

No. **2022-7134**

**Official Order
of the
Texas Commissioner of Insurance**

Date: 01/03/2022

Subject Considered:

Safe Auto Insurance Company
4 Easton Oval
Columbus, Ohio 43219-6010

Consent Order
TDI Enforcement File No. 27372

General remarks and official action taken:

This is a consent order with Safe Auto Insurance Company (Safe Auto). The department alleges Safe Auto improperly used an applicant's lack of prior insurance to determine personal automobile rates and failed to timely make a rate filing. Safe Auto has agreed to pay restitution for the rating error to the affected policyholders and a \$75,000 administrative penalty.

Waiver

Safe Auto acknowledges that the Texas Insurance Code and other applicable law provide certain rights. Safe Auto waives all of these rights, and any other applicable procedural rights, in consideration of the entry of this consent order. Under TEX. INS. CODE § 82.055(b), Safe Auto agrees to this consent order with the express reservation that it does not admit to a violation of the Texas Insurance Code or of a rule and that the existence of a violation is in dispute.

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Findings of Fact

1. Safe Auto is a foreign casualty insurance company that holds a certificate of authority to transact business in Texas.

Rating Error – Lack of Prior Insurance

2. Texas law, under 28 TEX. ADMIN. CODE § 5.401(b), prohibits insurers from using an applicant's lack of prior insurance in determining the appropriate rate for private passenger automobile liability insurance where the applicant has not been operating an uninsured motor vehicle in the state for more than 30 days during the 12 months immediately preceding the date of the application.
3. Safe Auto's personal automobile rate filings considered a policyholder's prior insurance, including any lapse in insurance over 30 days, in numerous rating classes. This affected the final premium a policyholder paid.
4. After objections from department staff in early 2021, Safe Auto implemented a process to identify applicants whose lapse in insurance coverage is not associated with unlawful vehicle operation. Prior to that implementation, Safe Auto did not receive specific information on which policyholders with a lapse of over 30 days may have also operated an uninsured vehicle.

Rate Filing

5. TEX. INS. CODE § 2251.101(a) requires each insurer to file with the commissioner all rates, applicable rating manuals, supplementary rating information, and additional information as required by the commissioner.
6. Safe Auto made a personal automobile rate filing on March 22, 2021, which was after the filing's stated effective date for new business-March 18, 2021. The filing included removal of the installment fee and an updated acquisition base rate.
7. Prior to making the filing with the department, Safe Auto wrote approximately 250 new policies and \$289,351 in written premium from March 18, 2021, through March 21, 2021, using the new fee structure.
8. After TDI objected to the March 22 rate filing, Safe Auto requested to withdraw the rate filing on April 23, 2021, and began using the previously filed filing effective

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April 24, 2021. Safe Auto also volunteered to pay refunds to the affected policyholders.

9. Safe Auto represents that the total number of policyholders charged the updated acquisition base rate is 1,939.

Conclusions of Law

1. The commissioner has jurisdiction over this matter under TEX. INS. CODE §§ 82.051–82.055, 84.021–84.044, 801.052–801.053, and 2251.101.
2. The commissioner has the authority to informally dispose of this matter as set forth in TEX. GOV'T CODE § 2001.056; TEX. INS. CODE §§ 36.104 and 82.055; and 28 TEX. ADMIN. CODE § 1.47.
3. Safe Auto has knowingly and voluntarily waived all procedural rights to which it may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intention to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.
4. Safe Auto violated 28 TEX. ADMIN. CODE § 5.401 by assigning a rate consequence to an applicant's lack of prior insurance without having specific evidence that the applicant had been operating an uninsured motor vehicle in the state for more than 30 days.
5. Safe Auto violated TEX. INS. CODE § 2251.101 by using a rate different than that on file with the department from March 18, 2021, through March 21, 2021.
6. Pursuant to TEX. INS. CODE § 82.053, the commissioner is authorized to direct Safe Auto to make complete restitution to each policyholder impacted by the violations.

Order

It is ordered that Safe Auto pay an administrative penalty of \$75,000 within 30 days from the date of this order. The administrative penalty must be paid as instructed in the invoice, which the department will send after entry of this order.

Safe Auto is ordered to comply with the following:

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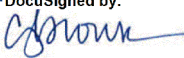
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- a. Safe Auto must identify all personal automobile insurance policies issued in Texas with effective dates from March 18, 2021, through April 23, 2021 (the "Review Period").
- b. For each policy in the Review Period, Safe Auto must identify any policyholder who was charged a higher acquisition expense fee and/or installment fee based on the withdrawn filing discussed above. The increased fee amount is the Overcharge.
- c. Safe Auto must pay restitution in the form of a company check or account credit to each policyholder identified in the Review Period as having an Overcharge (the "Qualifying Policyholders"). The restitution check and/or account credit must include both the dollar amount of the overcharge, plus simple interest due on the overcharge. The rate of interest is five percent per annum.
- d. Safe Auto must mail the restitution checks or issue the account credits to the Qualifying Policyholders on or before March 31, 2022.
- e. Any restitution checks that are returned to Safe Auto with an address correction must be promptly resent to the correct address. Funds from any restitution checks that are returned thereafter for incorrect addresses and from checks that are not negotiated must be reported and delivered to the comptroller pursuant to the procedures and deadlines set forth in TEX. PROP. CODE §§ 72.001 *et. seq.*, 73.001 *et. seq.*, and 74.001 *et. seq.*
- f. On or before June 1, 2022, Safe Auto must report the restitution paid to the Qualifying Policyholders by submitting a complete and sortable electronic spreadsheet to the department. The spreadsheet must contain the following information:
 - i. policy number;
 - ii. policyholder name;
 - iii. policyholder address;
 - iv. effective date of the policy;
 - v. expiration date of the policy;
 - vi. amount of Overcharge;
 - vii. dollar amount of simple interest;

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- viii. amount of Overcharge and interest;
 - ix. date(s) of mailing of restitution check or credits;
 - x. the total sum of all Overcharges;
 - xi. the total sum of all simple interest; and
 - xii. the total sum of all restitution paid (total Overcharges plus the total of the simple interest).
- g. Safe Auto must send all submissions required under the terms of this order by email to: EnforcementReports@tdi.texas.gov.

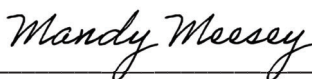
DocuSigned by:

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Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:



Leah Gillum, Deputy Commissioner
Enforcement Division



Mandy R. Meesey, Associate Commissioner
Enforcement Division

Affidavit

STATE OF North Carolina §
§
COUNTY OF Forsyth §

Before me, the undersigned authority, personally appeared Peter Rendall,
who being by me duly sworn, deposed as follows:

"My name is Peter Rendall. I am of sound mind, capable of making
this statement, and have personal knowledge of these facts which are true and correct.

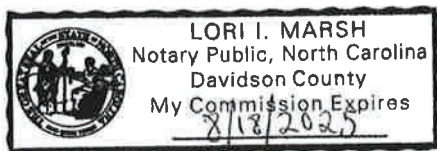
I hold the office of President and am the authorized representative of
Safe Auto Insurance Company. I am duly authorized by said organization to execute this
statement.

Safe Auto Insurance Company has knowingly and voluntarily entered into the foregoing
consent order and agrees with and consents to the issuance and service of the same by
the commissioner of insurance of the state of Texas."

Peter Rendall
Affiant

SWORN TO AND SUBSCRIBED before me on December 17, 2021, 2021.

(NOTARY SEAL)



Lori I. Marsh
Signature of Notary Public

Lori I. Marsh
Printed Name of Notary Public