employees of the mortgage company perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by Tex. Fin. Code §180.002(19)(B)(i); or

(C) an office or location which conducts any combination of activities described by subparagraphs (A) or (B) of this paragraph.

(2) "Branch office" means any office a mortgage company maintains that is separate and distinct from its main office, whether located in Texas or not, at which it conducts residential mortgage loan origination business with mortgage applicants or prospective mortgage applicants in Texas or concerning residential real estate located in Texas. The term does not include:

(A) an office or location at which the employees of the mortgage company act solely in the capacity of a "loan processor or underwriter," as that term is defined by Tex. Fin. Code §180.002;

(B) an office or location at which the employees of the mortgage company perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by Tex. Fin. Code §180.002(19)(B)(i);

(C) an office or location which conducts any combination of the activities described by subparagraphs (A) and (B) of this paragraph; or

(D) a "remote location" as defined by this section.

(3) "Licensed office" means a physical office of the mortgage company that is licensed by the Department as its main office or a branch office.

(4) "Main office" means the office the mortgage company has listed in its NMLS license records (MU1 filing) as its "main address" (principal address) under "identifying information," and is therefore licensed by the Department through the mortgage company's license.

(5) "Remote location" means a location other than a licensed office or an administrative office of the mortgage company from which the employees or sponsored originators of the mortgage company conduct residential mortgage loan business as provided by subsection (c) of this section.

(b) Office Requirements. A mortgage company must obtain a license for any office constituting the main office or a branch office of the mortgage company. A mortgage company must also obtain a license for any office or location it advertises or promotes to the general public as an office or location at which the mortgage company's sponsored originators meet in-person with mortgage applicants or prospective mortgage applicants. A licensed office of the mortgage company must be a physical office and have a permanent physical or street address (a post office box or other similar arrangement is not sufficient). The main office or a branch office must be established by the mortgage company. A sponsored originator cannot establish his or her own office other than an office or location from which he or she performs remote work as provided by subsection (c) of this section.

(c) Authorization for Remote Work. The employees of a mortgage company and its sponsored originators may conduct business and work from a remote location to the same extent as if such employees or originators were physically present at a licensed office of the mortgage company; provided, the mortgage company:

(1) maintains appropriate safeguards for the mortgage company and its consumer data, information, and records, including the use of secure virtual private networks and data storage encryption (including cloud storage) where appropriate;

(2) employs appropriate risk-based monitoring and oversight processes for work performed from a remote location and maintains records of those processes;

(3) ensures that physical records containing consumer information are not maintained at a remote location (as defined by this section) and any electronic records containing consumer information located at or accessible from the remote location are secured;

(4) ensures that consumer information and records of the mortgage company, including written procedures and training for work from remote locations authorized under this section, are accessible and available to the Commissioner or the Commissioner's designee on request;

(5) provides appropriate training to its employees and sponsored originators to ensure that remote employees or sponsored originators work in an environment conducive and appropriate to consumer privacy; and

(6) adopts, maintains, and follows written procedures to ensure that:

(A) the mortgage company and its employees and sponsored originators comply with this section; and

(B) the employees and sponsored originators do not perform an activity from a remote location that would be prohibited at a licensed office or administrative office of the mortgage company.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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7 TAC §80.206

Statutory Authority

The rule repeal is adopted under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rule repeal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

7 TAC §80.300

Statutory Authority

The rule is adopted under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rule affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

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CHAPTER 80. TEXAS RESIDENTIAL MORTGAGE LOAN COMPANIES

SUBCHAPTER B. LICENSING

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts amendments, new rules, and rule repeals in 7 TAC Chapter 80, Texas Residential Mortgage Loan Companies. The commission's proposal was published in the September 10, 2021 issue of the *Texas Register* (46 TexReg 5679). The following rules sections are adopted with changes to the published text and are republished to reflect such changes: §80.102, and §80.107. The changes regulate no new parties and affect no new subjects of regulation. As a result, the rules will not be republished as proposed rules for comment. The remaining rules sections in the proposal are adopted without changes to the text as published in the *Texas Register*, and will not be republished.

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 80 implement Finance Code Chapter 156, Residential Mortgage Loan Companies (Chapter 156). The adopted rules were identified during the

department's periodic review of 7 TAC Chapter 80 conducted pursuant to Government Code §2001.039.

Changes Concerning Licensing Procedures

The department licenses residential mortgage loan companies (for purposes of the adopted rules, a "residential mortgage loan company" has the meaning assigned by Finance Code §156.002; mortgage company). The department utilizes the Nationwide Mortgage Licensing System & Registry (NMLS), owned and operated by a company that is a wholly-owned subsidiary of the Conference of State Bank Supervisors (CSBS), as its licensing database system. The adopted rules make various changes to clarify and set forth in rule various procedures utilized by the department in licensing mortgage companies. The adopted rules, among other things: (i) clarify how a mortgage company goes about sponsoring individual residential mortgage loan originators and its responsibility for supervising such originators; (ii) clarify the role of the individual residential mortgage loan originator appointed as the qualifying individual for purposes of Finance Code §156.002(10-b), including requiring the consent of such individual to be appointed; and (iii) clarify the commissioner's authority to approve a license renewal or reinstatement application with a minor deficiency so as to enable the licensed mortgage company to conduct regulated activities while the deficiency is resolved.

Changes Concerning License Records

The adopted rules make various changes concerning: the license records the department maintains with respect to each licensee in NMLS; responsibility for a licensed mortgage company to update such records; and the department's procedures for contacting a licensed mortgage company using the contact information derived from such records. The adopted rules, among other things: (i) expand existing requirements concerning a mortgage company updating and keeping current in the NMLS system various information associated with its license (contact information, information concerning its owners, etc.) by requiring that the mortgage company update such records within ten days after a material change occurs in such information; (ii) set forth in rule an existing requirement prohibiting a licensed mortgage company from allowing an individual residential mortgage loan originator to act on its behalf prior to becoming sponsored of record by such mortgage company in the NMLS system; (iii) set forth in rule procedures for the department to contact a mortgage company utilizing the contact information designated by the licensed mortgage company; and (iv) establish a new requirement providing that a licensed mortgage company must monitor the email address it has designated in the NMLS system for purposes of receiving correspondence or other notices from the department.

Other Modernization and Update Changes

The adopted rules make changes to modernize and update the rules including: adding and replacing language to improve clarity and readability; removing unnecessary or duplicative provisions; updating terminology; and reorganizing the rules sections by subject matter and to align more closely with similar subject matter in 7 TAC Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or October 10, 2021. A public hearing in accordance with Government Code §2001.029 was not required. The commission received

one comment in response the proposal from Black Mann & Graham L.L.P. (commenter). The commenter suggested proposed §80.102 (relating to Qualified Individual) be adopted with changes to subsection (b) to eliminate language the commenter deemed unnecessary. The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment. The commenter further suggested proposed §80.107 (relating to NMLS License Records; Notice to Licensee) be adopted with changes to subsection (d) to use the term "mortgage company" in place of "originator." The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment.

7 TAC §§80.101, 80.102, 80.105 - 80.107

Statutory Authority

The rules are adopted under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rules affect the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§80.102. *Qualified Individual.*

(a) **Qualified Individual Required.** A mortgage company must appoint at least one originator to be the mortgage company's qualifying individual for purposes of Tex. Fin. Code §156.002 (Qualified Individual). As provided by Tex. Fin. Code §156.002, the Qualified Individual is a personal representative of the mortgage company and is deemed to have authority to bind the mortgage company concerning its operations in Texas. In order to serve as the Qualified Individual the licensee must hold his or her individual license in a status which enables him or her to engage in regulated activities with the license, and must be sponsored by the mortgage company for which he or she seeks to serve as Qualified Individual. A mortgage company may appoint more than one originator as Qualifying Individual. If a mortgage company appoints more than one originator to serve as Qualified Individual, each such originator is deemed to serve concurrently and is responsible for all of the originators sponsored by the mortgage company or individuals otherwise allowed to act as originator on its behalf.

(b) **Consent Required.** The appointment of the Qualified Individual must be consented to by the originator. The originator must acknowledge and confirm his or her consent by making a corresponding license record amendment in NMLS to reflect such appointment using the appropriate form prescribed by NMLS.

§80.107. *NMLS License Records; Notice to Licensee.*

(a) **Amendments to License Records Required.** Unless Tex. Fin. Code §156.211 applies and requires additional notice, a mortgage company must amend its NMLS license records (MU1 filing) within 10 days after any material change occurs affecting any aspect of the MU1 filing, including but not limited to:

- (1) name (which must be accompanied by supporting documentation submitted to the Department establishing the name change);
- (2) the addition or elimination of an assumed name (a/k/a trade name or "doing business as" name; which must be accompanied by a certificate of assumed business name or other documentation establishing or abandoning the assumed name);
- (3) the contact information for the mortgage company listed in the MU1 filing under "Identifying Information":

- (A) principal address (main address);
 - (B) mailing address;
 - (C) phone number;
 - (D) fax number; and
 - (E) email address;
- (4) the contact information listed under "Resident/Registered Agent";
- (5) the contact information listed under "Contact Employee Information;" and
- (6) answers to disclosure questions (which must be accompanied by explanations for each such disclosure, together with supporting documentation concerning such disclosure).

(b) **Amendments to MU2 Associations Required.** A mortgage company must cause the individuals who are required to register an association with the mortgage company (MU2 filing) to do so within the NMLS system and must ensure such associations are amended within 10 days after any material change occurs affecting such associations.

(c) **Branch Office License Required.** A mortgage company must apply for and obtain a branch office license for each office constituting a branch office of the mortgage company for purposes of §80.206 of this title (relating to Office Locations; Remote Work), which must be licensed prior to conducting operations at such office. The application must be submitted through NMLS and must be made using the appropriate form prescribed by NMLS (MU3 filing). A mortgage company must amend its MU3 filing to surrender the branch office license within 10 days after closing a branch office.

(d) **Notice to Licensee.** Service of any correspondence, notification, alert, message, official notice or other written communication issued by the Department will be served on the licensee in accordance with this subsection utilizing the licensee's current contact information of record in NMLS unless another method is prescribed by other applicable law (notice to the mortgage company in a matter referred to the State Office of Administrative Hearings for an adjudicative hearing will be performed in accordance with 1 Texas Administrative Code §155.105).

(1) **Service by Email.** Service by email will be made utilizing the email address the mortgage company has designated in its MU1 filing listed under "Identifying Information." Service by email is complete on transmission of the email by the Department to the mortgage company's email service provider; provided, the Department does not receive a "bounce back" notification, or similar, from the email service provider indicating that delivery was not effective. The mortgage company has an ongoing duty and a continuing obligation to monitor such email account including to ensure that correspondence from the Department is not lost in a "spam" or similar folder, or undelivered due to intervention by a "spam filter" or similar service. A mortgage company is deemed to have constructive notice of any email correspondence or NMLS system notifications sent to the email address it has designated in its MU1 filing listed under "Identifying Information."

(2) **Service by Mail.** Service by mail is complete on deposit of the document, postpaid and properly addressed, in the mail or with a commercial delivery service. If service is made on the mortgage company by mail and the document communicates a deadline by or a time during which the mortgage company must perform some act, such deadline or time period for action is extended by three days. However, if service was made by another method prescribed by this subsection, such deadline or time period will be calculated based on the earliest possible deadline or shortest applicable time period.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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7 TAC §§80.102 - 80.104, 80.107

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rule repeals affect the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 81. MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts amendments, new rules, and rule repeals in 7 TAC Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators, §§81.2, 81.203, 81.204, 81.206, 81.300. The commission's proposal was published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5506). Section 81.206 is adopted with changes to the published text and is republished to reflect such changes. The changes regulate no new parties and affect no new subjects of regulation. The remaining rule sections in the proposal are adopted without changes to the text as published in the *Texas Register*, and will not be republished.

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 81 implement Finance Code Chapter 157, Mortgage Bankers and Residential Mortgage Loan Originators (Chapter 157), and Chapter 180, Residential Mortgage Loan Originators (Texas SAFE Act), with respect to persons regulated under Chapter 157.

Changes Concerning Office Requirements and Remote Work

The adopted rules recognize the growing demand for the employees and sponsored originators of a mortgage banker to work remotely by formalizing and clarifying in rule existing authority for the employees and sponsored originators of a mortgage banker to do so. The adopted rules also formalize and clarify in rule existing requirements concerning what constitutes the main office or a branch office of a mortgage banker such that the office must be registered with the department. The adopted rules are further designed to fully implement the requirement, pursuant to Finance Code §157.003(b)(6), for a mortgage banker to provide the commissioner with "a list of any offices that are separate and distinct from the primary office identified on the mortgage banker registration and that conduct residential mortgage loan business." The adopted rules: (i) create definitions for the terms "administrative office," "branch office," "main office," and "registered office," for purposes of administering the adopted rules, including to clarify which offices of a mortgage banker must be registered with the department; (ii) clarify that the main office or a branch office must be established by the mortgage banker or mortgage company and not an originator; (iii) describe conditions under and parameters by which the employees and sponsored originators of a mortgage banker are authorized to work from a remote location; (iv) establish a new requirement for a mortgage banker to provide appropriate training to its employees and sponsored originators to ensure that remote work is conducted in an environment conducive and appropriate to consumer privacy; (v) establish a new requirement for a mortgage banker to establish, adopt, maintain, and follow written procedures concerning its employees and sponsored originators working remotely; (vi) establish a new requirement for a mortgage banker to create and maintain a list of its offices constituting an "administrative office" as defined by the adopted rules; and (vii) establish a new requirement for a mortgage banker to maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage banker to work remotely.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or October 3, 2021. A public hearing in accordance with Government Code §2001.029 was not required. The commission received two comments in response to the proposal. One commenter (Black Mann & Graham L.L.P.) suggested proposed §81.206 (relating to Office Locations; Remote Work) be adopted with changes to define use of the terms "residential mortgage loan business" (as used in proposed §81.206(a)(5)) or "business and work" (as used in proposed §81.206(c)), or otherwise clarify the scope of work that an employee or sponsored originator or a mortgage company may perform remotely. The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment. One commenter (Texas Mortgage Bankers Association) suggested that proposed §81.206(a) be adopted with changes to clarify and better define the types of activities that a mortgage banker acting as a residential mortgage loan servicer may perform at an "administrative office" of the mortgage banker as defined by the

adopted rules. The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §81.2

Statutory Authority

The rule is adopted under the authority of Finance Code §157.0023 and §180.004 which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rule affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator Act, and Chapter 180, the Texas Fair Enforcement for Mortgage Licensing Act of 2009.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§81.203, 81.204, 81.206

Statutory Authority

The rules are adopted under the authority of Finance Code §157.0023 and §180.004, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rules affect the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator Act, and Chapter 180, the Texas Fair Enforcement for Mortgage Licensing Act of 2009.

§81.206. *Office Locations; Remote Work.*

(a) Definitions. The following terms, when used in this section, will have the following meanings, unless the context clearly indicates otherwise.

(1) "Administrative office" means any office of a mortgage banker that is separate and distinct from its main office or a branch office, whether located in Texas or not, at which the mortgage banker conducts residential mortgage loan business in Texas. The term does not include a "remote location" as defined by this section. The term includes:

(A) an office or location at which the employees of the mortgage banker act solely in the capacity of a "loan processor or underwriter," as that term is defined by Tex. Fin. Code §180.002;

(B) an office or location at which the employees of the mortgage banker perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by Tex. Fin. Code §180.002(19)(B)(i);

(C) with respect to a mortgage banker whose registration under Finance Code Chapter 157 reflects it acts as a servicer of residential mortgage loans, an office or location at which a mortgage banker or its employees solely perform activities relating to residential mortgage loan servicing, including:

(i) collection of the residential mortgage loan;

(ii) the administration of escrow accounts;

(iii) loss mitigation;

(iv) administering or enforcing the terms of a residential mortgage loan; or

(v) administering the terms of an investor servicing agreement for a residential mortgage loan; or

(D) an office or location which conducts any combination of activities described by subparagraphs (A) - (C) of this paragraph.

(2) "Branch office" means any office a mortgage banker maintains that is separate and distinct from its main office, whether located in Texas or not, at which it conducts residential mortgage loan origination business with mortgage applicants or prospective mortgage applicants in Texas or concerning residential real estate located in Texas. The term does not include:

(A) an office or location at which the employees of the mortgage banker act solely in the capacity of a "loan processor or underwriter," as that term is defined by Tex. Fin. Code §180.002;

(B) an office or location at which the employees of the mortgage banker perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by Tex. Fin. Code §180.002(19)(B)(i);

(C) with respect to a mortgage banker whose registration under Finance Code Chapter 157 reflects it acts as a servicer of residential mortgage loans, an office or location at which a mortgage banker or its employees solely perform activities relating to residential mortgage loan servicing, including:

(i) collection of the residential mortgage loan;

(ii) the administration of escrow accounts;

(iii) loss mitigation;

(iv) administering or enforcing the terms of a residential mortgage loan; or

(v) administering the terms of an investor servicing agreement for a residential mortgage loan;

(D) an office or location which conducts any combination of activities described by subparagraphs (A) - (C) of this paragraph; or

(E) a "remote location" as defined by this section.

(3) "Main office" means the office the mortgage banker has listed in its NMLS registration (MU1 filing) as its "main address" (principal address) under "identifying information," and is therefore registered with the Department.

(4) "Registered office" means a physical office of the mortgage banker that is registered with the Department as its main office or a branch office.

(5) "Remote location" means a location other than a registered office or an administrative office of the mortgage banker from which the employees or sponsored originators of the mortgage banker conduct residential mortgage loan business as provided by subsection (c) of this section.

(b) Office Requirements. A mortgage banker must register any office constituting the main office or a branch office of the mortgage banker. A mortgage banker must also register any office or location it advertises or promotes to the general public as an office or location at which the mortgage banker's sponsored originators meet in-person with mortgage applicants or prospective mortgage applicants. A registered office of the mortgage banker must be a physical office and have a permanent physical or street address (a post office box or other similar arrangement is not sufficient). The main office or a branch office must be established by the mortgage banker or mortgage company. An originator cannot establish his or her own office other than an office or location from which he or she performs remote work as provided by subsection (c) of this section.

(c) Authorization for Remote Work. The employees of a mortgage banker and its sponsored originators may conduct business and work from a remote location to the same extent as if such employee or originators were physically present at a licensed or registered office of the mortgage banker; provided:

(1) maintains appropriate safeguards for the mortgage banker and its consumer data, information, and records, including the use of secure virtual private networks and data storage encryption (including cloud storage) where appropriate;

(2) employs appropriate risk-based monitoring and oversight processes for work performed from a remote location and maintains records of those processes;

(3) ensures that physical records containing consumer information are not maintained at a remote location (as defined by this section) and any electronic records containing consumer information located at or accessible from the remote location are secured;

(4) ensures that consumer information and records of the mortgage banker, including written procedures and training for work from remote locations authorized under this section, are accessible and available to the Commissioner or the Commissioner's designee on request;

(5) provides appropriate training to its employees and sponsored originators to ensure that remote employees or sponsored originators work in an environment conducive and appropriate to consumer privacy; and

(6) adopts, maintains, and follows written procedures to ensure that:

(A) the mortgage banker and its employees and sponsored originators comply with this section; and

(B) the employees and sponsored originators do not perform an activity from a remote location that would be prohibited at a registered office or administrative office of the mortgage banker.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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7 TAC §81.206

Statutory Authority

The rule repeal is adopted under the authority of Finance Code §157.0023 and §180.004, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rule repeal affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator Act, and Chapter 180, the Texas Fair Enforcement for Mortgage Licensing Act of 2009.

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SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

7 TAC §81.300

Statutory Authority

The rule is adopted under the authority of Finance Code §157.0023 and §180.004, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rule affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator Act, and Chapter 180, the Texas Fair Enforcement for Mortgage Licensing Act of 2009.

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CHAPTER 81. MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts rule repeals (§§81.102 - 81.104, 81.106 - 81.110), amendments (§81.101, §81.105), and new rules (§§81.102 - 81.104, 81.106 - 81.111) in 7 TAC Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators. The commission's proposal was published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5683). The following rules are adopted with changes to the proposed text and are republished to reflect such changes: §81.103, and §81.110. The changes regulate no new parties and affect no new subjects of regulation. As a result, the rules will not be republished as proposed rules for comment. The remaining rules in the proposal are adopted without changes to the proposed text as published in the *Texas Register* and will not be republished.

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 81 implement Finance Code Chapter 157, Mortgage Bankers and Residential Mortgage Loan Originators (Chapter 157), and Chapter 180, Residential Mortgage Loan Originators (Texas SAFE Act), with respect to persons regulated under Chapter 157. The adopted rules were identified during the department's periodic review of 7 TAC Chapter 81 conducted pursuant to Government Code §2001.039.

Criminal Conviction Guidelines

The department licenses individuals to act as residential mortgage loan originators. Pursuant to Occupations Code §53.025, the department, as a licensing authority for an occupational license, is required to issue guidelines relating to the department's administration of Occupations Code Chapter 53, including stating the reasons a particular crime is considered to relate the duties and responsibilities of the license and any other criterion that affects the decisions of the department in administering Occupations Code Chapter 53. The adopted rules implement Occupations Code §53.025 by adopting comprehensive criminal conviction guidelines in rule. The authority for denial of an application for licensure based on an individual's criminal history under the Occupations Code is in addition to and augments that arising from the Finance Code. The adopted rules further outline the commissioner's authority for denial of an application for licensure under the Finance Code based on criminal history, including outlining certain offenses deemed by rule to be grounds for denial of licensure under the Finance Code.

Changes Concerning Licensing Procedures

The department licenses individuals to act as residential mortgage loan originators. The department utilizes the Nationwide Mortgage Licensing System & Registry (NMLS), owned and operated by a company that is a wholly-owned subsidiary of the Conference of State Bank Supervisors (CSBS), as its licensing database system. The adopted rules make various changes to clarify and set forth in rule various procedures utilized by the department in licensing residential mortgage loan originators. The adopted rules, among other things: (i) clarify how a residential mortgage loan originator goes about being sponsored by a mortgage company or mortgage banker so as to engage in regulated activities with the license; (ii) clarify how an individual licensed in another jurisdiction or by a different licensing authority as a residential mortgage loan originator, or is a "registered mortgage loan originator" (as defined by Finance Code §180.002(16)) may engage in regulated activities under temporary authority while he or she seeks licensure by the department; (iii) with respect to an applicant for licensure who is a military service member or military veteran, clarify that his or her military service, training, or education cannot constitute grounds for waiving the pre-licensing examination required by Finance Code §180.057, the pre-licensing education training and coursework required by Finance Code §180.056, or the continuing education training and coursework required by Finance Code §180.060; (iv) with respect to a military spouse, clarify that a military spouse seeking temporary authority to act as a residential mortgage loan originator in Texas must do in conformity with Finance Code §180.0511; (v) with respect to pre-licensing education, expand an existing requirement by requiring that such pre-licensing education lapses if the individual does not achieve licensure by limiting the applicable time period from four years to three years; (vi) with respect to pre-licensing education taken in another jurisdiction, establish a new requirement that any portion of such training and coursework which was specific to such jurisdiction does not count towards the minimum hours of required pre-licensing education; (vii) clarify the commissioner's authority to approve a license renewal or reinstatement application with a minor deficiency so as to enable the individual to conduct regulated activities while the deficiency is resolved (viii) clarify the commissioner's authority to conduct background checks other than through the NMLS system; and (ix) set forth in rule procedures for conducting background checks by the department.

Changes Concerning License Records

The adopted rules make various changes concerning: the license records the department maintains with respect to each licensee in NMLS; responsibility for a licensed residential mortgage loan originator to update such records; and the department's procedures for contacting a residential mortgage loan originator using the contact information derived from such records. The adopted rules, among other things: (i) expand existing requirements concerning a residential mortgage loan originator updating and keeping current in the NMLS system various information associated with his or her license (contact information, disclosures concerning criminal history and financial background, etc.) by requiring that the originator update such records within ten days after a material change occurs in such information; (ii) set forth in rule an existing requirement prohibiting a residential mortgage loan originator from engaging in regulated activities prior to becoming sponsored of record in the NMLS system by a mortgage company or mortgage banker; (iii) set forth in rule procedures for the department to contact a residential mortgage loan originator utilizing the contact information designated by the residential mortgage loan originator

in his or her NMLS license records; and (iv) establish a new requirement requiring a residential mortgage loan originator to monitor the email address he or she has designated in the NMLS system to manage his or her account with NMLS and receive system-generated messages from NMLS, for purposes of receiving correspondence or other notices from the department.

Other Modernization and Update Changes

The adopted rules make changes to modernize and update the rules including: adding and replacing language to improve clarity and readability; removing unnecessary or duplicative provisions; updating terminology; and reorganizing the rules sections by subject matter and to align more closely with similar subject matter in 7 TAC Chapter 80, Texas Residential Mortgage Loan Companies.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or October 10, 2021. A public hearing in accordance with Government Code §2001.029 was not required. The commission received one comment in response to the proposal from Black Mann & Graham, L.L.P. (commenter). The commenter suggested proposed §81.103 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses) be adopted with changes to subsection (c) to replace a reference to Finance Code §157.0062 with a reference to Finance Code §157.016. The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment. The commenter further suggested proposed §81.110 be adopted with changes to: (i) revise subsection (f)(4) to clarify that the factors used by the department to evaluate an individual with a criminal history for licensure pertain to a license to act as a residential mortgage loan originator; (ii) revise subsection (g)(8) to use gender-specific pronouns; (iii) make clarifying revisions to resolve differing usage within the section of the terms "ineligible" and "disqualified" (or derivations thereof) with respect to the eligibility of an individual with a criminal history for a residential mortgage loan originator license; and (iv) reorganize or otherwise clarify the interplay between subsections (c) and (e) as proposed. The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment.

SUBCHAPTER B. LICENSING OF INDIVIDUAL ORIGINATORS

7 TAC §§81.101 - 81.111

Statutory Authority

The rules are adopted under the authority of Finance Code §157.0023, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act). 7 TAC §81.103 is also adopted under the authority of, and to implement, Occupations Code Chapter 55. 7 TAC §81.108 is also adopted under the authority of Government Code §411.1385. 7 TAC §81.110 is also adopted under the authority of, and to implement, Occupations Code §53.025. 7 TAC §81.111 is also adopted under the authority of, and to implement, Occupations Code Chapter 53, Subchapter D.

The adopted rules affect the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

§81.103. Licensing of Military Service Members, Military Veterans, and Military Spouses.

(a) Purpose and Applicability. The purpose of this section is to specify licensing requirements for military service members, military veterans, and military spouses, in accordance with Occupations Code Chapter 55.

(b) Definitions. In this section, the terms "military service member," "military spouse," and "military veteran" have the meanings assigned by Tex. Occ. Code §55.001.

(c) Late Renewal (Reinstatement). As provided by Tex. Occ. Code §55.002, an individual is exempt from any increased fee or other penalty for failing to renew his or her originator license in a timely manner if the individual establishes to the satisfaction of the Commissioner that the individual failed to timely renew the license because the individual was serving as a military service member. A military service member who fails to timely renew his or her originator license must seek reinstatement of the license within the time period prescribed by Tex. Fin. Code §157.016; otherwise, the individual must obtain a new license, including complying with the requirements and procedures then in existence for obtaining an original license.

(d) Expedited License Procedure. As provided by Tex. Occ. Code §55.004 and §55.005, the Department will process a license application as soon as practicable and issue a license to a qualifying applicant who is a military service member, military veteran, or military spouse, if the applicant:

(1) holds a current license in another jurisdiction as a residential mortgage loan originator in accordance with the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §§5101-5117; or

(2) held a residential mortgage loan originator license in Texas within the five years preceding the date of the application.

(e) Temporary Authority for Military Spouse. Tex. Occ. Code §55.0041 provides that a military spouse may engage in a business or occupation for which a license is required without obtaining the applicable license if the spouse is currently licensed in good standing in another jurisdiction with substantially similar licensing requirements. However, federal law imposes specific, comprehensive requirements governing when and under what circumstances an individual sanctioned to act as an originator in another jurisdiction may act under temporary authority in this state (12 U.S.C. §5117 (relating to Employment Transition of Loan Originators)). Tex. Occ. Code §55.0041(c) further requires that a military spouse "comply with all other laws and regulations applicable to the business or occupation." As a result, a military spouse seeking to avail himself or herself of the temporary authority conferred by Tex. Occ. Code §55.0041 must apply for and seek temporary authority in accordance with Tex. Fin. Code §180.0511 and §81.102 of this title (relating to Temporary Authority).

(f) Substantial Equivalency. For purposes of this section and Tex. Occ. Code §55.004, a residential mortgage loan originator license issued in another jurisdiction is substantially equivalent to a Texas residential mortgage loan originator license if it is issued in accordance with the requirements of the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §§5501-5117. The Department will verify a license issued in another jurisdiction through NMLS.

(g) Credit for Military Experience. As provided by Tex. Occ. Code §55.007, with respect to an applicant who is a military service

member or military veteran, the Department will credit verified military service, training or education toward the requirements for an originator license by considering the service, training, or education as part of the applicant's employment history. The following items cannot be substituted for military service, training, or education:

- (1) the pre-licensing examination, as provided by Tex. Fin. Code §180.057;
- (2) the required pre-licensing education training and coursework, as provided by Tex. Fin. Code §180.056 and §81.104 of this title (relating to Required Education); and
- (3) continuing education training and coursework, as provided by Tex. Fin. Code §180.060 and §81.104 of this title (relating to Required Education).

§81.110. *Criminal Conviction Guidelines.*

(a) Purpose and Applicability. This section establishes the criteria utilized by the Commissioner and Department staff in reviewing an individual with a criminal history to determine his or her eligibility and fitness to be licensed by the Department as an originator. This section implements the requirements of Tex. Occ. Code §53.025, requiring the Department to establish guidelines related to such reviews, including designating particular crimes and offenses the Department considers to be directly related to the duties and responsibilities of acting as an originator and may constitute grounds for denial of licensure. The Commissioner's authority to deny an application for licensure based on an individual's criminal history under the Occupations Code is in addition to and augments that arising from the Finance Code. This section also describes the Commissioner's other statutory authority arising from the Finance Code for denial of licensure based on an individual's criminal history, including outlining certain offenses deemed by this section to be grounds for denial under the Finance Code.

(b) Ineligibility by Operation of Law. The following individuals are ineligible for licensure by operation of law due to his or her criminal history:

- (1) an individual who, within the seven years preceding the date of the application, has been convicted of, or pled guilty or nolo contendere to, a felony in a court of this state, another state or territory of the United States, a federal court of the United States, or other foreign, or military court, in accordance with Tex. Fin. Code §180.055(a); and
- (2) an individual who, at any time, has been convicted of, or pled guilty or nolo contendere to, a felony offense involving an act of fraud, dishonesty, breach of trust, or money laundering, in accordance with Tex. Fin. Code §180.055(a). Any felony offense listed in the schedule contained in subsection (e) of this section having a nexus to residential mortgage loan origination arising from the categories of criminal offenses related to residential mortgage loan origination under subsection (d)(1) or (2) of this section (concerning crimes involving fraud, falsification, dishonesty, deception and breach of trust, and theft or embezzlement, respectively) is deemed to constitute a crime involving an act of fraud, dishonesty, breach of trust, or money laundering for purposes of Tex. Fin. Code §180.055(a).

(c) Duties and Responsibilities of a Residential Mortgage Loan Originator. An originator acts as an intermediary between the consumer seeking a residential mortgage loan and the underwriter who ultimately determines whether the consumer qualifies for the loan. The originator may assist the consumer in reviewing his or her income, expenses and credit worthiness to determine whether he or she will qualify for a loan, and on what terms he or she might qualify. The originator may assist the consumer in making the loan application, and sometimes directs the consumer to present his or her financial informa-

tion in the manner to which the lender or underwriter is accustomed. A residential mortgage loan often takes place in the context of a real estate transaction, and as a result, an originator sometimes advises the consumer of his or her financial ability to purchase residential real estate, including providing prequalification documents to establish the consumer's purchasing power while shopping in the marketplace. Once the loan has entered the underwriting process, the originator may assist the consumer in resolving any outstanding conditions of the underwriter to qualify for the loan and obtain approval, including addressing items of concern on a consumer's credit report, immigration/residency status, available cash-on-hand for the transaction, and income which may not be readily established by documentary evidence, such as that of an independent contractor. The originator communicates to the consumer the ever-changing loan terms as prevailing rates in the marketplace fluctuate, and is often a key figure in advising the consumer of when and how he or she may "lock" the loan in advance of closing and solidify the loan terms. The originator may serve as communications liaison between the consumer and various parties to the transaction, including the lender, the underwriting department or a third-party underwriter, real estate brokers and sales agents, appraisers, insurance providers, closing/settlement agents, and representatives of various taxing authorities. In performing his or her duties, an originator has access to sensitive information of the consumer, including his or her social security number, date of birth, immigration/residency status, and all the personal financial details of the consumer, including employment, income, assets, and expenses.

(d) Categories of Offenses Related to Residential Mortgage Loan Origination. The Finance Commission of Texas and the Department's Commissioner has determined the following categories of criminal offenses are directly related to the duties and responsibilities of acting as an originator:

- (1) criminal offenses involving fraud, falsification, dishonesty, deception, and breach of trust;
- (2) criminal offenses involving theft or embezzlement; and
- (3) criminal offenses involving intoxication by drugs or alcohol.

(e) Schedule of Criminal Offenses Determined to be Directly Related. The Finance Commission of Texas and the Department's Commissioner has determined the criminal offenses in the following schedule meet one or more of the categories deemed to relate to residential mortgage loan origination by subsection (d) of this section, and are directly related to the duties and responsibilities of an individual licensed by the Department to act as an originator. The schedule includes those criminal offenses most likely to be encountered by Department staff and is made from the perspective of the criminal laws of the State of Texas and the United States federal government. However, the schedule is not an exhaustive review of all offenses, and does not limit the Department from considering a criminal offense not specifically listed in the schedule. The schedule should be construed to include any criminal offense meeting one or more of the categories deemed to relate to residential mortgage loan origination, as provided by subsection (d) of this section. The schedule should further be construed to include the substantially similar or functionally equivalent crime of any state or territory of the United States, violations of the Texas Code of Military Justice (Government Code Chapter 432), violations of the Uniform Code of Military Justice, or crimes of a foreign country or governmental subdivision thereof. In determining whether a criminal offense of another jurisdiction is substantially similar or functionally equivalent, an inquiry will be made comparing the subject offense with an offense on the schedule to determine whether the subject offense has similar elements, including intent and

classification of punishment, and whether the crime would have been punishable had the acts been committed in Texas.

Figure: 7 TAC §81.110(e)

(f) Factors. Unless the individual is ineligible for licensure by operation of law as provided by subsection (b) of this section, in determining whether a criminal offense is directly related to the duties and responsibilities of an individual licensed by the Department to act as an originator, the Commissioner will consider:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to act as an originator;
- (3) the extent to which an originator license might offer an opportunity for the individual to engage in further criminal activity of the same type as that in which the individual has previously been involved;
- (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensed originator; and
- (5) any correlation between the elements of the crime and the duties and responsibilities of licensed originator.

(g) In addition to the factors listed in subsection (f) of this section, the Commissioner, in determining whether an individual who has been convicted of a crime (as determined by Tex. Fin. Code §157.0131 and subsection (h) of this section) is unfit and ineligible for licensure, will consider:

- (1) the extent and nature of the individual's past criminal activity;
- (2) the age of the individual when the crime was committed;
- (3) the amount of time that has elapsed since the individual's criminal activity;
- (4) the amount of time that has elapsed since the individual's release from incarceration;
- (5) the conduct and work activity of the individual before and after the criminal activity;
- (6) evidence of the individual's rehabilitation or rehabilitative efforts;
- (7) letters of recommendation, signed and dated, by a current employer, if the individual is employed, or a previous employer, stating that the employer has specific and complete knowledge of the individual's criminal history and the reasons the employer is recommending that the individual be considered fit to be licensed by the Department; and
- (8) any other letters of recommendation, signed and dated, by an individual familiar with the applicant and his or her character and fitness, with specific and complete knowledge of the individual's criminal history, able to offer competent information about the nature and extent of the applicant's rehabilitative efforts.

(h) Convictions Considered. The determination of whether a criminal proceeding is considered to have resulted in a conviction for purposes of this section will be made in accordance with Tex. Fin. Code §157.0131, which states that an individual is considered to have been convicted of a criminal offense if:

- (1) a sentence is imposed on the individual;

(2) the individual received probation or community supervision, including deferred adjudication or community service; or

(3) the court deferred final disposition of the individual's case.

(i) Consideration of Disciplinary Actions. Unless the individual is ineligible for licensure by operation of law as provided by subsection (b) of this section, in addition to the individual's criminal history, the Commissioner may consider the individual's past history of disciplinary actions with the Department, or another regulatory body or official of another jurisdiction regulating residential mortgage loan origination or other financial services, which may serve as separate grounds for license ineligibility, or as an aggravating factor rendering the individual ineligible for licensure.

(j) Consideration of Financial Responsibility, Character and General Fitness. Unless the individual is ineligible for licensure by operation of law as provided by subsection (b) of this section, in addition to the individual's criminal history, the Commissioner may consider the individual's financial responsibility, and other evidence of character and general fitness, which may serve as separate grounds for license ineligibility, or as an aggravating factor rendering the individual ineligible for licensure. A conviction for a criminal offense having a nexus to residential mortgage loan origination arising from the categories of criminal offenses deemed to relate to residential mortgage loan origination under subsection (d) of this section is indicative of a failure to demonstrate requisite character and general fitness to command the confidence of the community in accordance with Tex. Fin. Code §180.055(a)(3), and honesty, trustworthiness and integrity in accordance with Tex. Fin. Code §157.012(c)(1).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. LICENSING

7 TAC §§81.102 - 81.104, 81.106 - 81.110

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §157.0023, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rule repeals affect the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 89. PROPERTY TAX LENDERS

The Finance Commission of Texas (commission) adopts amendments to §89.310 (relating to Fees) and §89.405 (relating to Denial, Suspension, or Revocation Based on Criminal History), and adopts the repeal of §89.409 (relating to License Reissuance), in 7 TAC, Chapter 89, concerning Property Tax Lenders. The commission adopts the amendments to §89.310 and the repeal of §89.409 without changes to the proposed text as published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5513). These rules will not be republished. The commission adopts the amendments to §89.405 with changes to the proposed text as published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5513). This rule will be republished.

The commission received no written comments on the proposal.

In general, the purpose of the rule changes to 7 TAC Chapter 89 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 89 was published in the *Texas Register* on May 28, 2021 (46 TexReg 3425). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received one informal precomment on the rule text draft, addressing the issue of below-market-rate loans under Texas Tax Code, §32.06(a-8). The precomment did not address the proposed rule changes in §§89.310, 89.405, and 89.409. The OCCC appreciates the thoughtful input provided by stakeholders.

An amendment to §89.310 adjusts the volume-based portion of the annual fee paid by property tax lender licensees. Under Texas Finance Code, §351.154, property tax lender licensees are required to pay a license fee to the OCCC. Under Texas Finance Code, §14.107, the commission is authorized to set the amount of the license fee in an amount necessary to recover the costs of administering Texas Finance Code, Chapter 351. Under Texas Finance Code, §16.002 and §16.003, the OCCC is a self-directed, semi-independent agency. This means that the OCCC is responsible for the costs of its operations, and may set fees in amounts necessary for the purpose of carrying out its functions.

Under current §89.310(g)(1), the annual license fee paid by active property tax lender licensees consists of two components: (1) a fixed fee up to \$600, and (2) a volume fee up to \$0.03 for each \$1,000 advanced in property tax loans, in accordance with the property tax lender's most recent annual report. Under current §89.310(g)(3), the total annual license fee shall not average more than \$1,200 per active licensed location.

The amendment to §89.310(g)(1)(B) adjusts the volume-based portion of the annual license fee from \$0.03 to \$0.05 per \$1,000 advanced. The commission and the OCCC believe that this change is necessary to ensure that licensing fees are sufficient to recover the costs of administering Texas Finance Code, Chapter 351. Currently, property tax lenders contribute approximately 0.8% of the total revenue that the OCCC receives from license fees. However, property tax lender examinations make up approximately 1.5% of the OCCC's workload of examination hours. This suggests that the current revenue from property tax lender license fees is not sufficient in comparison to other industries.

In the OCCC's experience, the property tax lending industry has required significant staff resources due to the complexity of the property tax loan transaction. A property tax lender examination often requires a team of examiners with specialized training and experience. On average, a property tax lender examination requires approximately 20 examination hours (compared to 16 hours for motor vehicle sales finance licensees and 10 hours for regulated lenders). The OCCC has also received a number of complaints about property tax lenders. Compared to other industries, property tax lenders have consistently tended to have a higher ratio of complaints to the number of active licensees. Many of these complaints are complex and require significant staff time to process. In the OCCC's experience, costs for property tax lenders tend to scale with loan volumes, with the OCCC generally expending more resources on property tax lenders that have larger loan volumes.

Currently, the volume-based fee for property tax lenders is lower than the corresponding fee for regulated lenders. Whereas property tax lenders currently pay \$0.03 per \$1,000 advanced under §89.310(g)(1)(B), regulated lenders currently pay \$0.05 per \$1,000 of loans made under Texas Finance Code, Chapter 342, Subchapter E, as provided by the current rule at 7 TAC §83.310(g)(1)(B)(iii) (relating to Fees). Adjusting the volume-based fee for property tax lenders from \$0.03 to \$0.05 would bring property tax lenders more in line with other licensees. This would help ensure that property tax lenders pay their fair share of costs for regulating the industry, and that other industries are not subsidizing the cost of regulating property tax lenders.

Amendments to §89.405 relate to the OCCC's review of the criminal history of a property tax lender applicant or licensee. The OCCC is authorized to review criminal history of applicants and licensees under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.109; and Texas Government Code, §411.095. The amendments to §89.405 will ensure consistency with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included the following changes in Texas Occupations Code, Chapter 53: (1) the bill repealed a provision that generally allowed denial, suspension, or revocation for any offense occurring in the five years preceding the application, (2) the bill added provisions requiring an agency to consider correlation between elements of a crime and the duties and responsibilities of the licensed occupation, as well as compliance with conditions of community supervision, parole, or mandatory supervision, and (3) the bill

removed previous language specifying who could provide a letter of recommendation on behalf of an applicant. Amendments throughout subsections (c) and (f) of §89.405 implement these statutory changes from HB 1342. Other amendments to §89.405 include technical corrections, clarifying changes, and updates to citations.

Since the proposal, a change has been made in §89.405(d), to correct an internal reference that should refer to §89.405(f)(1).

The adoption repeals §89.409. Currently, §89.409 requires a licensee to return its license certificate in the event of reissuance of a license. When this section was adopted, it was based on the assumption that the OCCC would issue a paper license certificate. Because the OCCC now issues licenses through an online system (ALECS), this section is no longer necessary.

SUBCHAPTER C. APPLICATION PROCEDURES

7 TAC §89.310

The rule changes are adopted under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §14.107 authorizes the commission to set licensing fees under Chapter 351 at amounts necessary to recover the costs of administering that chapter. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 351.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Matthew Nance

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For further information, please call: (512) 936-7660



SUBCHAPTER D. LICENSE

7 TAC §89.405

The rule changes are adopted under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §14.107 authorizes the commission to set licensing fees under Chapter 351 at amounts necessary to recover the costs of administering that chapter. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 351.

§89.405. *Denial, Suspension, or Revocation Based on Criminal History.*

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §89.310 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and its principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c) of this section, including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid or are current.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 351, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating, acquiring, or servicing loans under Texas Finance Code, Chapter 351 involves or may involve making representations to consumers regarding the terms of the loan, receiving money from consumers, remitting money to third parties, maintaining accounts, collecting due amounts in a legal manner, foreclosing on real property in compliance with state and federal law, and compliance with reporting requirements to government agencies. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

(C) any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);

(D) any offense that involves breach of trust or other fiduciary duty;

(E) any criminal violation of a statute governing credit transactions, property tax lending, or debt collection;

(F) failure to file a government report, filing a false government report, or tampering with a government record;

(G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;

(D) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of a licensee; and

(E) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served;

(F) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(G) evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation.

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §351.104(a)(1). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(1) of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness

of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) and (3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

(1) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054 or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(2)-(3);

(2) errors or incomplete information in the license application;

(3) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §351.156(3); and

(4) any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §351.104(a)(1) and §351.156.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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7 TAC §89.409

The rule repeal is adopted under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §14.107 authorizes the commission to set licensing fees under Chapter 351 at amounts necessary to recover the costs of administering that chapter. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 351.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 85. VEHICLE STORAGE FACILITIES

16 TAC §85.722

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 85, §85.722, regarding the Vehicle Storage Facilities Program, without changes to the proposed text as published in the August 13, 2021, issue of the *Texas Register* (46 TexReg 4965). The rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 85 implement Texas Occupations Code, Chapter 2303, Vehicle Storage Facilities.

The adopted rule addresses the maximum amounts for vehicle storage and impoundment fees that may be charged by a vehicle storage facility company. The adopted rule increases the allowable vehicle storage facility impoundment fee and daily storage fee in accordance with changes in the Consumer Price Index (CPI) during the preceding state fiscal biennium, as authorized by statute. Pursuant to Texas Occupations Code §2303.1552, the Texas Commission of Licensing and Regulation (Commission) is authorized to adjust the vehicle impoundment and daily storage fees based upon changes in the CPI not later than November 1 of every odd-numbered year. The adopted rule, based upon analysis of the CPI during the preceding state fiscal biennium by Department staff, is necessary to comply with the statutory requirements to implement changes in the vehicle impoundment and storage fees for 2021.

SECTION-BY-SECTION SUMMARY

The adopted rule amends §85.722(d) by reflecting the new maximum amounts for daily storage fees that may be charged by a vehicle storage facility in connection with receipt and storage of a vehicle, as authorized by statute.

The adopted rule amends §85.722(e) by reflecting the new maximum amount for the vehicle impoundment fee that may be charged by a vehicle storage facility in connection with impoundment and custody of a vehicle, as authorized by statute.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the August 13, 2021, issue of the *Texas Reg-*

ister (46 TexReg 4965). The deadline for public comments was September 13, 2021. The Department received seven comments from six interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment - The Department received a comment from an interested party in opposition to the proposed rule which asserted that VSF fees should increase with the cost of living. Moreover, the commenter stated the proposed storage fee was too low and should rise with property tax rates. The commenter proposed a 3% annual rise in VSF fees.

Department Response - The Department respectfully disagrees with this comment. In determining the VSF daily storage fee and the impoundment fee levels, the Department was bound by the statutory calculation method under Occupations Code §2303.1552. The method by which the proposed fees were reached was based upon changes in the consumer price index for urban consumers (CPI-U) during the preceding state biennium. The Department was not authorized by statute to employ any other method. No change was made to the proposed rule as a result of this comment.

Comment - The Department received a comment from an interested party that contended that the VSF notification fee was excessive, and that the Department should have consulted with licensees prior to determining the proposed levels for the daily storage fee and the impoundment fee. The commenter further objected and noted that, after 14 years of regulation, the daily storage fee was not raised enough to compensate the licensees.

Department Response - The Department respectfully disagrees with this comment. In determining the VSF daily storage fee and the impoundment fee levels, the Department was bound by the statutory calculation method under Occupations Code §2303.1552. The method by which these fees were reached was based upon changes in the consumer price index for urban consumers (CPI-U) during the preceding state biennium. The Department was not authorized by statute to employ any other method. Moreover, the notification fee was not amended by the current rulemaking. Consequently, that aspect of the comment was beyond the scope of the proposed rule. No change was made to the proposed rule as a result of this comment.

Comment - The Department received two comments from the Southwest Tow Operators Association (STOA) in opposition to the proposed rule. The second comment was nearly identical to the first but offered a correction to an exhibit in the initial comment. The commenter contended that the proposed fee increases made an error in using 2005 fee rates to calculate the proposed fees. STOA asserted that the Department should have accounted for increases in the CPI over the last 14 years, as contemplated by the Legislature in Occupations Code §2303.1552. The commenter notes that the increase in CPI over this time period should have been used in the methodology prior to calculating the CPI increase. The commenter argued that the higher fee adjustment does not harm Texas consumers and properly compensates operators for their true expenses based on today's prices not those of 2005.

Department Response - The Department respectfully disagrees with this comment. In determining the VSF daily storage fee and the impoundment fee levels, the Department was bound by the statutory calculation method under Occupations Code §2303.1552. The method by which these proposed fees were reached was based upon changes in the consumer price index

for urban consumers (CPI-U) during the preceding state biennium. The Department was not authorized by statute to employ any other method. The Department further notes that the daily storage fee was raised two years ago. No change was made to the proposed rule as a result of this comment.

Comment - The Department received a comment from an interested party opposing the proposed rule that contended the proposed VSF storage fee increases were not set high enough and suggested that the fee should be set at \$30 per day for vehicles less than 25 feet, and \$45 per day for those vehicles exceeding that length. The commenter noted that there had not been a significant increase in the storage fee for a long time.

Department Response - The Department respectfully disagrees with this comment. In determining the proposed VSF daily storage fee, the Department was bound by the statutory calculation method under Occupations Code §2303.1552. The method by which the daily storage fee level was reached was based upon changes in the consumer price index for urban consumers (CPI-U) during the preceding state biennium. The Department was not authorized to employ any other method. Moreover, the Department notes that the daily storage fee was raised two years ago. No change was made to the proposed rule as a result of this comment.

Comment - The Department received a comment from an interested party in support of the amendments to the proposed rule, describing the fee increases as aiding licensees in absorbing increased operational costs.

Department Response - The Department appreciates the comments in support of the proposed rule and no change was made to the proposed rule as a result of this comment.

Comment - The Department received a comment from the American Property Casualty Insurance Association (APCIA) in opposition to the proposed rule. The APCIA is concerned that the proposed rule will lead to higher insurance premiums for consumers if the changes are adopted.

Department Response - The Department respectfully disagrees with this comment. While the Department does not comment on the future of consumer insurance premiums as a result of the proposed rule, the Department notes that it is bound by the dictates for statutory calculation method under Occupations Code §2303.1552. The Department was not authorized to employ any other method or consideration not authorized by law. No change was made to the proposed rule as a result of this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Towing and Storage Advisory Board met on September 15, 2021, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register*. At its meeting on October 5, 2021, the Commission adopted the proposed rules as recommended by the Advisory Board.

STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapters 51 and 2303, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51 and 2303. No other statutes, articles, or codes are affected by the adopted rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 463-3671



CHAPTER 86. VEHICLE TOWING AND BOOTING

16 TAC §86.455

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 86, §86.455, regarding the Vehicle Towing and Booting program, without changes to the proposed text as published in the August 13, 2021, issue of the *Texas Register* (46 TexReg 4967). The rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 86 implement Texas Occupations Code, Chapter 2308, Vehicle Towing and Booting.

The adopted rule addresses the maximum amounts for private property tows and drop fees that may be charged by a towing company. Pursuant to Occupations Code §2308.0575, the Texas Commission of Licensing and Regulation (Commission) is required to biennially contract for a fee study which examines private property towing fees assessed by towing companies based on factors such as: (1) the costs of company towing services; (2) changes in the Consumer Price Index for All Urban Consumers (CPI-U); (3) the geographic area, in this instance, a specific focus on the urban consumers for the U.S. South Region; and (4) individual cost components, including the CPI-U for motor vehicle maintenance and repair and the CPI-U for motor vehicle insurance and state gasoline prices. The adopted rule is based upon findings from the 2020 fee study and is necessary to comply with the statutory requirements to implement the biennial adjustment of fees for 2021, in order to protect public health and safety of consumers.

SECTION-BY-SECTION SUMMARY

The adopted rule amends §86.455(b), by reflecting the new maximum amounts for private property tows that may be charged by a towing company in connection with a private property tow, as determined by the 2020 fee study required by statute.

The adopted rule amends §86.455(c), by reflecting the new maximum amounts for motor vehicle drop charges that may be charged by a towing company in connection with a private property tow prior to its removal from the premises or parked

location, as determined by the 2020 fee study required by statute.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the August 13, 2021, issue of the *Texas Register* (46 TexReg 4967). The deadline for public comments was September 13, 2021. The Department received comments from four interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment - The Department received a comment from an interested party that contended that the private property tow fee increase would adversely impact the current economy and hurt Texas consumers.

Department Response - The Department respectfully disagrees with this comment. In determining the proposed private property tow fees, the Department was bound by the statutory calculation method under Occupations Code §2308.0575(b). The method employed for these proposed fees were reached from the results of a Department contracted fee study that examined the results of previous fee studies, the costs of towing services by company, the consumer price index, geographic area, and individual cost components. The Department was not authorized to employ any other method. The proposed fees were the product of that method. No change was made to the proposed rule as a result of this comment.

Comment - The Department received two comments from interested parties in support of the amendment to the proposed rule, describing the fee increases as aiding licensees in absorbing increased operational costs.

Department Response - The Department appreciates the comments in support of the proposed rule and no change was made to the proposed rule as a result of this comment.

Comment - The Department received a comment in opposition to the proposed rule from an interested party that contended that towing fees are not affordable and requested that they not increase.

Department Response - The Department acknowledges and respectfully disagrees with this comment. In determining the proposed private property tow fees, the Department was bound by the statutory provisions under Occupations Code §2308.0575(b). In keeping with the law, the Department contracted fee study reached the increase in private property tow fees as indicated in the proposed rule. The proposed increase is mandated by law to take effect not later than November 1st of this year. The Department was not authorized to employ any other method. No change was made to the proposed rule as a result of this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Towing, Storage and Boating Advisory Board met on September 15, 2021, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register*. At its meeting on October 5, 2021, the Commission adopted the proposed rules as recommended by the Advisory Board.

STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapters 51 and 2308, which authorize the Commission to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51 and 2308. No other statutes, articles, or codes are affected by the adopted rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 88. POLYGRAPH EXAMINERS

16 TAC §§88.1, 88.10, 88.20 - 88.29, 88.40, 88.70 - 88.80, 88.90, 88.91, 88.100, 88.101

The Texas Commission of Licensing and Regulation (Commission) adopts the repeal of existing rules at 16 Texas Administrative Code (TAC), Chapter 88, §§88.1, 88.10, 88.20 - 88.29, 88.40, 88.70 - 88.80, 88.90, 88.91, 88.100, and 88.101, regarding the Polygraph Examiners Program, without changes to the proposed text as published in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5123). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 88 implement Texas Occupations, Chapter 1703, Polygraph Examiners.

The adopted repeals implement House Bill (HB) 1560, 87th Legislature, Regular Session (2021), which deregulates the polygraph examiners program by repealing Chapter 1703, Occupations Code, effective September 1, 2021. The adopted repeals are necessary to repeal the existing chapter establishing the regulatory structure for polygraph examiner licenses. Due to the repeal of Chapter 1703, Occupations Code, the Department no longer has authority over the licensure of Polygraph Examiners, and the adopted repeals remove all rules related to the regulation of this program.

SECTION-BY-SECTION SUMMARY

The adopted repeal of §88.1, Authority. This section states the authority for regulation by the Department.

The adopted repeal of §88.10, Definitions. This section provides definitions for Chapter 88.

The adopted repeal of §88.20, Licensing Requirements--Polygraph Examiner. This section establishes licensure requirements for the Polygraph Examiner license.

The adopted repeal of §88.21, Licensing Requirements--Polygraph Examiner Renewal. This section establishes renewal licensure requirements for the Polygraph Examiner license.

The adopted repeal of §88.22, Licensing Requirements--Polygraph Examiner Non-resident Applicants. This section establishes non-resident application requirements for the Polygraph Examiner license.

The adopted repeal of §88.23, Licensing Requirements--Registration with County Clerk. This section establishes the registration requirements with county clerks.

The adopted repeal of §88.24, Licensing Requirements--Polygraph Examiner Applicant with Out-of-State License. This section establishes the out-of-state reciprocity procedures for Polygraph Examiner license applications.

The adopted repeal of §88.25, Continuing Education. This section establishes continuing education requirements for the licenses issued under Chapter 88.

The adopted repeal of §88.26, Licensing Requirements--Polygraph Examiner Internship License. This section establishes licensure requirements for the Polygraph Examiner Internship license.

The adopted repeal of §88.27, Polygraph Examiner Internship License Term. This section establishes the term of a Polygraph Examiner Internship license.

The adopted repeal of §88.28, Responsibilities of Registered Curriculum Providers. This section establishes requirements for curriculum providers.

The adopted repeal of §88.29, State Examination for Polygraph Examiner License. This section establishes the requirements for examination eligibility and passage.

The adopted repeal of §88.40, Financial Security. This section establishes financial security requirements of \$5,000 for Polygraph Examiner licensees.

The adopted repeal of §88.70, General Responsibilities--Sponsor. This section outlines the responsibilities of a sponsor for a trainee.

The adopted repeal of §88.71, General Responsibilities--Polygraph Examiner Internship. This section outlines the responsibilities of a trainee in an internship.

The adopted repeal of §88.72, Responsibility of Licensee--Change of Name and/or Address. This section establishes the requirement to inform the Department of a change of name or address.

The adopted repeal of §88.73, Responsibility of Licensee--Display of License. This section establishes the requirement to display a Polygraph Examiner license.

The adopted repeal of §88.74, Responsibility of Licensee--Conducting Polygraph Examinations. This section establishes the responsibilities of a Polygraph Examiner during a polygraph examination.

The adopted repeal of §88.75, Responsibility of Licensee--Prohibited Acts. This section establishes prohibited acts by licensees under Chapter 88.

The adopted repeal of §88.76, Responsibility of Licensee--Polygraph Examination Results. This section outlines the responsibilities of licensees after conducting a polygraph examination.

The adopted repeal of §88.77, Responsibility of Licensee--Confidentiality of Examination Results. This section establishes the confidentiality of polygraph examination results.

The adopted repeal of §88.78, Responsibility of Licensee--Contract for Services and Waiver of Liability. This section contains mandatory language that must be included in any contract for polygraph examinations or waivers of liability.

The adopted repeal of §88.79, Responsibility of Licensee--Record Keeping. This section establishes the recordkeeping requirements a licensee must observe for polygraph examinations.

The adopted repeal of §88.80, Fees. This section establishes the fees to be paid to the Department for licenses issued under Chapter 88.

The adopted repeal of §88.90, Sanctions and Administrative Penalties. This section establishes that the Department may apply sanctions or administrative penalties under Chapter 88 or other Department laws and rules.

The adopted repeal of §88.91, Enforcement Authority. This section establishes the Department's enforcement authority.

The adopted repeal of §88.100, Technical Requirements--Polygraph Examiner Course Training Material and Internship. This section establishes the hours and subject matter requirements for Polygraph Examiner license training courses.

The adopted repeal of §88.101, Other Instruments and Instrumentation. This section states that the Texas Commission of Licensing and Regulation (Commission) may adopt rules to identify instruments acceptable for use in Texas.

PUBLIC COMMENTS

The Department drafted and distributed the proposed repeals to persons internal and external to the agency. The proposed rules were published in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5123). The deadline for public comments was September 20, 2021. The Department received comments from one interested party on the proposed rules during the 30-day public comment period. The public comment is summarized below.

Comment -- One commenter expressed sadness with the Texas Legislature's decision to deregulate polygraph examiners in Texas, and concern regarding the legitimacy of the profession in the future.

Department Response -- This comment is outside the scope of the proposed rules as it concerns legislative decision-making by elected representatives. The Department has made no changes as a result of this comment.

COMMISSION ACTION

At its meeting on October 5, 2021, the Commission adopted the proposed rules as recommended by the Department.

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51 and 1703, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapters 51 and

1703. No other statutes, articles, or codes are affected by the adopted repeals.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 97. MOTOR FUEL METERING AND QUALITY

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 97, Subchapter A, §97.1 and §97.2, and Subchapter D, §97.59; and adopts a new rule at Subchapter B, §97.29, regarding the Motor Fuel Metering and Quality Program, without changes to the proposed text as published in the August 6, 2021, issue of the *Texas Register* (46 TexReg 4814). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 97 implement Texas Business and Commerce Code, Chapter 607, Payment Card Skimmers on Motor Fuel Metering Devices.

The adopted rules are necessary to implement House Bill (HB) 2106, 87th Legislature, Regular Session (2021), which transferred regulatory authority related to payment card skimmers on motor fuel metering devices from the Office of the Attorney General (OAG) to the Department effective September 1, 2021. The adopted rules are necessary to reconcile differences in the legislation and current Department rules and enable the Texas Commission of Licensing and Regulation, the Department's governing body (Commission), and the Department to administer Chapter 607, Texas Business and Commerce Code.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §97.1, Authority, by adding a reference to the Texas Business and Commerce Code.

The adopted rules amend §97.2, Definitions, by adding definitions for "Merchant," and "Skimmer," to align with statute, and renumbering the remaining definitions.

The adopted rules add new §97.29, Discovery of Payment Card Skimmers, which prescribes the requirements a merchant must follow if a skimmer is located at their facility.

The adopted rules amend §97.59, Inspection for Payment Card Skimmers. The adopted rules remove the definitions which were included in proposed §97.2 and prescribe that service companies must report skimmers, as required by statute.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the August 6, 2021, issue of the *Texas Register* (46 TexReg 4814). The deadline for public comments was September 6, 2021. The Department received comments from one interested party on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment: The Department received a comment from an individual regarding training and procedures related to skimmer identification.

Department Response: The comment is outside the scope of the proposed rule, and the Department has taken no action on the comment; however, the comment has been provided to staff for consideration.

COMMISSION ACTION

At its meeting on October 5, 2021, the Commission adopted the proposed rules as recommended by the Department.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §97.1, §97.2

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and Chapter 2310, and Texas Business and Commerce Code, Chapter 607, which authorize the Commission, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 2310, and Texas Business and Commerce Code, Chapter 607. No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. MOTOR FUEL METERING DEVICES

16 TAC §97.29

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and Chapter 2310, and Texas Business and Commerce Code, Chapter 607, which authorize the Commission, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 2310, and Texas Business and Commerce Code, Chapter 607. No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 12, 2021.

TRD-202104034

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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Proposal publication date: August 6, 2021

For further information, please call: (512) 463-3671



SUBCHAPTER D. SERVICE COMPANIES AND SERVICE TECHNICIANS

16 TAC §97.59

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and Chapter 2310, and Texas Business and Commerce Code, Chapter 607, which authorize the Commission, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 2310, and Texas Business and Commerce Code, Chapter 607. No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brad Bowman

General Counsel

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PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS

SUBCHAPTER D. TEXAS BRED INCENTIVE PROGRAMS

DIVISION 3. PROGRAMS FOR GREYHOUNDS

16 TAC §303.102

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §303.102, Greyhound Rules, without changes to the text as proposed in the August 13, 2021, issue of the *Texas Register* (46 TexReg 4968). The amendments allow for the Texas Greyhound Association (TGA), rather than the National Greyhound Association, to register greyhounds as Texas-bred. These amendments were requested by the TGA as a cost-saving measure for its members. The rule will not be republished.

REASONED JUSTIFICATION

The reasoned justification for these amendments is reduced cost to persons wishing to register Texas-bred greyhounds.

PUBLIC COMMENTS

No comments were submitted in response to the proposal of these amendments.

STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code § 2023.004, which authorizes the Commission to adopt rules to administer the Act.

No other statute, code, or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202104117

Connie Estes

Interim Executive Director

Texas Racing Commission

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For further information, please call: (512) 833-6699



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING INSTRUCTIONAL MATERIALS AND TECHNOLOGY ALLOTMENT

19 TAC §§66.1309, 66.1311, 66.1312

The Texas Education Agency adopts amendments to §§66.1309, 66.1311, and 66.1312, concerning the technology and instructional materials allotment. The amendments are adopted without changes to the proposed text as published in

the August 20, 2021 issue of the *Texas Register* (46 TexReg 5155) and will not be republished. The adopted amendments update terminology, provide clarifications, make technical edits, and remove outdated information.

REASONED JUSTIFICATION: The rules in Chapter 66, Subchapter CC, implement Texas Education Code, §31.0211, which establishes the instructional materials and technology allotment and gives the commissioner rulemaking authority over the allotment. The adopted amendments update the subchapter as follows.

The title of Chapter 66, Subchapter CC, is updated to "Commissioner's Rules Concerning Instructional Materials and Technology Allotment" to align with the name of the allotment used in statute.

The adopted amendment to §66.1309, High Enrollment Growth Adjustment, updates references to the instructional materials and technology allotment.

The adopted amendment to §66.1311, Special Instructional Materials, updates language to refer to the federal Web Content Accessibility Guidelines (WCAG) generally. As the federal WCAG standards are updated, the amended rule language refers to the WCAG standards applicable according to each instructional materials proclamation and does not become outdated. In addition, the specific reference to the EMAT system is replaced with a more general reference to the state ordering system.

The adopted amendment to §66.1312, Delayed Publisher Payment Option, updates references to the instructional materials and technology allotment for consistency.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began August 20, 2021, and ended September 20, 2021. No public comments were received.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §31.0211, as amended by House Bill (HB) 1525 and HB 3261, 87th Texas Legislature, Regular Session, 2021, which authorizes the commissioner to adopt rules regarding the instructional materials allotment (IMA), including the amount of the per-student allotment, the authorization of juvenile justice alternative education program allotments, allowed expenditures, required priorities, and adjustments to the number of students for which a district's IMA is calculated; TEC, §31.0212, which requires the commissioner to adopt rules regarding the documentation required for requisitions and disbursement to be approved, rules regarding districts' online instructional materials ordering system accounts, and rules requiring school districts to submit to the commissioner the title and publication information for any materials the district purchases with its IMA; TEC, §31.0214, which authorizes the commissioner to adopt rules regarding high enrollment growth; TEC, §31.0215, which authorizes the commissioner to adopt rules regarding allotment purchases, including announcing to districts the amount of their allotments and delayed payment options; TEC, §31.0231, which requires the commissioner to adopt rules regarding the Commissioner's List of Instructional Materials, including electronic or other tools, models, and investigative materials for Kindergarten-Grade 5 science and Kindergarten-Grade 8 personal financial literacy, various requirements for the adoption, the criteria the materials must meet, coverage of the Texas Essential Knowledge and Skills, teacher training, accessibility standards, and allowed changes; TEC, §31.029, which requires the commissioner to adopt rules

regarding instructional materials for use in bilingual education classes; TEC, §31.031, which requires the commissioner to adopt rules regarding the purchase of college preparatory instructional materials with the IMA; TEC, §31.076, which authorizes the commissioner to adopt rules regarding state-developed open-source instructional materials; and TEC, §31.104, which requires the commissioner to adopt rules that include criteria for determining whether instructional materials and technological equipment are returned in an acceptable condition.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§31.0211; 31.0212; 31.0214; 31.0215; 31.0231; 31.029; 31.031; 31.076; and 31.104.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 13, 2021.

TRD-202104049

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING SUBCHAPTER A. GENERAL

22 TAC §571.15

The Texas Board of Veterinary Medical Examiners (Board) adopts this amendment to §571.15, concerning Temporary Veterinary License. The amendment is adopted without changes to the proposed text published in the April 16, 2021, issue of the *Texas Register* (46 TexReg 2551) and will not be republished.

Reasoned Justification and Factual Basis

This purpose of the amendment is to help make temporary licensure less restrictive for out of state veterinarians who wish to volunteer their services in high need areas in Texas.

Summary of Comments and Agency Response

The agency did not receive any public comments that concerned the proposed amendment to this rule.

Statutory Authority

The amendment is adopted under the authority of §801.151(a), Occupations Code, which states that the Board may adopt rules necessary to administer the chapter, and the authority of 801.151(a), Occupations Code, which states that Board may adopt rules as necessary to administer the chapter and the authority of 801.151(b) Occupations Code, which states that the Board may adopt rules of professional conduct appropriate

to establish and maintain a high standard of integrity, skills and practice in the veterinary medicine profession.

No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202104118

John Helenberg

Executive Director

Texas Board of Veterinary Medical Examiners

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Proposal publication date: April 16, 2021

For further information, please call: (512) 305-7561



CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §573.27

The Texas Board of Veterinary Medical Examiners (Board) adopts this amendment to §573.27, concerning Honesty, Integrity and Fair Dealing. The amendment is adopted without changes to the proposed text as published in the April 16, 2021, issue of the *Texas Register* (46 TexReg 2552) and will not be republished.

Reasoned Justification and Factual Basis

This purpose of the amendment is to ensure that the rule for honesty, integrity and fair dealing is more inclusive and reflective of the types of complaints received and adjudicated by the Board. This rule modifies existing regulations.

Summary of Comments and Agency Response

The agency did not receive any public comments that concerned the proposed amendment to this rule.

Statutory Authority

The rule is adopted under the authority of §801.151(a), Occupations Code, which states that the Board may adopt rules necessary to administer the chapter, and the authority of §801.151(b), Occupations Code, which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the veterinary medicine profession.

No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202104119

John Helenberg

Executive Director

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7561



SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.65

The Texas Board of Veterinary Medical Examiners (Board) adopts this amendment to §573.65, concerning Proof of Acceptable Continuing Education. The amendment is adopted without changes to the proposed text as published in the April 16, 2021, issue of the *Texas Register* (46 TexReg 2553) and will not be republished.

Reasoned Justification and Factual Basis

This purpose of the amendment is to allow licensees the flexibility to earn continuing education hours in whatever format they prefer, whether that be live or virtual.

Summary of Comments and Agency Response

The agency received a total of eight public comments regarding this rule, six in favor of the rule and two opposed to the elimination of in-person continuing education. The agency's response to the opposition is that this rule does eliminate in-person continuing education, it merely allows licensees the option to obtain their continuing education hours virtually, via correspondence, in-person or a combination of those formats.

Statutory Authority

The amendment is adopted under the authority of §801.151(a), Occupations Code, which states that the Board may adopt rules necessary to administer the chapter, and the authority of §801.151(b), Occupations Code, which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the veterinary medicine profession.

No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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John Helenberg

Executive Director

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7561



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH
INSURANCE AND ANNUITIES
SUBCHAPTER PP. ANNUITY DISCLOSURES
DIVISION 2. ANNUITY SUITABILITY
DISCLOSURES

28 TAC §3.9721, §3.9722

The Commissioner of Insurance adopts new Division 2, consisting of new §3.9721 and §3.9722, in Chapter 3, Subchapter PP. These sections concern annuity suitability disclosures. Section 3.9722 is adopted with nonsubstantive changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5347). The rule will be republished. Section 3.9721 is adopted without changes and will not be republished. To improve clarity when referencing new forms, the date the forms were created, 07/21, was added in parentheses after each form name: FIN 194 in §3.9722(a)(1), FIN 195 in §3.9722(b)(1), and FIN 196 in §3.9722(c)(1). The goal of this nonsubstantive change is to account for possible future revisions to the forms and make it easier to discern the most recent form version adopted by the rule.

REASONED JUSTIFICATION. The new sections are necessary to implement House Bill 1777, 87th Legislature, 2021. HB 1777 amends Insurance Code Chapter 1115 to incorporate a "best interest" standard of care for annuities that is similar to the Security Exchange Commission's standard, to harmonize the standards of care for annuities across regulatory platforms. HB 1777 applies to all annuity transactions occurring on or after September 1, 2021; agents must use a compliant disclosure form for annuity transactions on and after that date.

Insurance Code §1115.0514 and §1115.0516 require the Commissioner to prescribe by rule three new disclosure forms an agent must provide to a consumer, where applicable, either before or at the time of a recommendation or sale of an annuity. The forms must contain statutorily required information, including information incorporating the new best-interest standard and other consumer protection provisions, and they must be substantially similar to forms promulgated by the National Association of Insurance Commissioners (NAIC).

The adopted new sections, which implement §1115.0514 and §1115.0516, are described in the following paragraphs.

Division 2. Annuity Suitability Disclosures. The Commissioner adopts new Division 2 (relating to Annuity Suitability Disclosures) to distinguish new §3.9721 and §3.9722 from existing §§3.9701 - 3.9712, which address annuity contract disclosures. After this rule's adoption, a new Division 1, with a heading clarifying that it addresses annuity contract disclosures, will be administratively added for §§3.9701 - 3.9712.

Section 3.9721. New §3.9721 describes the purpose of new Division 2, stating that it provides standards for the disclosure of certain minimum information about annuity suitability as required by Insurance Code Chapter 1115.

Section 3.9722. New §3.9722 specifies which forms may be used by agents to satisfy the requirements of HB 1777.

Section 3.9722(a) covers the form mandated by Insurance Code §1115.0514(b) for use by agents before the recommendation or sale of an annuity.

Section 3.9722(b) covers the form mandated by Insurance Code §1115.0516(2) for use by agents if a consumer does not provide the agent some or all of the information needed to decide whether the annuity effectively meets the consumer's needs at the time of a recommendation or sale of an annuity.

Section 3.9722(c) covers the form mandated by Insurance Code §1115.0516(3) for use by agents if a consumer decides to enter into an annuity transaction that is not based on an agent's recommendation.

Section 3.9722 references forms adopted by the NAIC in its Suitability in Annuity Transactions Model Regulation (Model 275), which, at the date of publication of this adoption, is available at content.naic.org/sites/default/files/inline-files/MDL-275.pdf. The section also provides an option to use forms developed by the Texas Department of Insurance (TDI) that are substantially similar to the NAIC model forms, which are available at www.tdi.texas.gov/forms. Finally, the rule gives industry flexibility to develop their own disclosure forms that meet the statutory requirements and plain language standards, consistent with the federal government's plain language website (www.plain-language.gov). Additional plain language resources can be found on TDI's website at tdi.texas.gov/commissioner/plain-language-industry.html.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: There was one commenter, the Insured Retirement Institute, in support of the proposal.

Comment on §3.9721 and §3.9722

Comment. A commenter communicates general support of the proposal, stating that the adoption of these proposed rules is "important for the sake of uniformity and consistency," and states its appreciation that Texas has promulgated the NAIC suitability disclosure forms.

Agency Response. TDI thanks the commenter for its support.

STATUTORY AUTHORITY. The Commissioner adopts new Division 2, §3.9721 and §3.9722, under Insurance Code §§1115.005, 1115.0514, 1115.0516, and 36.001.

Insurance Code §1115.005 provides that the Commissioner may adopt reasonable rules to accomplish and enforce the purpose of Chapter 1115.

Insurance Code §1115.0514 requires that an agent, before the recommendation or sale of an annuity, provide a disclosure to the consumer on a form prescribed by the Commissioner by rule.

Insurance Code §1115.0516 requires two additional disclosure forms to be prescribed by the Commissioner by rule. Insurance Code §1115.0516(2) requires that an agent use a form at the time of an annuity recommendation or sale that documents (1) when a consumer refuses to provide either consumer profile information, and (2) the consumer's understanding of the consequences of failing to provide or providing insufficient consumer profile information. Insurance Code §1115.0516(3) requires that an agent use a form at the time of an annuity recommendation or sale that documents a statement from the consumer acknowledging when the consumer is entering into an annuity transaction that is not recommended by the agent.

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.

§3.9722. *Required Forms.*

(a) Before the recommendation or sale of an annuity, an agent must provide to the consumer a form that meets the requirements of Insurance Code §1115.0514(b), concerning Disclosure Obligation. The agent must use:

(1) form FIN194 (07/21), which is adopted by reference and is available on the department's form website;

(2) the Insurance Agent (Producer) Disclosure for Annuities form, adopted by the National Association of Insurance Commissioners in the Suitability in Annuity Transactions Model Regulation; or

(3) another form that:

(A) meets the requirements of Insurance Code §1115.0514(b) and is substantially similar to the form specified in paragraph (2) of this subsection;

(B) is understandable to a person with an 8th-grade reading level; and

(C) is written in plain language, consistent with federal plain language recommendations from the Plain Language Action and Information Network.

(b) If, at the time of a recommendation or sale of an annuity, a consumer has not given an agent some or all of the information needed to decide whether the annuity effectively meets the consumer's needs, the agent must obtain a statement signed by the consumer on a form that meets the requirements of Insurance Code §1115.0516(2), concerning Documentation Obligation. The agent must use:

(1) form FIN195 (07/21), which is adopted by reference and is available on the department's form website;

(2) the Consumer Refusal to Provide Information form, adopted by the National Association of Insurance Commissioners in the Suitability in Annuity Transactions Model Regulation; or

(3) another form that:

(A) is substantially similar to the form specified in paragraph (2) of this subsection;

(B) is understandable to a person with an 8th-grade reading level; and

(C) is written in plain language, consistent with federal plain language recommendations from the Plain Language Action and Information Network.

(c) At the time of a recommendation or sale of an annuity, if a consumer decides to enter into an annuity transaction that is not based on the agent's recommendation, the agent must obtain a statement signed by the consumer that meets the requirements of Texas Insurance Code §1115.0516(3). The agent must use:

(1) form FIN196 (07/21), which is adopted by reference and is available on the department's form website;

(2) the Consumer Decision to Purchase an Annuity Not Based on a Recommendation form, adopted by the National Association of Insurance Commissioners in the Suitability in Annuity Transactions Model Regulation; or

(3) another form that:

(A) is substantially similar to the form specified in paragraph (2) of this subsection;

(B) is understandable to a person with an 8th-grade reading level; and

(C) is written in plain language, consistent with federal plain language recommendations from the Plain Language Action and Information Network.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Allison Eberhart

Deputy General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6584



CHAPTER 21. TRADE PRACTICES

The Commissioner of Insurance adopts amendments to 28 TAC §§21.2 - 21.4, 21.6, 21.102, 21.104, 21.120, 21.203 - 21.205, 21.301, 21.403, 21.408, 21.701, 21.703 - 21.705, 21.901, 21.1004 - 21.1007, 21.1101, 21.1110, 21.2001, 21.2006, 21.2010, 21.2011, 21.2106, 21.2202, 21.2204, 21.2212, 21.2501, 21.2601, 21.2604, 21.2606, 21.2702, 21.2819, 21.2901, 21.2902, 21.3201, 21.3302, 21.3303, 21.3305, 21.3701, 21.3802, and 21.4105, relating to trade practices.

The amendments to §§21.2 - 21.4, 21.204, 21.205, 21.301, 21.403, 21.408, 21.701, 21.703 - 21.705, 21.1004, 21.1006, 21.1101, 21.1110, 21.2010, 21.2011, 21.2106, 21.2202, 21.2204, 21.2212, 21.2601, 21.2604, 21.2606, 21.2702, 21.2819, 21.2901, 21.2902, 21.3201, 21.3302, 21.3303, 21.3305, 21.3701, 21.3802, and 21.4105 are adopted without changes to the proposed text published in the June 18, 2021, issue of the *Texas Register* (46 TexReg 3701). These sections will not be republished.

The amendments to §§21.6, 21.102, 21.104, 21.120, 21.203, 21.901, 21.1005, 21.1007, 21.2001, 21.2006, and 21.2501 are adopted with nonsubstantive changes to the proposed text and will be republished.

REASONED JUSTIFICATION. Amendments to Chapter 21 are necessary to (1) change instances of the obsolete "State Board of Insurance" to "Department of Insurance;" (2) replace obsolete statutory citations to Insurance Code articles that have changed because of codification; (3) update agency names, websites, and addresses; (4) correct typographical, punctuation, and grammatical errors, and (5) make nonsubstantive language and usage changes to adhere to current agency style (e.g., capitalizing "Commissioner" and changing "shall" to other context-appropriate words).

The amendments to the sections are described in the following paragraphs, organized by subchapter.

Subchapter A. Unfair Competition and Unfair Practices of Insurers, and Misrepresentation of Policies. Amendments to §§21.2, 21.3, and 21.6 update obsolete statutory citations. Additional amendments to §21.3 and §21.4 update obsolete references to the State Board of Insurance.

Additional amendments include amending §21.3 to replace "shall" with "may," amending §21.4 to remove superfluous "or" instances, and in §21.6 "shall" is replaced with "will."

Subchapter B. Advertising, Certain Trade Practices, and Solicitation. Amendments to §§21.102, 21.104, and 21.120 remove obsolete references to "viatical." An amendment to §21.120 updates an obsolete mailing address. Amendments to §21.120 change "shall" to "must," change "division" to "title," and update a regulatory reference.

A change from the proposal text removes an unnecessary comma in §21.102(4) after "premium finance companies." A change from the proposed text in §21.104 replaces "shall" with "must." A change from the proposal text in §21.120(e)(1) adds a comma after "sales."

Subchapter C. Unfair Claims Settlement Practices. Amendments to §21.203 and §21.205 update obsolete statutory citations. Amendments to §21.204 correct a typo in a citation to §21.203 and update obsolete references to the State Board of Insurance.

Additional amendments to §21.203 include replacing "shall" with "may" or "will," as appropriate; capitalization of "Commissioner of Insurance"; addition of missing periods; deletions of "the"; changes to syntax for proper grammar; and correcting a citation to the Insurance Code. In §21.204, additional amendments include replacing "shall" with "must," replacing "such" with "the" in two places and replacing "of" with "by." In §21.205, an additional amendment replaces "shall" with "must."

A change from the proposal text in §21.203 clarifies the corrected statutory reference, adding "Subchapter B" to Chapter 542.

Subchapter D. Statistical Agents. Amendments to §21.301 update obsolete statutory citations. Amendments also include deleting "shall" or replacing it with "will" and "must," as appropriate; capitalizing "Commissioner"; inserting the word "following"; and inserting a comma and a colon where needed.

Subchapter E. Unfair Discrimination Based on Sex or Marital Status. Amendments to §21.403 update obsolete references to "the board," remove obsolete references to "non-profit legal service corporations," delete unnecessary uses of the word "shall" and revise text as appropriate to reflect removal of "shall" and correct punctuation. Amendments to §21.403 and §21.408 update obsolete statutory citations.

Subchapter H. Unfair Discrimination. Amendments to §§21.701, 21.703, and 21.705 update obsolete statutory citations. Amendments to §21.704 update an obsolete mailing address and replace "shall" with "may." Additional amendments to §21.703 replace "mental retardation" with "intellectual disability" to conform with the *Diagnostic and Statistical Manual of Mental Disorders* and to conform with changes to the Health and Safety and Insurance Codes and replace "handicap or partial handicap" with "disability or partial disability" to conform with changes to Insurance Code §544.002.

Subchapter I. Prohibited Agent Practices. Amendments to §21.901 update obsolete statutory citations. Additional amendments add and delete commas; delete one instance of "shall" and replace another instance with "will"; and replace "shall be" with "are," "pursuant" with "according"; and "article" with "chapter."

A change from the proposal text in §21.901 revises "will" to "do" where "will" was used as a revision of the word "shall."

Subchapter J. Prohibited Trade Practices. Amendments to §§21.1004 - 21.1007 update obsolete statutory citations. Additional amendments add a hyphen in §21.1004; delete an unnecessary comma and replace "shall" with "may" and "shall be" with "is" in §21.1005, as appropriate; make the word "To" lowercase in the heading of §21.006 and replace "shall" with "does" in §21.1006.

An amendment to §21.1004 updates a section title. An amendment to §21.1004(d) updates a section title. In addition, amendments delete §21.1004(f) and (g) because subsection (f) is no longer effective, and subsection (g) is no longer relevant. Subsection (g) contains an expiration clause for subsection (f), providing for the section to expire on January 1, 2008.

An amendment to §21.1007 removes an unnecessary and obsolete mailing address.

A change from the proposal text in §21.1005 changes amended text at the end of section (a) from "will be" to "is."

A change from the proposal text in §21.1007 adds a hyphen in "PC327 WDR-1."

Subchapter K. Certification of Creditable Coverage. Amendments to §21.1101 update obsolete statutory citations, and an amendment to §21.1110 removes an unnecessary and obsolete mailing address. Additional amendments include adding a comma and hyphens, punctuating "USC" to make it "U.S.C.," and capitalizing "Commissioner of Insurance." The defined term "risk pool" is removed from §21.1101 because the term is not used in the subchapter, and the paragraphs that follow it are renumbered as appropriate.

Subchapter L. Medical Child Support, Unfair Practices. Amendments to §§21.2001, 21.2006, 21.2010, and 21.2011 update obsolete statutory citations and delete the words "shall" and "shall be" or replace it with "must," "will," or "are," as appropriate. Additional amendments in §21.2001 replace dashes with double hyphens and add punctuation to "USC" to make it "U.S.C." An additional amendment in §21.2010 removes an unnecessary and obsolete mailing address. Additional amendments in §21.2011 include deleting "will subject" and replacing with "subjects" and replacing "application" with "applicable."

A change from the proposal text in §21.2001 removes an unnecessary ending parenthesis in (8)(B)(ii) after "Chapter 1578." A change from the proposal text in §21.2006 in subsection (a) changes "Insurance Codes" to "Insurance Code."

Subchapter M. Mandatory Benefit Notice Requirements. Amendments to §21.2106 remove an unnecessary and obsolete mailing address.

Subchapter N. Life Insurance Illustrations. Amendments to §§21.2202, 21.2204, and 21.2212 update obsolete statutory citations. Additional amendments to §21.2202 include changing the capitalization of "subchapter" and "Commissioner." Additional amendments to §21.2204 include changing the capitalization of "subchapter" and "Commissioner," deleting two instances of an unnecessary "shall," and changes to syntax. Additional amendments to §21.2212 include changing "subsection" to "subchapter" and deleting an unnecessary "shall."

Subchapter Q. Complaint Records to be Maintained. Amendments to §21.2501 update obsolete statutory citations and eliminate unnecessary uses of "the."

A change from the proposal text in §21.2501 corrects a rule reference.

Subchapter R. Diabetes. Amendments to §§21.2601, 21.2604, and 21.2606 update obsolete statutory citations. Additional amendments to §21.2601 include changing a colon to a period, eliminating unnecessary uses of "shall," capitalizing "Commissioner," revising references to current statutes for consistency with current agency style, and adding punctuation to "USC" to change it to "U.S.C." Additional amendments to §21.2604 include replacing "shall" with "must," adding hyphens and commas where grammatically appropriate, changing numbers rendered in words to numerals, replacing "on-going" with "ongoing," and eliminating unnecessary use of "services." Additional amendments to §21.2606 include replacing "shall" with "must" or "should" as appropriate and updating the title of the Commissioner of Public Health.

Subchapter S. Association Plans. Amendments to §21.2702 update obsolete statutory citations. Additional amendments include changing a colon to a period, capitalizing "Commissioner," eliminating unnecessary uses of "shall," and adding commas and hyphens where appropriate.

Subchapter T. Submission of Clean Claims. Amendments to §21.2819 revise a reference to an Administrative Code section and remove an unnecessary and obsolete mailing address.

Subchapter U. Arrangements Between Indemnity Carriers and HMOs for Point-of-Service Coverage. Amendments to §21.2901 and §21.2902 update obsolete statutory citations. Additional amendments in §21.2901 include eliminating an unnecessary "shall" and adding commas where grammatically appropriate. Additional amendments in §21.2902 include replacing "shall" with "must," "will," "do," or "may" as appropriate; replacing "pursuant" with "according"; adding the word "by"; and updating the heading of a subchapter in a reference to the Administrative Code.

Subchapter X. Evaluation of Network Physicians and Providers. Amendments to §21.3201 update obsolete statutory citations and an out-of-date website address. Additional amendments include changing the capitalization of "Applicability," changing a colon to a period, eliminating an unnecessary "shall," replacing "shall" with "must," and removing text addressing ways to request the Texas Standardized Credentialing Application via mail or over the phone.

Subchapter Y. Unfair Discrimination in Compensation for Women's Health Care. Amendments to §§21.3302, 21.3303, and 21.3305 update obsolete statutory citations. Additional amendments include replacing a colon with a period and eliminating an unnecessary "shall" in §21.3302 and replacing "shall" with "must," "than" with "from," and "if" with "whether" in §21.3305.

Subchapter CC. Electronic Health Care Transactions. Amendments to §21.3701 update obsolete statutory citations and a mailing address. Additional amendments include correcting a citation to a section in the Administrative Code, replacing "shall" with "must" or "will," as appropriate; replacing "ten" with "10"; and replacing "Department of Insurance" with "department." Amendments also update the titles of department staff, which have changed due to internal reorganizations.

Subchapter DD. Eligibility Statements. Amendments to §21.3802 update obsolete statutory citations and eliminate an unnecessary "shall."

Subchapter GG. Health Care Quality Assurance Presumed Compliance. Amendments to §21.4105 update obsolete web-

site references and an obsolete mailing address. Additional amendments include adding the word "as," making the word "department" possessive, replacing "shall" with "will," and eliminating an unnecessary use of the word "internet."

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The Texas Department of Insurance (TDI) received one comment from the Texas Medical Association on the proposed amendments. The commenter was neither for nor against the proposal, but requested changes.

Comment on Chapter 21 Generally

Comment. A commenter raises concerns that changing "shall" to "must" in some of the amended rules could change the meaning of the rules. As an example, the commenter points to the proposed amendment to §21.205. The commenter says that replacing the word "shall" with "must" or another comparable word may lead to someone misconstruing the rule proposal as removing the various duties imposed on health benefit plan issuers under the rules. The commenter requests that TDI clarify its intent with the change of the word.

The commenter refers to §311.016 of the Government Code (the Code of Construction Act), which provides definitions for the words "may," "shall," and "must," and objects to TDI making any change of the use of the word "shall" in rule text that could be construed as removing a duty imposed on a health benefit plan issuer or that is inconsistent with use of the word "shall" in the underlying statute that forms the basis of the rule.

The commenter requests that TDI provide more information on its style guidelines so that stakeholders, the public, and the regulated community may better understand its intended use of "must" and "shall" and whether they are interchangeable under TDI style preferences.

Agency Response. TDI disagrees that changing "shall" to "must" in this rulemaking is a substantive change. As the Texas Supreme Court said in *Helena Chemical Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001), "shall" and "must" are both "generally recognized as mandatory, creating a duty or obligation." The proposed changes of the word "shall" contemplate the content of applicable statutes and the context of the rule text in implementing those statutes, and that context makes it clear that the meaning of the impacted rules is not being changed.

The purpose of changing the word "shall" is to provide plain language clarification of the rule text, consistent with current agency style and guidance on the TDI website, which provides links to resources on writing in plain language. Resources TDI uses for plain language guidance include plainlanguage.gov, which provides the federal government's plain language guidelines, and the National Archives guidelines for clear legal documents. Both sources advise using alternatives to the word "shall" to provide clarity for readers.

SUBCHAPTER A. UNFAIR COMPETITION AND UNFAIR PRACTICES OF INSURERS, AND MISREPRESENTATION OF POLICIES

28 TAC §§21.2 - 21.4, 21.6

STATUTORY AUTHORITY. The Commissioner adopts the amendments to §§21.2 - 21.4 and 21.6 under Insurance Code §§463.006, 541.401, 543.001, and 36.001.

Insurance Code §463.006 provides that the Commissioner may adopt rules necessary to carry out and supplement the Texas Life and Health Insurance Guaranty Association Act.

Insurance Code §541.401 provides that the Commissioner may adopt and enforce rules necessary to accomplish the purpose of Chapter 541, which is to regulate trade practices in the business of insurance by defining or determining trade practices that are unfair methods of competition or deceptive acts or practices and prohibiting them.

Insurance Code §543.001 provides that the Commissioner may adopt and enforce rules as provided by Chapter 541, Subchapter I, to ensure life insurance companies do not circulate statements that misrepresent the terms, benefits, or dividends received on a life insurance policy or certificate.

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.

§21.6. Prohibition against the Use of Guaranty Fund Protection in the Sale of Insurance.

The use in any manner of the protection afforded by the Life and Health Insurance Guaranty Association Act (the Act) by any person in the sale of any product included within the scope of the Act (Insurance Code Chapter 463) will constitute unfair competition and unfair practices under Insurance Code Chapter 541 and will be subject to the provisions thereof.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. ADVERTISING, CERTAIN TRADE PRACTICES, AND SOLICITATION

DIVISION 1. INSURANCE ADVERTISING

28 TAC §§21.102, 21.104, 21.120

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§21.102, 21.104, and 21.120 under Insurance Code §562.106 and §36.001.

Insurance Code §562.106 provides that if the Commissioner reasonably believes that a program operator or marketer may not be operating in compliance with Chapter 562, the Commissioner by order may require the program operator or marketer to submit to the Commissioner any advertisement, solicitation, or marketing materials or other document requested by the Commissioner.

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.

§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;

(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;

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

(D) material used to:

(i) solicit additional coverage or policies from existing insureds; or

(ii) modify existing coverage or policies;

(E) material included with a policy when the policy is delivered and materials used in the solicitation of renewals and reinstatements, except those reinstatements provided for in the policy;

(F) lead solicitations which are defined as communications distributed to the public which, regardless of form, content, or stated purpose, are intended to result in the compilation or qualification of a list containing names or other personal information regarding persons who have expressed a specific interest in a product or coverage and which are intended to be used to solicit residents of this state for the purchase of a policy, as defined in paragraph (3) of this section; and

(G) any other communication directly or indirectly related to a policy, as defined in paragraph (3) of this section, and intended to result in the eventual sale or solicitation of a policy.

(2) "Advertisement" does not include:

(A) communications or materials used within an insurer's own organization, not used as sales aids and not disseminated to the public;

(B) communications with policyholders other than materials urging policyholders to purchase, increase, modify, or retain a policy;

(C) a general announcement by a group or blanket policyholder to eligible individuals on an employment or membership list that a policy or program has been written or arranged, provided the announcement clearly indicates that it is preliminary to the issuance of a booklet explaining the proposed coverage;

(D) material used solely for the recruitment, training, and education of an insurer's personnel, agents, counselors, and solicitors, provided it is not also used to induce the public to purchase, increase, modify, or retain a policy of insurance; and

(E) correspondence between a prospective group or blanket policyholder and an insurer or agent in the course of negotiating a group or blanket contract.

(3) "Policy" includes any policy, plan, certificate, contract, evidence of coverage, agreement, statement of coverage, cover note, certificate of policy, rider or endorsement which provides, limits, or

controls insurance for any kind of loss or expense or because of the continuation, impairment, or discontinuance of human life or annuity benefits issued by an insurer, life settlement contracts, premium finance agreements, or any other product offered by an insurer and regulated by the Department.

(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 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 life settlement providers.

(5) "Agent" includes each agent, solicitor, counselor, and soliciting representative of an insurer and, as can be made appropriate, life settlement brokers and provider representatives.

(6) "Institutional advertisement" is an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or agent. Correspondence and materials used by an insurer only for the purpose of explaining Legislative or Texas Department of Insurance mandated changes, amendments, additions, or innovations relative to forms, rules, or rates which are subject to the Insurance Code shall be considered institutional advertising for the purpose of §21.104(b) of this division (relating to Requirement of Identification of Policy or Insurer). Web pages on an Internet website that do not refer to a specific insurance policy, certificate of coverage, or evidence of coverage or that do not provide an opportunity for an individual to apply for coverage or to request a quote are considered to be institutional advertisements. Advertisements in other media that do not refer to a specific insurance policy, certificate of coverage, or evidence of coverage or that do not provide an opportunity for an individual to apply for coverage or to request a quote or other information, are considered to be institutional advertisements. In addition, web pages or navigation aids within an Internet website that provide a link to another web page, the content of which refers to a specific insurance policy, certificate of coverage, or evidence of coverage or provides an opportunity for an individual to apply for coverage or request a quote, but that do not, themselves, otherwise include such content are considered to be institutional advertisements.

(7) "Invitation to inquire" for the purpose of this section is an advertisement that refers to a specific insurance policy or provides an opportunity to request a quote or that, except for Internet advertising, provides an opportunity to request other information. An "invitation to inquire" advertisement for accident or health coverage may refer to rates only as permitted under §21.113(b) of this division (relating to Rules Pertaining Specifically to Accident and Health Insurance Advertising and Health Maintenance Organization Advertising). An "invitation to inquire" is not an "invitation to contract."

(8) "Invitation to contract" is an advertisement that includes an application or enrollment form for insurance or which is presented with an opportunity to apply for the advertised coverage.

§21.104. Requirement of Identification of Policy or Insurer.

(a) An advertisement must identify the person or entity responsible for the advertisement.

(1) The full licensed name of the insurer is required to be stated in each of its invitation to inquire and invitation to contract advertisements, including the portion of the advertisement to be returned to the insurer or agent, unless the portion to be returned is delivered as a form detachable from another form containing the insurer's full licensed name. The full licensed name must appear at or before the first appearance of any shortened or substitute name in the body of the text, which shortened or substitute name may be indicated as representing the insurer thereafter in the advertisement.

(2) It is sufficient to state the full licensed name, assumed name registered with the department pursuant to §19.902 of this title (relating to One Agent, One License) or Texas agent's license number of the agent when advertisements address coverages in general and do not describe a specific policy or coverages of a particular insurer.

(b) An advertisement other than institutional, may not use a trade name, any insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol, or other device which without disclosing the name of the actual insurer would have the capacity and tendency to mislead or deceive a prospective purchaser as to the true identity of the insurer, or its relation with public or private institutions.

(c) No advertisement may use a combination of words, symbols, or physical materials which by their content, phraseology, shape, color, or other characteristics are so similar to combinations of words, symbols, or physical material normally or usually used by agencies of the federal government or of this state, or that otherwise appear to be of such a nature that the advertisement or solicitation has the capacity or tendency to confuse or mislead prospective insureds into believing that such advertisement or solicitation is connected with an agency of the municipal, state, or federal government.

(d) All advertisements, other than institutional, must explicitly and conspicuously disclose that the product concerned is property, life or other insurance, an annuity, HMO coverage, a life settlement contract, or a prepaid legal services contract, on the basis that each of these products are classified or addressed by statute or rule or as the products are filed with the department. It is sufficient for an insurer to use the term "PPO plan" in advertisements when referring to a preferred provider benefit plan offered under Insurance Code Chapter 1301.

(e) An advertisement that is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed may not imply licensing beyond those limits.

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

(g) An advertisement that contains an application and is advertising more than one policy shall be presented in such manner as to clearly reflect that the cost and benefits are applicable to separate policies of insurance.

(h) No advertisement by an insurer or agent may be used that, directly or by implication, has the capacity and tendency to mislead or deceive prospective purchasers with respect to an insurer's assets, corporate structure, financial standing, age or relative position in the insurance business, or in any other material respect.

(i) Multiple insurers may be represented in one advertisement, provided that an invitation to inquire or invitation to contract advertisement must clearly identify the issuer of each product advertised and the advertisement discloses that each insurer has sole financial responsibility for its own products.

§21.120. Filing for Review.

(a) Any advertisement required to be submitted or submitted voluntarily by an insurer licensed to do business in Texas must be accompanied by a transmittal letter addressed to the Texas Department of Insurance, Life and Health Lines, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030. The transmittal letter must contain the following information:

(1) the identifying form number of each form submitted including a separate identifying form number for each Internet page and pop-up having a distinct URL;

(2) the type of advertisement submitted, i.e., institutional advertisement, invitation to inquire, or invitation to contract;

(3) the form number(s) of the approved policy and/or rider form(s) advertised;

(4) the method or media used for dissemination of the advertisement;

(5) the form number(s) for all other advertising material to be used with the advertisement(s) being submitted; and

(6) an attachment explaining all variable material; the variable material must be identified with brackets on the advertisement(s).

(b) All advertisements must be submitted in duplicate.

(c) Advertisements may be submitted in printers' proof or as "pasteups."

(d) An advertisement subject to requirements regarding filing of the advertisement with the department for review under the Insurance Code or Texas Administrative Code, Title 28, and that is the same as or substantially similar to an advertisement previously reviewed and accepted by the department, is not required to be filed for review. For the purposes of this subsection, "substantially similar" means the new advertisement does not introduce any substantive content not previously reviewed, nor does it eliminate any content satisfying required disclosures or that would render the advertisement noncompliant with §21.112 of this title (relating to General Prohibition). A person or entity wishing to introduce a "substantially similar" advertisement must file a signed written statement with the department at the address identified in subsection (a) of this section. Such statement must identify or illustrate the changes to be introduced, and list the previously reviewed and accepted form(s) in which those changes would appear, including the form number(s) and the department's filing number(s) under which those forms were previously reviewed and accepted.

(e) The following rules require that advertisements be filed with the department for review at or prior to use:

(1) §3.1744 of this title (relating to Advertising, Sales, and Solicitation Materials; Filing Prior to Use), regarding life settlement contracts;

(2) §3.3313 of this title (relating to Filing Requirements for Advertising), regarding Medicare supplement insurance;

(3) §3.3838 of this title (relating to Filing Requirements for Advertising), regarding long-term care insurance; and

(4) §11.603 of this title (relating to Filings), regarding certain Medicare HMO contracts.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Department of Insurance

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**SUBCHAPTER C. UNFAIR CLAIMS
SETTLEMENT PRACTICES**

28 TAC §§21.203 - 21.205

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§21.203 - 21.205 under Insurance Code §542.014 and §36.001.

Insurance Code §542.014 provides that the Commissioner may adopt rules necessary to implement the Unfair Claims Settlement Practices Act.

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.

§21.203. Unfair Claim Settlement Practices.

No insurer may engage in unfair claim settlement practices. Unfair claim settlement practices means committing or performing any of the following:

(1) misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue;

(2) failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies, provided that "pertinent communications" will exclude written communications that are direct responses to specific inquiries made by the insurer after initial report of a claim. An acknowledgment within 15 business days is presumed to be reasonably prompt;

(3) failing to adopt and implement reasonable standards for prompt investigation of claims arising under its policies;

(4) not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims submitted in which liability has become reasonably clear;

(5) compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them;

(6) failure of any insurer to maintain, in substantial compliance with §21.2504 of this title (relating to Complaint Record; Required Elements; Explanation and Instructions), a complete record of all complaints, as that term is defined in §21.202(4) of this title (relating to Definitions), which it has received during the preceding three years or since the date of its most recent financial examination by the Commissioner of Insurance, whichever time is shorter. For purposes of this section, "substantial compliance" has the meaning set out in §21.2503 of this title (relating to Compliance Standard);

(7) failing to provide promptly, when provided for in the policy, claim forms when the insurer requires such forms as a prerequisite for a claim settlement;

(8) not attempting in good faith to promptly settle claims where liability has become reasonably clear under one portion of the

policy in order to influence settlement under other portions of the policy coverage. (This provision does not apply to those situations where payment under one portion of coverage constitutes evidence of liability under another portion of coverage.);

(9) failing to promptly provide to a policyholder a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;

(10) failing to affirm or deny coverage of a claim to a policyholder within a reasonable time. The reasonable submission of a reservation of rights letter by an insurer to a policyholder within a reasonable time is deemed compliance with the provisions of this paragraph;

(11) except as may be specifically provided in the policy, to refuse, fail, or unreasonably delay offer of settlement under applicable first-party coverage on the basis that other coverage may be available or third parties are responsible in law for damages suffered;

(12) attempting to settle a claim for less than the amount to which a reasonable person would have believed she/he was entitled by reference to an advertisement, as described in §21.102 of this title (relating to Scope), made by an insurer or person acting on behalf of an insurer;

(13) undertaking to enforce a full and final release from a policyholder when, in fact, only a partial payment has been made. (This provision will not prevent or have application to the compromise settlement of doubtful or disputed claims.);

(14) failing to establish a policy and proper controls to make certain that agents calculate and deliver to policyholders or their assignees funds due under policy provisions relative to cancellation of coverage within a reasonable time after such coverages are terminated;

(15) refusing to pay claims without conducting a reasonable investigation based upon all available information;

(16) failing to respond promptly to a request by a claimant for personal contact about or review of the claim;

(17) with respect to the Texas personal auto policy, delaying or refusing settlement of a claim solely because there is other insurance of a different type available to satisfy partially or entirely the loss forming the basis of that claim. The claimant who has a right to recover from either or both insurers is entitled to choose under which coverage and in what order payment is to be made;

(18) a violation of Insurance Code Chapter 542, Subchapter B, by an insurer subject to its provisions; or

(19) requiring a claimant, as a condition of settling a claim, to produce the claimant's federal income tax returns for examination or investigation by the insurer unless the claimant is ordered to produce those tax returns by a court of competent jurisdiction, the claim involves a fire loss, or the claim involves a loss of profits or income.

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SUBCHAPTER D. STATISTICAL AGENTS

28 TAC §21.301

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.301 under Insurance Code §38.207 and §36.001.

Insurance Code §38.207 provides that the Commissioner may adopt rules necessary to accomplish the purposes of Chapter 38, Subchapter E.

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.

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SUBCHAPTER E. UNFAIR DISCRIMINATION BASED ON SEX OR MARITAL STATUS

28 TAC §21.403, §21.408

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.403 and §21.408 under Insurance Code §541.401 and §36.001.

Insurance Code §541.401 provides that the Commissioner may adopt and enforce rules necessary to accomplish the purpose of Chapter 541, which is to regulate trade practices in the business of insurance by defining or determining trade practices that are unfair methods of competition or deceptive acts or practices and prohibiting them.

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.

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SUBCHAPTER H. UNFAIR DISCRIMINATION

28 TAC §§21.701, 21.703 - 21.705

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§21.701 and 21.703 - 21.705 under Insurance Code §541.401 and §36.001. The Commissioner adopts amendments to §21.705 under Insurance Code §545.003.

Insurance Code §541.401 provides that the Commissioner may adopt and enforce rules necessary to accomplish the purpose of Chapter 541, which is to regulate trade practices in the business of insurance by defining or determining trade practices that are unfair methods of competition or deceptive acts or practices and prohibiting them.

Insurance Code §545.003 provides that the Commissioner may adopt rules to be followed for an HIV-related test requested or required by an issuer.

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.

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SUBCHAPTER I. PROHIBITED AGENT PRACTICES

28 TAC §21.901

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.901 under Insurance Code §541.401 and §36.001.

Insurance Code §541.401 provides that the Commissioner may adopt rules necessary to accomplish the purpose of Chapter 541, which is to regulate trade practices in the business of insurance by defining or determining trade practices that are unfair

methods of competition or deceptive acts or practices and prohibiting them.

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.

§21.901. Prohibition Against Solicitation or Acceptance of Power of Attorney.

(a) Scope and application. This section applies to any person required to be licensed as an agent pursuant to the provisions of the Insurance Code or other insurance law of this state. For purposes of this section, "person" means both natural persons and business association entities.

(b) Prohibition. No person subject to the provisions of this section is permitted, directly or indirectly, to require, solicit or accept any power of attorney to act as attorney-in-fact for any applicant for any insurance coverage in this state for purposes of placing, procuring, instituting, maintaining, canceling or nonrenewing any insurance coverage, or for any other act in connection with the placement or institution of such insurance coverage.

(c) Exceptions. This section does not apply to the situations described in paragraphs (1) and (2) of this subsection, as follow:

(1) insurance activities for which the Insurance Code or other insurance law of this state expressly authorizes a person to conduct such insurance activities as an attorney-in-fact pursuant to a power of attorney; or

(2) instances in which a person required to be licensed as an agent under the Insurance Code is appointed attorney-in-fact by a relative or household member of such person for purposes which include placing personal lines insurance coverages for such relative or household member.

(d) Premium finance company provisions. The provisions of this section do not prohibit any person subject to the provisions of this section from accepting applications for premium financing on premium financing agreement forms that include a power of attorney in favor of the premium financing company for purposes of canceling a financed insurance contract, so long as the power-of-attorney provisions comply with statutory provisions of Insurance Code Chapter 651, concerning the financing of insurance premiums.

(e) Declaration of unfair practice. The failure to comply with the provisions of this section constitutes unfair competition and unfair practices according to Insurance Code Chapter 541 and is subject to the provisions of that chapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER J. PROHIBITED TRADE PRACTICES

28 TAC §§21.1004 - 21.1007

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§21.1004 - 21.1007 under Insurance Code §§541.401, 544.304, 544.354, and 36.001.

Insurance Code §541.401 provides that the Commissioner may adopt rules necessary to accomplish the purpose of Chapter 541, which is to regulate trade practices in the business of insurance by defining or determining trade practices that are unfair methods of competition or deceptive acts or practices and prohibiting them.

Insurance Codes §544.304 provides that the Commissioner adopt rules necessary to implement Insurance Code Chapter 544, Subchapter G.

Insurance Code §544.354 provides that the Commissioner adopt rules necessary to accomplish the purpose of Insurance Code Chapter 544, Subchapter G.

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.

§21.1005. Prohibition of Underwriting Guidelines Based on the Purchase of Types or Amounts of Coverage in Excess of Minimum Limits Liability Coverage.

(a) Prohibition. Effective September 1, 1995, an insurer or agent may not use an underwriting guideline for private passenger automobile insurance based, in whole or in part, on whether an insured or applicant purchases types or amounts of coverage in excess of the minimum automobile liability coverage required to show proof of financial responsibility under the Motor Vehicle Safety Responsibility Act, Transportation Code, Chapter 601. The failure to comply with this section constitutes an unfair trade practice in the business of insurance in violation of Insurance Code Chapter 541, and is subject to the provisions thereof.

(b) Definition of "Underwriting Guideline." For the purposes of this rule, an "underwriting guideline" is a rule, standard, marketing decision, guideline, or practice, whether written, oral or electronic, used by an insurer or its agent to examine, bind, accept, reject, renew, non-renew, cancel or limit coverages made available to classes of consumers.

(c) Definition of "Private Passenger Automobile Insurance." For the purposes of this rule, "private passenger automobile insurance" is the insurance for which a personal auto policy is issued.

§21.1007. Restrictions on Using Guidelines Based on a Water Damage Claim, Previous Mold Damage, or a Mold Damage Claim.

(a) Purpose. The purpose of this section is to protect persons and property from being unfairly stigmatized in obtaining residential property insurance due to previous mold damage, or by filing a mold damage claim, a water damage claim, or certain appliance-related claims under a residential property insurance policy.

(b) Definitions. The following words and terms, when used in this section, have the following meanings:

(1) Appliance--A household device operated by gas or electric current, including hoses directly attached to the device. The term includes air conditioning units, heating units, refrigerators, dishwashers, icemakers, clothes washers, water heaters, and disposals.

(2) Appliance-related claim--A claim for a loss arising from the discharge or leakage of water or steam from an appliance that is the direct result of the failure of the appliance.

(3) Consumer--The person making the application to insure a property and includes both existing insureds and applicants for insurance.

(4) Insurer--An insurance company, reciprocal or interinsurance exchange, mutual, capital stock company, county mutual insurance company, farm mutual insurance company, association, Lloyd's plan company, or other entity writing residential property insurance in this state. The term includes an affiliate as described by Insurance Code §823.003 if that affiliate is authorized to write and is writing residential property insurance in Texas. The term does not include the Texas Windstorm Insurance Association, the FAIR Plan, or an eligible surplus lines insurer regulated under Insurance Code Chapter 981.

(5) Residential property insurance--Insurance against loss to residential real property at a fixed location or tangible personal property provided in a homeowners policy, including a tenant policy, a condominium owners policy, or a residential fire and allied lines policy.

(6) Underwriting guideline--A rule, standard, guideline, or practice, whether written, oral, or electronic, that is used by an insurer or an agent of an insurer to decide to accept or reject an application for a residential property insurance policy or to determine how to classify risks that are accepted for the purpose of determining a rate.

(7) Water damage claim--A claim for a loss arising from the discharge or leakage of water or steam that is the direct result of the failure of a plumbing system or other system that contains water or steam.

(c) Water damage claims - underwriting. An insurer may not use an underwriting guideline based solely on a single previous water damage claim either filed by the applicant or on the covered property. This subsection does not affect the surcharge and renewal provisions in Insurance Code §551.107 (concerning Renewal of Certain Policies; Premium Surcharge Authorized; Notice).

(d) This subsection contains provisions related to underwriting and rating based on a previous appliance-related claim.

(1) Except as provided in Insurance Code §544.353(e) (concerning Restrictions on Use of Claims History for Water Damage) an insurer must not use a previous appliance-related claim as a basis for determining a rate to be paid or for determining whether to issue, renew, or cancel a residential property insurance policy if the consumer complies with the requirements in Insurance Code §544.353(c) and §544.353(d). It is the consumer's option whether to have the appliance-related claim inspected and certified. The consumer is responsible for the cost of the inspection and certification. An appliance-related claim that is not inspected and certified is subject to subsection (c) of this section.

(2) Nothing in this subsection exempts an insurer from the notice provisions in Insurance Code §551.107(e). However, appliance-related losses are a special class of non-weather-related losses. The notice must be specific to the insured's appliance-related loss history.

(3) The following individuals are inspectors that may have the knowledge and experience in water damage remediation to inspect and certify the proper remediation of an appliance-related claim:

(A) inspectors licensed or certified through the Voluntary Inspection Program under Insurance Code Chapter 2003, Subchapter C;

(B) persons licensed to perform real estate property inspections under the Real Estate Licensing Act;

(C) persons licensed as mold assessment consultants or mold remediation contractors by the Department of Licensing and Regulation under Occupations Code Chapter 1958;

(D) engineers licensed by the Texas Board of Professional Engineers; and

(E) persons authorized by an insurer to perform appliance-related water damage remediation inspections.

(4) An insurer that maintains a list of authorized inspectors must give verbal and written notice that a claimant has the right to choose an inspector. The inspector does not have to be on the insurer's list. The insurer must give verbal notice when the claimant calls to report the claim. The insurer must send written notice within 15 days after the insurer receives notice of the claim.

(5) If a consumer uses an inspector from an insurer's list, the insurer may not reject or challenge the certification. If the consumer uses an inspector who is not on the insurer's list, the insurer may reject or challenge the certification by reinspecting the property. The insurer must give the consumer a list of all reasons it will not accept the certification. The insurer must keep all documentation of the reinspection.

(6) If an inspector physically inspects the property and determines that the appliance-related water damage was properly remediated, the inspector must issue a water damage repair certificate (PC327 WDR-1) within 10 days of completing the inspection.

(7) Water damage repair certificate form (PC327 WDR-1). An inspector must use the water damage repair certificate form (PC327 WDR-1) found on TDI's website at www.tdi.texas.gov. TDI adopts by reference the water damage repair certificate form (PC327 WDR-1) that an inspector must use, subject to the provisions of this subchapter and Insurance Code Chapter 544. Persons using the form should confirm that they are using the most recent online version before giving a copy to the property owner.

(8) TDI has information about inspectors who may have the knowledge and experience in water damage remediation to inspect and certify the proper remediation of an appliance-related claim. A list of inspectors can be obtained from TDI's website or by requesting it from the TDI Property and Casualty Lines Office.

(e) This subsection contains provisions related to underwriting based on previous mold damage or a previous mold damage claim.

(1) An insurer may not use an underwriting guideline based on previous mold damage or a previous mold damage claim filed by the applicant or on the covered property if:

(A) the property is eligible for residential property insurance coverage;

(B) the property had mold damage;

(C) mold remediation was performed on the property; and

(D) the property was:

(i) remediated in accordance with the requirements in Occupations Code Chapter 1958, Subchapter D and any applicable rules adopted by the Department of Licensing and Regulation, and inspected by a licensed mold assessment consultant; and a mold damage remediation certificate (PC326 MDR-1) was issued to the property owner under Occupations Code §1958.154, certifying with reasonable

certainty that the underlying cause or causes of the mold at the property were remediated; or

(ii) inspected by a licensed, independent mold assessment consultant or a licensed adjuster; and a mold damage remediation certificate (PC326 MDR-1) was issued to the property owner under Occupations Code §1958.154, certifying that, based on the mold assessment inspection, the property does not contain evidence of mold damage.

(2) Mold damage remediation certificate form (PC326 MDR-1). Mold remediation contractors, mold assessment consultants, and adjusters must use the mold damage remediation certificate form (PC326 MDR-1) found on TDI's website at www.tdi.texas.gov or by requesting the form from the TDI Property and Casualty Lines Office, or from the Department of Licensing and Regulation. TDI adopts by reference the mold damage remediation certificate form (PC326 MDR-1) that must be used, subject to the provisions of this subchapter, Occupations Code Chapter 1958, and Insurance Code Chapter 544. Persons using the form should confirm that they are using the most recent online version before giving a copy to the property owner.

(3) This subsection does not affect the surcharge and renewal provisions in Insurance Code §551.107 (concerning Renewal of Certain Policies; Premium Surcharge Authorized; Notice).

(f) This subsection contains provisions for filing underwriting guidelines related to water damage claims, previous mold damage, or mold damage claims.

(1) All underwriting guidelines relating to water damage claims, previous mold damage, or mold damage claims must be filed with TDI. They must comply with the requirements in this section and with any rules adopted by the Commissioner.

(2) Underwriting guidelines relating to water damage claims, previous mold damage, or mold damage claims must be submitted to TDI as described in §5.9310(f) of this title (relating to Property and Casualty Transmittal Information and General Filing Requirements).

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SUBCHAPTER K. CERTIFICATION OF CREDITABLE COVERAGE

28 TAC §21.1101, §21.1110

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.1101 and §21.1110 under Insurance Code §§845.004, 846.005, and 36.001.

Insurance Code §845.004 provides that the Commissioner adopt rules necessary to implement Insurance Code Chapter 845, Subchapters A - D.

Insurance Code §846.005 provides that the Commissioner may adopt rules necessary to augment and implement Insurance Code Chapter 846.

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.

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SUBCHAPTER L. MEDICAL CHILD SUPPORT, UNFAIR PRACTICES

28 TAC §§21.2001, 21.2006, 21.2010, 21.2011

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§21.2001, 21.2006, 21.2010, and 21.2011 under Insurance Code §§541.401, 846.005, 1301.007, 1355.258, 1504.002, 1701.060, and 36.001.

Insurance Code §541.401 provides that the Commissioner may adopt rules necessary to accomplish the purpose of Chapter 541, which is to regulate trade practices in the business of insurance by defining or determining trade practices that are unfair methods of competition or deceptive acts or practices and prohibiting them.

Insurance Code §846.005 provides that the Commissioner may adopt rules necessary to augment and implement Insurance Code Chapter 846.

Insurance Code §1301.007 provides that the Commissioner adopt rules necessary to implement Insurance Code Chapter 1301.

Insurance Code §1355.258 provides that the Commissioner adopt rules necessary to implement Insurance Code Chapter 1355, Subchapter F.

Insurance Code §1504.002 provides that the Commissioner adopt rules necessary to implement Insurance Code Chapter 1504, including rules that define acts that constitute unfair or deceptive practices under Insurance Code Chapter 541, Subchapter I.

Insurance Code §1701.060 provides that the Commissioner may adopt rules necessary to implement the purposes of Insurance Code Chapter 1701.

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.

§21.2001. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Actuarial assumptions--The value of a parameter, or other choice, having an impact on an estimate of a future cost or other actuarial item under evaluation.

(2) Actuarially equivalent--Producing equal actuarial present value, determined as of a given date with each value based on the same set of actuarial assumptions.

(3) Actuarial present value--The value of an amount or series of amounts payable or receivable at various times, determined as of a given date by the application of a particular set of actuarial assumptions.

(4) Child--

(A) a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes; or

(B) in the context of child support, "child" includes a person over 18 years of age for whom a person may be obligated to pay child support.

(5) Child support agency--As defined in Family Code §101.004.

(6) Custodial parent--

(A) a managing conservator of a child or a possessory conservator of a child who is a parent of the child; or

(B) a guardian of the person of a child, or another custodian of a child if the guardian or custodian is designated by a court or administrative agency of this or another state.

(7) Health insurer--Any insurance company, stipulated premium company, fraternal benefit society, group hospital service corporation, or HMO that delivers or issues for delivery an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an evidence of coverage that provides benefits for medical or surgical expenses incurred as a result of an accident or sickness.

(8) Insurer--

(A) a health insurer;

(B) a governmental entity subject to:

(i) Insurance Code, Articles 3.51-1, 3.51-4, or 3.51-5; or

(ii) Insurance Code Chapter 1578; Local Government Code, Chapter 177; or Insurance Code §1355.151 or §1364.101;

(C) a multiple employer welfare arrangement, as that term is defined by Insurance Code §§846.001, 846.002, 846.202, and 846.251; or

(D) a health insurer that issues coverage for a group health plan, as defined by the Employee Retirement Income Security Act of 1974, §607(1) (29 U.S.C. §1167).

(9) Medical assistance--Medical assistance under the state Medicaid program.

(10) Medical support order--A court or administrative judgment, decree, or order whether temporary, final, or subject to modification for the benefit of a child that provides for health coverage of the child.

(11) Policy--Includes an individual, blanket, or franchise insurance agreement or contract, a certificate issued under a group policy, a group hospital service contract, or evidence of coverage issued by a health maintenance organization.

(12) Qualified actuary--An actuary who is either:

(A) a Fellow of the Society of Actuaries, or

(B) a Member of the American Academy of Actuaries.

§21.2006. *Notice of Availability of Continuation or Conversion Coverage.*

(a) For the purpose of providing notification to the custodial parent under Insurance Code §1504.054 and §21.2008 of this title (relating to Information Provided by an Insurer), the custodial parent must notify the insurer of any change of address. If no such change of address is submitted by the custodial parent to the insurer, then the insurer must comply with the provisions of Insurance Code §1504.054 and §21.2008 of this title (relating to Information Provided by an Insurer) regarding notification to the custodial parent if such notice is sent to the last known address of the custodial parent.

(b) The insurer must enroll or continue enrollment of the child on application of a parent of the child, a child support agency, or the child over 18 years of age.

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SUBCHAPTER M. MANDATORY BENEFIT NOTICE REQUIREMENTS

28 TAC §21.2106

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.2106 under Insurance Code §§843.151, 1251.008, 1370.004, and 36.001.

Insurance Code §843.151 provides that the Commissioner may adopt rules as necessary and proper to implement Insurance Code Chapter 1271.

Insurance Code §1251.008 provides that the Commissioner may adopt rules necessary to administer Insurance Code Chapter 1251.

Insurance Code §1370.004 provides that health benefit plan issuers must provide written notice of coverage required under Insurance Code Chapter 1370 to each woman 18 years of age or

older enrolled in the plan in accordance with rules adopted by the Commissioner.

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.

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SUBCHAPTER N. LIFE INSURANCE ILLUSTRATIONS

28 TAC §§21.2202, 21.2204, 21.2212

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§21.2202, 21.2204, and 21.2212 under Insurance Code §§541.401, 543.001, and 36.001.

Insurance Code §541.401 provides that the Commissioner may adopt rules necessary to accomplish the purpose of Chapter 541, which is to regulate trade practices in the business of insurance by defining or determining trade practices that are unfair methods of competition or deceptive acts or practices and prohibiting them.

Insurance Code §543.001 provides that the Commissioner may adopt rules as provided by Chapter 541, Subchapter I, to ensure life insurance companies do not circulate statements that misrepresent the terms, benefits, or dividends received on a life insurance policy or certificate.

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.

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SUBCHAPTER Q. COMPLAINT RECORDS TO BE MAINTAINED

28 TAC §21.2501

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.2501 under Insurance Code §541.401 and §36.001.

Insurance Code §541.401 provides that the Commissioner may adopt and enforce rules necessary to accomplish the purpose of Chapter 541, which is to regulate trade practices in the business of insurance by defining or determining trade practices that are unfair methods of competition or deceptive acts or practices and prohibiting them.

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.

§21.2501. *Applicability and Purpose.*

This subchapter applies to all insurers as defined in §21.2502 of this title (relating to Definitions). The purpose of this subchapter is to prescribe the minimum information required to be maintained in the complaint record of an insurer, to provide a recommended format for the maintenance of such a record by insurers, and to require presentation of such information at the time of examination of insurers or upon other request for complaint record information by the department. Complaint record maintenance provisions of this subchapter apply to all complaints of an insurer not specifically excepted by this subchapter, including complaints relating to the claims settlement practices of an insurer.

(1) This subchapter does not apply to complaints received and maintained by Health Maintenance Organizations. Insurance Code Chapter 843, Subchapter G, as amended, as well as §11.205 of this title (relating to Additional Documents to be Available for Review), expressly and specifically provide for complaint record maintenance by HMOs.

(2) This subchapter does not apply to the complaints received by an insurer in its capacity as a utilization review agent. Complaint record maintenance and reporting for such complaints are addressed in §19.1705 of this title (relating to General Standards of Utilization Review).

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SUBCHAPTER R. DIABETES

28 TAC §§21.2601, 21.2604, 21.2606

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§21.2601, 21.2604, and 21.2606 under Insurance Code §1358.057 and §36.001.

Insurance Code §1358.057 provides that the Commissioner adopt rules necessary to implement Insurance Code Chapter 1358, Subchapter B.

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.

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SUBCHAPTER S. ASSOCIATION PLANS

28 TAC §21.2702

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.2702 under Insurance Code §§843.151, 1115.005, 1251.0008, and 36.001.

Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement Insurance Code Chapter 843.

Insurance Code §1115.005 provides that the Commissioner may adopt reasonable rules to accomplish and enforce the purpose of Chapter 1115.

Insurance Code §1251.008 provides that the Commissioner may adopt rules necessary to administer Insurance Code Chapter 1251.

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.

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SUBCHAPTER T. SUBMISSION OF CLEAN CLAIMS

28 TAC §21.2819

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.2819 under Insurance Code §§843.336, 1301.007 and 36.001.

Insurance Code §843.336 provides that the Commissioner may adopt rules that specify the information that must be entered on the claim form for a claim to be a clean claim.

Insurance Code §1301.007 provides that the Commissioner may adopt rules necessary to implement Chapter 1301 relating to preferred provider benefit plans, including the prompt payment of claims.

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.

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SUBCHAPTER U. ARRANGEMENTS BETWEEN INDEMNITY CARRIERS AND HMOS FOR POINT-OF-SERVICE COVERAGE

28 TAC §21.2901, §21.2902

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.2901 and §21.2902 under Insurance Code §§843.151, 1201.006, 1251.008, 1273.005, 1301.007, 1701.060, 4201.003, and 36.001.

Insurance Code §843.151 provides that the Commissioner may adopt rules necessary to implement Insurance Code Chapters 843; 1452, Subchapter A; 1507, Subchapter B; 222; 251; and 258 as applicable to health maintenance organizations; and Insurance Code Chapters 1271 and 1272.

Insurance Code §1201.006 provides that the Commissioner may adopt rules necessary to implement the purposes and provisions of Insurance Code Chapter 1201.

Insurance Code §1251.008 provides that the Commissioner may adopt rules necessary to administer Insurance Code Chapter 1251.

Insurance Code §1273.005 provides that the Commissioner may adopt rules to implement Chapter 1273, Subchapter A.

Insurance Code §1301.007 provides that the Commissioner adopt rules necessary to implement Insurance Code Chapter 1301 and to ensure reasonable accessibility and availability of preferred provider services to residents of this state.

Insurance Code §1701.060 provides that the Commissioner may adopt rules necessary to implement the purpose of Insurance Code Chapter 1701.

Insurance Code §4201.003 provides that the Commissioner may adopt rules to implement Chapter 4201.

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.

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SUBCHAPTER X. EVALUATION OF NETWORK PHYSICIANS AND PROVIDERS

28 TAC §21.3201

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.3201 under Insurance Code §1452.052 and §36.001.

Insurance Code §1452.052 provides that the Commissioner adopt a standardized verification of credentials form for physicians, advanced practice nurses, and physician assistants.

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.

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SUBCHAPTER Y. UNFAIR DISCRIMINATION IN COMPENSATION FOR WOMEN'S HEALTH CARE

28 TAC §§21.3302, 21.3303, 21.3305

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§21.3302, 21.3303, and 21.3305 under Senate Bill 8, 77th Legislature, 2001, and Insurance Code §36.001.

The enacting language of SB 8, which enacted the article that was codified as Insurance Code Chapter 1454, effective April 1, 2005, provides that TDI may adopt rules necessary to implement the act.

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.

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SUBCHAPTER CC. ELECTRONIC HEALTH CARE TRANSACTIONS

28 TAC §21.3701

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.3701 under Insurance Code §1213.006 and §36.001.

Insurance Code §1213.006 provides that the Commissioner may adopt rules necessary to implement the requirements for electronic health care transactions found in Chapter 1213.

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.

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SUBCHAPTER DD. ELIGIBILITY STATEMENTS

28 TAC §21.3802

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.3802 under Insurance Code §1274.004 and §36.001.

Insurance Code §1274.004 provides that the Commissioner adopt rules necessary to implement Chapter 1274.

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.

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SUBCHAPTER GG. HEALTH CARE QUALITY ASSURANCE PRESUMED COMPLIANCE

28 TAC §21.4105

STATUTORY AUTHORITY. The Commissioner adopts amendments to §21.4105 under Insurance Code §847.007 and §36.001.

Insurance Code §847.007 provides that the Commissioner may by rule determine the application of compliance with national accreditation requirements by a delegated entity, delegated third party, or utilization review agent to compliance by the health benefit plan issuer that contracts with the delegated entity, delegated third party, or agent.

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.

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 6. LICENSE TO CARRY HANDGUNS

SUBCHAPTER B. ELIGIBILITY AND APPLICATION PROCEDURES FOR A LICENSE TO CARRY A HANDGUN

37 TAC §6.14, §6.17

The Texas Department of Public Safety (the department) adopts amendments to §6.14, concerning Proficiency Requirements, and new §6.17, concerning Protective Order Designation, in Subchapter B, Eligibility and Application Procedures for a License to Carry a Handgun. These rules are adopted without changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5361) and will not be republished.

Amendments to §6.14, concerning Proficiency Requirements, are intended to clarify the content and manner of instruction of the range portion of the handgun proficiency requirements. New §6.17, Protective Order Designation, is necessary to implement House Bill 918, 87th Legislative Session and to verify the continued eligibility of certain license holders for the protective order designation.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, §411.197, which authorizes the director to adopt rules to administer this subchapter, and §411.1735(e) (added by House Bill 918, 87th Legislative Session), which requires the director to adopt rules relating to the verification of a license holder's eligibility for the protective order designation.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 424-5848



CHAPTER 7. TEXAS DIVISION OF EMERGENCY MANAGEMENT

SUBCHAPTER A. EMERGENCY MANAGEMENT PROGRAM REQUIREMENTS

37 TAC §§7.1 - 7.3

The Texas Department of Public Safety (the department) adopts the repeal of §§7.1 - 7.3, concerning Emergency Management Program Requirements. These repeals are adopted without changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5362) and will not be republished.

Texas Government Code, Chapter 418 establishes the system of Emergency Management in Texas. The current External Operating Rules for the system are located at <https://tdem.texas.gov/wp-content/uploads/2020/02/External-Operating-Rule-Chapter-418.pdf>. The current provisions replace these sections of the Texas Administrative Code, making the repeal necessary.

No comments were received regarding the adoption of these repeals.

These repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



SUBCHAPTER B. EMERGENCY MANAGEMENT PLANNING AND PREPLANNING REQUIREMENTS

37 TAC §§7.11 - 7.13

The Texas Department of Public Safety (the department) adopts the repeal of §§7.11 - 7.13, concerning Emergency Management Planning and Preplanning Requirements. These repeals are adopted without changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5363) and will not be republished.

Texas Government Code, Chapter 418 establishes the system of Emergency Management in Texas. The current External Operating Rules for the system are located at <https://tdem.texas.gov/wp-content/uploads/2020/02/External-Operating-Rule-Chapter-418.pdf>. The current provisions replace these sections of the Texas Administrative Code, making the repeal necessary.

No comments were received regarding the adoption of these repeals.

These repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. EMERGENCY MANAGEMENT OPERATIONS

37 TAC §§7.21 - 7.27

The Texas Department of Public Safety (the department) adopts the repeal of §§7.21 - 7.27, concerning Declaration of a State of Disaster and Effects of a Declaration. These repeals are adopted without changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5364) and will not be republished.

Texas Government Code, Chapter 418 establishes the system of Emergency Management in Texas. The current External Operating Rules for the system are located at <https://tdem.texas.gov/wp-content/uploads/2020/02/External-Operating-Rule-Chapter-418.pdf>. The current provisions replace these sections of the Texas Administrative Code, making the repeal necessary.

No comments were received regarding the adoption of these repeals.

These repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. RECOVERY AND REHABILITATION REQUIREMENTS

37 TAC §§7.41 - 7.45

The Texas Department of Public Safety (the department) adopts the repeal of §§7.41 - 7.45, concerning Recovery and Rehabilitation Requirements. These repeals are adopted without changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5364) and will not be republished.

Texas Government Code, Chapter 418 establishes the system of Emergency Management in Texas. The current External Operating Rules for the system are located at <https://tdem.texas.gov/wp-content/uploads/2020/02/External-Operating-Rule-Chapter-418.pdf>. The current provisions replace these sections of the Texas Administrative Code, making the repeal necessary.

No comments were received regarding the adoption of these repeals.

These repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins

General Counsel

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CHAPTER 36. METALS RECYCLING ENTITIES
SUBCHAPTER C. PRACTICE BY CERTIFICATE HOLDERS AND REPORTING REQUIREMENTS

37 TAC §36.38

The Texas Department of Public Safety (the department) adopts new §36.38, concerning Marking of Catalytic Converters. This rule is adopted without changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5365) and will not be republished.

This new rule is required in order to comply with House Bill 4110, 87th Legislative Session, requiring the commission to prescribe by rule the manner in which a metal recycling entity mark catalytic converters purchased by the entity.

The department accepted comments on the proposed amendments through September 27, 2021. Written comments relating to §36.38 were submitted by Karen Phillips, on behalf of Texas Automobile Dealers Association in support of the new rule. No changes were made to the proposal based on these comments.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which authorizes the commission to adopt rules to administer Chapter 1956.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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SUBCHAPTER E. DISCIPLINARY PROCEDURES AND ADMINISTRATIVE PROCEDURES

37 TAC §36.52

The Texas Department of Public Safety (the department) adopts the repeal of §36.52, concerning Advisory Letters, Reprimands and Suspensions of a Certificate of Registration. This repeal is adopted without changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5366) and will not be republished.

Section 36.52 is to be consolidated with §36.60, concerning Administrative Penalties, thereby providing a single rule relating to both administrative sanctions and penalties.

No comments were received regarding the adoption of this repeal.

This repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.506, which authorizes the commission to adopt rules establishing procedures for the informal resolution of complaints filed against metal recycling entities; and Texas Occupations Code, §1956.013, which authorizes the commission to adopt rules to administer Chapter 1956.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins
General Counsel
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For further information, please call: (512) 424-5848

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37 TAC §36.55, §36.60

The Texas Department of Public Safety (the department) adopts amendments to §36.55 and §36.60, concerning Disciplinary Procedures and Administrative Procedures. These rules are adopted without changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5367) and will not be republished.

Texas Occupations Code, §53.025(a) requires a licensing agency's guidelines to state the reasons that particular disqualifying criminal offenses are considered to relate to the license. The amendments to §36.55 will bring the rule into compliance with Texas Occupations Code, §53.025(a). The amendments to §36.60 reflect in part its consolidation with §36.52, which is to be repealed, thereby providing a single rule relating to both administrative sanctions and penalties. Additional changes to §36.60 authorize the suspension of a license when the licensee has refused to pay an administrative penalty for which there is a final order. The proposed change to the penalty schedule within §36.60 is necessary to implement House Bill 4110, 87th Legislative Session, requiring the commission to prescribe by rule the manner in which a metal recycling entity mark catalytic converters purchased by the entity. This rule change provides the administrative penalty for violation of the requirements reflected in proposed §36.38 and various provisions of Occupations Code, Chapter 1956 as amended by H.B. 4110.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which

authorizes the commission to adopt rules to administer Chapter 1956.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



PART 4. TEXAS MILITARY DEPARTMENT

CHAPTER 137. LEAVE POOL

37 TAC §137.1

The Texas Military Department adopts new 37 TAC §137.1, concerning the establishment of the State Employee Family Leave Pool. Section 137.1 is adopted without changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5368). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the rule is for the agency to comply with the statutory requirement under Texas Government Code §661.022, directing agencies to adopt rules in order to properly implement the newly authorized State Employee Family Leave Pool.

COMMENTS

The agency received no comments regarding the proposed rule.

STATUTORY AUTHORITY

The rule is adopted under Texas Government Code §661.022.

The new rules affect the following statutes: Government Code §661.021-028, which relates to establishment of a State Employee Family Leave Pool.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 14, 2021.

TRD-202104057

Mark McHargue

Attorney

Texas Military Department

Effective date: November 3, 2021

Proposal publication date: August 27, 2021

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37 TAC §137.2

The Texas Military Department adopts new 37 TAC §137.2, concerning establishment of the State Employee Sick Leave Pool. Section 137.2 is adopted without changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5369). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the rule is for the agency to comply with the statutory requirement under Texas Government Code §661.002, directing agencies to adopt rules in order to properly implement the authorized State Employee Sick Leave Pool.

COMMENTS

The agency received no comments regarding the proposed rule.

STATUTORY AUTHORITY

The rule is adopted under Texas Government Code §661.002.

The new rules affect the following statutes: Texas Government Code §661.001-008, which relates to establishment of a State Employee Sick Leave Pool.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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