

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION
DIVISION 8. RATES
28 TAC §5.4702

INTRODUCTION. The Texas Department of Insurance (TDI) proposes new 28 TAC §5.4702, concerning the Texas Windstorm Insurance Association's rate filings and reinsurance purchases. Section 5.4702 implements House Bill 769, 87th Legislature, 2021.

EXPLANATION. HB 769 (1) prohibits the Texas Windstorm Insurance Association (TWIA) board of directors from voting on a proposed rate increase if there is a vacancy on the board that has existed for at least 60 days at the time the vote is to be taken, (2) prohibits TWIA from buying reinsurance from any insurer or broker involved in executing catastrophe models that TWIA relies on in determining its probable maximum loss or in adopting rates, and (3) requires TDI to conform TWIA's plan of operation to these changes.

The proposed new section is described in the following paragraphs.

Section 5.4702. New §5.4702 consists of subsections (a) - (c).

Subsection (a) states that the TWIA board of directors must comply with Insurance Code §2210.3512 in all votes on proposed rate filings.

Subsection (b) states that TWIA must comply with Insurance Code §2210.453(f) in all purchases of reinsurance under §2210.453.

Subsection (c) states that §5.4702 is part of TWIA's plan of operation.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Mark Worman, deputy commissioner, Property and Casualty Division, has determined that during each year of the first five years the proposed new section is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or

administering the section, other than that imposed by the statute. Mr. Worman made this determination because the proposed section does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed section.

Mr. Worman does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed new section is in effect, Mr. Worman expects that the proposed section will have the public benefit of ensuring that TWIA's plan of operation conforms to Insurance Code §2210.3512 and §2210.453(f).

Mr. Worman expects that the proposed new section will not increase the cost of compliance with Insurance Code §2210.3512 and §2210.453(f) because it does not impose requirements beyond those in statute.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed new section will not have an adverse economic effect on small or micro businesses, or on rural communities because it does not impose requirements beyond those in statute. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this rule proposal does not impose a possible cost on regulated persons.

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

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

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on September 27, 2021. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by the

department no later than 5:00 p.m., central time, on September 27, 2021. If TDI holds a public hearing, TDI will consider written comments and those presented at the hearing.

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STATUTORY AUTHORITY. TDI proposes new §5.4702 under HB 769 and Insurance Code §§2210.008, 2210.151, and 36.001.

HB 769, Section 4, states that TDI must amend TWIA's plan of operation to conform with the bill not later than the 60th day after the bill's effective date.

Insurance Code §2210.008 provides that the Commissioner may adopt rules as reasonable and necessary to implement Chapter 2210.

Insurance Code §2210.151 provides that the Commissioner adopt TWIA's plan of operation by rule.

Insurance Code §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. Section 5.4702(a) implements Insurance Code §2210.3512. Section 5.4702(b) implements Insurance Code §2210.453(f). All of §5.4702 implements Section 4 of HB 769.

TEXT.

§5.4702. Requirement for Vote of Rate Filing and Prohibition on Purchasing Reinsurance from Certain Insurers or Brokers.

(a) The Texas Windstorm Insurance Association (TWIA) board of directors must comply with Insurance Code §2210.3512 in all votes on proposed rate filings.

(b) TWIA must comply with Insurance Code §2210.453(f) in all purchases of reinsurance under §2210.453.

(c) This section is part of TWIA's plan of operation.

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 August 11, 2021.

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James Person, General Counsel
Texas Department of Insurance