

SUBCHAPTER A. AUTOMOBILE INSURANCE
DIVISION 3. MISCELLANEOUS INTERPRETATIONS
28 TAC §5.204 and §5.208

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to amend 28 TAC §5.204, concerning Motor Vehicle Safety Responsibility, and repeal 28 TAC §5.208, concerning Disclosures for Named Driver Automobile Insurance Policies. The amendment and repeal implement changes made by House Bill 259, 86th Legislature, Regular Session (2019), which prohibits named driver auto policies.

EXPLANATION. HB 259 prohibits Texas automobile insurers from delivering, issuing for delivery, or renewing a named driver policy that was not also an operator's policy, defined by the bill as a policy that covers the named insured when operating an automobile the insured does not own. HB 259 amended Insurance Code Chapter 1952 to add Subchapter H, consisting of §§1952.351 – 1952.353, and repealed Insurance Code §1952.0545. Insurance Code §1952.351 provides definitions for the new subchapter and Insurance Code §1952.352 addresses applicability of the subchapter. Insurance Code §1952.353 prohibits an insurer writing automobile insurance in Texas from delivering, issuing for delivery, or renewing named driver auto policies. Insurance Code §1952.0545 established required disclosures for named driver policies. The prohibition applies to policies issued, issued for delivery, or renewed on or after January 1, 2020.

The proposed amendments to §5.204 and the proposed repeal of §5.208 update TDI's rules to reflect the changes to the Insurance Code made by HB 259. The proposed amendments and repeal will reduce confusion by eliminating the now unnecessary requirements for named driver automobile insurance. The proposed amendments and repeal also include minor grammatical and stylistic changes to conform to plain language guidelines.

Section 5.204. Motor Vehicle Safety Responsibility. Section 5.204 provides requirements for the standard proof of motor vehicle liability insurance card, which includes requirements for named driver policies. Because Insurance Code §1952.353 prohibits named driver policies, §5.204(a) is amended to remove a reference to the named driver disclosure that was required by Insurance Code §1952.0545, and §5.204(c) is amended to remove paragraph (9), which provides the text of a disclosure that must be included in a named driver policy. In addition, subsection (c) is amended to remove the words "all of."

Section 5.208. Disclosures for Named Driver Automobile Insurance Policies. Section 5.208 requires an insurer to provide disclosures to the purchaser of a named driver policy before accepting the premium for the policy, and it specifies the content of the disclosures the insurer must provide. Section 5.208 is proposed to be repealed because Insurance Code §1952.353 prohibits named driver policies.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Marianne Baker, director, Property and Casualty Lines Office, has determined that during each year of the first five years the proposed amendment and repeal are in effect, there will be no measurable fiscal impact on state and local governments because of enforcing or administering the sections. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

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

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendment and repeal are in effect, Ms. Baker expects that administering the proposed

amendment and repeal will have the public benefit of ensuring that rules are consistent with Insurance Code §1952.353 and do not contain provisions made unnecessary by that statute.

Ms. Baker expects that the proposed amendment and repeal will not increase the cost of compliance with the statute and rules, and that any costs are a result of the statute and not the rule.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. Before a state agency considers a rule adoption, Government Code §2006.002(a) requires state agencies to reduce the effect of adverse economic effects on small or micro companies or rural communities when it is legal or feasible to do so. TDI has determined that the proposed amendment and repeal will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because any costs associated with Insurance Code §1952.353 are a result of the statute and not the rule. 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 a cost on regulated persons, it simply removes unnecessary wording and it deletes a provision from one section and repeals another section that are no longer necessary due to a change in the Insurance Code. 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 amendments are 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 not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not 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 p.m. Central time, on June 8, 2020. Send your comments by email to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing on the proposal, submit a request by email before the end of the comment period, and separate from any comments, to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, 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 p.m. Central time, on June 8, 2020. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

SUBCHAPTER A. AUTOMOBILE INSURANCE

28 TAC §5.204

STATUTORY AUTHORITY. TDI proposes amendments to §5.204 under Insurance Code §1952.353 and Insurance Code §36.001.

Insurance Code §1952.353 prohibits an insurer from delivering, issuing for delivery, or renewing a named driver policy unless the named driver policy is an operator's policy.

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. The proposed amendments to §5.204 implement Insurance Code §§1952.351 – 1952.353.

TEXT.

§5.204. Motor Vehicle Safety Responsibility.

(a) Applicability. This section does not apply to evidence of financial responsibility exhibited as an image displayed on a wireless communication device. Under Transportation Code §601.053(a)(2-a), the image must include the information required by Transportation Code §601.081, as provided by a liability insurer [~~including the named driver disclosure that Insurance Code §1952.0545 requires~~].

(b) Form. For each motor vehicle insurance policy, the liability insurer must issue a standard proof of motor vehicle liability insurance form. The form must be titled "Texas Liability Insurance Card." The insurer may use its own form or TDI's prescribed form. TDI's prescribed form is available on the TDI website or upon request.

(c) Side A. Side A of the form must be written in at least 10-point type, except where otherwise specified in this subsection. The insurer must provide Side A in English, or in English and Spanish. Side A of the form must include ~~all of~~ the following (optional Spanish language in parentheses):

(1) the name and address of each insured or covered person (el nombre y la dirección del asegurado)

(2) the year, make, and model of each covered vehicle (el año, marca, y modelo de cada vehículo con cobertura); or a description of the types of vehicles the policy covers, and, at the company's option, the VIN. {Note: If the policy does not require the description of a vehicle, then this section of the ID card should contain the appropriate wording to describe the types of vehicles the policy covers, such as "any auto driven by the insured," "any auto driven with dealer plates," or similar descriptive language.}

(3) the effective date of the policy (la fecha de efectividad de la póliza)

(4) the expiration date of the policy (la fecha de vencimiento de la póliza)

(5) the policy number (el número de la póliza)

(6) the name and toll-free phone number of the insurer, if the insurer is required by statute to maintain a toll-free number for consumer inquiries (el nombre de la compañía de seguro y el número de teléfono gratis)

(7) the name and phone number of the agent, if applicable (el nombre del agente y el número de teléfono)

(8) the following statement in at least eight-point type, "This policy provides at least the minimum amounts of liability insurance required by the Texas Motor Vehicle

Safety Responsibility Act for the specified vehicles and named insureds and may provide coverage for other persons and vehicles as provided by the insurance policy." If the insurer provides Side A in Spanish, the Spanish statement must read, "Esta póliza provee por lo menos las cantidades mínimas de seguro de responsabilidad civil que es requerida por la ley de responsabilidad para la seguridad de los vehículos motorizados de Texas (Texas Motor Vehicle Safety Responsibility Act) para los vehículos especificados y para los asegurados nombrados y puede proveer una cobertura para otras personas y vehículos según lo proporcionado en la póliza de seguro."

~~[(9) for a named driver policy under Insurance Code §1952.0545, the following statement, which must comply with the Business and Commerce Code §1.201(b)(10)(B) definition of conspicuous, "WARNING: A NAMED DRIVER POLICY DOES NOT PROVIDE COVERAGE FOR INDIVIDUALS RESIDING IN THE INSURED'S HOUSEHOLD THAT ARE NOT NAMED ON THE POLICY." If Side A contains Spanish, the warning in Spanish should read, "ADVERTENCIA: ESTA PÓLIZA NO PROVEE COBERTURA A LAS PERSONAS QUE RESIDEN EN EL HOGAR DEL ASEGURADO QUE NO SON MENCIONADAS EN LA PÓLIZA DE SEGUROS."]~~

(d) Side B. Side B of the form must be written in at least 10-point type, except where otherwise specified. Side B must contain the following statements, in this order, and formatted as shown in this subsection (optional Spanish language in parentheses; not italicized):

(1) Texas Liability Insurance Card (Tarjeta de Seguro de Responsabilidad Civil de Texas) *(at least 12-point, boldfaced type)*

(2) Keep this card. (Guarde esta tarjeta.) *(boldfaced type)*

(3) IMPORTANT: You must show this card or a copy of your insurance policy when you apply for or renew your: (IMPORTANTE: Usted debe mostrar esta tarjeta o una

copia de su póliza de seguro cuando solicite o renueve su:) ("**IMPORTANT**" in *boldfaced capital letters*)

(A) Motor vehicle registration (Registro del vehículo motorizado)

(B) Driver's license (Licencia de conducir)

(C) Motor vehicle safety inspection sticker. (Etiqueta de inspección de seguridad para su vehículo.)

(4) You may also be asked to show this card or your policy if you have an accident or if a peace officer asks to see it. (También se puede pedir que usted muestre esta tarjeta o su póliza si tiene un accidente o si se la pide un oficial de policía.)

(5) All drivers in Texas must carry liability insurance on their vehicles or otherwise meet legal requirements for financial responsibility. If you do not meet your financial responsibility requirements, you could be fined up to \$1,000, your driver's license and motor vehicle registration could be suspended, and your vehicle could be impounded for up to 180 days (at a cost of \$15 per day). (Todos los conductores en Texas deben tener un seguro de responsabilidad civil para sus vehículos, o de lo contrario deben cumplir con los requisitos legales de responsabilidad financiera. Si usted no cumple con los requisitos de responsabilidad financiera, podría estar sujeto a pagar una multa de hasta \$1,000, mas la suspensión de su licencia de conducir y la suspensión del registro del vehículo, y además su vehículo podría ser confiscado por hasta 180 días (a un costo de \$15 por día).)

(e) The insurer must issue Side B in English. The insurer must also make Side B available in Spanish, either on the same card as the English version, or on a separate card. If the insurer initially provides only the English version and offers to provide the Spanish version on a separate card when the insured requests it, the insurer must include with the English version the following notice in Spanish, in at least 10-point type, formatted as shown in this subsection, with or without the optional bracketed text, "IMPORTANTE: Si usted desea una tarjeta oficial de comprobante de seguro escrita en español,

comuníquese con su agente de seguros a este número {o dirección de correo electrónico}." The notice must be followed by the company's toll-free number, the insured's agent's number, or any other applicable number, and, at the insurer's option, the agent's or company's email address.

SUBCHAPTER A. AUTOMOBILE INSURANCE

Repeal of 28 TAC §5.208

STATUTORY AUTHORITY. TDI proposes the repeal of §5.208 under Insurance Code §1952.353 and Insurance Code §36.001.

Insurance Code §1952.353 prohibits an insurer from delivering, issuing for delivery, or renewing a named driver policy unless the named driver policy is an operator's policy.

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. The repeal of §5.208 implements amendments to Insurance Code §§1952.351 – 1952.353 and the repeal of §1952.0545.

TEXT.

§5.208. Disclosures for Named Driver Automobile Insurance Policies.

CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 27, 2020.

/s/ James Person

James Person, General Counsel
Texas Department of Insurance