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Mandatory RTA Update: *The Ball is in*



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For nearly a decade, ABAT and others advocated for legislators to amend the Insurance Code to add a mandatory appraisal provision, and earlier this year, their hard work came to fruition when Senate Bill 458 was unanimously approved by both the House and Senate, becoming law on June 20 and going into effect on September 1. The law dictates that all personal auto and homeowners insurance policies issued, delivered or renewed on January 1, 2026 and after “must contain an appraisal provision,” which “is intended to provide a type of dispute resolution process solely to determine the amount of loss when that amount is in dispute between the policyholder and the insurer.”

SB 458 also indicated that the Insurance Commissioner “shall adopt rules necessary to implement this chapter,” and as such, the Texas Department of Insurance (TDI) was tasked with creating rules for Commissioner Brown’s approval by the end of the year, with three specific targets identified:

1. Rules mandating an appraisal for total loss and property damage,
2. The time period in which an appraisal must be completed, and
3. Qualifications and selection of appraisers and umpires.

In September, TDI published an informal working draft of their proposed rules (visit bit.ly/TDI-RTARules to view). When TDI solicited public commentary on those drafted rules, consumer advocates Robert McDorman (Auto Claim Specialists) and Ware Wendell (Texas Watch) were quick to weigh in on what was done well and which rules could use some refinement. McDorman views the rule making process as “critical and of the utmost importance. Errors in the rule making process could negate all the hard work we’ve invested in ensuring Texans have recourse for value disputes through mandatory Right to Appraisal.”

TDI first enforced the mandatory appraisal rule through Section 5.9802(a) - General Requirements by specifying that “every policy subject to this division must have an appraisal provision.” Furthermore, they indicated that the appraisal provision must allow “either party to unilaterally demand appraisal,” an inclusion that McDorman applauds.

"This is an essential element of these rules, and it must remain that either party is allowed to unilaterally demand appraisal for the appraisal process to work as intended," he commented.

In the next subsection of the General Requirements, TDI sought to establish minimum qualifications: "Appraisers and umpires must be: 1) competent to evaluate the type of property loss or damage in dispute; 2) independent from the parties; and 3) disinterested in the outcome of the appraisal."

McDorman believes these requirements "are a very important part of these rules," noting that "on the auto side, several large carriers regularly require their independent appraiser to send their loss statement to the insurer for review and to make changes to, prior to their appraiser discussing the appraisal loss statement with the insured's appraiser. The insurers are also instructing that their appraisers choose specific umpires. This process corrupts the independent appraisal process."

McDorman suggested TDI add language emphasizing that "appraisers and umpires must remain unbiased, independent, disinterested and not be instructed or coached by any outside interest during the appraisal process" to make this section more effective.

Section 5.9804 lays out the appraisal process for personal automobiles, including identifying the maximum timelines in which each step of an appraisal should be completed. This section begins by establishing that any "demand for appraisal under a personal automobile insurance policy must be made in writing not later than 120 days from the date the insurer gives the policyholder notice accepting coverage of the property loss or damage that is the subject of the appraisal."

Wendell suggested increasing the deadline for requesting an appraisal to 180 days to reflect "the reality of the amount of time that it may take for a carrier to inspect a vehicle, adjust the loss and assess coverage. The consumer has no control over this and should not be prejudiced or time-barred if the carrier takes more time to complete these phases. Extending this particular deadline by 60 days will preserve the consumer's right to mandatory appraisal in accordance with Section 1813.003 of the Texas Insurance Code."

Subsection 5(b) 1-3 specifies time triggers – all based on the date the written demand for appraisal is made – for when each party must hire their own appraisers (20 days), for how long those appraisers have to come to an agreement on the amount of loss or damage (75 days) and if an agreement is not reached, for the length of time before they select an umpire (105 days). The time triggers proposed by TDI do not differentiate between vehicles that can be repaired and those deemed a total loss.

Based on his considerable research, McDorman identified what he views as optimal time triggers for repair procedure disputes in his August "Ask the Expert" column (available at bit.ly/ATE-0825). Although TDI's proposed time triggers are less stringent than those suggestions, the only area with which McDorman expressed concern was 5.9804 (b)(5) which reads, "If an umpire is engaged, the appraisal award must be issued not later than 180 days after the umpire is selected or appointed. If an appraisal award is not issued by the deadline, the appraisers may select a new umpire."

He pointed out that extending the appraisal process by an additional 180 days for the umpire and appraisers to issue the appraisal award "allows the appraisal to last over one year. The

umpire's role does not require this amount of time," he explained. "The estimates have already been created, and the umpire should be able to complete whatever work they need to do within 30 to 60 days. We feel the 180 day timeline will unnecessarily delay the resolution of auto appraisals."

Wendell agreed that the time trigger should be reduced to 60 days. "Shortening this deadline will help to resolve the dispute faster so the consumer may have their repaired vehicle returned to them more quickly, allowing it to be utilized for employment and family-related duties. Sixty days should be a sufficient amount of time for the umpire to perform their work and issue their award."

McDorman and Wendell both offered suggestions related to Section 5.9805, which (as drafted) requires insurers to "provide written notice of the appraisal process, applicable deadlines and the right of either party to demand appraisal in the notice accepting coverage, which is described in Insurance Code §542.056, concerning Notice of Acceptance or Rejection of Claim."

Wendell felt it would be wise to alert the policyholder earlier in the process, suggesting the written notice be provided in "the notice acknowledging receipt of claim, which is described in Insurance Code Section 542.055, concerning Receipt of Notice of Claim."

"This change points to a well-defined moment in time that carriers, policyholders and their counsel are all familiar with, avoiding further delay in the process," Wendell explained the revision.

McDorman thought it would be beneficial to ensure the notice is conspicuous enough to draw the policyholder's attention by requiring stylistic changes. "We believe the notice required in this section should be required to be in a larger, different font that is italicized and bold."

One important shortcoming in the draft came to these diligent watchdogs' attention – "This informal draft does not include an **enforcement mechanism**," Wendell noted. "The Department should include administrative penalties for carriers that contravene the law by failing to include mandated appraisal provisions in their policies or violate deadlines. The Department may also look to Section 2210.574 (g) of the Insurance Code for a model when appraisal is corrupted or prejudiced."

McDorman agreed on the necessity of identifying how the rules will be enforced. "Some clear penalties for violations [of these rules] would be very helpful."

Next up? TDI will use the public commentary provided by all involved parties to finalize the rules for mandatory appraisal before those rules are officially published, open for comment and ultimately implemented by Commissioner Brown.

McDorman is eager to see the final version. "We are thankful for TDI's work on these rules. And I'm hopeful that they'll be able to use the feedback they received to revise and strengthen those rules to ensure they are as effective as possible. With the right data, I'm confident that they'll make the right decisions and that Commissioner Brown will implement them without a doubt."

Stay tuned to *Texas Automotive* for updates as they become available. **TXA**