

SUBCHAPTER A. AUTOMOBILE INSURANCE
DIVISION 3. MISCELLANEOUS INTERPRETATIONS
28 TAC §5.208

INTRODUCTION. The commissioner of insurance adopts new 28 TAC §5.208, concerning disclosure requirements for named driver automobile insurance policies under Insurance Code §1952.0545. The commissioner adopts §5.208 with changes to the proposed text published in the July 25, 2014, issue of the *Texas Register* (39 TexReg 5715).

Senate Bill 1567, 83rd Legislature, Regular Session (2013) created Insurance Code §1952.0545, which requires written and oral disclosures, and contemporaneous written confirmation of the oral disclosure, for named driver policies. To partially implement SB 1567 and Insurance Code §1952.0545, the commissioner adopted amendments to 28 TAC §5.204 on April 28, 2014, to require the named driver disclosure on auto ID cards. In this order, the commissioner adopts new §5.208 to implement the other named driver policy disclosures required for new and renewal policies.

TDI received many inquiries and filings as a result of the disclosure requirements in SB 1567. Additionally, TDI received comments following a stakeholder meeting held on December 2, 2013, and comments on an informal draft posted on TDI's website on April 3, 2014. TDI considered those comments in drafting the proposal to adopt §5.208.

On August 20, 2014, TDI held a hearing on the proposal. In response to written comments and comments made at the hearing, TDI made the following changes to the proposed section.

- TDI deleted the requirement that named non-owner policies comply with the rule.
- TDI clarified the signature requirements in §5.208(c)(6).
- TDI clarified that excluded driver policies are not subject to §5.208.
- TDI added a reference to the conspicuousness requirements in Business and Commerce Code §1.201(B)(10).
- TDI also made several nonsubstantive editorial changes to the rule.

REASONED JUSTIFICATION. Insurance Code §1952.0545 requires agents and insurers to provide disclosures to applicants and insureds that named driver policies have coverage limitations. Section 5.208 is necessary to:

1. clarify the disclosure and applicability requirements; and
2. ensure that agents and insurers issuing new or renewal named driver policies are consistent in applying the disclosure requirements in Insurance Code §1952.0545.

Typically, a standard personal auto policy provides coverage to almost everyone who drives the covered vehicle, unless specifically excluded. In contrast, a named driver policy does not provide coverage for individuals who are residents of the named insured's household and are not named as insureds on the policy. Insurance Code §1952.0545 requires specific disclosures for named driver policies at the time new or renewal policies are issued.

The disclosures put the applicant or insured on notice that a named driver policy has limitations in coverage and that coverage depends on who is driving the car. The disclosures alert the applicant or insured to review the extent of coverage with the agent or insurer. The disclosures do not say that every driver not named on the policy is not covered—they simply alert people that not all individuals residing in the named insured's household are covered under the policy. Although some named driver policies cover more people than just the named insured, there may be a substantial group of people who could drive the car and be uninsured under the policy, including relatives, unrelated roommates, or other household residents.

Definition of “Named Driver Policy”

Section 5.208(a) and (b) clarify the definition of “named driver policy” and the applicability of the disclosure requirements under Insurance Code §1952.0545.

Section 5.208(a)(1) restates the definition of “named driver policy” in Insurance Code §1952.0545(a). Insurance Code §1952.0545(a) defines a named driver policy as “an automobile insurance policy that does not provide coverage for an individual residing in a named insured's household specifically unless the individual is named on the policy. The term includes an

automobile insurance policy that has been endorsed to provide coverage only for drivers specifically named on the policy.”

Section 5.208(a)(2) clarifies that the definition of “named driver policy” includes automobile insurance policies that do not cover all household residents. This interpretation is consistent with the intent of §1952.0545, which is to inform the insured or applicant that the policy has coverage limitations that make it different from a standard personal auto policy. For example, a policy that covers all roommates, but does not cover resident relatives, provides less coverage than a standard personal auto policy. That information—that if an unnamed household resident drives the vehicle, the driver may not be covered—is what the Legislature intended to have insurers and agents convey to policyholders. The disclosures required under §1952.0545 are designed to ensure that policyholders are notified of the coverage limitations so they can prevent people who are not covered under their policies to drive their vehicles.

Conversely, almost all auto policies provide coverage for a resident spouse as a “covered person” under the policy, even if the spouse is not named and the policy does not cover every other household resident. Under a narrow reading of the definition of “named driver policy,” a policy that covers any household residents other than the household residents specifically named on the policy—even just one—is not a named driver policy. Reading the definition of “named driver policy” narrowly would mean that there are virtually no named driver policies approved for use in Texas.

Such a reading is contrary to code construction guidelines under Government Code §311.021(2) and (4), which state that it is presumed that “the entire statute is intended to be effective,” and that “a result feasible of execution is intended.” Additionally, not requiring disclosures on policies that cover some—but not all—unnamed household residents would frustrate the intent of §1952.0545 by failing to warn policyholders and other interested parties who might not realize that some household residents are not covered.

Applicability: Excluded Driver Policies

Section 5.208(a)(3) states that an automobile insurance policy that provides coverage for all residents of the insured’s household is not a named driver policy, even if the policy or an

endorsement excludes one or more drivers specifically by name. Those policies are known as “excluded driver policies” or policies with “excluded driver endorsements.” Merely attaching an endorsement to specifically exclude a driver does not necessarily make a policy a named driver policy.

An excluded driver policy is functionally the opposite of a named driver policy. While a named driver policy generally covers named drivers residing within the household and drivers from outside the household operating the vehicle with permission, an excluded driver policy generally covers all drivers except those specifically excluded from coverage by name. Those who buy excluded driver policies are already informed that the policy does not cover all possible drivers, because the excluded drivers are specifically listed by name. Section 5.208(a)(3) clarifies that specifically excluding one or more household residents by name does not make a policy a named driver policy if the policy covers all other household residents.

However, a named driver policy that also has an excluded driver endorsement is still a named driver policy. For example, a policy that does not cover every household resident, and that also excludes “John Doe,” is a named driver policy with an excluded driver endorsement.

Applicability: Coverages and Renewals

Section 5.208(b)(1) clarifies that the section applies to all new and renewal named driver policies of any term. It also clarifies that the section applies to policies in which any type of coverage applies only to named drivers.

Insurance Code §1952.0545 applies to every renewal of a named driver policy. SB 1567, Section 3, states that it applies to an insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2014. It does not say “annually at renewal,” “at the first renewal after January 1, 2014,” or “before accepting the initial premium or fee.” Instead, Insurance Code §1952.0545(b) requires an agent or insurer to make oral and written disclosures to the applicant or insured before accepting any premium or fee for a named driver policy. If the disclosure requirements were intended to apply only to new policies, only the term “applicant” would appear in the text. The inclusion of the word “insured” indicates that the disclosure requirements were meant to apply to renewals.

Moreover, if the disclosure requirements were only intended to apply to an insured with an existing policy on the effective date of SB 1567 and to no renewals thereafter, §1952.0545(b) could have stated, “insured with an existing policy on January 1, 2014.”

Government Code §311.021(2) states that, in enacting a statute, it is presumed that the entire statute is intended to be effective. Ignoring the inclusion of the word “insured” would be contrary to this presumption. In addition, the phrase “any premium or fee” in Insurance Code §1952.0545(b) logically includes renewal premiums.

Finally, other statutes that require automobile insurers to obtain signatures from insureds specifically allow insurers to obtain the insured’s signature only once. For example, both Insurance Code §1952.101 (which applies to written rejection of uninsured or underinsured motorist coverage) and §1952.152 (which applies to written rejection of personal injury protection) contain language that specifies that the insurer is not required to offer the rejected coverage again for reinstated or renewal policies. These examples guide TDI on how to interpret §1952.0545. Express statutory authority was required to allow insurers to apply a rejection of coverage under Insurance Code §1952.101 or §1952.152 to future reinstated or renewal policies. Because §1952.0545 contains no similar, express provision allowing an insurer or agent to provide disclosures and obtain signatures only once, TDI can only conclude that the Legislature intended that the insurer or agent must give the disclosures and obtain the confirming signatures each and every time the insurer or agent accepts any premium or fee.

Section 5.208(b)(2) clarifies that the section applies to all agents and insurers offering automobile insurance in Texas, which is consistent with Insurance Code §1952.0545(b) - (e).

Disclosure Requirements

Section 5.208(c) clarifies the disclosure requirements for named driver policies under Insurance Code §1952.0545. Insurance Code §1952.0545(b) requires an agent or insurer, before accepting any premium or fee for a named driver policy, to make the following disclosure, orally and in writing, to the applicant or insured, “WARNING: A NAMED DRIVER POLICY DOES NOT PROVIDE COVERAGE FOR INDIVIDUALS RESIDING IN THE INSURED’S HOUSEHOLD THAT ARE NOT NAMED ON THE POLICY.”

Insurance Code §1952.0545(c) and (d) require an agent or insurer that delivers or issues for delivery a named driver policy in Texas to receive a copy of the disclosure in subsection (b) that is signed by the applicant or insured, and to specifically include in the policy and conspicuously identify on the front of any proof of insurance document issued to the insured the required disclosure.

Insurance Code §1952.0545(e) requires the agent or insurer to require the applicant or insured to confirm contemporaneously in writing the provision of oral disclosure.

Section 5.208(c)(1) restates Insurance Code §1952.0545 to list the procedural requirements. It states that an agent or insurer may not accept a premium or fee for a named driver policy until the agent or insurer has made the required oral and written disclosures, received a signed copy of the written disclosure, and received a contemporaneous written confirmation of the oral disclosure.

Section 5.208(c)(2) restates the disclosure requirement in Insurance Code §1952.0545(b).

Section 5.208(c)(3) affirms that an agent or insurer may provide the oral disclosure live or by using a recording, and allows telephone and Internet disclosures. Though Insurance Code §1952.0545 does not expressly allow recorded disclosures, it also does not prohibit them. Insurance Code §1952.0545 does not require in-person oral disclosures; and Insurance Code §35.003 allows agents and insurers, on agreement of all parties to the business, to conduct business electronically to the same extent that they are authorized to conduct business otherwise. Without an express prohibition on electronic or recorded disclosures for named driver policies, insurers and agents who comply with the Insurance Code §1952.0545 disclosure requirements to conduct their business may use electronic means to do so.

Section 5.208(c)(4) reiterates the requirement in Insurance Code §1952.0545(e) for contemporaneous written confirmation of the oral disclosure.

Section 5.208(c)(5) reiterates the requirements in Insurance Code §1952.0545 that an agent or insurer must include the written disclosure in the policy and on any proof of insurance document issued to the insured, and must require an applicant or insured to sign a copy of the disclosure.

Section 5.208(c)(6) provides that all required signatures must be original or electronic signatures executed for each new and renewal policy. Electronic signatures must comply with Business and Commerce Code Chapter 322 (the Uniform Electronic Transactions Act), Insurance Code Chapter 35, and any applicable rules. Section 5.208(c)(6) also clarifies certain prohibitions with regard to the signatures required under this section—namely, that signatures must not precede the actual provision of the disclosure, and may not be copied, presumed, or assumed on payment.

Under §5.208(c)(7), agents and insurers must provide the English disclosures that Insurance Code §1952.0545 requires, and may provide the disclosures in other languages.

Section 5.208(d) provides that accepting installment payments of premium and associated fees does not, by itself, trigger a requirement for a new set of disclosures under Insurance Code §1952.0545. Insurance Code §1952.0545(b) requires agents and insurers to comply with the disclosure requirements before accepting any premium or fee for a named driver policy. The statute does not state that the disclosure must be given repeatedly during or throughout the term of the policy. Installment payments do not require a new set of disclosures because at the time an insured makes an installment payment the policy has already been delivered or issued, and the agent or insurer was required to have already provided the disclosures for that policy's term.

Noncompliance

Section 5.208(e) clarifies that an agent or insurer may not use noncompliance with Insurance Code §1952.0545 or the proposed section as a reason to avoid liability under the policy, and that noncompliance is not grounds for cancellation of the insured's policy under Insurance Code §551.104. Insurance Code §551.104 provides that an insurer may cancel a personal automobile policy only for specified reasons, including: nonpayment of premium; fraud; if continuing the policy would be illegal; if specific circumstances pertaining to suspension or revocation of a driver's license or motor vehicle registration exist; or, with proper notice, on any 12-month anniversary of the original effective date of the policy. An agent or insurer's failure to comply with the disclosure requirements in Insurance Code §1952.0545 or the proposed section does not fall into any of the categories in Insurance Code §551.104. However,

nothing in the rule or §1952.0545 prevents an insurer from canceling a policy for the reasons allowed in Insurance Code §551.104.

TDI retains its enforcement authority to enforce violations under the Insurance Code and any other applicable statutes and rules. TDI's authority includes, but is not limited to, Insurance Code Chapter 82 (Sanctions) and Chapter 83 (Emergency Cease and Desist Orders), which apply to all companies and individuals regulated by the commissioner. The commissioner may also take action under Chapter 86 (Revocation or Modification of Certificate of Authority; Authority to Bring Certain Actions). Not listing specific authority or penalties for violations in each rule does not deprive TDI of this authority. Rules typically do not articulate every possible ground for enforcement action or the range of sanctions and penalties available.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received written comments from 21 people, and oral comments from seven people. Some commenters submitted both written and oral comments. The commenters were: Lone Star Insurance Agency, Harco Insurance, Independent Insurance Agents of Texas, Sutliff & Stout, Senator Craig Estes, Office of Public Insurance Counsel, Texas Watch, Representative Ed Thompson, Senator Wendy Davis, Alinsco Insurance Company, Empower MGA, Safe Auto, ACCC Insurance Company, Property Casualty Insurers Association of America, AmWINS Specialty Auto, Insurance Council of Texas, Nationwide Insurance, and three anonymous individuals.

Four comments from three commenters were either against adoption of the rule before the 2015 legislative session, or for adoption with changes. Twenty-eight comments were for adoption with changes.

Comments on the Existence of Named Driver Policies: Four commenters stated that TDI should eliminate named driver policies.

Agency Response to Comments on the Existence of Named Driver Policies: TDI does not have specific statutory authority to ban named driver policies. The Legislature did not pass

House Bill 1773, 83rd Legislature, Regular Session (2013), which would have eliminated named driver policies.

Comments on Standard Policy Forms: Two commenters stated that TDI should only permit standard policy forms, or only the Insurance Services Office policy form.

Agency Response to Comments on Standard Policy Forms: TDI does not have the statutory authority to prohibit insurers from filing their own policy forms for approval, or to refuse to approve policy forms that comply with all applicable statutes and rules. SB 14, 78th Legislature, Regular Session (2003) allowed insurers and advisory organizations to file for approval their own policy forms and endorsements instead of using promulgated forms, as the previous regulatory scheme required.

Comments on Renewals—Not Required: Seven commenters stated that the rule should not require named driver policy disclosures at each renewal.

Agency Response to Comments on Renewals—Not Required: Section 1952.0545 does not permit the consumer or the rule to waive the requirement that insurers provide the disclosures required at every renewal of a named driver policy. SB 1567, Section 3, states that it applies to an insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2014. It does not say “annually at renewal,” “at the first renewal after January 1, 2014,” or “before accepting the initial premium or fee.” Instead, Insurance Code §1952.0545(b) requires an agent or insurer to make oral and written disclosures to the applicant or insured before accepting any premium or fee. If the disclosure requirements were intended to apply only to new policies, only the term “applicant” would appear in the text. The Legislature’s inclusion of the term “insured” indicates that the disclosure requirements were meant to apply to renewals. Moreover, if the disclosure requirements were only intended to apply to an insured with an existing policy on the effective date of SB 1567 and to no renewals thereafter, §1952.0545(b) could have stated, “insured with an existing policy on January 1, 2014.”

Government Code §311.021(2) states that, in enacting a statute, it is presumed that the entire statute is intended to be effective. Ignoring the inclusion of the word “insured” would be

contrary to this presumption. In addition, the phrase “any premium or fee” in Insurance Code §1952.0545(b) logically includes renewal premiums. Finally, as previously stated, other statutes that require insurers to obtain documents from insureds contain specific language that the insurer is not required to offer the rejected coverage again for reinstated or renewal policies. Insurance Code §1952.0545 contains no such provision. As a result, TDI must conclude that the disclosure requirements apply to renewals.

Comments on Renewals vs. Installment Payments: One commenter stated that requiring disclosures at renewal but not for installment payments seems arbitrary.

Two commenters stated that the rule should clearly not apply to installment payments each time an agent or an insured accepts an installment payment during the policy term if the disclosure and confirmation is obtained on or before the payment of the initial premium or fee; or the policy is issued, delivered, reinstated, or renewed.

Agency Response to Comments on Renewals vs. Installment Payments: TDI agrees that the rule should not apply to installment payments. Distinguishing between renewals, which are offers and acceptances of an insurance contract for a new policy term, and installment payments, which are a method of spreading out the cost of a policy over that policy’s term, is reasonable.

Section 3, SB 1567, states that the bill applies to a policy that is delivered, issued for delivery, or renewed on or after January 1, 2014. Installment payments are not like renewals. No policy is delivered, issued, or renewed with each installment payment. There is no change to the policy contract at each installment payment. In contrast, the insurer can make changes to the contract at renewal.

Moreover, the insured incurs an obligation to pay at policy issuance or renewal. At renewal, the insured receives a renewal certificate and pays for a new policy term, rather than paying part of a debt for an existing policy term. The insured is charged the entire premium for a policy term when the policy is issued or renewed. Installment payment arrangements are separate agreements that allow the insured to fulfill that obligation by paying it over time, instead of all at once.

Comments on Comparing Named Driver Disclosures with Disclosures for PIP and UM/UIM: Two commenters stated that repeated disclosures and signatures have never been required for personal injury protection coverage, uninsured and underinsured motorist coverage, the policy application, and excluded driver endorsements. They stated that a burdensome system will increase rates and increase the numbers of uninsured motorists; and that requiring disclosures at each renewal of a named driver policy is unprecedented and insulting to insureds.

One commenter stated that it is unlikely that the Legislature intended that a non-mandated coverage (that primarily being coverage of undisclosed resident drivers) receive stronger procedural protections than mandated coverages like personal injury protection coverage and uninsured or underinsured motorist coverages.

Agency Response to Comments on Comparing Named Driver Disclosures with Disclosures for PIP and UM/UIM: The requirement for disclosures at each renewal is based on the statutory language chosen by the Legislature. Other statutes that require insurers to obtain signatures from insureds include specific language that the insurer is not required to offer the rejected coverage again for reinstated or renewal policies. For example, Insurance Code §1952.101 (pertaining to written rejection of uninsured or underinsured motorist coverage) and §1952.152 (pertaining to written rejection of personal injury protection) specifically allow coverage rejections to apply to reinstated or renewed policies. Insurance Code §1952.0545 contains no such provision.

Moreover, the signatures required under Insurance Code §1952.101 and §1952.152 are rejections of coverage, rather than signatures confirming disclosure of limited coverage in the policy delivered, issued for delivery, or renewed. The Insurance Code's specific allowance of a "once and done" waiver of the coverages required to be offered under §1952.101 and §1952.152 does not create a similar "once and done" allowance for named driver disclosures and the signatures required under Insurance Code §1952.0545, absent specific statutory language to that effect.

Comments on Requiring Disclosures at Only the First Renewal: One commenter stated that the rule should require disclosures only on the first renewal after January 1, 2014, and not

for subsequent renewals. The commenter stated that when a policy renews, the policy itself just continues in force—it is not a new policy; and that SB 1567 is meant to apply at the policy level, for “policies,” not “policy terms.” The commenter also stated that burdensome requirements at each renewal would drive some insurers out of the named driver market, would increase premiums for others’ policies, and would force people to be uninsured.

One commenter stated that the proposed rule could eventually eliminate the popular and necessary named driver option in the nonstandard market. The commenter stated that §1952.0545 requires disclosures only for new named driver policies after January 1, 2014, or for the first renewal after January 1, 2014; and that, if the Legislature had intended to require disclosures at each renewal, SB 1567, Section 3 would have said, “delivered, issued for delivery, AND renewed,” instead of “OR renewed.” The commenter stated that the bill does not say, “each,” “every,” or “all,” so it was not intended to require continuous disclosure; and that no other auto insurance requirement requires such duplication of disclosures. The commenter stated that only the written disclosure requirement applies to renewals. The commenter stated that named driver policies are routinely sold as monthly policies, and that renewals of policies that already have a compliant disclosure and acknowledgment should not require perpetual reconfirmation.

Two commenters stated that requiring disclosures at each renewal is burdensome to consumers, agents, and insurers, and would be an absurd result. The commenters stated that disclosures should be required to be given only once, at policy issuance or at the first renewal after January 1, 2014; and that normal practice for insurance policies is to obtain signatures and disclosures when the policy is issued, not at each renewal. The commenters stated that proposed §5.208(c) should be amended to either not require written disclosure and confirmation at each renewal, or to allow companies or agents to obtain some kind of waiver to keep from having to repeat disclosures at every renewal. The commenters also stated that proposed §5.208(d) should be amended to delete “after complying with the disclosure requirements for each new and renewal policy,” and “after complying with the disclosure requirements each time a policy is delivered, issued for delivery or renewed.”

Agency Response to Comments on Requiring Disclosures at Only the First Renewal:

As stated above, the Insurance Code's allowance of a "once and done" waiver of the coverages required to be offered under §1952.101 and §1952.152 does not create a similar "once and done" allowance for named driver disclosures required under Insurance Code §1952.0545.

TDI cannot grant consumers the authority to waive an insurer's statutory duty. There is a distinction between a statutory duty—a requirement the Legislature places on insurers—and a consumer right. A consumer may choose to waive certain rights, but a consumer does not have the authority to waive an insurer's statutory obligation to obey the law by providing oral and written disclosures and receiving contemporaneous written confirmation of the oral disclosure at each renewal.

Comments on Renewals—Required: Three commenters stated that the rule should require named driver policy disclosures at each renewal.

One commenter stated that TDI correctly interpreted the "or" in the SB 1567, Section 3 statement that it applies to an insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2014. The commenter stated that, because SB 1567 did not explicitly allow disclosures to be given once and apply prospectively for renewals, as in Insurance Code §1952.152(b), which applies to personal injury protection coverage, the SB 1567 disclosures must be given at each renewal.

Another commenter stated that the bill and intent are clear that SB 1567 does not allow for any sort of initial renewal disclosure, and that it is obvious that the disclosures are to continue to be delivered at each and every renewal.

Another commenter stated that reading the bill to apply to only the first renewal would be inconsistent with reading the bill to apply to new policies issued after January 1, 2014.

Agency Response to Comments on Renewals—Required: TDI agrees that, under SB 1567, the rule must require named driver policy disclosures at each renewal of a named driver policy.

Comments on Rulemaking:

One commenter requested that TDI delay rulemaking on SB 1567 because compliance with the rule as proposed is virtually impossible.

Another commenter requested that TDI delay rulemaking on SB 1567, and stated an intent to introduce legislation affecting named driver policies during the 2015 Legislative Session, which could affect the rule as proposed.

Another commenter stated an intent to introduce legislation in the coming session that would ban named driver policies altogether.

Another commenter stated that the rule should proceed to ensure that the intent of the law is sustained. The commenter also stated that SB 1567, which had significant bipartisan support, intended to make certain that Texas consumers understand the lack of coverage in named driver policies and to keep Texas roadways safe.

Agency Response to Comments on Rulemaking: TDI declines to delay the rule. It is possible that legislation passed in the 2015 session may change Insurance Code §1952.0545 such that TDI would need to amend the rule. However, §1952.0545 has been effective since January 1, 2014, and the rule does not impose any costs that are not already required by the statute.

The rule clarifies the statutory requirements, guides insurers to uniformly comply with those requirements, and promotes a level playing field among insurers and agents selling named driver policies. Allowing the uncertainty about what §1952.0545 requires to persist simply because those requirements may change may harm consumers. The Legislature mandated that insurers must give the required disclosures to consumers who purchase named driver policies, regardless of the insurer or agent from whom they purchase their policies. Insurers and agents who are providing disclosures on every renewal of a named driver policy should not have to compete against insurers and agents who are not providing disclosures on every renewal. TDI implements SB 1567, and part of implementing the bill is promulgating rules to clarify the statutes.

Comments on the “Failure to Comply” Provision—Delete or Revert to Informal Draft Language:

Comments on Using April 3, 2014, Language: Four commenters stated that TDI should either revert to the “Failure to Comply” language in the informal draft text TDI posted on April 3, 2014, or delete the provision entirely.

Agency Response to Comments on Using April 3, 2014, Language: The Failure to Comply provision in the informal draft read: *When an agent or insurer does not comply with the disclosure requirements, the insurer may not avoid liability under the policy.* This language could be read to say that the insurer could not avoid liability under the policy for any reason, even if there is a legitimate reason for denying the claim. That was not the intent of the provision, so TDI revised the language.

Comment on Cancellation: One commenter stated that the proposed “Failure to Comply” provision could prevent an insurer from canceling a policy for other appropriate underwriting or nonpayment reasons for fear of the cancellation appearing to be based on a pretext.

Agency Response to Comment on Cancellation: Nothing in §5.208(e) prohibits canceling a named driver policy for a legitimate reason.

Comment that the Policy Should Not be Treated as a Named Driver Policy: A commenter stated that failure to comply should result in the policy being treated as not including the named driver provisions, and that, until the policy is compliant, an insurer has not accepted a premium or fee for a named driver policy.

Agency Response to Comment that the Policy Should Not be Treated as a Named Driver Policy: Regarding the commenter’s assertion that a named driver policy contract that lacks the proper disclosures is not a named driver policy until the disclosures are provided: a named driver policy is defined by Insurance Code §1952.0545 based on whether it provides coverage for all household drivers. A contract is the basis of the business of insurance. To change the terms of an insurance contract, the parties must formally modify the contract in writing. Contracts are generally not modified by oral agreements, outside influences, or actions. For example, changing adjuster behavior does not change the contract—merely telling an adjuster to adjust a claim as though a named driver policy were a standard policy does not change a named driver policy into a standard policy.

TDI considered whether the rule could change the policy contract based on a condition subsequent. Section 1952.0545 does not provide that authority; as a result, the rule will not require that an executed insurance policy contract would be automatically converted into a different contract with different rates and actuarial justification of those rates simply because the insurer or agent has not complied with the statutory disclosure requirements.

Comment that §5.208(e) Does Not Add Anything Useful, and is Too Broad: Another commenter stated that proposed §5.208(e) would spark unnecessary litigation and does not add anything to TDI's enforcement authority. The commenter recommends removing or narrowing the provision.

Agency Response to Comment that §5.208(e) Does Not Add Anything Useful, and is Too Broad: The rule clarifies that failing to comply with the statute does not allow an insurer to avoid contractual obligations under the policy. As written, this subsection of the rule limits its scope to noncompliance with Insurance Code §1952.0545 or §5.208. As previously discussed, TDI retains its enforcement authority to enforce violations under the Insurance Code and any other applicable statutes and rules.

Comments on the “Failure to Comply” Provision—Strengthen: Five commenters stated that TDI should strengthen the “Failure to Comply” language.

One commenter stated that the proposed “Failure to Comply” language sends the message that noncompliance is okay as long as the insurer or agent does not void the insurance policy. The commenter stated that TDI should tie failure to comply with the rule to Insurance Code Chapter 541, especially §541.060; and that the rule should state that violators will be subject to administrative process, sanctions, and penalties under Subchapter C or Chapter 541, and subject to all other administrative actions available to TDI.

One commenter stated that each noncompliant policy should be a separate violation.

One commenter stated that the “Failure to Comply” section should be either deleted or revised to state that failure to comply triggers a Chapter 541 violation.

One commenter stated that TDI should amend the “Failure to Comply” provision to include the possible disciplinary action TDI might take.

One commenter stated that the “Failure to Comply” provision should contain specific penalties, and mentioned Insurance Code Chapter 541.

Agency Response to Comments on the “Failure to Comply” Provision—Strengthen: TDI disagrees that the “Failure to Comply” language suggests that noncompliance is acceptable. TDI declines to list specific Insurance Code provisions, including Chapter 541, because TDI’s enforcement options and authority encompass all the enforcement authority granted under the Insurance Code to address any violations, including, but not limited to, violations of Insurance Code §1952.0545 and the rule. Not listing specific provisions does not limit TDI’s authority, and rules typically do not list all related enforcement provisions. Whether each noncompliant policy constitutes a separate violation of §1952.0545 is determined on a case-by-case basis after investigating all allegations and evidence available to TDI. TDI will address violations of the statute and rule on a case-by-case basis, considering all applicable statutes, sanctions, and penalties.

Comment on Signature Requirements: One commenter stated that TDI should clarify the requirements for signatures in the rule by adding “referenced to” to proposed §5.208(c)(6)(B)(ii); adding “without positively confirming they do in fact exist” to proposed §5.208(c)(6)(B)(iii); and adding “or state in any fashion” to proposed §5.208(c)(6)(C).

Agency Response to Comment on Signature Requirements: TDI has amended the rule by adding “referenced to” to proposed §5.208(c)(6)(B)(ii) and adding “state” to §5.208(c)(6)(C). TDI considered adding “without positively confirming they do in fact exist,” but determined that the resulting text may be confusing and is not necessary.

Comment on Uneven Playing Field: One commenter stated that companies selling named driver policies and not complying with §1952.0545 or the proposed rule are making it hard for the commenter to compete.

Agency Response to Comment on Uneven Playing Field: TDI enforces statutes and rules in a variety of ways, including through market conduct examinations and enforcement actions. TDI

will take appropriate action when specific violations come to its attention, and encourages the commenter to report any specific violations.

Comments on Excluded Driver Policies: Three commenters stated that TDI should clarify that excluded driver policies are not subject to the rule.

One commenter stated that TDI should revise the definition of “named driver policy” in the rule to clarify that merely attaching an endorsement to specifically exclude a driver does not necessarily make a policy a named driver policy.

Another commenter stated that TDI should amend the rule to define an “excluded driver policy” and make it clear that they are not named driver policies.

Agency Response to Comments on Excluded Driver Policies: TDI has revised the definition of “named driver policy” in the rule to clarify that excluded driver policies are not necessarily named driver policies.

Comment on Conspicuousness: One commenter stated that TDI should include specific conspicuousness requirements for the required disclosures. The commenter stated that meaningful, prominent, widespread disclosure about the limits of named driver policies is an important first step to ensuring that drivers are meeting their financial responsibility obligations.

Agency Response to Comment on Conspicuousness: TDI has revised §5.208(b)(5) to add “conspicuously” and to refer to the requirements for conspicuousness in Business and Commerce Code §1.201(B)(10).

Comments on Recorded Disclosures: Two commenters stated that the rule should not allow recorded oral disclosures. One commenter stated that recorded disclosures put an extra burden on consumers, are less effective, and do not comply with the contemporaneousness requirement.

Agency Response to Comments on Recorded Disclosures: Section 1952.0545 does not prohibit recorded disclosures. There are several apparent ways to satisfy the contemporaneousness requirement with a recorded oral disclosure. These include providing the disclosure and the written confirmation over the Internet, accompanied by a date and time stamp

that could be used to verify the contemporaneousness of the disclosure and confirmation. Business and Commerce Code Chapter 311 (Uniform Electronic Transactions Act), and Insurance Code Chapter 35 (Electronic Transactions) allow business that can be conducted in person to be conducted electronically, with the parties' agreement. Without an express prohibition on electronic or recorded disclosures, TDI concluded that if insurers find a way to comply with the disclosure requirements in Insurance Code §1952.0545, they may do so electronically.

Comments on Disclosures in Other Languages: Two commenters stated that the rule should require that named driver policy disclosures be available in Spanish. Government Code §2054.116 requires agencies to avoid providing program information, including notices, in English only.

Agency Response to Comments on Disclosures in Other Languages: Section 1952.0545 does not require disclosures in Spanish. The statute requires disclosures, which are written in English, and does not prohibit insurers from providing them additionally in Spanish or other languages. If insurers wish to provide disclosures in Spanish, TDI adopted a Spanish translation of the disclosure for the prescribed auto ID card form in 28 TAC §5.204. In amending 28 TAC §5.204 to comply with SB 1567, TDI retained the existing requirement that insurers make the Spanish version of the auto ID card available to policyholders. Subsection (d)(3), Government Code §2054.116 (Spanish Language Content on Agency Websites) requires state agencies, in a reasonable effort to provide meaningful access to state agency information online, to avoid providing program information, including forms, notices, and correspondence, in English only. That requirement does not apply to information provided by insurers or agents.

Comments on Costs—Overly Burdensome: Five commenters stated that the proposed rule is burdensome, will increase rates, will increase the numbers of uninsured motorists, and will eliminate short term named driver policies.

One commenter stated that the rule would produce a 10-15 percent rate increase in the underserved auto market, eliminate limited forms, and increase the numbers of uninsured.

One commenter stated that adopting the rules as proposed would result in litigation, increased costs, and increased numbers of uninsured motorists.

One commenter stated that named driver policyholders already know what they are buying; and that if insurers had to provide coverage for each undisclosed or unknown person in every household, rates would go up, and the numbers of uninsured motorists would go up. The commenter further stated that uninsured motorist rates would increase across the entire auto market.

Two commenters stated that the intent of the bill was to provide disclosures for named driver policies, and that the Legislature declined to eliminate named driver policies in HB 1773. Instead, the Legislature passed the alternative option—disclosures in SB 1567. One of those commenters stated that the bill that would have eliminated named driver policies in the previous session failed.

Agency Response to Comments on Costs—Overly Burdensome: The rule does not eliminate named driver policies. Instead, it gives effect to the Legislature’s intent in passing SB 1567, which was to ensure that consumers are informed about what they are buying and renewing. The rule does not contain requirements that are not in SB 1567—it clarifies what those requirements are to ensure that all insurers and agents are subject to the same rules. As noted below, a commenter stated that some insurers are currently complying with the statute and with the contemplated rule requirements.

In clarifying the requirements that already exist in §1952.0545, the rule takes into consideration the statutory language, its legislative history, and industry practice. The rule does not impose costs beyond those in §1952.0545. For example, the rule does not require anyone to file additional forms, pay additional fees, or file new rates. SB 1567 requires insurers and agents to provide written and oral disclosures, and to obtain contemporaneous written confirmation of the oral disclosure, before accepting a premium or fee for a named driver policy when that policy is delivered, issued for delivery, or renewed. Those are statutory requirements, not new requirements created in the rule.

The rule allows insurers and agents to choose how to comply with §1952.0545, as long as their methods do comply. For example, insurers and agents may be able to reasonably lower the

costs of compliance by finding ways to use computer or mobile information technology to provide the disclosures and receive the confirmations, or they could issue policies with longer terms to avoid having to provide monthly disclosures.

Comment on Costs—Not Overly Burdensome: One commenter stated that complaints that the proposed regulations are too burdensome are without merit, as some insurers are already complying with the rule.

Agency Response to Comment on Costs—Not Overly Burdensome: TDI agrees that the rule is not too burdensome. It does not add requirements that are not in the statute.

Comments on Notice of Costs in the Proposed Rule: Three commenters stated that the proposed rule violates the Administrative Procedure Act because it does not provide adequate notice of costs.

One commenter stated that the preamble's assertion that there is little or no impact on local economies or to the public is conclusory; and that eliminating named driver policies would increase premiums by 10-15 percent.

Two commenters stated that the proposal does not consider costs to the agents, insurers, and consumers if disclosure is required at every renewal.

Agency Response to Comments on Notice of Costs in the Proposed Rule: The proposal does not violate Government Code Chapter 2001 (Administrative Procedure Act) because the costs the commenters cite are attributable to SB 1567, not to the rule.

Government Code §2001.024 specifies notice requirements for a proposed rule. With regard to notice of costs to the public, §2004.024(a)(5) requires “a note about public benefits and costs showing the name and title of the employee...responsible for preparing or approving the note and stating for each year of the first five years that the rule shall be in effect: (A) the public benefits expected as a result of adoption of the proposed rule; and (B) the probable economic cost to persons required to comply with the rule.”

The proposal contained a note about public benefits and costs showing the name and title of the employee responsible for preparing or approving the note. It stated for each year of the

first five years that the rule is in effect that enforcing or administering the proposed section would have the significant public benefits of ensuring that TDI's rules conform to Insurance Code §1952.0545, and ensuring that consumers who purchase named driver policies are informed of the restrictions on coverage under named driver policies.

The note further stated that the proposed section is not expected to increase the cost of compliance with Insurance Code §1952.0545 because it does not impose requirements beyond those in the statute, stated those statutory requirements, and concluded that the costs associated with making the disclosures and obtaining the signatures that the statute requires do not result from the enforcement or administration of the rule. In addition, the note stated that insurers could decide how to comply with the disclosure requirements in Insurance Code §1952.0545, provided that the method falls within the scope of the law. The rule does not increase those requirements or provide a platform or business model that insurers must incur costs to adopt. Instead, the rule clarifies what it is that the statute requires insurers to do, without telling them how they have to do it.

TDI sees no reason to change its analysis. As stated above, the rule clarifies the requirements that already exist in §1952.0545, taking into consideration the language of SB 1567, its legislative history, and industry practice. The rule does not impose costs beyond those in the bill. For example, the rule does not require affected persons to file additional forms, pay additional fees, or file new rates. SB 1567 requires insurers and agents to provide written and oral disclosures, and to obtain contemporaneous written confirmation of the oral disclosure, before accepting a premium or fee for a named driver policy when that policy is delivered, issued for delivery, or renewed. Those are clear statutory requirements, not new requirements created in the rule.

The rule allows insurers and agents to choose how to comply with SB 1567, as long as their methods do comply. For example, insurers and agents may be able to reasonably lower the costs of compliance by finding ways to use computer or mobile information technology to provide the disclosures and receive the confirmations, or they could issue policies with longer terms to avoid having to provide monthly disclosures. Because insurers and agents who write named driver policies are already required by statute to provide disclosures and get signatures,

and the rule does not add new requirements or otherwise increase the cost of compliance with the statute, the cost note in the proposal for §5.208 complies with Government Code §2001.024.

Comments on Definition of Named Driver Policy: One commenter stated that TDI’s definition of “named driver policy” does not comply with SB 1567. The commenter stated that the proposed rules are an improper agency exercise of legislative functions, especially the proposed definition of named driver policy, as the express terms of §1952.0545 do not support TDI’s interpretation. The commenter stated that, if the Legislature had wanted to define named driver policy as any policy that does not automatically provide coverage for all household members, it would have done so, and phrased the warning to reflect that. The commenter asked why TDI couldn’t make the more reasoned interpretation that the automatic inclusion of a spouse does not, by itself, render a policy exempt from the statute.

Agency Response to Comments on Definition of Named Driver Policy: The statutory definition of “named driver policy” creates, in effect, two choices of classification—either a policy covers unnamed household permissive drivers, or it does not. The statutory language does not allow for a continuum of coverage (a “more reasoned interpretation,” as the commenter suggests) that would provide TDI discretion to say that policies that cover more people but not all unnamed household permissive drivers are not named driver policies.

If TDI were to interpret SB 1567 to apply only to policies that cover the named driver and no other household drivers, TDI is not aware of any Texas personal auto policies that would fit the statutory definition of “named driver policy.” As a result, no policies would be required to contain the disclosures in SB 1567. Interpreting a statute to have no effect is contrary to Government Code §311.021, which states that, in enacting a statute, it is presumed that the Legislature intended that the entire statute is effective, a just and reasonable result, a result feasible of execution, and to favor public interest over any private interest.

Comments on Named Non-Owner Policies: Six commenters stated that the rule should not apply to named non-owner policies.

Three commenters stated that named non-owner policies insure specific drivers, not specific vehicles, and that financial responsibility requirements are aimed at insuring vehicles. The commenters stated that operator policies are not required to cover permissive users; and that, as a result, TDI should delete §5.208(b)(1)(C).

Agency Response to Comments on Named Non-Owner Policies: TDI agrees and has removed the requirement in §5.208(b)(1)(C) that named non-owner policies must comply with SB 1567. A named non-owner, or operator, policy, which provides coverage only for the named insured, creates no expectation that it would cover other household members. Further, named non-owner policies are not required to cover permissive users under Transportation Code Chapter 601 (Texas Motor Vehicle Safety and Responsibility Act).

A named driver policy is subject to the requirements for an owner's policy under Transportation Code §601.076 (Required Terms: Owner's Policy), which states, "[a]n owner's motor vehicle liability insurance policy must (1) **cover each motor vehicle** for which coverage is to be granted under the policy; and (2) pay, on behalf of the named insured **or another person** who, as insured, uses a covered motor vehicle with the express or implied permission of the named insured, amounts the insured becomes obligated to pay as damages arising out of the ownership, maintenance, or use of the motor vehicle in the United States or Canada, subject to the amounts, excluding interest and costs, and exclusions of Section 601.072 [Minimum Coverage Amounts]." (Emphasis added.)

In contrast, a named non-owner policy is subject to the requirements of Transportation Code §601.077 (Required Terms: Operator's Policy), which states, "[a]n operator's motor vehicle liability insurance policy must pay, on behalf of the named insured, amounts the insured becomes obligated to pay as damages arising out of the use **by the insured** of a motor vehicle **the insured does not own**, subject to the same territorial limits, payment limits, and exclusions as for an owner's policy under Section 601.076." (Emphasis added.)

Transportation Code §601.077 refers to the named insured specifically, unlike Transportation Code §601.076, which contains the language "or another person..." The two sections address different types of policies. Section 601.076 contemplates that a person other than the person named on the policy could be driving the subject vehicle, while §601.077

addresses coverage only for the named insured for a non-owned vehicle. For these reasons, TDI deleted §5.208(b)(1)(C).

Comments on Application of the Rule to Personal Automobile Insurance Only: Two commenters stated that TDI should amend the title and applicability sections to apply §5.208 to personal automobile insurance only.

Agency Response to Comments on Application of the Rule to Personal Automobile Insurance Only: TDI declines to limit the applicability of the rule. Section 1952.0545 does not limit its applicability to personal automobile insurance. In contrast, §1952.0515 specifically requires personal automobile insurance policies to provide minimum coverage. There is no such specificity in §1952.0545.

Comment on Application of the Rule to Any Type of Coverage: One commenter stated that TDI should amend the applicability section to delete the “any type of coverage” provision. The commenter stated that proposed §5.208(b)(1)(B), which includes policies in which any type of coverage applies only to named drivers, prevents endorsing the policy to expand coverage for any one individual beyond the coverage in the underlying policy.

Agency Response to Comment on Application of the Rule to Any Type of Coverage: Insurance Code §1952.0545 does not distinguish between different types of coverage; nor does it specify that the term “named driver policy” applies to an automobile *liability* insurance policy. Instead, §1952.0545 states that a named driver policy means an automobile insurance policy that does not provide coverage for an individual residing in a named insured’s household specifically unless the individual is named on the policy. Also, §1952.0545 specifically includes policies that have been endorsed to provide coverage only for drivers specifically named on the policy. Neither provision says that a policy is a named driver policy only if specific coverages apply to named drivers, and neither says that the term only applies to coverage required to meet minimum financial responsibility requirements.

STATUTORY AUTHORITY. The commissioner adopts new §5.208 under Insurance Code §§1952.0515, 1952.0545, 551.104, and 2301.006; Insurance Code Chapter 35; Business and Commerce Code §1.201(B)(10); Business and Commerce Code Chapter 322 (the Uniform Electronic Transactions Act); Government Code §311.021 and §2001.024; Transportation Code §§601.076 and 601.077; and Insurance Code §36.001.

Insurance Code §1952.0515 requires that personal automobile insurance policies provide at least the minimum coverage specified by Transportation Code Chapter 601.

Insurance Code §1952.0545 requires the following disclosure for named driver policies, “WARNING: A NAMED DRIVER POLICY DOES NOT PROVIDE COVERAGE FOR INDIVIDUALS RESIDING IN THE INSURED’S HOUSEHOLD THAT ARE NOT NAMED ON THE POLICY.”

Insurance Code §551.104 provides that an insurer may cancel a personal automobile policy only under certain circumstances.

Insurance Code §2301.006 requires insurers to file policy forms with the commissioner and receive the commissioner’s approval of the forms before delivering them or issuing them for delivery.

Insurance Code Chapter 35 allows a regulated entity, upon agreement of all parties, to conduct business electronically to the same extent that the entity is authorized to conduct business otherwise. The chapter also provides requirements for those electronic transactions.

Business and Commerce Code §1.201(B)(10) defines “conspicuous” and states that whether a term is conspicuous is a decision for the court.

Business and Commerce Code Chapter 322 provides requirements for electronic records and electronic signatures relating to a transaction.

Government Code §311.021 states that, in enacting a statute, it is presumed that the Legislature intended (1) compliance with the constitutions of Texas and the United States; (2) that the entire statute is effective; (3) a just and reasonable result; (4) a result feasible of execution; and (5) to favor public interest over any private interest.

Government Code §2001.204 provides requirements for notice of a proposed rule.

Transportation Code §601.076 (Required Terms: Owner's Policy) states that an owner's motor vehicle liability insurance policy must (1) cover each motor vehicle for which coverage is to be granted under the policy; and (2) pay, on behalf of the named insured or another person who, as insured, uses a covered motor vehicle with the express or implied permission of the named insured, amounts the insured becomes obligated to pay as damages arising out of the ownership, maintenance, or use of the motor vehicle in the United States or Canada, subject to the amounts, excluding interest and costs, and exclusions of Section 601.072 (Minimum Coverage Amounts).

Transportation Code §601.077 (Required Terms: Operator's Policy) states that an operator's motor vehicle liability insurance policy must pay, on behalf of the named insured, amounts the insured becomes obligated to pay as damages arising out of the use by the insured of a motor vehicle the insured does not own, subject to the same territorial limits, payment limits, and exclusions as for an owner's policy under Section 601.076.

Insurance Code §36.001 provides that the commissioner of insurance 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.

§5.208. Disclosures for Named Driver Automobile Insurance Policies.

(a) Definition.

(1) Under Insurance Code §1952.0545(a), a named driver policy is an automobile insurance policy that does not provide coverage for an individual residing in a named insured's household specifically unless the individual is named on the policy. The term includes an automobile insurance policy that has been endorsed to provide coverage only for drivers specifically named on the policy.

(2) A policy is a named driver policy if it does not provide coverage for one or more individuals who reside in the named insured's household and who are not named on the policy.

(3) An automobile insurance policy that provides coverage for all residents of the insured's household is not a named driver policy, even if the policy or an endorsement excludes one or more drivers from coverage specifically by name.

(b) Applicability. This section applies to:

(1) All new and renewal named driver policies, including:

(A) policies of any term; and

(B) policies in which any type of coverage applies only to named drivers.

(2) Agents and insurers offering automobile insurance in this state, including an insurance company, corporation, reciprocal or interinsurance exchange, mutual insurance company, association, Lloyd's plan or other insurer, and a county mutual insurance company.

(c) Disclosures.

(1) Disclosure requirements. An agent or insurer may not accept a premium or fee for a new or renewal named driver policy until the agent or insurer has:

(A) made the oral disclosure under paragraph (3) of this subsection;

(B) received a contemporaneous written confirmation of the oral disclosure under paragraph (4) of this subsection;

(C) made the written disclosures under paragraph (5) of this subsection;

and

(D) received a signed copy of the written disclosure under paragraph (5)(B) of this subsection.

(2) Content. Oral and written disclosures for named driver policies must include the following, "WARNING: A NAMED DRIVER POLICY DOES NOT PROVIDE COVERAGE FOR INDIVIDUALS RESIDING IN THE INSURED'S HOUSEHOLD THAT ARE NOT NAMED ON THE POLICY."

(3) Oral disclosure. An agent or insurer may comply with the oral disclosure requirement by delivering the disclosure live or using a recording:

(A) in the presence of the applicant or insured;

(B) over the telephone; or

(C) over the Internet (for example, by Internet video call).

(4) Signed confirmation of oral disclosure. An agent or insurer must require an applicant or insured to sign a written confirmation that the agent or insurer has provided the oral disclosure. The applicant or insured must sign the written confirmation contemporaneously with receiving the oral disclosure.

(5) Written disclosures must be conspicuous, as that term is defined in Business and Commerce Code §1.201(B)(10). An agent or insurer must:

(A) include the disclosure in the policy and on any proof of insurance document issued to the insured, including an auto ID card issued under §5.204 of this title; and

(B) require an applicant or insured to sign a copy of the disclosure.

(6) Signatures. All signatures required by this section must be original or electronic signatures executed specifically for each new and renewal policy.

(A) Electronic signatures must comply with Business and Commerce Code Chapter 322 (Uniform Electronic Transactions Act), Insurance Code Chapter 35 (Electronic Transactions), and any applicable rules.

(B) Signatures must not be:

(i) made before the agent or insurer makes the disclosure;

(ii) reproduced, transferred, referenced to, or otherwise replicated from a signature on file with the agent or insurer; or

(iii) merely presumed to exist.

(C) An agent or insurer may not state, require, agree, or assume that a signature requirement is met based on payment received from the applicant or insured.

(7) Language. Agents and insurers must provide the disclosures in English and, in addition, may provide them in other languages.

(d) Installment payments. After complying with the disclosure requirements for each new and renewal policy, an agent or an insurer is not required to comply with subsection (c) of this section each time the agent or insurer accepts an installment payment during that policy's term.

(e) Failure to comply. An agent or insurer may not use noncompliance with Insurance Code §1952.0545 or this section as a reason to avoid liability under the policy. Noncompliance

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with Insurance Code §1952.0545 or this section is not grounds for cancellation under Insurance Code §551.104.

CERTIFICATION. This agency certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 5, 2015.



Sara Waitt, General Counsel
Texas Department of Insurance

The commissioner adopts new §5.208.



Julia Rathgeber
Commissioner of Insurance

Commissioner's Order No. **3756**