

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION
DIVISION 1. PLAN OF OPERATION
28 TAC §5.4021

INTRODUCTION. The Texas Department of Insurance proposes new 28 TAC §5.4021, relating to nonresident agent requirements under the Texas Windstorm Insurance Association (TWIA) plan of operation. The new section is necessary to implement House Bill 3018, 85th Legislature, Regular Session (2017).

EXPLANATION. HB 3018 added Insurance Code §2210.152(a)(2)(G), mandating that TWIA's plan of operation include "a requirement that a nonresident agent... may not offer or sell a Texas windstorm and hail insurance policy under [Chapter 2210] unless the nonresident agent's state of residence authorizes a resident agent licensed in [Texas] to act in the nonresident agent's state as an agent for that state's residual insurer of last resort for windstorm and hail insurance."

New §5.4021 amends the plan of operation to conform to the statute and requires that TWIA implement a process to prevent ineligible nonresident agents from offering or selling TWIA policies.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Marianne Baker, director, Property and Casualty Lines Office, has determined that for each year of the first five years the proposed new section is in effect, there will be no measurable fiscal impact to state and local governments as a result of enforcement or administration of this proposal. This determination was made because the proposed new 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 amendments.

Ms. Baker 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, Ms. Baker expects that administering the proposed section will have the public benefit of ensuring that TDI's rules conform to the Insurance Code and that Texas agents are treated fairly.

Ms. Baker expects that the proposed new section will not increase the cost of compliance with §2210.152 because it does not impose requirements beyond those in the statute. As a result, any cost associated with the rule is a result of the statutory change and not enforcement or administration of the proposed new section.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed new section will not have an adverse economic effect or a disproportionate economic impact on small or microbusinesses or on rural communities, because it only implements a statutorily required provision addressing the sale of Texas windstorm and hail insurance policies by Texas agents and nonresident agents. Therefore, in accordance with Government Code Section 2006.002(c), TDI has determined that a regulatory flexibility analysis is not required.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE SECTION 2001.0045. TDI has determined that this proposal does not impose a cost beyond that required to implement HB 3018. In addition, no additional rule amendments or repeals are required under Government Code Section 2001.0045 because proposed new §5.4021 is necessary to implement HB 3018.

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

- will not create or eliminate a government program;
- will not require creating new employee positions or eliminating 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 mandated by the Legislature at 28 TAC §5.4021;
- will not expand 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 the 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 received by the department no later than 5 p.m., Central time, on February 4, 2019. Send your comments to ChiefClerk@tdi.texas.gov, or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, TX 78714-9104. 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, Mail Code

113-2A, 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 February 4, 2019. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes new 28 TAC §5.4021 under Insurance Code §§36.001, 2210.008(b), and 2210.151.

Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement TDI powers and duties under the Insurance Code and other laws of the state.

Section 2210.008(b) authorizes the Commissioner to adopt rules as reasonable and necessary to implement Chapter 2210.

Section 2210.151 authorizes the Commissioner to adopt TWIA's plan of operation.

CROSS-REFERENCE TO STATUTE. Section 5.4021 implements Insurance Code §2210.152.

TEXT.

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§5.4021. Agent Requirements.

A nonresident agent may not offer or sell a TWIA policy if the agent's state of residence does not authorize Texas residents to be agents for that state's windstorm and hail insurer

of last resort. TWIA must implement a process to prevent unauthorized nonresident agents from offering or selling TWIA policies.

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

Issued at Austin, Texas, on December 19, 2018.

/s/ Norma Garcia _____

Norma Garcia
General Counsel
Texas Department of Insurance