

SUBCHAPTER A. AUTOMOBILE INSURANCE
DIVISION 3. MISCELLANEOUS INTERPRETATIONS
28 TAC §5.205

1. INTRODUCTION. The commissioner of insurance adopts amendments to §5.205, concerning the Automobile Burglary and Theft Prevention Authority (ABTPA) pass-through fee. Section 5.205 is adopted with minor editorial changes to the proposed text as published in the June 7, 2013, issue of the *Texas Register* (38 TexReg 3491).

Section 5.205 increases the fee paid to the ABTPA from \$1.00 to \$2.00 per motor vehicle year, to conform with amended Article 4413(37). It updates the references to the ABTPA and the Texas Automobile Insurance Plan Association (TAIPA) because the current rule uses outdated names for these organizations. Section 5.205 also modifies the required notice language in the rule to reflect the new fee amount and its effective date, to make nonsubstantive editorial changes, and to clarify that insurers may recoup the fee in whole or in part.

The Texas Department of Insurance (TDI) has inserted two commas and deleted the word “and” in the first sentence of §5.205(b)(1) for editorial reasons. TDI has removed commas after “partially or completely” and “\$2.00” in §5.205(b)(2). Those commas were inadvertently inserted in the published proposal and have been removed in the adopted version to correct the error. These changes do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

2. REASONED JUSTIFICATION. House Bill 1541, 82nd Legislature, Regular Session (2011), amended Section 10, Article 4413(37), *Vernon's Annotated Revised Civil Statutes of the State of Texas (Revised Statutes)*, by increasing the ABTPA fee from \$1.00 to \$2.00 per motor vehicle year.

Under amended Article 4413(37), insurers writing motor vehicle insurance in Texas are required to pay to the ABTPA a fee equal to \$2.00 multiplied by the total number of motor vehicle years of insurance for insurance policies delivered, issued for delivery, or renewed by the insurer. The comptroller's office defines motor vehicle years as the total number of motor vehicles covered under an insurer's policies for the year or portion of the year at the time the policies are issued. Section 5.205 provides that the insurer may recoup this fee from the policyholder.

The amendments to §5.205 are necessary to implement the increased fee required by HB 1541, to update the references to the ABTPA and TAIPA, and to update the required notice language in the rule.

3. SUMMARY OF COMMENTS. TDI received no comments on the proposal.

4. STATUTORY AUTHORITY. The commissioner adopts the amendments under Section 10, Article 4413(37), *Revised Statutes*; and Insurance Code §2301.008 and §36.001. Section 10, Article 4413(37), *Revised Statutes*, as amended by HB 1541, requires that insurers pay to the ABTPA a fee equal to \$2.00 multiplied by the total number of motor vehicle years of insurance for insurance policies delivered, issued for

delivery, or renewed by the insurer. Section 2301.008 allows the commissioner of insurance to adopt standard insurance policy forms, printed endorsement forms, and related forms other than insurance policy forms and printed endorsement forms that an insurer may use instead of the insurer's own forms in writing insurance subject to Subchapter A, Chapter 2301. Section 36.001 provides that the commissioner of insurance 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.

5. TEXT.

§5.205. Automobile Burglary and Theft Prevention Authority Pass-Through Fee

(a) *Vernon's Annotated Revised Civil Statutes of the State of Texas*, Article 4413(37), §10, requires each insurer to pay a fee of \$2.00 per motor vehicle year to the Automobile Burglary and Theft Prevention Authority. Each insurer is authorized to recoup this fee from the policyholder.

(b) Any insurer recouping the fee from the policyholder as authorized by subsection (a) of this section must include 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, 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, the following must be printed on the declarations page of the policy, renewal certificate, or billing: Automobile Burglary and Theft Prevention Authority Fee \$_____ (See enclosed explanation).

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.

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TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 5. Property and Casualty Insurance

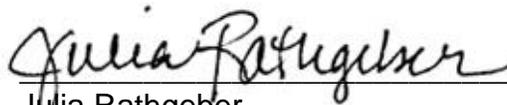
Adopted Section
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Sara Waitt, General Counsel
Texas Department of Insurance

The commissioner adopts the amendments to §5.205.



Julia Rathgeber
Commissioner of Insurance

Commissioner's Order No. 2694