

Subchapter F. Electronic Transactions
28 TAC §21.051

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to add new 28 TAC §21.051, concerning notices of termination of insurance policies. The new section will be in new Subchapter F, Electronic Transactions. Proposed new §21.051 implements House Bill 1040, 88th Legislature, 2023.

EXPLANATION. New §21.051 defines "termination" to specify that nonrenewal and discontinuation are terminations for the purposes of Insurance Code §35.004.

[HB 1040](#) amended Insurance Code §§ 35.003 and 35.004 to allow regulated entities to do business electronically without obtaining consent from the other party. Before HB 1040, a regulated entity had to obtain an agreement from a party to an insurance transaction to do business or deliver documents electronically. Under HB 1040, no express agreement is required, and the regulated entity can simply notify the party that it will conduct business electronically. After receiving notice, the party has a right to withdraw consent from doing business electronically.

HB 1040 also added to §35.004 new subsection (l), which requires a regulated entity to send notices in both electronic form and on paper or another nonelectronic form to a party when cancelling or terminating a policy. With the proliferation of electronic transactions, entities may be sending notices in only electronic form. The 88th Legislature included subsection 35.004(l) to make sure that regulated entities send notices in nonelectronic form as well as electronic. TDI is proposing this rule to clarify that nonrenewals and discontinuations of insurance policies are considered forms of termination.

Section 21.051. New §21.051 defines "termination" to include nonrenewal, a refusal to renew, or discontinuation by a regulated entity for the purposes of Insurance Code §35.004.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Marianne Baker, director of the Property and Casualty Lines Office, has determined that during each year of the first five years the proposed new section is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the new section, other than that imposed by the statute. Ms. Baker made this determination because the proposed new section does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed new section.

Ms. Baker does not anticipate any 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 new section is in effect, Ms. Baker expects that enforcing the proposed new section will have the public benefit of ensuring that TDI's rules conform to Insurance Code §35.004 and making sure that consumers are adequately notified when their policies are not renewed.

Ms. Baker expects that the proposed new section will not increase the cost of compliance with Insurance Code §35.004 because it clarifies the statute and does not impose requirements beyond those in the statute. Insurance Code §35.004(l) requires that regulated entities notify parties in electronic and nonelectronic formats when cancelling or terminating an insurance policy. As a result, the cost associated with notifying a party

nonelectronically and electronically when a policy is not renewed does not result from the enforcement or administration of the proposed new section.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed new section will not have an adverse economic effect on small or micro businesses, or on rural communities. The new section applies specifically to entities regulated by TDI that notify parties regarding the cancellation, nonrenewal, or termination of an insurance policy. 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 possible cost on regulated persons. Even if the proposal did impose costs, no additional rule amendments would be required under Government Code §2001.0045 because proposed new §21.051 is necessary to implement legislation. The proposed rule implements Insurance Code §35.004(l), as added by HB 1040.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed new section is 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 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 are received by TDI no later than 5:00 p.m., central time, on June 24, 2024. Send your comments to ChiefClerk@tdi.texas.gov or 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 request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. 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 June 24, 2024.

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STATUTORY AUTHORITY. TDI proposes new §21.051 under Insurance Code §§35.0045, 551.001, 1202.051, 1271.307, and 36.001.

Insurance Code §35.0045 requires the commissioner to adopt rules necessary to implement and enforce Chapter 35.

Insurance Code §551.001 authorizes the commissioner to adopt rules related to the cancellation and nonrenewal of insurance policies issued under specified provisions of the Insurance Code.

Insurance Code §1202.051 requires the commissioner to adopt necessary rules related to the cancellation and renewal of individual health insurance policies.

Insurance Code §1271.307 authorizes the commissioner to adopt necessary rules related to the renewal of managed care individual health insurance policies.

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 21.051 implements Insurance Code §35.004(l).

TEXT.

§21.051. Notices of Termination.

"Termination" includes nonrenewal, a refusal to renew, or discontinuation by a regulated entity for the purposes of Insurance Code §35.004, concerning Minimum Standards for Regulated Entities Electronically Conducting Business with Consumers.

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 in Austin, Texas, on May 13, 2024.

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Jessica Barta

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Jessica Barta, General Counsel
Texas Department of Insurance