

Subchapter H. Cancellation, Denial, and Nonrenewal of Certain Property and Casualty Insurance Coverage**Division 1. General Provisions
28 TAC §§5.7005, 5.7007, and 5.7011 - 5.7013****Division 2. Mandatory Nonrenewal of Private Passenger Automobile Insurance Policies
28 TAC §§5.7101 - 5.7110**

INTRODUCTION. The commissioner of insurance adopts amendments to 28 TAC Chapter 5, Subchapter H, §§5.7005, 5.7007, and 5.7011 - 5.7013, and new §§5.7101 - 5.7110, concerning nonrenewal of automobile insurance. The commissioner adopts §5.7011 and §5.7013 without changes to the proposed text published in the October 6, 2023, issue of the *Texas Register* (48 TexReg 5813). The following sections are adopted with changes: §§5.7005, 5.7007, 5.7012 and 5.7101 - 5.7110. The proposed text was changed in response to comment, to provide clarification, to better conform to agency style, or to align more closely with statutory language.

A notice of hearing was published in the December 1, 2023, issue of the *Texas Register* (48 TexReg 7094), and the public hearing was held on December 14, 2023.

REASONED JUSTIFICATION. The amended and new sections in Subchapter H are necessary to implement:

- Senate Bill 1602, 87th Legislature, 2021, which requires insurers to nonrenew private passenger automobile policies if an insured fails or refuses to cooperate in an insurer's investigation, settlement, or defense of a claim or action;

- House Bill 1900, 88th Legislature, 2023, which updates the timing of notice for nonrenewal and cancellation of certain property and casualty policies; and

- House Bill 2065, 88th Legislature, 2023, which clarifies that insurers may not renew a policy if any insured--not just a named insured--fails or refuses to cooperate with the insurer in an investigation, settlement, or defense of a claim or action and also clarifies that Insurance Code §551.1053 applies only to third-party liability claims or actions.

HB 1900. Amendments to §§5.7005, 5.7007, 5.7011, 5.7012, and 5.7013 implement Insurance Code §551.104(f) and §551.105, as amended by HB 1900. Insurance Code §551.104(f) allows insurers to cancel a personal automobile insurance policy on any 12-month anniversary of the original effective date of the policy. Under the amended section, the insurer must now send that cancellation notice not later than 60 days before the effective date of cancellation, rather than 30 days. Likewise, Insurance Code §551.105 now requires insurers to send notice of nonrenewal of certain property and casualty policies not later than 60 days before the policy expires, rather than 30 days.

SB 1602 and HB 2065. SB 1602 added Insurance Code §551.1053, effective September 1, 2021, and it was amended by HB 2065 effective September 1, 2023. As amended, §551.1053 mandates nonrenewal of a private passenger automobile insurance policy when an insured fails or refuses to cooperate in the investigation, settlement, or defense of a third-party liability claim or action. However, most private passenger automobile insurance policy forms filed soon after that effective date did not initially comply with §551.1053.

The Texas Department of Insurance (TDI) proposed §§5.7101 - 5.7110 to help insurers understand how to comply with §551.1053. These new sections specify requirements to make it easier for insurers and TDI staff to ensure that policy forms, claims handling, and nonrenewal practices comply with Insurance Code §551.1053. In addition, to assist consumers, the new sections offer sample plain language notices. TDI also amended §5.7005(c) to implement SB 1602 and HB 2065, adding an exception to the

requirement to renew personal auto policies written for less than one year, so that they accumulate a minimum of 12 months of continuous coverage.

Insurance Code §551.1053 gives rise to complex situations for insurers when the insurer decides near the end of the policy term that an insured failed or refused to cooperate. Insurers may have already developed methods to deal with these issues, but the new sections clarify expectations for compliance and promote consistency in handling and communications in these situations. For example, the new sections require that insurers give insureds at least 10 days to cooperate from the date the insurer sends the Notice of mandatory nonrenewal and opportunity to cooperate. (When the word "Notice" is capitalized in Division 2 and elsewhere in this order, it means the Notice required by Insurance Code §551.1053.)

Organization. To provide clarity and structure to Subchapter H, TDI divided the subchapter into two divisions. Division 1, now titled General Provisions, includes §§5.7001 - 5.7018. Division 2, Mandatory Nonrenewal of Private Passenger Automobile Insurance Policies, includes new §§5.7101 - 5.7110.

General changes. Amendments to the sections reorganize some text and include nonsubstantive plain language revisions to conform the text to current agency style. The title of Division 1 was changed from Miscellaneous to General Provisions to better inform readers. In response to public comments, the changes to the proposed rule includes capitalizing "Notice" throughout Division 2 to distinguish the Notice under Insurance Code §551.1053 from a notice of nonrenewal under Insurance Code §551.105 and from a notice of cancellation under Insurance Code §551.104.

Effective date. The changes made to Division 1 and new Division 2 will become effective January 1, 2025, to give insurers time to implement any necessary programming or procedural changes.

The adopted new and amended sections are described in the following paragraphs, organized by division.

Division 1. General Provisions.

Amendments to the sections in Division 1 implement HB 1900.

Sections 5.7005 and 5.7007. Amendments to §5.7005 and §5.7007 conform the rule to Insurance Code §551.104(f) and §551.105 by lengthening the amount of time from 30 days to 60 days for the insurer to give notice of cancellation at the one-year policy anniversary or nonrenewal. The amendments also revise text to simplify language and except from §5.7005(c) policies that are mandatorily nonrenewed under Insurance Code §551.1053 and Division 2. The proposal added a reference to Division 2, and the adopted rule added a citation to Insurance Code §551.1053, in both sections to recognize the exception.

Section 5.7011. Amendments to §5.7011 simplify language and change the word "subchapter" to "division" to account for new Division 2. The scope of the section is unchanged.

Section 5.7012. Amendments to §5.7012 remove redundant and outdated statutory references. Section 5.7001 provides the general applicability for Subchapter H. Section 5.7001(c) specifically provides that §5.7012 applies "to all property and casualty policies regulated by the Texas Department of Insurance pursuant to the Texas Insurance Code, Chapter 5." Thus, the list of specific statutes in §5.7012 is unnecessary. "Board of Insurance" was amended to "Texas Department of Insurance" in the proposal, but the proposed text has been changed to "TDI" to align with agency style.

Section 5.7013. Section 5.7013(a) is amended to remove the specific number of days for notice of cancellation because the time period is specified by Insurance Code §551.053. Amendments to §5.7013(b) update the notice requirements for cancellation and nonrenewal to include an exception for mandatory nonrenewal as required by Insurance

Code §551.1053. Amendments to §5.7013(b) also remove the specific number of days for notice of nonrenewal and add references to Insurance Code §551.054 and §551.1053.

Adopted §5.7013(c) provides that (1) an insurer may comply by requiring or permitting its agent to notify the policyholder, and (2) it is the insurer's responsibility to give notice to the policyholder if the agent fails to notify the policyholder.

Division 2. Mandatory Nonrenewal of Private Passenger Automobile Insurance Policies.

Division 2 implements SB 1602 and HB 2065.

Section 5.7101. New §5.7101 states the purpose and applicability of new Division 2. This division does not apply to policies written through the Texas Automobile Insurance Plan Association (TAIPA) because Insurance Code §551.102 specifically excludes TAIPA from the applicability of Insurance Code Chapter 551, Subchapter C. As adopted, the proposed text of §5.7101(b) has been changed to address third-party liability claims or actions, as required by HB 2065.

Section 5.7102. New §5.7102 defines "Notice" to mean the notice of mandatory nonrenewal and opportunity to cooperate required by Insurance Code §551.1053(a). This streamlines the rule text and makes it easier to read. Proposed §5.7102 has been changed in response to public comments.

As adopted, the proposed text has been changed to capitalize "Notice," to distinguish the Notice required by Insurance Code §551.1053 from a notice of nonrenewal under Insurance Code §551.105, and from a notice of cancellation under Insurance Code §551.104. This same change has been made in each section where the Notice required by Insurance Code §551.1053 is addressed.

Section 5.7103. New §5.7103 emphasizes the legislative intent behind and implied in Insurance Code §551.1053 that insurers must use reasonable efforts to contact and

encourage cooperation from an insured who fails or refuses to cooperate in the investigation, settlement, or defense of a third-party liability claim or action. The section does not define "reasonable efforts" because what constitutes reasonable efforts depends on the facts of each claim or action. As adopted, §5.7103 was changed from the proposal to add the phrase "third-party liability" to describe the claim or action.

Section 5.7104. New §5.7104 requires an insurer to send the Notice to the named insured within seven days after the insurer decides that an insured has failed or refused to cooperate. Specifying this timing requirement not only promotes prompt communication between the parties and consistency in claims handling and nonrenewal practices but also, importantly, keeps the claims process moving.

Proposed §5.7104 has been changed in response to public comments. First, under the adopted rule, the insurer must send the Notice within seven days--instead of five--after the insurer decides that an insured has failed or refused to cooperate. This gives the insurer more time to send the Notice after making its decision. Second, this section has been changed to emphasize that it is the insurer--not TDI--that decides when and how an insured fails or refuses to cooperate. Finally, new subsection (b) has been added to clarify that if an insurer decides during one policy term that an insured failed or refused to cooperate during any prior policy term, the insurer must still send the Notice within seven days of making that decision, and the text of proposed subsection (b) has been redesignated as subsection (c).

Section 5.7105. New §5.7105(a) prohibits nonrenewal under §551.1053 if the insurer decides that an insured cooperates. The title of the section has been changed to reflect this prohibition.

In response to comments, proposed new §5.7105(a) has been changed to remove the specification that an insured may cooperate at any time during the policy term in

which Notice was sent or any extended term. That change acknowledges the variety of situations that insurers may encounter.

New §5.7105(b) requires an insurer to provide an insured at least 10 days to cooperate after the insurer sends the Notice, regardless of when the policy term ends. Insurance Code §551.1053(a)(3) creates a prerequisite to mandatory nonrenewal--that the insured continues to fail or refuse to cooperate. This means that the insurer must provide the insured an opportunity to cooperate before the policy is mandatorily nonrenewed.

Section 5.7106. Proposed §5.7106 has been revised to remove the requirement to extend the policy term and to instead specify that one way the insurer can comply with §5.7104 and §5.7105(b) when the insurer makes the decision that the insured failed or refused to cooperate with less than 17 days left in the policy term is to extend the policy term. This extension gives the insurer time to send the Notice to the named insured within seven days of making its decision. The extension also gives the insured at least 10 days to cooperate. New §5.7106 allows the insurer to charge additional premium for the coverage extension.

Section 5.7107. New §5.7107 lists the required contents of the Notice sent by an insurer under Insurance Code §551.1053. Prescribing specific elements for the Notice provides uniformity and transparency and decreases consumer confusion. These required elements ensure that the named insured is informed of:

- information about the claim or action;
- the identity of the insured who failed or refused to cooperate;
- what the insured needs to do to cooperate; and
- the consequences to the named insured if the insured does not cooperate.

Proposed §5.7107 required an insurer to tell the named insured--in the Notice--about its attempts to contact the insured. The proposed text has been changed in response to public comments; under the adopted text, an insurer is required to tell the

named insured about its contact attempts only if the insurer has been unable to contact the insured.

To recognize that insurers may use a variety of methods to identify claims, the proposed text of §5.7107(b)(4) has been changed to add "or other identifying number." In response to comments, subsection (b)(7) as proposed has been changed to remove the requirement that the Notice state that the insured must cooperate before the end of the policy term (or any extended term) to stop nonrenewal.

Adopted §5.7107(c) requires insurers to provide the required Notice either (1) in English and in Spanish, or (2) in English with a statement in Spanish stating that the policy will be nonrenewed if the insured continues to fail or refuse to cooperate.

According to the 2020 U.S. Census, over 7 million Texas households speak Spanish as their primary language. Spanish instructions will help consumers whose native language is Spanish understand their contractual obligation to cooperate. Providing the Notice either completely in Spanish or in English with an instructional statement in Spanish and requiring the insurer's phone number is consistent with other rules intended to alert consumers of important rights or information in their policies, such as in the Consumer Bill of Rights in §5.9970 and §5.9971 and the Texas Liability Insurance Card in §5.204(e).

The proposed text of §5.7107 has been changed in response to public comments to clarify that insurers are not required to have a dedicated phone number for communicating with Spanish speakers.

As adopted, the proposed text of §5.7107 has also been changed to reorganize it and add clarifying nonsubstantive revisions. These revisions include removing language about when the insured must cooperate to stop nonrenewal of the policy, clarifying that the insurer decides if the insured has cooperated after sending the Notice, and giving the

insurer the option to include language stating that the insurer might nonrenew the policy for other reasons or might send a renewal offer if the insured cooperates.

Section 5.7108. New §5.7108 provides sample Notices. Insurers are not required to use the sample Notices, but providing them encourages clear and consistent communication, saves insurers the time and expense of having to draft Notice language, and helps insurers comply with the law. In addition to English and Spanish Notices, TDI is providing a sample dual-language Notice. That Notice is in English but also contains a statement in Spanish. These sample Notices are consistent with TDI's plain language recommendations and provisions in Insurance Code §2301.053 regarding plain language.

The all-Spanish and dual-language sample Notices in proposed §5.7108 have been changed in response to public comments to remove language that suggested that companies must have a dedicated phone number for Spanish speakers. The Notices are also changed to align with the revisions to §5.7107.

Section 5.7109. New §5.7109 reiterates that if an insured does not cooperate after the insurer provides the Notice, the insurer must nonrenew the policy. However, if the insurer decides that the insured has cooperated at any time before the policy's expiration or before the end of the extended term, §5.7109 prohibits the insurer from nonrenewing the policy under Insurance Code §551.1053.

The proposed text of §5.7109 has been changed in response to public comments to address when the mandatory nonrenewal takes effect. As adopted, subsection (b) is reorganized to expressly state that Insurance Code §551.105 and §551.106 do not apply where they conflict with the requirement to mandatorily nonrenew the policy under Insurance Code §551.1053. After sending the Notice, if the insurer decides that an insured continues to fail or refuse to cooperate, the policy is mandatorily nonrenewed at the end of the policy term in which the insurer initially decided that the insured failed or refused to cooperate or at the end of any extended term. The Insurance Code does not authorize

or require an additional or separate notice of nonrenewal to the named insured to comply with Insurance Code §551.1053.

Section 5.7110. New §5.7110 affirms that insurers may nonrenew a policy for reasons other than refusal or failure to cooperate under other applicable statutes, specifically Insurance Code §551.105 and §551.106. The section also clarifies that the insurer must still provide the Notice if the insurer decides an insured fails or refuses to cooperate in a third-party liability claim or action even when the insurer intends to nonrenew the policy under other applicable law. Because the Notice encourages the insured to cooperate in the claim or action, the insurer must send the Notice even in situations where nonrenewal is certain for other reasons. The text of the section as adopted has been changed to replace the words "other rules and statutes" with "laws" and "send" with "provide."

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI provided an opportunity for public comment on the rule proposal for a period that ended on December 14, 2023.

TDI received comments from five commenters. Commenters against the proposal were the Association of Fire and Casualty Companies in Texas (AFACT) and the Insurance Council of Texas (ICT), who submitted a joint comment letter, and whose representative spoke at the public hearing on the proposal held December 14, 2023; the American Property Casualty Insurance Association (APCIA); and Burnie Burner of Mitchell, Williams, Selig, Gates & Woodyard, PLLC, on behalf of the firm's clients affected by the proposal. TDI also received comments from Insurance Services Office, Inc. (ISO), who suggested changes, but was neither for nor against the proposal.

Comment on the Applicability of the Rule (§5.7101)

Comment. Several commenters question how a "private passenger policy" could be issued to a governmental entity or political subdivision and ask TDI to remove governmental entities from the applicability of the rule.

Agency Response. TDI declines to remove governmental entities from the applicability of the rule. Section 551.1053 is in Insurance Code Chapter 551, Subchapter C, and §551.102 specifies that Subchapter C applies to certain governmental entities and political subdivisions. SB 1602 did not amend the applicability of Subchapter C in Insurance Code §551.102 and it did not except those entities from its applicability.

Comment on the Definition of "Notice" (§5.7102)

Comment. Several commenters state that the definition of "Notice" is confusing and vague, and they say that the definition incorrectly suggests that the Notice is the equivalent of a notice of nonrenewal. The commenters state that the definition of Notice should be changed to distinguish between the Notice required under Insurance Code §551.1053 and a nonrenewal notice sent for other reasons.

Agency Response. TDI agrees with the comment in part on the necessity to distinguish the types of notices, but disagrees that the definition is confusing, vague, or is equivalent to a notice of nonrenewal. TDI has capitalized Notice to distinguish the Notice under Insurance Code §551.1053 from a notice of nonrenewal sent to comply with Insurance Code §551.105. The definition is changed to further clarify that distinction by inserting the word "mandatory" before the word "nonrenewal." As adopted, the definition of Notice states that it is the Notice of mandatory nonrenewal and opportunity to cooperate, which distinguishes the Notice from a notice of nonrenewal sent for other reasons under Insurance Code §551.105. The circumstances and timing of the Insurance Code §551.1053 Notice are entirely different from those under which an insurer might send a notice of nonrenewal under Insurance Code §551.105.

Comment on the Breadth of Reasonable Efforts (§5.7103)

Comment. Several commenters state that the rule appears to impose a broader duty for "reasonable efforts" than Insurance Code §551.1053 requires. The commenters state that Insurance Code §551.1053 contemplates only requiring the insurer to make reasonable efforts to contact or find the insured, and they believe it does not extend to encouraging cooperation. They express that this imposes a vague standard on what would be reasonable in encouraging cooperation, and could result in materially different interpretations, particularly by TDI Market Conduct or Enforcement staff, that would not be known until after the fact.

Agency Response. TDI disagrees and declines to make a change. The condition for providing Notice in Insurance Code §551.1053(a) states in part, "If an insured . . . fails or refuses to cooperate with an insurer in the investigation, settlement, or defense of a third-party liability claim or action or the insurer is unable to contact the insured using reasonable efforts *for those purposes. . .*" (emphasis added). The phrase "for those purposes" refers to the purposes described in the first clause of the condition, "If an insured . . . fails or refuses to cooperate. . . ." The purposes are not limited to efforts to contact the insured. TDI revised the rule to make it clear that the insurer—and not TDI—decides whether the insured failed or refused to cooperate in the claim or action.

Comment on Deciding Noncooperation (§5.7104)

Comment. One commenter asks how TDI would find that insurers have determined noncooperation if the insurer has not sent the notice. The commenter asks whether TDI would review claims files to make different determinations based on the facts.

Agency Response. TDI has a duty to ensure that the Insurance Code and other laws regarding insurance and insurers are executed under Insurance Code §31.002. As part of

those duties, TDI may investigate a complaint or fraud report, or perform a market conduct examination. However, TDI has changed the proposed text to more clearly state that the insurer—not TDI—decides when and how an insured fails or refuses to cooperate. If an insurer decides that an insured has failed or refused to cooperate, presumably the insurer's records or claim file will show or demonstrate when the insurer made that decision. Those records or the claim file should also show that the insurer timely sent the Notice within seven days after making that decision. If TDI discovers during a Market Conduct examination, Enforcement investigation, or complaint investigation that there is evidence showing a violation of Insurance Code §551.1053 or the adopted rules, then the insurer may be subject to disciplinary action.

Comments on the Requirement to Send the Notice Within Five Days (§5.7104)

Comment. Several commenters state that the requirement that insurers send the Notice to the named insured within five days of deciding noncooperation is tight or too short, and not reasonable. They also state that the timing is inconsistent with the elements in Insurance Code §551.1053 because they think the Notice may be given at different times depending on the facts and circumstances in a specific third-party claim.

Agency Response. TDI agrees with the commenters about the timeframe and adds two more days in the text as adopted, giving the insurer seven days instead of five to provide the Notice after the insurer makes its decision that an insured has failed or refused to cooperate. The timeframe in which the insurer must provide the Notice to the named insured is triggered by the insurer's decision. However, TDI recognizes that holidays and other circumstances may make a five-day timeline difficult to meet. Giving insurers additional time to send the Notice after making the decision may assist them in overcoming any challenges they might have in programming, addressing manual tasks, or drafting the Notice to comply.

TDI disagrees that specifying the timing to provide the Notice is inconsistent with Insurance Code §551.1053 because the statute requires the insurer to provide the Notice, and the intent of the statute is to encourage cooperation so that third-party claims and actions get resolved. Setting timeframes helps ensure that claims and actions are resolved promptly. Also, the rule allows the insurer—based on the facts and circumstances of each third-party claim—to decide whether and when the insured has failed to cooperate.

Comment. Several commenters asked for a minimum of 20 days to send the Notice because that is the amount of time that the insurer would have to file an answer if it defends an insured in a lawsuit.

Agency Response. TDI declines to extend the deadline to 20 days to send the Notice but agrees to extend it to seven days. Insurance Code §551.1053 specifies that the insurer must provide the Notice when an insured fails or refuses to cooperate in the investigation, settlement, or defense of a third-party liability claim or action or the insurer is unable to contact the insured using reasonable efforts for those purposes. The insurer's obligation to provide the Notice is not limited to the insured's failure or refusal to cooperate in defense of a third-party liability lawsuit. Similarly, the time to answer a lawsuit and the timing of an insurer's decision that an insured has failed or refused to cooperate are not codependent. The insurer decides when the insured has failed or refused to cooperate. The statute's purpose is to encourage the insured's cooperation so that the third party's claim can be settled, or the action resolved. Extending the time to 20 days may unnecessarily delay that resolution.

Comment on the Necessity and Enforceability of the Five-Day Requirement (§5.7104)

Comment. One commenter states that the five-day requirement to send the Notice is unenforceable and unnecessary.

Agency Response. TDI disagrees that the time requirement is unenforceable or unnecessary but has changed the time the insurer must send the Notice from five to seven days in the text as adopted. The time requirement is necessary to encourage prompt cooperation and to prevent delays in the investigation, settlement, or defense of the third-party claim or action.

Comment Conflating the Notice and Cooperation Timeframes (§5.7104 and §5.7105)

Comment. Several commenters opine that giving the insured 10 days to cooperate conflicts with the requirement to send the Notice within five days of determining that an insured has failed or refused to cooperate.

Agency Response. TDI disagrees. These are two successive timing requirements triggered by a single event—the insurer's decision that an insured has failed or refused to cooperate. After that decision is made, the insurer must provide the Notice to the named insured within seven days (previously five days) under §5.7104. Then, after the insurer sends the Notice, the insured has a minimum of 10 days to cooperate. TDI has agreed to increase the amount of time the insurer has to provide the Notice to the named insured from five to seven days under §5.7104.

Comment That Coverage Must Be Denied Before Nonrenewal (§5.7105) Comment.

Several commenters suggest that insurers should be allowed to:

1. send a notice under Insurance Code §551.1053;
2. deny coverage; and
3. then send a notice of nonrenewal.

Agency Response: TDI disagrees. Insurance Code §551.1053 does not have a prerequisite that the insurer deny coverage in a third-party claim or action before the insurer must comply with §551.1053. The statute requires the insurer to nonrenew a private passenger auto policy if the insured continues to fail or refuse to cooperate after the insurer has sent the Notice to the named insured. It also requires the insurer to provide the Notice to the named insured if an insured fails or refuses to cooperate in a claim or action, or if the insurer is unable to contact the insured using reasonable efforts.

Nothing in the statute states or suggests that there is any requirement to deny coverage. Indeed, there may be cases where an insured does not cooperate, but an insurer still has sufficient information to determine liability and pay the third-party claim. The statute expressly states that the Notice under Insurance Code §551.1053 is to be sent notwithstanding Insurance Code §551.105 and §551.106, so the commenters' suggested third step--to send a notice of nonrenewal under §551.105--is not contemplated under §551.1053.

Comments Asserting That Allowing Insureds 10 Days to Cooperate Is Confusing and Difficult to Apply (§5.7105)

Comment. Several commenters state that §5.7105 "appears to confuse the fact that if an insured wants the benefits of coverage (defense and indemnity) of a third-party claim against the insured, it is required to cooperate with the insurer. Thus, the reference in subsection (a) that an 'insured may cooperate at any time during the policy term' is confusing and inconsistent with the obligations under the policy." The commenters further state that the timeframe would be difficult to apply in certain factual scenarios and does not address the situation where an insurer cannot locate an insured.

Agency Response. As we understand these comments, TDI disagrees that §5.7105 is confusing or inconsistent. Although TDI acknowledges that there may be circumstances

in which it might be challenging for the insurer to allow an insured an opportunity to cooperate, that opportunity is provided by Insurance Code §551.1053 rather than the rule. The adopted rule specifies a minimum number of days that the insurer must provide for the insured to cooperate.

TDI has removed the text specifying that the insured may cooperate at any time during the policy term to acknowledge that the factual scenario in each claim or action, the length of the policy term, and the timing of the insurer's decision may vary. The adopted rule states that if an insurer decides that the insured has cooperated, then the insurer may not nonrenew the policy for that insured's failure or refusal to cooperate.

Once the insurer decides that an insured has failed or refused to cooperate, the timelines in the rule are triggered, and the insurer must provide the Notice to the named insured within seven days and then give the insured at least 10 days to cooperate. An insurer may decide that an insured failed or refused to cooperate within the same policy term that the claim or the lack of cooperation occurred, or it may make that decision in a subsequent policy term. For example, if the term in which the insurer makes the decision is 180 days in length, and the insurer decides the insured failed or refused to cooperate on day 20 of that term, the insurer has seven days to send out the Notice (by day 27), and the insured has more than 10 days to cooperate before that term (and coverage) expires on day 180.

Similarly, if an insurer decides that the insured failed or refused to cooperate on day 179, the insurer cannot renew the policy but must send the Notice within seven days of making that decision, and then must provide at least 10 days for the insured to cooperate. Because of this challenging timing scenario, the insurer can extend the term under §5.7106 by as much as 17 days and charge the policyholder for that extension. In this second example, if the insurer does not send the Notice until seven days after its decision on day 179, the extended term could be as long as 17 days, but if the insurer

sends the Notice the day after making its decision—on day 180 of the term, the extended term might only be 10 days. Regardless of the extension length, if the insured does not cooperate during the extension, the coverage expires at the end of the extended term.

When the insurer cannot locate the insured, the insurer must still comply with Insurance Code §551.1053 and send the Notice to the named insured. The named insured may be a different person from the insured who failed or refused to cooperate. The named insured is sent the Notice for a reason. The named insured should know the insured—who may be a household member or a permissive driver—and is in the best position to encourage that insured to cooperate so that the named insured can potentially avoid the mandatory nonrenewal.

Comments on the Renewal Requirement if the Insured Cooperates After Receiving the Notice (§5.7105)

Comment. Several commenters suggest that it would be better to state that efforts will be made to prevent nonrenewal or reinstate the policy if the insured cooperates. These commenters believe that renewing the policy will be impossible to execute if the insured cooperates on the last day of the term before nonrenewal. They argue it is counter to the intent of the statute to require the insurer to renew the policy if the insured cooperates after the insurer has decided that the insured has not cooperated, and when the insurer has already taken two steps to comply with the statute by sending both the required Notice and sending a subsequent notice of nonrenewal.

Agency Response. TDI disagrees and declines to allow insurers to nonrenew the policy under Insurance Code §551.1053 when the insured subsequently cooperates. If an insurer sends the Notice and the insured subsequently cooperates, Insurance Code §551.1053 does not allow the insurer to then nonrenew the policy. Allowing nonrenewal after an insured cooperates would contradict the statute's express language and legislative intent.

The language in Insurance Code §551.1053(b) expressly requires mandatory nonrenewal when an insured fails or refuses to cooperate. Insurance Code §551.1053(a)(3) implies that there is time for the insured to cooperate. Insurance Code §551.1053 does not give the insurer authority to nonrenew when an insured cooperates.

According to the statement of intent in the Legislature's bill analysis, "The purpose of this legislation is to give an incentive for the insurer to do all possible to contact their insured to get them to cooperate."

Not only does the insurer decide when an insured has failed or refused to cooperate but the reverse is also true—the insurer decides whether the insured has cooperated. If the insurer later decides the insured has cooperated, the insurer may not nonrenew under Insurance Code §551.1053 but might be able to nonrenew the policy, with proper 60-days' notice on the 12-month anniversary of the policy's original effective date, as contemplated in Insurance Code §551.105 and §551.106.

Comments on Policy Extension When Notice Is Sent Within 10 Days of Policy Expiration (§5.7105 and §5.7106)

Comment. Several commenters suggest that if the Notice under Insurance Code §551.1053 is sent less than 10 days before the end of the policy term, that the insurer should be allowed to cancel the policy instead of extending it. These commenters suggest that TDI adopt a rule authorizing cancellation of a renewed policy under the authority of Insurance Code §551.104(b)(3), which states that an insurer may cancel a policy if TDI determines that continuation of the policy would result in a violation of the Insurance Code or other insurance law in this state.

Several commenters express that an extension of the policy term is unworkable because their systems cannot extend policy terms. The commenters state that they believe the problem of shorter notice of nonrenewal when a policy is approaching the end of its

term can be solved only through a cancellation or by nonrenewal following a temporary renewal.

Agency Response. TDI declines to make the requested changes. Insurance Code §551.1053 does not use the word "cancellation." Instead, it requires mandatory nonrenewal, notwithstanding Insurance Code §551.105 and §551.106. The effect of the commenters' suggestion would allow the insurer to act contrary to the statutory language by renewing the policy and then sending a 10-day notice of cancellation, rather than sending the Notice and mandatorily nonrenewing the policy at the end of the policy term or any extended term. This cancellation is prohibited by Insurance Code §551.104, which limits the allowable reasons for cancellation, and does not include the failure or refusal to cooperate in a claim or action. Insurance Code §551.1053 prohibits the insurer from renewing a policy if the insurer decides that the insured has continued to fail or refuse to cooperate.

The commenters did not explain why their systems cannot extend policy terms. TDI does not believe that an extension is unworkable because policy extensions already occur in the marketplace. However, TDI agrees to change the text requiring a policy extension in §5.7106 to instead make it clear that it is one way an insurer can comply with §5.7104 and §5.7105(b). This change recognizes that the insurer may make the decision that the insured has failed or refused to cooperate earlier in the policy term, allowing for plenty of time to send the Notice and to allow at least 10 days for the insured to cooperate. It also gives the insurer an incentive to seek the insured's cooperation as early as possible in the claims handling process. Under the adopted rule, insurers must provide the insured with at least 10 days to cooperate and may extend the policy term to do so.

Comment. Several commenters question the statutory authority for an extension of the policy term. One commenter states that an extension is "contrary to the intent of the

statute which is intended to penalize insureds who do not cooperate rather than to reward them with extended coverage."

Agency Response. TDI disagrees that it lacks the statutory authority to require an extension of the policy term and disagrees that the intent of the statute is to penalize insureds. TDI has authority to adopt and enforce reasonable rules necessary to carry out the provisions of Insurance Code Title 10, Subtitle C, concerning Automobile Insurance.

The SB 1602 bill analysis states, "The purpose of this legislation is to give an incentive for the insurance company to do all possible to contact their insured to get them to cooperate." Insurance Code §551.1053(a)(3) requires the insurer to notify the named insured that the insurer will not renew the policy if the insured *continues to* fail or refuse to cooperate. This contemplates an opportunity to cooperate, or to cure, that is inherent in the statute.

After the insurer makes the decision that an insured has failed or refused to cooperate, the insurer must comply with §5.7104 and §5.7105(b) by giving the named insured Notice and giving the insured at least 10 days to cooperate. For reasons previously explained, TDI has agreed to change §5.7106 to make it clear that extending the term is one way to comply with §5.7104 and §5.7105(b).

Comments Disagreeing with the Single Notice Requirement (§5.7107)

Comment. Several commenters disagree that the Notice described in Insurance Code §551.1053 is a single notice of nonrenewal. Rather, they say that it is a separate notice of noncooperation. These commenters believe the rule should allow insurers to first provide a notice of noncooperation and then subsequently provide a notice of nonrenewal. These

commenters ask that TDI incorporate their proposed two-step notice process into the sample notices.

They further state that Insurance Code §551.1053 requires that notice of the following three elements be sent *before* a nonrenewal notice is sent:

1. Notice must state how an insured has failed or refused to cooperate;
2. The notice must include the specific claim (or action) where the insurer is requesting cooperation; and
3. Notice is given that the insurer will nonrenew coverage if the insured continues to fail or refuse to cooperate.

Agency Response. TDI disagrees that Insurance Code §551.1053 creates or requires a notice separate from the Notice sent under §551.1053. Therefore, TDI declines to create a two-step process requiring first a notice of noncooperation and then a notice of nonrenewal. Insurance Code §551.1053 expressly states that the mandatory nonrenewal takes place *notwithstanding* Insurance Code §551.105 and §551.106. The Legislature expressed that the policy must be nonrenewed when an insured fails or refuses to cooperate with the insurer. Insurance Code §551.1053 does not specify a secondary or other notice.

The Notice required by Insurance Code §551.1053 is a single notice—a special notice of mandatory nonrenewal and opportunity to cooperate—explaining that the policy nonrenewal is conditional on the insured's cooperation. Due to the enactment of Insurance Code §551.1053, there are now three different ways insurers can terminate a policy: cancellation, nonrenewal, and mandatory nonrenewal for failing or refusing to cooperate.

Sending a second additional notice contravenes statutory language in Insurance Code §551.1053, indicating that Insurance Code §551.105 and §551.106 are not part of the mandatory nonrenewal process. The single Notice approach implements the

"notwithstanding" phrase in §551.1053(b), requiring the insurer to disregard Insurance Code §551.105 and §551.106. The single Notice approach recognizes the possibility that the Notice may be given near the end of a term, and still encourages cooperation by giving time for the insured to cooperate.

Requiring a second notice of nonrenewal would also create consumer confusion. In contrast, a clear and transparent single Notice written in plain language encourages prompt cooperation. The Notice is the only communication required to be sent under Insurance Code §551.1053 to notify the named insured that the policy will be mandatorily nonrenewed unless the insured cooperates. If an insurer sends the Notice and the insured cooperates before coverage ends, Insurance Code §551.1053 does not allow the insurer to nonrenew the policy for the insured's failure or refusal to cooperate, but the insurer may nonrenew the policy for other reasons.

TDI agrees that the three listed elements are statutorily required, and those elements are in adopted §5.7107, which specifies the required contents of the Notice.

Comments on the Contents of the Notice (§5.7107)

Comment. Several commenters state that some of the proposed elements in the Notice are too burdensome to implement, go beyond the scope of the statutory requirements, are too subjective, or are unreasonable.

Agency Response. TDI disagrees. TDI has authority to adopt and enforce reasonable rules necessary to carry out the provisions of Insurance Code Title 10, Subtitle C, concerning Automobile Insurance.

Insurance Code §551.1053 requires the insurer to provide written notice that states the information described in Insurance Code §551.1053(a)(1) - (3). Section 5.7107(b)(2) and (3) require the Notice to include the specific statutory requirements.

The rest of §5.7107 includes necessary elements to plainly convey enough information to the named insured to encourage the insured's cooperation in the claim or action, and to notify them of the mandatory nonrenewal. Adopted subsection (d) provides that insurers may include additional information in the notice, and is designed to assure insurers that they have flexibility in communicating with their customers. As adopted, subsection (d) is changed from the proposal to add examples of optional information—that (1) the insurer might send a renewal offer if the insurer has not already sent a notice of nonrenewal for other reasons under Insurance Code §551.105; and that (2) even if the insured cooperates, the insurer may nonrenew the policy for other reasons. Subsection (d)(2) was moved from proposed subsection (b)(9) to give the insurer the option of whether to provide that statement.

Adopted subsection (e) informs insurers that they are not required to file their Notices unless TDI requests.

Comment. Several commenters state that certain Notice elements are unreasonable, too subjective, or go beyond the purview of Insurance Code §551.1053. Specifically, they take issue with the elements regarding the insurer's attempts to contact the insured; that the insured still has time to cooperate; that the insured must cooperate to stop nonrenewal; that if the insured doesn't cooperate, it will trigger nonrenewal; and the date of nonrenewal. The commenters suggest these requirements will require the Notices to be customized for every scenario, requiring manual typing.

Agency Response. TDI disagrees that the Notice elements are unreasonable, too subjective, or go beyond the purview of Insurance Code §551.1053. The statute requires giving a Notice that contains the necessary elements. The elements in §5.7107(b)(1) - (9) are contemplated or specifically required by Insurance Code §551.1053(a)(1) - (3). Insurance Code §551.1053 has been in effect for more than three years, and insurers

should already be sending a Notice that gives the insured information about the claim or action, the insured's obligation to cooperate, and the consequence—i.e., mandatory nonrenewal—if the insured continues to fail or refuse to cooperate. To help ensure that the insured gets appropriate notice and to promote consistency between insurers, the rule lists the elements.

Comment. Several commenters suggest changing the section title to clarify that the Notice is the notice of mandatory nonrenewal and opportunity to cooperate, as required by Insurance Code §551.1053.

Agency Response. TDI agrees. As adopted, the section title has been changed to "Notice of Mandatory Nonrenewal and Opportunity to Cooperate Under Insurance Code §551.1053."

Comment. Several commenters express concern that proposed §5.7107(b)(3) requires insurers to inform the named insured of the insurer's attempts to contact the insured in all notices, even if an insurer has been able to contact an insured.

Agency Response. TDI agrees. As adopted, §5.7107(b)(3) has been changed to state that insurers are required to inform the named insured of contact attempts only if the insurer was unable to contact the insured.

Comment. Several commenters ask that TDI not adopt §5.7107(b)(6), opining that Insurance Code §551.1053 does not require the insurer to inform the named insured that there is still time to cooperate before the policy is nonrenewed.

Agency Response. TDI disagrees and declines to make a change. Insurance Code §551.1053 implies there is a period of time that the insured has to cooperate. Section 551.1053(a)(3) states the Notice must inform the named insured that "the insurer will not

renew the policy if the insured *continues* to fail or refuse to cooperate" (emphasis added). Informing the insured that they still have time to cooperate promotes transparency and furthers the legislative intent to encourage cooperation.

Comment. Several commenters express concern that §5.7107(b)(7) as proposed required the insurer to explicitly inform the named insured that the insured had until the end of the policy term to cooperate. The commenters state that the duty to cooperate is ongoing and not restricted to the policy term in which the insurer makes its decision that the insured failed or refused to cooperate.

Agency Response. TDI agrees and has removed the phrase limiting the timeframe for cooperation from the text of §5.7107(b)(7) as adopted.

Comment. Several commenters disagree with the requirement that the insurer inform the named insured that if the insured cooperates, then the insurer will not nonrenew the policy for failure or refusal to cooperate. The commenters assert that this requirement is not stated in Insurance Code §551.1053 and that the statute only requires the insurer to nonrenew the policy. The commenters also state that a failure to cooperate may result in no coverage for a particular claim.

Agency Response. TDI disagrees that this requirement is outside the scope of Insurance Code §551.1053. Section 551.1053(a)(3) requires that the Notice inform the named insured that the insurer will not renew the policy if the insured continues to fail or refuse to cooperate. TDI has changed the adopted rule text to clarify that it is the insurer that decides whether the insured has cooperated.

Comment. Several commenters suggest eliminating the requirement in §5.7107(b)(8) (proposed §5.7107(b)(10)) that the insurer must inform the named insured of the date of

nonrenewal because the rule "confuses the notice under Insurance Code §551.1053 with a notice of nonrenewal." The commenters argue that the Notice should not include a date of nonrenewal unless this rule authorizes a nonrenewal notice shorter than 60 days, and that the date of nonrenewal is the date the policy expires.

Agency Response. TDI declines to remove the date of nonrenewal as an element that must be in the Notice. The Notice required by Insurance Code §551.1053 is a special notice of mandatory nonrenewal, conditioned on the insured's cooperation. Adopted §5.7102 defines the Notice as a notice of mandatory nonrenewal and opportunity to cooperate. Unless the insurer is nonrenewing for other reasons, a second notice of nonrenewal under Insurance Code §551.105 and §551.106 is not allowed if the insurer has decided the insured failed or refused to cooperate. Insurance Code 551.1053(b) expressly states that notwithstanding Insurance Code §551.105 and §551.106, the insurer may not renew the policy if the insured fails or refuses to cooperate in the claim or action--as described in the Notice.

Informing the insured of the date of nonrenewal ensures that the named insured knows when their insurance coverage ends and should signal that they might need to seek other coverage. While TDI agrees that the date of nonrenewal is the date that the policy term expires, that might not be obvious to the insured.

Moreover, Insurance Code §551.1053 authorizes a shorter nonrenewal notice period than the 60 days ordinarily required by Insurance Code §551.105. The amount of time that remains in a policy term after the insurer gives the Notice depends on when the insurer decides that the insured has failed or refused to cooperate. It could be more or less than 60 days before the end of the policy term. Section 551.1053(b) expressly requires a mandatory nonrenewal notwithstanding the 60-day notice required by Insurance Code §551.105, and notwithstanding whether the nonrenewal occurs on a 12-month

anniversary of the original effective date of the policy, which would ordinarily be prohibited by Insurance Code §551.106(b).

Comment on TDI's Authority to Promulgate a Notice (§5.7107 and §5.7108)

Comment: Several commenters express concerns about the sample Notices and argue that TDI does not have statutory authority to promulgate the form of a notice of nonrenewal.

Agency Response. The rule does not promulgate the form of the Notice. Section 5.7107 lists the elements that must be in the Notice, and §5.7108 provides sample Notices to help insurers comply with Insurance Code §551.1053. Insurers may use the sample Notices provided in §5.7108, but they are not required to. Insurers may create and use their own Notice, as long as it complies with Insurance Code §551.1053 and §5.7107.

Comment on the Spanish Notice (§5.7107)

Comment. Several commenters say that the rule requires the Notice in English and Spanish. They question TDI's authority to require a Spanish Notice and whether it is necessary. Commenters question why TDI is requiring a Spanish-language Notice for this rule when it does not for others.

Agency Response. TDI disagrees that it lacks statutory authority. TDI has authority to adopt and enforce reasonable rules necessary to carry out the provisions of Insurance Code Title 10, Subtitle C, concerning Automobile Insurance.

TDI clarifies that the rule does not require insurers to send the Notice in Spanish. The adopted rule text gives insurers the option to comply by either giving the Notice in both English and Spanish, or by giving the Notice in English with a statement in Spanish containing the insurer's phone number and stating that the policy will be nonrenewed if the insured continues to fail or refuse to cooperate.

The Spanish notice requirements are consistent with other rules intended to alert consumers of important rights or changes in their policies. This is similar to the English versions of the Consumer Bills of Rights in 28 TAC §5.9970 and §5.9971, which include statements in Spanish telling readers the purpose of the document and that they can call their company for information in Spanish. Both the English and Spanish versions of the Consumer Bill of Rights require the insurer to provide a phone number. Likewise, this is similar to the approach TDI took when adopting the Texas Liability Insurance Card, as described in 28 TAC §5.204(e).

The Notice's primary purpose is to encourage the insured to cooperate with the insurer in the investigation, settlement, or defense of the claim or action described by the Notice. Insureds need to know and understand what is being asked of them.

According to the 2020 U.S. Census, over 7 million Texas households speak Spanish as their primary language. Providing a Spanish statement in the Notice or translating the Notice to Spanish will help Spanish-speaking consumers understand their obligation to cooperate and inform them that their coverage might end if they continue to fail or refuse to cooperate.

The adopted rule text has been changed from the proposed text to clarify that insurers are not required to have a dedicated phone number for communicating with Spanish speakers.

Comment on the Sample Notices (§5.7108)

Comment. Several commenters state that the sample Notices do not contain all the elements in proposed §5.7107. The commenters state that the sample Notices contain different elements, but they do not specify which elements were different.

Agency Response. TDI disagrees that the sample Notices do not match the elements in §5.7107. The sample Notices are written in plain language and in at least 10-point type.

The adopted sample Notices contain all the required elements, as well as two optional elements listed in §5.7107(d).

Comment. One commenter expresses concerns that the Notice may be interrelated with a situation in which a nonrenewal notice for a different permissible reason is also sent to the same insured. The commenter asks that the sample Notice emphasize the following text by moving it to the first paragraph, underlining it, and making the font bold:

"Warning: Even if you cooperate, we may still not renew your policy for other reasons allowed by law."

Agency Response. TDI declines to move the text or change its formatting. The primary focus of the Notice is to encourage insureds to cooperate in the claim. Keeping the most relevant information at the top furthers this goal. TDI appreciates and acknowledges the importance of this warning, which is why it has been included as optional language for the Notice and is included on the sample Notices.

Comment on the Requirement That the Notice Must Be Sent Even if Otherwise Nonrenewing (§5.7110)

Comment. One commenter asks TDI to remove the requirement that an insurer must send the Notice even if the insurer has already sent a notice of nonrenewal for another reason. The commenter states that it makes no sense to send the Notice when a customer has already been nonrenewed.

Agency Response. TDI declines to remove this requirement. The intent of Insurance Code §551.1053 and the purpose of the Notice is to encourage the insured's cooperation so that the claim or action can be swiftly and efficiently investigated, settled, and, if necessary, defended by the insurer, allowing the third-party claimant to either be paid for their damages or to have a timely resolution to the claim or action, even if an insurer has

already notified the policyholder that the insurer is nonrenewing their policy for other reasons.

Comments Requesting Negotiated Rulemaking

Comment. Several commenters ask for withdrawal of the proposed rule and that TDI instead consider a negotiated rulemaking process to implement SB 1602 and HB 2065. They suggested that TDI meet with insurance industry experts as a part of that process.

Agency Response. TDI declines to engage in negotiated rulemaking contemplated by Insurance Code §36.110 and Chapter 2008 of the Government Code. As the [Texas Negotiated Rulemaking Deskbook](#) (Center for Public Policy Dispute Resolution, 1996) points out, negotiated rulemaking does not exempt the agency from statutory requirements. Each requirement in this rule is either specifically required by Insurance Code §551.1053 or is necessary to give effect to the statute. Therefore, the majority of the issues raised by the commenters are not appropriate for negotiation, and amendments to §551.1053 would require legislative action.

Comments on the Insured's Duty to Cooperate

Comment. At the hearing, one commenter mentioned that Texas case law from 1976 states that whether an insured has failed or refused to cooperate is a question of fact and it may vary by instance. This commenter stated that the case law distinguishes between failure to cooperate in a claim from failure to cooperate in a lawsuit.

Agency Response. TDI agrees that whether an insured fails or refuses to cooperate with an insurer is a question of fact. The adopted rule acknowledges that it is the insurer's decision as to whether the insured failed or refused to cooperate with the insurer in the investigation, settlement, or defense of the claim or action.

Comment Requesting Examples of Noncompliant Policy Provisions

Comment. One commenter asks that TDI provide specific examples of policy provisions filed with TDI that do not comply with Insurance Code §551.1053. The commenter further suggests that TDI provide corresponding rationales explaining why the text was noncompliant.

Agency Response. TDI declines to provide examples of noncompliant policy forms in this rulemaking. Insurers that filed forms that did not comply with insurance laws were required to revise those forms during the filing review process before TDI could approve them, as contemplated in Insurance Code Chapter 2301. TDI declines to provide examples that do not comply because it only highlights examples TDI does not want insurers to follow. Moreover, TDI does not want to imply that those examples might be the only form or method of noncompliance. Parties interested in reviewing filed and approved forms or objections to policy form provisions may do so in the System for Electronic Rates & Forms Filing (SERFF), which is publicly available on the internet.

Subchapter H. Cancellation, Denial, and Nonrenewal of Certain Property and Casualty Insurance Coverage**Division 1. General Provisions**
28 TAC §§5.7005, 5.7007, and 5.7011 - 5.7013

STATUTORY AUTHORITY. The commissioner adopts amended §§5.7005, 5.7007, and 5.7011 - 5.7013 under Insurance Code §§551.1053, 551.112, 1951.002, and 36.001.

Insurance Code §551.1053 requires insurers to nonrenew private passenger automobile insurance policies when an insured fails or refuses to cooperate with the insurer in the investigation, settlement, or defense of a third-party liability claim or action.

Insurance Code §551.112 authorizes the commissioner to adopt rules relating to the cancellation and nonrenewal of insurance policies.

Insurance Code §1951.002 authorizes the commissioner to adopt and enforce rules necessary to carry out the provisions of Insurance Code Title 10, Subtitle C.

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.

TEXT.**§5.7005. Special One-Year Rule Applicable Only to Personal Automobile Policies.**

(a) Purpose of rule. The purpose of this section is to:

(1) require continuity of coverage for at least one year when the policy is written for a lesser term; and

(2) allow cancellation at the expiration of a one-year term when coverage is written for more than one year.

(b) Cancellation or nonrenewal. An insurer may cancel or nonrenew personal automobile policies for any legal reason, if the purpose is to terminate coverage concurrently with the expiration of any annual period, beginning with the original effective date of the policy. The prohibition in §5.7002 of this title (relating to Cancellations) does not apply to such cancellations. An insurer that cancels on the anniversary, and in accordance with this subsection, must give the policyholder at least 60 days prior written notice of cancellation.

(c) Except as provided in Insurance Code §551.1053, concerning Mandatory Nonrenewal of Private Passenger Automobile Insurance Policies, and Division 2 of this subchapter (relating to Mandatory Nonrenewal of Private Passenger Automobile Insurance Policies), personal automobile policies that are written for less than one year must be renewed, at the option of the insured, for additional periods so as to accumulate a minimum of 12 months' continuous coverage.

§5.7007. Renewal of Policies.

(a) Except as provided in Insurance Code §551.1053, concerning Mandatory Nonrenewal of Private Passenger Automobile Insurance Policies, and Division 2 of this subchapter (relating to Mandatory Nonrenewal of Private Passenger Automobile Insurance Policies), a policy must be renewed at expiration, at the option of the policyholder, unless the insurer has mailed written notice of nonrenewal to the policyholder at least 60 days before the policy's expiration date. The insurer may comply with this provision by requiring or permitting its agent to notify the policyholder. However, it is the insurer's responsibility to give notice to the policyholder if the agent fails to notify the insured.

(b) An insurer may not decline to renew personal automobile policies because of the ages of the insureds.

§5.7011. Violations.

In addition to all other remedies provided by law, any policy cancellation or restriction of coverage made in violation of this subchapter is deemed to be null and void and of no effect. Policies on which notice of nonrenewal is not given as required by this division must be renewed at the request of the insured.

§5.7012. Reason for Declination, Cancellation, or Nonrenewal.

Insurers must provide to policyholders or applicants a written statement of the reason or reasons for the declination, cancellation, or nonrenewal of any policy regulated by TDI, upon request by the policyholder or applicant.

§5.7013. Notice Requirements for Cancellation and Nonrenewal for General Liability and Certain Automobile Insurance Policies.

(a) An insurer may cancel general liability insurance policies and commercial automobile insurance policies to which this section applies by providing the notice required by Insurance Code §551.053, concerning Written Notice of Cancellation Required, except as provided by §5.7014 of this title (relating to Exceptions to Cancellations and Nonrenewal Notice Requirements for General Liability and Certain Automobile Insurance Policies).

(b) General liability insurance policies and automobile insurance policies to which this section applies must be renewed at expiration, at the option of the policyholder, unless the company has provided the written notice required by Insurance Code §551.054, concerning Written Notice of Nonrenewal Required, or by Insurance Code §551.1053, concerning Mandatory Nonrenewal of Private Passenger Automobile Insurance Policies. If the insured does not pay the renewal premium when due, the insurer's obligation to renew terminates on the policy's expiration date, regardless of whether the company has given notice of nonrenewal.

(c) An insurer may comply with this section by requiring or permitting its agent to notify the policyholder. However, it is the insurer's responsibility to give notice to the policyholder if the agent fails to notify the policyholder.

Division 2. Mandatory Nonrenewal of Private Passenger Automobile Insurance Policies**28 TAC §§5.7101 - 5.7110**

STATUTORY AUTHORITY. The commissioner adopts new §§5.7101 - 5.7110 under Insurance Code §§551.1053, 551.112, 1951.002, and 36.001.

Insurance Code §551.1053 requires insurers to nonrenew private passenger automobile insurance policies when an insured fails or refuses to cooperate with the insurer in the investigation, settlement, or defense of a third-party liability claim or action.

Insurance Code §551.112 authorizes the commissioner to adopt rules relating to the cancellation and nonrenewal of insurance policies.

Insurance Code §1951.002 authorizes the commissioner to adopt and enforce rules necessary to carry out the provisions of Insurance Code Title 10, Subtitle C.

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.

TEXT.**§5.7101. Division Purpose and Applicability.**

(a) This division implements Insurance Code §551.1053, concerning Mandatory Nonrenewal of Private Passenger Automobile Insurance Policies.

(b) Insurance Code §551.1053 requires insurers to nonrenew a policy if the insured fails or refuses to cooperate with an insurer in an investigation, settlement, or defense of a third-party liability claim or action.

(c) This division applies to third-party liability claims and actions:

(1) involving insurers identified in Insurance Code §551.101, concerning Definition; and

(2) relating to private passenger automobile insurance policies that are:

(A) personal automobile insurance policies, or

(B) written for any governmental entity or political subdivision identified in Insurance Code §551.102(4), concerning Applicability of Subchapter.

(d) This division does not apply to policies written through the Texas Automobile Insurance Plan Association.

§5.7102. Definition.

In this division, "Notice" means the notice of mandatory nonrenewal and opportunity to cooperate required by Insurance Code §551.1053(a), concerning Mandatory Nonrenewal of Private Passenger Automobile Insurance Policies.

§5.7103. Reasonable Efforts.

An insurer must use reasonable efforts to contact and encourage cooperation from an insured who fails or refuses to cooperate in an investigation, settlement, or defense of a third-party liability claim or action.

§5.7104. Notice Timing.

(a) An insurer must send the Notice to the named insured within seven days after the insurer decides that the insured failed or refused to cooperate.

(b) If an insurer decides during one policy term that an insured failed or refused to cooperate during any prior policy term, the insurer must send the Notice within seven days of making that decision.

(c) If an insurer decides that an insured failed or refused to cooperate, the insurer must send the Notice even if the insurer has already sent a notice of nonrenewal for another reason.

§5.7105. Prohibited Nonrenewal and Cooperation Timeframe.

(a) If an insurer decides that the insured has cooperated, the insurer may not nonrenew the policy for that insured's failure or refusal to cooperate.

(b) An insurer must give the insured at least 10 days to cooperate from the date the insurer sends the Notice, regardless of when the policy term ends.

§5.7106. Extension of Term and Additional Premium.

(a) If the insurer makes the decision that the insured failed or refused to cooperate when there are less than 17 days before the end of the policy term, one way the insurer may comply with §5.7104 and §5.7105(b) of this division (relating to Notice Timing, and Prohibited Nonrenewal and Cooperation Timeframe, respectively) is to extend the policy term. Extending the policy term gives the insurer time to send the Notice to the named insured within seven days and also gives the insured at least 10 days to cooperate.

(b) An insurer may charge additional premium for any extended term on a pro rata basis, based on the premium for the expiring term.

§5.7107. Notice of Mandatory Nonrenewal and Opportunity to Cooperate Under Insurance Code §551.1053.

(a) The Notice must be written in:

- (1) plain language (see TDI's website for plain language guidance); and
- (2) at least 10-point type.

(b) The Notice must inform the named insured:

(1) of the identity of the insured who failed or refused to cooperate, if known;

- (2) how the insured failed or refused to cooperate;

(3) of the insurer's attempts to contact the insured, if the insurer has been unable to contact the insured;

(4) of the claim or other identifying number, or action for which the insurer is requesting cooperation;

(5) that the insurer will not renew the policy if the insured continues to fail or refuse to cooperate;

(6) that there is still time to cooperate;

(7) that the insured must cooperate to stop nonrenewal of the policy;

(8) of the date of nonrenewal; and

(9) that if the insurer decides that the insured has cooperated, then the insurer will not nonrenew the policy for failure or refusal to cooperate.

(c) Insurers must provide the Notice either:

(1) in English and in Spanish; or

(2) in English with a statement in Spanish on the first page that the policy will be nonrenewed if the insured continues to fail or refuse to cooperate. The statement must include the insurer's phone number.

(d) The Notice may include additional information that does not violate any statutes or rules, including that:

(1) the insurer might send a renewal offer if the insurer has not already sent a notice of nonrenewal for other reasons under Insurance Code §551.105, concerning Nonrenewal of Policies; Notice Required; and

(2) even if the insured cooperates, the insurer may nonrenew the policy for other reasons.

(e) Insurers are not required to file the Notice with TDI unless TDI requests it.

2024-8596

TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 5. Property and Casualty Insurance

Adopted Sections

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§5.7108. Sample Notice of Mandatory Nonrenewal and Opportunity to Cooperate.

The figures in this section provide samples of written Notices that comply with §5.7107 of this title (relating to Notice of Mandatory Nonrenewal and Opportunity to Cooperate under Insurance Code §551.1053). Insurers are not limited to using the samples in this section; they may use other content and formatting as long as the Notice they provide complies with this division.

Figure 1: 28 TAC 5.7108 - English Sample Notice

28 TAC §5.7108

**Call us now! Help us with this claim or
we can't renew your policy!**

Notice of Mandatory Nonrenewal and Opportunity to Cooperate

We can't renew your policy unless you help us with this claim. If you don't help us, you won't have coverage after [DATE policy term ends or the end of optional extended term].

You still have time to cooperate and work with us on the claim [OR action] described below. If you cooperate before [DATE policy term ends or the end of optional extended term], we won't nonrenew your policy for this reason.

What we need from you:

Call us **now** at [insurer contact information].

[Insurer should explain specifically what the insured or named insured should do or provide now.]

What happened:

[Insurer should:

- identify the insured who failed or refused to cooperate;
- explain how that person failed or refused to cooperate; and
- if the insurer has been unable to contact the insured, describe the insurer's contact attempts.]

Claim [or Action] information:

Claim number {or other identifying number}: [_____]

Action number: {if applicable} [_____]

Date of loss: [_____]

Location or address where damage or loss took place: [_____]

Warning: This is the **only** notice we will send for this reason.

- If you continue to fail or refuse to cooperate, your policy ends on the date above.
- If we later decide you are cooperating, we might send you a renewal offer.
- Even if you do cooperate, we might nonrenew you for other reasons allowed by law.

Figure 2: 28 TAC 5.7108 - Spanish Sample Notice

28 TAC §5.7108

¡Llámenos ahora! ¡Ayúdenos con esta reclamación o no podremos renovar su póliza!

Notificación de No Renovación Obligatoria y Oportunidad para Cooperar

No podemos renovar su póliza a menos que usted nos ayude con esta reclamación. Si no nos ayuda, no tendrá cobertura después del [DATE policy term ends or the end of extended term].

Usted todavía tiene tiempo para cooperar y colaborar con nosotros en la reclamación [OR action] que se describe a continuación. Si usted coopera antes del [DATE policy term ends or the end of extended term], no cancelaremos la renovación de su póliza por este motivo.

Lo que necesitamos de usted:

Llámenos **ahora** al [phone number].

[Insurer should explain specifically what the insured or named insured should do or provide.]

Lo que sucedió:

[Insurer should:

- identify the insured who failed or refused to cooperate;
- explain how that person failed or refused to cooperate; and
- if the insurer has been unable to contact the insured, describe the insurer's contact attempts.]

Información sobre la reclamación [o Acción]:

Número de reclamación {or other identifying number}: [_____]

Número de acción: {if applicable} [_____]

Fecha de la pérdida: [_____]

Lugar o dirección en donde ocurrió el daño o la pérdida: [_____]

Advertencia: Esta es la **única** notificación que enviaremos por este motivo.

- Si usted continúa sin responder o si se niega a cooperar, su póliza termina en la fecha que se muestra en la parte de arriba.
- Si después nosotros decidimos que usted está cooperando, es posible que le enviemos una oferta de renovación.
- Incluso si usted coopera, es posible que no renovemos su póliza por otras razones permitidas por la ley.

Figure 3: 28 TAC 5.7108 - Dual-Language Sample Notice

28 TAC §5.7108

Call us now! Help us with this claim or we can't renew your policy!

Notice of Mandatory Nonrenewal and Opportunity to Cooperate

We can't renew your policy unless you help us with this claim. If you don't help us, you won't have coverage after [DATE policy term ends or the end of optional extended term].

¡Llámenos ahora al [phone number]! No podemos renovar su póliza a menos que usted nos ayude con esta reclamación. Si no nos ayuda, no tendrá cobertura después del [DATE policy term ends or the end of extended term].

You still have time to cooperate and work with us on the claim [OR action] described below. If you cooperate before [DATE policy term ends or the end of optional extended term], we won't nonrenew your policy for this reason.

What we need from you:

Call us **now** at [insurer contact information].

[Insurer should explain specifically what the insured or named insured should do or provide now.]

What happened:

[Insurer should:

- identify the insured who failed or refused to cooperate;
- explain how that person failed or refused to cooperate; and
- if the insurer has been unable to contact the insured, describe the insurer's contact attempts.]

Claim [or Action] information:

Claim number {or other identifying number}: [_____]

Action number: {if applicable} [_____]

Date of loss: [_____]

Location or address where damage or loss took place: [_____]

Warning: This is the **only** notice we will send for this reason.

- If you continue to fail or refuse to cooperate, your policy ends on the date above.
- If we later decide you are cooperating, we might send you a renewal offer.
- Even if you do cooperate, we might nonrenew you for other reasons allowed by law.

§5.7109. Mandatory Nonrenewal Under Insurance Code §551.1053.

(a) After the insurer provides the Notice and gives the insured at least 10 days to cooperate, then--if the insured continues to fail or refuse to cooperate--the mandatory nonrenewal is effective at the end of the:

(1) policy term during which the insurer decides the insured initially failed or refused to cooperate, or

(2) extended term under §5.7106 of this title (relating to Extension of Term and Additional Premium).

(b) Where they conflict with the requirement to mandatorily nonrenew the policy under Insurance Code §551.1053, concerning Mandatory Nonrenewal of Private Passenger Automobile Insurance Policies, the following statutes do not apply:

(1) Insurance Code §551.105, concerning Nonrenewal of Policies; Notice Required; and

(2) Insurance Code §551.106, concerning Renewal and Reinstatement of Personal Automobile Insurance Policies.

(c) If the insured cooperates before the end of the policy term or the end of the extended term under §5.7106 of this title, then the insurer may not nonrenew the policy under Insurance Code §551.1053.

§5.7110. Nonrenewal Under Other Statutes.

(a) An insurer may nonrenew a policy for a reason other than an insured's failure or refusal to cooperate if the insurer complies with other laws governing renewal and nonrenewal, including Insurance Code §551.105, concerning Nonrenewal of Policies;

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Notice Required, and Insurance Code §551.106, concerning Renewal and Reinstatement of Personal Automobile Insurance Policies.

(b) To encourage cooperation, even if an insurer has already sent a notice of nonrenewal for another reason, the insurer must still provide the Notice required by this division and Insurance Code §551.1053(a).

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

Issued at Austin, Texas, on April 2, 2024.

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

The amendments to 28 TAC §§5.7005, 5.7007, and 5.7011 - 5.7013 and new 28 TAC §§5.7101 - 5.7110 are adopted and are effective January 1, 2025.

DocuSigned by:
Cassie Brown
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Cassie Brown
Commissioner of Insurance

Commissioner Order No. 2024-8596