

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

1. INTRODUCTION. The Texas Department of Insurance proposes amendments to §5.205, concerning the Automobile Burglary and Theft Prevention Authority (ABTPA) pass-through fee. 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. The proposed amendments to §5.205 are necessary to implement the increased fee required by HB 1541, to update the references to the ABTPA and the Texas Automobile Insurance Plan Association (TAIPA), and to update the required notice language set forth in the rule.

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.

Proposed §5.205 increases the fee paid to the ABTPA from \$1.00 to \$2.00 per motor vehicle year, in accord with amended Article 4413(37). Proposed §5.205 also updates the references to the ABTPA and the TAIPA because the current rule uses outdated names for these organizations. In 2007, HB 1887, 80th Legislature, Regular Session, amended Article 4413(37) by changing the Automobile Theft Prevention

Authority to the Automobile Burglary and Theft Prevention Authority. Additionally, although the current §5.205 refers to the Texas Automobile Insurance Plan (TAIP), the TAIP became the Texas Automobile Insurance Plan Association in 1995. The reference in Chapter 2151 of the Insurance Code is to the TAIPA, rather than the TAIP currently cited in the rule. Proposed §5.205 also modifies the required notice language set forth in the rule to reflect the new fee amount and its effective date, and to make nonsubstantive editorial changes. Finally, proposed §5.205 clarifies that insurers may recoup the fee in whole or in part.

2. FISCAL NOTE. Marilyn Hamilton, director of the Personal and Commercial Lines Office for the Property and Casualty Section, has determined that, for each year of the first five years the proposed section is in effect, there will be no measurable fiscal impact to state and local governments as a result of the enforcement or administration of this proposal. Ms. Hamilton does not anticipate any measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Hamilton expects that enforcing or administering the proposed amendments will have the significant public benefit of ensuring that TDI's rules conform to Section 10, Article 4413(37), *Revised Statutes*, as amended by HB 1541.

Ms. Hamilton does not anticipate any adverse economic effect on large or small insurers from the proposed amendments for the following reasons. First, Section 10,

Article 4413(37), *Revised Statutes*, already requires insurers to collect a fee and submit it to the ABTPA. Second, §5.205 already requires the notice to be delivered to policyholders, and that requirement is not affected by this proposal. Third, insurers are authorized to recoup the fee from the policyholders. Ms. Hamilton does not expect a disproportionate economic impact on small or micro businesses.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

FOR SMALL AND MICRO BUSINESSES. TDI has determined that the proposed amendments to §5.205 will not have an adverse economic effect on small or micro businesses. Insurers are authorized to recoup the increased fee from their policyholders, so they will not be required to bear the burden of the additional fee. As a result, and in accord with §2006.002(c) of the Government Code, TDI is not required to prepare a regulatory flexibility analysis.

5. 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.

6. REQUEST FOR PUBLIC COMMENT. If you wish to comment on the proposal, or to request a public hearing, you must do so in writing no later than 5 p.m. on July 8, 2013. A hearing request must be on a separate page from any written comments. TDI

requires two copies of your comments or hearing request. Send one copy to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. Send the other copy to the Texas Department of Insurance, Personal and Commercial Lines Office, Mail Code 104-PC, P.O. Box 149104, Austin, Texas 78714-9104.

7. STATUTORY AUTHORITY. TDI proposes 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.

8. CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal:

<u>Rule</u>	<u>Statute</u>
§5.205	Insurance Code §2301.008 and Vernon's Annotated Revised Civil Statute art. 4413(37), §10.

9. TEXT.

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

(a) Vernon's Annotated Revised Civil Statutes of the State of Texas [~~Texas Civil Statutes~~], Article 4413(37), §10, requires each insurer to pay a fee of \$2.00 [~~\$1.00~~] 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 paragraph (2) of this subsection.

(1) This notice must [~~shall~~] be in no less than 10-point type and must [~~shall~~] be attached to or stamped or printed on the declarations page of the policy and must [~~shall~~] become part of the policy. The notice must [~~shall~~] 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 [~~\$1.00~~] fee per motor vehicle year required to be paid to the Automobile Burglary and Theft Prevention Authority [~~Fund~~] under Vernon's Annotated Revised Civil Statutes of the State of Texas [~~Texas Civil Statutes~~], Article 4413(37), §10, which was [~~became~~] effective on June 6, 1991, and revised effective September 1, 2011.”

(2) This notice must ~~[shall]~~ be in no less than 10-point type and must ~~[shall]~~ be included as a part of the policy. The notice must ~~[shall]~~ 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 ~~[\$1.00]~~ fee per motor vehicle year required to be paid to the Automobile Burglary and Theft Prevention Authority ~~[Fund]~~ under *Vernon’s Annotated Revised Civil Statutes of the State of Texas* ~~[Texas Civil Statutes]~~, Article 4413(37), §10, which was ~~[became]~~ effective on June 6, 1991, and revised effective September 1, 2011.” If insurers provide this notice ~~[is provided]~~, the following must ~~[shall]~~ be printed on the declarations page of the policy, renewal certificate, or billing: Automobile Burglary and Theft Prevention Authority Fee \$_____ (See enclosed explanation~~[-]~~).

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

Issued in Austin, Texas, on May 24, 2013.



Sara Waitt, General Counsel
Texas Department of Insurance