



Watch Your Car
TEXAS AUTOMOBILE THEFT PREVENTION AUTHORITY

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Opinion Committee
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The Honorable John Cornyn
Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

RE: Whether Single Interest Automobile Physical Damage Insurance policies are subject to the ATPA statutory fee

Dear General Cornyn:

The Automobile Theft Prevention Authority (ATPA) is established by Article 4413(37). Section 10(b) of the Act assesses a fee on an "Insurer," or insurance company, of "\$1 multiplied by the total number of motor vehicle years of insurance for insurance policies delivered, issued for delivery, or renewed by the company for the preceding calendar year." See Attachment A, Art. 4413(37) §10. The ATPA has received an inquiry from the American National Insurance Company (ANIC), asking whether Single Interest Automobile Physical Damage Insurance (Single Interest) policies are subject to the fee. See Attachment B, Letter from Jim Pangburn, Vice President, ANIC. On behalf of the ATPA, I am requesting your opinion on this issue.

The American National Insurance Company suggests that due to the nature of a Single Interest policy, it might be considered a non-ownership type coverage and exempt under the current ATPA rule, 43 TAC 57.48(a)(4). See Attachment C, Rule 57.48. However, the Texas Department of Insurance (TDI) states that Single Interest policies are not considered non-ownership policies. See Attachment D, Letter from Grover Corum, Manager, Automobile Division, TDI. Therefore, under the ATPA's current rule, this type of insurance would not be exempt from the fee. Because of the TDI's role as the primary enforcer of the Insurance Code, the ATPA has deferred to it on questions of motor vehicle insurance. The ATPA fee is administered in conjunction with the TDI and the Comptroller's Office.

The ATPA amended Rule 57.48, as published in the *Texas Register*, November 6, 1998, 23 TexReg 11411, to clarify the types of vehicles and the types of insurance that are subject to the statutory fee. See Attachments E and F, Proposed Amendments, 23 TexReg 8414, and Adopted Rule, 23 TexReg 11411. Section 10 of the Act defines the terms "Insurer" and "Motor vehicle years of insurance." It does not further define the types of vehicles or the type of insurance policies that the legislature intended to be covered. §§10(a)(1) and (2). The definition of "Insurer," means any insurance company that writes any form of "motor vehicle insurance." The ATPA has interpreted "motor vehicle insurance" and "motor vehicle" as used in the Act to refer to the Insurance Code's definition of motor vehicle insurance.

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Some members of the ATPA feel that the Single Interest policies should not be assessed the fee because of the nature of the policy; they desire to amend Rule 57.48(a)(4). I ask your opinion as to the authority of the agency to adopt such an amendment.

The TDI classifies Single Interest insurance as motor vehicle insurance under the Insurance Code's definition. However, the question has been raised as to whether or not the legislature intended a motor vehicle covered under a policy to be assessed should be counted more than once, which usually occurs in the situation of a Single Interest policy. It is recognized that under the ATPA's current rule and interpretation, the fact that a particular vehicle is covered by more than one policy in a year is not determinative of the fee an insurer must pay. For example, Joe Car Owner insures his SUV with Insurer A, in January. That policy is assessed the one dollar fee; in March, Joe Car Owner changes to Insurer B and cancels his policy with Insurer A. The policy he has with Insurer B is assessed one dollar. The ATPA fees on these two policies may or may not be passed on to Joe Car Owner. See Attachment G, TDI rule 28 TAC §5.205. Under the ATPA's interpretation of Section 10, an insurer's obligation to pay the fee accrues at the time a policy is "delivered, issued for delivery, or renewed." Accordingly, once the fee accrues, it is not refundable even if the insured cancels the policy. The fee is still due and owing by the insurance company. Insurers A and B would be liable for \$1 for the policy each wrote even though the policy covered the same vehicle. See Attachment H, Texas ATPA Assessment Report.

It has also been commented that Single Interest insurance is not the type of insurance the legislature intended to be assessed the fee, because it does not provide auto liability protection to an owner of a vehicle, only property damage protection to the lender. For these reasons, does the ATPA have authority to amend its rules to exempt Single Interest insurance even though it is considered to be motor vehicle insurance under the Insurance Code definition and by the TDI?

Thank you for your assistance. If further information is required, please contact the ATPA Director, Gus De La Rosa, at (512) 416-4600. You may also discuss this request with Brenda Loudermilk, Assistant Attorney General, 5-4292, who provides the ATPA with legal counsel.

Sincerely,



Patty J. Williams
Board Chair

AD:eea

Enclosures

cc: Members, ATPA
Gus De La Rosa, ATPA Director
Brenda Loudermilk, OAG
Jim Pangburn, ANIC