

SUBCHAPTER W. CONSUMER PROTECTION REQUIREMENTS CONSUMER BILL OF RIGHTS

28 TAC §5.9970 and §5.9971

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to amend 28 TAC §5.9970 and add new §5.9971, relating to the Consumer Bills of Rights for Personal Automobile Insurance (Auto Bill of Rights) and Homeowners, Dwelling, and Renters Insurance (Homeowners Bill of Rights). Insurance Code §501.156 requires the Office of Public Insurance Counsel (OPIC) to submit to TDI for adoption a consumer bill of rights appropriate to each personal line of insurance that TDI regulates.

EXPLANATION. TDI received petitions from OPIC requesting adoption of the Auto Bill of Rights and Homeowners Bill of Rights. Personal lines insurers must distribute the bills of rights to each policyholder on issuance of a new policy or on renewal if the updated bills of rights were not previously sent. Amending the current consumer bill of rights section and adopting a new section ensures that insurers distribute current consumer rights information to policyholders. The proposal moves the Homeowners Bill of Rights from §5.9970 to new §5.9971. The Auto Bill of Rights remains in §5.9970.

Amending the existing rule and adopting a new section to separately address the Auto and Homeowners Bills of Rights will give more flexibility to customize each bill of rights.

In addition, the proposed rules and bills of rights include nonsubstantive edits for improved clarity and style. The changes include reorganizing and rewriting the rules and bills of rights in plain language consistent with agency style to make them easier for consumers to understand.

Amended §5.9970. Section 5.9970 is amended to limit this section to only the Auto Bill of Rights. The caption of §5.9970 is revised accordingly. Subsection (a) is revised

to remove text related to the Homeowners Bill of Rights, including the references to the Texas Windstorm Insurance Association and the Texas Fair Plan Association, neither of which write automobile insurance. Subsection (b) is updated to reflect that the rule applies to the 2021 version of the Auto Bill of Rights rather than the 2012 version.

The updated English and Spanish translation versions of the Auto Bill of Rights are proposed in subsection (b) as FIGURE 1: 28 TAC §5.9970(b) and FIGURE 2: 28 TAC §5.9970(b).

Current subsection (c) is divided into new subsections (c), (d), and (e) to make it easier to read and understand. The last sentence of existing subsection (c) is deleted because that sentence does not impose a requirement.

Current subsections (d) and (e), related to the Homeowners Bill of Rights, are deleted.

New §5.9971. New §5.9971 is proposed to specify requirements for the Homeowners Bill of Rights, moved from current §5.9970. The updated English and Spanish translation versions of the Homeowners Bill of Rights are proposed in subsection (b) as FIGURE 1: 28 TAC §5.9971(b) and FIGURE 2: 28 TAC §5.9971(b).

The proposed new English and Spanish translation versions of the Auto and Homeowners Bills of Rights contain changes from the previous versions due to legislative and regulatory actions that affected the rights of insurance consumers. These include:

- SB 112, 83rd Legislature, 2013, which required insurers to disclose deductibles on declarations pages;
- SB 698, 83rd Legislature, 2013, which added deadlines for refunds of unearned premium; and
- SB 417, 85th Legislature, 2017, which required insurers to give notice when they make material changes to insurance policies at renewal.

Each provision in the updated bills of rights is intended to inform consumers about their rights related to their insurance policies.

OPIC filed its original petition to adopt the Homeowners Bill of Rights on August 31, 2018. TDI posted the informal draft of the rule text and bill of rights on its website on May 15, 2019, to solicit comments from the public. TDI received eight comments. In response to these comments, and to make additional changes, OPIC submitted a series of amended petitions. The current petition, filed on October 8, 2020, is available on TDI's website.

OPIC submitted its original petition to adopt the Auto Bill of Rights on August 22, 2019. TDI posted the informal draft of the rule text and bill of rights on its website on March 30, 2020, to solicit comments from the public. TDI received two comments. In response, OPIC filed an amended petition on June 8, 2020. This current petition is available on TDI's website.

TDI and OPIC considered all comments made during the informal processes for both the Auto Bill of Rights and Homeowners Bill of Rights when drafting this proposal.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Marianne Baker, director, Property and Casualty Lines Office, has determined that for each year of the first five years the proposed amendment and new section are in effect, there will be no measurable fiscal impact on state and local governments due to enforcement or administration of this proposal.

Ms. Baker does not anticipate any measurable effect on local employment or the local economy due to enforcement or administration of this proposal, because the proposal simply updates documents insurers are already required to provide.

PUBLIC BENEFIT AND COST NOTE. For each of the first five years the proposed amendment and new section are in effect, Ms. Baker expects public benefits attributable to their enforcement and administration. The expected benefits include consumers receiving an accurate and understandable summary of their rights related to their auto and residential property insurance policies and facilitating public awareness of insurance consumer rights.

Ms. Baker expects that the proposed amendment and new section will impose an economic cost on persons required to comply. The cost will vary based on the lines of insurance and number of policyholders for each insurer.

According to data reported to TDI, there were almost 23,000,000 residential property and personal auto policies in force in Texas at the end of 2019. Insurance Code §501.156 and TDI rules require insurers to deliver the Homeowners Bill of Rights and Auto Bill of Rights to policyholders at the time the policy is issued or renewed. Because the proposed amendment and new section update existing documents already required to be provided with insurance policies, the amendment and new section do not impose additional duties regarding new policies. Insurers must provide policyholders with copies of the updated bills of rights at the first renewal after the updated bills of rights are effective.

Printing and paper costs. If the insurer and policyholder both consent to electronic delivery under Insurance Code Chapter 35, the insurer may send the updated bills of rights electronically, avoiding paper and printing costs. If an insurer prints paper copies of the bills of rights, TDI expects the cost to be between \$0.06 and \$0.08 per page for printing and paper. Both bills of rights are seven pages long.

An insurer's cost of complying with this requirement will depend on the number of renewals that the insurer provides and on the number of paper bills of rights the insurer sends. TDI expects that each insurer will have the information necessary to determine its

individual cost, including the number of pages to be printed, in-house printing costs, and commercial printing costs.

TDI does not anticipate additional costs for mailing or electronic distribution, because the new bills of rights will be sent out in new and renewal packets that the insurer already sends.

Labor costs. TDI estimates that insurers may face administrative costs associated with updating the bills of rights in their systems.

While it is not feasible to determine the actual cost of any employees needed to comply with the requirement, TDI estimates that amending the bills of rights may require the following resources:

- between four and 20 hours of compliance officer staff time to update internal procedures so the revised bills of rights are distributed; and
- between four and 80 hours of computer programming staff time to prepare and test systems to begin distributing the revised bills of rights.

Staff costs may vary depending on the skill level required, the number of staff required, and the geographic location where work is done. The 2019 median hourly wage for these positions in Texas is:

- compliance officer, \$35.65; and
- computer programmer, \$40.86;

as reported by the Texas Wages and Employment Projections database, which is developed and maintained by the Texas Workforce Commission and located at www.texaswages.com/WDAWages.

Information on median wages in other states may be obtained directly from the federal Bureau of Labor Statistics website at www.bls.gov/oes/current/oes_nat.htm.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that this proposal may have an adverse economic effect on small or micro businesses. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to these small and micro businesses. The total cost to an insurer in providing the updated Homeowners Bill of Rights and Auto Bill of Rights to its policyholders is not wholly dependent on the size of the insurer. Instead, the cost depends on the insurer's number of current and future policyholders. TDI does not anticipate an impact on any rural communities because the requirement to distribute the bills of rights applies to insurers, not to rural communities.

In accordance with Government Code §2006.002(c-1), TDI considered the following alternatives to minimize any adverse impact on small or micro businesses while still accomplishing the proposal's objectives:

(1) TDI considered not proposing the new rules, but Insurance Code §501.156 requires OPIC to submit to TDI for adoption a consumer bill of rights appropriate to each personal line of insurance TDI regulates. The statute requires these bills of rights to be distributed upon issuance of a policy by insurers to all applicable policyholders. Updating the Auto Bill of Rights and Homeowners Bill of Rights is necessary to reflect legislative and regulatory actions that affect the rights of insurance policyholders despite any possible impact on small or micro businesses. To ensure compliance with the statutory requirements, TDI rejected this option.

(2) TDI also considered imposing different rules for small or micro businesses, but ultimately rejected this option for the same reason previously stated. The proposed amendment and new section are necessary to comply with statutes and rules that require all insurers issue the applicable bill of rights to policyholders on issuance of a new or renewal policy. These statutory requirements apply to all residential property and personal

auto insurers, regardless of size, and cannot be waived or modified for small or micro businesses. Therefore, TDI rejected this option.

(3) Finally, TDI considered exempting small or micro businesses from the rule requirement, but ultimately rejected this option for the same reasons previously stated. The purpose of the consumer bills of rights is to notify each policyholder of their rights applicable to those personal lines of insurance. Insurance Code §501.156 requires OPIC to submit to TDI for adoption a consumer bill of rights appropriate to each personal line of insurance that TDI regulates. These statutory requirements apply to all residential and auto insurers, regardless of size, and cannot be waived or modified for small or micro businesses. Therefore, TDI rejected this option.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does impose a possible cost on regulated persons. However, no additional rule amendments are required under Government Code §2001.0045 because publishing the bills of rights is necessary to implement Insurance Code §501.156. Section 501.156 requires OPIC to submit for adoption a consumer bill of rights appropriate to each personal line of insurance TDI regulates.

The bills of rights were last updated in 2012. More recent legislation requires updating the bills of rights:

- SB 112, 83rd Legislature, 2013, requires insurers to disclose deductibles on declarations pages;

- SB 698, 83rd Legislature, 2013, adds deadlines for refunds of unearned premium;

and

- SB 417, 85th Legislature, 2017, requires insurers to give notice when they make material changes to insurance policies at renewal.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years it is in effect, the proposed rule amendment and new section:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

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 or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. You may review copies of the most recent petitions and associated documents at www.tdi.texas.gov/rules/2021. If you would like to review the materials in person at the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701, please email ChiefClerk@tdi.texas.gov to arrange a time.

Submit any written comments on the proposal no later than 5:00 p.m. Central time, on February 22, 2021. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, Mail Code 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, Mail Code 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

STATUTORY AUTHORITY. TDI proposes amending §5.9970 and adding new §5.9971 under Insurance Code §§501.156, 2301.055, and 36.001.

Section 501.156 requires OPIC to submit to TDI for adoption a consumer bill of rights appropriate to each personal line of insurance TDI regulates.

Section 2301.055 grants the Commissioner the authority to adopt reasonable and necessary rules to implement regulation of insurance policy forms and endorsements for personal automobile insurance and residential property insurance.

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. Sections 5.9970 and 5.9971 implement Insurance Code §§501.156, 2301.055, and 36.001.

TEXT.

**SUBCHAPTER W. CONSUMER PROTECTION REQUIREMENTS CONSUMER BILL OF
RIGHTS**

28 TAC §5.9970 and §5.9971

§5.9970. Personal Automobile Insurance Consumer Bill of Rights. [Responsibility and Obligation of Insurers To Provide Copies of the Consumer Bills of Rights to Each Insured for Personal Automobile Insurance and for Homeowners, Dwelling and Renters Insurance.]

(a) For purposes of this section, "insurer" [~~insurer(s)~~] means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write personal automobile insurance [~~or residential property insurance~~] in this state. The term includes an affiliate, as described by Insurance Code §823.003(a) [~~of the Insurance Code~~], if that affiliate is authorized to write and is writing personal automobile insurance [~~or residential property insurance~~] in this state. [~~The term does not include the Texas Windstorm Insurance Association or the Texas Fair Plan Association.~~]

(b) The Texas Department of Insurance adopts the 2021 version of the Consumer Bill of Rights – Personal Automobile Insurance (Auto Bill of Rights) [~~(BRPA Revised 2012)~~], and the Spanish language translation, as developed and submitted by the Office of Public Insurance Counsel:

FIGURE 1: 28 TAC §5.9970(b) [~~FIGURE 1: 28 TAC §5.9970(b)~~]

FIGURE 2: 28 TAC §5.9970(b) [~~FIGURE 2: 28 TAC §5.9970(b)~~]

(c) All insurers writing personal automobile insurance policies must provide with each new policy of personal automobile insurance a copy of the 2021 version of the Auto Bill of Rights [~~BRPA – Revised 2012~~]. At the consumer's request, the insurer may provide an electronic copy of the Auto Bill of Rights [~~BRPA – Revised 2012~~] instead of a hard copy. The insurer must provide the Auto Bill of Rights [~~BRPA – Revised 2012~~] with each renewal notice for personal automobile insurance unless the insurer has previously provided the policyholder with the 2021 version of the Auto Bill of Rights [~~BRPA – Revised 2012~~]. [~~The BRPA – Revised 2012 must appear in no less than 10 point type and be on separate pages~~]

~~with no other text on those pages. The insurer must provide the Spanish language version of the BRPA — Revised 2012 to any consumer who requests it from the insurer. You may request a copy of the BRPA — Revised 2012 from the Texas Department of Insurance, Mail Code 104-1A, P.O. Box 149104, Austin, Texas 78714-9104 or from the Texas Department of Insurance website at www.tdi.texas.gov.]~~

(d) The Auto Bill of Rights must appear in no less than 10-point type and be on separate pages with no other text on those pages. ~~[The Texas Department of Insurance adopts the "Consumer Bill of Rights Homeowners, Dwelling and Renters Insurance" (BRHO — Revised 2012), and the Spanish language translation:]~~

~~[FIGURE 1: 28 TAC §5.9970(d)]~~

~~[FIGURE 2: 28 TAC §5.9970(d)]~~

(e) Insurers must provide the Spanish language version of the 2021 version of the Auto Bill of Rights to any consumer who requests it. ~~[All insurers writing homeowners, renters, or dwelling insurance must provide with each new policy of any such insurance a copy of the BRHO — Revised 2012. At the consumer's request, the insurer may provide an electronic copy of the BRHO — Revised 2012 instead of a hard copy. The insurer must provide the BRHO — Revised 2012 with each renewal notice for any such insurance unless the insurer has previously provided the insured with the BRHO — Revised 2012. The BRHO — Revised 2012 must appear in no less than 10-point type and be on separate pages with no other text on those pages. The insurer must provide the Spanish language version of the BRHO — Revised 2012 to any consumer who requests it from the insurer. You may request a copy of the BRHO — Revised 2012 from the Texas Department of Insurance, Mail Code 104-1A, P.O. Box 149104, Austin, Texas 78714-9104 or from the Texas Department of Insurance website at www.tdi.texas.gov.]~~

§5.9971. Homeowners, Dwelling, and Renters Insurance Consumer Bill of Rights.

(a) For purposes of this section, "insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write residential property insurance in this state. The term includes an affiliate, as described by Insurance Code §823.003(a), if that affiliate is authorized to write and is writing residential property insurance in this state. The term does not include the Texas Windstorm Insurance Association or the Texas Fair Plan Association.

(b) The Texas Department of Insurance adopts the 2021 version of the Consumer Bill of Rights – Homeowners, Dwelling, and Renters Insurance (Homeowners Bill of Rights), and the Spanish language translation, as developed and submitted by the Office of Public Insurance Counsel:

FIGURE 1: 28 TAC §5.9971(b)

FIGURE 2: 28 TAC §5.9971(b)


(c) All insurers writing homeowners, dwelling, or renters insurance must provide with each new policy of any such insurance a copy of the 2021 version of the Homeowners Bill of Rights. At the consumer's request, the insurer may provide an electronic copy of the Homeowners Bill of Rights instead of a hard copy. The insurer must provide the Homeowners Bill of Rights with each renewal notice for any such insurance unless the insurer has previously provided the policyholder with the 2021 version of the Homeowners Bill of Rights.

(d) The Homeowners Bill of Rights must appear in no less than 10-point type and be on separate pages with no other text on those pages.

(e) The insurer must provide the Spanish language version of the 2021 version of the Homeowners Bill of Rights - Revised 2021 to any consumer who requests it.

CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's authority to adopt.

Issued in Austin, Texas, on January 7, 2021.

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Allison Eberhart
Deputy General Counsel
Texas Department of Insurance