

Chapter 5. Property and Casualty
Subchapter H. Cancellation, Denial, and Nonrenewal of Certain Property and Casualty Insurance
Coverage
28 TAC §5.7015

INTRODUCTION. The Texas Department of Insurance proposes new 28 TAC Chapter 5, Subchapter H, §5.7015. The new rule is necessary to clarify the requirement to refund unearned premium on personal automobile or residential property policies within 15 business days of cancellation or termination of the policy as required by Insurance Code §558.002(d).

EXPLANATION. The Legislature added Insurance Code §558.002(d) in Senate Bill 698, 83rd Legislature, Regular Session (2013). Insurance Code §558.002(d) requires insurers to refund unearned premium within 15 business days of cancellation or termination of personal automobile and residential property policies as defined by Insurance Code §2301.051. Auto insurance policies are frequently canceled or terminated automatically based on policy provisions or statute, without the insurer's knowledge. Sometimes the insurer does not receive notice of the cancellation or termination before 15 business days pass. Therefore, the proposed section defines "the effective date of cancellation or termination" to mean either the date the insurer receives notice of the cancellation or termination, or the date of cancellation or termination, whichever is later. Adding this definition will clarify the deadline and give the insurer time to refund the premium in compliance with the statute.

The proposed section also allows insurers to refund unearned premium by applying it as a credit to other premium due on the same policy, unless the policyholder requests otherwise. This will reduce the transaction cost for the insurers, and give consumers the convenience of fewer monetary transactions, while retaining the option to receive the unearned premium directly if they choose.

The proposed section applies to any unearned premium, including any that results from cancellation or termination of an entire policy or an endorsement.

FISCAL NOTE. Marianne Baker, director of the Personal and Commercial Lines Office of the Regulatory Policy Division, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. Ms. Baker does not anticipate any measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Baker expects that for each year of the first five years the proposed section is in effect, the public benefit is that insurers will have time to refund the premium after receiving notice of termination or cancellation, and consumers will receive timely refunds of unearned premium.

Ms. Baker does not expect the proposed rule to increase the cost of compliance with Insurance Code §558.002(d) because the rule does not impose requirements beyond those in the statute.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by Government Code §2006.002(c), TDI has determined the proposal will not have an adverse economic effect or a disproportionate impact on small or micro businesses. Insurance Code §558.002(d) applies equally to all insurance companies writing personal automobile and residential property policies. The refund timeline is mandated by statute, and the rule does not specify any additional requirements. As a result, and in compliance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal, and 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 invites the public to comment on this proposal. Submit written comments on the proposal no later than 5 p.m., Central time on December 12, 2016. TDI requires two copies of your comments. Send one copy to the chief clerk by email to chiefclerk@tdi.texas.gov, or by mail to the Texas Department of Insurance, Office of the Chief Clerk, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. Send the other copy to Marianne Baker by email to marianne.baker@tdi.texas.gov, or by mail to the Texas Department of Insurance, Property and Casualty Lines Office, MC 104-PC, P.O. Box 149104, Austin, Texas 78714-9104. If you wish to request a public hearing, submit a request separately to the chief clerk by email to chiefclerk@tdi.texas.gov, or by mail to the Texas Department of Insurance, Office of the Chief Clerk, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104 before the close of the public comment period. If TDI holds a hearing, the commissioner will consider written comments and testimony presented at the hearing.

STATUTORY AUTHORITY. The new sections are proposed under Insurance Code §§558.003 and 36.001.

Section 558.003 requires the commissioner to adopt rules necessary to implement Chapter 558. Section 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 5.7015 implements Insurance Code §558.002(d), enacted by Senate Bill 698, 83rd Legislature, Regular Session (2013).

TEXT

§5.7015. Refund of Unearned Premium.

(a) Insurers must refund the appropriate portion of any unearned premium to the policyholder not later than the 15th business day after the effective date of cancellation or termination of a personal automobile or residential property insurance policy, as required by Insurance Code §558.002(d).

(b) For purposes of this section and Insurance Code §558.002(d), the "effective date of cancellation or termination" means the date the insurer receives notice of the cancellation or termination, or the date of the cancellation or termination, whichever is later.

(c) Insurers may refund unearned premium by applying it as a credit to other premium due on the same policy, unless the policyholder requests otherwise.

(d) This section applies to any unearned premium, including any that results from cancellation or termination of an entire policy or an endorsement.

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 at Austin, Texas, on the 28th day of October, 2016.



Norma Garcia
General Counsel
Texas Department of Insurance