

**SUBCHAPTER H. CANCELLATION, DENIAL, AND NONRENEWAL OF CERTAIN
PROPERTY AND CASUALTY INSURANCE COVERAGE
28 TAC §5.7018**

INTRODUCTION. The Texas Department of Insurance (TDI) adopts new 28 TAC Chapter 5, Subchapter H, §5.7018, relating to notice to lienholders of cancellation of personal automobile policies that provide physical damage coverage. Section 5.7018 implements Insurance Code §551.1041. TDI adopts new §5.7018 with changes to the proposed text in response to public comment. The proposed text was published in the January 25, 2019, issue of the *Texas Register* (44 TexReg 403).

EXPLANATION. Senate Bill 1450, 85th Legislature, Regular Session (2017), enacted Insurance Code §551.1041, which requires the Commissioner "to adopt rules under which an insurer that cancels a personal automobile insurance policy that provides comprehensive or collision physical damage coverage for an automobile that is subject to a purchase money lien is required to notify the lienholder, if known, that the coverage will be canceled." New §5.7018 is necessary to implement the statute.

The rule requires insurers to give lienholders at least 10 days' written notice of cancellation of a policy. Ten days is a reasonable period for a lienholder to act to protect its interests. Insurance Code §551.103 and §551.104 describe when an insurer may cancel a personal auto policy.

Insurance Code §35.003 provides that a "regulated entity may conduct business electronically to the same extent that the entity is authorized to conduct business otherwise if before the conduct of business each party to the business agrees to conduct the business electronically." Therefore, the rule allows the written notice to be given electronically.

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TDI received comments on an informal draft of the rule that was posted on TDI's website on April 24, 2018, and on the proposal published in the *Texas Register* on January 25, 2019. TDI considered those comments when drafting the adoption order.

REASONED JUSTIFICATION. The new section is necessary to implement Insurance Code §551.1041, which requires the Commissioner "to adopt rules under which an insurer that cancels a personal automobile insurance policy that provides comprehensive or collision physical damage coverage for an automobile that is subject to a purchase money lien is required to notify the lienholder, if known, that the coverage will be canceled." TDI revised §5.7018(b) from the text as proposed to clarify the language.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received written comments from three commenters. The Office of Public Insurance Counsel and the Texas Independent Automobile Dealers Association supported the proposal with changes. The American Property Casualty Insurance Association opposed the proposal.

Comment on §5.7018(a).

A commenter suggests including a requirement for the notice to be sent by mail to the lienholder's last known address.

Agency Response to Comment on §5.7018(a).

TDI agrees that mail is an acceptable method for providing notice and has added that delivery method to the rule. In addition, TDI has added hand delivery and electronic delivery to allow flexibility in the method by which the notice is transmitted. TDI made

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this change in §5.7018(c) and (d). As to sending notice to the lienholder's last known address, including this language would be duplicative, as Insurance Code §551.1041 states that insurers are required to send notice to the "lienholder, if known." TDI declines to make that change.

Comment on §5.7018(a).

A commenter suggests noting the lienholder on the declaration page or other policy documents as an additional insured.

Agency Response to Comment on §5.7018(a).

This rule is limited to clarifying requirements for notice of insurer cancellation. Requiring the insurer to add a lienholder as an additional insured exceeds the scope of the rule. Therefore, TDI disagrees with the comment and declines to make this change.

Comment on §5.7018(a).

A commenter suggests requiring the insurer to send notice to the lienholder recorded on the title documents on file with the Texas Department of Motor Vehicles to ensure the veracity of notice only to bona fide lienholders.

Agency Response to Comment on §5.7018(a).

Insurers rely on the lienholder name provided by the policyholder. It is not part of current insurance practice to obtain copies of title documents or to do additional investigation to uncover potential lienholders. In addition, this suggestion is beyond the scope of this rule. Therefore, TDI disagrees with the comment and declines to make this change.

Comment on §5.7018(a).

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A commenter suggests including the terms "lien" and "title" to harmonize with definitions in Business and Commerce Code §1.201.

Agency Response to Comment on §5.7018(a).

Insurance Code §551.1041 requires notice to lienholders of vehicles subject to purchase money liens, which is a very specific type of security interest. The terms in the Business and Commerce Code are broader than this statute contemplates. Because of this, TDI disagrees with the comment and declines to make this change.

Comment on §5.7018(c).

A commenter suggests allowing the lienholder and insurer to agree to electronic delivery of documents, including email.

Agency Response to Comment on §5.7018(c).

TDI agrees with the comment and TDI added new §5.7018(c) to clarify that electronic notices are permissible if the method complies with Insurance Code Chapter 35. Subsection (c), which allows insurers and lienholders to agree to different notice requirements, has been redesignated as subsection (d).

Comment on §5.7018.

A commenter suggests clarification that remedies available under §551.111 are available in the event of noncompliance with this rule.

Agency Response to Comment on §5.7018.

Insurance Code §551.1041 gives the Commissioner rulemaking authority to require the insurer to provide the vehicle's lienholder with notice of cancellation of coverage. An insurer that fails to deliver a notice to a lienholder that has not opted out of the notice requirement or that has not agreed to different notice requirements with the insurer

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would violate the rule. TDI will take appropriate action when such specific violations are brought to its attention. TDI encourages the commenter to report any specific violations. Not listing specific authority or penalties for violations in each rule does not deprive TDI of this enforcement authority. TDI does not agree that it is necessary to clarify remedies in the rule text and did not make any changes in response to this comment.

Comment on §5.7018.

A commenter expresses concern that requiring a notice would increase costs.

Agency Response to Comment on §5.7018.

Insurance Code §551.1041 requires the Commissioner to adopt rules to require insurers to notify lienholders of cancellation. The rule does not specify a form for the notice. Therefore, any costs that result from this requirement lie with the statute itself. TDI did not make any changes in response to this comment.

Comment on §5.7018.

A commenter expresses concern that the rule, in its current (proposed) form, does not address notice requirements in the event of policyholder cancellation.

Agency Response to Comment on §5.7018.

This rule only implements §551.1041, which is focused on insurer cancellation. Policyholder cancellation is beyond the scope of this rule. Because of this, TDI does not agree that any changes are necessary and did not make any changes in response to this comment.

Comment on §5.7018(b).

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A commenter requests that §5.7018(b) be amended to clarify that the cancellation or nonrenewal will take effect no earlier than the 10th day after the insurer sends written notice of the cancellation or nonrenewal to the lienholder.

Agency Response to Comment on §5.7018(b).

TDI agrees that adding this language will clarify the requirement. TDI has revised Subsection (b) to make this change.

STATUTORY AUTHORITY. The Commissioner adopts §5.7018 under Insurance Code §551.1041 and §36.001.

Insurance Code §551.1041 gives the Commissioner authority to adopt rules under which an insurer that cancels a personal automobile insurance policy that provides comprehensive or collision physical damage coverage for an automobile that is subject to a purchase money lien is required to notify the lienholder, if known, that the coverage will be canceled.

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.

§5.7018. Notice to Lienholders.

(a) For a personal automobile policy that includes comprehensive or collision physical damage coverage for an automobile that is subject to a purchase money lien, insurers must give written notice to the lienholder, if known, at least 10 days before the insurer:

- (1) cancels coverage; or

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(2) nonrenews the policy.

(b) Cancellation or nonrenewal of a policy may not take effect earlier than the 10th day after the insurer sends written notice of the cancellation or nonrenewal to the lienholder.

(c) Notice may be given by mail, hand delivery, or electronically if the notice complies with Chapter 35 of the Texas Insurance Code.

(d) A lienholder may opt out of the notice requirement or agree to different notice requirements with an insurer.

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 July 3, 2019.

/s/ James Person
James Person
Interim General Counsel
Texas Department of Insurance

The Commissioner adopts new 28 TAC §5.7018.

/s/ Kent C. Sullivan
Kent C. Sullivan
Commissioner of Insurance