

Chapter 5. Property and Casualty Insurance
Subchapter H. Cancellation, Denial, and Nonrenewal of Certain Property and Casualty Insurance
Coverage
28 TAC §5.7015

INTRODUCTION. The Texas Department of Insurance adopts new 28 TAC Chapter 5, Subchapter H, §5.7015 with changes to the proposed text published in the November 11, 2016, issue of the *Texas Register* (41 TexReg 8981). The new section clarifies the requirement to refund unearned premium on personal automobile or residential property policies within 15 business days of cancellation or termination of the policy, as required by Insurance Code §558.002(d). On January 10, 2017, TDI held a public hearing on the proposal. In response to comments, TDI revised the section to clarify that it does not change the actual date of cancellation or termination for calculating the amount of unearned premium or any other purpose.

REASONED JUSTIFICATION. SB 698, 83rd Legislature, Regular Session (2013) amended Insurance Code §558.002 to require insurers to refund unearned premium within 15 business days of cancellation or termination of personal automobile and residential property policies as defined by Insurance Code §2301.051. Personal automobile insurance policies often cancel or terminate automatically based on policy provisions or statute, without the insurer's knowledge. Sometimes the insurer does not receive notice of the cancellation or termination before 15 business days pass. Therefore, the new section defines "the effective date of cancellation or termination" to mean either the date the insurer receives notice of the cancellation or termination, or the date of cancellation or termination, whichever is later. Adding this definition clarifies the deadline and gives the insurer time to refund the premium in compliance with the statute.

The new section also allows insurers to refund unearned premium by applying it as a credit to other premium due on the same policy, unless the policyholder requests otherwise. This reduces transaction costs for insurers, and gives policyholders the convenience of fewer monetary transactions while retaining the option to receive the unearned premium directly if they choose.

The new section applies to any unearned premium, including any that results from cancellation or termination of an entire policy or an endorsement, and is effective May 31, 2017.

This order summarizes the comments TDI received during the comment period and at the public

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hearing. In response to comments, TDI adopted a change to the proposed text to improve clarity.

Based on comments, TDI added "This does not change the actual date of cancellation or termination for calculating the amount of unearned premium or any other purpose" to subsection (b). This new language should eliminate confusion by further specifying that the new rule is not intended to affect the calculation of the amount of unearned premium. This rulemaking is limited to implementing SB 698 and is only for the limited purpose of clarifying the date by which insurers must refund unearned premium under Insurance Code §558.002(d). The change does not introduce new subject matter, create additional costs, or affect persons other than those previously on notice from the proposal.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For, with changes: Office of Public Insurance Counsel; Wellington Risk Insurance Agency, Inc.; and Insurance Premium Finance Association of Texas.

Against: None

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment: A commenter asked TDI to amend the proposed section to include guidelines for determining the appropriate refund of unearned premium and suggested that insurers should refund unearned premium on a pro rata basis. The commenter argued there is an express statutory requirement under Insurance Code §558.003(2) to establish appropriate guidelines to calculate the amount of unearned premium.

Agency Response: TDI acknowledges Insurance Code §558.003(2), but declines to include calculation guidelines because it is outside the scope of this rulemaking. This rulemaking is limited to implementing SB 698, and is only for the limited purpose of clarifying the date by which insurers must refund unearned premium under Insurance Code §558.002(d). It is not intended to address calculating the amount of unearned premium. TDI is considering a future rule to address this issue.

Comment: A commenter argues that the definition of "effective date of cancellation" could harm consumers when they sell their home or die. Defining the "effective date of cancellation or termination" as the date the insurer receives notice, if it is after the date requested by the policyholder, allows

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insurers to calculate the refund from the date they receive the notice because that date is later than the requested cancellation or termination.

Agency Response: The rule does not establish a date of cancellation or termination for calculating the amount of unearned premium. The rule is limited to implementing SB 698 and is only for the limited purpose of clarifying the date by which insurers must refund unearned premium under Insurance Code §558.002(d). To clarify the rule, TDI has added "This does not change the actual date of cancellation or termination for calculating the amount of unearned premium or any other purpose" to subsection (b).

Comment: A commenter noted that insurers sometimes agree to backdate the cancellation of a policy at the request of insureds or their agents. This can occur for a variety of reasons, including when an insured provides proof of duplicative coverage. The commenter suggested adjusting the definition of "effective date of cancellation or termination" to allow insurers to make a refund within 15 business days after an insurer's conditions for backdating a cancellation are satisfied.

Agency Response: TDI declines to revise the rule as suggested because this rulemaking only addresses the date by which insurers must refund unearned premium under Insurance Code §558.002(d). It does not address the date insurers can or should use to calculate the amount of unearned premium. TDI added new language to the rule to reduce confusion over this issue. TDI may consider the commenter's suggestion in a future rulemaking.

Comment: A commenter expressed support for the rule and recommended that TDI should consider the same requirement for business insurance.

Agency Response: This rulemaking is limited to implementing SB 698. TDI may consider this requirement for other lines of insurance in the future.

STATUTORY AUTHORITY. The new section is adopted under Insurance Code §558.003 and §36.001. Section 558.003 requires the commissioner to adopt rules necessary to implement Chapter 558. Section 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 5.7015 implements Insurance Code §558.002(d), enacted by SB

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698, 83rd Legislature, Regular Session (2013).

TEXT.

§5.7015. Refund of Unearned Premium.

(a) Insurers must refund the appropriate portion of any unearned premium to the policyholder not later than the 15th business day after the effective date of cancellation or termination of a personal automobile or residential property insurance policy, as required by Insurance Code §558.002(d).

(b) For purposes of this section and Insurance Code §558.002(d), the "effective date of cancellation or termination" means the date the insurer receives notice of the cancellation or termination, or the date of the cancellation or termination, whichever is later. This does not change the actual date of cancellation or termination for calculating the amount of unearned premium or any other purpose.

(c) Insurers may refund unearned premium by applying it as a credit to other premium due on the same policy, unless the policyholder requests otherwise.

(d) This section applies to any unearned premium, including any that results from cancellation or termination of an entire policy or an endorsement.

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

Issued at Austin, Texas, on May 4, 2017.


Norma Garcia, General Counsel
Texas Department of Insurance

TDI adopts new 28 TAC Chapter 5, Subchapter H, §5.7015.


Kevin Brady
Deputy Commissioner for Agency Affairs
Texas Department of Insurance
Delegation Order 4506

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