

SUBCHAPTER A. AUTOMOBILE INSURANCE
28 TAC §5.205

INTRODUCTION. The Commissioner of Insurance adopts amended 28 TAC §5.205, relating to the Motor Vehicle Crime Prevention Authority pass-through fee. The amendments are necessary to implement Senate Bill 604, 86th Legislature, 2019, and House Bill 2048, 86th Legislature, 2019. The amendments are adopted with changes to the proposed text published in the September 25, 2020, issue of the *Texas Register* (45 TexReg 6686). The Texas Department of Insurance (TDI) revised §5.205 in response to public comments and made additional nonsubstantive changes to the proposed text.

REASONED JUSTIFICATION. Amendments to §5.205 are necessary to ensure that the rule and the notice it requires reflect changes in law made by SB 604 and HB 2048. Before 2019, the Automobile Burglary and Theft Prevention Authority (ABTPA) was governed by Tex. Rev. Civ. Stat. Ann. art. 4413(37). SB 604 renamed the ABTPA as the Motor Vehicle Crime Prevention Authority (MVCPA). SB 604 also codified art. 4413(37) as Transportation Code Chapter 1006. Additionally, HB 2048 increased the fee amount that insurers must pay from \$2.00 to \$4.00 as that requirement was adopted in Transportation Code §1006.153. SB 604 and HB 2048 were both effective on September 1, 2019.

Section 5.205. Motor Vehicle Crime Prevention Authority Pass-Through Fee.

Throughout §5.205, the name of the entity is changed from ABTPA to MVCPA.

Amendments to subsection (a) update the statutory reference to the Transportation Code and the fee to \$4.00. The last sentence of subsection (a) as adopted is changed from the text as proposed to clarify that the insurer may recoup some or all of the fee from an insurer.

Subsection (b) requires a notice to help policyholders understand the charge. For clarity, subsection (b) distinctly enumerates the notice requirements for an insurer that recoups a fee from a policyholder. Insurers must use notice language that is the same or similar to the language in new paragraph (b)(1). In response to comments, TDI changed the notice requirement in paragraph (b)(1) as proposed to allow an insurer to use language similar to suggested text rather than requiring specific language.

Amendments to subsection (b) include revised notice language, written in plain language. TDI previously issued Commissioner's Bulletin B-0006-19, alerting insurers of the statutory changes. The amended rule includes language that tracks the notice language suggested in the bulletin, except for removing the acronym "MVCPA." This acronym is not included in the language adopted by the rule because it is not necessary.

The new notice does not expressly include a \$4.00 fee amount. Rather, it includes brackets to allow an insurer to insert the dollar amount the insurer charges the policyholder. This is because insurers are not required to recoup the entire \$4.00 fee; they may charge a policyholder for all, part, or none of the fee. The brackets also allow flexibility if the legislature later changes the fee amount.

New paragraphs (b)(2) and (b)(3) give insurers flexibility in how they provide the notice. Insurers must include the notice on or with each motor vehicle insurance policy that is delivered, issued for delivery, or renewed in Texas. Insurers may, but are not required to, include the notice in a policy. However, an insurer must at least mention the charge on the declarations page, renewal certificate, or billing, if there is a charge but the full notice is not given in one of those places.

For flexibility, subsection (c) allows an insurer to comply with the notice requirements by using a notice previously filed with TDI if the notice contains the correct

fee amount, has the name "Automobile Burglary and Theft Prevention Authority" replaced with "Motor Vehicle Crime Prevention Authority," and has outdated statutory references updated or removed. In response to comment, TDI has changed the proposed text of subsection (c) to remove a requirement that the notice become a part of the insurer's policy and replace it with this option regarding notice language previously filed with TDI.

Subsection (d) clarifies that a notice that complies with subsection (c) is considered similar to the notice language required by subsection (b). Subsection (d) has been added to the proposed text of the section to coordinate the changes made to subsection (b) and (c) in response to comments.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received five comments. Commenters in support of the proposal with changes were AmWINS Specialty Auto, Inc.; Cox Insurance Group; Home State Insurance Group, Inc.; National Association of Mutual Insurance Companies; and Old American County Mutual Fire Insurance Company.

Comment on Specific Notice Language in §5.205

Comment: All commenters request flexibility in the language required by the notice to avoid additional costs due to changes to forms or a need to refile policy forms to include mandatory notice language, because many companies already revised their notice forms in response to guidance in Commissioner's Bulletin B-0006-19.

Agency response: TDI has changed the notice language requirements as adopted to allow insurers to use language similar to the language in new paragraph (b)(1). Subsections (c) and (d) allow insurers to continue providing a notice used on or before

the effective date of the rule if the notice contains the correct fee amount, refers to the MVCPA, and updates or removes the statutory reference in the notice.

Comment on the Location of Notice Language in §5.205

Comment: Many commenters requested more flexibility in the placement of the notice.

Agency response: As adopted, TDI has changed the requirement in subsection (c) so that it does not mandate the notice become part of the policy.

SUBCHAPTER A. AUTOMOBILE INSURANCE

DIVISION 3. MISCELLANEOUS INTERPRETATIONS

28 TAC §5.205

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §5.205 under Transportation Code §1006.153 and Insurance Code §36.001.

Transportation Code §1006.153 provides that the fee amount that insurers must pay to the Motor Vehicle Crime Prevention Authority is \$4.00 per motor vehicle years of insurance, as defined by that section.

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.

§5.205. Motor Vehicle Crime Prevention Authority Pass-Through Fee.

(a) Each insurer must pay a fee of \$4.00 per "motor vehicle year of insurance" to the Motor Vehicle Crime Prevention Authority, as required by Transportation Code §1006.153. The insurer is authorized to recoup some or all of this fee from the policyholder.

(b) If an insurer recoups the fee from the policyholder under subsection (a) of this section, the insurer must:

(1) provide the policyholder with a notice using the following or similar language, in at least 10-point type: "Your payment includes a \$[_____] fee per vehicle each year. This fee helps fund (1) auto burglary, theft, and fraud prevention, (2) criminal justice efforts, and (3) trauma care and emergency medical services for victims of accidents due to traffic offenses. By law, this fee funds the Motor Vehicle Crime Prevention Authority.";

(2) include the notice on or with each motor vehicle insurance policy, as defined in 43 TAC §57.48 (relating to Motor Vehicle Years of Insurance Calculations), that is delivered, issued for delivery, or renewed in this state, including those policies issued through the Texas Automobile Insurance Plan Association; and

(3) if the notice language required by paragraph (1) of this subsection is provided somewhere other than the declarations page, renewal certificate, or billing, also include the following or similar language on the declarations page of the policy, renewal certificate, or billing: "Motor Vehicle Crime Prevention Authority Fee \$[] (See enclosed explanation)."

(c) An insurer may continue providing a notice used on or before the effective date of this section if the notice:

(1) contains the correct fee amount,

(2) includes "Motor Vehicle Crime Prevention Authority" in place of "Automobile Burglary and Theft Prevention Authority," and

(3) has any statutory references removed or updated to change Tex. Rev. Civ. Stat. Ann. art. 4413(37) to Transportation Code Chapter 1006.

(d) A notice that complies with subsection (c) of this section is considered similar to the notice language required by subsection (b) of this section.

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 February 23, 2021.

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James Person, General Counsel
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The Commissioner adopts amendments to 28 TAC §5.205.

Commissioner of Insurance
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Doug Slape
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Doug Slape
Chief Deputy Commissioner
Tex. Gov't Code § 601.002
Commissioner's Order No. 2018-5528