

**SUBCHAPTER A. AUTOMOBILE INSURANCE**  
**28 TAC §5.205**

**INTRODUCTION.** The Texas Department of Insurance (TDI) proposes to amend 28 TAC §5.205, concerning the automobile theft prevention authority pass-through fee. The amendments to §5.205 implement Senate Bill 604 and House Bill 2048, 86th Legislature, Regular Session (2019).

**EXPLANATION.** Amending §5.205 is necessary to ensure that the rule and the notice it requires reflect the 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 codified art. 4413(37) as Transportation Code Chapter 1006. SB 604 also renamed the ABTPA as the Motor Vehicle Crime Prevention Authority (MVCPA). Additionally, HB 2048, in Transportation Code §1006.153, increased the fee amount that insurers must pay from \$2.00 to \$4.00. Both bills were effective on September 1, 2019.

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

Proposed amendments to §5.205 implement the statutory changes made by SB 604 and HB 2048. Throughout the section, the amendments change the name of the authority from the ABTPA to the MVCPA.

Proposed amendments to subsection (a) update the statutory references from the Revised Civil Statutes to the Transportation Code and change the fee from \$2.00 to \$4.00.

Proposed 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 changes to the notice language made by SB 604. This bulletin included notice language similar to what is included in the proposed amendments. The new notice

does not expressly include the \$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 can charge the policyholder for all, part, or none of it.

For clarity, subsection (b) is reorganized to more distinctly enumerate the notice requirements for an insurer that recoups a fee from the policyholder. New paragraph (b)(1) maintains the current requirements that insurers include the notice on or with each motor vehicle insurance policy and provide the notice in at least 10-point type. New paragraph (b)(2) maintains the requirement of the current rule that insurers must include the notice on or with each motor vehicle insurance policy that is delivered, issued for delivery, or renewed in Texas. New paragraph (b)(3) maintains the current requirement that an insurer who recoups the fee must list the fee on the declarations page.

Proposed new subsection (c) also maintains the current requirement that the notice must become part of the policy. Unlike the current rule, proposed §5.205 includes only one version of the notice language. The notice language is written so that an insurer can choose to print it on the declarations page or include it on or with the policy. That allows insurers to have the same placement options they have under the current rule.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** J'ne Byckovski, director and chief actuary of the Property and Casualty Actuarial Office, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the rule, other than that imposed by the statute. 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. Byckovski does not anticipate a 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 amendments are in effect, Ms. Byckovski expects that enforcing and administering the proposed amendments will have the public benefit of ensuring that TDI's rules conform to Transportation Code Chapter 1006, as enacted by SB 604 and amended by HB 2048. The amendments will have the additional public benefit of ensuring that the notice that the rule requires is written in plain language, so that policyholders will be able to understand what the fee is and why it is charged.

Ms. Byckovski expects that the proposed amendments will not increase the cost of compliance with Transportation Code Chapter 1006, as enacted by SB 604 and amended by HB 2048, because it does not impose requirements beyond those in the statute. New Transportation Code §1006.453(b) requires insurers to pay to the MVCPA a fee equal to \$4 multiplied by the total number of years or portions of years during which a motor vehicle is covered by insurance. As a result, the costs associated with the increased fee, and any filings needed to update the fee or the required notice, do not result from the enforcement or administration of the proposed amendments. The notice language in the proposed amendments is the same as the notice language in Commissioner's Bulletin B-0006-19. Most insurers who recoup the fee will have already added the notice language from the bulletin and will not need to update and refile their forms.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. The increased fee is required by statute and is not a result of 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. Even if the proposal did impose such a cost, no additional rule amendments would be required under Government Code §2001.0045 because proposed §5.205 is necessary to implement legislation. The proposed rule implements Transportation Code Chapter 1006, as enacted by SB 604 and amended by HB 2048.

**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 not 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 it receives by no later than 5:00 p.m., central time, on October 26, 2020. Send your 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.

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 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 5:00 p.m. Central time, on October 26, 2020. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

**STATUTORY AUTHORITY.** TDI proposes revised §5.205 under Transportation Code Chapter 1006 and Insurance Code §36.001.

Transportation Code Chapter 1006 provides that an insurer must pay to the MVCPA a fee equal to \$4.00 multiplied by the total number of motor vehicle years of insurance for insurance policies delivered, issued for delivery, or renewed by the insurer.

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 5.205 implements Transportation Code Chapter 1006, as enacted by SB 604 and amended by HB 2048, 86th Legislature, Regular Session (2019).

**TEXT.**

**§5.205. Motor Vehicle Crime ~~[Automobile Theft]~~ Prevention Authority Pass-Through Fee.**

(a) ~~Each [Vernon's Annotated Revised Civil Statutes of the State of Texas, Article 4413(37), §10, requires each]~~ insurer must ~~[to]~~ pay a fee of \$4.00 ~~[2.00]~~ per "motor vehicle year of insurance" to the Motor Vehicle Crime ~~[Automobile Burglary and Theft]~~ Prevention Authority, as required by Transportation Code §1006.153. Each insurer is authorized to recoup this fee from the policyholder.

(b) ~~If an [Any]~~ insurer recoups ~~[recouping]~~ the fee from the policyholder under ~~[as authorized by]~~ subsection (a) of this section, the insurer must:

(1) provide the policyholder with the following notice 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 (MVCPA).";

(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 [on or after October 5, 1992], including those policies issued through the Texas Automobile Insurance Plan Association; and [a notice conforming with either paragraph (1) or (2) of this subsection.];

~~[(1) This notice must be in no less than 10-point type, must be attached to or stamped or printed on the declarations page of the policy, and must become part of~~

~~the policy. The notice must read as follows: "NOTICE: A fee of \$\_\_\_\_\_ is payable in addition to the premium due under this policy. This fee partially or completely reimburses the insurer, as permitted by 28 TAC §5.205, for the \$2.00 fee per motor vehicle year required to be paid to the Automobile Burglary and Theft Prevention Authority under Vernon's Annotated Revised Civil Statutes of the State of Texas, Article 4413(37), §10, which was effective on June 6, 1991, and revised effective September 1, 2011."~~

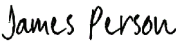
~~[(2) This notice must be in no less than 10-point type and must be included as a part of the policy. The notice must read as follows: "NOTICE: The Automobile Burglary and Theft Prevention Authority fee is payable in addition to the premium due under this policy. This fee partially or completely reimburses the insurer, as permitted by 28 TAC §5.205, for the \$2.00 fee per motor vehicle year required to be paid to the Automobile Burglary and Theft Prevention Authority under Vernon's Annotated Revised Civil Statutes of the State of Texas, Article 4413(37), §10, which was effective on June 6, 1991, and revised effective September 1, 2011." If insurers provide this notice,]~~

~~(3) include the following language [must be printed] on the declarations page of the policy, renewal certificate, or billing: "Motor Vehicle Crime [Automobile Burglary and Theft] Prevention Authority Fee \$[\_\_\_\_\_] (See enclosed notice [explanation])."~~

(c) The notice must become part of the policy.

**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 September 10, 2020.

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James Person, General Counsel  
Texas Department of Insurance