

**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 proposes amendments to 28 TAC §§5.7001, 5.7002, and 5.7009, concerning cancellation, denial, and nonrenewal of certain property and casualty insurance coverage. These proposed amendments are necessary to clarify when an insurer may send a notice of cancellation to the insured for nonpayment of premium that satisfies the requirements of Insurance Code Chapter 551, Subchapter C. The proposed amendments are also necessary to update §§5.7001, 5.7002, and 5.7009 for consistency with Insurance Code Chapter 551, Subchapter C. Additionally, these amendments are proposed to update statutory references resulting from nonsubstantive revisions of the Insurance Code, amend existing text for clarification, correct grammar, and update internal references. As preparation for this proposal, the department made an informal posting on its website on March 30, 2012.

Amendments to §5.7001 conform the applicability provisions for consistency with Insurance Code §§551.101 and 551.102. The 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 that this proposal applies to standard fire policies insuring the contents of an apartment as provided under Insurance Code §551.102(3)(B). This proposal deletes §5.7001(a)(4) and proposes new §§5.7001(a)(4)(A) - (D) to delete outdated use of terms in §5.7001(a)(4) while moving pertinent text and rewording language for consistency with Insurance Code §551.102(4)(A) - (D).

New §5.7001(a)(4) clarifies that this proposal applies to insurance policies covering property and casualty coverage, other than a fidelity, surety, or guaranty bond, to governmental units, as provided under Insurance Code §551.102(4). New §5.7001(a)(4) also adds §5.7001(a)(4)(C)(ix) to include “a communication district” to 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). New §5.7001(d) states that “[f]or the purpose of subsection (a) of this section, ‘insurer’ and ‘company’ have the same meaning as assigned in Insurance Code §551.101.” The amendments to §5.7001 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 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) and to clarify 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 proposal 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. Some insureds receive a notice of cancellation in the same document as the billing statement (a “dual notice”). These dual notices of cancellation are sent before a reason for cancellation has occurred.

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 update statutory references resulting from nonsubstantive revisions of the Insurance Code, amend existing text for clarification, correct grammar, and update internal references.

2. FISCAL NOTE. Melissa Hield, associate commissioner of the Consumer Protection Section, has determined that, for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Ms. Hield also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of this proposal are rules to implement Insurance Code §551.104(e), to require insurers that wish to cancel an insurance policy for the nonpayment of a premium to send the notice of cancellation after the premium due date. As a result, this proposal reduces confusion as to when an insurer should process a notice of cancellation for nonpayment of a premium. This proposal further benefits the insured by requiring that the insured receive informed notice of cancellation for nonpayment of a premium from an insurer in a manner that allows sufficient time to obtain other insurance coverage.

Estimated Costs for Persons Required to Comply with the Proposal. To the extent that insurers currently send a dual notice to insureds consisting of both the billing statement and cancellation notice for nonpayment of a premium when due, the department anticipates that for each of the first five years the proposed amended sections will be in effect, there will be costs to insurers to comply with Insurance Code §551.104(e) and this proposal by mailing a separate cancellation notice to the insureds for nonpayment of a premium when due. The costs to insurers to comply with this proposal include printing and mailing costs for the separate notice, and any necessary computer programming changes that may be necessary to provide the separate notice.

The department estimates that the printing and paper cost for the notice on a separate page cost approximately 3 cents per page (2 cents for paper and 1 cent for ink). The department anticipates that an insurer will only need to use one page to provide the notice of cancellation for nonpayment of the premium. The total estimated mailing cost would be approximately 50 cents per notice, 45 cents for the postage, plus an additional 5 cents for each standard envelope. A lower bulk rate may also be available, and each insurer has information on its bulk mailing costs. The department anticipates that each insurer will have staff, such as office clerks, to perform any tasks that are related to printing and mailing the notice. Based on the mean hourly wage in Texas for general office clerks working for insurance carriers, the department estimates a cost of \$16.22 per hour. This estimate is based on wage information data provided to the Texas Workforce Commission (TWC) by the U.S. Department of Labor and is available in the latest Labor Market and Career Information Data (2010) on the TWC website. For each year of the first five years that the proposal will be in effect, the total

annual costs for each insurer to print and mail the notice will depend on the number of insureds to whom the notice must be sent and how many times the notice must be sent to an insured.

For an insurer that chooses to modify its computer programming system to permit automatic electronic generation and distribution of the notice, these insurers may initially incur personnel costs to program electronic systems for compliance with the proposed rule. This may include programming to automatically generate the notice of cancellation for nonpayment of premium. Total programming costs will vary depending on the number of hours required, the skill level of the programmer or programmers, the complexity of the insurer's electronic systems, and whether the insurer will contract with outside computer programmers. Each insurer has the information needed to estimate its individual costs for such programming. However, based on TWC wage information data, the mean hourly wage for a computer programmer working for an insurance carrier in Texas is \$38.92. The actual number, types, and cost of personnel or independent contractors will depend on the insurer's existing data systems and staffing. Once an electronic program generating and distributing the required notice is operational, the department expects continuing costs to be negligible. The department expects insurers that only automate the generation of the notice, but not the delivery, to incur the printing and mailing costs previously discussed.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Government Code §2006.002(c) provides that, if a proposed rule may have an economic impact on small businesses, state

agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis. Government Code §2006.001(2) defines a “small business” as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than \$6 million in annual gross receipts. Government Code §2006.001(1) defines a “micro business” similarly to “small business” but specifies that such a business may not have more than 20 employees. Government Code §2006.001(1) does not specify a maximum level of gross receipts for a “micro business.”

The costs for compliance with this proposal will not vary between the smallest and largest businesses because they will both incur similar costs for printing and mailing the separate notice, and any necessary computer programming changes that may be necessary to provide the separate notice. However, in accordance with Government Code §2006.002(c), the department has determined that the amendments may have an adverse economic impact on 3 to 5 percent of authorized insurers writing property and casualty insurance in this state, including a county mutual insurance company, a Lloyd’s plan, a reciprocal or interinsurance exchange, and a farm mutual insurance company, that qualify as small or micro businesses under Government §2006.001(1) and (2) and that must comply with these proposed rules if they cancel an insurance policy as provided by Insurance Code §551.104(e). The department bases its estimated number of small and micro businesses on its analysis of revenue reports in financial statements submitted to the department and its determination by the department of the insurers that

are independently owned and operated. The adverse economic impact may result from the costs to comply with this proposal appearing in the public benefit/cost note part of this proposal.

Government Code §2006.002(c)(2) requires a state agency, before adopting a rule that may have an adverse economic effect on small businesses, to prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Section 2006.002(c-1) of the Government Code requires that the regulatory analysis "consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses."

The department has considered that the purpose of the applicable statute, Insurance Code §551.104(e), is to inform the insured of a cancellation of a policy after the reason for cancellation has occurred in a manner that allows sufficient time to obtain other insurance coverage. Under this section, if an insurer wishes to cancel a policy for nonpayment of a premium, it must provide the insured with a separate mailing of the 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 notice of the cancellation is mailed to the insured.

The department considered regulatory alternatives for achieving the purpose of the statute and this proposal to minimize any adverse impact on the estimated 3 to 5 percent of authorized insurers writing property and casualty insurance in this state that qualify as small or micro businesses under Government Code §2006.001(1) and (2).

The department, in accordance with Government Code §2006.002(c-1), has considered exempting small business insurers from the separate notice requirement for nonpayment of a premium. The department has determined that this alternative is not viable because a separate mailing of the notice to inform the insured of the cancellation after the insured has failed to timely pay the premium is necessary to achieve the purpose of Insurance Code §551.104(e) and this proposal. Not requiring a small business to send a separate notice of cancellation if it wishes to cancel a policy for nonpayment of a premium would be inconsistent with Insurance Code §551.104(e) and not an acceptable alternative.

For these reasons, the department has determined, in accordance with §2006.002(c-1) of the Government Code, that there are no regulatory alternatives to the proposed amendment that will sufficiently protect the health, safety, environmental, and economic interests of Texas consumers and the welfare of the state.

5. TAKINGS IMPACT ASSESSMENT. The department has determined that this proposal does not affect any private real property interests, nor does it restrict or limit an owner's right to property that would otherwise exist in the absence of government action. Therefore, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on August 20, 2012, to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P. O. Box

149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Melissa Hield, Associate Commissioner, Consumer Protection Section, Mail Code 111-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If the department holds a hearing, it will consider written and oral comments presented at the hearing.

7. STATUTORY AUTHORITY. The department proposes amendments 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.

8. CROSS REFERENCE TO STATUTE. The proposal implements the following statutes:

<u>Rule</u>	<u>Statute</u>
§5.7001	Insurance Code §551.102 and Insurance Code Chapter 4051, Subchapter H
§5.7002	Insurance Code §551.104
§5.7009	Insurance Code Chapter 4051, Subchapter H

9. 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; [Texas] Insurance Code Chapter 4051, Subchapter H [~~Article 21.14-4~~]; Endorsement Forms; Violations; and Reason for Declination, Cancellation, or Nonrenewal) apply [~~are applicable~~] 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 [~~are inapplicable~~] to any automobile policy written through the Texas Automobile Insurance Plan;

(2) homeowners or farm or [~~and~~] ranch owners policies;

(3) standard fire policies insuring: [~~one-family dwellings or duplexes or contents of either;~~]

(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.

~~[(4) all property policies insuring 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, but not limited to,~~

~~other agencies bearing different designations, all departments, bureaus, boards, commissions, offices, agencies, councils and courts; all political subdivisions, all cities, counties, school districts, levee improvement districts, drainage districts, irrigation districts, water improvement districts, water control and improvement districts, water control and preservation districts, fresh water supply districts, navigation districts, conservation and reclamation districts, soil conservation districts, river authorities, and junior college districts; and all institutions, agencies and organs of government whose status and authority is derived either from the constitution of the State of Texas or from laws passed by the legislature pursuant to such constitution.]~~

(b) and (c) (No change.)

(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 ~~[After a personal automobile policy has been in effect for 60 days, the company may cancel]~~ for only the following reasons ~~[and none other]:~~

(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 ~~vehicle is being operated by the~~ driver whose license is suspended or revoked is operating the vehicle; ~~or~~

(3) ~~[a determination by]~~ the department determines ~~[State Board of Insurance]~~ 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 ~~[All other types of policies subject to these sections may be cancelled by the company after they have been in effect for 90 days, for the following reasons and none other]:~~

(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; [~~or~~]

(3) [~~a determination by~~] the department determines [~~State Board of Insurance~~] 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 [~~, Article 21.11-4~~]. [~~The State Board of Insurance directs attention to the~~] Insurance Code Chapter 4051, Subchapter H, [~~Article 21.11-4, which~~] deals with the relations between companies and their agents. Insurance Code Chapter 4051, Subchapter H, [~~This article~~] also contains provisions relative to cancellations and renewals of policies written through agencies which are subsequently terminated. All provisions of these sections shall be interpreted so as to give full effect to Insurance Code Chapter 4051, Subchapter H [~~Article 21.11-4~~]. Insurance Code Chapter 4051, Subchapter H, [~~Article 21.11-4~~] shall not be interpreted

to impair any obligations which the company owes to the policyholder, even though the agent has no authority [~~is no longer empowered~~] to act on behalf of the company.