

**SUBCHAPTER H. CANCELLATION, DENIAL, AND NONRENEWAL OF CERTAIN
PROPERTY AND CASUALTY INSURANCE COVERAGE
28 TAC §§5.7001, 5.7002, AND 5.7009**

1. INTRODUCTION. The Texas Department of insurance adopts amendments to 28 Texas Administrative Code §§5.7001, 5.7002, and 5.7009, concerning cancellation, denial, and nonrenewal of certain property and casualty insurance coverage. The amendments are adopted with changes to the proposed text as published in the July 20, 2012, issue of the *Texas Register* (37 TexReg 5402).

2. REASONED JUSTIFICATION. The amendments are necessary to clarify when an insurer may send a notice of cancellation to the insured for nonpayment of premium under Insurance Code Chapter 551, Subchapter C. The amendments also update §§5.7001, 5.7002, and 5.7009 for consistency with Insurance Code Chapter 551, Subchapter C. Additionally, the amendments update statutory references resulting from nonsubstantive revisions of the Insurance Code, amend existing text for clarification, correct grammar, and update internal references.

Amendments to §5.7001 conform the applicability provisions for consistency with Insurance Code §551.101 and §551.102. An amendment to §5.7001(a)(2) changes “homeowners or farm and ranch owners policies” to “homeowners or farm or ranch owners policies” for consistency with Insurance Code §551.102(2). Amendments to §5.7001(a)(3) add standard fire policies insuring the contents of an apartment as provided under Insurance Code §551.102(3)(B). Amendments to §5.7001(a)(4) delete outdated terms, move pertinent text, and reword language for consistency with

Insurance Code §§5.7001(a)(4)(A) - (D). Amendments to §5.7001(a)(4) add insurance policies covering property and casualty coverage, other than a fidelity, surety, or guaranty bond, to governmental units under the applicability listing as provided under Insurance Code §551.102(4). Amendments to §5.7001(a)(4) also add §5.7001(a)(4)(C)(ix) to include “a communication district” in the list of political subdivisions of this state subject to Insurance Code Chapter 551, Subchapter C, as provided under Insurance Code §551.102(4)(C)(ix). Amendments to §5.7001 add subsection (d) to clarify the meaning of “insurer” and “company” used throughout Subchapter H for the purpose of the listed policies under subsection (a). The amendments to §5.7001(a) also update statutory references resulting from nonsubstantive revisions of the Insurance Code, amend existing text for clarification, and correct grammar.

Amendments to §5.7002 conform the cancellation provisions for consistency with Insurance Code §551.104. The amendment to §5.7002(a) updates the statutory period in which an insurer may cancel a personal automobile policy for the reasons provided in Insurance Code §551.104(b)(1-3) and (d). Insurance Code §551.104(g) provides that an insurer may cancel a personal automobile insurance policy if it has been in effect for less than 60 days. Thus, an insurer may only cancel a personal automobile policy if it has been in effect for more than 59 days, for the reasons listed in Insurance Code §551.104(b)(1-3) and (d).

The amendment to §5.7002(a)(3) adds “or any other law governing the business of insurance in this state” for consistency with Insurance Code §551.104(b)(3). As an

additional reason that an insurer may cancel a policy after the specified number of days, the amendment to §5.7002(a) adds subsection (4) to provide “the insured submits a fraudulent claim” for consistency with Insurance Code §551.104(b)(2). Amendments to §5.7002(a) also amend existing text for clarification, correct grammar, and update internal references.

The amendment to §5.7002(b) updates the statutory periods in which an insurer may cancel a homeowners policy and other listed types of policies under Insurance Code §551.102 and 28 TAC §5.7001(a) for the reasons provided under subsection (c) of §5.7002. Section 5.7002(b) does not apply to a personal automobile policy. Insurance Code §551.104(g) provides that an insurer may cancel any insurance policy, other than a personal automobile or homeowners insurance policy, if the policy has been in effect for less than 90 days. Thus, other than a personal automobile policy or homeowners insurance policy, an insurer may only cancel a policy listed under Insurance Code §551.102 and 28 TAC §5.7001(a), if it has been in effect for more than 89 days, for the reasons listed under Insurance Code §551.104(b) and (c).

In addition, Insurance Code §551.104(g) provides that an insurer may cancel a homeowners insurance policy, if the policy has been in effect for less than 60 days, for the reasons provided under Insurance Code §551.104(g)(1) and (2). Thus, an insurer may only cancel a homeowners insurance policy, if it has been in effect for more than 59 days, for the reasons listed under Insurance Code §551.104(b) and (c).

An amendment to §5.7002(b) moves paragraphs (1) – (3) to new subsection (c) of §5.7002 to list the reasons that an insurer may cancel any of the policies under

§5.7002(b) for consistency with Insurance Code §551.104(b) and (c). An amendment to paragraph (2) of §5.7002(c) adds language for consistency with Insurance Code §551.104(c). The amendment to paragraph (3) of §5.7002(c) adds “or any other law governing the business of insurance in this state” for consistency with Insurance Code §551.104(b)(3). New §5.7002(c)(4) is added for consistency with Insurance Code §551.104(b)(2) by providing, as an additional reason that an insurer may cancel a policy after the specified number of days, “the insured submits a fraudulent claim.”

Additionally, the amendment to §5.7002 adds new subsection (d) to provide that “an insurer may not date or send the notice of cancellation for nonpayment of premium until after the premium due date” for consistency with Insurance Code §551.104(e). This amendment also clarifies when an insurer may give notice of a cancellation for nonpayment of a premium.

Insurance Code §551.104(e) provides that cancellation of a policy under subsection (b), (c), or (d) does not take effect until the 10th day after the date the insurer mails notice of the cancellation to the insured. This amendment clarifies that an insurer may not give notice of a cancellation for nonpayment of a premium if the premium payment from the insured is not yet due. Insurance Code §551.104(b)(1) permits an insurer to cancel a policy for nonpayment of the premium. If an insurer wishes to cancel a policy for nonpayment of a premium, it must separately mail the insured notice to inform the insured of the cancellation only after the insured has failed to timely pay the premium. The cancellation of a policy is not effective until the 10th day after the date the insurer mails the notice of the cancellation to the insured.

Amendments to §5.7002(b) also amend existing text for clarification, correct grammar, and update internal references.

Amendments to §5.7009 are necessary to update statutory references resulting from nonsubstantive revisions of the Insurance Code, amend existing text for clarification, correct grammar, and update internal references.

The department has made nonsubstantive changes to the proposed language in the text of the rule as adopted. These changes made to the proposed text do not materially alter issues raised in the proposal, introduce new subject matter, or add costs or requirements to persons other than those previously on notice.

Amendments to §5.7001(b) make nonsubstantive changes to the proposed language in the text of the rule as adopted. These changes delete unnecessary and repetitive use of the phrase “of this title” and internal references to the titles of sections identified in subsection (a).

Amendments to §5.7001(b)(1) make nonsubstantive changes to the proposed language in the text of the rule as adopted. These changes delete unnecessary and repetitive use of the phrase “of this title” and internal references to the titles of sections identified in subsection (b).

An amendment to §5.7001(b)(2) makes a nonsubstantive change to the proposed language in the text of the rule as adopted. This change deletes a repetitive internal reference to the title of a section identified in subsection (a).

Amendments to §5.7001(c) also make nonsubstantive changes to the proposed language in the text of the rule as adopted. Amendments to §5.7001(c) delete

unnecessary and repetitive use of the phrase “of this title” and internal references to the titles of sections identified in subsection (a). These changes replace “board” with “Texas Department of Insurance” to update internal references.

3. HOW THE SECTIONS WILL FUNCTION. Section 5.7001 establishes which insurers are subject to the subchapter. Section 5.7002 establishes the statutory period for cancellation, the reasons for cancellation, and the time period for when an insurer may give notice of a cancellation for nonpayment of a premium. Section 5.7009 addresses Insurance Code Chapter 4051, Subchapter H, concerning companies and their agents.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Section 5.7002(d)

Comment: A commenter states that most businesses, including insurers, are increasingly moving to the use of electronic communications with their customers for ease of doing business. The commenter references Insurance Code Chapter 35, enacted by House Bill 1951, 82nd Legislature, Regular Session (2011), and Commissioner’s Bulletin No. B-0002-02, which address electronic commerce. The commenter states that the rulemaking for §§5.7001, 5.7002, and 5.7009 provides an opportunity to begin implementing Chapter 35 by adding language that electronic notice is permissible. Specifically, the commenter recommends adding “in accordance with

Sec. 35.003, Tex. Ins. Code, the required notice may be provided in writing or electronically” to the amended language in §5.7002(d).

Agency Response: The department agrees with the comment; however, a change in the text is not necessary because §5.7002(d) does not limit the notice to mail or require delivery of a paper notice. The section only provides the notice must comply with the period specified in that section. Insurance Code §35.002(b) provides that to the extent of any conflict between another provision of the Insurance Code and a provision of Chapter 35, the provision of Chapter 35 controls. Thus, the insurer may mail the notice as provided in Insurance Code §551.104(e) or, if the insurer and its policyholder have agreed to transact business electronically, the insurer may send the notice electronically in compliance with Insurance Code, Chapter 35 and department rules implementing Chapter 35.

5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For with changes: Nationwide Insurance and Financial Service.

6. STATUTORY AUTHORITY. The amendments are adopted pursuant to Insurance Code §551.112 and §36.001. Section 551.112 provides that the commissioner may adopt rules relating to the cancellation and nonrenewal of insurance policies. Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

7. TEXT.**§5.7001. Applicability.**

(a) Sections 5.7002 - 5.7012 of this title (relating to Cancellations; Calculation of Time Period; Certain Acts Regarded as Cancellation; Special One-Year Rule Applicable Only to Personal Automobile Policies; Discontinuing the Writing of Certain Lines or Classes, Withdrawing from a Geographical Area, or Withdrawing from an Agency; Renewal of Policies; Records Required; Insurance Code Chapter 4051, Subchapter H; Endorsement Forms; Violations; and Reason for Declination, Cancellation, or Nonrenewal) apply to companies or insurers writing the following types of insurance policies which become effective on or after February 1, 1972, and to no other policies, except as otherwise provided in this section:

(1) personal automobile policies. Except for §5.7012 of this title, these sections do not apply to any automobile policy written through the Texas Automobile Insurance Plan;

(2) homeowners or farm or ranch owners policies;

(3) standard fire policies insuring:

(A) a one-family dwelling or a duplex; or

(B) the contents of a one-family dwelling, a duplex, or an

apartment; or

(4) insurance policies providing property and casualty coverage, other than a fidelity, surety, or guaranty bond to governmental units. A governmental unit

means the State of Texas and all of the several agencies of government which collectively constitute the government of the State of Texas, specifically including:

- (A) this state;
- (B) an agency of this state;
- (C) a political subdivision of this state, including:
 - (i) a municipality or county;
 - (ii) a school district or junior college district;
 - (iii) a levee improvement district, drainage district, or irrigation district;
 - (iv) a water improvement district, water control and improvement district, or water control and preservation district;
 - (v) a freshwater supply district;
 - (vi) a navigation district;
 - (vii) a conservation and reclamation district;
 - (viii) a soil conservation district;
 - (ix) a communication district;
 - (x) a river authority; and
 - (xi) councils and courts; or
- (D) any other governmental agency whose authority derives from the laws and constitution of this state.

(b) Sections 5.7004, 5.7008, 5.7009, 5.7010, 5.7011, 5.7013 of this title (relating to Notice Requirements for Cancellation and Nonrenewal for General Liability and

Certain Automobile Insurance Policies), and §5.7014 of this title (relating to Exceptions to Cancellation and Nonrenewal Notice Requirements for General Liability and Certain Automobile Insurance Policies) are applicable to companies or insurers writing the following types of insurance policies which become effective on or after April 7, 1986, and to no other policies, except as otherwise provided in this section.

(1) General liability policies including, but not limited to, excess liability policies, excess loss liability policies (umbrella), errors and omissions liability policies, and all miscellaneous liability policies. Section 5.7013 and §5.7014 of this title are not applicable to any general liability policy written through the Texas Medical Liability Insurance Underwriting Association pursuant to the Texas Insurance Code, Article 21.49-3.

(2) Automobile policies except personal automobile, automobile physical damage single interest, automobile mechanical breakdown, and mobilowners policies. Except for §5.7012 of this title, these sections are inapplicable to any automobile policy written through the Texas Automobile Insurance Plan.

(c) Section 5.7006 and §5.7012 of this title apply to all property and casualty policies regulated by the Texas Department of Insurance pursuant to the Texas Insurance Code, Chapter 5.

(d) For the purpose of subsection (a) of this section, “insurer” and “company” have the same meaning as assigned to “insurer” in Insurance Code §551.101.

§5.7002. Cancellations.

(a) An insurer may cancel a personal automobile policy if it has been in effect for more than 59 days for only the following reasons:

(1) the failure of the insured to discharge his or her obligation in the payment of premium for the policy or any installment thereof, whether payable directly to the company or its agent or indirectly under any premium finance plan or extension of credit;

(2) the suspension or revocation of the driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy. Provided, however, a company may not cancel if the policyholder consents to the attachment of an endorsement eliminating coverage when the driver whose license is suspended or revoked is operating the vehicle;

(3) the department determines that the continuation of the policy would violate or place the company in violation of the Insurance Code or any other law governing the business of insurance in this state; or

(4) the insured submits a fraudulent claim.

(b) An insurer may cancel a homeowners insurance policy if it has been in effect for more than 59 days for only the reasons provided under subsection (c) of this section. An insurer may cancel any of the following policies that have been in effect for more than 89 days for only the reasons provided under subsection (c) of this section:

(1) farm or ranch owners policies;

(2) standard fire policies insuring:

(A) a one-family dwelling or a duplex; or

(B) the contents of a one-family dwelling, a duplex, or an

apartment; or

(3) insurance policies providing property and casualty coverage, other than a fidelity, surety, or guaranty bond, to:

(A) this state;

(B) an agency of this state;

(C) a political subdivision of this state, including:

(i) a municipality or county;

(ii) a school district or junior college district;

(iii) a levee improvement district, drainage district, or irrigation district;

(iv) a water improvement district, water control and improvement district, or water control and preservation district;

(v) a freshwater supply district;

(vi) a navigation district;

(vii) a conservation and reclamation district;

(viii) a soil conservation district;

(ix) a communication district;

(x) a river authority; and

(xi) councils and courts; or

(D) any other governmental agency whose authority derives from the laws and constitution of this state.

(c) An insurer may cancel any of the policies under subsection (b) of this section for only the following reasons:

(1) the failure of the insured to discharge his or her obligation in the payment of premium for the policy or any installment thereof, whether payable directly to the company or its agent or indirectly under any premium finance plan or extension of credit;

(2) increase in hazard within the control of the insured which would produce an increase in the premium rate of the policy;

(3) the department determines that the continuation of the policy would violate or place the company in violation of the Insurance Code or any other law governing the business of insurance in this state; or

(4) the insured submits a fraudulent claim.

(d) An insurer may not date or send the notice of cancellation for nonpayment of premium until after the premium due date.

§5.7009. Insurance Code Chapter 4051, Subchapter H. Insurance Code Chapter 4051, Subchapter H, deals with the relations between companies and their agents. Insurance Code Chapter 4051, Subchapter H, also contains provisions relative to cancellations and renewals of policies written through agencies which are subsequently

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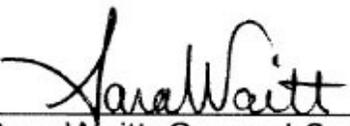
TITLE 28. INSURANCE
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terminated. All provisions of these sections shall be interpreted so as to give full effect to Insurance Code Chapter 4051, Subchapter H. Insurance Code Chapter 4051, Subchapter H, shall not be interpreted to impair any obligations which the company owes to the policyholder, even though the agent has no authority to act on behalf of the company.

CERTIFICATION. This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on September 18, 2012.


Sara Waitt, General Counsel
Texas Department of Insurance

The commissioner orders the adoption of the amendments to §§5.7001, 5.7002, and 5.7009.


ELEANOR KITZMAN
COMMISSIONER OF INSURANCE

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TITLE 28. INSURANCE

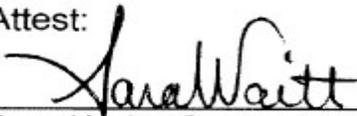
Part I. Texas Department of Insurance

Chapter 5. Property and Casualty Insurance.

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Attest:



Sara Waitt, General Counsel
Texas Department of Insurance

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