

SUBCHAPTER W. CONSUMER PROTECTION REQUIREMENTS

28 TAC §5.9970

1. INTRODUCTION. The Commissioner of Insurance adopts new Subchapter W, §5.9970, concerning the Consumer Bill of Rights Personal Automobile Insurance (BRPA) and the Consumer Bill of Rights Homeowners, Dwelling and Renters Insurance (BRHO). The section is adopted with changes to the proposed text as published in the October 22, 2004, issue of the Texas Register (29 TexReg 9810).

2. REASONED JUSTIFICATION. The department received petitions from the Office of Public Insurance Counsel (OPIC), requesting the adoption of a revised BRPA and a revised BRHO. Article 1.35A, Sec. 5(b)(8), Insurance Code, provides that the Public Counsel for OPIC “shall submit to the department for adoption a consumer bill of rights appropriate to each personal line of insurance regulated by the department to be distributed upon the issuance of a policy by insurers to each policyholder under rules adopted by the department.”

As a result of legislative changes, specifically the enactment of Senate Bill (SB) 14 by the 78th Legislature, the commissioner adopts new §5.9970, which adopts the BRPA and the BRHO, in English and Spanish, and sets forth the responsibility and obligation of insurers to provide copies of these Bills of Rights to insureds. Based on changes to regulatory provisions brought about by SB 14, the new rule provides a more efficient method of requiring that the Bills of Rights be provided to each policyholder for

each personal line of insurance regulated by the department. Since the last adoption of the Bills of Rights in 2002, (Commissioner's Order No. 02-0507), SB 14 and departmental actions have resulted in changes affecting both policyholders and insurers. It is necessary to adopt the 2005 version of the Bills of Rights so that insurers will be distributing to current and future policyholders the appropriate information informing them of their rights.

The department has made the following changes to the Bills of Rights as proposed: The department has resolved the formatting errors in the Bills of Rights and deleted the information box containing OPIC contact information on the last page of the Bills of Rights. More precise statutory language was incorporated where appropriate and the footer was changed to reflect the 2005 publication date. Language in the RIGHT TO PRIVACY and the section regarding the USE OF CREDIT INFORMATION in both Bills of Rights was condensed. The last sentence in the NOTICE OF CHANGE IN COVERAGE was deleted and the title and first sentence were changed. The version year was changed from 2004 to 2005.

3. HOW THE SECTION WILL FUNCTION. New §5.9970 adopts the 2005 versions of the BRPA and the BRHO, in English and Spanish. The section defines "insurer" and sets forth the responsibility and obligation of insurers to provide copies of the Bills of Rights to insureds. The 2005 versions of the Bills of Rights contain the information previously provided to insureds as well as reflect legislative acts and departmental actions concerning the use of credit information; repeal of statutory discounts;

information regarding rate differentials within a county; the use of water claims, previous mold damage or mold damage claims, and appliance-related claims in underwriting; information concerning right to privacy; notices regarding premium increases and reduced coverage; and information concerning the use of underwriting guidelines. The documents provide accurate, simplified, and clarified language.

In response to comments regarding the BRPA, the department updated the footer; condensed the RIGHT TO PRIVACY; condensed the CREDIT RIGHT; renumbered the individual rights under CREDIT RIGHT; and removed the OPIC information box at the end of both Bills of Rights. In response to comments regarding the BRHO, the department updated the footer; in APPLIANCE CLAIMS, the department changed the title to APPLIANCE RELATED WATER DAMAGE CLAIMS; added "water damage" to the first sentence in right number six; condensed RIGHT TO PRIVACY; the department added "water damage" to the fourth bullet under USE OF CLAIMS HISTORY TO NONRENEW; the department revised the title to read NOTICE OF CHANGE IN POLICY FORM from NOTICE OF CHANGE IN COVERAGE; the department condensed CREDIT RIGHT; and renumbered the rights following CREDIT RIGHT.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE TO COMMENTS.

Comment: One commenter stated that Article 1.35A Section 5(b)(8) of the Texas Insurance Code authorizes promulgation of a rule that Bills of Rights be distributed upon "issuance" of a policy by insurers. The commenter states that the statute does not

authorize a rule requiring insurers to furnish revised Bills of Rights to existing insureds upon renewal of their policies.

Agency Response: The department disagrees with the comments regarding statutory authority. Insurance Code Article 1.35A, Section (5)(b)(8) requires the department to adopt rules for Bills of Rights appropriate to each personal line of insurance regulated by the department to be distributed upon the issuance of a policy by insurers to each policyholder which would include the issuance of a renewal policy to an existing policyholder. To accept the commenters' interpretation of this authority would mean that any updates to the Bills of Rights would not reach renewing policyholders, thus existing policyholders would have an outdated version and would only receive the updated version if they become a new policyholder. The department submits that the commenter's interpretation of the statute contravenes not only the wording of the statute but also the authority of the department to promulgate rules which properly implement, interpret, and prescribe policy.

Comment: Another commenter states that the use of the word "current" in the text is ambiguous since the current Bills of Rights have been presumably provided to insureds with their initial policy and thus this language could be read to eliminate the need for the revision to be sent out at all. This commenter further states that some insurers might prefer to send the new versions to existing policyholders at one time thereby getting the new information to them sooner. This commenter also suggests language that eliminates the word "current," references the 2005 revised version, and eliminates the

requirement to provide the Bills of Rights at renewal after all customers have received the revised version.

Agency Response: Regarding the use of the word “current” in the text, the department has removed any ambiguity by specifying that insurers must provide to policyholders the 2005 edition of the Bills of Rights as adopted under the applicable subsections of the rule, unless the 2005 edition of the Bills of Rights has previously been provided to the policyholder. The department changed subsection (b) to be specific to the adoption of BRPA and BRHO and incorporated language from subsection (d) regarding Figure 1 and 2. Changes were made to subsections (c) and (e) to delete the word “current” and replace it with “adopted as set forth . . .”

Comment: A few commenters disagree with the information in the BRPA relating to the availability of underwriting guidelines. They feel the language in the Bills of Rights could be confusing to consumers and should be removed. A commenter suggests the language in the BRPA regarding the rate differentials within counties be removed as it is confusing to consumers.

Agency Response: The department does not agree that the information in the section entitled UNDERWRITING GUIDELINES is confusing, as consumers have the right to pursue that information via the Public Information Act. The department deems all of the information found in the Bills of Rights to be essential. The information found in the section entitled RATE DIFFERENTIAL WITHIN A COUNTY is needed to properly inform the public about very important matters impacting their insurance.

Comment: A couple of commenters state the provisions in the Bills of Rights

concerning the use of credit information are duplicative of the information required under state and federal law, create unnecessary confusion and anxiety among consumers and policyholders of insurers who do not in fact use credit information in their underwriting or rating practices, and request either removal of the sections on credit information or a more concise reference to the requirement that companies must provide disclosure notices. A commenter states that the BRPA provision regarding the right to privacy was redundant as it is already provided to consumers under federal law.

Agency Response: The department has re-examined WHAT YOU SHOULD KNOW ABOUT INSURANCE COMPANIES' USE OF CREDIT INFORMATION in both Bills of Rights and the section of the BRPA entitled RIGHT TO PRIVACY and has worked with OPIC to condense these sections while providing information deemed necessary to inform the public about very important matters which may impact their insurance rights, rates and coverage.

Comment: A commenter states that the BRPA provision entitled EQUAL TREATMENT on page 14 seems duplicative to an item on page 17 and adds an unnecessarily adversarial tone to the Bills of Rights.

Agency Response: The department notes that the two causes of action discussed in the provisions are distinct and not related to one another. OPIC and the department added the right to the 2005 version of the Bills of Rights to advise consumers about an important new right.

Comment: A commenter states that the BRPA provision entitled TIMEFRAMES FOR CLAIMS PROCESSING AND PAYMENT regarding Insurance Code Article 21.55 right

to collect interest and attorneys' fees contains an incorrect statement of the right. The commenter believes the right to collect first requires the insured to file suit to collect those items as damages and the insured must first prove a failure to comply with the deadlines. The provision, the commenter states, is misleading and should be removed.

Agency Response: The department does not believe this is misleading. Based on the statutory language the consumer may collect 18% plus attorneys' fees whether or not the insured files suit.

Comment: A few commenters state that the APPLIANCE CLAIMS provision in the BRHO should be entitled: APPLIANCE RELATED WATER DAMAGE CLAIMS and should more closely reflect the law in Insurance Code Article 5.35-4 (c) and (e). Another commenter stated that USE OF CLAIMS HISTORY TO NON-RENEW specifically addresses appliance related water damage claims and the language should be clarified. A commenter states that the WATER CLAIMS / MOLD DAMAGE OR CLAIMS provision in the BRHO should more closely reflect 28 TAC §21.1007. A commenter states that the BRHO provision regarding the BURDEN OF PROOF is unnecessary since an attorney can explain the burden of proof when necessary and the commenter suggests clarification.

Agency Response: The department appreciates the suggestions and has ensured that the Bills of Rights accurately reflect all relevant rules and statutes. The department has added "WATER" to the title of the USE OF CLAIMS HISTORY TO NON-RENEW section.

Comment: A commenter states that the language in the BRHO provision entitled LIMITATION ON CANCELLATION FOR THE DWELLING POLICIES needs to more properly distinguish between homeowners and dwelling policies and it is an incorrect statement under Insurance Code Article 21.49-2B §(4)(i).

Agency Response: The Department disagrees with the commenter's interpretation of Article 21.49-2B. Article 21.49-2B(i) provides that any insurance policy other than personal automobile or homeowners may be canceled if it has been in effect less than 90 days. The Article also specifically states that a homeowners policy may be canceled if the policy has been in effect for less than 60 days and certain specified circumstances exist.

Comment: A commenter states the BRHO provision entitled NOTICE OF CHANGE IN COVERAGE lacks statutory support for the statement that in certain instances the insurance company must provide a comparison between the policy offered and policies adopted by the department. The commenter believes the title and the substance seem incorrect and suggests changing the title to NOTICE IN CHANGE OF POLICY FORM and changing the word "policy" to "policy contract."

Agency Response: The department agrees with the commenter and has made the suggested changes.

Comment: Some commenters point out formatting errors in the Bills of Rights, and one commenter requests that the information box at the end of the Bills of Rights be deleted since many consumers having claims or questions for their insurer or agent often contact OPIC which is referenced in the information box, thereby causing confusion or

delay for consumers who require immediate help from their insurers or agents.

Agency Response: The department understands how the box could confuse some consumers who were attempting to contact their insurers and notes that the formatting errors appeared only in the electronic versions of the Bills of Rights. The department has resolved the formatting errors in the Bills of Rights and deleted the information box containing OPIC contact information on the last page of the Bills of Rights.

Comment: One commenter notes that the BRPA ELECTRONIC PAYMENTS requirement does not apply to county mutuals.

Agency Response: The BRPA notes some exceptions to the rights when it states: "This Bill of Rights identifies your rights specified by rule or by state statute, but it does not include all your rights. Also, some exceptions to the rights are not listed here. If your agent, company, or adjuster tells you that one of these rights does not apply to you, contact TDI Consumer Protection at 1-800-252-3439 (463-6515 in Austin) (111-1A), P.O. Box 149091, Austin, TX 78714-9091."

5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTION.

For with changes: Office of Public Insurance Counsel; Progressive County Mutual Insurance Company; Property Casualty Insurers Association of America; Nationwide Insurance and Financial Services; American Insurance Association; and Farmers Insurance Group.

6. STATUTORY AUTHORITY. This new section is adopted pursuant to Insurance Code Articles 1.35A, 5.145, 5.13-2, and §36.001. Article 1.35A, Sec. 5(b)(8) of the Insurance Code provides that OPIC shall submit to the department for adoption a consumer bill of rights appropriate to each personal line of insurance to be distributed upon the issuance of a policy by insurers to each policyholder. Article 5.145, §2 provides that, notwithstanding any other provision of the Insurance Code and except as provided in this section, an insurer is governed by the provisions of §8 of Article 5.13-2 relating to policy forms and endorsements for personal automobile and residential property insurance. Article 5.13-2 provides the commissioner authority to regulate policy forms, endorsements, and rates for the writing of insurance subject to this article. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

7. TEXT.

§5.9970. Responsibility and Obligation of Insurers To Provide Copies of the Consumer Bills of Rights to Each Insured for Personal Automobile Insurance and for Homeowners, Dwelling and Renters Insurance.

(a) For the purposes of this section, insurer(s) means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write personal automobile insurance or residential property insurance in

this state. The term includes an affiliate, as described by §823.003(a) of the Insurance Code, if that affiliate is authorized to write and is writing personal automobile insurance or residential property insurance in this state.

(b) The Texas Department of Insurance adopts the "Consumer Bill of Rights Personal Automobile Insurance" (BRPA - Revised 2005) and the Spanish language translation,

[FIGURE 1: 28 TAC §5.9970\(b\)](#)

[FIGURE 2: 28 TAC §5.9970\(b\)](#)

(c) All insurers writing personal automobile insurance policies must provide with each new policy of personal automobile insurance a copy of the "Consumer Bill of Rights Personal Automobile Insurance." The Consumer Bill of Rights shall accompany each renewal notice for personal automobile insurance unless the adopted version of the Consumer Bill of Rights as set forth in subsection (b) of this section has been previously provided to the insured by the insurer. The Consumer Bill of Rights must appear in no less than 10 point type and be on separate pages with no other text on those pages. The Spanish language version of the Consumer Bill of Rights Personal Automobile Insurance must be provided to any consumer who requests it from the insurer. A copy of the Consumer Bill of Rights Personal Automobile Insurance can be obtained from the Texas Department of Insurance, MC 104-1A, P.O. Box 149104, Austin, Texas 78714-9104 or from the Texas Department of Insurance website at www.tdi.state.tx.us.

(d) The Texas Department of Insurance adopts the "Consumer Bill of Rights Homeowners, Dwelling and Renters Insurance" (BRHO - Revised 2005) and the Spanish language translation,

[FIGURE 1: 28 TAC §5.9970\(d\)](#)

[FIGURE 2: 28 TAC §5.9970\(d\).](#)

(e) All insurers writing homeowners, renters or dwelling insurance must provide with each new policy of any such insurance a copy of the "Consumer Bill of Rights Homeowners, Dwelling and Renters Insurance." The Consumer Bill of Rights shall accompany each renewal notice for any such insurance unless the adopted version of the Consumer Bill of Rights as set forth in subsection (d) of this section has been previously provided to the insured by the insurer. The Consumer Bill of Rights must appear in no less than 10 point type and be on separate pages with no other text on those pages. The Spanish language version of the Consumer Bill of Rights Homeowners, Dwelling and Renters Insurance must be provided to any consumer who requests it from the insurer. A copy of the Consumer Bill of Rights Homeowners, Dwelling and Renters Insurance can be obtained from the Texas Department of Insurance, MC 104-1A, P.O. Box 149104, Austin, Texas 78714-9104 or from the Texas Department of Insurance website at www.tdi.state.tx.us.

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

Issued in Austin, Texas, on _____, 2005.

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that Subchapter W, §5.9970, concerning the Consumer Bill of Rights Personal Automobile Insurance and the Consumer Bill of Rights Homeowners, Dwelling and Renters Insurance, is adopted.

AND IT IS SO ORDERED.

JOSE MONTEMAYOR
COMMISSIONER OF INSURANCE

ATTEST:

Gene C. Jarmon
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO. _____