

**SUBCHAPTER E Texas Windstorm Insurance Association
28 TAC §5.4307**

INTRODUCTION. The Texas Department of Insurance proposes to amend 28 TAC §5.4307, concerning the Assumption Reinsurance Program for policies issued by the Texas Windstorm Insurance Association (TWIA). Section 5.4307 implements Insurance Code §2210.705.

EXPLANATION. Amending §5.4307 is necessary to implement changes to Insurance Code §2210.705 enacted by Senate Bill 615, 86th Legislature, (Regular Session) (2019). SB 615 requires amending §5.4307 because the current rule conflicts with the new provisions of Insurance Code §2210.705. SB 615 requires TDI to adopt or amend rules as needed by March 31, 2020, due to its changes to Insurance Code §2210.705.

Section 5.4307 provides rules for the TWIA Assumption Reinsurance Program. Amending §5.4307 is necessary to conform with the newly adopted provisions of Insurance Code §2210.705. SB 615 made two changes to this provision. First, it deleted the requirement that the reinsurance agreement include an offer commencement date of December 1. Second, it changed the deadline for the policyholder to opt out of the reinsurance agreement from on or before May 31 to not more than 60 days after the policyholder receives notice of the reinsurance agreement.

In addition, the proposed amendments include a nonsubstantive formatting change to conform the section to the agency's current style and to improve the rule's clarity.

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 amendments are 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 amendments are in effect, Ms. Walker expects that enforcing the proposed amendments will have the public benefit of ensuring that TDI's rules conform to Insurance Code §2210.705.

Ms. Walker expects that the proposed amendments will not increase the cost of compliance with Insurance Code §2210.705 because it does not impose requirements beyond those the statute requires. Insurance Code §2210.705 requires TDI to adopt by rule the procedure for the transfer of reinsured policies under the TWIA depopulation program. The proposed amendments will adopt provisions to conform to Insurance Code §2210.705 as amended by SB 615. As a result, the cost associated with the procedure for the transfer of reinsured policies under the TWIA depopulation program does not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. All of the proposed changes are necessary to make §5.4307 comply with

the new requirements of Insurance Code §2210.705. 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. No additional rule amendments are required under Government Code §2001.0045, because the proposed §5.4307 is necessary to implement legislation. The proposed rule implements Insurance Code §2210.705, as amended by SB 615, 86th Legislature, (Regular Session) (2019).

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are 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; or
- will not 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. The department will consider any written comments on the proposal that are received by the department no later than 5:00 p.m., central time, on November 25, 2019. Send your comments to ChiefClerk@tdi.texas.gov; or 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 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 the department no later than 5:00 p.m., central time, on November 25, 2019. If the department holds a public hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes §5.4307 under Insurance Code §2210.705 and Insurance Code §36.001.

Insurance Code §2210.705 requires TDI to adopt rules addressing the procedure for the transfer of reinsured policies under the TWIA depopulation program.

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 5.4307 implements Insurance Code §2210.705, as amended by SB 615, 86th Legislature, (Regular Session) (2019).

TEXT.

§5.4307. Assumption Reinsurance Program.

(a) An insurer and the association must submit to the department the written assumption reinsurance program, including the assumption reinsurance agreement and all necessary documents, including notices and policy forms evidencing generally comparable coverage and premiums, to allow the department to determine that policyholders and the policyholders' agents have the necessary protections.

(b) The assumption reinsurance program and assumption reinsurance agreement must comply with Insurance Code Chapter 2210, Subchapter O. The assumption reinsurance agreement must include:

(1) ~~[an offer commencement date of December 1;]~~

~~[(2)]~~ the opportunity for the policyholder to opt out of the assumption reinsurance agreement not more than 60 days after the policyholder receives notice of the reinsurance agreement ~~[on or before May 31];~~

~~(2)~~ ~~[(3)]~~ a transfer of the earned premium on a reinsured policy to a trust account to be held until the expiration of the policyholder opt-out period when the earned premium for the final reinsured policy will be transferred to the insurer;

~~(3)~~ ~~[(4)]~~ a period of not less than 60 days for the agent of record to accept an appointment or other written agreement with the insurer; and

~~(4)~~ ~~[(5)]~~ the effective date of the assumption.

(c) The insurer and the association must not proceed with the assumption reinsurance program, and it is not effective unless the Commissioner [~~commissioner~~] approves the assumption reinsurance program in writing.

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 October 14, 2019.

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