

2024-8598

TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 5. Property and Casualty Insurance

Adopted Sections
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Subchapter W. Consumer Rights Notices 28 TAC §5.9970 and §5.9971

INTRODUCTION. The commissioner of insurance adopts amendments to 28 TAC §5.9970 and §5.9971, concerning consumer rights notices for personal automobile insurance and homeowners, dwelling, and renters insurance. These notices explain how consumer rights are affected by applicable statutes and rules and are to be distributed by an insurer to each policyholder on issuance of a policy. Section 5.9970 and §5.9971 are adopted with changes to the proposed text published in the October 13, 2023, issue of the Texas Register (48 TexReg 5953) and addressed in a correction of error published in the October 27, 2023, issue of the *Texas Register* (48 TexReg 6416). The text of each section has been changed to provide a later applicable date than was included in the proposed text. In addition, changes have been made to the notices adopted by reference in both sections in response to comments and to the notices adopted by reference in §5.9970 to correct errors. Minor nonsubstantive grammatical corrections and formatting changes have been made to each form.

PETITION HISTORY. Under Insurance Code §501.156, the Office of Public Insurance Counsel (OPIC) sent petitions to the Texas Department of Insurance (TDI) requesting the adoption of updated consumer rights notices for automobile and homeowners insurance. OPIC filed its original petition on August 30, 2022, requesting that TDI adopt a revised consumer rights notice for personal automobile insurance (Auto Bill of Rights). TDI's proposal revising the Auto Bill of Rights was published in the April 14, 2023, issue of the Texas Register. However, following the publication of the proposal in the Texas Register,

the 88th Legislature enacted legislation impacting the Auto Bill of Rights. Therefore, TDI withdrew its April 14, 2023, proposal amending the Auto Bill of Rights.

OPIC submitted another petition to TDI on August 28, 2023, requesting adoption of revisions to the Auto Bill of Rights and the consumer rights notice for homeowners, dwelling, and renters insurance (Homeowners Bill of Rights).

REASONED JUSTIFICATION. The previous versions of both the Auto Bill of Rights and the Homeowners Bill of Rights were adopted in May 2021 and are found in §5.9970 and §5.9971, respectively. Since the May 2021 amendments, the Legislature enacted legislation affecting the rights of insurance consumers. The adopted amendments are necessary to inform consumers of these changes.

Senate Bill 1602, 87th Legislature, 2021, added Insurance Code §551.1053, requiring mandatory nonrenewal of private passenger automobile policies when an insured fails or refuses to cooperate with an insurer in the investigation, settlement, or defense of a claim or action.

House Bill 2065, 88th Legislature, 2023, amended Insurance Code §551.1053 to apply only to third-party liability claims or actions.

House Bill 1900, 88th Legislature, 2023, amended the Insurance Code to require notice of nonrenewal no later the 60th day before the date of nonrenewal of certain insurance policies, including personal automobile insurance and homeowners, dwelling, and renters insurance. The bill amended Insurance Code §551.105, changing the requirement from 30 days' notice to 60 days' notice.

House Bill 1706, 88th Legislature, 2023, added new Insurance Code §4102.007, specifying that a commercial or residential property insurance policy may not include a

provision prohibiting an insured from contracting with a public insurance adjuster for services.

The petition received from OPIC on August 28, 2023, updates the Auto Bill of Rights to include changes made by SB 1602, HB 2065, and HB 1900, and updates the Homeowners Bill of Rights to include changes made by HB 1900 and HB 1706.

Insurers must distribute the Auto Bill of Rights or Homeowners Bill of Rights to each policyholder on issuance of a new policy or on renewal if the updated consumer notice was not previously sent. Amending the Auto Bill of Rights and Homeowners Bill of Rights ensures that consumers get the most accurate and up-to-date information and insurers distribute current and accurate consumer rights information to policyholders.

In addition, the proposed text of the figures has been changed to correct errors in both Figure 1: 28 TAC §5.9971(b) and Figure 2: 28 TAC §5.9971(b). In each figure item 13, Notice of premium increase, incorrectly specified that insurance companies must provide 60 days' notice of a premium increase of 10% percent or more. This is corrected in the adopted text by changing this to 30 days' notice. The adopted amendments also correct two errors in Figure 1: 28 TAC §5.9971(b). The table of contents page number for "Where to Get Information" is changed from 2 to 3, and the title of Item 17 is changed from "Right to Cancel" to "Your right to cancel."

Finally, the text of §5.9970(f) and §5.9971(f) as proposed has been changed to delay the applicable date for the revised notices from May 1, 2024, as proposed, to November 1, 2024. This change will allow insurers sufficient lead time to incorporate the adopted changes. Insurance companies may begin using the new consumer rights notices immediately after the effective date of the rule adoption. They must begin using them no later than November 1, 2024.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI provided an opportunity for public comment on the rule proposal for a period that ended on November 13, 2023. TDI received comments from one commenter. The commenter was the Insurance Council of Texas, in support of the proposal with changes.

Comment on the Use of the Phrase "Unused Premium" in the Auto Bill of Rights and the Homeowners Bill of Rights

Comment. A commenter states that the term "unused premium," as used in both the Auto Bill of Rights and the Homeowners Bill of Rights, is misleading, deceptive, and may lead to consumer misunderstandings on how companies use premiums. The commenter says referring to premiums as unused could inadvertently imply to policyholders that they have a reserve of funds available for coverage, which can create unrealistic expectations. The commenter suggests replacing "unused premium" with "unearned premium."

Agency Response. TDI agrees that the phrase "unused premium" may lead to consumer misunderstanding and that the phrase "unearned premium" is preferable. In response to the comment, TDI has changed the word "unused" to "unearned" in the following figure locations: (1) Figure 1, 28 TAC §5.9970(b) (Auto Bill of Rights), page 5, Item 17, Your right to cancel, and Item 18, Refund of premium; and (2) Figure 1, 28 TAC §5.9971(b), (Homeowners Bill of Rights), page 5, Item 17, Right to cancel, and Item 18, Refund of premium.

Similarly, in response to the comment, TDI has changed the word "utilizada" to "retribuida" in the Spanish consumer rights notices in the following figure locations: (1)

Figure 2, 28 TAC §5.9970(b) (Spanish Auto Bill of Rights), page 5, Item 17, Su derecho a cancelar, and Item 18, Reembolso de la prima; and (2) Figure 2, 28 TAC §5.9971(b) (Spanish Homeowners Bill of Rights), page 6, Item 17, Su derecho a cancelar, and Item 18, Reembolso de la prima.

Comments on Auto Bill of Rights Item 19, Limits on Using Claim History to Change Premium

Comment. A commenter says that the title of this item is misleading and may imply a broader scope than it encompasses. The commenter states that, to avoid confusion, the title should be amended to clarify that the item pertains to first-party claims and not to claims that have been paid or payable. The commenter suggests that the term "a claim you file" should be explained to avoid confusion or misinterpretation.

Agency Response. TDI disagrees with these comments and declines to make any change. TDI disagrees with the comment that the title of the item is misleading or overly broad. The title of the item is accurate because Insurance Code §1953.051 prescribes limits on using claim history to change premium.

TDI disagrees with the comment that the title of Item 19 should be amended to specify that the rating prohibition does not apply to claims paid or payable under the policy. The single explanatory sentence in Item 19, which closely tracks Insurance Code §1951.051, explains that the prohibition applies to claims not paid or payable under the policy.

TDI disagrees with the comment that the term "a claim you file" in the explanatory text of Item 19 needs additional explanation to avoid confusion or misinterpretation. This language very closely tracks Insurance Code §1951.051(b)(1)(B), which states that the

rating plan prohibition applies to "a claim filed by an insured" under a personal automobile insurance policy.

Comment on Homeowners Bill of Rights Item 5, Deadline for Processing Claims and Payments

Comment. A commenter states that the item should be clarified to specify that the deadlines apply only to first-party claims. The comment states that this would avoid confusion for consumers or others reporting third-party claims.

Agency Response. TDI agrees with the comment. To clarify that the deadlines apply to first-party claims only, TDI has added the phrase "for your damages" to both the title and the second sentence of Item 5 in the Homeowners Bill of Rights. Similarly, in response to the comment, TDI has added the phrase "para sus daños" in the title and second sentence of Item 5 in the Spanish Homeowners Bill of Rights.

Comment on Homeowners Bill of Rights Item 12, Claim Disagreements

Comment. A commenter states that the item should be clarified to further explain the statement that a policyholder can "pay a licensed public adjuster to review the damage and handle the claim." The commenter states that public adjusters have no authority on coverage disagreements, and that the item should be clarified.

Agency Response. TDI disagrees with the comment that public insurance adjusters have no authority on coverage disagreements and declines to make any change. Insurance Code §4102.001 defines public insurance adjuster as a person acting on behalf of an insured in "negotiating for or effecting the settlement of a claim or claims for loss or damage under any policy of insurance covering real or personal property." This definition

does not exclude public insurance adjusters from acting on behalf of an insured in coverage disagreements.

Subchapter W. Consumer Rights Notices
28 TAC §5.9970 and §5.9971

STATUTORY AUTHORITY. The commissioner adopts amendments to §5.9970 and §5.9971 under Insurance Code §501.156 and §36.001.

Insurance Code §501.156 requires OPIC to submit to TDI for adoption a consumer bill of rights appropriate to each personal line of insurance that TDI regulates, to be distributed under TDI rules.

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.

§5.9970. Personal Automobile Insurance Consumer Bill of Rights.

(a) For purposes of this section, "insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write personal automobile insurance in this state. The term includes an affiliate, as described by Insurance Code §823.003(a), if that affiliate is authorized to write and is writing personal automobile insurance in this state.

(b) The Texas Department of Insurance adopts the 2024 version of the Consumer Bill of Rights - Personal Automobile Insurance (Auto Bill of Rights), and the Spanish

language translation, as developed and submitted by the Office of Public Insurance Counsel:

[FIGURE 1: 28 TAC §5.9970\(b\)](#)

[FIGURE 2: 28 TAC §5.9970\(b\)](#)

(c) All insurers writing personal automobile insurance policies must provide with each new policy of personal automobile insurance a copy of the 2024 version of the Auto Bill of Rights. At the consumer's request, the insurer may provide an electronic copy of the Auto Bill of Rights instead of a hard copy. The insurer must provide the Auto Bill of Rights with each renewal notice for personal automobile insurance unless the insurer has previously provided the policyholder with the 2024 version of the Auto Bill of Rights.

(d) The Auto Bill of Rights must appear in no less than 10-point type and be on separate pages with no other text on those pages.

(e) Insurers must provide the Spanish language version of the 2024 version of the Auto Bill of Rights to any consumer who requests it.

(f) Insurers must provide the applicable Auto Bill of Rights included in this section beginning November 1, 2024. Before that date, insurers may provide the Auto Bill of Rights either as it currently is included in this section or as it was included in the section as the section was amended to be effective May 16, 2021.

§5.9971. Homeowners, Dwelling, and Renters Insurance Consumer Bill of Rights.

(a) For purposes of this section, "insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write residential property insurance in this state. The term includes an affiliate, as described by

Insurance Code §823.003(a), if that affiliate is authorized to write and is writing residential property insurance in this state. The term does not include the Texas Windstorm Insurance Association or the Texas Fair Plan Association.

(b) The Texas Department of Insurance adopts the 2024 version of the Consumer Bill of Rights - Homeowners, Dwelling, and Renters Insurance (Homeowners Bill of Rights), and the Spanish language translation, as developed and submitted by the Office of Public Insurance Counsel:

[FIGURE 1: 28 TAC §5.9971\(b\)](#)

[FIGURE 2: 28 TAC §5.9971\(b\)](#)

(c) All insurers writing homeowners, dwelling, or renters insurance must provide with each new policy of any such insurance a copy of the 2024 version of the Homeowners Bill of Rights. At the consumer's request, the insurer may provide an electronic copy of the Homeowners Bill of Rights instead of a hard copy. The insurer must provide the Homeowners Bill of Rights with each renewal notice for any such insurance unless the insurer has previously provided the policyholder with the 2024 version of the Homeowners Bill of Rights.

(d) The Homeowners Bill of Rights must appear in no less than 10-point type and be on separate pages with no other text on those pages.

(e) The insurer must provide the Spanish language version of the 2024 version of the Homeowners Bill of Rights to any consumer who requests it.

(f) Insurers must provide the applicable Homeowners Bill of Rights included in this section beginning November 1, 2024. Before that date, insurers may provide the Homeowners Bill of Rights either as it is currently included in this section or as it was included in the section as the section was amended to be effective May 16, 2021.

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 3, 2024.

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

The amendments to 28 TAC §5.9970 and §5.9971 are adopted.

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C Brown
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Cassie Brown
Commissioner of Insurance

Commissioner's Order No. 2024-8598