

(4) Provide clear communication and reporting systems through which forensic analysts may report to management non-conformances in the quality system and other adverse events, such as an unintended mistake or a breach of ethical, legal, scientific standards, or questionable conduct.

(5) Make timely and full disclosure to the Texas Forensic Science Commission of any non-conformance that may rise to the level of professional negligence or professional misconduct.

(6) Provide copies of all substantive communications with the laboratory's national accrediting body to the Commission.

(7) For any laboratory that performs forensic analysis on behalf of the State of Texas, develop and follow a written forensic disclosure compliance policy for the purpose of ensuring the laboratory's compliance with article 39.14 of the Texas Code of Criminal Procedure.

(8) Ensure the laboratory's forensic disclosure policy provides clear instructions for identifying and disclosing any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the laboratory. The policy should explicitly address how to inform potentially affected recipients of any non-conformances or breaches of law or ethical standards that may adversely affect either a current case or a previously issued report or testimony.

(9) Inform all forensic analysts working on behalf of the laboratory that they may report allegations of professional negligence or professional misconduct to the Texas Forensic Science Commission without fear of adverse employment consequences.

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

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Leigh Savage

Associate General Counsel

Texas Forensic Science Commission

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For further information, please call: (512) 936-0661



## **TITLE 43. TRANSPORTATION**

### **PART 3. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY**

#### **CHAPTER 57. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY**

##### **43 TAC §§57.18, 57.48 - 57.52**

The Automobile Burglary and Theft Prevention Authority (ABTPA) proposes amendments to §57.18, Grant Adjustments; §57.48, Motor Vehicle Years of Insurance Calculations; §57.49, Audit; §57.50, Report to Department of Insurance, and §57.51, Refund Determinations. The ABTPA also proposes new §57.52, Correction of Administrative Posting or Data Entry Errors.

EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTION

Amendments to §57.18 are proposed to add language to further clarify the types of grant adjustments which require grantees to secure the prior written approval of the ABTPA Director.

Amendments to §57.48(a)(1), (a)(2) and (a)(3) are proposed to add language to clarify that there are two semi-annual reporting periods in which the \$2 fee is payable; to add a definition for "motor vehicle insurance" and to be consistent with statutory definitions; and to clarify that each insurer is responsible for paying the fee when more than one insurer provides motor vehicle insurance during the two semi-annual reporting periods.

Amendments to §57.48(a)(4) are proposed to remove the exceptions to the payment of the \$2 insurance policy fee effective January 1, 2019.

Amendments to §57.49 are proposed to clarify that all insurers that are subject to the payment of the \$2 fee shall make available to auditors or ABTPA staff their books and records. Proposed amendments also add new §57.49(d) specifying that charges for any audit shall be deducted from the refund due if the claim for the refund is determined to be inaccurate by the ABTPA Board.

Proposed amendments to §57.50 add language clarifying that the insurer is one that is licensed in Texas to sell motor vehicle insurance, and that the ABTPA shall file a report with the Department of Insurance that provides the names of insurers that failed to pay the fee.

Amendments to §57.51 add language to clarify that insurers seeking a determination of the sufficiency or a refund of a semi-annual payment shall submit an amended report and a written claim for a refund for each reporting period not later than four years after the date the semi-annual payment was made. Subsection (b) clarifies that where an insurer fails to provide the requested information or provides an incomplete response to the ABTPA regarding a claim for a refund, the refund shall be denied in whole or in part. Amendments to subsection (e) are proposed to require the ABTPA to provide an amended report to the Comptroller of Public Accounts regarding refunds for each semi-annual reporting period considered by the ABTPA board.

The ABTPA also proposes new §57.52, Correction of Administrative Posting or Data Entry Errors. The Comptroller of Public Accounts is the fiscal officer for the state. If in the normal processing of tax payments and fee assessments the Comptroller detects, becomes aware of, or is notified of an error in the account number or misapplied funds that impact the ABTPA Fund account, the Comptroller is to administratively correct the error without board approval. Additionally, the ABTPA shall be notified of the corrections or changes when the Comptroller provides its reports and collection summaries each year.

Finally, proposed amendments correct the cite to the Texas Revised Civil Statutes, Article 4413(37) throughout.

#### **FISCAL NOTE**

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments and new section as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments and new section.

Bryan Wilson, Director of ABTPA, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and new section.

PUBLIC BENEFIT AND COST

Mr. Wilson has also determined that for each year of the first five years the amendments and new section are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be requiring greater accountability by insurers who are required under the statute to pay the fee; by clarifying the requirements for insurers to obtain a refund; and clarifying and streamlining the duties of the ABTPA in considering refund claims by insurers, and in filing required reports. There are no anticipated economic costs for persons required to comply with the proposed amendments and new section. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

#### TAKINGS IMPACT ASSESSMENT

The ABTPA has determined that this proposal affects no private real property interests 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, and so does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

#### GOVERNMENT GROWTH IMPACT STATEMENT

The ABTPA has determined that during the first five years the proposed amendments and new section are in effect, no government program would be created or eliminated. Implementation of the proposed amendments and new section would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the ABTPA or an increase or decrease of fees paid to the ABTPA. Additionally, the proposed amendments and new section do not create a new regulation, or expand, limit, or repeal an existing regulation. The proposed amendments and new section do not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments and new section may be submitted to David Richards, General Counsel, Automobile Burglary and Theft Prevention Authority, 4000 Jackson Avenue, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on January 15, 2018.

#### STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Revised Civil Statutes, Article 4413(37), §6(a), which provides the Board of the Automobile Burglary and Theft Prevention Authority with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the ABTPA.

#### CROSS REFERENCE TO STATUTE

Texas Revised Civil Statutes, Article 4413(37).

#### §57.18. Grant Adjustments.

(a) The grantee must secure prior written approval from the ABTPA director for any of the following:

- (1) changes in the need, objectives, approach, or geographical location of the grant;
- (2) changes in the number of positions or job descriptions of personnel specified in the grant agreement;

(3) [(2)] transfers of funds among direct cost categories exceeding 5.0% of the total grant budget;

[(3) changes in overtime, confidential funds, the number of positions or job descriptions of personnel specified in the grant agreement;]

(4) changes in equipment or other controlled assets amounts, types, or methods of acquisition;

(5) use of confidential [out-of-state travel] funds not specified in the grant agreement; [or]

(6) use of program income for reasonable and necessary expenses of over \$1000 or more;

(7) changes in overtime or out-of-state travel of \$1000 or more; or

(8) [(6)] other changes for which the grant agreement or uniform grant and contract management standards require prior approval.

(b) The grantee must provide updates in the on-line system or written notification to the ABTPA director within five days from the date of any change in the program director, financial officer, or authorized official.

#### §57.48. Motor Vehicle Years of Insurance Calculations.

(a) Each insurer, in calculating the fees established by Texas Revised Civil Statutes, Article 4413(37), §10, shall comply with the following guidelines:

(1) The single statutory fee of \$2 is payable on each motor vehicle for which the insurer provides [insurance] coverage during the two semi-annual reporting periods [calendar year] regardless of the number of policy renewals; and

(2) When more than one insurer provides motor vehicle insurance [coverage for a motor vehicle] during the two semi-annual reporting periods [calendar year], each insurer shall pay the statutory fee for that vehicle.

(3) "Motor vehicle insurance" [as referred to in Texas Civil Statutes, Article 4413(37), §1(5),] means motor vehicle insurance as defined by the Insurance Code, Article 5.01(e). This definition shall be used when calculating the fees under this section.

(4) All motor vehicle or automobile insurance policies as defined by Insurance Code, Article 5.01(e), covering a motor vehicle shall be assessed the \$2 fee [except mechanical breakdown policies, garage liability policies, nonresident policies and policies providing only non-ownership or hired auto coverages].

(b) The Texas Automobile Burglary and Theft Prevention Authority Assessment Report form and Instructions for the Computation of the Automobile Burglary and Theft Prevention Authority Assessment of the Comptroller of Public Accounts are adopted by reference. The form and instructions are available from the Comptroller of Public Accounts, Tax Administration, [P.O. Box 149356,] Austin, Texas [78714-9356]. Each insurer shall use this form and follow these instructions when reporting assessment information to the Comptroller.

#### §57.49. Audit.

(a) The ABTPA may employ or retain the services of auditors for the purpose of assisting the ABTPA to determine an insurer's compliance with the requirements of Texas Revised Civil Statutes, Article 4413(37), §10.

(b) All insurers subject to Texas Revised Civil Statutes, Article 4413(37), §10, shall make their books and records reflecting motor ve-

hicle years of insurance available to the auditors or ABTPA staff upon request during normal business hours.

(c) The ABTPA may assess charges for the audit to insurance companies in cases where the companies' assertion of Refund Due is ~~[was]~~ determined to be inaccurate ~~[unfounded]~~.

(d) The charges for the audit shall be deducted from the refund due if the claim for the refund is determined to be inaccurate by the ABTPA Board.

*§57.50. Report to Department of Insurance.*

If the ABTPA determines that an insurer failed to pay or ~~[intentionally]~~ underpaid the fee required by Texas Revised Civil Statutes, Article 4413(37), §10, the ABTPA shall notify the Department of Insurance of the failure to pay ~~[with the request that the department revoke the insurer's certificate of authority]~~.

*§57.51. Refund Determinations.*

(a) An insurer that seeks a determination of the sufficiency or a refund of a semi-annual payment must submit ~~[file]~~ an amended report ~~[for each period]~~ and ~~[submit]~~ a written claim for a refund for each reporting period to the ABTPA director or the ABTPA board for a determination or a refund not later than four years after the date the semi-annual payment was made to the state comptroller.

(b) The director or the ABTPA board designee shall review the claim and obtain from the insurer any additional information~~[- if any;]~~ that may be necessary or helpful to assist in the ABTPA determination. If an insurer fails ~~[refuses]~~ to provide the requested information or provides an incomplete response, the refund shall be denied in whole or in part.

(c) The director or the ABTPA board designee is authorized to employ or retain the services of a third party, such as the state comptroller, to assist in the refund determination. The director or the designee shall prepare a written report to the ABTPA board based on the director's or the designee's review and shall contain findings, conclusions, and a recommendation.

(d) The ABTPA shall base its determination on the documentary evidence considered by the director and ~~[or]~~ the board designee. The ABTPA decision shall be based on a majority vote of the board. The ABTPA decision is final and is not subject to judicial review.

(e) Upon determining that an insurer is entitled to a refund, the ABTPA shall notify the comptroller and request the comptroller to draw warrants for the purpose of refunding overpayments. The ABTPA shall provide an amended report to the Comptroller of Public Accounts regarding refunds for each semi-annual reporting period considered by the ABTPA board.

*§57.52. Correction of Administrative Posting or Data Entry Errors.*

(a) When the Comptroller, while in the normal processing of reports and payments detects, becomes aware of, or is notified of an error involving a taxpayer number or misapplied funds which are not refunds pursuant to Texas Revised Civil Statutes Article 4413(37) §6A, the Comptroller shall administratively correct such error.

(b) The ABTPA shall be notified of the corrections or changes when the Comptroller provides its reports and collection summaries each year.

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

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David Richards

General Counsel

Automobile Burglary and Theft Prevention Authority

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For further information, please call: (512) 465-5665

