

INSURANCE CODE  
TITLE 13. REGULATION OF PROFESSIONALS  
SUBTITLE A. GENERAL PROVISIONS  
CHAPTER 4005. CONDUCT, DISCIPLINARY ACTIONS, AND SANCTIONS

SUBCHAPTER A. AUTHORIZED CONDUCT

Sec. 4005.001. DEFINITION. In this subchapter, "client" means:

- (1) an applicant for insurance coverage; or
- (2) an insured.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4005.002. AUTHORIZATION TO OBTAIN CERTAIN RECORDS OR PHOTOGRAPHS. (a) In connection with a client's application for insurance coverage or with the issuance of an insurance policy to a client, or on a client's request, a general property and casualty agent or personal lines property and casualty agent may obtain:

- (1) the motor vehicle record of a person insured under or to be insured under an insurance policy; or
- (2) a photograph of property insured under or to be insured under an insurance policy.

(b) The agent must provide a copy of the motor vehicle record to the client.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. [1263](#)), Sec. 2.21, eff. September 1, 2007.

Sec. 4005.003. FEES. (a) A general property and casualty agent or personal lines property and casualty agent may charge a client a fee to reimburse the agent for costs the agent incurred in obtaining a motor vehicle record or photograph of property described under Section [4005.002](#). The fee may not exceed the actual costs to the agent.

(b) For services provided to a client, a property and casualty agent described by Subsection (a) may charge a reasonable

fee, including a fee for:

- (1) special delivery or postal charges;
- (2) printing or reproduction costs;
- (3) electronic mail costs;
- (4) telephone transmission costs; and
- (5) similar costs that the agent incurs on behalf of the client.

(c) A property and casualty agent described by Subsection (a) may charge a client a fee under this section only if, before the agent incurs an expense for the client, the agent:

- (1) notifies the client of the agent's fee; and
- (2) obtains the client's written consent for each fee to be charged.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. [1263](#)), Sec. 2.22, eff. September 1, 2007.

Sec. 4005.004. DISCLOSURE OF COMPENSATION. (a) In this section:

(1) "Affiliate" has the meaning described by Section [823.003](#)(a).

(2) "Agent" means a person licensed under Chapter [4051](#), [4053](#), [4054](#), or [4056](#).

(3) "Compensation from an insurer or other third party" includes payments, commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes, or any other form of valuable consideration, whether or not payable under a written contract or agreement.

(4) "Compensation from a customer" does not include a fee described by Section [4005.003](#), an application fee, or an inspection fee.

(5) "Customer" means the person signing the application for insurance or the authorized representative of the insured actually negotiating the placement of an insurance product with the agent. A person is not to be considered a "customer" of an agent for purposes of this section solely because the person is a

participant or beneficiary:

(A) of an employee benefit plan; or

(B) of, or otherwise covered by, a group or blanket insurance policy or group annuity contract sold, solicited, or negotiated by an agent or the agent's affiliate.

(6) "Documented acknowledgment" means a customer's dated acknowledgment, obtained before the customer's purchase of an insurance product, as demonstrated by the customer's written or electronic signature or recorded voice, or by other additional methods that the commissioner may authorize by rule.

(b) If an agent, or any affiliate of an agent, receives compensation from a customer for the placement or renewal of an insurance product, other than a service fee described under Section [4005.003](#), an application fee, or an inspection fee, the agent or the affiliate may not accept or receive any compensation from an insurer or other third party for that placement or renewal unless the agent has, before the customer's purchase of insurance:

(1) obtained the customer's documented acknowledgment that the compensation will be received by the agent or affiliate; and

(2) provided a description of the method and factors used to compute the compensation to be received from the insurer or other third party for that placement.

(c) This section does not apply to:

(1) a licensed agent who acts only as an intermediary between an insurer and the customer's agent, including a managing general agent;

(2) a reinsurance intermediary or surplus lines agent placing reinsurance or surplus lines insurance; or

(3) an agent whose sole compensation for the placement or servicing of an insurance product is derived from commissions, salaries, and other remuneration paid by the insurer.

(d) An agent may satisfy any requirements imposed by this section through an affiliate.

(e) The commissioner may adopt rules as necessary to implement the disclosure and acknowledgment of disclosure requirements under this section.

Added by Acts 2005, 79th Leg., Ch. 755 (H.B. [2941](#)), Sec. 1, eff. September 1, 2005.

#### SUBCHAPTER B. PROHIBITED CONDUCT

Sec. 4005.051. APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to a person who holds a license or certificate of authority issued under Title 11.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4005.052. CERTAIN CONDUCT PROHIBITED AFTER REVOCATION OF LICENSE. A person whose insurance license has been revoked in this state or any other state may not:

(1) solicit or otherwise engage in business under Chapter [885](#) unless the department determines it to be in the public interest, for good cause shown, to permit the person to act in that capacity; or

(2) act as an officer, director, member, manager, or partner, or as a shareholder with a controlling interest, of an entity holding a license issued under this title unless the department determines it to be in the public interest, for good cause shown, to permit the person to act in that capacity.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4005.053. CERTAIN PAYMENTS PROHIBITED TO OR FROM PERSON NOT HOLDING LICENSE. (a) An insurer or agent engaged in the business of insurance in this state may not pay to any person, directly or indirectly, and may not accept from any person a commission or other valuable consideration for a service performed by that person as an agent in this state unless the person holds a license to act as an agent in this state.

(b) Subsection (a) does not prevent the payment of a renewal or other deferred commission to a person or the acceptance of a renewal or other deferred compensation by a person solely because the person no longer holds a license to act as an agent.

(c) An agent may not pay, permit, or give or offer to pay, permit, or give, directly or indirectly, to any person who does not

hold a license as an agent:

(1) a rebate of premiums payable, a commission, employment, a contract for service, or any other valuable consideration or inducement that is not specified in the insurance policy or contract for or on account of the solicitation or negotiation of an insurance contract; or

(2) a fee or other valuable consideration for referring a customer who seeks to purchase an insurance product or seeks an opinion on or advice regarding an insurance product, based on that customer's purchase of insurance.

(d) Subsection (c) does not prohibit an agent from, in connection with an offer or sale of an insurance policy or contract, giving, providing, or allowing or offering to give, provide, or allow an item that is a promotional advertising item, educational item, or traditional courtesy commonly extended to consumers and that is valued at \$25 or less.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 28 (S.B. [840](#)), Sec. 6, eff. September 1, 2013.

Sec. 4005.054. RECEIVING ADDITIONAL FEE PROHIBITED. A person who holds a license under this code and receives a commission or other consideration for services as an agent may not receive an additional fee for those services provided to the same client except for a fee:

(1) described by Section [550.001](#) or [4005.003](#); and

(2) for which disclosure is made as required under Section [4005.003](#) or Section [4005.004](#).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Amended by:

Acts 2005, 79th Leg., Ch. 755 (H.B. [2941](#)), Sec. 2, eff. September 1, 2005.

Sec. 4005.055. CERTAIN COVERAGE FOR LOSS BY FIRE PROHIBITED. A property and casualty agent may not knowingly grant, write, or permit a greater amount of insurance against loss by fire

than the reasonable value of the insured subject.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

#### SUBCHAPTER C. DISCIPLINARY ACTIONS AND PROCEDURES; ENFORCEMENT

Sec. 4005.101. GROUNDS FOR LICENSE DENIAL OR DISCIPLINARY ACTION. (a) This section does not apply to a person who holds a license or certificate of authority issued under Title 11.

(b) The department may deny a license application or discipline a license holder under this subchapter if the department determines that the applicant or license holder, individually or through an officer, director, or shareholder:

(1) has wilfully violated an insurance law of this state;

(2) has intentionally made a material misstatement in the license application;

(3) has obtained or attempted to obtain a license by fraud or misrepresentation;

(4) has misappropriated, converted to the applicant's or license holder's own use, or illegally withheld money belonging to:

(A) an insurer;

(B) a health maintenance organization; or

(C) an insured, enrollee, or beneficiary;

(5) has engaged in fraudulent or dishonest acts or practices;

(6) has materially misrepresented the terms and conditions of an insurance policy or contract, including a contract relating to membership in a health maintenance organization;

(7) has made or issued, or caused to be made or issued, a statement misrepresenting or making incomplete comparisons regarding the terms or conditions of an insurance or annuity contract legally issued by an insurer or a membership issued by a health maintenance organization to induce the owner of the contract or membership to forfeit or surrender the contract or membership or allow it to lapse for the purpose of replacing the contract or membership with another;

(8) has been convicted of a felony;

(9) has offered or given a rebate of an insurance premium or commission to an insured or enrollee;

(10) is not actively engaged in soliciting or writing insurance for the public generally as required by Section [4001.104](#)(a); or

(11) has obtained or attempted to obtain a license, not for the purpose of holding the applicant or license holder out to the general public as an agent, but primarily for the purpose of soliciting, negotiating, or procuring an insurance or annuity contract or membership covering:

(A) the applicant or license holder;

(B) a member of the applicant's or license holder's family; or

(C) a business associate of the applicant or license holder.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4005.102. REMEDIES FOR VIOLATION OF INSURANCE LAWS OR COMMISSIONER RULES. In addition to any other remedy available under Chapter [82](#), for a violation of this code, another insurance law of this state, or a rule of the commissioner, the department may:

(1) deny an application for:

(A) an original license; or

(B) a certificate issued under Chapter [4008](#);

(2) suspend, revoke, or deny renewal of:

(A) a license; or

(B) a certificate issued under Chapter [4008](#);

(3) place on probation a person whose license has been suspended;

(4) assess an administrative penalty;

(5) reprimand a license holder; or

(6) require a license holder to qualify, or re-qualify if the agent has already qualified, for a certificate to sell a product or product line designated by rule under Chapter [4008](#).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 451 (H.B. [2456](#)), Sec. 4, eff. June 19, 2009.

Sec. 4005.103. PROBATED LICENSE SUSPENSION. If a license suspension is probated, the commissioner may require the license holder to:

(1) report regularly to the department on any matter that is the basis of the probation;

(2) limit the license holder's practice to the areas prescribed by the department; or

(3) continue or review professional education until the license holder attains a degree of skill satisfactory to the commissioner in each area that is the basis of the probation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4005.104. HEARING. (a) If the department proposes to deny an application for an original license or to suspend, revoke, or deny renewal of a license, the applicant or license holder is entitled to a hearing conducted by the State Office of Administrative Hearings as provided by Chapter [40](#).

(b) Notice of the hearing shall be provided to:

(1) the applicant or license holder; and

(2) any insurer indicated on the application as desiring that the license be issued.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4005.105. APPLICATION FOR LICENSE AFTER DENIAL OF APPLICATION OR REVOCATION OF LICENSE. (a) This section does not apply to a person who holds a license or certificate of authority issued under Title 11.

(b) An individual whose license application has been denied or whose license has been revoked under this subchapter may not apply for an agent license before the fifth anniversary of:

(1) the effective date of the denial or revocation; or

(2) the date of a final court order affirming the denial or revocation if judicial review was sought.



(c) A license application filed after the time required by Subsection (b) may be denied by the commissioner if the applicant fails to show good cause why the denial or revocation should not be a bar to the issuance of a new license.

(d) Subsections (b) and (c) do not apply to an applicant whose license application was denied or revoked for failure by the applicant to:

- (1) pass a required written examination;
- (2) complete continuing education or pay an applicable fine under Section [4004.055\(a\)](#); or
- (3) submit a properly completed license application.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1172 (S.B. [876](#)), Sec. 11, eff. September 1, 2015.

Sec. 4005.106. APPLICATION FOR LICENSE AFTER CERTAIN DETERMINATIONS. (a) In addition to any other penalty imposed under this code, a person who the department determines has engaged in conduct described by this section may not obtain a license as an agent before the fifth anniversary of the date of the determination.

(b) This section applies to a person who:

- (1) acts as an agent without holding a license under this code;
- (2) solicits an insurance contract or acts as an agent without having been appointed or designated by an authorized insurer, association, or organization to do so as provided by this code;
- (3) solicits an insurance contract or acts as an agent for a person, including an insurer, association, or organization, who is not authorized to engage in the business of insurance in this state without holding a surplus lines agent license issued under Chapter [981](#); or
- (4) as an officer or representative of an insurer, knowingly contracts with or appoints as an agent a person who does not hold a valid license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4005.107. DISCIPLINARY PROCEEDING FOR CONDUCT COMMITTED BEFORE SURRENDER OR FORFEITURE OF LICENSE. (a) The department may institute a disciplinary proceeding against a former license holder for conduct committed before the effective date of a voluntary surrender or automatic forfeiture of the license.

(b) In a proceeding under this section, the fact that the license holder has surrendered or forfeited the license does not affect the former license holder's culpability for the conduct that is the subject of the proceeding.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4005.108. DISABILITY PROBATION. (a) This section does not apply to a person who holds a license or certificate of authority issued under Title 11.

(b) Instead of or in addition to taking disciplinary action under Section [4005.102](#), [4005.103](#), [4005.105\(c\)](#), or [4005.107](#), the department may order that a license holder who is disabled be placed on disability probation under the terms specified under Chapter [4006](#) and department rules.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4005.109. FINES. (a) To expedite the department's processing of certain violations of this code, the commissioner by rule may establish fines for certain violations.

(b) A violation for which a fine may be assessed under this section includes a failure to:

(1) obtain the total number of continuing education hours before the expiration date of a license;

(2) timely report a change of address to the department; or

(3) notify the department of an administrative action against the agent by a financial or insurance regulator of another state or of the federal government.

(c) This section does not limit the department's authority to take any other disciplinary action against a license holder as

otherwise provided by this code.

(d) The dispute of an assessment of a fine under this section is a contested case subject to Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1172 (S.B. 876), Sec. 12, eff. September 1, 2015.

Sec. 4005.110. ENFORCEMENT OF TITLE. The attorney general, a district or county attorney, or the department acting through the commissioner may bring a proceeding for an injunction or bring any other proceeding to enforce this title and to enjoin any person, firm, corporation, or depository institution from engaging in or attempting to engage in the business of insurance in violation of this code or any other insurance law of this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

#### SUBCHAPTER D. CRIMINAL PENALTIES

Sec. 4005.151. ACTING AS AGENT AFTER LICENSE SUSPENSION OR REVOCATION; CRIMINAL PENALTY. (a) A person commits an offense if the person acts as an agent after the person's agent license has been suspended or revoked.

(b) An offense under this section is a felony of the third degree.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 58 (H.B. 1305), Sec. 1, eff. September 1, 2013.

Sec. 4005.152. AGENT ASSISTING OR CONSPIRING WITH PERSON WHOSE LICENSE HAS BEEN SUSPENDED OR REVOKED; CRIMINAL PENALTY. (a) A person commits an offense if the person is an agent who holds a license under this code and the person assists or conspires with a person whose license as an agent has been suspended or revoked to act as an agent.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine not to exceed \$1,000;

(2) confinement in jail for a term of not more than six months; or

(3) both fine and confinement in jail under this subsection.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4005.153. EMBEZZLEMENT OR CONVERSION BY AGENT; CRIMINAL PENALTY. (a) A person commits an offense if the person, as an agent for an insurer lawfully engaged in the business of insurance in this state, collects premiums or otherwise receives money or a substitute for money, and the person:

(1) embezzles, fraudulently converts, or appropriates to the person's own use the money or substitute for money; or

(2) with intent to embezzle and contrary to the instructions of or without the consent of the insurer, takes, secretes, or otherwise disposes of or fraudulently withholds, appropriates, lends, invests, or otherwise uses or applies, any money or substitute for money received by the person in the person's capacity as agent or broker.

(b) A person who commits an offense under this section shall be punished as if the person had stolen the money or substitute for money.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.