

Subchapter J. Prohibited Trade Practices
28 TAC §21.1008

INTRODUCTION. The Texas Department of Insurance (TDI) proposes new 28 TAC §21.1008, prohibiting individuals and entities engaged in the business of insurance from tying together the sale of personal automobile policies and residential property policies. Proposed new §21.1008 implements Insurance Code §541.003.

EXPLANATION. Insurance Code §541.003 provides that a "person may not engage in this state in a trade practice that is defined in this chapter as or determined under this chapter to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance." Insurance Code §541.401 gives the commissioner the authority to "adopt and enforce reasonable rules the commissioner determines necessary to accomplish the purpose of this chapter." Insurance Code §541.001 states that the purpose of Chapter 541 "is to regulate trade practices in the business of insurance by: (1) defining or providing for the determination of trade practices in this state that are unfair methods of competition or unfair or deceptive acts or practices; and (2) prohibiting those trade practices." In addition, Insurance Code §§541.107, 541.201, 541.204, 541.301, 541.351, and 541.352 reinforce that TDI has the authority to adopt and enforce rules that define when a method of competition, act, or practice is considered unfair or unlawful. Also, Insurance Code §31.002(4) and (5) impose on TDI the duty to "protect and ensure the fair treatment of consumers" and "ensure fair competition in the insurance industry in order to foster a competitive market."

Insurance Code Chapter 541 delegates the authority to define acts as unfair or unlawful by rule in order to ensure the public policy of protecting consumers in the business of insurance. This delegation gives TDI the ability to prevent unforeseen, unfair

practices that the Legislature cannot conveniently address and assure that the purpose of Chapter 541 is met.

Proposed new §21.1008 implements Insurance Code §541.003 by specifying that making the purchase of a residential property insurance policy contingent on purchasing a personal automobile insurance policy from a specific person, or vice versa, is an unfair act or practice in the business of insurance.

"Tying," also known as "tying arrangements" and "tie-in arrangements," includes "an arrangement whereby a seller sells a product to a buyer only if the buyer purchases another product from the seller." *Black's Law Dictionary* (12th ed., 2024). Tying can also describe when the sale of a product is conditioned on the purchase of another product from a particular person. Proposed new §21.1008 solely addresses business practices where the purchaser does not have a choice of buying the tied products separately. TDI encourages consumers to shop around and compare options to find coverage and pricing that most meet their needs. This rule helps ensure that consumers have the freedom to make the best choices for themselves and their families.

Proposed new §21.1008 does not prohibit insurers or agents offering Texas consumers the option of choosing to purchase personal automobile and residential property policies from the same person. It also does not prohibit insurers offering an actuarially justified premium discount if a consumer chooses to "bundle" multiple products that are separately available for sale. The distinction between bundling discounts and tying can be compared with the practices of a grocer: a grocer may provide a coupon that gives a customer who buys lunch meat a discount on the purchase of bread, but the grocer does not require the customer buying lunch meat to also buy bread.

The rule treats tying and bundling discounts differently because the consumer protection concerns for these business practices are different. A bundling discount introduces an added opportunity for a consumer to save money by purchasing multiple

policies from the same company, while preserving the consumer's ability to shop for a better price or coverage by purchasing separate policies from unrelated companies. Tying achieves the opposite: a consumer who chooses, for example, a homeowners policy from a company engaging in tying then loses the ability to shop for an auto policy from another company. By purchasing or renewing a tied homeowners policy, the consumer's marketplace options for auto insurance are reduced from many to just one.

Proposed new §21.1008 is necessary to protect consumers from being unfairly pressured or compelled to purchase multiple products from one source instead of being able to choose the insurance coverage they want from any source they want. Usually, consumers must buy insurance to get a home loan or to comply with Texas motorist laws. Because consumers must have home and auto insurance, it underscores the importance of protecting their ability to freely shop for each policy. Tying arrangements can also pressure consumers to purchase unwanted coverage when they need or want only one policy and not the other tied to it. For example, a consumer who cannot drive or does not own a vehicle could be pressured to purchase an unwanted auto policy in order to purchase the homeowners policy the consumer prefers.

Prohibiting the tying of personal auto and residential property policies will also help prevent unfair competition among insurance companies and agents. Tying may give a company an unfair advantage by leveraging sales of one product to require sales of an unrelated product. This can make it difficult for new or rival companies to obtain sales. For example, if a company requires its homeowners policyholders to purchase auto policies from it, other companies could not compete for the personal auto business unless a consumer also chooses to switch the consumer's home insurance. Also, some companies cannot sell both residential property and personal auto insurance. For example, farm mutual insurance companies can write residential property insurance but are prohibited from writing personal automobile insurance.

The rule does not apply to all insurance products. The rule does not prohibit insurers tying commercial insurance products. It also does not prohibit tying products that supplement underlying coverage, such as personal umbrella or excess insurance policies which are often designed to work in tandem with an underlying homeowners or personal auto policy by extending liability coverage beyond the limits of the underlying policy. The rule's prohibition focuses on the tying of policies that provide coverage for two separate risks: the risk of damage to a person's home and belongings versus a person's risk as a driver and vehicle owner. While residential property owners frequently also need automobile coverage, it is not fair for an insurer or agent to refuse to sell one kind of coverage unless the consumer also purchases insurance from the insurer or agent for a fundamentally unrelated risk.

Subsection (a) of proposed new §21.1008 provides the purpose of the section--to protect consumers from being forced to purchase a product they do not want. The subsection also clarifies that it applies to any step of the purchasing process, including policy delivery, issuance, and renewal.

Subsection (b) of proposed new §21.1008 provides definitions for the section. The definition of "person" comes from Insurance Code §541.002(2), which is a wide-reaching definition, making the chapter and this rule applicable to any individual or other legal entity engaged in the business of insurance. The prohibition addresses both an insurer's underwriting practices and an insurer's or agent's sales practices. In addition to the broad definition, other sections in the Insurance Code affirm the applicability of Insurance Code Chapter 541 to various insurance entities. For example, Insurance Code §911.001 affirms applicability to farm mutual insurance companies; Insurance Code §912.002 affirms applicability to county mutual insurance companies; and Insurance Code §981.073 affirms applicability to surplus lines insurance. The definitions of "personal automobile insurance," "residential property insurance," and "underwriting guideline" come from

Insurance Code §38.002, which relates to underwriting guidelines for personal automobile and residential property insurance policies. To avoid confusion and help ensure that protection is extended to farms and ranches, the definition for "residential property insurance" clarifies that this rule also includes farm and ranch insurance and farm and ranch owners insurance.

Subsection (c) of proposed new §21.1008 sets out the prohibition against certain tying requirements. It identifies tying that occurs through either a purchase requirement or an underwriting guideline as an unfair trade practice under Insurance Code Chapter 541. It limits the rule's prohibition to tying the purchase of a residential property insurance policy and a personal automobile insurance policy from a specific person. Tying arrangements for other types of insurance may be contrary to statute or rule and require a fact-based determination for each specific situation.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. David Muckerheide, assistant director of the Property and Casualty Lines Office, has determined that during each year of the first five years the proposed new section is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the new section, other than that imposed by statute. Mr. Muckerheide made this determination because the proposed new section does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed new section.

Mr. Muckerheide does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed new section is in effect, Mr. Muckerheide expects that administering it will have the public benefit of ensuring that TDI is (1) implementing Insurance Code §541.003, (2) helping insurers comply with Insurance Code Chapter 541, (3) ensuring fair competition in the insurance industry, and (4) protecting the fair treatment of consumers.

Mr. Muckerheide expects that the proposed new section will increase the cost of compliance with Insurance Code Chapter 541 for persons engaged in tying personal automobile and residential property insurance. TDI is currently aware of only one company currently engaged in the type of tying this rule addresses. Companies that engage in tying will need to revise their underwriting guidelines and file them with TDI to comply with the rule. The cost to comply will vary depending on insurers' operations. Companies can still offer actuarially justified discounts for optional bundled policies.

While it is not feasible to determine the actual time required or the cost of employees needed to comply with the requirements, Mr. Muckerheide estimates that updating underwriting guidelines and filing them with TDI would take a range of one to five hours to complete and would likely require both software programming and clerical staff. According to the May 2023 Bureau of Labor Statistics Occupation and Employment Wage Statistics at www.bls.gov/oes/current/oes_nat.htm, the national mean hourly wage for the "Software and Web Developers, Programmers, and Testers" classification is \$62.74, and the national mean hourly wage for the "Secretaries and Administrative Assistants, Except Legal, Medical, and Executive" classification is \$21.87.

Any costs associated with this proposed new section are costs that are necessary to implement statute under Government Code §2001.0045(c)(9).

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed new section will not have an adverse economic effect on small or micro businesses, or on rural communities. The proposed new section might have a favorable effect on small and microbusinesses by eliminating tying arrangements that could unfairly constrict the market. Insurance companies or agents that are small businesses focused on selling only automobile insurance would not lose potential market share because a tying arrangement requires potential clients to purchase automobile coverage from a competitor. The same is true for insurance companies or agents that are small businesses focused on selling only residential property insurance. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does impose a cost on regulated persons engaged in tying personal automobile and residential property insurance. However, no additional rule amendments are required under Government Code §2001.0045 because the proposed new section is necessary to (1) implement legislation; and (2) protect the health, safety, and welfare of the residents of this state.

Insurance Code Chapter 541 repeatedly charges the commissioner to adopt and enforce rules that establish what actions constitute a violation of the chapter; see Insurance Code §§541.107, 541.201, 541.204, 541.301, 541.351, 541.352, and 541.401. The requirement that the commissioner identify specific unfair acts or practices that are putting the Texas market or consumers at risk is an ongoing duty under Chapter 541 and is necessary to accomplish the purpose of the chapter. The proposed new section is also necessary to protect the health, safety, and welfare of the residents of this state, as addressed by Government Code §2001.0045(c)(6), because prospective consumers would

be otherwise subject to unfair trade practices by being compelled to purchase a product they do not want and hindering their ability to shop the market.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed new section is in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will increase the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

The proposed new section will identify a new act or practice as unfair under Insurance Code Chapter 541.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on March 24, 2025. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

The commissioner of insurance will also consider written and oral comments on the proposal in a public hearing under Docket No. 2852 at 10:00 am central time, on March 10, 2025, in Room 2.035 of the Barbara Jordan State Office Building, 1601 Congress Avenue, Austin, Texas 78701.

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STATUTORY AUTHORITY. TDI proposes new §21.1008 under Insurance Code §541.401 and §36.001.

Insurance Code §541.401 provides that the commissioner may adopt and enforce reasonable rules the commissioner determines necessary to accomplish the purposes of Insurance Code Chapter 541.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Proposed new §21.1008 implements Insurance Code §§31.002(4) and (5), 541.001, 541.003, 541.008, and 541.401.

TEXT.

§21.1008. Prohibited Tying Requirements.

(a) Purpose. The purpose of this section is to protect purchasers of either a personal automobile insurance policy or a residential property insurance policy from being required to purchase a policy of the other type as a condition of policy delivery, issuance, or renewal.

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

(1) Person--As defined in Insurance Code §541.002(2), concerning Definitions.

(2) Personal automobile insurance--As defined in Insurance Code §38.002(a), concerning Underwriting Guidelines for Personal Automobile and Residential Property Insurance; Filing; Confidentiality.

(3) Residential property insurance--As defined in Insurance Code §38.002(a), but also includes farm and ranch insurance and farm and ranch owners insurance.

(4) Underwriting guideline--As defined in Insurance Code §38.002(a).

(c) Prohibited tying requirements. It is an unfair trade practice in violation of Insurance Code Chapter 541, concerning Unfair Methods of Competition and Unfair or Deceptive Acts or Practices, for a person to make the purchase of or use an underwriting guideline that makes the purchase of:

(1) a residential property insurance policy contingent on the purchase of a personal automobile insurance policy from any specific person; or

(2) a personal automobile insurance policy contingent on the purchase of a residential property insurance policy from any specific person.

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

Issued in Austin, Texas, on February 7, 2025.

Signed by:
Jessica Barta
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Jessica Barta, General Counsel
Texas Department of Insurance