

SUBCHAPTER RR. Valuation Manual
28 TAC §3.9901

INTRODUCTION. The Texas Department of Insurance proposes to amend 28 TAC §3.9901, relating to the adoption of a valuation manual for reserving and related requirements. Section 3.9901 implements Senate Bill 1654, 84th Legislature, Regular Session (2015).

EXPLANATION. Amending §3.9901 is necessary to implement the provisions of SB 1654, which adopted Insurance Code §425.073. Section 425.073 requires the Commissioner to adopt a valuation manual that is substantially similar to the valuation manual adopted by the National Association of Insurance Commissioners (NAIC). The valuation manual adopted by the NAIC may be viewed at the following website: www.naic.org/documents/cmte_a_latf_related_val_2020_edition.pdf.

Under §425.073 the Commissioner must adopt the valuation manual, and any changes to it, by rule.

Under §425.073(c), when the NAIC adopts changes to the valuation manual, TDI must adopt substantially similar changes. This subsection also requires the Commissioner to determine that the NAIC's changes were approved by an affirmative vote representing at least three-fourths of the voting NAIC members, but not less than a majority of the total membership. In addition, the NAIC members voting in favor of amending the valuation manual must represent jurisdictions totaling greater than 75 percent of the direct written premiums as reported in the most recently available life insurance and accident and health annual statements, health annual statements, and fraternal annual statements.

TDI originally adopted the valuation manual in §3.9901 on December 29, 2016, in compliance with §425.073. On August 6, 2019, the NAIC voted to adopt changes to the valuation manual. Forty-nine jurisdictions, representing 94.92 percent of the relevant direct written premiums, voted in favor of adopting the amendments. The vote adopting changes to the NAIC valuation manual meets the requirements of §425.073(c).

Section 3.9901 adopts the valuation manual, as required by Insurance Code §425.073. Amending §3.9901 is necessary to adopt the updated valuation manual, as required by Insurance Code §425.073.

This proposal includes provisions related to NAIC rules, regulations, directives, or standards, and under Insurance Code §36.004 TDI must consider whether authority exists to enforce or adopt it. Additionally, under Insurance Code §36.007, an agreement that infringes on the authority of this state to regulate the business of insurance in this state has no effect unless the agreement is approved by the Texas legislature. TDI has determined that neither §36.004 nor §36.007 prohibit the proposed rule because §425.073 requires TDI to adopt a valuation manual that is substantially similar to the valuation manual approved by NAIC and §425.073(c) expressly requires TDI to adopt changes to the valuation manual that are substantially similar to changes adopted by the NAIC.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Jamie Walker, deputy commissioner of the Financial Regulation Division, has determined that during each year of the first five years the proposed amendment is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures,

and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Walker 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 amendment is in effect, Ms. Walker expects that administering the proposed amendment will have the public benefit of ensuring that TDI's rules conform to Insurance Code §425.073.

Ms. Walker expects that the proposed amendment will not increase the cost of compliance with §425.073 because it does not impose requirements beyond those in the statute. Section 425.073 requires that changes to the valuation manual must be adopted by rule and must be substantially similar to changes adopted by the NAIC. As a result, the cost associated with adopting the changes to the valuation manual does not result from the enforcement or administration of the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendment will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. This is because it does not impose any requirements beyond those required by 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 proposal does not impose a possible cost on regulated persons and no additional rule amendments are required under Government Code §2001.0045,

because the proposed adoption of the amended valuation manual is necessary to implement legislation. The proposed rule implements Insurance Code §425.073, as added by SB 1654, 84th Legislature, Regular Session (2015).

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendment 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 not 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 December 23,

2019. Send your comments to ChiefClerk@tdi.texas.gov; or by mail to the Office of the Chief Clerk, MC 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 by mail to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., Central time, on December 23, 2019. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

SUBCHAPTER RR.

28 TAC §3.9901.

STATUTORY AUTHORITY. TDI proposes §3.9901 under Insurance Code §425.073 and §36.001.

Insurance Code §425.073 requires the Commissioner to adopt changes to the valuation manual that are substantially similar to the changes to the valuation manual adopted by NAIC, and it provides that after a valuation manual has been adopted by the Commissioner by rule, any changes to the valuation manual must be adopted 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 3.9901 implements Insurance Code §425.073, enacted by SB 1654, 84th Legislature, Regular Session (2015).

TEXT.

§3.9901. Valuation Manual.

(a) The Commissioner adopts by reference the National Association of Insurance Commissioners (NAIC) Valuation Manual, including subsequent changes that were adopted by the NAIC through August 6, 2019 [~~September 10, 2018~~], as required by Insurance Code §425.073.

(b) The operative date of the NAIC Valuation Manual in Texas is January 1, 2017.

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 November 5, 2019.

/s/ James Person
James Person, General Counsel
Texas Department of Insurance