PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text, [square brackets and strikethrough] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION
PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES
SUBCHAPTER A. GENERAL PROVISIONS
1 TAC §351.3

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §351.3, concerning Recognition of Out-of-State License of Military Spouse.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with Senate Bill (S.B.) 1200, 86th Legislature, Regular Session, 2019, which requires the adoption of rules to implement the legislation.

S.B. 1200 amended Texas Occupations Code, Chapter 55, by adding §55.0041, to authorize certain military spouses to engage in a business or occupation in the State of Texas without having a license issued in Texas. The proposed rule requires the military spouse to be currently licensed and in good standing in another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in this state. State agencies are directed to adopt rules not later than December 1, 2019.

SECTION-BY-SECTION SUMMARY

The proposed new §351.3 adds a new process to allow military spouses, who are currently licensed by another jurisdiction, the opportunity to begin working in the industry in Texas for up to three years without obtaining a Texas license.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years the rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;
(2) implementation of the proposed rule will not affect the number of HHSC employee positions;
(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
(4) the proposed rule will not affect fees paid to HHSC;
(5) the proposed rule will create a new rule;
(6) the proposed rule will expand existing rules;
(7) the proposed rule will not change the number of individuals subject to the rule; and
(8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045, does not apply to this rule because the rule does not impose a cost on regulated persons; is amended to reduce the burden or responsibilities imposed on regulated persons by the rule; and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Constance Allison, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years that the rule is in effect, the public benefit will be improved job continuity for military spouses licensed by another jurisdiction and will provide military spouses the opportunity to begin working within the industry in Texas for up to three years without going through the state licensure process. It also provides a benefit by recognizing the dedication of the spouses that support our military.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule. This alternative is optional and dependent upon the military spouse having a substantially equivalent license in another state, which would also result in the waiver of the application fee.

TAKINGS IMPACT ASSESSMENT

HHSC has determined the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist.
in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to HHSPRulesCoordinationOffice@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the Texas Register. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 19R068" in the subject line.

STATUTORY AUTHORITY

The new section is authorized by Texas Occupations Code, §§55.0041 and Texas Government Code, §§31.0055, which provides the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system.

The new section implements Texas Occupations Code, §§55.0041.

§351.3. Recognition of Out-of-State License of Military Spouse.

(a) For the purposes of this section, the definitions found in Texas Occupations Code Chapter 55.001 are hereby adopted by reference;

(b) This section applies to all licenses issued by the Health and Human Services Commission (HHSC) under authority granted by the laws of the State of Texas, unless a more specific rule concerning recognition of out-of-state licenses of military spouses applies to a license type issued by HHSC.

(c) A military spouse may engage in a business or occupation as if licensed in the State of Texas without obtaining the applicable license in Texas if the spouse:

(1) is currently licensed in good standing by another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in this state;

(2) notifies HHSC in writing of the spouse's intent to practice in this state;

(3) submits to HHSC proof of the spouse's residency in this state and a copy of the spouse's military identification card; and

(4) receives a verification letter from HHSC that:

(A) HHSC has verified the spouse's license in the other jurisdiction; and

(B) the spouse is authorized to engage in the business or occupation in accordance with the Act and rules for that business or occupation.

(d) HHSC will review and evaluate the following criteria, if relevant to a Texas license, when determining whether another state's licensing requirements are substantially equivalent to the requirements for a license under the statutes and regulations of this state:

(1) whether the other state requires an applicant to pass an examination that demonstrates competence in the field in order to obtain the license;

(2) whether the other state requires an applicant to meet any experience qualifications in order to obtain the license;

(3) whether the other state requires an applicant to meet the education qualifications in order to obtain the license; and

(4) the other state's license requirements, including the scope of work authorized to be performed under the license issued by the other state.

(e) The military spouse must submit:

(1) a written request to HHSC for recognition of the spouse's license issued by the other state; no fee will be required;

(2) any form and additional information regarding the license issued by the other state required by the rules of the specific program or division within HHSC that licenses the business or occupation;

(3) proof of residency in this state;

(4) a copy of the military spouse's identification card; and

(5) proof the military service member is stationed at a military installation in Texas.

(f) Upon verification from the licensing jurisdiction of the military spouse's license and if the license is substantially equivalent to a Texas license, HHSC shall issue a verification letter recognizing the license as the equivalent license in this state.

(g) The verification letter will expire three years from date of issuance or when the military service member is no longer stationed at a military installation in Texas, whichever comes first. The verification letter may not be renewed.

(h) A replacement letter may be issued after receiving a request for a replacement letter in writing or on a form, if any, required by the rules of the specific program or division within HHSC that licenses the business or occupation; no fee will be required.

(i) The military spouse shall comply with all applicable laws, rules, and standards of this state, including applicable Texas Health and Safety Code chapters and all relevant Texas Administrative Code provisions.

(j) HHSC may withdraw or modify the verification letter for reasons including the following:

(1) the military spouse fails to comply with subsection (i) of this section; or

(2) the military spouse's licensure required under subsection (c)(1) of this section expires or is suspended or revoked in another jurisdiction.

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

Filed with the Office of the Secretary of State on August 26, 2019.

TRD-201902899

Karen Ray
Chief Counsel
Texas Health and Human Services Commission

Earliest possible date of adoption: October 6, 2019
For further information, please call: (512) 707-6101

44 TexReg 4788  September 6, 2019  Texas Register
TITLE 7. BANKING AND SECURITIES
PART 7. STATE SECURITIES BOARD
CHAPTER 103. RULEMAKING PROCEDURE

7 TAC §103.6

The Texas State Securities Board proposes new §103.6, concerning Negotiated Rulemaking, pursuant to House Bill (HB) 1535 addition of §2-9 of the Texas Securities Act, during the 86th legislative session, which becomes effective September 1, 2019. The rule is proposed in order to comply with an amendment to the Texas Securities Act regarding establishing a policy on the use of negotiated rulemaking and with Texas Government Code, Chapter 2008.

Travis J. Ilies, Securities Commissioner; and Clint Edgar, Deputy Securities Commissioner, have determined that for the first five-year period the proposed rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Ilies and Mr. Edgar have also determined that for each year of the first five years the proposed rule is in effect, the public benefit expected as a result of adoption of the proposed rule will be a clear, open, inclusive, and consistent process for the use of negotiated rulemaking in appropriate situations. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed rule will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Mr. Ilies and Mr. Edgar have determined that for the first five-year period the proposed rule is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule’s applicability; and it does not positively or negatively affect the state’s economy. Additionally, the proposed new rule does not limit, expand, or repeal an existing regulation. The proposed rule would create a new rule to comply with an amendment to the Texas Securities Act.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the Texas Register. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The new rule is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.


§103.6. Negotiated Rulemaking.

(a) Policy. It is the Board’s policy to encourage the use of negotiated rulemaking in appropriate situations. When the Securities Commissioner finds that a rule to be proposed is likely to be complex, controversial, or affect disparate groups, the Commissioner may propose to engage in negotiated rulemaking in accordance with the Government Code, Chapter 2008.

(b) Appointment and duties of convener.

(1) The Deputy Securities Commissioner or the Deputy’s designee shall serve as the negotiated rulemaking convener.

(2) The convener shall assist in identifying persons who are likely to be affected by a proposed rule, including those who oppose issuance of a rule. The convener shall discuss the items listed in Government Code, §2008.052(c), with those persons or their representatives.

(3) The convener shall then recommend to the Commissioner whether negotiated rulemaking is a feasible method to develop the proposed rule and shall report on the relevant considerations, including those listed in §2008.052(d).

(c) Notice of intent to engage in negotiated rulemaking. After considering the convener’s recommendation and report, the Commissioner may direct the Agency Staff to engage in negotiated rulemaking in accordance with the provisions of Government Code, Chapter 2008, and authorize the Agency Staff to perform the duties and requirements set forth Chapter 2008, including providing any required notices, establishing a negotiated rulemaking committee, and appointing the members of the committee, and appointing a facilitator.

(d) Duties of the negotiated rulemaking committee and facilitator.

(1) The facilitator shall preside over meetings of the negotiated rulemaking committee and assist the committee in establishing procedures for conducting negotiations and in attempting to arrive at a consensus on the proposed rule.

(2) At the conclusion of negotiations, the negotiated rulemaking committee shall send a written report to the Commissioner as provided in Government Code §2008.056(d).

(e) Notice and comment rulemaking. After considering the negotiated rulemaking committee’s report, if the Commissioner intends to proceed with the rulemaking process, the Commissioner shall present the proposed rule to the Board for consideration in accordance with Government Code, Chapter 2001, Subchapter B.

(f) Rulemaking coordinator. The Board’s Deputy Commissioner, or designee, shall act as the designated negotiated rulemaking coordinator to coordinate the implementation of the policy set out in subsection (a) of this section, serve as a resource for any staff training or education needed to implement negotiated rulemaking procedures, and collect data to evaluate the effectiveness of the implementation of negotiated rulemaking procedures.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.
Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendment is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section repeal in the Texas Register. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1 and Texas Occupations Code, Chapter 53, Subchapter D. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Texas Occupations Code, Chapter 53, Subchapter D provides a means for a potential applicant to obtain preliminary information regarding their eligibility for an occupational license before they begin a training program for the occupation.


§104.7. Preliminary Evaluation of License Eligibility.
(a) (No change.)

(b) Factors considered. After determining a conviction directly relates to a license issued by the Agency, the Agency considers the following evidence in determining whether the person is eligible for a license issued by the Agency [the present fitness of an applicant who has been convicted of a crime]. Accordingly, the requestor should provide information on the following:

(1) - (5) (No change.)

(6) Evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision.

(7) Other evidence of the requestor's present fitness, including letters of recommendation, may also be provided and considered, including letters from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the requestor; the sheriff and chief of police in the community where the requestor resides; and any other persons in contact with the requestor.

(8) It shall be the responsibility of the requestor to the extent possible to secure and provide to the Agency the letters of recommendation described by paragraph (7) of this subsection of the prosecution, law enforcement, and correctional authorities as required under this section. The requestor shall also furnish proof to the Agency that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record
of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted].

(c) (No change.)

(d) Determination of eligibility; letter.

(1) (No change.)

(2) If the Agency determines that the requestor is ineligible for a license, the Agency shall issue a letter which complies with the requirements of Texas Occupations Code, §53.026(b) and §53.104(b), setting out each basis for potential ineligibility and the Agency’s determination as to eligibility.

(3) - (4) (No change.)

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

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TRD-201902804
Travis J. Iles
Securities Commissioner
State Securities Board
Earliest possible date of adoption: October 6, 2019
For further information, please call: (512) 305-8303

CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION

7 TAC §109.13

The Texas State Securities Board proposes an amendment to §109.13, concerning limited offering exemptions. The amendment would implement recommendations made by the Texas Sunset Advisory Commission to eliminate notarization requirements for forms when the Texas Securities Act does not otherwise require the form to be sworn. Specifically, subsection (l) would be amended to remove the reference in subparagraph (9)(A) to Form 133.29 requiring that the notice be sworn to correspond to the repeal of Form 133.29 and adoption of new Form 133.29 which is concurrently proposed for repeal and adoption in order to remove the requirements from the notice form that it be sworn. The new Form 133.29 would not require the notice form to be sworn.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed amendment is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendment is in effect the public benefit expected as a result of adoption of the proposed amendment will be to provide more efficiency in the filing of Form 133.29 with the Texas State Securities Board by removing unnecessary administrative burdens. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendment will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendment is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state’s economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the Texas Register. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-5 and 581-7.


(a) - (k) (No change.)

(i) Intrastate limited offering exemption. In addition to sales made under the Texas Securities Act, §5.1, the State Securities Board, pursuant to the Act, §5.7, exempts from the registration requirements of the Act, §7; any offer or sale of any securities by the issuer itself, or by a registered dealer acting as agent for the issuer provided all offers and sales are made pursuant to an offering made and completed solely within this state and all the conditions in paragraphs (1) - (11) of this subsection are satisfied.

(1) - (8) (No change.)

(9) Notice filing requirements.

(A) An issuer who is not a registered securities dealer and who does not sell securities by or through a registered securities dealer shall file a [sworn] notice on Form 133.29 not less than 10 business days before any sale claimed to be exempt under this subsection may be consummated for sales under paragraph (1)(B) of this subsection, in whole or in part to individual accredited investors, as defined in §107.2 of this title.

(B) - (E) (No change.)

(10) - (11) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.
The Texas State Securities Board proposes amendments to §113.1, concerning qualification of securities; §113.4, concerning application for registration; and §113.11, concerning shelf registration of securities. Section 113.1 would be amended to delete the reference to Securities and Exchange Commission (SEC) Regulation "B" that has been repealed as obsolete due to the availability of other exemptions.

Section 113.4 would be amended to eliminate paragraph (c)(3), which references the consent to service of process filed through the Securities Registration Depository ("SRD") System, which was never implemented and to eliminate the cross-reference to paragraph (c)(3), contained in paragraph (c)(1).

Section 113.11 would be amended to remove the reference to SEC Form S-2 in paragraph (b)(1), which is no longer in use.

Clint Edgar, Deputy Securities Commissioner Director; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed amendments are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Mr. Edgar, Miss. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendments are in effect the public benefit expected as a result of adoption of the proposed amendments will be to accurately coordinate provisions of the rules with federal standards and requirements and to eliminate outdated references. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendments will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Miss. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendments are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rule's applicability; and they do not positively or negatively affect the state's economy. Additionally, the proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed sections in the Texas Register. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendments are proposed under Texas Civil Statutes, Article 581-28.1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Article 581-7.

§113.1. Qualification of Securities.

A Regulation "A" filing and "B" filings with the SEC is a form of exemption and cannot be the basis for a filing for registration by the Securities and Exchange Commission under the Texas Securities Act, §7. Such a registration should meet the requirements as outlined in the Act, §7 or, if federal covered securities, the requirements in §114.4 of this title (relating to Filings and Fees).

§113.4. Application for Registration.

(a) - (b) (No change.)

(c) Consents to service of process.

(1) Except as provided in paragraph [paragraphs] (2) and (3) of this subsection, all applications to register securities issued by an issuer which is organized under the laws of any other state, territory, or government, or domiciled in any state other than Texas, must include with the application a written consent to service of process duly executed by an authorized agent of the issuer appointing the Securities Commissioner irrevocably its true and lawful attorney upon whom process in any action or proceeding against such issuer arising out of any transaction subject to the Texas Securities Act may be served with the same effect as if such issuer were organized or created under the laws of Texas and had been lawfully served with process herein.

(2) (No change.)

(3) The consent to service of process required for applications to register securities filed through the Securities Registration Depository System will satisfy, in all respects, the requirements governing consents to service of process set out in this subsection and in the Texas Securities Act, §8.4.

(d) - (e) (No change.)

§113.11. Shelf Registration of Securities.

(a) (No change.)

(b) Certain debt offerings by substantial issuers.

(1) This subsection (b) applies to the registration of debt securities of issuers eligible to use SEC Form S-2 or S-3 (17 Code of Federal Regulations §239.12 and §239.13), to register debt securities with the SEC under SEC Rule 415.

(2) - (3) (No change.)
The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Travis J. Iles
Securities Commissioner
State Securities Board
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CHAPTER 114. FEDERAL COVERED SECURITIES

7 TAC §114.3, §114.4

The Texas State Securities Board proposes amendments to §114.3, concerning consents to service of process, and to §114.4, concerning filings and fees. Section 114.3 would be amended to remove subsection (c), which refers to the Securities Registration Depository ("SRD") System. The development of the SRD System, originally proposed by NASA, has been abandoned.

Section 114.4 would be amended in part to implement recommendations made by the Texas Sunset Advisory Commission to remove notarization and sworn under oath requirements from the Agency's forms where the Texas Securities Act does not require these forms to be sworn. Specifically, subsections (a) and (f) of §114.4 would be amended to remove the references in subparagraph (1)(A) of each subsection to a notice filing being verified under oath to reflect the current requirements of the Registration Division for filings pursuant to this rule.

Subsection (b) of §114.4 would be amended to remove the reference in subparagraph (4)(A) to a notice filing being verified under oath to correspond to the proposed repeal of Form 133.5 and proposed adoption of new Form 133.5 which is concurrently proposed for repeal and adoption in order to remove the notarization requirements from the form.

In addition to the amendments to implement Sunset recommendations, a new subparagraph (C) would be added under subsection (a)(1) of §114.4 to address filings by unit investment trusts ("UITs"), which would allow them at their option to be filed and fees to be paid electronically through the EFD System. UIT filers would continue to have the option to file directly with the Agency.

A new paragraph (5) would also be added under subsection (b) to specifically address federal covered securities offered pursuant to SEC Regulation A, Tier 2 ("Regulation A+"). Currently these offerings fall within the catch-all for federal covered securities provided by subsection (a). To assist issuers in more readily locating the filing and fee requirements for Regulation A+ offerings, a specific provision covering these offerings would be provided in new paragraph (b)(5). No change would be made to the filing or fee requirements of this rule, other than to permit a filer to use the Uniform Notice Filing of Regulation A - Tier 2 Offering form instead of page 1, Items 1-6 of the Form U-1. The Regulation A - Tier 2 form includes a consent to service of process.

Clint Edgar, Deputy Securities Commissioner, and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed amendments are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendments are in effect the public benefit expected as a result of adoption of the proposed amendment to §114.3 will be to eliminate an outdated reference in §114.3; the public benefit expected as a result of the proposed amendments to §114.4 will be to provide more efficiency in the filing of Form 133.5 with the Texas State Securities Board by removing unnecessary administrative burdens; and to provide more efficiency for UIT filings and Regulation A+ filings by allowing electronic filings for UIT filings, by setting forth a specific filing requirement for Regulation A+ filings and by permitting Regulation A+ filers to use a different form for these filings. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendments will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. The EFD System charges users a one-time $155 system use fee for each Form NF-UIT notice filing submitted through the System. This one-time system fee covers the initial filing at the trust level, as well as any corresponding amendment and renewal filings subsequently made through the EFD System. Since the use of the EFD System by UIT filers is optional, there is no anticipated economic cost to the filers to comply with the proposed amendment to §114.4(a)(1). There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendments are effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rule's applicability; and they do not positively or negatively affect the state's economy. Additionally, the proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the Texas Register. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendments are proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.
The proposal affects Texas Civil Statutes, Articles 581-5 and 581-7.

§114.3. Consents to Service of Process.
(a) - (b) (No change.)

(c) The consent to service of process filed through the Securities Registration Depository System will satisfy, in all respects, the requirements governing consents to service of process set out in this section and in the Texas Securities Act, §114.3.

§114.4. Filings and Fees.
(a) Generally. Unless otherwise provided in subsection (b) of this section, prior to the initial offer of the federal covered securities in this state, the issuer shall provide to the Securities Commissioner:

(1) a notice filing, [verified under oath by the applicant] consisting of:

(A) page 1 of a Form U-1, Uniform Application to Register Securities, with items 1-6 completed, or a document providing substantially the same information; or

(B) if the issuer is an investment company, Form NF, Uniform Investment Company Notice Filing; or [ ]

(C) if the issuer is a unit investment trust, Form NF may be filed and the payment of the filing fee, set out in paragraph (3) of this subsection, paid electronically through the EFD System.

(2) - (3) (No change.)

(b) Special circumstances.

(1) - (3) (No change.)

(4) Secondary trading. A registered dealer or issuer that chooses to comply with the Texas Securities Act, §5.O(9), by filing a form, shall provide to the Securities Commissioner, prior to the sale of the securities in this state:

(A) a notice filing, [verified under oath by the applicant] consisting of page 1 of a Form U-1, Uniform Application to Register Securities, with items 1-6 completed, or a document providing substantially the same information;

(B) - (D) (No change.)

(5) SEC Regulation A, Tier 2. Prior to the initial offer of the federal covered securities in this state, the issuer shall provide to the Securities Commissioner:

(A) a notice filing on either:

(i) Uniform Notice Filing of Regulation A - Tier 2 Offering form; or

(ii) page 1 of a Form U-1, Uniform Application to Register Securities, with items 1-6 completed, or a document providing substantially the same information;

(B) a consent to service of process signed by the issuer, if required by §114.3 of this title (relating to Consents to Service of Process), and if the notice filing required by subparagraph (A) of this paragraph is not made on the Uniform Notice Filing of Regulation A - Tier 2 Offering form; and

(C) the fee provided for in the Act, §35.A(1), plus one-tenth of 1.0% of the aggregate amount of federal covered securities proposed to be sold to persons located within this state based on the price at which such securities are to be offered to the public, as provided in the Act, §35.B(2).

(c) - (e) (No change.)

(f) Period of effectiveness.

(1) The initial authorization for federal covered securities of an open-end investment company, as defined in the Investment Company Act of 1940, shall be effective until two months after the end of the issuer's fiscal year. After the initial authorization, the issuer or its agent may renew the authorization by submitting, within two months after the end of the issuer's fiscal year:

(A) a notice filing, [verified under oath by the applicant] consisting of Form NF, Uniform Investment Company Notice Filing; and

(B) (No change.)

(2) - (5) (No change.)

(g) - (i) (No change.)

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

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Travis J. Iles
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State Securities Board
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CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §§115.1, 115.2, 115.4

The Texas State Securities Board proposes amendments to §115.1, concerning general provisions, to §115.2, concerning application requirements, and to §115.4, concerning evidences of registration. The sections would be amended remove the references to branch office registration requirements for dealers, and related registration fees. The amendments to §§115.1, 115.2, and 115.4 are required by House Bill 1535, enacted by the 86th Texas Legislature, that amended §35.B(1) of the Texas Securities Act to remove the requirement that branch offices of dealers and investment advisers be registered and the related requirement to pay a branch office registration fee of $25. The sections would instead be amended to require branch offices of dealers to make a notice filing, which would not require any filing fee. Except for the registration and fee requirements, other existing requirements for branch offices set forth in the rules will continue to apply.

Subsection (a)(4) of §115.2 would also be amended to implement a management recommendation made by the Sunset Advisory Commission to eliminate notarization requirements from agency forms when the Texas Securities Act does not otherwise require the form to be sworn. This amendment would remove the requirement that a dealer's balance sheet, submitted as part of its application for registration, be attested by the applicant's principal financial officer before a notary. Instead the principal financial officer would certify the balance sheet as true and correct using Form 133.18, Certification of Balance Sheet by Principal Financial Officer. Form 133.18 is being repealed and replaced by a new form in related rulemaking to remove a notarization requirement.
Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed amendments are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendments. Although there would be a negative fiscal impact, it is the direct result of the Legislature’s change to the Texas Securities Act, rather than through Agency rulemaking. When the statutory change becomes effective, the Agency will no longer have the authority to collect fees relating to branch office registration or amendments to those registrations. These proposed amendments reflect that change in authority. A decrease in revenue resulting from the elimination of the branch office registration fee for both dealers and investment advisers was reflected in the fiscal note to HB 1535. According to the Comptroller of Public Accounts, “the provision that removes the requirement for registered entities to register individual branch offices would result in a revenue loss to the General Revenue Fund estimated to total $425,850 per fiscal year, beginning in fiscal year 2020, based on collections from branch office registrations in fiscal year 2017.”

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendments are in effect the public benefit expected as a result of adoption of the proposed amendments will be to align the rule requirements for branch offices with changes made to the Texas Securities Act by eliminating the branch office registration requirement and removing unnecessary administrative burdens.

There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendments will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendments are effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rules’ applicability; and they do not positively or negatively affect the state’s economy. Additionally, the proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation. Although registration of branch offices will no longer be required under the Legislature’s change to the Texas Securities Act, which implements the Sunset Commission Recommendation 1.3, the Agency continues to regulate dealer activities occurring at the branch offices. As the Sunset Commission noted, the Agency would continue to: (a) require location information about branch offices, (b) require the designation of a supervisor for each branch office who is responsible for the branch office’s activities, and (c) be authorized to inspect a branch office and take action if needed. Similarly, any negative fiscal impact caused by the elimination of fees paid by branch offices for registration and amendments is the direct result of the Legislature’s change to the Texas Securities Act, rather than through the Agency’s rulemaking to implement the legislative change.

Comments on the proposals must be in writing and will be accepted for 30 days following publication of the proposed sections in the Texas Register. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendments are proposed under Texas Civil Statutes, Article 581-28.1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-12, 581-13, 581-18, and 581-35 (effective September 1, 2019).


(a) (No change.)

(b) Registration requirements of dealers, issuers, and agents, and notice filings for branch offices.

(1) Requirements of registration or notice filing.

(A) (No change.)

(B) Each branch office in Texas must make a notice filing to become designated as a branch office of a dealer [be registered]. A registered officer, partner, or agent must be named as supervisor.

(2) (No change.)

(c) - (d) (No change.)

§115.2. Application Requirements.

(a) Securities dealer application requirements. A complete application consists of the following and must be filed in paper form with the Securities Commissioner:

(1) - (3) (No change.)

(4) A balance sheet prepared in accordance with United States generally accepted accounting principles reflecting the financial condition of the dealer as of a date not more than 90 days prior to the date of such filing. The balance sheet should be compiled, reviewed, or audited by independent certified public accountants or independent public accountants, or must instead be certified [attested] by [the sworn notarized statement of] the applicant’s principal financial officer. If certified [attested] by the principal financial officer of the applicant, such officer shall make the certification on Form 133.18, Certification of Balance Sheet by Principal Financial Officer.

(5) - (6) (No change.)

(b) (No change.)

(c) Branch office designation [office registration] and inspection.

(1) A request for registration of a branch office of a dealer may designate a branch office [be made] upon initial application of the dealer or by amendment to a current Form BR [registration]. No sales-related activity may occur in any branch office location until such time as the dealer has notified [receives notification from] the Securities Commissioner that such location will function [has been approved] as a branch office [. The request for registration of a branch office may be
made] by submitting [the submission of] Form BR on CRD for FINRA member firms. For non-FINRA member firms, the request is made by submitting Form BR in paper form to the Securities Commissioner. [The fee for registration of each branch office is $25.]

(2) Simultaneously with the designation [request for registration] of a branch office, a supervisor must be designated for that branch office. A supervisor is not required to be registered as a FINRA principal, but must be registered in Texas as an agent and is responsible for supervision of the activities of the branch office. A supervisor may not supervise sales activities encompassing a broader range of products than those covered by the supervisor's qualification examination(s). Within 10 business days after [from when] a supervisor ceases to be employed or registered in such capacity by the dealer, the dealer must designate a new supervisor, qualified by passage of the appropriate examinations, for the branch office. [must be designated. Absent the designation of a new supervisor to the Securities Commissioner within the 10 business day period, the registration of a branch office whose supervisor ceases to be employed as such by a dealer may be automatically terminated. The branch office registration may be reinstated upon the designation of a qualified supervisor and payment of the branch office registration fee.]

(3) Each branch office of a dealer who is registered with the Securities Commissioner is subject to unannounced inspections at any time during normal business hours.

(d) - (e) No change.

§115.4. Evidences of Registration.

(a) Issuance. An evidence of registration or certificate of registration shall be issued for each registered securities dealer reflecting the registered officer or partner. [An evidence of registration shall be issued for each registered branch office reflecting the registered supervisor.]

(b) - (e) (No change.)

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

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Travis J. Iles
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7 TAC §115.6

The Texas State Securities Board proposes an amendment to §115.6, concerning Registration of Persons with Criminal Backgrounds. This section contains rulemaking required by §53.025 of the Texas Occupations Code, which requires licensing authorities to issue guidelines relating to the licensing of persons with criminal convictions. The proposed amendment would implement the requirements of House Bill 1342 (HB 1342), passed during the 2019 Regular Session of the Texas Legislature, that amended Chapter 53 of the Texas Occupations Code (Consequences of Criminal Conviction). The changes made by HB 1342 apply to an application for a license submitted on or after September 1, 2019. Specifically, the proposed amendment would alter the factors to be considered in determining whether a conviction relates to a registered or licensed occupation, add new factors that must be considered in determining eligibility, and remove other factors from consideration. The proposed amendment would also include specific references to the new or amended sections of Chapter 53 of the Texas Occupations Code that will require the Agency to comply with new notification requirements in these sections. Finally, the proposed rule would also be amended to include new requirements added by HB 1342 set forth in new Texas Occupations Code, §53.026, concerning an Applicant Best Practices Guide, once such guide is developed and published by the state auditor on its website.

This proposal would implement the requirements of HB 1342, as they specifically relate to or concern the dealer or agent registration of individuals with criminal backgrounds and the Agency's process to review existing dealer and agent registrations and possibly take action to revoke or suspend the registrations on the basis of certain criminal convictions that may occur after the person is registered.

Clint Edgar, Deputy Securities Commissioner; Tommy Green, Director, Inspections and Compliance Division; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division; have determined that for the first five-year period the proposed amendment is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendment is in effect the public benefit expected as a result of adoption of the proposed amendment will be to enhance opportunities for a person to obtain gainful employment in the securities industry after the person has been convicted of an offense and discharged the sentence for the offense. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendment will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendment is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule’s applicability; and it does not positively or negatively affect the state’s economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the Texas Register. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.
The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Article 581-14, and Texas Occupations Code, §53.025.

§115.6. Registration of Persons with Criminal Backgrounds.

(a) An application for registration may be denied, or a registration may be revoked or suspended, if the Securities Commissioner finds that the person has been convicted of any felony, or of a misdemeanor offense that directly relates to its duties and responsibilities. In determining whether a misdemeanor directly relates to such duties and responsibilities, the Securities Commissioner shall consider each of the following factors:

1. (1) - (2) (No change.)
2. (3) the extent to which the registration applied for might offer an opportunity to engage in further criminal activity of the same type as that in which the applicant previously had been involved; and
3. (4) the relationship of the crime to the ability or [ ] capacity[ , or fitness] required to perform the duties and discharge the responsibilities of a registered dealer or agent; and [ ]
4. (5) Any correlation between the elements of the crime and its duties and responsibilities.

(b) After the Securities Commissioner has determined the criminal conviction directly relates to the duties and responsibilities of the license, the [ ] Securities Commissioner shall consider the following evidence in determining whether the person is eligible for a license issued by the Agency [the present fitness of an applicant who has been convicted of a crime]:

1. (1) - (5) (No change.)
2. (6) Evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision.
3. (7) [46] Other evidence of the applicant's present fitness, including letters from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the applicant; the sheriff and chief of police in the community where the applicant resides; and any other persons in contact with the applicant.

(c) [53] It shall be the responsibility of the applicant to the extent possible to secure and provide to the Securities Commissioner the letters of recommendation described by paragraph (7) of this subsection [of the prosecution, law enforcement, and correctional authorities as required under this section]. The applicant shall also furnish proof to the Securities Commissioner that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

(d) - (d) (No change.)

(e) Prior to taking any action under subsection (a) of this section to deny any application for registration, the State Securities Board shall comply with the notification requirements of Texas Occupations Code, §53.0231 Notice of Pending Denial of License, and §53.051.

(f) Prior to taking any action under subsection (a) of this section to revoke or suspend any application for registration, the State Securities Board shall comply with the notification requirements of Texas Occupations Code, §53.051.

(g) State Auditor Applicant Best Practices Guide.

1. The State Securities Board shall post a link on its website to the Applicant Best Practices Guide, to be developed and published by the state auditor as required by Texas Occupations Code, §53.026. This guide, which shall be posted once it becomes available, shall set forth best practices for an applicant with a prior conviction to use when applying for a license.

2. In each notice to deny, revoke, or suspend a registration or to deny a person the opportunity to be examined for a registration, the State Securities Board shall include a link to the guide as described in paragraph (1) of this subsection.

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

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7 TAC §115.18

The Texas State Securities Board proposes an amendment to §115.18, concerning Special Provisions Relating to Military Applicants. The amendment will implement the requirements of Senate Bill 1200, passed in the 2019 Texas Legislative Session, which added §55.0041 to the Texas Occupations Code. Related forms are being concurrently proposed as are comparable amendments to the corresponding rule for investment advisers and investment adviser representatives.

Section 55.0041 of the Texas Occupations Code, effective September 1, 2019, authorizes a military spouse to engage in a business or occupation for which a license or registration is required without obtaining the applicable license or registration if the military spouse holds a current license or registration, that is in good standing, issued by another jurisdiction that has licensing or registration requirements that are substantially equivalent to the requirements for the license or registration in Texas. The statute requires the military spouse to comply with all other laws and regulations applicable to the business or occupation in Texas. The military spouse is authorized to engage in the business or occupation only for the period during which the military service member to whom the military spouse is married is stationed at a military installation in Texas but not to exceed three years from the date the spouse receives the requisite confirmation from the agency.

Most participants in the securities industry acting as dealers or as agents of dealers are registered and practice in multiple jurisdictions. Dealer firms that have a compliance department are unlikely to want to keep track of the unique Texas process that allows a military spouse to operate as an agent without registering. In light of this, and in keeping with the spirit of the bill, the proposed amendment would provide the option in paragraph
(3) of new subsection (h) (Option 1) to allow military spouses to register and receive a waiver or refund of the initial application and renewal fees for the period covered by §55.0041 in which they would not be required to be registered to conduct activity in Texas.

The Central Registration Depository (CRD) System is used by dealers and their agents to process virtually all Texas dealer and agent registrations. Only applications and renewals with reportable disclosure items or deficiencies remain pending for more than a few days before registration is effective. It is therefore expected that most applications and renewals filed by military spouses choosing Option 1 will, similar to applications filed by other applicants, be processed almost immediately.

Since a military spouse choosing Option 1 (filing through the CRD System) would have to pay the registration fee (initial or renewal) to use the electronic system, the amendment would provide for a refund to a military spouse who pays the fee. This would enable electronic filers to take advantage of the fee waiver authorized by statute. To avoid problems associated with processing stale claims, subsection (h) would provide that a refund request must be received within four years from the date the fee was collected or received. Current law and Board rules already provide for the waiver (or refund) of the initial application fee for military spouses. Accordingly, that procedure, provided under subsection (c) of §115.18, is referenced in the proposed amendment. A new form is being concurrently proposed to allow an eligible military spouse choosing this option to apply for a waiver or refund of a renewal fee in the second and third years of registration in Texas.

Eligible military spouses (or the firms that employ them) may also elect "Option 2." This option, set forth in paragraph (4) of new subsection (h), would track the requirements of the statute by requiring the military spouse to do the following before engaging in the practice of the securities business without first obtaining Texas dealer or agent registration: notify the Agency of the military spouse’s intent to practice in Texas; submit to the Agency proof of the spouse’s residency in Texas and a copy of the spouse’s military identification card; and receive confirmation from the Agency that the Agency has verified the spouse’s license in the other jurisdiction and authorized the spouse to engage in the specified activity in Texas without registration. A new form is being concurrently proposed for use by an eligible military spouse choosing this option to request and obtain recognition of out-of-state license or registration.

Additionally, since engaging in unregistered activity can result in administrative, civil, or criminal action against the military spouse and/or the employing firm, the proposed amendment would impose a requirement on a military spouse choosing Option 2 (operating in Texas without a dealer or agent registration) to notify the Securities Commissioner within 30 days if circumstances change and he or she is no longer eligible for §55.0041 treatment and immediately cease activity until such time as he or she becomes registered in the appropriate capacity to conduct securities activity in Texas. This requirement is also noted in proposed new Form 133.23, Request for Recognition of Out-of-State License or Registration by a Military Spouse, which is being concurrently proposed. Option 2 would, upon issuance of the confirmation by the Agency, be treated as a notice filing, subject to renewal on a calendar year basis, so continued eligibility of the unregistered military spouse can be reassessed annually.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division; have determined that for the first five-year period the proposed amendment is in effect there may be foreseeable fiscal implications as a result of enforcing or administering the proposed amendment on state, but not local, government.

The effect on state government for the first five-year period that the proposed amendment will be in effect is an estimated loss in revenue as a result of the up to two years of renewal fee waivers or refunds that would be granted to military spouses that remain in the state after their first year for the subsequent two one-year renewal periods. Although there would be a fiscal impact, it is the result of legislation rather than Agency rulemaking. The fiscal note to Senate Bill 1200 reflected that no significant fiscal implication to the State is anticipated. According to the Comptroller of Public Accounts (CPA), under current law, license application and examination fees are waived for military spouses who hold a current license issued by another jurisdiction with substantially equivalent license requirements, therefore the bill would have no revenue implications. The Agency did not receive any requests for refunds or waivers of initial registration fees from military applicants or other requests under current §115.18 in fiscal years 2018 or 2017. Based on the absence of any such requests in the past two fiscal years, the anticipated fiscal impact is expected to be negligible.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendment is in effect the public benefit expected as a result of adoption of the proposed amendment will be to ease regulatory and financial burdens of certain military spouses, licensed in good standing as securities professionals in another state, who are relocating to Texas. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendment will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendment is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state’s economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation. Although military spouses will be eligible for waivers or refunds of initial registration and renewal fees due to new Texas Occupations Code §55.0041 (which is an expansion of current law and Board rules that apply to initial applications only), the anticipated negative fiscal impact that may be caused by the elimination of renewal fees of military spouses is the direct result of the Legislature's adoption of new Texas Occupations Code §55.0041, rather than through the Agency’s rulemaking to implement the legislative change.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the Texas Register. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to
The amendment is proposed under Texas Civil Statutes, Article 581-28-1 and §55.0041 of the Texas Occupations Code. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 55.0041 of the Texas Occupations Code requires a state agency that issues a license to adopt rules to implement §55.0041 and authorizes a state agency to adopt rules to provide for the issuance of a license to a military spouse to whom the agency provides confirmation under subsection (b)(3) of §55.0041.


(a) - (g) (No change.)

(h) Recognition of out-of-state license or registration of a military spouse as authorized by Occupations Code, §55.0041.

(1) A military spouse may use the procedure set out in this subsection if he or she holds a current registration in another jurisdiction;

(2) The period covered by this subsection is only for the time during which the military service member to whom the military spouse is married is stationed at a military installation in Texas. This period may not exceed three years from the date the military spouse:

(A) first becomes registered in Texas under Option 1, set out in paragraph (3) of this subsection; or

(B) first receives the confirmation from the Registration Division under Option 2, set out in paragraph (4)(C)(ii) of this subsection.

(3) Option 1: registration in Texas with waiver or refund of the initial registration and renewal fees. If the military spouse is registered in Texas, for all or part of the period set out in paragraph (2) of this subsection, he or she may request a waiver or refund of a fee previously paid.

(A) The initial registration fee may be waived or refunded by following the procedure set out in subsection (c) of this section, including filing Form 133.19, Waiver or Refund Request by a Military Applicant.

(B) A renewal fee may be waived by submitting Form 133.22, Waiver or Refund Request by a Military Spouse for a Renewal Fee, at the time the renewal is submitted. A refund of a renewal fee that was paid in error, is requested by submitting Form 133.22 within four years from the date the fee was collected or received.

(4) Option 2: notification and authorization of activity without registration. Upon confirmation under subparagraph (C) or (D) of this paragraph, the military spouse will be considered to be notice filed in Texas. Such notice filing expires at the end of the calendar year.

(A) A military spouse may engage in activity without a license or registration under the authority of Occupations Code, §55.0041, and this paragraph, only for the period specified in paragraph (2) of this subsection.

(B) A military spouse who becomes ineligible under Occupations Code, §55.0041, or paragraph (1) or (2) of this subsection prior to the three year period identified in paragraph (2), must notify the Securities Commissioner of such ineligibility within 30 days and immediately cease activity until such time as he or she is registered in the appropriate capacity to conduct activity in Texas.

(C) Before engaging in an activity requiring registration in Texas, the military spouse must initially:

(i) provide notice of his or her intent to engage in activity in Texas and specify the type of activity by filing with the Securities Commissioner:

(1) Form 133.23, Request for Recognition of Out-Of-State License or Registration by a Military Spouse;

(2) proof of his or her residency in Texas; and

(3) a copy of his or her military identification card.

(ii) receive confirmation that the Registration Division:

(1) has verified the individual's license in another jurisdiction; and

(2) authorizes the individual to engage in the specified activity.

(D) To continue to conduct business in Texas without registration under Option 2, after the expiration of the initial confirmation under subparagraph (C)(ii), the military spouse must renew annually on the same schedule as renewals of registration. This enables the Registration Division to determine that the military spouse remains eligible under Occupations Code, §55.0041, to continue to conduct securities activities in Texas without being registered.

(i) A renewal is made by submitting the same documents identified in subparagraph (C)(ii) of this paragraph.

(ii) A renewal is not effective until the military spouse receives confirmation that the Registration Division:

(1) has verified the individual's license in another jurisdiction; and

(2) authorizes the individual to engage in specified activity.

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

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Travis J. Iles

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8303

7 TAC §115.22

The Texas State Securities Board proposes new §115.22, concerning electronic submission of forms and fees. The new rule

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would implement a management recommendation of the Sunset Advisory Commission to allow dealer and agent applicants the option to electronically submit registration documents (those not presently filed through the CRD System) with the Agency that are currently being submitted in paper format. Forms, payments, and fees currently required to be submitted through CRD will continue to be submitted through and maintained on that system.

Since these electronic filing and fee payment processes are still being developed, the proposal specifically addresses applicants in the category specified in the Sunset recommendation. However, once staff has experience with the electronic submission system, the staff contemplates expanding it to cover other filings and fees. Subsection (c) in the proposal takes this future expansion into account.

Staff anticipates initially the electronic submission system will operate to permit an applicant to submit electronic copies of required documents as attachments through an email address dedicated solely for that purpose. A process using the Agency’s email system, which automatically scans emails and attachments for viruses and malware, has already been implemented to accomplish this goal of the Sunset recommendation.

Clint Edgar, Deputy Securities Commissioner, and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that, for the first five-year period the proposed rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed rule. The Agency staff will administer the optional, electronic submission of forms portion of the rule by using existing resources. The portion of the proposed rule concerning optional online fee submissions would not impose a cost on the Agency because it is not being implemented at this time.

When the Agency implements an online payment system in the future, there would be a cost to the Agency and state government, but at this time that future cost cannot be ascertained. The Agency currently lacks sufficient information to provide an estimate of the anticipated cost to implement an online payment system, because implementation will require the Agency to use the Texas.gov payment system, operated by DIR. DIR has plans to replace this system with a newer, updated system, which DIR anticipates will significantly decrease the implementation costs to the Agency. The Agency is deferring implementation of the online payment system portion of the rule until DIR puts this new system in place. The actual costs to the Agency and state government to implement the Agency’s online acceptance of dealer and agent application fees through the new DIR system are unknown at this time and there is no timeline currently in place for the implementation of DIR’s new system.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed rule is in effect the public benefit expected as a result of adoption of the proposed rule will be to reduce the burden on applicants by providing an online option for submission of application forms and supplemental documents and, when implemented in the future, and option for fee payment other than to mail in checks.

Due to the choices provided in the proposed rule, which would give filers the options to pay online rather than by check and to submit documents electronically or on paper, there will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed rule will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There is no anticipated economic cost to persons who are required to comply with the rule as proposed. Once the online payment system is implemented through Texas.gov, credit card payments submitted through that site will be required to pay an online processing fee (or convenience fee) in addition to the underlying state fee for the registration or service. This additional processing fee would be a cost incurred by each of the Agency’s applicants who opt to pay a fee electronically, when that service is available. At the present time, it appears that the maximum online processing fee is $5 for an annual occupational license. Comptroller’s APS 029, updated 8/31/2018. Since the use of the online system to pay a fee electronically will be optional, there is no anticipated economic cost to the filers to comply with the rule as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed rule is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule’s applicability; and it does not positively or negatively affect the state’s economy. Additionally, the proposed rule does not create a new regulation, or expand, limit or repeal an existing regulation. Although the proposed rule creates a new rule, there would be no new regulation created since the new rule only addresses the manner in which fees can be paid and filings made. The filings and fees affected by the proposal are ones that are already required by statute and current rules.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the Texas Register. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The new rule is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-12, 581-13, and 581-18.

§115.22. Electronic Submission of Forms and Fees.

(a) This section does not apply to forms or fees required by §115.2 of this chapter (relating to Application Requirements), to be submitted electronically through the CRD System.
(b) Documents and fees submitted by applicants for dealer and agent registration may, at the option of the filer, be submitted electronically to the Securities Commissioner.

(c) Filings made and fees paid by dealers and agents may be submitted electronically, as the Agency's system is developed to accept them.

(d) All electronic submissions of forms or fees must be made in accordance with the submission procedures set out on the Agency's website (www.ssb.texas.gov). Please check the Agency's website for a complete list of forms and fees that are currently being accepted electronically.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

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CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

7 TAC §§116.1, 116.2, 116.4

The Texas State Securities Board proposes amendments to §116.1, concerning general provisions, to §116.2, concerning application requirements, and to §116.4, concerning evidences of registration. The sections would be amended to remove the references to branch office registration requirements for investment advisers and related registration fees. The amendments to §§116.1, 116.2, and 116.4 are required by House Bill 1535, enacted by the 86th Texas Legislature, that amended §35.8(1) of the Texas Securities Act to remove the requirement that branch offices of dealers and investment advisers be registered and the related requirement to pay a branch office registration fee of $25. The sections would instead be amended to require branch offices of investment advisers to make a notice filing, which would not require any filing fee. Other requirements for branch offices set forth in the rules will continue to apply.

Subsection (a)(2)(B) of §116.2 would also be amended to implement a management recommendation made by the Sunset Advisory Commission to eliminate notarization requirements from agency forms when the Texas Securities Act does not otherwise require the form to be sworn. This amendment would remove the requirement that an investment adviser’s balance sheet, submitted as part of its application for registration, be attested by the applicant’s principal financial officer before a notary. Instead the principal financial officer would certify the balance sheet as true and correct using Form 133.18, Certification of Balance Sheet by Principal Financial Officer. Form 133.18 is being repealed and replaced by a new form in related rulemaking to remove a notarization requirement.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed amendments are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendments. Although there would be a negative fiscal impact, it is the result of the Legislature’s change to the Texas Securities Act, rather than through Agency rulemaking. When the statutory change becomes effective, the Agency will no longer have the authority to collect fees relating to branch office registration or amendments to those registrations. These proposed amendments reflect that change in authority. A decrease in revenue resulting from the elimination of the branch office registration fee for both dealers and investment advisers was reflected in the fiscal note to HB 1535. According to the Comptroller of Public Accounts, “the provision that removes the requirement for registered entities to register individual branch offices would result in a revenue loss to the General Revenue Fund estimated to total $425,850 per fiscal year, beginning in fiscal year 2020, based on collections from branch office registrations in fiscal year 2017.”

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendments are in effect, the public benefit expected as a result of adoption of the proposed amendments will be to align the rule requirements for branch offices with changes made to the Texas Securities Act by eliminating the branch office registration requirement and removing unnecessary administrative burdens.

There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendments will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendments are effective; they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rules’ applicability; and they do not positively or negatively affect the state’s economy. Additionally, the proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation. Although registration of branch offices will no longer be required under the Legislature’s change to the Texas Securities Act, which implements the Sunset Commission Recommendation 1.3, the Agency continues to regulate investment adviser activities occurring at the branch offices. As the Sunset Commission noted, the Agency would continue to: (a) require location information about branch offices, (b) require the designation of a supervisor for each branch office who is responsible for the branch office’s activities, and (c) be authorized to inspect a branch office and take action if needed. Similarly, any negative fiscal impact caused by the elimination of fees paid by branch offices for registration and amendments is the direct result of the Legislature’s change to the Texas Securities Act, rather than through the Agency’s rulemaking to implement the legislative change.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed sec-
tions in the Texas Register. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendments are proposed under Texas Civil Statutes, Article 581-28-1, Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-12, 581-13, 581-18, and 581-35 (effective September 1, 2019).


(a) (No change.)

(b) Registration of investment advisers, and investment adviser representatives, and notice filings for branch offices.

(1) Requirements of registration or notice filing.

(A) (No change.)

(B) Each branch office of a registered investment adviser in Texas must make a notice filing to become designated as a branch office of the investment adviser [be registered]. A registered officer, partner, or investment adviser representative must be named as supervisor.

(2) (No change.)

c) (d) (No change.)

§116.2. Application Requirements.

(a) Investment adviser and investment adviser representative application requirements. A complete application consists of the following:

(1) (No change.)

(2) items filed in paper form with the Securities Commissioner:

(A) (No change.)

(B) a balance sheet prepared in accordance with United States generally accepted accounting principles reflecting the financial condition of the investment adviser as of a date not more than 90 days prior to the date of such filing. The balance sheet should be compiled, reviewed, or audited by independent certified public accountants or independent public accountants, or must instead be certified [attested] by [the sworn notarized statement of] the applicant’s principal financial officer. If certified [attested] by the principal financial officer of the applicant, such officer shall make the certification on Form 133.18, Certification of Balance Sheet by Principal Financial Officer.

(C) - (E) (No change.)

(b) (No change.)

c) Branch office designation [registration] and inspection.

(1) An [A request for registration of a branch office of an investment adviser may designate a branch office be made] upon initial application of the investment adviser or by amendment to a current Form BR [registration]. No investment advisory activity may occur in any branch office location until such time as the investment adviser has notified [receives notification from] the Securities Commissioner that such location will function [has been approved] as a branch office [at]. The request for registration of a branch office is made by submitting [the submission of Form BR on CRD. [The fee for registration of each branch office is $25.]

(2) Simultaneous with the designation [request for registration] of a branch office, a supervisor must be named for that branch office. The supervisor must satisfy the examination qualifications required of the investment adviser before the branch office is designated [may be registered]. A supervisor is responsible for supervision of the activities of the branch office. Within 10 business days after [from when] a supervisor ceases to be employed or registered in such capacity by the investment adviser, the investment adviser must designate a new supervisor, qualified by passage of the appropriate examinations, for the branch office [must be named]. Absent the designation of a new supervisor to the Commissioner within the 10 business day period, the registration of a branch office whose supervisor ceases to be employed as such by an investment adviser shall be automatically terminated. The branch office registration may be reinstated upon the designation of a qualified supervisor and payment of the branch office registration fee.

(3) Each branch office of an investment adviser who is registered with the Commissioner is subject to unannounced inspections at any time during normal business hours.

(d) - (e) (No change.)

§116.4. Evidences of Registration.

(a) Issuance. An evidence of registration or certificate of registration shall be issued for each registered investment adviser reflecting the registered officer or partner. [An evidence of registration shall be issued for each registered branch office reflecting the registered supervisor.]

(b) - (e) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

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Travis J. Iles
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7 TAC §116.6

The Texas State Securities Board proposes an amendment to §116.6, concerning Registration of Persons with Criminal Backgrounds. This section contains rulemaking required by §53.025 of the Texas Occupations Code, which requires licensing authorities to issue guidelines relating to the licensing of persons with criminal convictions. The proposed amendment would implement the requirements of House Bill 1342 (HB 1342), passed during the 2019 Regular Session of the Texas Legislature, that amended Chapter 53 of the Texas Occupations Code (Consequences of Criminal Conviction). The changes made by HB 1342 apply to an application for a license submitted on or after September 1, 2019. Specifically, the proposed amendment would alter the factors to be considered in determining whether
a conviction relates to a registered or licensed occupation, add new factors that must be considered in determining eligibility, and remove other factors from consideration. The proposed amendment would also include specific references to the new or amended sections of Chapter 53 of the Texas Occupations Code that will require the Agency to comply with new notification requirements in these sections. Finally, the proposed rule would also be amended to include new requirements added by HB 1342 set forth in new Texas Occupations Code, §53.026, concerning an Applicant Best Practices Guide, once such guide is developed and published by the state auditor on its website.

This proposal would implement the requirements of HB 1342, as they specifically relate to or concern the investment adviser or representative registration of individuals with criminal backgrounds and the Agency's process to review existing investment adviser and representative registrations and possibly take action to revoke or suspend the registrations on the basis of certain criminal convictions that may occur after the person is registered.

Clint Edgar, Deputy Securities Commissioner; Tommy Green, Director, Inspections and Compliance Division; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division; have determined that for the first five-year period the proposed amendment is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendment is in effect the public benefit expected as a result of adoption of the proposed amendment will be to enhance opportunities for a person to obtain gainful employment in the securities industry after the person has been convicted of an offense and discharged the sentence for the offense. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendment will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendment is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the Texas Register. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78771-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Article 581-14, and Texas Occupations Code, §53.025.

§116.6. Registration of Persons with Criminal Backgrounds.

(a) An [The] application for registration may be denied, or a registration may be revoked or suspended, [suspended, or revoked] if the Securities Commissioner finds that the person has been convicted of any felony, or of a misdemeanor offense that directly relates to its duties and responsibilities. In determining whether a misdemeanor conviction directly relates to such duties and responsibilities, the Securities Commissioner shall consider each of the following factors:

1. (1) - (2) (No change.)
2. (3) the extent to which the registration applied for might offer an opportunity to engage in further criminal activity of the same type as that in which the applicant previously had been involved; [and]
3. (4) the relationship of the crime to the ability or [or] capacity[ or fitness] required to perform the duties and discharge the responsibilities of a registered investment adviser or investment adviser representative; and [or]
4. (5) Any correlation between the elements of the crime and its duties and responsibilities.
5. (b) After the Securities Commissioner has determined the criminal conviction directly relates to the duties and responsibilities of the license, the [The] Securities Commissioner shall consider the following evidence in determining whether the person is eligible for a license issued by the Agency [the present fitness of an applicant who has been convicted of a crime]:

1. (1) - (5) (No change.)
2. (6) Evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision.
3. (7) [6] Other evidence of the applicant's present fitness, including letters of recommendation may be provided and considered, including letters from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the applicant; the sheriff and chief of police in the community where the applicant resides; and any other persons in contact with the applicant.
4. (8) [2] It shall be the responsibility of the applicant to the extent possible to secure and provide to the Securities Commissioner the letters of recommendation described by paragraph (7) of this subsection [of the prosecution, law enforcement, and correctional authorities as required under this section. The applicant shall also furnish proof to the Securities Commissioner that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted].
5. (c) - (d) (No change.)
6. (e) Prior to taking any action under subsection (a) of this section to deny any application for registration, the State Securities Board

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shall comply with the notification requirements of Texas Occupations Code, §53.0231 Notice of Pending Denial of License, and §53.051.

(f) Prior to taking any action under subsection (a) of this section to revoke or suspend any application for registration, the State Securities Board shall comply with the notification requirements of Texas Occupations Code, §53.051.

(g) State Auditor Applicant Best Practices Guide.

(1) The State Securities Board shall post a link on its website to the Applicant Best Practices Guide, to be developed and published by the state auditor as required by Texas Occupations Code, §53.026. This guide, which shall be posted once it becomes available, shall set forth best practices for an applicant with a prior conviction to use when applying for a license.

(2) In each notice to deny, revoke, or suspend a registration or to deny a person the opportunity to be examined for a registration, the State Securities Board shall include a link to the guide as described in paragraph (1) of this subsection.

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

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Travis J. Iles
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State Securities Board
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7 TAC §116.18

The Texas State Securities Board proposes an amendment to §116.18, concerning Special Provisions Relating to Military Applicants. The amendment is proposed to implement the requirements of Senate Bill 1200, passed in the 2019 Texas Legislative Session, which added §55.0041 to the Texas Occupations Code. Related forms are being concurrently proposed as are comparable amendments to the corresponding rule for dealers and agents.

Section 55.0041 of the Texas Occupations Code, effective September 1, 2019, authorizes a military spouse to engage in a business or occupation for which a license or registration is required without obtaining the applicable license or registration if the military spouse holds a current license or registration, that is in good standing, issued by another jurisdiction that has licensing or registration requirements that are substantially equivalent to the requirements for the license or registration in Texas. The statute requires the military spouse to comply with all other laws and regulations applicable to the business or occupation in Texas. The military spouse is authorized to engage in the business or occupation only for the period during which the military service member to whom the military spouse is married is stationed at a military installation in Texas but not to exceed three years from the date the spouse receives the requisite confirmation from the agency.

Most participants in the securities industry acting as investment advisers or investment adviser representatives are either registered or notice-filed and practice in multiple jurisdictions. Before they can engage in the securities business in Texas, the Texas Securities Act generally requires investment advisers and their representatives to either register with the Agency or to notice file pursuant to §116.1(b)(2), by filing the applicable form and paying the application fee (in this preamble registrations and notice filings will be collectively referred to as "licenses"). Investment adviser firms that have a compliance department are unlikely to want to keep track of the unique Texas process that allows a military spouse to operate as a representative without being licensed. In light of this, and in keeping with the spirit of the bill, the proposed amendment would provide the option in paragraph (3) of new subsection (h) (Option 1) to allow military spouses to become licensed and receive a waiver or refund of the initial application and renewal fees for the period covered by §55.0041 in which they would not be required to be licensed to conduct activity in Texas.

The Investment Adviser Registration Depository (IARD) System is used by investment advisers and their representatives to process virtually all Texas investment adviser and representative licenses. Only applications and renewals with reportable disclosure items or deficiencies remain pending for more than a few days before registration is effective. It is therefore expected that most applications and renewals filed by military spouses choosing Option 1 will, similar to applications filed by other applicants, be processed almost immediately.

Since a military spouse choosing Option 1 (filing through the IARD System) would have to pay the application fee (initial or renewal) to use the electronic system, the amendment would provide for a refund to a military spouse who pays the fee. This would enable electronic filers to take advantage of the fee waiver authorized by statute. To avoid problems associated with processing stale claims, subsection (h) would provide that a refund request must be received within four years from the date the fee was collected or received. Current law and Board rules already provide for the waiver (or refund) of the initial application fee for military spouses. Accordingly, that procedure, provided under subsection (c) of §116.18, is referenced in the proposed amendment. A new form is being concurrently proposed to allow an eligible military spouse choosing this option to apply for a waiver or refund of a renewal fee in the second and third years of being licensed in Texas.

Eligible military spouses (or the firms that employ them) may also elect "Option 2." This option, set forth in paragraph (4) of new subsection (h), would track the requirements of the statute by requiring the military spouse to do the following before engaging in the practice of the securities business without first being licensed as an investment adviser or investment adviser representative in Texas: notify the Agency of the military spouse's intent to practice in Texas; submit to the Agency proof of the spouse's residency in Texas and a copy of the spouse's military identification card; and receive confirmation from the Agency that the Agency has verified the spouse's license in the other jurisdiction and authorized the spouse to engage in the specified activity in Texas without being licensed in Texas. A new form is being concurrently proposed for use by an eligible military spouse choosing this option to request and obtain recognition of out-of-state license or registration.

Additionally, since engaging in unlicensed activity can result in administrative, civil, or criminal action against the military spouse and/or the employing firm, the proposed amendment would impose a requirement on a military spouse choosing Option 2 (operating in Texas without an investment adviser or investment adviser representative license) to notify the Securities Commis-
sioner within 30 days if circumstances change and he or she is no longer eligible for §55.0041 treatment and immediately cease activity until such time as he or she becomes licensed in the appropriate capacity to conduct securities activity in Texas. This requirement is also noted in proposed new Form 133.23, Request for Recognition of Out-Of-State License or Registration by a Military Spouse, which is being concurrently proposed. Option 2 would, upon issuance of the confirmation by the Agency, be treated as a notice filing, subject to renewal on a calendar year basis, so continued eligibility of the military spouse can be reassessed annually.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division; have determined that for the first five-year period the proposed amendment is in effect there may be foreseeable fiscal implications as a result of enforcing or administering the proposed amendment on state, but not local, government.

The effect on state government for the first five-year period that the proposed amendment will be in effect is an estimated loss in revenue the public benefit expected as a result of adoption of the proposed amendment will be to ease regulatory and financial burdens of certain military spouses, licensed in good standing as securities professionals in another state, who are relocating to Texas. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendment will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendment is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation. Although military spouses will be eligible for waivers or refunds of renewal fees due to new Texas Occupations Code §55.0041 (which is an expansion of current law and Board rules that apply to initial applications only), the anticipated negative fiscal impact that may be caused by the elimination of renewal fees of military spouses is the direct result of the Legislature's adoption of new Texas Occupations Code §55.0041, rather than through the Agency's rulemaking to implement the legislative change.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the Texas Register. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1 and §55.0041 of the Texas Occupations Code. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 55.0041 of the Texas Occupations Code requires a state agency that issues a license to adopt rules to implement §55.0041 and authorizes a state agency to adopt rules to provide for the issuance of a license to a military spouse to whom the agency provides confirmation under subsection (b) of §55.0041.


(a) - (g) (No change.)

(h) Recognition of out-of-state license or registration of a military spouse as authorized by Occupations Code, §§55.0041.

(1) A military spouse may use the procedure set out in this subsection if he or she holds a current registration in another jurisdiction.

(2) The period covered by this subsection is only for the time during which the military service member to whom the military spouse is married is stationed at a military installation in Texas. This period may not exceed three years from the date the military spouse:

(A) first becomes registered, or makes a notice filing pursuant to §116.1(b)(2) of this chapter (relating to general provisions), in Texas under Option 1, set out in paragraph (3) of this subsection; or

(B) first receives the confirmation from the Registration Division under Option 2, set out in paragraph (4)(C)(ii) of this subsection.

(3) Option 1: registration in Texas, or a notice filing made pursuant to §116.1(b)(2) of this chapter, with waiver or refund of the initial filing fee and renewal fees. If the military spouse is registered or notice filed in Texas, for all or part of the period set out in paragraph (2) of this subsection, he or she may request a waiver or refund of a fee previously paid.

(A) The initial registration fee may be waived or refunded by following the procedure set out in subsection (c) of this section, including filing Form 133.19, Waiver or Refund Request by a Military Applicant.
(B) A renewal fee may be waived by submitting Form 133.22, Waiver or Refund Request by a Military Spouse for a Renewal Fee, at the time the renewal is submitted. A refund of a renewal fee that was paid in error, is requested by submitting Form 133.22 within four years from the date the fee was collected or received.

(4) Option 2: notification and authorization of activity without registration, or notice filing pursuant to §116.1(b)(2) of this chapter. Upon confirmation under subparagraph (C) or (D) of this paragraph, the military spouse will be considered to be notice filed in Texas. Such notice filing expires at the end of the calendar year.

(A) A military spouse may engage in activity without a license or registration under the authority of Occupations Code, §55.0041, and this paragraph, only for the period specified in paragraph (2) of this subsection.

(B) A military spouse who becomes ineligible under Occupations Code, §55.0041, or paragraph (1) or (2) of this subsection prior to the three year period identified in paragraph (2), must notify the Securities Commissioner of such ineligibility within 30 days and immediately cease activity until such time as he or she is registered in the appropriate capacity to conduct activity in Texas.

Before engaging in an activity requiring registration in Texas, or a notice filing pursuant to §116.1(b)(2) of this chapter, in Texas, the military spouse must initially:

(i) provide notice of his or her intent to engage in activity in Texas and specify the type of activity by filing with the Securities Commissioner:

(1) Form 133.23, Request for Recognition of Out-of-State License or Registration by a Military Spouse;

(II) proof of his or her residency in Texas; and

(III) a copy of his or her military identification card.

(ii) receive confirmation that the Registration Division:

(1) has verified the individual's license in another jurisdiction; and

(II) authorizes the individual to engage in the specified activity.

To continue to conduct business without registration in Texas, or a notice filing pursuant to §116.1(b)(2) of this chapter, under Option 2, after the expiration of the initial confirmation under subparagraph (C)(ii), the military spouse must renew annually on the same schedule as renewals of registration. This enables the Registration Division to determine that the military spouse remains eligible under Occupations Code, Section 55.0041, to continue to conduct securities activities in Texas without being registered.

(i) A renewal is made by submitting the same documents identified in subparagraph (C)(i) of this paragraph.

(ii) A renewal is not effective until the military spouse receives confirmation that the Registration Division:

(1) has verified the individual's license in another jurisdiction; and

(II) authorizes the individual to engage in specified activity.

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

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Travis J. Iles
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7 TAC §116.22

The Texas State Securities Board proposes new §116.22, concerning electronic submission of forms and fees. The new rule would implement a management recommendation of the Sunset Advisory Commission to allow investment adviser and investment adviser representative applicants to the option to electronically submit supplemental, required documents (those not presently filed through the IARD System) with the Agency that are currently being submitted in paper format. Forms, payments, and fees currently required to be submitted through IARD will continue to be submitted through and maintained on that system.

Since these electronic filing processes are still being developed, the proposal specifically addresses applicants - the category specified in the Sunset recommendation. However, once staff has experience with the electronic submission system, the staff contemplates expanding it to cover other filings and fees. Subsection (c) in the proposal takes this future expansion into account.

Staff anticipates initially the electronic submission system will operate to permit an applicant to submit electronic copies of required documents as attachments through an email address dedicated solely for that purpose. A process using the Agency's email system, which automatically scans emails and attachments for viruses and malware, has already been implemented to accomplish this goal of the Sunset recommendation.

Clint Edgar, Deputy Securities Commissioner, and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that, for the first five-year period the proposed rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed rule. The Agency staff will administer the optional, electronic submission of forms portion of the rule by using existing resources. The portion of the proposed rule concerning optional online fee submissions would not currently impose a cost on the Agency or state government because, at this time, all investment advisers and investment adviser applicants are currently required to pay their fees online through IARD. If that changes in the future and the Agency implements an online payment system, there would be a cost to the Agency and state government, at this time, the cost cannot be ascertained.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed rule is in effect the public benefit expected as a result of adoption of the proposed rule will be to reduce the burden on applicants by providing them the option to submit additional, required documents electronically rather than in hard copy format and to reduce the burden on certain applicants in the future who would be required to pay fees directly to the Agency, by providing them with the option to pay fees electronically rather than mailing in checks.
Due to the choices provided in the proposed rule, which would give filers the options to submit required documents electronically or on paper, and which would give certain filers (that are not required to use IARD for fees payments) the option to pay online instead of by check, there will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed rule will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There is no anticipated economic cost to persons who are required to comply with the rule as proposed. At the present time, all investment adviser and investment adviser representative application and renewal fees are paid electronically through IARD, and under the proposal would continue to be paid that way. In the future, if there are investment adviser or investment adviser representative applicants who are not required to use IARD, they will have the option to submit their fees to the Agency electronically when an online payment system is implemented. Once an online payment system is implemented through texas.gov, credit card payments submitted through that site will be required to pay an online processing fee (or convenience fee) in addition to the underlying state fee for the registration or service. This additional processing fee would be a cost incurred by each of the Agency's applicants who opt to pay a fee electronically, when that service is available. At the present time, it appears that the maximum online processing fee is $5 for an annual occupational license. Comptroller's APS 029, updated 8/31/2018. Since the use of the online system to pay a fee electronically will be optional, there is no anticipated economic cost to the filers to comply with the rule as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed rule is in effect; it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed rule does not create a new regulation, or expand, limit or repeal an existing regulation. Although the proposal creates a new rule, there would be no new regulation created since the new rule only addresses the manner in which fees can be paid and filings can be made. The filings and fees affected by the proposal are ones that are already required by statute and current rules.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the Texas Register. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The new rule is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-12, 581-13, and 581-18.

§116.22. Electronic Submission of Forms and Fees.
(a) This section does not apply to forms or fees required by §116.2 of this chapter (relating to Application Requirements), to be submitted electronically through the IARD System or the CRD System.
(b) Documents and fees submitted by applicants for investment adviser and investment adviser representative registration or notice filing may, at the option of the filer, be submitted electronically to the Securities Commissioner.
(c) Filings made and fees paid by investment advisers or investment adviser representatives may be submitted electronically, as the Agency's system is developed to accept them.
(d) All electronic submissions of forms or fees must be made in accordance with the submission procedures set out on the Agency's website (www.ssb.texas.gov). Please check the Agency's website for a complete list of forms and fees that are currently being accepted electronically.

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

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CHAPTER 133. FORMS
7 TAC §§133.5, 133.6, 133.8, 133.12, 133.13, 133.16, 133.18, 133.26, 133.29, 133.30, 133.34 - 133.36
The Texas State Securities Board proposes the repeal of thirteen rules, concerning forms adopted by reference. These forms, which contain notarization and sworn under oath requirements, would be repealed to implement recommendations made by the Texas Sunset Advisory Commission to remove these requirements from the forms when the Texas Securities Act doesn't otherwise require the form to be sworn. New replacement forms that would be certified to be true and correct and to be signed under penalty of perjury are being currently proposed. Specifically, the State Securities Board proposes the repeal of §133.5, a form concerning Secondary Trading Exemption Notice; §133.6, a form concerning Secondary Trading Exemption Renewal Notice; §133.8, a form concerning Power of Attorney; §133.12, a form concerning Renewal Application for Mutual Funds and Other Continuous Offerings; §133.13, a form concerning Application for Renewal Permit; §133.16, a form concerning Texas Crowdfunding Portal Withdrawal of Registration; §133.18, a form concerning Certification of Balance Sheet by Principal Financial Officer; §133.26, a form concerning Request for Determination of Money Market Fund Status for Federal Covered Securities; §133.29, a form concerning Intra masked Exemption Notice; §133.30, a form concerning Information Concerning Projected
Market Prices and Related Market Information; §133.34, a form concerning Undertaking Regarding Non-Issuer Sales; §133.35, a form concerning Application for Designation as Matching Service under §109.15; and §133.36, a form concerning Request for Reduced Fees for Certain Persons Registered in Multiple Capacities.

Clint Edgar, Deputy Securities Commissioner; Tommy Green, Director, Inspections and Compliance Division; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the repeals are in effect, there will be no foreseeable fiscal implications for state or local government as a result of administering the repeals.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed repeals are in effect the public benefit expected as a result of adoption of the proposed repeals will be that forms that are no longer needed will be eliminated. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed repeals will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed repeals of the rules adopting by reference the forms are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rule’s applicability; they do not positively or negatively affect the state’s economy; and they do not create a new regulation, or expand, limit, or repeal an existing regulation. Although the rulemaking involves repealing existing forms, the net effect is to merely replace the forms with new forms that are being concurrently proposed, while leaving the scope and the content of the current regulations that relate to these forms unchanged.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed repeals in the Texas Register. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The repeals are proposed under Texas Civil Statutes, Articles 581-28-1 and 581-42.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 42.B provides the Board with the authority to adopt rules reducing fees for persons registered in two or more capacities.

The proposal affects Texas Civil Statutes, Articles 581-5, 581-7, 581-8, 581-12, 581-18, and 581-42.

§133.5. Secondary Trading Exemption Notice.
§133.12. Renewal Application for Mutual Funds and Other Continuous Offerings.
§133.16. Texas Crowdfunding Portal Withdrawal of Registration.
§133.18. Certification of Balance Sheet by Principal Financial Officer.
§133.29. Intra state Exemption Notice.
§133.30. Information Concerning Projected Market Prices and Related Market Information.
§133.34. Undertaking Regarding Non-issuer Sales.
§133.35. Application for Designation as Matching Service under §109.15.
§133.36. Request for Reduced Fees for Certain Persons Registered in Multiple Capacities.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

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7 TAC §§133.5, 133.6, 133.8, 133.12, 133.13, 133.16, 133.18, 133.26, 133.29, 133.30, 133.34 - 133.36

The Texas State Securities Board proposes thirteen new rules, concerning forms adopted by reference. Specifically, the State Securities Board proposes new §133.5, a form concerning Secondary Trading Exemption Notice; §133.6, a form concerning Secondary Trading Exemption Renewal Notice; §133.8, a form concerning Consent to Service; §133.12, a form concerning Renewal Application for Mutual Funds and Other Continuous Offerings; §133.13, a form concerning Application for Renewal Permit; §133.16, a form concerning Texas Crowdfunding Portal Withdrawal of Registration; §133.18, a form concerning Certification of Balance Sheet by Principal Financial Officer; §133.26, a form concerning Request for Determination of Money Market Fund Status for Federal Covered Securities; §133.29, a form concerning Intra state Exemption Notice; §133.30, a form concerning Information Concerning Projected Market Prices and Related Market Information; §133.34, a form concerning Undertaking Regarding Non-Issuer Sales; §133.35, a form concerning Application for Designation as Matching Service under §109.15; and §133.36, a form concerning Request for Reduced Fees for Certain Persons Registered in Multiple Capacities.

The new sections would adopt by reference forms that are updated to remove notarization requirements to implement a recommendation made by the Texas Sunset Advisory Commission.

44 TexReg 4808  September 6, 2019  Texas Register
to remove the requirement from the forms when the Texas Securities Act doesn’t otherwise require the form to be sworn. Instead of being signed before a notary the new forms would be certified to be true and correct and would be signed under penalty of perjury. Other non-substantive changes would be made to sections and the forms, and the name of Form 133.8 would be changed to more accurately reflect the purpose of the form and to conform the terminology with that used in §8 of the Texas Securities Act. Existing forms §§133.5, 133.6, 133.8, 133.12, 133.13, 133.16, 133.18, 133.26, 133.29, 133.30, 133.34, 133.35, and 133.36 are being concurrently proposed for repeal.

Clint Edgar, Deputy Securities Commissioner; Tommy Green, Director, Inspections and Compliance Division; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed forms are used there will be no foreseeable fiscal implications for state or local government as a result of using the proposed forms.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed forms are used the public benefit expected as a result of adoption of the proposed forms will be to provide more efficiency in the filing of forms with the Board by removing unnecessary administrative burdens. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed forms will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to use the forms as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed rules adopting by reference the forms are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rule’s applicability; they do not positively or negatively affect the state’s economy; and they do not create a new regulation, or expand, limit or repeal an existing regulation. Although the rulemaking involves the creation of new forms, there would be no new regulation created since the net effect is to merely replace forms that are being concurrently proposed for repeal, while leaving the scope and the content of the current regulations that relate to these forms unchanged.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed sections in the Texas Register. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The new rules are proposed under Texas Civil Statutes, Articles 581-28-1 and 581-42.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 42.B provides the Board with the authority to adopt rules reducing fees for persons registered in two or more capacities.

The proposal affects Texas Civil Statutes, Articles 581-5, 581-7, 581-8, 581-12, 581-18, and 581-42.

§133.5. Secondary Trading Exemption Notice. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.6. Secondary Trading Exemption Renewal Notice. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.8. Consent to Service. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.12. Renewal Application for Mutual Funds and Other Continuous Offerings. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.13. Application for Renewal Permit. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.16. Texas Crowdfunding Portal Withdrawal of Registration. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.18. Certification of Balance Sheet by Principal Financial Officer. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.26. Request for Determination of Money Market Fund Status for Federal Covered Securities. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.29. IntraState Exemption Notice. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.30. Information Concerning Projected Market Prices and Related Market Information. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.34. Undertaking Regarding Non-issuer Sales. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.35. Application for Designation as Matching Service under §109.13. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.36. Request for Reduced Fees for Certain Persons Registered in Multiple Capacities. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

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7 TAC §133.22, §133.23

The Texas State Securities Board proposes new §133.22, a form concerning Waiver or Refund Request by a Military Spouse for a Renewal Fee, and new §133.23, a form concerning Request for Recognition of Out-Of-State License or Registration by a Military Spouse. The new sections would adopt by reference forms that are created to implement proposed amendments to §115.18 and §116.18, which are concurrently proposed for adoption to implement the requirements of Senate Bill 1200, passed in the 2019 Texas Legislative Session, which added §55.0041 to the Texas Occupations Code.

New Form 133.22 would allow a military spouse falling within the provisions of Texas Occupations Code §55.0041 to apply for a waiver or refund of a renewal fee pursuant to proposed amendments to §115.18 or §116.18, which are being concurrently amended.

New Form 133.23 would be filed by a military spouse eligible for non-registration under Occupations Code §55.0041, to provide the Agency with information needed to determine eligibility for such treatment. The form would need to be resubmitted annually during the period that the military spouse qualifies for unique treatment under Texas Occupations Code §55.0041. Upon issuance of the confirmation by the Registration Division for the initial or a renewal filing, the military spouse would be considered to be notice filed for purposes of recordkeeping and certification.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed forms are used there will be no foreseeable fiscal implications for state or local government as a result of using the proposed forms.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed forms are used the public benefit expected as a result of adoption of the proposed forms will be that an eligible military spouse can complete the forms to either obtain a waiver or refund of renewal fees or to practice securities business in Texas without being registered. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed forms will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to use the forms as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed rules adopting by reference the forms are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rule's applicability; they do not positively or negatively affect the state's economy; and they do not create a new regulation, or expand, limit or repeal an existing regulation. Although the rulemaking involves the creation of new forms, the forms are created as part of the implementation of Senate Bill 1200.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed sections in the Texas Register. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The new rules are proposed under Texas Civil Statutes, Article 581-28-1 and §55.0041 of the Texas Occupations Code. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 55.0041 of the Texas Occupations Code requires a state agency that issues a license to adopt rules to implement §55.0041 and authorizes a state agency to adopt rules to provide for the issuance of a license to a military spouse to whom the agency provides confirmation under subsection (b)(3) of §55.0041.


§133.22. Waiver or Refund Request by a Military Spouse for a Renewal Fee.
This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.23. Request for Recognition of Out-Of-State License or Registration by a Military Spouse.
This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

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

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7 TAC §133.33

The Texas State Securities Board proposes an amendment to §133.33, concerning uniform forms accepted, required, or recommended. Section 133.33 would be amended to specifically address federal covered securities offered pursuant to SEC Regulation A, Tier II ("Regulation A+") by adding the Uniform Notice...
Filing of Regulation A - Tier 2 form to the list of uniform forms accepted. This form is used for making the required notice filings for this type of federal covered securities. A related change to §114.4 has been concurrently proposed for adoption.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed amendment is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendment is in effect the public benefit expected as a result of adoption of the proposed amendment will be to provide for more efficiency for Regulation A+ filings by permitting Regulation A+ filers to use a different form for these filings. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendment will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local government.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendment is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule’s applicability; and it does not positively or negatively affect the state’s economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the Texas Register. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Article 581-5.

§133.33. Uniform Forms Accepted, Required, or Recommended.

(a) Assuming the appropriate exhibits and supplements are filed, the State Securities Board will accept for filing the following "Uniform Forms" in lieu of the requisite Texas form, if any.

1. (11) (No change.)

7. (12) Regulation A - Tier 2 form.

(b) - (c) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

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TITLE 10. COMMUNITY DEVELOPMENT
PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") proposes to amend 10 Texas Administrative Code, Chapter 80, §§80.2, 80.21, 80.41, 80.73, and add new 80.95, relating to the regulation of the manufactured housing program. The rules are revised to comply with House Bill 2315 (86th Legislature, 2019 regular session) that amends the Manufactured Housing Standards Act and for clarification purposes.

10 Texas Administrative Code §80.2(26) was added to define a serious violation. Section 1201.605(c)(1) of the Texas Occupations Code allows the Department to use the seriousness of a violation to help determine the proper penalty amount. However, the term "seriousness of a violation" is vague. A definition will assist to determine how and when the department should consider a violation as serious when determining the penalty.

10 Texas Administrative Code §80.21(h) was amended to remove the rental community exception for drainage site preparation. The installer is responsible for proper site drainage where a new manufactured home is installed, pursuant to 24 CFR §3285.203. The Code of Federal Regulation does not allow an exception for rental communities. The Code of Federal Regulation does not apply to the installation of used manufactured homes.

10 Texas Administrative Code §80.41(g)(1)(B), (2)(D), (3)(D) were amended to clarify the exemption for retailer’s licenses. The Department wanted to clarify that this exemption only applies to the sale of up to three manufactured homes within a twelve (12) month period to ensure it was consistent with the statutory authority found in §1201.1025 of the Texas Occupations Code. Clarification was also needed to demonstrate the homes may not be sold until the letter of exemption is granted.

10 Texas Administrative Code §80.73(b)(3) was amended to clarify the timeline for conducting a proper warranty inspection. Pursuant to §1201.355 of the Texas Occupations Code, if a proper warranty service is not provided, and an inspection is requested the Department has thirty (30) days to conduct an inspection from the date the request is made. When a complaint is received it may not be a valid complaint within the Department’s jurisdiction. It must be determined that a proper
warranty service was not provided within the warranty deadline. The thirty (30) day deadline to conduct an inspection should begin after the complaint is validated, to ensure Department's resources are not wasted on inspections that are not within the Department's jurisdiction.

New 10 Texas Administrative Code §80.95 was added to implement House Bill 2315 introduced during the 86th Texas Legislative Session. House Bill 2315, adopted in the 86th Texas Legislative Session, required the Department to adopt rules for the application for an automatic issuance of a Statement of Ownership for a federal governmental agency providing temporary housing in response to a natural disaster or other declared emergency. The addition of §1201.2071 of the Texas Occupations Code, Exemption for Certain Emergency Housing, will take effect September 1, 2019.

Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that the proposed rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections. There will be no effect on small businesses, micro-businesses, or rural communities because of the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the proposed rules.

Mr. Garcia also has determined that for each year of the first five years that the proposed rules benefit the public by providing clarification of procedures in order to comply with the Manufactured Housing Standards Act.

Mr. Garcia has also determined that for each year of the first five years the proposed rules are in effect there should be no adverse effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

Mr. Garcia has also determined that for each of the first five years the proposed rules are in effect, the proposed rules would not have a large government growth impact. The proposed rules do not create or eliminate a government program. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed rule does not require the increase or decrease in future legislative appropriations to the agency. The proposed rules do not require an increase or decrease in fees paid to the agency. The proposed rules do not create a new regulation. The proposed rules do not expand, limit, or repeal an existing regulation. The proposed rules do not increase or decrease the number of individuals subject to the rules applicability. The proposed rules do not positively or adversely affect this state's economy. This statement is made pursuant to the Administrative Procedures Act, Texas Government Code, §2001.0221.

If requested, the Department will conduct a public hearing on this rulemaking, pursuant to the Administrative Procedure Act, Texas Government Code §2001.029. The request for a public hearing must be received by the Department within 15 days after publication.

Comments may be submitted to Mr. Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P.O. Box 12489, Austin, Texas 78711-2489 or by e-mail at mproposedrulecomments@tdhca.state.tx.us. The deadline for comments is no later than 30 days from the date that these proposed rules are published in the Texas Register.

SUBCHAPTER A. CODES, STANDARDS, TERMS, FEES AND ADMINISTRATION

10 TAC §80.2

The amendments are proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.2. Definitions.

Terms used herein that are defined in the Code and the Standards Act have the meanings ascribed to them therein. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (25) (No change.)

(26) Seriousness of Violation--Pursuant to Section 1201.605(c)(1) of the Texas Occupations Code, the Department shall assess a higher administrative penalty if the consumer harm or burden is great as a result of the violation.

(27) [26] Stabilization systems--A combination of the anchoring and support system. It includes, but is not limited to the following components:

(A) - (K) (No change.)

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

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Joe A. Garcia
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-2206

SUBCHAPTER B. INSTALLATION STANDARDS AND DEVICE APPROVALS

10 TAC §80.21

The amended section is proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department, and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed rule.
§80.21. Requirements for the Installation of Manufactured Homes.

(a) - (g) (No change.)

(h) Drainage: The Installer is responsible for proper site drainage where a new manufactured home is to be installed unless the home is installed in a rental community. The consumer is responsible for proper site drainage where a used manufactured home is to be installed unless the home is installed in a rental community. Drainage prevents water build-up under the home. Water build-up may cause shifting or settling of the foundation, dampness in the home, damage to siding and bottom board, buckling of walls and floors, delamination of floor decking and problems with the operation of windows and doors.

(i) - (j) (No change.)

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

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SUBCHAPTER D. LICENSING

10 TAC §80.41

The amended section is proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.41. License Requirements.

(a) - (f) (No change.)

(g) Exemption for Retailer's License Requirement.

1. Application for Exemption of Retailer's License Requirement.

(A) A person requesting exemption from the Retailer's licensing requirement of §1201.101(b) of the Occupations Code, shall submit the required application outlining the circumstances under which they are requesting exemption from licensure.

(B) Applications should identify the HUD label or serial number(s) of up to three (3) homes being sold under the exemption;

(C) Applications will be processed within seven (7) business days after receipt of all required information.

2. The circumstances under which this exemption is granted are:

(A) One-time sale of up to three (3) manufactured homes in a 12-month period as personal property;

(B) Non-profit entity transferring ownership of up to three (3) manufactured homes in a 12-month period; and/or

(C) No other manufactured homes have been purchased and resold in the previous twelve (12) months, even with a previous exemption; and/or

(D) Other circumstances deemed appropriate by the Executive Director.

3. Letter of Exemption.

(A) Once granted, a Letter of Exemption from licensure will be issued by the Executive Director to the applicant.

(B) Letter of Exemption is valid only for the manufactured home(s) specified.

(C) Letter of Exemption is valid only for twelve (12) months.

(D) The homes may not be sold until the Letter of Exemption is granted.

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

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SUBCHAPTER E. ENFORCEMENT

10 TAC §80.73

The amended section is proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.73. Procedures for Handling Consumer Complaints.

(a) (No change.)

(b) The Department shall make a consumer complaint home inspection upon request.

1 - 2 (No change.)

3. All complaints transferred to the field shall be inspected within 30 calendar days from the date the verified complaint was received. A complaint is deemed verified once it is established that the Department has jurisdiction over the matter. [The Department will perform the inspection within thirty (30) calendar days from the date an inspection is requested.]

(A) The consumer, manufacturer, retailer, and installer, as applicable, shall be notified of the scheduled inspection.
The person conducting the inspection shall inspect all matters (relating to the home and/or the installation of the home) set forth in the complaint and any other items raised at the inspection.

(c) The person conducting the inspection will issue a report of inspection, completed to reflect the findings of the inspection.

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

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Texas Department of Housing and Community Affairs

For further information, please call: (512) 475-2206

SUBCHAPTER G. STATEMENTS OF OWNERSHIP

10 TAC §80.95

The new section is proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department, and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.95. Recording Ownership for Emergency Housing

(a) A federal government agency that purchases a manufactured home to provide temporary housing in response to a natural disaster or other declared emergency may apply for a statement of ownership using the Statement of Ownership Application for Federal Government Agency.

(b) The Department may also accept a Certificate to Obtain Title signed by the federal government agency or their authorized representative in lieu of the Statement of Ownership Application for Federal Governmental Agency.

(c) The Department shall apply priority and special handling when an application for emergency housing in conjunction with a natural disaster or declared emergency, is received.

(d) The Department may waive or refund any fees for emergency housing affiliated with a governor's executive order or proclamation that declares a state of disaster under Chapter 418 of the Government Code in the affected area.

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

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 160. MEDICAL PHYSICISTS

22 TAC §160.31

The Texas Medical Board (Board) proposes new rule §160.31 concerning Exemption from Licensure for Certain Military Spouses for medical physicists.

The proposed new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses.

New rule §160.31, Exemption from Licensure for Certain Military Spouses regarding medical physicists, allows qualified military spouses to practice medical physics without obtaining a medical physicist license during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by the Board after verifying that the military spouse holds an active license in good standing in another state with substantially equivalent requirements for licensure as Texas.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the new rule as proposed is in effect, the public benefit anticipated as a result of enforcing this proposed new rule will be to increase patient accessibility to properly licensed, trained, and educated providers.

Mr. Freshour has also determined that for the first five-year period this new rule as proposed is in effect there will be no fiscal impact or effect on government growth as a result of enforcing the new rule as proposed.

Mr. Freshour has also determined that for the first five-year period the new rule is in effect there will be no probable economic cost to individuals required to comply with this rule as proposed.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed new rule and determined that for each year of the first five years the proposed new rule will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed new rule and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years this new rule as proposed is in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the rule;
(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the rule;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed new rule will be in effect, there will be no effect on local economy and no effect on local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed new rule. For each year of the first five years the proposed new rule will be in effect, Mr. Freshour has determined the following:

(1) The proposed rule does not create or eliminate a government program.

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.

(4) The proposed rule does not require an increase or decrease in fees paid to the agency.

(5) The proposed rule creates new regulations.

(6) The proposed rule does not repeal existing regulations as described above. The proposed rule does not expand or limit an existing regulation.

(7) The proposed rule increases the number of individuals subject to the rule’s applicability.

(8) The proposed rule does not positively or adversely affect this state’s economy.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The new rule is proposed under the authority of Texas Occupations Code §153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act, and to adopt rules necessary to regulate medical physicists. The new rule is also proposed under Texas Occupations Code §55.0041, which mandates the Board to adopt rules to implement that section.

No other statutes, articles or codes are affected by this proposal.


(a) The executive director of the Texas Medical Board must authorize a qualified military spouse to practice medical physics in Texas without obtaining a license in accordance with §55.0041(a), Texas Occupations Code. This authorization to practice is valid during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas, but is not to exceed three years.

(b) In order to receive authorization to practice the military spouse must:

(1) hold an active medical physicist license in another state, territory, Canadian province, or country that:

(A) has licensing requirements that are determined by the advisory committee to be substantially equivalent to the requirements for certification in Texas; and

(B) is not subject to any restriction, disciplinary order, probation, or investigation;

(2) notify the advisory committee of the military spouse's intent to practice in Texas on a form prescribed by the advisory committee; and

(3) submit proof of the military spouse's residency in this state, a copy of the spouse's medical identification card, and proof of the military member’s status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions).

(c) While authorized to practice medical physics in Texas, the military spouse shall comply with all other laws and regulations applicable to the practice of medical physics in Texas.

(d) Once the advisory committee receives the form containing notice of a military spouse’s intent to practice in Texas, the advisory committee will verify whether the military spouse's medical physicist license in another state, territory, Canadian province, or country is active and in good standing. Additionally, the advisory committee will determine whether the licensing requirements in that jurisdiction are substantially equivalent to the requirements for licensure in Texas.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

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Scott Freshour
General Counsel
Texas Medical Board
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For further information, please call: (512) 305-7016

CHAPTER 163. LICENSURE

22 TAC §163.3

The Texas Medical Board (Board) proposes new rule §163.3, concerning Exemption from Licensure for Certain Military Spouses, for physicians.

The proposed new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses who are physicians.

New rule §163.3. Exemption from Licensure for Certain Military Spouses regarding Physicians, allows qualified military spouses to practice medicine without obtaining a license during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by
the Board after verifying that the military spouse holds an active license in good standing in another state with substantially equivalent requirements for licensure as Texas.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the new rule as proposed is in effect, the public benefit anticipated as a result of enforcing these proposed new rules will be to increase patient accessibility to properly licensed, trained, and educated providers.

Mr. Freshour has also determined that for the first five-year period these new rule as proposed is in effect there will be no fiscal impact or effect on government growth as a result of enforcing the new rules as proposed.

Mr. Freshour has also determined that for the first five-year period the new rule is in effect there will be no probable economic cost to individuals required to comply with these rules as proposed.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed new rule and determined that for each year of the first five years the proposed new rule will be in effect:

(1) there will be no effect on small businesses, micro businesses, or rural communities; and

(2) the agency has considered alternative methods of achieving the purpose of the proposed new rules and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these new rules as proposed are in effect:

(1) the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule is none;

(2) the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule is none;

(3) the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule is none; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed new rule will be in effect, there will be no effect on local economy and no effect on local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed new rule. For each year of the first five years the proposed new rules will be in effect, Mr. Freshour has determined the following:

(1) The proposed rule does not create or eliminate a government program.

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.

(4) The proposed rule does not require an increase or decrease in fees paid to the agency.

(5) The proposed rule creates new regulations.

(6) The proposed rule does not repeal existing regulations as described above. The proposed rules do not expand or limit an existing regulation.

(7) The proposed rule does increase the number of individuals subject to the rules’ applicability.

(8) The proposed rule does not positively or adversely affect this state’s economy.

Comments on the proposals may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The new rule is proposed under the authority of Texas Occupations Code §153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act, and to adopt rules necessary to regulate physicians. The new rule is also proposed under Texas Occupations Code §55.0041, which mandates the Board to adopt rules to implement that section. No other statutes, articles or codes are affected by this proposal.

§163.3. Exemption from Licensure for Certain Military Spouses.

(a) The executive director must authorize a qualified military spouse to engage in the practice of medicine in Texas without obtaining a license in accordance with §55.0041(a), Texas Occupations Code. This authorization to practice is valid during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas, but not to exceed three years.

(b) In order to receive authorization to practice the military spouse must:

(1) hold an active medical license in another state, territory, Canadian province, or country that:

(A) has licensing requirements that are determined by the board to be substantially equivalent to the requirements for licensure in Texas; and

(B) is not subject to any restriction, disciplinary order, probation, or investigation; and

(2) submit proof of the military spouse’s residency in this state, a copy of the spouse’s military identification card, and proof of the military member’s status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions); and

(3) notify the board of the military spouse’s intent to practice in Texas on a form prescribed by the board.

(c) While authorized to practice medicine in Texas, the military spouse shall comply with all other laws and regulations applicable to the practice of medicine in Texas.

(d) Once the board receives the form containing notice of a military spouse’s intent to practice in Texas, the board will verify whether the military spouse’s license in another state, territory, Canadian province, or country is active and in good standing. Additionally, the board will determine whether the licensing requirements in that ju-

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risdiction are substantially equivalent to the requirements for licensure in Texas.

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

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Scott Freshour
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Texas Medical Board
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CHAPTER 165. MEDICAL RECORDS

22 TAC §165.1

The Texas Medical Board (Board) proposes an amendment to 22 TAC §165.1, relating to Medical Records.

The amendment to §165.1 adds a requirement that physicians must retain forensic medical examination records of a sexual assault victim for 20 years from the date of examination. This change is in accordance with and pursuant to the passage of HB531 (86th Reg. Session) which amended Section 153.003 of the Texas Occupations Code.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing this proposal will be to have rules that comply with statutory mandates.

Mr. Freshour has determined that, for the first five-year period this rule is in effect, there will be no effect to individuals required to comply with this rule as proposed. There will be no effect on small businesses, micro businesses, or rural communities.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments, and has determined that for each year of the first five years the proposed amendment will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule amendment and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that the agency has determined that, for each year of the first five years this rule amendment, as proposed, is in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the rule;

(2) there are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule;

(3) there are no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed amendment will be in effect, Mr. Freshour has determined the following:

(1) The proposed rule does not create or eliminate a government program.

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.

(4) The proposed rule does not require an increase or decrease in fees paid to the agency.

(5) The proposed rule does not create a new regulation.

(6) The proposed rule expands, but does not limit or repeal an existing regulation as described above.

(7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect this state's economy.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmbr.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, 153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by this proposal.

§165.1. Medical Records.

(a) Contents of Medical Record. Regardless of the medium utilized, each licensed physician of the board shall maintain an adequate medical record for each patient that is complete, contemporaneous and legible. For purposes of this section, an "adequate medical record" should meet the following standards:

(1) The documentation of each patient encounter should include:

   (A) reason for the encounter and relevant history, physical examination findings and prior diagnostic test results;

   (B) an assessment, clinical impression, or diagnosis;

   (C) plan for care (including discharge plan if appropriate); and

   (D) the date and legible identity of the observer.

(2) Past and present diagnoses should be accessible to the treating and/or consulting physician.

(3) The rationale for and results of diagnostic and other ancillary services should be included in the medical record.
(4) The patient's progress, including response to treatment, change in diagnosis, and patient's non-compliance should be documented.

(5) Relevant risk factors should be identified.

(6) The written plan for care should include when appropriate:

(A) treatments and medications (prescriptions and samples) specifying amount, frequency, number of refills, and dosage;
(B) any referrals and consultations;
(C) patient/family education; and,
(D) specific instructions for follow up.

(7) Include any written consents for treatment or surgery requested from the patient/family by the physician.

(8) Include a summary or documentation memorializing communications transmitted or received by the physician about which a medical decision is made regarding the patient.

(9) Billing codes, including CPT and ICD-9-CM codes, reported on health insurance claim forms or billing statements should be supported by the documentation in the medical record.

(10) All non-biographical populated fields, contained in a patient's electronic medical record, must contain accurate data and information pertaining to the patient based on actual findings, assessments, evaluations, diagnostics or assessments as documented by the physician.

(11) Any amendment, supplementation, change, or correction in a medical record not made contemporaneously with the act or observation shall be noted by indicating the time and date of the amendment, supplementation, change, or correction, and clearly indicating that there has been an amendment, supplementation, change, or correction.

(12) Salient records received from another physician or health care provider involved in the care or treatment of the patient shall be maintained as part of the patient's medical records.

(13) The board acknowledges that the nature and amount of physician work and documentation varies by type of services, place of service and the patient's status. Paragraphs (1) - (12) of this subsection may be modified to account for these variable circumstances in providing medical care.

(b) Maintenance of Medical Records.

(1) A licensed physician shall maintain adequate medical records of a patient for a minimum of seven years from the anniversary date of the date of last treatment by the physician.

(2) If a patient was younger than 18 years of age when last treated by the physician, the medical records of the patient shall be maintained by the physician until the patient reaches age 21 or for seven years from the date of last treatment, whichever is longer.

(3) A licensed physician who conducts a forensic medical examination of a sexual assault victim shall maintain the medical records for 20 years from the date of the examination.

(4) A physician may destroy medical records that relate to any civil, criminal or administrative proceeding only if the physician knows the proceeding has been finally resolved.

(5) Physicians shall retain medical records for such longer length of time than that imposed herein when mandated by other federal or state statute or regulation.

(6) Physicians may transfer ownership of records to another licensed physician or group of physicians only if the physician provides notice consistent with §165.5 of this chapter (relating to Transfer and Disposal of Medical Records) and the physician who assumes ownership of the records maintains the records consistent with this chapter.

(7) Medical records may be owned by a physician's employer, to include group practices, professional associations, and non-profit health organizations, provided records are maintained by these entities consistent with this chapter.

(8) Destruction of medical records shall be done in a manner that ensures continued confidentiality.

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

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Scott Freshour
General Counsel
Texas Medical Board
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For further information, please call: (512) 305-7016

CHAPTER 172. TEMPORARY AND LIMITED LICENSES

SUBCHAPTER D. DISASTER EMERGENCY RULE

22 TAC §172.21

The Texas Medical Board (Board) proposes an amendment to Subchapter D, Disaster Emergency Rule §172.21.

Section 172.21, relating to Other Health Care Providers Practice and Limited License for Disasters and Emergencies, is amended to include Advance Practice Nurses (APRN) as being exempt from the requirement for a written Prescriptive Authority Agreement during a disaster, as the APRNs were inadvertently omitted from the rule when it was initially adopted. The inclusion of APRNs is consistent with the practice in previous disasters.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the subsection as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules that are consistent with other rules and statutes pertaining to disaster or emergency as defined under the rule.

Mr. Freshour has determined that for the first five-year period this rule is in effect, there will be no effect to individuals required to comply with these rules as proposed. There will be no effect on small businesses, micro businesses, or rural communities.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments, and has determined that for each year of the first five years the proposed amendments will be in effect, there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule amendments and found none.
Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these rule amendments, as proposed, are in effect:

(1) there is no additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the rule;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed amendment will be in effect, Mr. Freshour has determined the following:

(1) The proposed rule does not create or eliminate a government program.

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.

(4) The proposed rule does not require an increase or decrease in fees paid to the agency.

(5) The proposed rule does not create new regulations.

(6) The proposed rule expands an existing regulation as described above. It does not limit or repeal an existing regulation.

(7) The proposed rule increases the number of individuals subject to the rule's applicability, but does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect this state's economy.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmbs.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, 153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act.

No other statutes, articles or codes are affected by this proposal.


(a) For out of state licensees, permit holders, and certificate holders, other than physicians, who practice in health care areas subject to regulation by the Board, the process for obtaining authority to practice in Texas during a disaster or emergency is set out in §172.20(b)(1) and (2), relating to Physician Practice and Limited License for Disasters and Emergencies, including all verification and reporting requirements.

(b) In addition, the following is applicable to these health care providers:

(1) the health care provider must practice under the supervision and delegation of a physician and the supervising physician must be licensed and practicing in Texas prior to the date of the disaster or emergency declaration and without restrictions on ability to supervise or delegate;

(2) except as specified in (c) below, the provisions related to supervision and delegation under §157.001, Texas Occupations Code, apply to both the health care provider and supervising physician; and

(3) the health care provider must also comply with all provisions of the applicable Texas Occupations Code for that occupation.

(c) Physician assistants, advanced practice registered nurses and Texas supervising physicians practicing under this section are not required to maintain onsite documentation describing supervisory arrangements and instructions for prescriptive authority as otherwise required by Chapter 157, Texas Occupations Code.

(d) The Board shall have jurisdiction over licensees, permit holders, and certificate holders practicing under this subchapter for all purposes set forth in or related to the Texas Occupations Code, and all other applicable state and federal laws, and such jurisdiction shall continue in effect even after the licensee, permit holder, or certificate holder have stopped practicing under this section related to providing medical services in Texas during the disaster.

(e) The authority to practice issued to a licensee, permit holder, or certificate holder under this subchapter shall be valid for no more than thirty (30) days from the date the licensee, permit holder, or certificate holder is authorized to practice or until the emergency or disaster declaration has been withdrawn or ended, whichever is longer.

(f) A licensee, permit holder, and certificate holder holding limited emergency authority under this subchapter shall not receive any compensation outside of their usual compensation for the provision of medical services during a disaster or emergency.

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

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Scott Freshour
General Counsel
Texas Medical Board

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For further information, please call: (512) 350-7016

CHAPTER 183. ACUPUNCTURE
22 TAC §183.27

The Texas Medical Board (Board) proposes new rule 183.27, concerning Exemption from Licensure for Certain Military Spouses, for acupuncturists.

The proposed new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses.
New rule §183.27, Exemption from Licensure for Certain Military Spouses regarding acupuncturists, allows qualified military spouses to practice acupuncture without obtaining a license during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by the Board after verifying that the military spouse holds an active license in good standing in another state with substantially equivalent requirements for licensure as Texas.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the new rule as proposed is in effect, the public benefit anticipated as a result of enforcing the proposed new rule will be to increase patient accessibility to properly licensed, trained, and educated providers.

Mr. Freshour has also determined that for the first five-year period this new rule as proposed is in effect there will be no fiscal impact or effect on government growth as a result of enforcing the new rule as proposed.

Mr. Freshour has also determined that for the first five-year period the new rule is in effect there will be no probable economic cost to individuals required to comply with this rule as proposed.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed new rule and determined that for each year of the first five years the proposed new rule will be in effect:

(1) there will be no effect on small businesses, micro businesses, or rural communities; and

(2) the agency has considered alternative methods of achieving the purpose of the proposed new rule and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years this new rule as proposed is in effect:

(1) the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule is none;

(2) the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule is none;

(3) the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule is none; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed new rule will be in effect, there will be no effect on local economy and no effect on local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed new rule. For each year of the first five years the proposed new rule will be in effect, Mr. Freshour has determined the following:

(1) The proposed rule does not create or eliminate a government program.

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.

(4) The proposed rule does not require an increase or decrease in fees paid to the agency.

(5) The proposed rule creates new regulations.

(6) The proposed rule does not repeal existing regulations as described above. The proposed rule does not expand or limit an existing regulation.

(7) The proposed rule does increase the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect this state's economy.

Comments on the proposals may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The new rule is proposed under the authority of Texas Occupations Code §153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act and to adopt rules necessary to regulate acupuncturists. The new rule is also proposed under Texas Occupations Code §55.0041, which mandates the Board to adopt rules to implement that section.

No other statutes, articles or codes are affected by this proposal.

§183.27. Exemption from Licensure for Certain Military Spouses.

(a) The executive director of the Texas Medical Board must authorize a qualified military spouse to engage in the practice of acupuncture in Texas without obtaining a license in accordance with §55.0041(a), Texas Occupations Code. This authorization to practice is valid during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas, but not to exceed three years.

(b) In order to receive authorization to practice the military spouse must:

(1) hold an active acupuncture license in another state, territory, Canadian province, or country that:

(A) has licensing requirements that are determined by the board to be substantially equivalent to the requirements for licensure in Texas; and

(B) is subject to no restriction, disciplinary order, probation, or investigation; and

(2) notify the board of the military spouse's intent to practice in Texas on a form prescribed by the board; and

(3) submit proof of the military spouse's residency in this state, a copy of the spouse's military identification card, and proof of the military member's status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions).
(c) While authorized to practice acupuncture in Texas, the military spouse shall comply with all other laws and regulations applicable to the practice of acupuncture in Texas.

(d) Once the board receives the form containing notice of a military spouse’s intent to practice in Texas, the board will verify whether the military spouse’s license in another state, territory, Canadian province, or country is active and in good standing. Additionally, the board will determine whether the licensing requirements in that jurisdiction are substantially equivalent to the requirements for licensure in Texas.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

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Scott Freshour
General Counsel
Texas Medical Board
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CHAPTER 185. PHYSICIAN ASSISTANTS

22 TAC §185.33

The Texas Medical Board (Board) proposes new rule §185.33, concerning Exemption from Licensure for Certain Military Spouses, for physician assistants.

The proposed new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses.

New rule §185.33, Exemption from Licensure for Certain Military Spouses, allows qualified military spouses to practice as a physician assistant without obtaining a license during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by the Board after verifying that the military spouse holds an active license in good standing in another state with substantially equivalent requirements for licensure as Texas.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the new rule as proposed is in effect, the public benefit anticipated as a result of enforcing the proposed new rule will be to increase patient accessibility to properly licensed, trained, and educated providers.

Mr. Freshour has also determined that for the first five-year period the new rule as proposed is in effect there will be no fiscal impact or effect on government growth as a result of enforcing the new rule.

Mr. Freshour has also determined that for the first five-year period the new rule is in effect there will be no probable economic cost to individuals required to comply with this rule as proposed.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed new rule and determined that for each year of the first five years the proposed new rule will be in effect:

(1) there will be no effect on small businesses, micro businesses, or rural communities; and

(2) the agency has considered alternative methods of achieving the purpose of the proposed new rule and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years the new rule as proposed is in effect:

(1) the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule is none;

(2) the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule is none;

(3) the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule is none; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule. Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed new rule will be in effect, there will be no effect on local economy and no effect on local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed new rule. For each year of the first five years the proposed new rule will be in effect, Mr. Freshour has determined the following:

(1) The proposed rule does not create or eliminate a government program.

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.

(4) The proposed rule does not require an increase or decrease in fees paid to the agency.

(5) The proposed rule creates new regulations.

(6) The proposed rule does not repeal existing regulations as described above. The proposed rule does not expand or limit an existing regulation.

(7) The proposed rule does increase the number of individuals subject to the rule’s applicability.

(8) The proposed rule does not positively or adversely affect this state’s economy.

Comments on the proposals may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmbs.state.tx.us. A public hearing will be held at a later date.

The new rule is proposed under the authority of Texas Occupations Code §153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act and to adopt rules necessary to regulate physician assistants. The new rule is also proposed under Texas Occupa-
tions Code §55.0041, which mandates the Board to adopt rules to implement that section.

No other statutes, articles or codes are affected by this proposal.

§185.33. Exemption from Licensure for Certain Military Spouses.

(a) The executive director of the Texas Medical Board must authorize a qualified military spouse to practice as a Physician Assistant in Texas without obtaining a license in accordance with §55.0041(a), Texas Occupations Code. This authorization to practice is valid during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas, but not to exceed three years.

(b) In order to receive authorization to practice the military spouse must:

(1) hold an active physician assistant license in another state, territory, Canadian province, or country that:

(A) has licensing requirements that are determined by the board to be substantially equivalent to the requirements for licensure in Texas; and

(B) is not subject to any restriction, disciplinary order, probation, or investigation; and

(2) notify the board of the military spouse’s intent to practice in Texas on a form prescribed by the board; and

(3) submit proof of the military spouse’s residency in this state, a copy of the spouse’s military identification card, and proof of the military member’s status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions).

(c) While authorized to practice as a physician assistant in Texas, the military spouse shall comply with all other laws and regulations applicable to the practice as a physician assistant in Texas.

(d) Once the board receives the form containing notice of a military spouse’s intent to practice in Texas, the board will verify whether the military spouse’s license in another state, territory, Canadian province, or country is active and in good standing. Additionally, the board will determine whether the licensing requirements in that jurisdiction are substantially equivalent to the requirements for licensure in Texas.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

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Scott Freshour
General Counsel
Texas Medical Board
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For further information, please call: (512) 305-7016

CHAPTER 186. RESPIRATORY CARE PRACTITIONERS

22 TAC §186.30
The Texas Medical Board (Board) proposes new rule §186.30 concerning Exemption from Licensure for Certain Military Spouses for respiratory care practitioners.

The proposed new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses.

New rule §186.30, Exemption from Licensure for Certain Military Spouses regarding respiratory care practitioners, allows qualified military spouses to practice as a respiratory care practitioner without obtaining a license during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by the Board after verifying that the military spouse holds an active license in good standing in another state with substantially equivalent requirements for licensure as Texas.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the new rules as proposed are in effect, the public benefit anticipated as a result of enforcing these proposed new rules will be to increase patient accessibility to properly licensed, trained, and educated providers.

Mr. Freshour has also determined that for the first five-year period these new rules as proposed are in effect there will be no fiscal impact or effect on government growth as a result of enforcing the new rules as proposed.

Mr. Freshour has also determined that for the first five-year period the new rules are in effect there will be no probable economic cost to individuals required to comply with these rules as proposed.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed new rules and determined that for each year of the first five years the proposed new rules will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed new rules and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these new rules as proposed are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the rule;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the rule;

(3) there are no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed new rule will be in effect, there will be no effect on local economy and no effect on local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed new rule. For each year of the first five years the proposed
new rules will be in effect, Mr. Freshour has determined the following:

(1) The proposed rule does not create or eliminate a government program.

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.

(4) The proposed rule does not require an increase or decrease in fees paid to the agency.

(5) The proposed rule creates new regulations.

(6) The proposed rule does not repeal existing regulations as described above. The proposed rules do not expand or limit an existing regulation.

(7) The proposed rule does increase the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect this state's economy.

Comments on the proposals may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The new rule is proposed under the authority of Texas Occupations Code §153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act and adopt rules necessary to regulate respiratory care practitioners. The new rule is also proposed under Texas Occupations Code §55.0041, which mandates the Board to adopt rules to implement that section. No other statutes, articles or codes are affected by this proposal.

§186.30  Exemption from Licensure for Certain Military Spouses.

(a) The executive director of the Texas Medical Board must authorize a qualified military spouse to practice as a respiratory care practitioner in Texas without obtaining a certificate in accordance with §55.0041(a), Texas Occupations Code. This authorization to practice is valid during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas, but is not to exceed three years.

(b) In order to receive authorization to practice the military spouse must:

(1) hold an active respiratory care practitioner certificate or permit in another state, territory, Canadian province, or country that:

(A) has licensing or certification requirements that are determined by the advisory board to be substantially equivalent to the requirements for certification in Texas; and

(B) is not subject to any restriction, disciplinary order, probation, or investigation;

(2) notify the advisory board of the military spouse's intent to practice in Texas on a form prescribed by the advisory board; and

(3) submit proof of the military spouse's residency in this state, a copy of the spouse's military identification card, and proof of the military member's status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions).

(c) While authorized to practice respiratory care in Texas, the military spouse shall comply with all other laws and regulations applicable to the practice of respiratory care in Texas.

(d) Once the advisory board receives the form containing notice of a military spouse's intent to practice in Texas, the advisory board will verify whether the military spouse's certificate or permit in another state, territory, Canadian province, or country is active and in good standing. Additionally, the advisory board will determine whether the licensing requirements in that jurisdiction are substantially equivalent to the requirements for licensure in Texas.

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

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Scott Freshour
General Counsel
Texas Medical Board

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For further information, please call: (512) 305-7016

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CHAPTER 188.  PERFUSIONISTS

22 TAC §188.30

The Texas Medical Board (Board) proposes new rule §188.30 concerning Exemption from Licensure for Certain Military Spouses for perfusionists.

The proposed new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses.

New rule §188.30, Exemption from Licensure for Certain Military Spouses regarding perfusionists, allows qualified military spouses to practice as a perfusionist without obtaining a license during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by the Board after verifying that the military spouse holds an active license in good standing in another state with substantially equivalent requirements for licensure as Texas.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the new rules as proposed are in effect, the public benefit anticipated as a result of enacting these proposed new rules will be to increase patient accessibility to properly licensed, trained, and educated providers.

Mr. Freshour has also determined that for the first five-year period these new rules as proposed are in effect there will be no fiscal impact or effect on government growth as a result of enforcing the new rules as proposed.

Mr. Freshour has also determined that for the first five-year period the new rules are in effect there will be no probable economic cost to individuals required to comply with these rules as proposed.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed new rules and determined that for each year of the first five years the proposed new rules will be in effect there will be no
effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed new rule and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these new rules as proposed are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the rule;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the rule;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed new rule will be in effect, there will be no effect on local economy and no effect on local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed new rule. For each year of the first five years the proposed new rules will be in effect, Mr. Freshour has determined the following:

(1) The proposed rule does not create or eliminate a government program.

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.

(4) The proposed rule does not require an increase or decrease in fees paid to the agency.

(5) The proposed rule creates new regulations.

(6) The proposed rule does not repeal existing regulations as described above. The proposed rules do not expand or limit an existing regulation.

(7) The proposed rule does increase the number of individuals subject to the rules' applicability.

(8) The proposed rule does not positively or adversely affect this state's economy.

Comments on the proposals may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The new rule is proposed under the authority of Texas Occupations Code §153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act and to adopt rules necessary to regulate perfusionists. The new rule is also proposed under Texas Occupations Code §55.0041, which mandates the Board to adopt rules to implement that section.

No other statutes, articles or codes are affected by this proposal.

§188.30. Exemption from Licensure for Certain Military Spouses.

(a) The executive director of the Texas Medical Board must authorize a qualified military spouse to practice perfusion in Texas without obtaining a license in accordance with §55.0041(a), Texas Occupations Code. This authorization to practice is valid during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas, but is not to exceed three years.

(b) In order to receive authorization to practice the military spouse must:

1. hold an active perfusion certificate or permit in another state, territory, Canadian province, or country that:

   A. has licensing requirements that are determined by the advisory committee to be substantially equivalent to the requirements for certification in Texas; and

   B. is subject to any restriction, disciplinary order, probation, or investigation;

2. notify the advisory committee of the military spouse's intent to practice in Texas on a form prescribed by the advisory committee; and

3. submit proof of the military spouse's residency in this state, a copy of the spouse's military identification card, and proof of the military member's status as an active duty military service member as defined by § 437.001(1), Texas Government Code (relating to Definitions).

(c) While authorized to practice perfusion in Texas, the military spouse shall comply with all other laws and regulations applicable to the practice of perfusion in Texas.

(d) Once the advisory committee receives the form containing notice of a military spouse's intent to practice in Texas, the advisory committee will verify whether the military spouse's certificate or permit in another state, territory, Canadian province, or country is active and in good standing. Additionally, the advisory committee will determine whether the licensing requirements in that jurisdiction are substantially equivalent to the requirements for licensure in Texas.

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

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Scott Freshour
General Counsel
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For further information, please call: (512) 305-7016

CHAPTER 194. MEDICAL RADIOLOGIC
TECHNOLOGY

44 TexReg 4824  September 6, 2019  Texas Register
The Texas Medical Board (Board) proposes amendments to Chapter 194, Medical Radiologic Technology, 22 TAC §§194.2, 194.6, 194.7, 194.10, and 194.21.

Amendments are proposed to Chapter 194 setting forth certification process and requirements related to a new radiologist assistant certificate type, in accordance with House Bill 1504 (86th Regular Session); repealing language mandating the denial of an application for renewal of a certificate or NCT registration upon notice of a Texas Guaranteed Student Loan Corporation guaranteed student loan, in accordance with Senate Bill 37 (86th Regular Session); deleting references to the NCT "general" registry, a distinction no longer required after the passage of SB 674 (85th Regular Session); and making minor wording and reformatting changes. Specifically:

Section 194.2, relating to Definitions, is amended with new definitions for "Certification Board for Radiology Practitioner Assistants", "radiologist", and "radiologist assistant."

Section 194.6, relating to Procedural Rules and Minimum Eligibility Requirements for Applicants for a Certificate or Placement on the Board's Non-Certified Technician General Registry, contains proposed new language establishing eligibility requirements that must be met in order for an applicant to obtain a temporary or regular radiologist assistant certificate, pursuant to HB 1504. Other proposed amendments delete references to the NCT "general" registry, a distinction no longer required after the passage of SB 674 (85th Regular Session), which eliminated the NCT secondary registry with the Texas Medical Board. Finally, proposed amendments represent changes necessitated by the new language to maintain consistency and clarity throughout the section.

Section 194.7, relating to Biennial Renewal of Certificate or Placement on the Board's General Registry for Non-Certified Technicians Generally, contains proposed new language establishing continuing education requirements that must be met in order for a radiologist assistant certificate holder to renew a certificate, in accordance with HB 1504.

Proposed amendments are further added to clarify that certificate holders and NCTs are required to "complete activities" meeting the RCEEM or RCEEM* designation, as opposed to "attendance and participation in formal activities", reflecting that web-based courses are formats that comply with the continuing education requirements.

Language mandating the denial of an application for renewal of a certificate or NCT registration upon notice of a Texas Guaranteed Student Loan Corporation guaranteed student loan is proposed for repeal, in accordance with SB 37 (86th Regular Session).

Other proposed amendments delete references to the NCT "general" registry, a distinction no longer required after the passage of SB 674 (85th Regular Session), which eliminated the NCT secondary registry with the Texas Medical Board. Remaining amendments represent changes necessitated by the new language related to radiologist assistant certificates, to maintain consistency and clarity throughout the section.

Section 194.10, relating to Retired Certificate or NCT General Registration Permit, is amended so that references to the NCT "general" registry are eliminated throughout, a distinction no longer required after the passage of SB 674 (85th Regular Session). Language is added with a reference to the Certification Board for Radiology Practitioner Assistants (CBRPA) related to possible certification renewal requirements for a radiologist assistant with a retired certificate, who desires to return to active practice and who had initially obtained eligibility for a Texas certificate through CBRPA national certification. The proposed language reflects the new radiologist assistant eligibility requirements established by HB 1504 (86th Regular Session).

Section 194.21, relating to Scope of Practice, includes proposed changes to more precisely outline the allowed scope of practice for an individual holding a limited certificate.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules implementing and defining the requirements set forth by HB 1504 and SB 37 (86th Regular Session) and SB 674 (85th Regular Session), related to the new radiologist assistant certificate type and elimination of NCT secondary registry. The public will also benefit from having rules that contain language accurately reflecting current laws and board processes.

Mr. Freshour has determined that for the first five-year period these rules are in effect, there will be no effect to individuals required to comply with these rules as proposed. There will be no effect on small businesses, micro businesses, or rural communities.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments, and has determined that for each year of the first five years the proposed amendments will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule amendments and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that the agency has determined that for each year of the first five years these rule amendments, as proposed, are in effect:

1. there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the rules;
2. there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the rules;
3. there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rules; and
4. there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rules.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed amendments will be in effect, Mr. Freshour has determined the following:
The proposed rules do not create or eliminate a government program.

Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

The proposed rules do not require an increase or decrease in fees paid to the agency.

The proposed rules create new regulations.

The proposed rules do not limit nor expand, but do repeal existing regulations as described above.

The proposed rules increase the number of individuals subject to the rules' applicability.

The proposed rules do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tlmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, 153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act. The amendments are also proposed under the authority of HB 1504 (86th R.S.), SB 37 (86th R.S.), and SB 674 (85th R.S.).

No other statutes, articles or codes are affected by this proposal.

§194.2. Definitions.

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

(1) ABHES--Accrediting Bureau of Health Education Schools.

(2) Act--The Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601.

(3) Active duty--A person who is currently serving as full-time military service member in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001, Government Code, or similar military service of another state.

(4) Agency--The divisions, departments, and employees of the board, Texas Medical Board, Texas Physician Assistant Board, Texas State Board of Acupuncture Examiners, Medical Physician Licensure Advisory Committee; Perfusionist Licensure Advisory Committee; and Texas Board of Respiratory Care.


(6) Applicant--A person who files an application with the board for a certificate, including a temporary certificate, general, limited, or a provisional certificate; or a person or program who files an application with the board for approval to act as an instructor or educational program.

(7) Armed forces of the United States--Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States or a reserve unit of one of those branches of the armed forces.

(8) ARRT--The American Registry of Radiologic Technologists and its predecessor or successor organizations.

(9) ASRT--The American Society of Radiologic Technologists and its predecessor or successor organizations.

(10) Board--The Texas Board of Medical Radiologic Technology.

(11) Cardiovascular (CV)--Limited to radiologic procedures involving the use of contrast media and or ionizing radiation for the purposes of diagnosing or treating a disease or condition of the cardiovascular system.

(12) CBRPA--Certification Board for Radiology Practitioner Assistants.

(13) [142] Certificate--A medical radiologic technologist certificate, general, limited or provisional, issued by the board.

(14) [144] Chiropractor--A person who is licensed by the Texas Board of Chiropractic Examiners as a doctor of chiropractic.

(15) [146] Dentist--A person who is licensed by the Texas State Board of Dental Examiners as a doctor of dentistry.

(16) [151] Direct supervision--Supervision and control by a medical radiologic technologist or a practitioner who:

(A) assumes legal liability for a student employed to perform a radiologic procedure and enrolled in a program that meets the requirements adopted under Texas Occupations Code Section 601.052; and

(B) is physically present during the performance of the radiologic procedure to provide consultation or direct the action of the student.

(17) [169] Education program--Clinical training or any other program offered by an organization approved by the advisory board that:

(A) has a specified objective;

(B) includes planned activities for participants; and

(C) uses an approved method for measuring the progress of participants.

(18) [183] Executive director--The executive director of the Agency or the authorized designee of the executive director.

(19) [185] Federally qualified health center (FQHC)--A health center as defined by 42 United States Code, §1396d(L)(2)(B).

(20) [187] Fluorography--Hard copy of a fluoroscopic image; also known as spot films.

(21) [189] Fluoroscopy--The practice of examining tissues using a fluorescent screen, including digital and conventional methods.

(22) [194] General certification--An authorization to perform radiologic procedures.

(23) [202] Good professional character--An applicant for licensure must not be in violation of or have committed any act described in the Medical Radiologic Technologist Certification Act, §§601.302-.303, Texas Occupations Code Annotated.

(24) [204] Hospital--A facility that:

(A) is:

(i) a general hospital or a special hospital, as those terms are defined by §241.003, Health and Safety Code, including a hospital maintained or operated by the state; or
(ii) a mental hospital licensed under Chapter 577, Health and Safety Code; and

(B) has an organized medical staff.

25 [244] Instructor--An individual approved by the board to provide instruction and training in the discipline of medical radiologic technology in an educational setting.

26 [255] JRCVCT--The Joint Review Committee on Education in Cardiovascular Technology.

27 [266] JRCERT--The Joint Review Committee on Education in Radiologic Technology.

28 [277] JRCNMT--The Joint Review Committee on Educational Programs in Nuclear Medicine Technology.

29 [288] Limited certification--An authorization to perform radiologic procedures that are limited to specific parts of the human body.

30 [299] Limited medical radiologic technologist (LMRT)--A person who holds a limited certificate issued under the Act, and who under the direction of a practitioner, intentionally administers radiation to specific parts of the bodies of other persons for a medical purpose. The limited categories are the skull, chest, spine, extremities, podiatric, chiropractic and cardiovascular. The term does not include a practitioner.

31 [310] Medical Board--The Texas Medical Board.

32 [321] Medical radiologic technologist (MRT)--A person who holds a general certificate issued under the Act, and who under the direction of a practitioner, intentionally administers radiation to other persons for medical purpose. The term does not include a practitioner.

33 [332] Military service member--A person who is on active duty.

34 [343] Military spouse--A person who is married to a military service member.

35 [354] Military veteran--A person who served on active duty and who was discharged or released from active duty.

36 [365] Mobile service operation--The provision of radiation machines and personnel at temporary sites for limited time periods. The radiation machines may be fixed inside a motorized vehicle or may be a portable radiation machine that may be removed from the vehicle and taken into a facility for use.

37 [376] NMTCB--Nuclear Medicine Technology Certification Board and its successor organizations.

38 [387] Non-certified technician (NCT)--A person who has completed a training program approved by the board and who is registered with the board under this chapter. An NCT may not perform a radiologic procedure which has been identified as dangerous or hazardous.


40 [409] Party--The board and each person named or admitted as a party in a hearing before the State Office of Administrative Hearings.

41 [410] Pediatric--Pertaining to radiologic procedures performed on a person who is between the age range of fetus to age 18 or as otherwise defined by Texas law, when the growth and developmental processes are generally complete. These rules do not prohibit a practitioner from taking into account the individual circumstances of each patient and determining if the upper age limit requires variation by not more than two years.

42 [444] Physician--A person licensed by the Texas Medical Board as a doctor of medicine or osteopathy.

43 [445] Physician assistant--A person licensed by the Texas Physician Assistant Board to practice as a physician assistant.

44 [446] Podiatric--A person licensed by the Texas State Board of Podiatric Medical Examiners as a doctor of podiatry.

45 [447] Practitioner--A chiropractor, dentist, physician, or podiatrist who prescribes radiologic procedures for other persons.

46 [448] Presiding Officer--The person designated by the Governor to serve as the presiding officer of the board.

47 [449] Provisional medical radiologic technologist (PMRT)--A person who holds a provisional certificate issued under the Act, and who, under the direction of a practitioner, intentionally administers radiation to other persons for a medical purpose. The authorization to perform radiologic procedures under the provisional certificate shall not exceed 180 days from date of the certificate's issuance. The term does not include a practitioner.

48 [447] Radiation--Ionizing radiation:

(A) in amounts beyond normal background levels; and

(B) from a source such as a medical or dental radiologic procedure.

49 [448] Radiologic procedure--A procedure or article, including a diagnostic X-ray or a nuclear medicine procedure, that:

(A) is intended for use in:

(i) the diagnosis of disease or other medical or dental conditions in humans; or

(ii) the cure, mitigation, treatment, or prevention of disease in humans; and

(B) achieves its intended purpose through the emission of ionizing radiation.

50 [449] Radiologic technology--The administration of radiation to a person for a medical purpose.

51 Radiologist--A physician specializing in radiology certified by or board-eligible for the American Board of Radiology, the American Osteopathic Board of Radiology, the Royal College of Radiologists, or the Royal College of Physicians and Surgeons of Canada.

52 Radiologist assistant (RA)--an advanced-level medical radiologic technologist who is certified as:

(A) a registered radiologist assistant by the American Registry of Radiologic Technologists; or

(B) a radiology practitioner assistant by the Certification Board for Radiology Practitioner Assistants.

53 [450] Registered nurse--A person licensed by the Texas Board of Nursing to practice professional nursing.

54 [451] Registry--A list of names and other identifying information of non-certified technicians registered with the board.

55 [452] SACS--The Southern Association of Colleges and Schools, Commission on Colleges.
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(56) [533] Sponsoring institution--A hospital, educational, other facility, or a division thereof, that offers or intends to offer a course of study in medical radiologic technology.

(57) [544] State--Any state, territory, or insular possession of the United States and the District of Columbia.

(58) [555] Submit--The term used to indicate that a completed item has been actually received and date-stamped by the board along with all required documentation and fees, if any.

(59) [566] Supervision--Responsibility for and control of quality, radiation safety and protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic and/or therapeutic purposes.

(60) [572] Temporary certification, general or limited--An authorization to perform radiologic procedures for a limited period, not to exceed one year.

(61) [588] X-ray equipment--An x-ray system, subsystem, or component thereof. For the purposes of this rule, the types of X-ray equipment are as follows:

(A) portable X-ray equipment--X-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled. Portable X-ray equipment may also include equipment designed to be hand-carried;

(B) stationary X-ray equipment--X-ray equipment that is installed in a fixed location; or

(C) mobile stationary X-ray equipment--X-ray equipment that is permanently affixed to a motor vehicle or trailer with appropriate shielding.

§194.6  Procedural Rules and Minimum Eligibility Requirements for Applicants for a Certificate or Placement on the Board's Non-Certified Technician [General] Registry:

(a) Except as otherwise provided in this chapter, an individual must be certified or hold a temporary certificate as a radiologist assistant, medical radiologic technologist or limited radiologic technologist, or be placed by the board on the [general] registry for non-certified technicians before the individual may perform a radiologic procedure.

(b) Types of Certificates. The board shall issue general certificates, limited certificates, temporary certificates (general or limited), or provisional certificates.

(c) General Requirements.

(1) Except as otherwise required in this section, an applicant for temporary or regular certification as a radiologist assistant, medical radiologic technologist or limited radiologic technologist, or for a certificate, must:

(A) graduate from high school or its equivalent as determined by the Texas Education Agency;

(B) attain at least 18 years of age;

(C) submit an application on a form prescribed by the board;

(D) pay the required application fee, as set forth under Chapter 175 of this title (relating to Fees and Penalties);

(E) provide a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation;

(F) certify that the applicant is mentally and physically able to perform radiologic procedures;

(G) not have a license, certification, or registration in this state or from any other licensing authority or certifying professional organization that is currently revoked or suspended;

(H) not have proceedings that have been instituted against the applicant for the restriction, cancellation, suspension, or revocation of certificate, license, or authority to perform radiologic procedures in the state, a Canadian province, or the uniformed service of the United States in which it was issued;

(I) not have pending any prosecution against applicant in any state, federal, or international court for any offense that under the laws of this state is a felony, or an offense that is a misdemeanor of moral turpitude;

(J) be of good professional character as defined under §194.2 of this title (relating to Definitions);

(K) submit to the board any other information the board considers necessary to evaluate the applicant's qualifications; and

(L) meet any other requirement established by rules adopted by the board.

(2) The board retains the discretion to consider the nature of any final disciplinary action, other than suspension or revocation, when determining whether to issue the certificate or other authorization.

(d) Additional Requirements for Specific Certificate Types or Placement on the Board's Non-Certified Technician [General] Registry.

(1) Radiologist Assistant Certificate. In addition to meeting requirements under subsection (c) of this section, an applicant must pass the jurisprudence examination in accordance with subsection (e) of this section, and meet the following requirements:

(A) possess current national certification and registration as a radiologist assistant by ARRT;

(B) possess current national certification as a radiology practitioner assistant by CBRPA; or

(C) be currently licensed, certified, or registered as a radiologist assistant in another state, the District of Columbia, or a territory of the United States whose requirements are more stringent than or are substantially equivalent to the requirements for Texas radiologist assistant certification.

(2) [44] General Medical Radiologic Technologist Certificate [medical radiologic technologist certificate]. In addition to meeting requirements under subsection (c) of this section, to qualify for a general certificate, an applicant must pass the jurisprudence examination in accordance with subsection (e) of this section, and meet at least one of the following requirements:

(A) possession of current national certification as a registered technologist, radiographer, radiation therapist, or nuclear medicine technologist by ARRT;

(B) successful completion of the ARRT’s examination in radiography, radiation therapy, or nuclear medicine technology;

(C) possession of current national certification as a nuclear medicine technologist by the NMTCB;

(D) successful completion of the NMTCB’s examination in nuclear medicine technology; or
(E) current licensure, certification, or registration as a medical radiologic technologist in another state, the District of Columbia, or a territory of the United States whose requirements are more stringent than or are substantially equivalent to the requirements for Texas general certification.

(3) [[(3)] Limited Medical Radiologic Technologist Certificate. In addition to meeting requirements under subsection (c) of this section, to qualify for a limited certificate, an applicant must meet at least one of the following requirements:

(A) the successful completion of a limited program as set out in §194.12 of this title [chapter] (relating to Standards for the Approval of Certificate Program Curricula and Instructors) and the successful completion of the jurisprudence examination and appropriate limited examination in accordance with subsection (e) of this section;

(B) current licensure, certification, or registration as an LMRT in another state, the District of Columbia, or a territory of the United States of America whose requirements are more stringent than or substantially equivalent to the requirements for Texas limited certification and successful completion of the jurisprudence examination in accordance with subsection (e) of this section; or

(C) current general certification as an MRT issued by the board. The MRT must surrender the general certificate and submit a written request for a limited certificate indicating the limited categories requested.

(4) Temporary Radiologist Assistant Certificate.

(A) The board may issue a temporary radiologist assistant certificate to an applicant who, in addition to meeting the requirements of subsection (c) of this section:

(i) has successfully completed a course of study in an ARRT or CBRPA-recognized radiologist assistant program;

(ii) is approved by ARRT or CBRPA as examination eligible;

(iii) meets all the qualifications for a radiologist certificate and has signed an agreed order or remedial plan but is waiting for the next scheduled meeting of the board for the agreed order or remedial plan to be approved and the radiologist certificate to be issued; or

(iv) has not on a full-time basis actively practiced as defined under subsection (i) of this section, but meets guidelines set by the board addressing factors that include, but are not limited to, length of time out of active practice and duration of temporary certificates. In order to be determined eligible for a temporary radiologist assistant certificate to remedy active practice issues, the applicant must:

(I) be supervised by a radiologist (as defined under §194.2 of this title) who:

(-a-) holds an active, unrestricted license in Texas;

(-b-) has not been the subject of a disciplinary order, unless the order was administrative in nature; and

(-c-) is not a relative or family member of the applicant; and

(II) present written verification from the radiologist that he or she will:

(-a-) provide on-site, continuous supervision of the applicant and provide reports of such supervision to the board according to rules adopted by the board; and

(b-) retain professional and legal responsibility for the care rendered by the applicant while practicing under the temporary certificate.

(B) A temporary radiologist assistant certificate granted under this paragraph may be valid for not more than one year from the date issued. A temporary radiologist assistant certificate may be revoked at any time the board deems necessary.

(C) An individual who practices after the expiration of the temporary certificate will be considered to be practicing without a certificate and may be subject to disciplinary action.

(5) [[(3)] Temporary General Medical Radiologic Technologist Certificate.

(A) The board may issue a temporary general certificate to an applicant who, in addition to meeting the requirements of subsection (c) of this section:

(i) has successfully completed a course of study in radiography, radiation therapy, or nuclear medicine technology which is accredited by an agency which is recognized by:

(I) the Council for Higher Education Accreditation, including but not limited to: the Joint Committee on Education in Nuclear Medicine Technology (JRCNMT); or

(II) the United States Secretary of Education, including, but not limited to: the Joint Review Committee on Education in Radiologic Technology (JRCERT), Accrediting Bureau of Health Education Schools, or the Southern Association of Colleges and Schools, Commission on Colleges;

(ii) is approved by the ARRT as examination eligible;

(iii) is approved by the NMTCB as examination eligible;

(iv) is currently licensed or otherwise registered as an MRT in another state, the District of Columbia, or a territory of the United States whose requirements are more stringent than or substantially equivalent to the Texas requirements for certification at the time of application to the board;

(v) has completed education, training and clinical experience which is substantially equivalent to that of an accredited educational program as listed in clause (i) of this subparagraph;

(vi) meets all the qualifications for a general certificate and has signed an agreed order or remedial plan but is waiting for the next scheduled meeting of the board for the agreed order or remedial plan to be approved and the general certificate to be issued; or

(vii) has not on a full-time basis actively practiced as defined under subsection (i) of this section, but meets guidelines set by the board addressing factors that include, but are not limited to, length of time out of active practice and duration of temporary certificates. In order to be determined eligible for a temporary general certificate to remedy active practice issues, the applicant must:

(I) be supervised by a general certificate holder or practitioner (as defined under §194.2 of this section [chapter]) who:

(-a-) holds an active, unrestricted license or certificate in Texas;

(-b-) has not been the subject of a disciplinary order, unless the order was administrative in nature; and

(-c-) is not a relative or family member of the applicant; and
(II) present written verification from the general certificate holder or practitioner that he or she will:

(-a-) provide on-site, continuous supervision of the applicant and provide reports of such supervision to the board according to rules adopted by the board; and

(-b-) retain professional and legal responsibility for the care rendered by the applicant while practicing under the temporary certificate.

(B) A temporary general certificate granted under this paragraph may be valid for not more than one year from the date issued. A temporary general certificate may be revoked at any time the board deems necessary.

(C) An individual who practices after the expiration of the temporary certificate will be considered to be practicing without a certificate and may be subject to disciplinary action.

(6) [44] Temporary Limited Medical Radiologic Technologist Certificate.

(A) The board may issue a temporary limited certificate to an applicant who, in addition to meeting requirements under subsection (c) of this section:

(i) has successfully completed a limited certificate program in the categories of skull, chest, spine, abdomen or extremities, approved in accordance with §194.12 of this title [chapter];

(ii) meets all the qualifications for a limited certificate and has signed an agreed order or remedial plan but is waiting for the next scheduled meeting of the board for the agreed order or remedial plan to be approved and the limited certificate to be issued; or

(iii) has not on a full-time basis actively practiced as defined under subsection (i) of this section, but meets guidelines set by the board addressing factors that include, but are not limited to, length of time out of active practice and duration of temporary certificates. In order to be determined eligible for a temporary limited certificate to remedy active practice issues, the applicant must:

(I) be supervised by a general certificate holder or practitioner ("practitioner" is defined under §194.2 of this title [chapter]) who:

(-a-) holds an active, unrestricted license or certificate in Texas;

(-b-) has not been the subject of a disciplinary order, unless the order was administrative in nature; and

(-c-) is not a relative or family member of the applicant; and

(II) present written verification from the general certificate holder or practitioner that he or she will:

(-a-) provide on-site, continuous supervision of the applicant and provide reports of such supervision to the board; and

(-b-) retain professional and legal responsibility for the care rendered by the applicant while practicing under the temporary certificate.

(B) A temporary limited certificate granted based upon successful completion of approved programs under subparagraph (A)(i) of this paragraph may not be valid for more than six months from the date issued, unless the applicant has met all qualifications for the limited certificate, and is on the agenda for the next scheduled meeting of the board for the limited certificate to be issued.

(C) Temporary limited certificates granted for the purpose of remedying active practice deficiencies under subparagraph (A)(iii) of this paragraph may not be valid for more than 12 months from the date of issue.

(D) A temporary limited certificate may be revoked at any time the board deems necessary.

(E) An individual who practices after the expiration of the temporary certificate will be considered to be practicing without a certificate and may be subject to disciplinary action.

(7) [54] Provisional Medical Radiologic Technologist Certificate.

(A) To qualify for a provisional general certificate, an applicant must:

(i) be currently licensed or certified in another jurisdiction;

(ii) have been licensed or certified in good standing as a MRT for at least two years in another jurisdiction, including a foreign country, that has licensing or certification requirements substantially equivalent to the requirements of the Act;

(iii) pass a national or other examination recognized by the board relating to the practice of radiologic technology;

(iv) provide a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation; and

(v) be sponsored by a medical radiologic technologist certified by the board under the Act with whom the provisional certificate holder will practice during the time the person holds a provisional certificate.

(B) A provisional certificate is valid until the date the board approves or denies the provisional certificate holder's application for a certificate.

(C) The board must approve or deny a provisional certificate holder's application for a certificate not later than the 180th day after the date the provisional certificate is issued. The board may extend the 180-day period if the results of an examination have not been received by the board before the end of that period.

(8) [64] Placement on the Non-Certified Technician [General] Registry.

(A) Registration Required. In accordance with §601.202 of the Act, a person who intentionally uses radiologic technology, other than a certificate holder, physician assistant, registered nurse, or person performing procedures under the supervision of a dentist, must register with the board prior to performing any procedures.

(B) In addition to meeting the requirements under subsection (c) of this section, to qualify for placement on the board's NCT [General] Registry, an applicant must successfully complete a training program approved by the board in accordance with §194.13 of this title [chapter] (relating to Mandatory Training Programs for Non-Certified Technicians) and pass the jurisprudence examination in accordance with subsection (e) of this section.

(e) Examinations Required.

(1) Jurisprudence examination. An applicant must pass the jurisprudence examination ("JP exam"), which shall be conducted on the laws, rules, or regulations applicable to the practice of medical ra-
diologic technology in this state. The JP exam shall be developed and administered as follows:

(A) The staff of the Medical Board shall prepare questions for the JP exam and provide a facility by which applicants can take the examination.

(B) An examinee shall not be permitted to bring books, compends, notes, journals, calculators or other documents or devices into the examination room, nor be allowed to communicate by word or sign with another examinee while the examination is in progress without permission of the presiding examiner, nor be allowed to leave the examination room except when so permitted by the presiding examiner.

(C) Irregularities during an examination, such as giving or obtaining unauthorized information or aid as evidenced by observation or subsequent statistical analysis of answer sheets, shall be sufficient cause to terminate an applicant's participation in an examination, invalidate the applicant's examination results, or take other appropriate action.

(D) Applicants must pass the JP exam with a score of 75 or better.

(E) A person who has passed the JP exam shall not be required to re-take the exam for re-licensure, except as a specific requirement of the board as part of an order.

(2) Additional Examinations Required for Certification.

(A) Radiologist Assistant Certificate. The following examinations are accepted for a radiologist assistant application:

(i) the ARRT Registered Radiologist Assistant examination; or

(ii) the CBRPA Radiology Practitioner Assistant examination.

(B) General Certificate. The following examinations are accepted for a general certificate application:

(i) NMTCB examination in nuclear medicine technology; or

(ii) The appropriate ARRT examination in radiography, nuclear medicine technology, or radiation therapy. Determination of the appropriate examination shall be made on the basis of the type of educational program completed by the applicant for a general certificate.

(C) Limited Certificate.

(i) The following examinations are accepted for a limited certificate application: Successful completion of the appropriate examination, including the core knowledge component, as follows:

(I) skull--the ARRT examination for the limited scope of practice in radiography (skull);

(II) chest--the ARRT examination for the limited scope of practice in radiography (chest);

(III) spine--the ARRT examination for the limited scope of practice in radiography (spine);

(IV) extremities--the ARRT examination for the limited scope of practice in radiography (extremities);

(V) chiropractic--the ARRT examinations for the limited scope of practice in radiography (spine and extremities);

(VI) podiatric--the ARRT examination for the limited scope of practice in radiography (podiatry); or

(VII) cardiovascular--the Cardiovascular Credentialing International invasive registry examination.

(ii) Limited Certification Exam Attempt Authorization.

(I) Individuals enrolled or who have completed an approved limited medical radiologic program, as set forth under §194.12 of this title [chapter], must apply to the board and obtain authorization in order to attempt passage of accepted examination(s) set forth under subparagraph (B) of this paragraph.

(ii) In order to obtain authorization to attempt passage of the exam, an individual must provide the following documentation:

(a) Evidence of current enrollment in an approved limited program as set forth by §194.12 of this title [chapter] and an attestation stating that the individual has completed the education components necessary for qualifying the individual to pass the appropriate limited scope examination, signed by the program director or registrar; or

(b) a copy of a certificate of completion or official transcript showing completion of an approved limited program, as set out in §194.12 of this title [chapter].

(III) Approval to attempt passage of the limited scope examination is not authorization to perform limited medical radiologic technology procedures. An individual must apply for and be granted a temporary or limited or general certificate prior to performing limited medical radiologic technology procedures or meet an exception to such certification requirements provided for under the Act.

(iii) Individuals approved to sit for the limited certification examination will be allowed three attempts to pass the examination within one year from the date of the initial authorization granted by the board. Individuals who fail to pass within the required number of attempts or one-year-period will not be eligible for additional attempts, except as provided in clause (iv) of this subparagraph.

(iv) Notwithstanding clause (iii) of this subparagraph, an individual who fails to pass the examination within the required number of attempts or within the one-year-period may obtain approval for one additional attempt, if the individual successfully completes a review course of no less than 60 hours of continuing education in length, offered by an approved limited program under §194.12 of this title [chapter]. The additional attempt must be made no later than one year from the date of the board's approval granted. Those failing to pass the examination within the additional one-year period allowed shall no longer be eligible for additional attempts at passage, and shall only be eligible for state examination attempts for the purpose of state limited certification by again meeting the requirements for approval of exam attempt authorization set forth under clause (ii)(II) of this subparagraph.

(3) Examination schedules. A schedule of examinations indicating the date(s), location(s), fee(s) and application procedures shall be provided by the board or organization administering the examination(s).

(4) Standards of acceptable performance. The scaled score to determine pass or fail performance shall be 75. For the cardiovascular limited certificate, the Cardiovascular Credentialing International examinations (Cardiovascular Science Examination and/or the Invasive Registry Examination as required to obtain the Registered Cardiovascular Invasive Specialist RCIS credential) the scaled score to determine pass or fail performance shall be 70.
(5) Completion of examination application forms. Each applicant shall be responsible for completing and transmitting appropriate examination application forms and paying appropriate examination fees by the deadlines set by the board or organization administering the examinations prescribed by the board.

(6) Examination Results.

(A) Notification to examinees. Results of an examination prescribed by the board but administered under the auspices of another organization will be communicated to the applicant by the board, unless the contract between the board and that organization provides otherwise.

(B) Score release. The applicant is responsible for submitting a signed score release to the examining agency or organization otherwise arranging to have examination scores forwarded to the board.

(C) Deadlines. The board shall notify each examinee of the examination results within 14 days of the date the board receives the results. If notice of the examination results will be delayed for longer than 90 days after the examination date, the board shall notify the person of the reason for the delay before the 90th day. The board may require a testing service to notify a person of the results of the person's examination.

(7) Refunds. Examination fee refunds will be in accordance with policies and procedures of the board or the organization prescribed by the board to administer an examination. No refunds will be made to examination candidates who fail to appear for an examination.

(f) Documentation. The following documentation shall be submitted as a part of the certification application process:

(1) Name Change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present certified copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization the applicant should send the original naturalization certificate by certified mail to the board for inspection.

(2) ARRT, CBRPA, or NMTCB-Certified or Considered Exam Eligible. For applicants certified by ARRT, CBRPA, or NMTCB or considered eligible by such organizations, the applicant must provide a letter of verification of current certification or examination eligibility sent directly from ARRT, CBRPA or NMTCB, as applicable.

(3) Training Program Certification. For applicants who are graduates of a program accepted by the board for certification under §194.12 or §194.13 of this title [chapter], each applicant must have a certificate of successful completion of an educational program submitted directly from a program accepted by the board for certification, on a form provided by the board.

(4) Examination Scores. Each applicant for certification must have a certified transcript of grades submitted directly from the appropriate testing service to the board for all examinations accepted by the board for certification.

(5) Verification from other states. On request of board staff, an applicant must have any state, in which he or she has ever been registered, certified, or licensed as any type of healthcare provider regardless of the current status of the registration, certification, or license, submit to the board a letter verifying the status of the registration, certification, or license and a description of any sanctions or pending disciplinary matters. The information must be sent directly to the board from the state licensing entities.

(6) Arrest Records. If an applicant has ever been arrested, a copy of the arrest and arrest disposition must be requested by the applicant to arresting authority, and that authority must submit copies directly to the board.

(7) Malpractice. If an applicant has ever been named in a malpractice claim filed with any liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must:

(A) have each liability carrier complete a form furnished by this board regarding each claim filed against the applicant's insurance, as applicable;

(B) for each claim that becomes a malpractice suit, have the attorney representing the applicant in each suit submit a letter directly to the board explaining the allegation, dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the settlement. The letter shall be accompanied by supporting documentation including court records if applicable. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided; and

(C) compose and provide a statement explaining the circumstances pertaining to patient care in defense of the allegations.

(8) Additional Documentation. An applicant must submit additional documentation as is deemed necessary to facilitate the investigation of any application for certification.

(g) Review and Recommendations by the Executive Director.

(1) The executive director or designee shall review applications for certification or other authorization and may determine whether an applicant is eligible for certification or other authorization, or refer an application to a committee of the board for review.

(2) If the executive director or designee determines that the applicant clearly meets all requirements, the executive director or designee, may issue a certificate or other authorization to the applicant, to be effective on the date issued without formal board approval, as authorized by §601.052 of the Act.

(3) If the executive director determines that the applicant does not clearly meet all certification or other authorization requirements as prescribed by the Act and this chapter, a certificate or other authorization may be issued only upon action by the board following a recommendation by the Licensure Committee, in accordance with §§601.052 of the Act and §187.13 of this title (relating to Informal Board Proceedings Relating to Licensure Eligibility). Not later than the 20th day after the date the applicant receives notice of the executive director's determination the applicant shall:

(A) request a review of the executive director's recommendation by a committee of the board conducted in accordance with §187.13 of this title; or

(B) withdraw his or her application.

(C) If an applicant fails to take timely action, as provided under this subsection, such inaction shall be deemed a withdrawal of his or her application.

(4) To promote the expeditious resolution of any matter concerning an application for certification or other authorization, the executive director, with the approval of the board, may recommend that an applicant be eligible for a certificate or other authorization under certain terms and conditions and present a proposed agreed order or
remedial plan to the applicant. Not later than the 20th day after the date the applicant receives notice of the executive director's recommendation for an agreed order or remedial plan, the applicant shall do one of the following:

(A) sign the order or remedial plan and the order/remedial plan shall be presented to the board for consideration and acceptance without initiating a Disciplinary Licensure Investigation (as defined in §187.13 of this title) or appearing before a committee of the board concerning issues relating to licensure eligibility; or

(B) request a review of the executive director's recommendation by a committee of the board conducted in accordance with §187.13 of this title; or

(C) withdraw his or her application.

(h) Committee Referrals. An applicant who has either requested to appear before the licensure committee of the board or has elected to be referred to the licensure committee of the board due to a determination of ineligibility by the executive director in accordance with section, in lieu of withdrawing the application for certification, may be subject to a Disciplinary Licensure Investigation as defined in §187.13 of this title. Review of the executive director's determination by a committee of the board shall be conducted in accordance with §187.13 of this title. All reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Public Information Act. The board may disclose such reports to appropriate licensing authorities in other states.

(i) All applicants must provide sufficient documentation to the board that the applicant has, on a full-time basis, actively practiced, been a student at an acceptable approved program under §194.12 or §194.13 of this title [chapter] or been on the active teaching faculty of an acceptable approved program under §194.12 or §194.13 of this title [chapter], within one of the last two years preceding receipt of an application for certification or registration. The term "full-time basis," for purposes of this section, shall mean at least 20 hours per week for 40 weeks during a given year.

(j) Applicants who are unable to demonstrate active practice on a full time basis may, in the discretion of the board, be eligible for an unrestricted or restricted certificate or placement on the non-certified technician registry, subject to one or more of the following conditions or restrictions as set forth in paragraphs (1) - (5) of this subsection:

(1) completion of specified continuing education hours directly or indirectly related to the disciplines of radiologic technology and offered by an institution accredited by a regional accrediting organization such as the Southern Association of Colleges and Schools (SACS), or by agencies or organizations such as JRCERT, JRCNMT, Joint Review Committee on Education in Cardiovascular Technology (JTCCVT), the Council on Chiropractic Education (CCE), ABHES, or the American Society of Radiologic Technologists (ASRT);

(2) current certification by ARRT, CBRPA, or NMTCB;

(3) limitation and/or exclusion of the practice of the applicant to specified activities of the practice;

(4) remedial education; and

(5) such other remedial or restrictive conditions or requirements which, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice.

(k) Applicants for certification, NCT registration, or other authorization:

(1) whose applications have been filed with the board in excess of one year will be considered expired. Any fee previously submitted with that application shall be forfeited unless otherwise provided by §175.5 of this title (relating to Payment of Fees or Penalties). Any further request for certification or registration will require submission of a new application and inclusion of the current [certification] fee. An extension to an application may be granted under certain circumstances, including:

(A) Delay by board staff in processing an application;

(B) Application requires Licensure Committee review after completion of all other processing and will expire prior to the next scheduled meeting;

(C) Licensure Committee requires an applicant to meet specific additional requirements for certification or registration and the application will expire prior to deadline established by the Committee;

(D) Applicant requires a reasonable, limited additional period of time to obtain documentation after completing all other requirements and demonstrating diligence in attempting to provide the required documentation;

(E) Applicant is delayed due to unanticipated military assignments, medical reasons, or catastrophic events;

(2) who in any way falsify the application may be required to appear before the board;

(3) on whom adverse information is received by the board may be required to appear before the board;

(4) shall be required to comply with the board's rules and regulations which are in effect at the time the completed application form and fee are filed with the board;

(5) may be required to sit for additional oral or written examinations that, in the opinion of the board, are necessary to determine competency of the applicant;

(6) must have the application complete in every detail at least 20 days prior to the board meeting in which they are considered for certification. Applicants may qualify for a temporary certificate prior to being considered by the board for certification, contingent upon meeting the minimum requirements for a temporary certificate under this section;

(7) who previously held a Texas health care provider license, certificate, permit, or registration may be required to complete additional forms as required.


(1) An applicant who is a military service member, military veteran, or military spouse may be eligible for alternative demonstrations of competency for certain requirements related to an application for certification or placement on the board's Non-Certified Technician [General] Registry. Unless specifically allowed in this subsection, an applicant must meet the requirements for certification as a medical radiologic technologist, limited medical radiologic technologist, or placement on the board's Non-Certified Technician [General] Registry as specified in this chapter.

(2) To be eligible, an applicant must be a military service member, military veteran, or military spouse and meet one of the following requirements:
(A) hold an active unrestricted certificate, license, or registration as a medical radiologic technologist, limited medical radiologic technologist, or non-certified technician in another state, the District of Columbia, or a territory of the United States that has requirements that are substantially equivalent to the requirements for a Texas certificate or placement on the NCT Registry; or

(B) within the five years preceding the application date held a certificate to practice radiologic technology in this state.

(3) The executive director may waive any prerequisite to obtaining a certificate or other authorization for an applicant described in paragraph (1) of this subsection after reviewing the applicant's credentials.

(4) Applications for certification or other authorization from applicants qualifying under paragraphs (1) and (2) of this subsection shall be expedited by the board's licensure division. Such applicants shall be notified, in writing or by electronic means, as soon as practicable, of the requirements and process for renewal of the certificate.

(5) Alternative Demonstrations of Competency Allowed. Applicants qualifying under paragraphs (1) and (2) of this subsection:

(A) in demonstrating compliance with subsection (i) of this section must only provide sufficient documentation to the board that the applicant has, on a full-time basis, actively practiced, been a student at an approved program, or has been on the active teaching faculty of an approved program, within one of the last three years preceding receipt of an application for certification;

(B) notwithstanding the one-year expiration in subsection (k)(1) of this section, are allowed an additional six months to complete the application prior to it becoming inactive; and

(C) notwithstanding the 20-day deadline in subsection (k)(6) of this section, may be considered for certification up to five days prior to the board meeting.

(m) Applicants with Military Experience.

(1) The board shall, with respect to an applicant who is a military service member or military veteran as defined in §194.2 of this title [chapter], credit verified military service, training, or education toward the requirements, other than an examination requirement, for a certificate or other authorization issued by the board.

(2) This section does not apply to an applicant who:

(A) has a license, certificate, or registration to practice radiologic technology suspended or revoked by this state, another state, a Canadian province, or another country;

(B) holds a license, certificate, or registration to practice radiologic technology issued by another state, Canadian province, or another country that is subject to a restriction, disciplinary order, or probationary order; or

(C) has an unacceptable criminal history.

(n) Re-Application for Certification or other Authorization Prohibited. A person who has been determined ineligible for a certificate or placement on the NCT Registry by the Licensure Committee may not reapply for a certificate or placement on the NCT Registry prior to the expiration of one year from the date of the board’s ratification of the Licensure Committee’s determination of ineligibility and denial of certification.

(o) Request for Criminal History Evaluation Letter.

(1) In accordance with Texas Occupations Code, §53.102, prior to applying for certification or other authorization, an individual may request that board staff review the person’s criminal history to determine if the person is potentially ineligible for certification or other authorization based solely on the person’s criminal background.

(2) Requestors must submit their requests in writing along with appropriate fees as provided in §175.1 of this title (relating to Application and Administrative Fees).

(3) The board may require additional documentation including fingerprint cards before issuing a criminal history evaluation letter.

(4) The board shall provide criminal history evaluation letters that include the basis for potential ineligibility, if grounds for ineligibility exist to all requestors no later than the 90th day after the board receives all required documentation to allow the board to respond to a request.

(5) If a requestor does not provide all requested documentation within one year of submitting the original request, the request will be considered as withdrawn.

(6) All evaluations letters shall be based on existing law at the time of the request. All requestors remain subject to the requirements for licensure at the time of application and may be determined ineligible under existing law at the time of application. If a requestor fails to provide complete and accurate information to the board, the board may invalidate the criminal history evaluation letter.

(7) An individual shall be permitted to apply for certification or other authorization, regardless of the board’s determination in a criminal history evaluation letter.

§194.7. Biennial Renewal of Certificate or Placement on the Board’s Non-Certified Technician [General] Registry [for Non-Certified Technicians Generally].

(a) Temporary Certificates.

(1) A temporary certificate shall expire one year from the date of issue. A person whose temporary certificate has expired is not eligible to reapply for another temporary certificate.

(2) A temporary certificate is not subject to a renewal or extension for any reason.

(3) Persons who hold temporary certificates, either radiologist assistant, general, or limited, are not subject to continuing education requirements set forth under subsection (c) of this section.

(b) Biennial Registration and Fee Required. [General and Limited Certificates, Placement on the Board’s General Registry for Non-Certified Technicians].

(1) Certificate holders [MRTs and LMRts certified] and NCTs registered under the Act shall renew authorization to practice [register] biennially and pay a fee. [A holder of a certificate or NCT general registration permit may, on] notification from the board, renew an unexpired authorization may be renewed [certificate or permit] by submitting the required form and documents and by paying the required renewal fee to the board on or before the expiration date of the authorization [permit].

(2) The fee shall accompany the required form which legally sets forth the certificate or NCT registration [permit] holder's name, mailing address, business address, and other necessary information prescribed by the board. The certificate or NCT registration [permit] holder must include with the required forms and fee documentation of continuing education completed during the previous two years to the date of renewal ("biennial renewal period").
Continuing education requirements.

(1) Generally.

(A) [RAAs] An assistant, as a prerequisite to the biennial renewal of a radiologist assistant certificate, a minimum of 24 hours of continuing education must be completed during each biennial renewal period. The hours must be in activities that are designated for Category A or A+ credits of continuing education evaluated by an organization recognized by ARRT as a Recognized Continuing Education Evaluation Mechanism (RCEEM) or RCEEM+ during the biennial renewal period.

(B) [AA] MRT. As a prerequisite to the biennial renewal [registration] of an MRT [a] certificate, a minimum of 24 hours of continuing education hours must be completed during each biennial renewal period. The continuing education must be completed in the following categories:

(i) At least 12 hours of the required number of hours must be completed by completing activities [attendance and participation in formal courses] that are designated for Category A or A+ credits of continuing education evaluated by an organization recognized by ARRT as a RCEEM [Recognized Continuing Education Evaluation Mechanism (RCEEM)] or RCEEM+ during the biennial renewal period.

(ii) The remaining 12 credits for the biennial renewal period may be composed of self-study or courses not approved for formal CE, and shall be recorded in a manner that can be easily transmitted to the board upon request.

(iii) Any additional hours completed through self-study must be verifiable, through activities that include reading materials, audio materials, audiovisual materials, or a combination thereof.

(C) [LB] LMRT. As a prerequisite to the biennial renewal [registration] of a limited certificate, a minimum of 18 hours of continuing education acceptable to the board must be completed during each biennial renewal period. The hours completed must be in the topics of general radiation health and safety or related to the categories of limited certificate held. The continuing education must be completed in the following categories:

(i) At least nine hours of the required number of hours must be completed by completing activities [attendance and participation in formal courses] that are designated for Category A or A+ credits of continuing education evaluated by an organization recognized by ARRT as a RCEEM [Recognized Continuing Education Evaluation Mechanism (RCEEM)] or RCEEM+ during the biennial renewal period.

(ii) The remaining nine credits for the biennial renewal period may be composed of self-study or courses not approved for formal CE, and shall be recorded in a manner that can be easily transmitted to the board upon request.

(iii) Any additional hours completed through self-study must be verifiable, through activities that include reading materials, audio materials, audiovisual materials, or a combination thereof.

(D) [LC] An RA, MRT, or LMRT who also holds a current Texas license, registration, or certification in another health profession may satisfy the continuing education requirement for renewal of a certificate with hours counted toward renewal of the other license, registration, or certification, provided such hours meet all the requirements of this subsection.

(E) [LD] An RA or MRT [or LMRT] who holds a current and active annual registration or credential card issued by ARRT indicating that the certificate holder is in good standing and not on probation satisfies the continuing education requirement for renewal of a [general or limited] certificate, provided the hours accepted by ARRT were completed during the certificate holder's biennial renewal period and meet or exceed the hour requirements set out in this subsection. The board must be able to verify the status of the card presented by the certificate holder electronically or by other means acceptable to the board. The board may review documentation of the continuing education activities in accordance with paragraph (5) of this subsection.

(F) [LE] NCTs. As a prerequisite to the biennial renewal [registration] of a placement on the NCT registry, [general registration permit], the individual must complete a minimum of 12 hours of continuing education during each biennial renewal period. The continuing education must be completed in the following categories:

(i) At least six hours of the required number of hours must be completed by completing activities [attendance and participation in formal courses] that are designated for Category A or A+ credits of continuing education evaluated by an organization recognized by ARRT as a RCEEM [Recognized Continuing Education Evaluation Mechanism (RCEEM)] or RCEEM+ during the biennial renewal period.

(ii) The remaining six credits for the biennial renewal period may be composed of self-study or courses not approved for formal CE, and shall be recorded in a manner that can be easily transmitted to the board upon request.

(iii) Any additional hours completed through independent self-study must be verifiable, through activities that include reading materials, audio materials, audiovisual materials, or a combination thereof.

(2) Content Requirements.

(A) At least 50% of the required number of hours must be activities which are directly related to the use and application of ionizing forms of radiation to produce diagnostic images and/or administer treatment to human beings for medical purposes. For the purpose of this section, directly related topics include, but are not limited to: radiation safety, radiation biology and radiation physics; anatomical positioning; radiographic exposure technique; radiological exposure technique; emerging imaging modality study; patient care associated with a radiologic procedure; radio pharmaceutics, pharmaceutics, and contrast media application; computer function and application in radiology; mammography applications; nuclear medicine application; and radiation therapy applications.

(B) No more than 50% of the required number of hours may be obtained in activities which are indirectly related to radiologic technology. For the purpose of this section, indirectly related topics include, but are not limited to, patient care, computer science, computer literacy, introduction to computers or computer software, physics, human behavioral sciences, mathematics, communication skills, public speaking, technical writing, management, administration, accounting, ethics, adult education, medical sciences, and health sciences. Other courses may be accepted for credit where there is a demonstrated benefit to patient care.

(3) Alternative Continuing Education Accepted by the Board. The additional activities for which continuing education credits will be awarded are as follows:

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(A) successful completion of an entry-level or advanced-level examination previously passed in the same discipline of radiologic technology administered by or for the ARRT during the renewal period. The examinations shall be topics dealing with ionizing forms of radiation administered to human beings for medical purposes. Such successful completion shall be limited to not more than one-half of the continuing education hours required;

(B) successful completion or recertification in a cardiopulmonary resuscitation course, basic cardiac life support course, or advanced cardiac life support course during the continuing education period. Such successful completion or recertification shall be limited to not more than:

(i) three hours credit during a renewal period for a cardiopulmonary resuscitation course or basic cardiac life support course; or

(ii) 6 hours credit during a renewal period for an advanced cardiac life support course;

(C) attendance and participation in tumor conferences (limited to six hours), in-service education and training offered or sponsored by Joint Commission-accredited or Medicare certified hospitals, provided the education/training is properly documented and is related to the profession of radiologic technology;

(D) teaching in a program accredited by a regional accrediting organization such as the Southern Association of Colleges and Schools; or an institution accredited by JCRCERT, JRCNMT, JTC-CVT, CCE, ABHES, ASRT, professional organizations or associations, or a federal, state, or local governmental entity, with a limit of one contact hour of credit for each hour of instruction per topic item once during the continuing education reporting period for up to a total of 6 hours. No credit shall be given for teaching that is required as part of one's employment. Credit may be granted in direct, indirect or non-ionizing radiation based on the topic; or

(E) developing and publishing a manuscript of at least 1,000 words in length related to radiologic technology with a limit of six contact hours of credit during a continuing education period. Upon audit by the board, the certificate holder must submit a letter from the publisher indicating acceptance of the manuscript for publication or a copy of the published work. The date of publication will determine the continuing education period for which credit will be granted. Credit may be granted in direct, indirect or non-ionizing radiation based on the topic.

(4) Reporting Requirements. A certificate holder or NCT must report on the biennial renewal application [registration] form if she or he has completed the required continuing education during the previous renewal period.

(A) A certificate holder or NCT may carry forward continuing education credit hours that meet the requirements under this subsection and earned prior to the biennial registration renewal period which are in excess of the biennial hour requirement, and apply such hours to the subsequent renewal period requirements.

(i) For RAs or MRTs, a maximum of 48 total excess credit hours meeting the requirements under this subsection may be carried forward. Excess continuing education credits may not be carried forward or applied to a report of continuing education more than two years beyond the date of the registration following the period during which the credits were earned.

(ii) For LMRTs, a maximum of 24 hours meeting the requirements of this subsection may be carried forward. Excess continuing education credits may not be carried forward or applied to a report of continuing education more than two years beyond the date of the registration following the period during which the credits were earned.

(B) For NCTS, a [A NCT may carry forward continuing education credit hours that meet the requirements under this subsection and earned prior to the biennial registration renewal period which are in excess of the biennial hour requirement, and apply such hours to the subsequent renewal period requirements. A] maximum of 12 total excess credit hours meeting the requirements [under paragraph (3)(A)] of this subsection may be carried forward. Excess continuing education credits may not be carried forward or applied to a report of continuing education more than two years beyond the date of the registration following the period during which the credits were earned.

(5) Exemptions.

(A) A certificate holder or NCT [holder of a certificate or registration as a non-certified technician] may request in writing an exemption for the following reasons, subject to the approval of the certification committee of the board:

(i) catastrophic illness;

(ii) military service of longer than one year's duration outside the United States;

(iii) residence of longer than one year's duration outside the United States; or

(iv) good cause shown on written application of the certificate holder that gives satisfactory evidence to the board that the certificate holder is unable to comply with the requirement for continuing medical education.

(B) An exception under paragraph (5) of this subsection may not exceed one registration period, but may be renewed biennially, subject to the approval of the board.

(6) A certificate holder or NCT who is a military service member may request an extension of time, not to exceed two years, to complete any continuing education requirements.

(7) This subsection does not prevent the board from taking disciplinary action with respect to a NCT or certificate holder or an applicant for such authorization [a certificate] by requiring additional hours of continuing education or of specific course subjects.

(8) The board may require written verification of continuing education credits from any certificate holder or NCT within 30 days of request. Failure to provide such verification may result in disciplinary action by the board.

(9) Unless exempted under the terms of this subsection, a certificate holder or NCT's failure to obtain and timely report required hours of continuing education as required and provided for in this subsection shall result in the nonrenewal of the authorization to practice [certificate] until such time as the certificate holder or NCT obtains and reports the required continuing education hours; however, the executive director of the Medical board may issue [to such a certificate holder] a temporary certificate or NCT registration numbered so as to correspond to the nonrenewed certificate or NCT registration. Such a temporary authorization to practice [certificate] shall be issued at the direction of the executive director for a period of no longer than 90 days. A temporary authorization to practice [certificate] issued pursuant to this subsection may be issued to allow the [certificate holder who has not obtained or timely reported the required number of hours an] opportunity to correct any deficiency so as not to require termination of practice.
(10) Determination of contact hour credits. A contact hour shall be defined as 50 minutes of attendance and participation. One-half contact hour shall be defined as 30 minutes of attendance and participation during a 30-minute period.

(d) Criminal History Requirement for Registration Renewal.

(1) An applicant must submit a complete and legible set of fingerprints for purposes of performing a criminal history check [of the applicant].

(2) The board may not renew the certificate or NCT [general] registration [permit] of a person who does not comply with the requirement of paragraph (1) of this subsection.

(3) A certificate holder [of a certificate or] NCT [general registration permit] is not required to submit fingerprints under this section for the renewal of the certificate or registration [permit] if the holder has previously submitted fingerprints for the initial issuance of the certificate or NCT general registration permit or as part of a prior renewal of a certificate or NCT [general] registration [permit].

(e) Report of Impairment on Registration Form.

(1) A certificate holder [of a certificate or] NCT [general registration permit] who reports an impairment that affects his or her ability to actively practice [as a MRT, LMRT, or NCT] shall be given written notice of the following:

(A) based on the individual's impairment, he or she may request:

(i) to be placed on retired status pursuant to §194.10 of this title [chapter] (relating to Retired Certificate or NCT [General] Registration [Permit]);

(ii) to voluntarily surrender the certificate or NCT registration [permit] pursuant to §194.33 of this title [chapter] (relating to Voluntary Relinquishment or Surrender of Certificate or Permit); or

(iii) to be referred to the Texas Physician Health Program pursuant to Chapter 180 of this title (relating to Texas Physician Health Program and Rehabilitation Orders); and

(B) that failure to respond to the written notice or otherwise not comply with paragraph (1) of this subsection within 45 days shall result in a referral to the board's investigation division for possible disciplinary action.

(2) The board shall provide written notice as described in paragraph (1) of this subsection within 30 days of receipt of the renewal application [certificate holder's registration] form indicating the [certificate holder's] impairment.

(f) The board shall deny an application for renewal of an authorization to practice [a certificate] upon notice of the certificate or NCT [general] registration [permit] holder's default of child support payments, as provided under Chapter 232 of the Texas Family Code, or default of a Texas Guaranteed Student Loan Corporation guaranteed student loan, as provided in the Texas Education Code, §57.401.

(g) The board shall deny an application for renewal of a certificate or NCT [general] registration [permit] or take and/or impose other disciplinary action against such an individual who falsifies an affidavit or otherwise submits false information to obtain renewal of a certificate or NCT registration, pursuant to the Act, §601.302.

(h) If the renewal fee and completed application form are not received on or before the expiration date of the certificate or NCT registration, the fees set forth in Chapter 175 of this title (relating to Fees and Penalties) shall apply.

(i) Except as otherwise provided, the board shall not waive fees or penalties.

(j) The board shall stagger biennial renewal [registration] of a certificate or NCT [general] registration [permit holder] proportionally on a periodic basis.

[(k) A certificate or NCT general registration permit holder who engages in activities requiring a certificate or other authorization while in Texas, without an biennial registration permit for the current renewal period as provided for in the board rules has the same force and effect as and is subject to all penalties of practicing without a certificate or other required authorization.]

(k) [44 TexReg 4837]

(1) Generally.

(A) If a certificate or NCT [general registration permit holder] registration has expired for less than one year, the certificate or NCT registration [permit holder] may be renewed [obtain a new registration] by submitting to the board a completed renewal [registration] application, and the renewal [registration] and penalty fees, as set forth under Chapter 175 (relating to Fees and Penalties).

(B) If a certificate [holder] or NCT [general] registration [permit holder's registration] has been expired for one year or longer, the certificate or NCT registration [permit holder's certificate or permit] will be automatically canceled, unless an investigation is pending, and the certificate or [permit holder may not obtain a new] NCT registration may not be renewed.

(C) A person whose certificate or NCT [general] registration [permit] has expired may not engage in activities that require a certificate or NCT registration [permit] until the authorization [certificate or permit] has been renewed. Performing activities requiring a certificate or NCT registration [permit] during the period in which the authority [registration] has expired [without obtaining a new registration for the current registration period] has the same effect as, and is subject to all penalties of, practicing radiologic technology in violation of the Act.

(D) If a certificate or NCT [general] registration [permit] has expired for one year or longer, it is considered to have been canceled, unless an investigation is pending. A new certificate or NCT [general] registration [permit] may be obtained by complying with the requirements and procedures for obtaining an original certificate or NCT registration [permit].

(2) Renewal for technologists on active military duty with expired certificate or NCT [general] registration [permit]. A holder of a certificate or NCT [general] registration [permit] that has been expired for longer than a year may file a complete application for another certificate or NCT registration [permit] of the same type as that which expired.

(A) The application shall be on official board forms and be filed with required fees. [the application and initial certification or NCT general registration permit fee.]

(B) An applicant shall be entitled to a certificate [of NCT general registration permit] of the same type as that which expired based upon the applicant's previously accepted qualification and no further qualifications or examination shall be required.

(C) The application must include a copy of the official orders or other official military documentation showing that the holder was on active duty during any portion of the period for which the applicant was last certified or registered as an NCT with the board.
(D) An applicant for a different type of certificate than that which expired must meet the requirements of this chapter generally applicable to that type of certificate.

\[194.10. \text{Retired Certificate or NCT [General] Registration [permit].}\]

(a) The registration fee shall not apply to retired certificate or NCT [general registration permit holder].

(b) To become exempt from the registration fee due to retirement, the individual:

(1) the certificate or permit holder's current certificate or permit must not be under an investigation or order with the board or otherwise be restricted; and

(2) the certificate or permit holder must request in writing on a form prescribed by the board for his or her certificate or NCT registration [permit] to be placed on official retired status.

(c) The following restrictions shall apply to a certificate or NCT registration placed under an [permit holders whose certificates or permits are on] official retired status:

(A) the certificate or NCT registration [permit] holder must not engage in clinical activities requiring a certificate or NCT registration [permit] in Texas or any state; and

(B) the certificate or permit holder's certificate or permit may not be endorsed to any other state.

(c) A retired certificate or NCT registration [permit] holder may return to active status by:

(1) applying to the board;

(2) paying an application fee equal to an application fee for a certificate or NCT registration [permit] holder;

(3) complying with the requirements for certificate or NCT registration [permit] renewal under the Act;

(4) providing current verifications from each state in which the certificate or NCT registration [permit] holder holds a license, certificate, permit, or registration, as applicable;

(5) providing current verifications of certification by ARRT, CBRPA, or NMTCB, as applicable; and

(6) complying with subsection (d) of this section.

(d) Licensure Committee or Executive Director Recommendations.

(1) The request of a certificate or NCT registration [permit] holder seeking a return to active status whose certificate or NCT registration [permit] has been placed on official retired status for two years or longer shall be submitted to the Licensure Committee of the board for consideration and a recommendation to the full board for approval or denial of the request. After consideration of the request and the recommendation of the Licensure Committee, the Licensure Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including, but not limited to the following terms:

(A) completion of specified continuing education hours directly or indirectly related to the disciplines of radiologic technology and offered by an institution accredited by a regional accrediting or-

organization such as SACS, or by JRCERT, JRCNMT, JTCCVT, CCE, ABHES, or ASRT;

(B) current certification by ARRT, CBRPA or NMTCB, as applicable;

(C) limitation and/or exclusion of the practice of the applicant to specified activities of the practice;

(D) remedial education; and

(E) such other remedial or restrictive conditions or requirements which, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice.

(2) The request of a certificate or NCT registration [permit] holder seeking a return to active status whose certificate has been placed on official retired status for less than two years may be approved by the executive director of the board or submitted by the executive director to the Licensure Committee of the board, for consideration and a recommendation to the full board for approval or denial of the request. In those instances in which the executive director submits the request to the Licensure Committee of the board, the Licensure Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including, but not limited to those options provided in paragraph (1)(A) - (E) of this subsection.

(e) In evaluating a request to return to active status, the Licensure Committee or the full board may require a personal appearance by the certificate or NCT registration [permit] holder at the offices of the board, and may also require a physical or mental examination by one or more physicians or other health care providers approved in advance and in writing by the executive director or the Licensure Committee, or other designee(s) determined by majority vote of the board.

(f) A retired certificate or NCT registration [permit] holder who has obtained an exemption from the renewal [registration] fee as provided for under this section, may be subject to disciplinary action under the Act, §601.302, based on unprofessional conduct if the certificate or NCT registration holder engages in activities requiring a certificate or NCT registration [permit].

(g) A retired certificate or NCT registration [permit] holder who attempts to obtain an exemption from the registration fee under this section by submitting false or misleading statements to the board shall be subject to disciplinary action pursuant to the Act, §601.302, in addition to any civil or criminal actions provided for by state or federal law.

\[194.21. \text{Scope of Practice.}\]

(a) (No change.)

(b) LMRTs. Persons holding a limited certificate in one or more categories may not perform radiologic procedures involving the use of contrast media, utilization of fluoroscopic equipment, mammography, tomography, portable radiography, nuclear medicine, and/or radiation therapy procedures. However, a person holding a limited certificate in the cardiovascular category may perform radiologic procedures involving the use of contrast media and/or ionizing radiation for the purposes of imaging [diagnosing or treating] a disease or condition of the cardiovascular system. Holding a limited certificate in all categories shall not be construed to mean that the holder of the limited certificate has the rights, duties, and privileges of a general certificate holder.
The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Scott Freshour
General Counsel
Texas Medical Board
Earliest possible date of adoption: October 6, 2019
For further information, please call: (512) 305-7016

22 TAC §194.34

The Texas Medical Board (Board) proposes new rule §194.34, concerning Exemption from Licensure for Certain Military Spouses for Medical Radiologic Technologists.

The proposed new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses.

New rule §194.34, Exemption from Licensure for Certain Military Spouses (regarding Medical Radiologic Technologists), allows qualified military spouses to practice medical radiological technology without obtaining a license during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by the Board after verifying that the military spouse holds an active license in good standing in another state with substantially equivalent requirements for licensure as Texas.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the new rules as proposed are in effect, the public benefit anticipated as a result of enforcing these proposed new rules will be to increase patient accessibility to properly licensed, trained, and educated providers.

Mr. Freshour has also determined that for the first five-year period these new rules as proposed are in effect there will be no fiscal impact or effect on government growth as a result of enforcing the new rules as proposed.

Mr. Freshour has also determined that for the first five-year period the new rules are in effect there will be no probable economic cost to individuals required to comply with these rules as proposed.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed new rules and determined that for each year of the first five years the proposed new rules will be in effect:

1. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule is none;

2. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule is none;

3. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule is none; and

4. there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed new rule will be in effect, there will be no effect on local economy and no effect on local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed new rule. For each year of the first five years the proposed new rules will be in effect, Mr. Freshour has determined the following:

1. The proposed rule does not create or eliminate a government program.

2. Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rule does not require an increase or decrease in fees paid to the agency.

5. The proposed rule creates new regulations.

6. The proposed rule does not repeal existing regulations as described above. The proposed rules do not expand or limit an existing regulation.

7. The proposed rule does increase the number of individuals subject to the rules' applicability.

8. The proposed rule does not positively or adversely affect this state's economy.

Comments on the proposals may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmmb.state.tx.us. A public hearing will be held at a later date.

The new rule is proposed under the authority of Texas Occupations Code §153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act and adopt rules necessary to regulate medical radiologic technologists. The new rule is also proposed under Texas Occupations Code §55.0041, which mandates the Board to adopt rules to implement that section. No other statutes, articles or codes are affected by this proposal.

§194.34. Exemption from Licensure for Certain Military Spouses.

(a) The executive director of the Texas Medical Board must authorize a qualified military spouse to practice medical radiologic technology in Texas without obtaining a certificate or permit in accor-
dance with §55.0041(a), Texas Occupations Code. This authorization to practice is valid during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas, but not to exceed three years.

(b) In order to receive authorization to practice the military spouse must:

(1) hold an active medical radiologic certificate or permit in another state, territory, Canadian province, or country that:

(A) has licensing or certification requirements that are determined by the board to be substantially equivalent to the requirements for certification in Texas; and

(B) is not subject to any restriction, disciplinary order, probation, or investigation;

(2) notify the board of the military spouse's intent to practice in Texas on a form prescribed by the board; and

(3) submit proof of the military spouse's residency in this state, a copy of the spouse's military identification card, and proof of the military member's status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions).

(c) While authorized to practice medical radiologic technology in Texas, the military spouse shall comply with all other laws and regulations applicable to the practice of medical radiologic technology in Texas.

(d) Once the board receives the form containing notice of a military spouse's intent to practice in Texas, the board will verify whether the military spouse's certificate or permit in another state, territory, Canadian province, or country is active and in good standing. Additionally, the board will determine whether the licensing or certification requirements in that jurisdiction are substantially equivalent to the requirements for certification in Texas.

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

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Scott Freshour
General Counsel
Texas Medical Board
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For further information, please call: (512) 305-7016

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 322. PRACTICE

22 TAC §322.1

The Texas Board of Physical Therapy Examiners proposes amending 22 TAC §322.1, Provision of Services, pursuant to HB 29 amendments to Sec. 453.301, Occupations Code during the 86th Legislative Session.

The amendments are proposed in order to delineate the qualifications beyond licensure, additional requirements, and limitations for a physical therapist to treat a patient without a referral from a qualified healthcare practitioner.

Fiscal Note

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy & Occupational Therapy Examiners, has determined that for the first five-year period these amendments are in effect there would be no increase or loss of revenue to the state. No fiscal implication to units of local government is anticipated as a result of enforcing or administering the rules.

Public Benefits and Costs

Mr. Harper has also determined that for the first five-year period these amendments are in effect the public benefit will be increasing consumer access to physical therapy services. There will be no economic cost to physical therapists who will provide treatment without a referral as no new fee will be imposed.

Local Employment Economic Impact Statement

The amendments are not anticipated to impact a local economy, so a local employment economic impact statement is not required.

Small and Micro-Businesses and Rural Communities Impact

Mr. Harper has determined that there will be no costs or adverse economic effects to small or micro-businesses or rural communities; therefore, an economic impact statement or regulatory flexibility analysis is not required.

Government Growth Impact Statement

During the first five-year period these amendments are in effect, the impact on government growth is as follows: the proposed amendment will neither create nor eliminate a government program; will neither create new employee positions nor eliminate existing employee positions; will neither increase nor decrease future legislative appropriations to the agency; will neither require an increase nor a decrease in fees paid to the agency; will amend an existing regulation by authorizing a physical therapist to treat a patient without a referral from a qualified healthcare practitioner with certain requirements, limitations and restrictions; will limit the number of physical therapists subject to the rule's applicability as certain qualifications beyond licensure must be met; and will neither positively nor adversely affect the state's economy.

Takings Impact Assessment


Requirement for Rule Increasing Costs to Regulated Persons

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule because the amendments will not increase costs to regulated persons and are necessary to implement legislation that amended Sec. 453.301, Occupations Code during the 86th Legislative Session.

Public Comment

Comments on the proposed amendments may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@plot.texas.gov. Comments must
be received no later than 30 days from the date this proposed amendment is published in the Texas Register.

Statutory Authority
The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Cross-reference to Statute
The proposed amendments implement amendments to Sec. 453.301; Occupations Code during the 86th Legislative Session.

§322.1. Provision of Services.
(a) Initiation of physical therapy services.
   (1) Referral requirement. Except as authorized by paragraph (2) of this subsection, a [A] physical therapist is subject to discipline from the board for providing physical therapy treatment without a referral from a qualified healthcare practitioner licensed by the appropriate licensing board, who within the scope of the professional licensure is authorized to prescribe treatment of individuals. The list of qualifying referral sources includes physicians, dentists, chiropractors, podiatrists, physician assistants, and advanced nurse practitioners.
   (2) Exceptions to referral requirement.
      (A) - (C) (No change.)
      (D) A PT may treat a patient for an injury or condition without a referral for not more than 10 consecutive business days if the PT:
         (i) has been licensed to practice physical therapy for at least one year;
         (ii) is covered by professional liability insurance in the minimum amount of $100,000 per claim and $300,000 aggregate per year; and
         (iii) either:
            (I) possesses a doctoral degree in physical therapy from:
               (-a-) a program that is accredited by the Commission on Accreditation in Physical Therapy Education; or
               (-b-) an institution that is accredited by an agency or association recognized by the United States secretary of education; or
            (II) has completed at least 30 CCUs in the area of differential diagnosis.
      (E) A PT who has completed a residency or fellowship may treat a patient without a referral for not more than 15 consecutive business days if he possesses a doctoral degree as described in subparagraph (D)(iii)(I)(-a-) or (-b-) of this paragraph and has satisfied the conditions set forth in subparagraph (D)(i) and (ii) of this paragraph.
      (F) A PT who treats a patient without a referral under subparagraph (D) or (E) of this paragraph must obtain a signed disclosure on a form prescribed by the board prior to the initiation of treatment. The disclosure form will be made available on the board's website.
      (G) Prior referrals. A physical therapist may treat a patient for an injury or condition that is the subject of a prior referral if all of the following conditions are met:

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CHAPTER 329. LICENSING PROCEDURE
22 TAC §329.6, §329.7
The Texas Board of Physical Therapy Examiners proposes amending §329.6, Licensure by Endorsement, and §329.7, Exemptions from Licensure, pursuant to SB 1200 addition of Sec. 55.0041, RECOGNITION OF OUT-OF-STATE LICENSE OF MILITARY SPOUSE to Chapter 55, Occupations Code during the 86th Legislative Session.
The amendment is proposed in order to authorize a military spouse to engage in the practice of physical therapy without obtaining a license as a physical therapist or physical therapist assistant if the spouse is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the licensure in this state and the military service member to whom the military spouse is married is stationed at a military installation in this state.
The amendments clarify that a military spouse may qualify to practice under the exemptions set forth in §329.7, Exemptions from Licensure, and may qualify, along with veterans, for a Compact privilege to practice in this state. The reporting requirements for both the military spouse and the agency and the time limit for authorization are delineated. Additionally, the method for determining substantial equivalent licensing requirements and
verification of licensure in another jurisdiction are identified. The requirements for the licensee to provide a list of the jurisdictions in which a license is or has been held, and for the licensee to comply with the laws and regulations of physical therapy are added to apply to all categories of licensure exemption in this section.

Fiscal Note
Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy & Occupational Therapy Examiners, has determined that for the first five-year period these amendments are in effect there would be no loss of revenue as a military spouse already qualifies for a waiver of application fees when endorsing from another jurisdiction. No fiscal implication to units of local government is anticipated as a result of enforcing or administering the rules.

Public Benefits and Costs
Mr. Harper has also determined that for the first five-year period these amendments are in effect the public benefit will be increasing consumer access to physical therapy services by reducing regulatory barriers to interstate mobility of qualified military spouses. There will be no economic cost to individuals who are exempt from obtaining licensure as a physical therapist or physical therapist assistant.

Local Employment Economic Impact Statement
The amendments are not anticipated to impact a local economy, so a local employment economic impact statement is not required.

Small and Micro-Businesses and Rural Communities Impact
Mr. Harper has determined that there will be no costs or adverse economic effects to small or micro-businesses or rural communities; therefore, neither an economic impact statement nor a regulatory flexibility analysis are required.

Government Growth Impact Statement
During the first five-year period this amendment is in effect, the impact on government growth is as follows: the proposed amendments will neither create nor eliminate a government program; will neither create new employee positions nor eliminate existing employee positions; will neither increase nor decrease future legislative appropriations to the agency; will neither require an increase nor a decrease in fees paid to the agency; will amend existing regulations by expanding the categories of licensees that are exempt from licensure in this state; will neither increase nor decrease the number of individuals subject to the rule's applicability; and will neither positively nor adversely affect the state's economy.

Takings Impact Assessment
The proposed rule amendment will not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

Requirement for Rule Increasing Costs to Regulated Persons
Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule because the amendments will not increase costs to regulated persons and are necessary to implement legislation that amended Sec. 55.0041. RECOGNITION OF OUT-OF-STATE LICENSE OF MILITARY SPOUSE of Chapter 55, Occupations Code during the 86th Legislative Session.
(A) The individual must submit written notification stating the following:

(i) the beginning and ending dates of the period of practice;

(ii) the name of the institution or facility in which the individual will be practicing; [and]

(iii) the name of the supervising physical therapist; and [and]

(iv) a list of the jurisdictions in which the individual has held or currently holds a license.

(B) Written notification must be received by the board prior to the start date of the practice.

(2) A physical therapist or a physical therapist assistant who is licensed in good standing in another jurisdiction of the U.S. or authorized to practice physical therapy without restriction in another country if the person is engaging in patient contact and treatment as either an instructor or participant while attending an educational seminar or activity in this state for not more than 60 days in a 12 month period.

(A) The individual must submit written notification stating the following:

(i) the beginning and ending dates of the educational activity;

(ii) the name of the course or activity sponsor; and

(iii) the location of the educational activity; and [and]

(iv) a list of the jurisdictions in which the individual has held or currently holds a license.

(B) Written notification must be received by the board prior to the start date of the educational activity.

(3) A physical therapist or physical therapist assistant licensed in good standing in another jurisdiction of the U.S. who is practicing physical therapy for not more than 60 days during a declared local, state, or national disaster or emergency.

(A) The individual must submit written notification stating the following:

(i) the beginning and ending dates of the period of practice; [and]

(ii) the name of the facility in which the individual will be practicing; and [and]

(iii) a list of the jurisdictions in which the individual has held or currently holds a license.

(B) Written notification must be received by the board prior to the start date of the practice.

(4) A physical therapist or physical therapist assistant licensed in good standing in another jurisdiction of the U.S. who is displaced from the person’s residence or place of employment due to a declared local, state, or national disaster and is practicing physical therapy in this state for not more than 60 days after the date the disaster is declared.

(A) The individual must submit written notification stating the following:

(i) the beginning and ending dates of the period of practice; [and]

(ii) the name of the facility in which the individual will be practicing; and [and]

(iii) a list of the jurisdictions in which the individual has held or currently holds a license.

(B) Written notification must be received by the board prior to the start date of the practice.

(5) A physical therapist or physical therapist assistant licensed in good standing in another jurisdiction of the U.S. who is a military spouse for the period during which the military service member to whom the military spouse is married is stationed at a military installation in Texas.

(A) The military spouse must submit written notification including the following:

(i) proof of the military spouse’s residency in this state;

(ii) a copy of the military spouse’s military identification card; and

(iii) a list of the jurisdictions in which the military spouse has held or currently holds a license.

(B) The board will issue a written confirmation stating that:

(i) licensure in other jurisdictions has been verified;

(ii) the military spouse is authorized to practice physical therapy in the state; and

(iii) authorization does not exceed three years from the date the confirmation is received.

(c) For individuals exempt from licensure under (b), the following applies:

(1) Any jurisdiction of the U.S. that licenses physical therapists and physical therapist assistants is deemed to have substantially equivalent requirements for licensure;

(2) Verification of licensure in other jurisdictions may be through online primary source verification; and

(3) The individual must comply with all of the laws and regulations applicable to the provision of physical therapy in Texas.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

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Ralph A. Harper
Executive Director
Texas Board of Physical Therapy Examiners

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For further information, please call: (512) 305-6900

CHAPTER 341. LICENSE RENEWAL

22 TAC §341.7

The Texas Board of Physical Therapy Examiners proposes amending §341.7, Restrictions on License Renewal and Restoration, pursuant to SB 37 amendments to CHAPTER 56. ACTION AGAINST RECIPIENTS OF STUDENT FINANCIAL
The amendment is proposed in order to eliminate default on a student loan as a restriction for obtaining, renewing, or restoring a physical therapy license.

Fiscal Note

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy & Occupational Therapy Examiners, has determined that for the first five-year period this amendment is in effect there may be a negligible gain of revenue to the state government through fees associated with allowing individuals with a student loan default to obtain, renew, or restore a physical therapy license. No fiscal implication to units of local government is anticipated as a result of enforcing or administering the rules.

Public Benefits and Costs

Mr. Harper has also determined that for the first five-year period this amendment is in effect the public benefit will be that physical therapists and physical therapist assistants who are otherwise qualified and competent will be allowed to obtain, renew, or restore a physical therapy license and provide physical therapy services. There will be a nominal economic cost to individuals who apply for or renewal their physical therapy license in the form of an application or renewal fee.

Local Employment Economic Impact Statement

The amendment is not anticipated to impact a local economy, so a local employment economic impact statement is not required.

Small and Micro-Businesses and Rural Communities Impact

Mr. Harper has determined that there will be no costs or adverse economic effects to small or micro-businesses or rural communities; therefore, an economic impact statement or regulatory flexibility analysis is not required.

Government Growth Impact Statement

During the first five-year period this amendment is in effect, the impact on government growth is as follows: the proposed amendment will neither create nor eliminate a government program; will neither create new employee positions nor eliminate existing employee positions; will neither increase nor decrease future legislative appropriations to the agency; will neither require an increase nor a decrease in fees paid to the agency; will not create a new regulation but does repeal an existing regulation that restricts licensing of an individual who has defaulted on a student loan; will neither increase nor decrease the number of individuals subject to the rule’s applicability; and will neither positively nor adversely affect the state’s economy.

Takings Impact Assessment

The proposed rule amendment will not impact private real property as defined by Tex. Gov’t Code §2007.003, so a takings impact assessment under Tex. Gov’t Code §2001.043 is not required.

Requirement for Rule Increasing Costs to Regulated Persons

Tex. Gov’t Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule because the amendment will not increase costs to regulated persons and are necessary to implement legislation that amended CHAPTER 56. ACTION AGAINST RECIPIENTS OF STUDENT

FINANCIAL ASSISTANCE, Occupations Code during the 86th Legislative Session.

Public Comment

Comments on the proposed amendment may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the Texas Register.

Statutory Authority

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Cross-reference to Statute

The proposed amendment implements CHAPTER 56. ACTION AGAINST RECIPIENTS OF STUDENT FINANCIAL ASSISTANCE, Occupations Code as amended during the 86th Legislative Session.

§341.7. Restrictions on License Renewal and Restoration.

(a) The board will not renew a license if a licensee has defaulted on a loan from the Texas Guaranteed Student Loan Corporation (TGSLC). Upon notice from TGSLC that a repayment agreement has been established, the license shall be renewed.

(b) The board will not renew a license if a licensee has defaulted on court or attorney general’s notice of child support. Upon receipt of notification that a repayment agreement has been established, the license shall be renewed.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

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Ralph A. Harper
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Texas Board of Physical Therapy Examiners

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 745. LICENSING

SUBCHAPTER N. ADMINISTRATOR’S LICENSING

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §745.8914, concerning How Does Licensing Determine Whether Another State’s Licensing Requirements are Substantially Equivalent to the Requirements for an Administrator’s License under this subchapter; and §745.9030, concerning When May a Military
Proposed new §745.9030(a) establishes the requirements a military spouse that has a substantially equivalent license in another state must meet to qualify to act as an administrator without obtaining a license in Texas.

Proposed new §745.9030(b) describes the information that the military spouse must submit so that CCL can evaluate the other state’s requirements for a license.

Proposed new §745.9030(c) describes how CCL will verify the information submitted, determine whether another state’s licensing requirements are substantially equivalent to the requirements for an administrator’s license in Texas, and verify that the military spouse is licensed in good standing.

Proposed new §745.9030(d) describes the process for notifying the military spouse on whether CCL will approve or deny the spouse to act as an administrator without having a license from CCL.

Proposed new §745.9030(e) specifies the laws and regulations that the military spouse who CCL approved to act as an administrator must comply with and when approval to act expires.

Proposed new §745.9030(f) clarifies that the approval to act as an administrator may be revoked in the same manner as a license for an administrator may be revoked.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

1. the proposed rules will not create or eliminate a government program;
2. implementation of the proposed rules will not affect the number of HHSC employee positions;
3. implementation of the proposed rules will result in no assumed change in future legislative appropriations;
4. the proposed rules will not affect fees paid to HHSC;
5. the proposed rules will create new rules;
6. the proposed rules implement legislation that requires a state agency to recognize an out-of-state occupational license for a military spouse if certain criteria are met. Otherwise, the proposed rules will not expand, limit, or repeal existing rules;
7. the proposed rules will not change the number of individuals subject to the rules; and
8. the proposed rules will not affect the state’s economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed rules do not apply to small or micro-businesses or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commission for Child Care Licensing, has determined that for each year of the first five years the rules are in effect, the public benefit will be military spouses that transfer to Texas will have another faster alternative (versus obtaining an administrator’s license from CCL) to act as an administrator for a general residential operation, child-placing agency, or both, which will allow military spouses to begin work as soon as possible under certain circumstances.

Trey Wood has determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply. The proposed rules waive application fees for military spouses, that have a substantially equivalent license in another state, seeking an alternative administrator’s license in Texas.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Gerry Williams at (512) 438-5559.

Written comments on the proposal may be submitted to Gerry Williams, Rules Developer, Child Care Licensing, Health and
Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by e-mail to CCRules@hhsc.stat.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the Texas Register. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or e-mailed before midnight on the following business day to be accepted. When e-mailing comments, please indicate "Comments on Proposed Rule 19R055" in the subject line.

DIVISION 1. OVERVIEW OF ADMINISTRATOR'S LICENSING

26 TAC §745.8914

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

Texas Human Resources Code §43.005 includes HHSC’s authority to adopt rules to administer provisions of Chapter 43, Texas Human Resources Code, concerning the regulation of child-care and child-placing agency administrators.

The new section implements new Texas Occupations Code, §55.0041, which was created by S.B. 1200 in the 86th Legislature, Regular Session, 2019.

§745.8914. How does Licensing determine whether another state's licensing requirements are substantially equivalent to the requirements for an administrator's license under this subchapter?

We will review and evaluate the following criteria when determining whether another state’s licensing requirements are substantially equivalent to the requirements for an administrator’s license under this subchapter and Chapter 43 of the Texas Human Resources Code:

(1) Whether the other state requires an applicant to pass an examination that demonstrates competence in the field of child care administration or placing children in residential settings, as appropriate, in order to obtain the license;
(2) Whether the other state requires an applicant to meet the full-time experience qualifications, described in this division, in order to obtain the license;
(3) Whether the other state requires an applicant to meet the education qualifications, described in this division, in order to obtain the license; and
(4) The other state’s license requirements, including the scope of work authorized to be performed under the license issued by the other state.

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

Filed with the Office of the Secretary of State on August 26, 2019.
TRD-201902897

Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: October 6, 2019
For further information, please call: (512) 438-5559

DIVISION 5. MILITARY MEMBERS, MILITARY SPOUSES, AND MILITARY VETERANS

26 TAC §745.9030

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

Texas Human Resources Code §43.005 includes HHSC’s authority to adopt rules to administer provisions of Chapter 43, Texas Human Resources Code, concerning the regulation of child-care and child-placing agency administrators.

The new section implements new Texas Occupations Code, §55.0041, which was created by S.B. 1200 in the 86th Legislature, Regular Session, 2019.

§745.9030. When may a military spouse who has a substantially equivalent license in another state act as an administrator without obtaining a license under this subchapter?

(a) If you are a military spouse, you may act as an administrator for a general residential operation, child-placing agency, or both, without obtaining an administrator's license under this subchapter and Chapter 43 of the Texas Human Resources Code, for up to three years if we determine that you:

(1) Are currently licensed in good standing by another state that has licensing requirements that are substantially equivalent to the requirements for an administrator's license under this subchapter; and
(2) Meet the other requirements in this section.

(b) In order for us to evaluate whether you are currently licensed in another state with requirements that are substantially equivalent to the requirements for an administrator’s license under this subchapter, you must submit:

(1) An Application for a Child-Care Administrator License or a Child-Placing Agency Administrator License and complete Sections I, VIII, except you must attach a copy of your valid military identification card to demonstrate your status as a military spouse, and X;
(2) A letter indicating your intent to act as an administrator for a general residential operation, child-placing agency, or both in this state;
(3) Documentation of your residency in this state;
(4) Proof of your administrator's license or any other professional or occupational license that you currently hold in the other state; and
(5) A copy of the regulations pertaining to the current license in the other state or a web address where the regulations can be found.

c) Once we receive the application and the additional documentation, we will:


44 TexReg 4846    September 6, 2019    Texas Register
(1) Verify that the application is complete and the documentation is accurate;

(2) Determine whether the requirements for the license in the other state are substantially equivalent to the requirements for an administrator's license according to § 745.8914 of this subchapter (relating to How does Licensing determine whether another state's licensing requirements are substantially equivalent to the requirements for an administrator's license under this subchapter?); and

(3) Verify that you are licensed in the other state and are in good standing, including that:

(A) Your license in the other state is valid, active, and current (is not pending renewal and has not expired); and

(B) There is no current disciplinary action or corrective action pending or attached to the license.

(d) After completing the actions in subsection (c) of this section, we will notify you whether we approve or deny you to act as an administrator for a general residential operation, child-placing agency, or both without having an administrator's license under this subchapter.

(e) If we approve you to act as an administrator for a general residential operation, child-placing agency, or both:

(1) You must comply with all other applicable laws and regulations, including those relating to:

(A) Administrator's Licensing in this subchapter and Chapter 43 of the Texas Human Resources Code;

(B) Subchapter F of this chapter (relating to Background Checks) when employed by a general residential operation or a child-placing agency; and

(C) Minimum standards for general residential operations and child-placing agencies; and

(2) Our approval for you to act as an administrator expires on the earlier of:

(A) The date your spouse is no longer stationed at a military installation in this state; or

(B) The third anniversary of the date when we notified you that you may act as an administrator for a general residential operation, child-placing agency, or both.

(f) We may revoke our approval for you to act as an administrator for any reason noted in §745.9037 of this subchapter (relating to Under what circumstances may Licensing take remedial action against my administrator's license or administrator's license application?).

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-5559

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.4

The Texas Board of Criminal Justice proposes amendments to §151.4, concerning Public Presentations and Comments to the Texas Board of Criminal Justice. The amendments are proposed in conjunction with a proposed rule review of §151.4 as published in another section of the Texas Register. The proposed amendments are minor wording changes and are not substantive.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the rule, will be to enhance clarity and public understanding. No cost will be imposed on regulated persons.

The rule will have no impact on government growth; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the Texas Register.

The amendments are proposed under Texas Government Code §§492.001, 492.013, 551.001-.146; Texas Penal Code §§30.06, 30.07.

Cross Reference to Statutes: None.

§151.4. Public Presentations and Comments to the Texas Board of Criminal Justice.

(a) Policy. The Texas Board of Criminal Justice (TBCJ or board) is committed to providing access and opportunity for public presentations and comments as provided by [for in] this section. Individuals [Persons] not employed by or under contract with the Texas Department of Criminal Justice (TDCJ), who wish to have items placed on the board's posted agenda, shall follow the procedures set forth in subsection (g) [44] of this section. Public presentations and comments shall be:

(1) subject to the requirements and restrictions of [subsections (b), (e), (f), and (g) of] this section;

(2) pertinent to issues under the jurisdiction of the board, as determined by the board chairperson [chairman] and the TDCJ general counsel; and

(3) pertinent to policies, procedures, standards, and rules of the TDCJ. Disputes that are appropriately the subject of the em-
ployee grievance system, the employee disciplinary system, the offender grievance system, the offender disciplinary system, or comments regarding pending litigation shall be addressed through those processes.

(b) Definitions.

(1) Public presentations are presentations made by the public to the TBCJ regarding topics posted on a board meeting agenda that has been filed with and published by the Texas Register and as provided for in subsection (c) of this section.

(2) Public comments are comments made by the public on non-posted agenda topics and as provided for in subsection (d) of this section.

(c) Public presentations. Individuals [Persons] who desire to make public presentations to the TBCJ on posted agenda topics shall provide, on the date of the meeting, a completed registration card to onsite board office staff at least 10 minutes prior to the meeting's posted start time. Registration cards shall be made available at the entry to the room where the board's scheduled meeting will be [is] held.

(1) Pre-registration is available for public presentations through first class mail at P.O. Box 13084, Austin, Texas 78711, or email at tbcj@tdcj.texas.gov. Pre-registration shall be received by the board office staff at least [no later than] four calendar days prior to the posted meeting date of the presentation. In addition to the information required in subsection (c)(2) of this section, pre-registration submissions shall include appropriate contact information, such as a daytime phone number or email address, for the individual who is registering to speak.

(2) Registration cards and pre-registration submissions shall include [disclose]:

(A) the name of the individual [person] who will make the presentation;

(B) a statement as to whether the individual [person] is being remunerated for the presentation and if so, by whom; and if applicable, the name of the individual [person] or entity on whose behalf the presentation will be made;

(C) a statement as to whether the presenter has registered as a lobbyist in relation to the agenda topic being addressed;

(D) a reference to the agenda topic on which the individual [person] wants to present;

(E) an indication as to whether the presenter will speak for or against the proposed agenda topic; and

(F) a statement verifying that all information that will be presented is factual, true, and correct to the best of the speaker's knowledge.

(3) The TBCJ chairperson [chairman] shall have discretion in setting reasonable limits on the time allocated for public presentations on posted agenda topics. If several individuals [persons] have registered to address the board on the same agenda topic, it shall be within the discretion of the board chairperson [chairman] to request that those individuals [persons] select a representative amongst themselves to express such remarks or limit their presentations to an expression of support for views previously articulated.

(4) The TBCJ chairperson [chairman] shall provide an opportunity for public presentations to occur prior to the board taking action on the topic denoted on the presenter's registration card. If an individual [a person] who is registered to speak on a posted agenda item is not present when called upon, that individual's [person's] opportunity to speak prior to action being taken on that topic shall be forfeited.

(5) A presenter may submit documentation pertaining to the public presentation to the board office staff. Documents shall be submitted at least [no later than] three calendar days prior to the posted meeting date when the presentation is to occur. Such documentation shall then be distributed to the board. Any documentation submitted after the above-referenced date will not be distributed to the board until after the presentation. A minimum of 12 copies of any such documentation shall be submitted to the board office staff or distribution may not occur.

(d) Public comments.

(1) Twice a year, at the second and fourth regular called meetings of the board, an opportunity shall be provided for public comment on issues that are not part of the TBCJ's posted agenda but are within the board's jurisdiction. Special called meetings are not counted toward the requirement of this subsection.

(2) Individuals [Persons] who desire to make public comments to the TBCJ at these meetings shall provide, on the date of the meeting, a completed registration card to onsite board office staff at least 10 minutes prior to the meeting's posted start time. Registration cards shall be made available at the entry to the room where the board's scheduled meeting will be [is] held.

(3) Pre-registration is available for public comments through first class mail at P.O. Box 13084, Austin, Texas 78711, or email at tbcj@tdcj.texas.gov. Pre-registration shall be received by board office staff no earlier than the first day of the month preceding the board meeting for which the registration is intended and at least [no later than] four calendar days prior to the posted meeting date when the comments are to occur. In addition to the information required in subsection (d)(4) of this section, pre-registration submissions shall include appropriate contact information, such as a daytime phone number or email address, for the individual who is registering to speak.

(4) Registration cards and pre-registration submissions shall include [disclose]:

(A) the name of the individual [person] who will make the comments;

(B) a statement as to whether the individual [person] is being remunerated for the comments and if so, by whom; and if applicable, the name of the individual [person] or entity on whose behalf the comments will be made;

(C) a statement as to whether the presenter has registered as a lobbyist in relation to the topic being addressed;

(D) the topic on which the individual [person] shall speak and whether the individual [person] will speak for or against the topic; and

(E) a statement verifying that all information that will be presented is factual, true, and correct to the best of the speaker's knowledge.

(5) The TBCJ chairperson [chairman] shall have discretion in setting reasonable limits on the time allocated for public comments. If several individuals [persons] have registered to address the board on the same topic, it shall be within the discretion of the board chairperson [chairman] to request that those individuals [persons] select a representative amongst themselves to express such comments, or limit their comments to an expression of support for views previously articulated.

(6) Public comments shall be heard just prior to the conclusion of the board meeting, with deviation from this practice within
the discretion of the board chairperson [chairman]. If an individual [a person] who is registered to speak on a non-posted topic is not present when called upon, that individual [person] shall be called once more following all other registered speakers. If that individual [person] is not present at that time, their opportunity to speak at that meeting shall be forfeited.

(7) A presenter may submit documentation pertaining to the public comments to the board office staff. Documentation shall be submitted at least [no later than] three calendar days prior to the posted meeting date when the comments are to occur. Such documentation shall then be distributed to the board. Any documentation submitted after the above-referenced date will not be distributed to the board until after the comments. A minimum of 12 copies of such documentation shall be submitted to the board office staff or distribution may not occur.

(c) Disability accommodations. Individuals [Persons] with disabilities who have special communication or accommodation needs and who plan to attend a meeting may contact the board office at 512-475-3250. Requests for accommodation shall be made at least two days prior to a posted meeting. The TBCJ shall make every reasonable effort to accommodate these needs.

(f) Conduct and decorum. The TBCJ shall receive public presentations and comments as authorized by this section, subject to the following additional guidelines:

(1) Due to requirements of the Open Meetings Act, questions shall only occur on public presentations as defined in subsection (b) of this section as they are associated with posted agenda topics. Questions shall be reserved for board members and staff recognized by the board chairperson [chairman].

(2) Presentations and comments shall remain pertinent to the issues denoted on the registration cards.

(3) An individual [A presenter] who is determined by the board chairperson [chairman] to be disrupting a meeting shall immediately cease the disruptive activity or leave the meeting room if ordered to do so by the board chairperson [chairman]. If the disruptive activity continues, the individual may be subject to removal from the meeting room.

(4) A presenter may not assign a portion of his or her allotted presentation time to another speaker.

(5) Signs and placards shall not be carried or displayed in the meeting room.

(g) Requests for issues to be placed on an agenda. Individuals [Persons] not employed by or under contract with the TDCJ who wish to propose an agenda item for discussion at a TBCJ meeting topics shall address the request in writing to the chairperson [chairman], Texas Board of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, or email at tbcj@tdcj.texas.gov. Such requests shall be titled "Proposed Agenda Topic" and shall be submitted no later than the first day of the month preceding the board meeting for which the request is intended. Such requests are subject to the requirements of the registration card in subsection (c) of this section. The decision as to whether to calendar a matter for discussion before the TBCJ, a board committee, a board liaison, or with a designated staff member shall be within the discretion of the board chairperson [chairman]. Public presentations on topics placed on a board agenda, at the request of an individual, shall be in accordance with subsection (c) of this section.

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

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Sharon Howell
General Counsel
Texas Department of Criminal Justice
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For further information, please call: (936) 437-6700

37 TAC §151.77
The Texas Board of Criminal Justice proposes amendments to §151.77, concerning Purchasing and Contracting with Historically Underutilized Businesses. The amendments are proposed in conjunction with a proposed rule review of §151.77 as published in another section of the Texas Register. The proposed amendments are necessary to update the subchapter because the rules of Comptroller of Public Accounts, upon which this rule is based, were reorganized. The proposed amendments here reflect that reorganization and minor formatting changes have been made.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the rule, will be to have an accurate reflection of the location of the rules of the Comptroller of Public Accounts regarding the use of historically underutilized businesses. No cost will be imposed on regulated persons.

The rule will have no impact on government growth; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the Texas Register.

The amendments are proposed under Texas Government Code §§492.013, 493.012, 2161.003.

Cross Reference to Statutes: None.

§151.77. Purchasing and Contracting with Historically Underutilized Businesses (HUBs).

(a) The Texas Board of Criminal Justice (TBCJ) hereby adopts by reference the rules of the Texas Comptroller of Public Accounts codified in 34 Texas Administrative Code, Part 1, Chapter 20, Subchapter D, Division 1 [Subchapter B], relating to the Historically Underutilized Business (HUB) [HUB] Program. The Texas Department of Criminal Justice shall comply with these rules and Texas Government Code §493.012.
CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

§163.37. Reports and Records.

(a) Case Records. Each community supervision and corrections department [Community Supervision and Corrections Department] (CSCD) director [directors] shall develop and maintain a case record management system for offenders supervised [receiving any type of supervision] by the CSCD. Each case record shall contain:

(1) the [a] court order placing the person on community supervision citing all conditions of community supervision;

(2) a chronological listing of all supervision case activity [significant actions], decisions, services rendered, and assessments;

(3) a [written] criminal history record or summary issued by a law enforcement agency;

(4) periodic evaluations;

(5) if required, a pre-sentence investigation report (PSIR) or post-sentence investigation report; and

(6) other documents or information related to the defendant [as] deemed appropriate by the community supervision officer or CSCD director.

(b) Case Record Confidentiality. Confidentiality of case records shall be maintained in accordance with federal and state laws.

(c) Pre- and Post- Sentence Investigation Reports (Reports)].[.] Unless waived by the defendant, a PSIR shall be completed before the imposition of a sentence and in accordance with the Texas Code of Criminal Procedure, art. 42A, Subchapter F [art. 42.12, §§9 and 9A]. If a PSIR was not completed, a post-sentence [post sentence] investigation report may be prepared, if directed by the judge, in accordance with Texas Code of Criminal Procedure, art. 42A.259 [art. 42.12, §9(k)]. The reports, and the information obtained in connection with the reports [them], are confidential and may be released only to those persons and under those circumstances as authorized by Texas Code of Criminal Procedure, art. 42A.256 [art. 42.12, §§9 or 9A]. Information contained in the reports may be disclosed to the Department of Family and Protective Services to the extent that such information discloses that a child's physical or mental health or welfare has been adversely affected by abuse or neglect. Copies of the completed reports shall be maintained in a defendant's case file and made available for periodic audits, reviews, or inspections by the Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CIAD) staff.

(d) PSIR Format. The TDCJ CIAD format shall be used for preparing PSIRs. A different format may be used if the content requirements comply with Texas Code of Criminal Procedure, art. 42A.253 [art. 42.12, §§9 and 9A] and the format is approved by both the TDCJ CIAD and the court having jurisdiction over the defendant.

(e) Transfer to the TDCJ. Upon the revocation of community supervision or an adjudication of guilt, the CSCD shall forward to the county, for inclusion in the defendant's penitentiary packet, a copy of the defendant's community supervision conditions, and if prepared, a copy of the victim's impact statement, and a copy of the pre- or post-sentence investigation report. The CSCD also shall [also] forward any additional information that was prepared for a revocation or other hearing and information updating the PSIR.

(f) Interstate Transfer. CSCD directors shall comply with the [use] uniform interstate transfer procedures and obtain the approval of [as provided by and approved by] the TDCJ Interstate Compact Of-
office for an interstate transfer of supervision in accordance with Texas Government Code, Chapter 510 and the Interstate Compact for Adult Offender Supervision Rules.

(g) IntraState Transfer. Each CSCD director [directors] shall comply with the [use] uniform transfer procedures in accordance with 37 Texas Administrative Code §163.35(c)(8)(10), relating to Supervision.

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

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Sharon Howell
General Counsel
Texas Department of Criminal Justice
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 364. REQUIREMENTS FOR LICENSURE

40 TAC §364.5

The Texas Board of Occupational Therapy Examiners proposes new rule §364.5, concerning recognition of out-of-state license of military spouse. The new rule is proposed to add provisions to the Occupational Therapy Rules concerning the recognition of out-of-state licenses of military spouses as required by SB 1200 of the 86th Regular Legislative Session.

New rule §364.5 would add to the Occupational Therapy Rules provisions concerning the information a military spouse seeking recognition of the out-of-state license must submit to the Board and the conditions under which the military spouse may practice in the state once the individual has received confirmation from the Board that the military spouse is authorized to engage in the practice of occupational therapy. The proposal includes further provisions pursuant to SB 1200.

FISCAL NOTE

Ralph Harper, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed new rule would be in effect, there would be no fiscal implications for state or local government as a result of enforcing or administering the rule as the changes do not impose a cost.

LOCAL EMPLOYMENT IMPACT

Mr. Harper has determined that the new rule would not impact a local economy as the proposed rule concerns the reduction of occupational therapy regulations and does not impose a cost; therefore, a local employment impact statement is not required.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST

Mr. Harper has determined that for each of the first five years the proposed new rule would be in effect, the public benefit anticipated as a result of enforcing the rule would be the reduction of occupational therapy regulations. There would be no anticipated economic cost to persons required to comply with the proposed new rule.

SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES IMPACT

There would be no costs or adverse economic effects on small or micro-businesses or rural communities as the proposed new rule concerns the reduction of occupational therapy regulations and does not impose a cost; therefore, an economic impact statement or regulatory flexibility analysis is not required for the proposed new rule.

TAKINGS IMPACT ASSESSMENT

The proposed rule would not impact private real property as defined by Tex. Gov’t Code §2007.003, so a takings impact assessment under Tex. Gov’t Code §2001.043 is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The proposed new rule's impact on government growth during the first five years the rule would be in effect is as follows: would not create or eliminate a government program; would not require the creation of new employee positions or the elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency as military spouses licensed in another jurisdiction may already have initial license fees waived as required by previous legislation; would create a new regulation concerning the recognition of an out-of-state license of a military spouse; would not expand or repeal an existing regulation; would not increase or decrease the number of individuals subject to the rule’s applicability as this is a proposed new rule; and would neither positively nor adversely affect this state’s economy as military spouses licensed in another jurisdiction may already have initial licensing fees waived as required by previous legislation.

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

Tex. Gov’t Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to the proposed new rule section because the rule does not impose a cost, does not increase costs to regulated persons, and because the Board is required by SB 1200 to adopt rules to implement the legislation.

PUBLIC COMMENT

Comments on the proposed new rule may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that the proposed new rule is published in the Texas Register.

STATUTORY AUTHORITY

The new rule is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.
Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§364.5. Recognition of Out-of-State License of Military Spouse.

(a) A military spouse may engage in the practice of occupational therapy without obtaining the applicable occupational therapy license if the military spouse is currently licensed in good standing by another jurisdiction of the U.S. that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(b) Before engaging in the practice of occupational therapy, the military spouse must:

(1) notify the Board in writing of the following:
   (A) the military spouse's intent to practice in this state;
   (B) the military spouse's full name and any previous last names, social security number, date of birth, residential address, business address, email address, and a chosen address of record;
   (C) the license type, license number, and jurisdiction in which the military spouse is currently licensed in good standing; and
   (D) a list of all jurisdictions in which the military spouse has held or currently holds a license with the license type, license number, and license expiration date of each;

(2) submit to the Board proof of the military spouse's residency in this state and a copy of the military spouse's military identification card; and

(3) receive from the Board written confirmation that:
   (A) the Board has verified the military spouse's license in the other jurisdiction; and
   (B) the military spouse is authorized to engage in the practice of occupational therapy in accordance with this section.

(c) The military spouse shall comply with all other Board laws and regulations applicable to the practice of occupational therapy in this state. The military spouse may be subject to revocation of the authority described by subsection (b)(3)(B) of this section for failure to comply with Board laws and regulations and the Board may notify any jurisdictions in which the military spouse is licensed of the revocation of such.

(d) A military spouse may engage in the practice of occupational therapy under the authority of this section only for the period during which the military service member to whom the military spouse is married is stationed at a military installation in this state but not to exceed three years from the date the military spouse receives the confirmation described by subsection (b)(3) of this section. During this authorization period, the military spouse must:

(1) maintain a current license in good standing in another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state;

(2) update the Board of any changes to information as specified in subsection (b)(1)(B)-(C) of this section within 30 days of such change(s); and

(3) notify the Board within 30 days of any disciplinary action taken against the military spouse by another jurisdiction.

(e) The Board will identify, with respect to each type of license issued by the Board, the jurisdictions that have licensing requirements that are substantially equivalent to the requirements for the license in this state; and the Board shall verify that a military spouse is licensed in good standing in the jurisdiction upon receipt of the items described by subsection (b)(1)-(2) of this section.

(f) In this section, "military service member" and "military spouse" have the meaning as defined in Chapter 55, Occupations Code, §55.001.

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

Filed with the Office of the Secretary of State on August 23, 2019.

TRD-201902875
Ralph A. Harper
Executive Director
Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: October 6, 2019
For further information, please call: (512) 305-6900

CHAPTER 370. LICENSE RENEWAL

40 TAC §370.1

The Texas Board of Occupational Therapy Examiners proposes amendments to §370.1, concerning license renewal. The amendments are proposed to remove language concerning restrictions to renewal for a licensee in default of a student loan pursuant to SB 37 of the 86th Regular Legislative Session and to cleanup and clarify provisions in the section.

The proposal includes amendments to reflect law changes made by SB 37, relating to a prohibition on the use of student loan default or breach of a student loan repayment as a ground for refusal to renew a license. Related changes to §370.1 are proposed to remove from the section a provision restricting the renewal of a license for an individual who has defaulted with the Texas Guaranteed Student Loan Corporation.

Additional amendments are proposed as cleanups and clarifications. An amendment is proposed to strike a reference in the section to the number of continuing education hours required per renewal period and to replace such with language referencing continuing education requirements as per Chapter 367, concerning Continuing Education, as adopted amendments to that chapter changed the number of required hours from thirty to twenty-four hours. Additional amendments are proposed to remove a redundant reference to the address of record, as language concerning such is already located elsewhere in the Occupational Therapy Rules, and to clarify a provision regarding a restriction on renewal for certain child support issues, including to add a reference to related statutory language in Texas Family Code.

FISCAL NOTE

Ralph Harper, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments would be in effect, there would be no fiscal implications for state or local government as a result of enforcing or administering the rule as the changes do not impose a cost and any fiscal implications concerning the removal of renewal restrictions for individuals in default of student loans would be effected by law changes already in effect from SB 37.

LOCAL EMPLOYMENT IMPACT

Mr. Harper has determined that the rule would not impact a local economy as the proposed rule concerns the reduction, cleanup,
and clarification of occupational therapy regulations and does not impose a cost; therefore, a local employment impact statement is not required.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST

Mr. Harper has determined that for each of the first five years the proposed amendments would be in effect, the public benefit anticipated as a result of enforcing the rule would be the reduction, cleanup, and clarification of occupational therapy regulations. There would be no anticipated economic cost to persons required to comply with the proposed rule.

SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES IMPACT

There would be no costs or adverse economic effects on small or micro-businesses or rural communities as the proposed rule concerns the reduction, cleanup, and clarification of occupational therapy regulations and does not impose a cost; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendments.

TAKINGS IMPACT ASSESSMENT


GOVERNMENT GROWTH IMPACT STATEMENT

The proposed amendments' impact on government growth during the first five years the rule would be in effect is as follows: would not create or eliminate a government program; would not require the creation of new employee positions or the elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require a decrease in fees paid to the agency and may increase the fees paid to the agency as certain licensees previously unable to renew, pursuant to changes in law made by SB 37, may now renew, and therefore, submit required renewal fees; would not create a new or expand an existing regulation; would repeal an existing regulation to reflect law changes pursuant to SB 37 by removing a provision concerning restrictions to renewal due to student loan default; would not increase the number of individuals subject to the rule's applicability; would decrease the number of individuals subject to the rule's applicability as the amendments would remove restrictions to renewal for certain individuals; and would neither positively nor adversely affect this state's economy as any positive or adverse consequences to the state's economy concerning the removal of renewal restrictions for individuals in default of student loans would be affected by law changes already in effect from SB 37, rather than the related proposed changes, and the other changes are cleanups or clarifications with no economic impact for the state's economy.

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to the proposed rule because the rule does not impose a cost, does not increase costs to regulated persons, and because the amendments concerning restrictions to renewal are necessary to reflect law changes in effect pursuant to SB 37 from the 86th Regular Legislative Session.

PUBLIC COMMENT

Comments on the proposed amendments may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that the proposed amendments are published in the Texas Register.

STATUTORY AUTHORITY

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§370.1. License Renewal.

(a) Licensee Renewal. Licensees are required to renew their licenses every two years by the end of their birth month. A licensee may not provide occupational therapy services without a current license. Licenses and license expiration dates should be verified on the Board's license verification web page.

(1) General Requirements. The renewal application is not complete until the Board receives all required items. The components required for license renewal are:

(A) a complete renewal application form as prescribed by the Board verifying completion of the required [30 hours of] continuing education, as per Chapter 367 of this title (relating to Continuing Education);

(B) the renewal fee and any late fees as set by the Executive Council that may be due;

(C) a passing score on the jurisprudence examination;

(D) the licensee's physical address, any work address, other mailing address, email address, and a chosen address of record [The address of record is the address that will be shared with the public. Until licensees select an address of record, the work address will be used as the default. If no work address is available, the mailing address will be used. If no alternate address is available, the home address will be used]; and

(E) a complete and legible set of fingerprints submitted in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(i) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(ii) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(iii) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(2) The licensee is responsible for ensuring that the license is renewed, whether receiving a renewal notice or not.

(3) The renewal process is not complete until the Board's license verification web page reflects that the license has been renewed by displaying the new renewal date.

(4) Renewal fees and late fees are non-refundable.
(5) Licensees electing to change their status or renewing a license on inactive or retired status must meet further requirements as per Chapter 371 of this title (relating to Inactive and Retired Status).

(6) Licensees renewing a license expired one year or more must meet further requirements as per §370.3 of this title (relating to Restoration of a Texas License).

(b) Restrictions to Renewal. The Board will not renew a license if it receives information from a child support agency that a licensee has failed to pay child support under a support order for six months or more as provided by Texas Family Code §232.0135. If all other renewal requirements have been met, the license will be renewed when the child support agency notifies the Board it may renew the license.

[41] The Board will not renew a license if a licensee has defaulted with the Texas Guaranteed Student Loan Corporation (TGSLC). Upon notice from TGSLC that a repayment agreement has been established, the license shall be renewed if all other renewal requirements have been met.

(2) The Board will not renew a license if the licensee has defaulted on a court or Attorney General’s notice of child support. Upon receipt that repayment has been established, the license shall be renewed if all other renewal requirements have been met.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

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