

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

INTRODUCTION. The Texas Department of Insurance proposes 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.

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 will require insurers to give lienholders at least 10 days' 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 how an insurer cancels a personal auto policy.

The rule requires written notice. 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, insurers and lienholders may agree to electronic notice under this rule.

TDI received comments on an informal draft of this proposed rule that was posted on TDI's website on April 24, 2018. TDI considered those comments when drafting this proposal.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Marianne Baker, director of the Property and Casualty Lines Office of the Regulatory Policy Division, has determined that for each year of the first five years the proposed new section is in effect, there will be no fiscal impact on state and local governments resulting from the enforcement or administration of this proposal. Ms. Baker does not anticipate any measurable effect on local employment or the local economy resulting from this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years proposed new §5.7018 is in effect, Ms. Baker expects that administering the proposed section will have the public benefits of ensuring that TDI's rules conform to Insurance Code §551.1041 and mitigating risk to vehicle lienholders. Ms. Baker expects that the proposed new section will not increase the cost of compliance with Insurance Code §551.1041 because it does not impose requirements beyond those in the statute. Insurance Code §551.1041 requires an insurer to give notice to lienholders of coverage cancellation. As a result, any cost associated with providing that notice does not result from the enforcement or administration of the proposed new section.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed new §5.7018 will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. Because the proposed rule is designed to implement Insurance Code §551.1041, any economic impact results from the statute itself. Section 5.7018 does not impose requirements beyond those in statute, and thus will not create an increase in cost of compliance with Insurance Code §551.1041. As a result, and in accordance with

Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose requirements beyond those in the statute, and therefore this rule does not impose a cost on regulated persons. No additional rule amendments are required under Government Code §2001.0045 because all costs result from the statute and proposed new §5.7018 is necessary to implement legislation. The proposed rule implements Insurance Code §551.1041 as added by SB 1450 Legislature, 85th Legislature, Regular Session (2017).

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that it is in effect, the proposed new rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation at 28 TAC §5.7018 to implement SB 1450;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- may positively affect the Texas economy by allowing lienholders time to protect their interests in vehicles when the owner's policy lapses.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal received by TDI no later than 5:00 p.m., central time, on February 25, 2019. Send your comments by email to ChiefClerk@tdi.texas.gov ; or by mail to the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing, submit a written request before the end of the comment period by email to ChiefClerk@tdi.texas.gov or by mail to the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on February 25, 2019. If TDI holds a public hearing, TDI will consider all written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes §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.

CROSS-REFERENCE TO STATUTE. Section 5.7018 implements Insurance Code §551.1041, enacted by SB 1450, 85th Legislature, Regular Session (2017).

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

(2) nonrenews the policy.

(b) Cancellation or nonrenewal of a policy will take effect no earlier than the 10th day after the insurer sends written notice of the cancellation to the lienholder.

(c) 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 proposal and found it to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on January 11, 2019.

/s/ Norma Garcia

Norma Garcia, General Counsel
Texas Department of Insurance