

SUBCHAPTER W. CONSUMER PROTECTION REQUIREMENTS CONSUMER BILL OF RIGHTS
28 TAC §5.9970

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to amend 28 TAC §5.9970, concerning the Consumer Bill of Rights for Personal Automobile Insurance (Auto Bill of Rights). Insurance Code §501.156 requires the Office of Public Insurance Counsel (OPIC) to submit to TDI for adoption a consumer bill of rights appropriate to each personal line of insurance that TDI regulates.

EXPLANATION. Under Insurance Code Chapter 501, OPIC represents the interests of insurance consumers in Texas. OPIC is required by Insurance Code §501.156 to submit to TDI for adoption a consumer bill of rights appropriate to each personal line of insurance TDI regulates. These bills of rights explain to consumers how their rights are affected by applicable statutes and rules and are to be distributed by an insurer to each policyholder on issuance of a policy.

TDI received a petition from OPIC on August 30, 2022, requesting adoption of a revised Auto Bill of Rights. The current version was adopted in May 2021 and is found in 28 TAC §5.9970. Since the last amendment, legislation was passed that affects the rights of insurance consumers. Specifically, new Insurance Code §551.1053 requires mandatory nonrenewal of private passenger automobile policies when an insured fails or refuses to cooperate with an insurer in the investigation, settlement, or defense of a claim or action. OPIC has determined that this change requires an amendment to the Auto Bill of Rights.

Personal line insurers must distribute the Auto Bill of Rights to each policyholder on issuance of a new policy or on renewal if the updated bill of rights was not previously sent. Amending the Auto Bill of Rights ensures that insurers distribute current consumer rights information to policyholders.

The proposed amendments to the section are described in the following paragraphs.

Section §5.9970. The amendments to §5.9970 update the English and Spanish translation versions of the Auto Bill of Rights and are proposed in subsection (b) as FIGURE 1: 28 TAC §5.9970(b) and FIGURE 2: 28 TAC §5.9970(b).

The proposed new English and Spanish translation versions of the Auto Bill of Rights contain changes from the previous versions resulting from legislative actions that affect the rights of insurance consumers. Specifically, Insurance Code §551.1053 was added by Senate Bill 1602, 87th Legislature, 2021, and requires nonrenewal of private passenger automobile insurance policies where an insured fails or refuses to cooperate with an insurer in the investigation, settlement, or defense of a claim or action or the insurer is unable to contact the insured using reasonable efforts for those purposes.

These amendments are intended to ensure that the Auto Bill of Rights is consistent with the law and that consumers are informed of their rights related to their personal automobile insurance policies.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. John Mooney, manager of the Property and Casualty Lines Office, has determined that for 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 the enforcement or administration of this proposal.

Mr. Mooney does not anticipate any measurable effect on local employment or the local economy as a result of the enforcement or administration of this proposal because the proposal simply updates documents insurers are already required to provide.

PUBLIC BENEFIT AND COST NOTE. For each of the first five years the proposed amendments are in effect, Mr. Mooney expects public benefits to include consumers receiving an accurate and understandable summary of their rights related to their personal automobile insurance policies and facilitating public awareness of insurance consumer rights.

Mr. Mooney expects that the proposed amendments will impose an economic cost on persons required to comply. The cost will vary based on the lines of insurance and number of policyholders for each insurer.

Insurance Code §501.156 and TDI rules require insurers to deliver the Auto Bill of Rights to policyholders at the time a policy is issued or renewed. Because the proposed amendment updates existing documents already required to be provided with insurance policies, the amendment does not impose additional duties regarding new policies. Insurers must provide policyholders with copies of the updated Auto Bill of Rights at the first renewal after the updated bill of rights is effective.

If the insurer and policyholder both consent to electronic delivery under Insurance Code Chapter 35, the insurer may send the updated Auto Bill of Rights electronically, avoiding paper and printing costs. If an insurer prints paper copies of the Auto Bill of Rights, TDI expects the cost to be between \$0.06 and \$0.08 per page for printing and paper. The Auto Bill of Rights is seven pages long.

An insurer's cost of complying with this requirement will depend on the number of renewals that the insurer provides and on the number of paper bills of rights the insurer sends. TDI expects that each insurer will have the information necessary to determine its individual cost, including the number of pages to be printed, in-house printing costs, and commercial printing costs.

TDI does not anticipate additional costs for mailing or electronic distribution because the new bill of rights will be sent out in new and renewal packets that the insurer already sends.

TDI estimates that insurers may face administrative costs associated with updating the Auto Bill of Rights in their systems. While it is not feasible to determine the actual cost of any employees needed to comply with the requirement, TDI estimates that amending the Auto Bill of Rights may require the following resources:

- between four and 10 hours of compliance officer staff time to update internal procedures so the revised Auto Bill of Rights is distributed; and
- between four and 10 hours of computer programming staff time to prepare and test systems to begin distributing the revised Auto Bill of Rights.

Staff costs may vary depending on the skill level required, the number of staff required, and the geographic location where work is done. The 2021 median hourly wage for these positions in Texas was:

- compliance officer, \$35.14; and
- computer programmer, \$38.92;

as reported by the Texas Wages and Employment Projections database, which is developed and maintained by the Texas Workforce Commission and located at www.texaswages.com/WDAWages.

Information on median wages in other states may be obtained directly from the federal Bureau of Labor Statistics website at www.bls.gov/oes/current/oes_nat.htm.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that this proposal may have an adverse economic effect on any insurers that are small or micro businesses. In data the Texas Comptroller provides for use in calculating the number of small businesses, the Comptroller estimates that there are approximately

630 insurance carriers that are considered small businesses as that term is defined in Government Code §2006.001. This Economic Impact Statement and Regulatory Flexibility Analysis and the cost analysis in the Public Benefit and Cost Note section of this proposal applies to the portion of insurance carriers that write personal automobile insurance policies and are small and micro businesses. The total cost to an insurer in providing the revised Auto Bill of Rights to its policyholders is not wholly dependent on the size of the insurer. Instead, the cost depends on the insurer's number of current and future policyholders. TDI does not anticipate an impact on any rural communities because the requirement to distribute bills of rights under Insurance Code §501.156 applies to insurers, not to rural communities.

In accordance with Government Code §2006.002(c-1), TDI considered the following alternatives to minimize any adverse impact on small or micro businesses while still accomplishing the proposal's objectives:

(1) TDI considered not proposing the new rules, but Insurance Code §501.156 requires OPIC to submit to TDI for adoption a consumer bill of rights appropriate to each personal line of insurance TDI regulates. The statute requires these consumer bills of rights to be distributed upon issuance of a policy by insurers to all applicable policyholders. Updating the Auto Bill of Rights is necessary to reflect legislative and regulatory actions that affect the rights of insurance policyholders despite any possible impact on small or micro businesses. To ensure compliance with the statutory requirements, TDI rejected this option.

(2) TDI also considered imposing different rules for small or micro businesses, but ultimately rejected this option for the reason previously stated. The proposed amendment is necessary to comply with statutes and rules that require all insurers to issue the Auto Bill of Rights to policyholders on issuance of a new or renewal policy. These statutory

requirements apply to all personal automobile insurers, regardless of size, and cannot be waived or modified for small or micro businesses.

(3) Finally, TDI considered exempting small or micro businesses from the rule requirement, but ultimately rejected this option for the reason previously stated. The purpose of any consumer bill of rights is to notify each policyholder of their rights applicable to those personal lines of insurance. Insurance Code §501.156 requires OPIC to submit to TDI for adoption a consumer bill of rights appropriate to each personal line of insurance that TDI regulates. These statutory requirements apply to all personal automobile insurers, regardless of size, and cannot be waived or modified for small or micro businesses.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does impose a possible cost on regulated persons. However, no additional rule amendments are required under Government Code §2001.0045 because publishing the Auto Bill of Rights is necessary to implement Insurance Code §501.156, based on the addition of new §551.1053 to the Insurance Code. Section 501.156 requires OPIC to submit for adoption a consumer bill of rights appropriate to each personal line of insurance TDI regulates.

Although the Auto Bill of Rights was last updated in 2021, recent legislative action has affected the rights of personal automobile insurance consumers. Specifically, Insurance Code §551.1053 was added by Senate Bill 1602, and it requires nonrenewal of private passenger automobile insurance policies where an insured fails or refuses to cooperate with an insurer in the investigation, settlement, or defense of a claim or action or the insurer is unable to contact the insured using reasonable efforts for those purposes.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years the amendments are in effect, the amendments:

- 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 or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments for the proposal that are received by TDI no later than 5:00 p.m. Central time, on May 15, 2023. Send your comments to ChiefClerk@tdi.texas.gov or by mail 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 separate request before the end of the comment period to ChiefClerk@tdi.texas.gov or by mail to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

STATUTORY AUTHORITY. TDI proposes amendments to §5.9970 under Insurance Code §§501.156, 551.1053, and 36.001.

Insurance Code §501.156 requires OPIC to submit to TDI for adoption a consumer bill of rights appropriate to each personal line of insurance TDI regulates.

Insurance Code §551.1053 requires nonrenewal of private passenger automobile insurance policies where an insured fails or refuses to cooperate with an insurer in the investigation, settlement, or defense of a claim or action or the insurer is unable to contact the insured using reasonable efforts for those purposes.

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 5.9970 implements Insurance Code §501.156 and §551.1053.

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TEXT.

§5.9970. Personal Automobile Insurance Consumer Bill of Rights.

(a) For purposes of this section, "insurer" 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 in this state. The term includes an affiliate, as described by Insurance Code §823.003(a), if that affiliate is authorized to write and is writing personal automobile insurance in this state.

(b) The Texas Department of Insurance adopts the 2023 [~~2021~~] version of the Consumer Bill of Rights - Personal Automobile Insurance (Auto Bill of Rights), and the Spanish language translation, as developed and submitted by the Office of Public Insurance Counsel:

FIGURE 1: 28 TAC §5.9970(b) [~~FIGURE 1: 28 TAC §5.9970(b)~~]

FIGURE 2: 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 2023 [~~2021~~] version of the Auto Bill of Rights. At the consumer's request, the insurer may provide an electronic copy of the Auto Bill of Rights instead of a hard copy. The insurer must provide the Auto Bill of Rights with each renewal notice for personal automobile insurance unless the insurer has previously provided the policyholder with the 2023 [~~2021~~] version of the Auto Bill of Rights.

(d) The Auto Bill of Rights must appear in no less than 10-point type and be on separate pages with no other text on those pages.

(e) Insurers must provide the Spanish language version of the 2023 [~~2021~~] version of the Auto Bill of Rights to any consumer who requests it.

(f) Insurers must provide the applicable Auto Bill of Rights included in this section beginning January 1, 2024 [~~November 15, 2021~~]. Before that date, insurers may provide the Auto Bill of Rights either as it currently is included in this section or as it was included in the section as the section was amended to be effective May 16, 2021 [~~January 31, 2013~~].

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 March 29, 2023.

DocuSigned by:
Jessica Barta
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Jessica Barta
General Counsel
Texas Department of Insurance