



# Texas Insurance News

REGULATORY NEWS PUBLISHED BY THE TEXAS DEPARTMENT OF INSURANCE

## Fraud Unit Sees More Fake Apps Cases

By Mary Sherman, Chief,  
Insurer Fraud Section, Insurance Fraud Unit

**S**CAMS IN WHICH AGENTS COLLECT substantial unearned commissions by submitting phony life insurance applications are a small but growing category of cases sent to district attorneys by TDI's Insurance Fraud Unit.

These referrals jumped from two in Fiscal Year 1999 to five in Fiscal Year 2000.

Fake life insurance applications now account for more than seven percent of the workload of the Fraud Unit's Insurer Fraud Section. All these cases came to us from insurance companies.

In one case, an insurance broker outside of Texas recruited agents in Texas and other states to participate in a scheme that involved distributing bogus casting calls for a television production. The young actors who responded received packets of paperwork to fill out—including life insurance applications. The perpetrators sent in the applications, along with initial premiums paid from the agents' pockets. The companies responded with commissions totaling more than \$1 million.

Another case involved an agent who applied to several companies he represented for very large life insurance policies on himself. His initial premium checks always bounced—but only after he had cashed commission checks that the companies were too quick to deliver.

The amounts of money lost by insurers can be quite large. One recent referral to a district attorney involved ill-gotten commissions of more than \$100,000.

The typical scenario usually goes like this:

- An agent forges an application or gets someone to unwittingly apply for a policy with death benefits below a company's threshold for requiring a medical examination.
- The agent submits the application to a company, along with the initial premium, usually paid by the agent.
- The company promptly remits the commission. It catches on to the fraud when a policy is cancelled after the first premium payment

or the U. S. Postal Service returns a premium notice.

- The company asks the agent to refund the unearned commission. He or she ignores the request or reneges on a promise to repay. The company terminates the agent but never recovers its money.

When referred to district attorneys, such cases have resulted in indictments for theft and for securing the execution of a document by deception.

In the past, insurers often resigned themselves to a bad situation, cancelled the agent's appointment and wrote off their losses without seeking criminal prosecution. That is changing, however, in part because insurers are becoming aware that the Fraud Unit investigates such cases and refers them to DAs when the evidence warrants. These criminal prosecutions are often conducted concurrently with administrative investigations by TDI's Legal and Compliance Division. Where the evidence warrants, these investigations can result in license revocations or other penalties.

Texas law requires insurers to report suspected fraud to the Fraud Unit or other appropriate law enforcement agencies. Companies may contact the Fraud Unit at 512 463-6492.

It's not always easy for a company to protect itself against this kind of fraud. However, here are some suggested defenses:

- Consider lowering the threshold for medical testing of life insurance applicants.
- Wait until you have verified the legitimacy of an application to pay the commission. Consider contacting the applicant directly to confirm that he or she did, in fact, apply for insurance.
- Don't send a commission check until you are sure the check for the initial premium has cleared.
- Be sure to tell TDI your reasons when you cancel an agent's appointment for cause. This will enable TDI to start license revocation proceedings that might remove the opportunity for a bad agent to scam other companies. ★

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### Texas Insurance News

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By necessity, summaries of proposed and adopted rules cannot explain their full complexity. Readers interested in complete information about administrative rules should consult the versions published in the Texas Register.

To the best of the staff's ability, information presented in this newsletter is correct as of the publication date, but scheduled dates and proposed rules and amendments may change as the adoption process goes forward.

## NewsBriefs

### Residential Property Insurance Benchmark Hearing Scheduled

**COMMISSIONER JOSE MONTEMAYOR** has scheduled the annual residential property insurance benchmark rate hearing to begin at 9 a.m. on December 19, 2000.

The hearing will be held at the State Office of Administrative Hearings (SOAH), Suite 1100, Stephen F. Austin State Office Building, 1700 North Congress, Austin.

SOAH administrative law judges will conduct the hearing, then make recommendations to Montemayor. The Commissioner is required to set benchmark rates annually for use by rate-regulated companies. These companies may file their rates and use them immediately as long as they fall within a range from 30 percent below to 30 percent above the benchmarks. In Texas, only about 10 percent of homeowner's premiums are written by carriers subject to the benchmark rate system.

Rates for wind and hail coverage provided by the Texas Windstorm Insurance Association are based on the benchmark rates for extended coverage insurance.

Among other things, Montemayor's hearing notice asked that the parties review the state's rating territories to identify any inequities that should be corrected.

The hearing date is subject to motions for continuance and, therefore, could change.

*Publication: 25TexReg10808, October 27, 2000  
Docket No. 454-01-0449.G ★*

### Commissioner OKs Hike in TWIA Commercial Rates

**COMMISSIONER JOSE MONTEMAYOR** has approved a 4 percent increase in wind and hail insurance rates for commercial and public buildings covered by the Texas Windstorm Insurance Association. The increase takes effect January 1, 2001.

TWIA had requested a 10 percent rate increase while the state's Office of Public Insurance Counsel said the indicated rate change was a 21 percent reduction.

The Commissioner also approved a TWIA petition to raise its maximum limits of liability as follows:

- Dwellings, including contents, from \$371,000 to \$383,000.
- Government buildings remain at \$2,192,000.

- Personal property in apartments, condos and townhouses, from \$133,000 to \$137,000.
- Commercial buildings, including contents, from \$1,596,000 to \$1,618,000. ★

### Biennial Title Rate and Rules Hearings Scheduled

**TDI HAS ISSUED** notice that it will hold both the rulemaking and the ratemaking phase of the 2000 biennial title insurance hearing in December.

The rulemaking phase will begin at 9 a.m., December 27, 2000. The ratemaking phase will start at 9 a.m., December 29, 2000. Both hearings will be held in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe, Austin.

Both hearing dates are subject to motions for continuance and, therefore, could change.

*Publication: 25TexReg11136, November 3, 2000  
Docket Nos. 2470 (Rulemaking) and 2471 (Ratemaking) ★*



### Fraud Unit Prosecutions

#### Indictments

**Morrison, Sally**, indicted in Houston on charges of theft, a state jail felony.

**Bradley, Steven Carl and Willis, Todd Robert**, indicted in U.S. District Court in Fort Worth on charges of mail fraud.

#### Convictions

**Brown, Eugene Wolfe**, pleaded guilty in San Antonio to insurance fraud, a Class A misdemeanor, and was sentenced to a \$500 fine, \$21,034.84 in restitution and one-month probation.

**Castorina, Joseph**, pleaded guilty in Galveston County to insurance fraud, a state jail felony, and was sentenced to two years' probation, 120 hours of community service and restitution of \$2,471.28.

**Loyd, Alfred Darnell**, pleaded guilty in Houston to insurance fraud, a state jail felony, and was sentenced to a \$750 fine, 160 hours of community service and restitution of \$280.

**Martinez, Sonia**, pleaded guilty in San Antonio to theft, a state jail felony, and was sentenced to four years' deferred adjudication, a \$1,000 fine, 320 hours of community service and restitution of \$5,839.65.

**Alexander, Harold**, pleaded guilty in San Antonio to theft, a state jail felony, and was sentenced to 60 days in jail, four years' deferred adjudication, a \$1,000.00 fine, 320 hours of community service and restitution of \$6,097.80.

**Reyes, Josephine**, pleaded guilty in San Antonio to theft, a state jail felony, and was sentenced to four years' deferred adjudication, \$1,000 fine, 320 hours of community service and restitution of \$8,667.85. ★

### Data Call Reminders

*(Failure to comply with TDI's reporting requirements may result in disciplinary action)*

#### Quarterly Closed Claim Reports

Reports for claims closed during the fourth quarter of 2000 will be due January 10, 2001. The 1999 Annual Aggregate Closed Claim Report and Reconciliation Form (Commissioner's Bulletin B-0044-00) was due September 25, 2000. The bulletin may be downloaded from TDI's web site, [www.tdi.state.tx.us](http://www.tdi.state.tx.us). TDI contacts are Vicky Knox, **512 475-1879** and Nita Rene Smith, **512 475-1999**. E-mail addresses: [vicky.knox@tdi.state.tx.us](mailto:vicky.knox@tdi.state.tx.us), [nita.rene.smith@tdi.state.tx.us](mailto:nita.rene.smith@tdi.state.tx.us)

#### Call for Quarterly Experience

The Call for Third Quarter 2000 Experience was mailed September 29, 2000, and was due November 15, 2000. The bulletin and forms may be downloaded from TDI's web site located at [www.tdi.state.tx.us](http://www.tdi.state.tx.us). TDI contact is Michael Davis, **512 322-5029**. E-mail address: [michael.davis@tdi.state.tx.us](mailto:michael.davis@tdi.state.tx.us)

#### Call for Quarterly Experience, Workers' Compensation Deductible Plans

The Call for Third Quarter 2000 Experience was mailed September 29, 2000, and was due November 15, 2000. The bulletin and forms may be downloaded from TDI's web site located at [www.tdi.state.tx.us](http://www.tdi.state.tx.us). TDI contact is Michael Davis, **512 322-5029**. E-mail address: [michael.davis@tdi.state.tx.us](mailto:michael.davis@tdi.state.tx.us)

#### Credit Data Call—Credit Life and Credit Accident & Health Insurance

The 1999 calendar year Credit Call was mailed July 28, 2000 as Commissioner's Bulletin B-0042-00. The data call was due September 15, 2000. The bulletin, forms, and diskette program may be downloaded from TDI's web site, [www.tdi.state.tx.us](http://www.tdi.state.tx.us). TDI contact is Julie Jones, **512 475-1878**. E-mail address: [julie.jones@tdi.state.tx.us](mailto:julie.jones@tdi.state.tx.us) ★

# TDI update

## Ernest Garza Named SDR of Benefit Life

**E**RNEST GARZA of Resolution Oversight Corp. in San Antonio has been appointed special deputy receiver (SDR) of Benefit Life Insurance Co.

As SDR, Garza is responsible for marshaling the company's assets and using them, to the extent possible, to pay Benefit Life's obligations that are not payable by the Texas Life, Accident, Health and Hospital Service Guaranty Association.

Contact information is as follows:

Ernest Garza  
Resolution Oversight Corp.  
P. O. Box 691852  
San Antonio, TX 78269

Phone: 210 493-8602  
Fax: 210 493-8780  
e-mail: eagarzasdr@aol.com

Judge Jon Wisser of the 353rd District Court in Austin placed Benefit Life in permanent receivership on September 28, 2000. He acted in response to a petition filed by the Office of the Attorney General on behalf of TDI. The state's receivership petition alleged that Benefit Life's liabilities exceeded its assets by \$2 million. The company consented to the receivership.

Benefit Life, which has been in business since 1982, operated only in Texas. It had 2,000 policies in force, primarily individual health insurance.

TDI's Conservation Division identified Benefit Life's insolvency while monitoring the company's follow-through on a business plan required earlier by the Department. TDI placed Benefit Life in confidential supervision on August 16, 2000. However, this rehabilitation effort was not successful. ★

## Enforcement Actions

### Houston Agent Charged in LTC Premium Theft

**A**HARRIS COUNTY GRAND JURY has indicted Houston insurance agent Tracy Akin Giron on charges that she stole about \$245,000 from more than 80 senior citizens by pocketing premiums they paid her for long-term care insurance.

Giron, 33, was indicted October 31, 2000, on charges of theft over \$200,000. The alleged crime is a first-degree felony that carries a maximum penalty of life in prison and a \$10,000 fine.

Giron allegedly started the scam in May and made contacts by speaking to church and retiree groups about long-term care insurance. Her alleged victims also included people who had been her customers in earlier, legitimate insurance sales.

The victims, predominantly in their 70s and 80s, were identified from documents found in a search of Giron's office by Houston police and the Harris County District Attorney's office.

According to the indictment and case records, Giron took applications and initial premiums for long-term care insurance from her victims but pocketed the proceeds instead of forwarding them to insurance companies to buy coverage.

Colonial American Life Insurance Co. reported Giron to TDI after receiving inquiries from some of her alleged victims about their non-existent policies.

The case was investigated by TDI's Insurance Fraud Unit, the Houston Police Department and the Harris County District Attorney's Office.

"Insurance fraud is especially heinous when it victimizes older Texans," said Insurance Commissioner Jose Montemayor. "The harm in this case would have been even greater if the crime had not been detected, investigated and prosecuted at a fairly early stage." ★

### HMO Losses Extend Into Second Quarter

**B**ASIC SERVICE HMOS lost \$171 million on Texas business in the second quarter of 2000.

Twenty-nine of the 45 active basic service HMOS experienced after-tax losses in the second quarter while 16 were profitable or broke even.

The second quarter loss figure brought year-to-date after-tax net losses through June 30 to \$248.9 million.

Three HMOS with losses of \$10 million or more accounted for 88.7 percent of the \$171 million industrywide after-tax loss on Texas business in the second quarter. One company that wrote off a large amount of "goodwill" accounted for almost two thirds of the industrywide loss.

After a small dip in the first quarter, Texas basic service HMO enrollment regained its momentum

and increased from 3,863,509 to 3,915,218 lives in the second quarter.

Meanwhile, per member per month (PMPM) commercial premiums for Texas business continued to rise, increasing from \$136.26 in the first quarter to \$136.10 in the second quarter. The second quarter medical loss ratio on Texas business was 101.6 percent.

Single service HMOS had industrywide net income after taxes of \$5.4 million compared to \$4.9 million the previous quarter. Of the 19 licensed single service HMOS, 13 were profitable and six experienced net losses after taxes. Texas enrollment increased from 2,447,915 in the first quarter to 2,650,171 in the second quarter. ★

#### Basic Service HMOS, Texas-Only Business

QUARTER ENDING	6/30/99	9/30/99	12/31/99	3/31/00	6/30/00
NET INCOME AFTER TAXES (\$ MILLION)	(\$102.5)	(\$157.1)	(83.3)	(79.0)	(171.0)
TOTAL ENDING ENROLLMENT	3,820,041	3,821,701	3,873,684	3,863,509	3,915,218
PMPM COMMERCIAL PREMIUMS	\$125.32	\$127.16	\$126.79	\$136.26	\$136.10
MEDICAL LOSS RATIO	101.4	104.9	100.9	78.8	101.6

## LegalNotes

### Appellate Court Rules On Duty to Defend

By Ann Bright, Section Chief, Agency Counsel Section, Legal and Compliance Division.

**T**HE TEXARKANA COURT OF APPEALS recently discussed what an insurance company must do if it wishes to stop providing a defense under a liability insurance policy.

#### Providence Washington Insurance Co. v. A & A Coating, Inc.

A & A Coating Inc. (A & A) was involved in pipe-coating operations. A & A purchased a commercial general liability insurance policy from a subsidiary of Providence Insurance Co. (Providence) in 1988. Under the policy, Providence was obligated to defend A & A in connection with claims asserted against A & A that were covered by the policy. However, the insurance policy covered only claims involving A & A's operations from November 16, 1988, through November 16, 1989.

In March 1994, A & A was sued by a New Mexico gas company. The lawsuit was filed in a New Mexico court. The lawsuit involved events that occurred before November 1989, as well as events that occurred after November 1989. Providence hired attorneys to defend A & A. However, Providence issued a reservation of rights letter to A & A stating,

*We will be assigning the defense of this cause to defense counsel and will inform you of the name, address and phone number of that attorney. We do, however, reserve the right to withdraw from the defense of your company in this cause upon reasonable notice to your company should it be determined that there is no coverage or any obligation to defend your company under the terms of its policies with us based upon any allegations that may be made in any further pleadings which are filed or based upon an investigation that we may conduct.*

In June 1996, the New Mexico court determined that the claims involving A & A's activities before November 24, 1989, were barred by the statute of limitations. Therefore, the claims arising before November 24, 1989 were dismissed. As a result, the only claims remaining in the lawsuit were those claims that arose on or after November 24, 1989.

On February 11, 1997, Providence's attorney sent a letter to A & A's attorney stating an opinion that Providence was no longer liable under the policy since the claims covered by Providence had been dismissed. However, the letter did not state that Providence would no longer defend A & A in the New Mexico lawsuit. On February 13, 1997, Providence's lawyer affirmed in a telephone discus-

sion that Providence was not denying its duty to defend A & A. Also, on February 13, 1997, the New Mexico lawsuit was settled. Providence's attorney participated in the settlement discussions. In addition, Providence contributed \$5,000 to the settlement on behalf of A & A.

Providence later declined to pay the costs of defense, which included attorney and expert fees. Providence noted that the policy covered only claims arising between November 16, 1988 and November 16, 1989. Providence argued that since the claims arising prior to November 24, 1989 had been dismissed, Providence was no longer obligated to defend A & A. A & A sued Providence. The trial court ruled in favor of A & A. Providence appealed to the Texarkana Court of Appeals.

The Texarkana Court of Appeals (the court) noted that an insurance company may begin to defend an insured, but later withdraw, so long as the insurance company reserves its right to withdraw. As the court stated, "When a defense is undertaken through a valid reservation of rights, the insurer may withdraw its defense when it becomes clear there is no coverage under the policy." The court determined that Providence had issued a valid reservation of rights letter to A & A.

The court noted that the reservation of rights letter stated that Providence reserved the right to stop defending A & A "upon reasonable notice" to A & A. The court stated, "Withdrawal without proper notice is not in accord with the nature of the reservation of rights." The court also stated, "The notice should be given at a point when the insured can still take appropriate measures to defend itself."

Providence argued that its February 1997 letter was notice of its withdrawal. However, the court determined that the February 1997 letter "indicated no intent of withdrawal." Furthermore, the court noted that the February 1997 letter was issued seven months after the New Mexico court dismissed the claims arising before November 1989. Even if the February 1997 notice was adequate, it was not timely.

The court therefore ruled in favor of A & A. As a result, the court determined that Providence was liable for the costs of defending A & A. For more information about this case, please consult the opinion of the court. **Providence Washington Insurance Company v. A & A Coating, Inc.**, 2000 WL 136436 (Tex. App.-Texarkana 2000). ★

### TDI Sets Hearing on WC Domestic Class

**TDI** WILL HOLD a December 18, 2000, public hearing on a TDI staff proposal to establish a new classification for residential domestic workers whose workers' compensation premium is based on payroll.

The hearing will be at 1:30 p.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe, Austin.

The proposal would amend Rule XV of the *Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers Liability Insurance*.

Currently, the manual allows the premium for residential domestic workers to be calculated on either a per capita basis or a payroll basis. However, there is no separate classification to use if the premium is calculated on a payroll basis rather than a per capita basis.

The proposed change would add Code 0923 Domestic Workers—Residences: Payroll Basis to both the alphabetic and numeric classification sections of the manual. There also would be changes to Rule XV—Domestic Workers—Residences to add a reference to Code 0923, to clarify that both Codes 0913 and 0923 are "a" rated classifications and to make necessary editorial changes to eliminate conflict or confusion.

Staff also is proposing experience rating values for the new class code and intends to review those for the current Code 0913.

Copies of the proposed amendment may be obtained from the Chief Clerk's Office, 512 463-6327. The reference number is W-1100-30-1. The hearing notice was scheduled for publication in the November 24, 2000, *Texas Register*. ★



# Rule Making

## ADMINISTRATION

### APA Adoptions

#### Negotiation and Mediation

- Commissioner Jose Montemayor has adopted new 28 TAC §§ 1.1801–1.1823 (Subchapter P) establishing procedures for the negotiation and mediation of certain breach of contract claims asserted by contractors against TDI. The new sections comply with House Bill 826 of the 76th Legislature, codified at Government Code Chapter 2260.

Under the statute, the negotiation and mediation procedures are required prerequisites to litigation under the Civil Practices and Remedies Code and the Government Code. Use of the procedures does not waive TDI's sovereign immunity to suit or liability.

Contractors claiming breach of contract are required to deliver their claims within 180 days after the dates of the events asserted as the bases of the claims. A contractor and TDI have a duty to negotiate but are not obligated to settle with one another as a result.

The new rules include a timetable and deadlines for negotiations. The parties may agree to mediation at any time before the 270th day after TDI receives a contractor's notice of claim or following the expiration of any extension agreed to by the parties. A contractor may request a contested case hearing before the State Office of Administrative Hearings (SOAH) after the 270th day. TDI and the contractor may agree to mediation even after their dispute has gone to SOAH. SOAH itself could refer a case for mediation.

Settlement agreements reached through mediation must be in writing and must identify any issues that remain unresolved.

*Projected publication date: November 24, 2000*  
*Effective date: November 27, 2000*  
*Further information: 512 463-6327*

#### TDI Employee Training

- Commissioner Jose Montemayor has adopted amendments to 28 TAC § 1.2702 concerning training of Department employees. Substantive changes include provisions that:
  - Require new employees to attend an orientation on TDI policies and procedures, including information on discrimination and sexual harassment. Employees must attend supplemental training on discrimination, including sexual harassment, every two years.

- Prohibit reimbursement of travel expenses for required training unless the training was unavailable via interactive television or videoconferencing or at a training facility leased for less than the total travel costs associated with the event.
- Prohibit tuition reimbursement if an employee leaves TDI before submitting the final grade report for a course for which tuition reimbursement had been authorized.

*Publication: 25TexReg10919, November 3, 2000*  
*Effective date: November 8, 2000*  
*Further information: 512 463-6327*

## AUTOMOBILE

### Exempt Proposal

#### Commercial Auto Experience Rating

- Commissioner Jose Montemayor will hold a December 11, 2000, hearing on a staff proposal to amend the *Texas Automobile Rules and Rating Manual* and the Automobile Liability Experience Rating Plan. The hearing will be at 1:30 p.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe, Austin.

Staff proposes to eliminate the requirement that TDI maintain files on each individual experience-rated auto risk in Texas. TDI currently receives policies, endorsements and ownership information from insurers and places it in the appropriate individual files. TDI also receives the calculated modifiers from insurers and updates an experience rating database accordingly. The Department releases modifier information when requested, although each insurer also is obligated to provide such information upon request from another insurer.

If the recommended change is adopted, TDI no longer would maintain a file on each experience-rated risk or provide modifiers or other experience rating information pertaining to specific risks. Instead, each insurer would be required to respond to inquiries from insurers, agents or insureds regarding its experience-rated risks. Deleting the filing requirement would eliminate the duplication that results from TDI maintaining and providing the same information that insurers must provide.

*Publication: 25TexReg11321, November 10, 2000*  
*Reference No. A-1000-27-I*  
*Copies and information: 512 463-6327*

## HEALTH CARE

### APA Proposal

#### Benefit Notice Requirement

- The Department has proposed amendments to 28 TAC §§ 21.2101–21.2103, 21.2105 and 21.2106, concerning mandatory benefit notice requirements. The proposed changes would implement House Bill 1764 of the 76th Legislature and provisions of the federal Women's Health and Cancer Rights Act of 1998.

Under the proposed rules, health benefit plans that cover or provide benefits for mastectomies must provide notice to enrollees that their coverage includes payment for reconstructive surgery after a mastectomy. The notice must be given upon enrollment in a health benefit plan and annually thereafter by all carriers that were issuing, delivering or renewing health benefit plans as of June 18, 1999.

The proposed enrollment notice would have to provide a description of the coverage and/or benefits and disclose that the coverage and/or benefits would be provided in a manner determined to be appropriate in consultation with the attending physician and the patient. It also would have to state the specific deductibles, copayments and/or coinsurance for breast reconstruction, which could be no greater than those for other benefits provided by the plan.

The annual notice required by the proposed rules would have to spell out that the health benefit plan provides coverage and/or benefits for reconstructive surgery after mastectomy, surgery and reconstruction of the other breast for symmetry, prostheses and treatment of complications resulting from a mastectomy (including lymphedema).

The notice requirement would not apply to specified disease or other limited benefit plans, other than cancer insurance; to hospital indemnity policies; to credit insurance; or to dental and vision plans.

*Publication: 25TexReg10873, November 3, 2000*  
*Earliest possible adoption: December 3, 2000*  
*Further information: 512 463-6327*

## LIFE INSURANCE

### APA Proposal

#### Variable Life Insurance Advertising

- The Department has proposed an amendment to 28 TAC § 3.803, repealing the requirement

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that insurers file all variable life insurance sales material, advertisements and descriptive material with TDI before using or distributing them to prospective applicants. The change also would eliminate the requirement that revised versions of these materials be filed with the Department prior to use. The materials would remain subject to all other TDI advertising standards and applicable requirements of *Texas Insurance Code* Chapters 3 and 21.

Publication: 25TexReg10971, November 3, 2000  
Earliest possible adoption: December 3, 2000  
Further information: 512 463-6327

## PROPERTY

### APA Proposal

#### TWIA Business Income Coverage

■ Commissioner Jose Montemayor has scheduled a December 18, 2000, public hearing on a proposed amendment to 28 TAC §§ 5.4201 and 5.4501 that would enable the Texas Windstorm Insurance Association to offer business income coverage as an endorsement to the TWIA commercial policy. If adopted, the endorsement would be available starting April 1, 2001.

The hearing will be at 1:30 p.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe, Austin.

The proposed endorsement (TWIA-17) would be available only to businesses that buy wind and hail coverage on their buildings from TWIA. A firm could buy coverage up to \$100,000 for loss of business income, including rental value, due to the suspension of business operations resulting from wind or hail damage to its covered building. The coverage also would pay the necessary extra expenses, up to \$10,000, that the insured incurs during the "period of restoration" that the policyholder would not have incurred had there been no physical loss to the building. The endorsement would include a "time deductible" of seven days (168 hours) before TWIA would become liable for a business income loss.

Department staff proposed the endorsement in response to a petition from TWIA.

TWIA noted that data from the Insurance Services Office showed that business income losses represented a significant percentage of total property losses from Hurricanes Fran, Erin, Opal and Andrew. The TDI staff propos-

al said these statistics support the conclusion that Texas businesses along the Gulf Coast need coverage against such losses.

Publication: 25TexReg11374, November 17, 2000  
Effective date: April 1, 2001  
Further information: 512 463-6327

### Exempt Adoption Compressed Air Foam Systems

■ Commissioner Jose Montemayor has amended the *Texas Addendum to the Fire Suppression Rating Schedule* to establish credit points for compressed air foam systems. The change implements Senate Bill 1610 of the 76th Legislature, which provides that the use of compressed air foam technology in fire fighting equipment shall constitute a reduction in hazard by policyholders.

The amendment revises the Texas Addendum by adding an additional 1.5 credit points for compressed air foam systems, thus raising the total possible additional credit points from 5.0 to 6.5.

In addition, the amendment requires monthly-only reporting under the Texas Fire Incident Reporting System.

Publication: 25TexReg11107, November 3, 2000  
Effective date: November 18, 2000  
Further information 512 463-6327

## TAXES, ASSESSMENTS AND FEES

### APA Proposals

#### 2001 Examination Expenses

■ The Department has proposed an amendment to 28 TAC § 7.1012 revising domestic insurance company assessments to cover TDI administrative expenses attributable to the examination of insurers during 2001.

Companies undergoing examinations would continue paying examiners' actual salaries and expenses allocable to the examinations.

All domestic companies would pay a 2001 overhead assessment computed as follows, with the 2000 rates shown in brackets for comparison:

- .00458 [.00503] of 1 percent of a company's admitted assets as of Dec. 31, 2000, taking into consideration the annual admitted assets that are not attributable to 90 percent of pension plan contracts and
- .01406 [.01271] of 1 percent of a company's gross premium receipts for 2000,

taking into consideration the annual premium receipts that are not attributable to 90 percent of pension plan contracts.

In addition to paying examiners' direct salaries and expenses, foreign companies undergoing examination would pay an assessment of 32 percent of the gross salary of each examiner for each month or partial month, the same as in 2000.

Publication: 25TexReg10872, November 3, 2000  
Earliest possible adoption: December 3, 1999  
Further information 512 463-6327

#### 2000 Maintenance Taxes and Fees

■ The Department proposes amendments to 28 TAC §1.414 to establish 2001 maintenance taxes and fees. The new maintenance tax and fee rates would be assessed on gross premiums for 2000.

The proposed new rates, with 2000 rates shown in brackets, are:

- .057 [.055] of 1 percent for motor vehicle insurance
- .186 [.200] of 1 percent for casualty insurance and fidelity, guaranty and surety bonds
- .352 [.358] of 1 percent for fire insurance and allied lines, including inland marine
- .060 [.055] of 1 percent for workers' compensation insurance
- .086 [.144] of 1 percent for title insurance
- .040 [.040] of 1 percent for life, health and accident insurance
- \$.37 [\$.36] per enrollee for single service HMOs
- \$1.11 [\$1.08] per enrollee for multi-service HMOs
- \$.37 [\$.36] per enrollee for limited service HMOs
- .237 [.218] of 1 percent of the correctly reported gross amount of administrative or service fees for third party administrators and
- .02 [.03] of 1 percent for corporations issuing prepaid legal service contracts.

Publication: 25TexReg10870, November 3, 2000  
Earliest possible adoption: December 3, 2000  
Further information 512 463-6327

#### Premium Finance Assessment

■ TDI proposes an amendment to 28 TAC § 25.88 setting the general administrative expense assessment of premium finance companies for 2001. The assessment will be .01684 [0.0] of 1 percent of a company's

# RuleMaking

total loan dollar volume for 2000, with a minimum assessment of \$250.

Publication: 25TexReg10876, November 3, 2000  
 Earliest possible adoption: December 3, 2000  
 Further information: 512 463-6327

## TITLE

### APA Proposal

#### Revision of Survey Requirement

■ The Department has proposed new 28 TAC § 9.2, which would adopt by reference changes in the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*. Commissioner Jose Montemayor has scheduled a hearing on the proposal for 9:30 a.m., December 12, 2000, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe, Austin.

The proposal would revise Procedural Rule P-2, Amendment of Exception to Area and Boundaries. The changes would clarify that a survey is required for a pending real estate

transaction when the insured desires to have the exception as to area and boundaries amended to delete all save "shortages in area," or when the title company insures as to area and boundaries coverage or assumes the risk of insuring an element of survey coverage.

A proposed new subsection P-2.b., concerning the re-sale of platted subdivision property would allow the use of a previous survey and an affidavit concerning the physical condition of the land if certain requirements are met. These requirements would include that the previous survey is dated no more than 24 months before the closing date of the pending real estate transaction.

The rule amendments would add home equity and reverse mortgage transactions to the subsection that allows affidavits in lieu of updated surveys in residential refinance situations if the prior survey is no more than seven years old. The previous surveys, or copies thereof, would have to bear the original seal

and signature of the registered professional land surveyor who prepared the survey.

A proposed new subsection P-2.d., General Conditions, sets forth the minimum standards of a survey and the requirements for the affidavits made in accordance with the procedural rule. A title insurer could not deny liability to a buyer or lender (innocent insured) based on an incorrect affidavit. If the affiant is the insured or a principal of the insured, however, then the area and boundary or survey coverage under the policy would not extend to or cover any matter as to which the affidavit is incorrect and relied upon by the company. Further, the proposed amendments would prohibit an indemnification provision in an affidavit made pursuant to the procedural rule.

Publication: 25TexReg11375, November 17, 2000  
 Earliest possible adoption: December 18, 2000  
 Further information: 512 463-6327 ★

# CompanyLicensing

## Applications Pending

### For admission to do business in Texas

COMPANY NAME	LINE	HOME OFFICE
American Sentinel Insurance Co.	Fire & Casualty	Harrisburg, PA
Safeco Insurance Company of Oregon	Fire & Casualty	Lake Oswego, OR

### For incorporation

COMPANY NAME	LINE	HOME OFFICE
American Farm Life Insurance Co.	Life	Fort Worth, TX
Loya Insurance Co.	Fire & Casualty	El Paso, TX
Medca\$h.Com Inc.	TPA	Odessa, TX

### For name change in Texas

FROM	TO	LINE	LOCATION
American Fidelity & Liberty Insurance Co.	AF&L Insurance Co.	Life	Warrington, PA
The KOA Fire & Marine Insurance Co. Ltd. (U.S. Branch)	Nipponkoa Insurance Company of America	Fire & Casualty	New York, NY
PMA Reinsurance Corp.	PMA Capital Insurance Co.	Fire & Casualty	Philadelphia, PA
Reliance Reinsurance Co.	Overseas Partners US Reinsurance Co.	Fire & Casualty	Wilmington, DE
Slavonic Benevolent Order of the State of Texas (SPJST)	SPJST	Fraternal Benefit Society	Temple, TX
Wisconsin Mortgage Assurance Corp.	MGIC Indemnity Corp.	Fire & Casualty	Milwaukee, WI

### To use the assumed name

OF	BY	LINE	LOCATION
Americaid Texas Inc.	Amerigroup Texas Inc.	HMO	Arlington, TX

## Applications Approved

### For admission to do business in Texas

COMPANY NAME	LINE	HOME OFFICE
Adjusting Alternatives, LLC	TPA	Albuquerque, NM
GMAC Insurance Online Inc.	Fire & Casualty	Hazelwood, MO
Harvey W. Watt & Co. Inc.	TPA	Hapeville, GA
IOA Re Inc.	TPA	Wilmington, DE
P5, L.L.C., dba P5 Electronic Health Services	TPA	Salt Lake City, UT
Selectcare of Texas, L.L.C.-PSO	HMO	Atlanta, GA

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# Company Licensing

## Applications Approved

### For Incorporation

COMPANY	LINE	HOME OFFICE
Access Healthsource Administrators Inc.	TPA	El Paso, TX
ASI Lloyds	Fire & Casualty	Dallas, TX
El Paso First Health Plans Inc.	HMO	El Paso, TX
Hefner & Associates Inc.	TPA	Richardson, TX

### For name change in Texas

FROM	TO	LINE	LOCATION
Americaid Texas Inc.	Amerigroup Texas Inc.	HMO	Arlington, TX
MCC Behavioral Care Inc.	Cigna Behavioral Health Inc.	TPA	Minneapolis, MN
Navisys Incorporated	Genelco Incorporated	TPA	St. Louis, MO
Willis Corroon Corporation of Kansas	Willis of Kansas Inc.	TPA	Wichita, KS

# Disciplinary Actions

Editor's Note: Copies of individual orders may be obtained by calling TDI's Public Information Office, 512 463-6425.

AGENTS & AGENCIES	NAME	CITY	ACTION TAKEN	VIOLATION	ORDER	DATE
	Briscoe, Leonard E.	Fort Worth	Agent's License Denied	Felony Convictions	00-1018	9/1/00
	O'Dell, Gaylon K.	Yantis	Revocation of Agent's License to Sell Life Insurance Under \$15,000	Fraudulent or Dishonest Practices; Felony Conviction	00-1171	10/12/00
	Oltmann, David H.	Cypress	Property & Casualty Agent's License Revoked	Misappropriation or Conversion	00-1114	9/28/00

COMPANIES	NAME	CITY	ACTION TAKEN	VIOLATION	ORDER	DATE
	Fire Insurance Exchange	Austin	\$20,000 Fine and Order Requiring the Reopening of Certain Closed Claims	Requiring Claimants to Produce Income Tax Returns in Violation of Texas Insurance Code	00-1186	10/23/00
	Forestview Mortgage Insurance Co.	Northbrook, IL	\$1,500 Fine	Failure to Comply with Information Request	00-1152	10/11/00
	Potomac Insurance Company of Illinois	Boston	\$2,000 Fine	Consent Order; Alleged Failure to Comply with Information Request	00-1151	10/11/00
	Spectera Dental Inc.	Houston	\$10,000 Fine	Consent Order; Alleged Failure to Employ a Full-Time Dental Director; Complaint System Deficiencies	00-1153	10/11/00



**Texas Department of Insurance**  
 P.O. Box 149104  
 Austin, Texas 78714-9104

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