

Subchapter A. Automobile Insurance
Division 3. Miscellaneous Interpretations
28 TAC §5.208

INTRODUCTION. The Texas Department of Insurance (TDI) proposes new 28 TAC §5.208, concerning terminology describing transportation-related incidents. Section 5.208 implements House Bill 2190, 88th Legislature, 2023.

EXPLANATION. New §5.208 is proposed to clarify terminology in the Insurance Code.

New §5.208(a) clarifies that the changes made by House Bill 2190, 88th Legislature, 2023, are nonsubstantive and are intended to clarify rather than change existing law.

Subsection (b) clarifies that the term "collision" has the same meaning that "accident" had before HB 2190 for the purposes of Insurance Code §1952.155 and §1954.056.

Subsection (c) clarifies that for the purposes of Title 28, Chapter 5, Subchapter A, HB 2190 did not change the meaning of the term "accident."

This section is proposed because the transition provision in Section 142 of HB 2190 is not included in the statutory text. This section highlights that the changes in law made by HB 2190 are nonsubstantive and are intended to clarify rather than change existing law. Because there is no substantive change to the meaning of the term "accident" as currently used in many policy forms, insurers do *not* need to file updated policy forms.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Marianne Baker, director, Property and Casualty Lines, has determined that during each year of the first five years the proposed new §5.208 is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the new section, other than that imposed by the statute. Ms. Baker made this determination because the

proposed new section does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed new section.

Ms. Baker does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed new section is in effect, Ms. Baker expects that administering the proposed section will have the public benefit of providing clarity in TDI's rules on the impact of HB 2190 in light of the transition provision in HB 2190.

Ms. Baker expects that the proposed new section will not increase the cost of compliance with the Insurance Code because it does not impose requirements beyond those in the statute.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed new section will not have an adverse economic effect on small or micro businesses, or on rural communities. 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 will not impose a cost on regulated persons. Therefore, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed new section is in effect, the proposed 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;
- will not expand, limit, or repeal an existing regulation;
- will increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

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 that are received by TDI no later than 5:00 p.m., central time, on February 12, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. 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 12, 2024. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

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STATUTORY AUTHORITY. TDI proposes new §5.208 under Insurance Code §1951.002 and §36.001.

Insurance Code §1951.002 provides that the commissioner may adopt reasonable rules necessary to carry out the provision of Insurance Code Title 10, Subtitle C, which includes Insurance Code §1952.155 and §1954.056.

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 5.208 implements Insurance Code §1952.155 and §1954.056.

TEXT.

§5.208. Terminology Describing Transportation-Related Accidents (Collisions).

(a) House Bill 2190, 88th Legislature, 2023 (HB 2190) replaced the term "accident" with "collision" in Insurance Code §1952.155, concerning Benefits Payable Without Regard

to Fault or Collateral Source; Effect on Subrogation, and §1954.056(b), concerning Financial Responsibility. However, the transition provision in Section 142 of HB 2190 states that these changes to the law are nonsubstantive and are intended to clarify rather than change existing law.

(b) Consistent with the transition provision in Section 142 of HB 2190, the Texas Department of Insurance (TDI) interprets the term "collision" when used in Insurance Code §1952.155 and §1954.056(b) as having the same meaning that "accident" had before passage of HB 2190 and as having no impact on rules adopted pursuant to Insurance Code §1952.155 and §1954.056(b) or forms filed for approval with TDI under those Insurance Code sections and rules before HB 2190.

(c) Because the transition provision in Section 142 of HB 2190 says the changes are nonsubstantive, they do not impact the rules in this subchapter.

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 December 22, 2023.

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Jessica Barta
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Jessica Barta, General Counsel
Texas Department of Insurance