

**SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION****DIVISION 10. IMPLEMENTATION OF HOUSE BILL 4409  
28 TAC §5.4907**

**1. INTRODUCTION.** The Commissioner of Insurance (Commissioner) adopts on an emergency basis, to take immediate effect, amendments to §5.4907 to extend the Certificate of Compliance Transition Program through September 27, 2011 and relating to the Texas Windstorm Insurance Association's (Association) Plan of Operation. The Certificate of Compliance Transition Program affects a person's ability to obtain Association windstorm and hail insurance coverage (insurance coverage). This amendment is necessary to provide applicants, policyholders, the Association, and other interested persons with requirements and procedures necessary for persons to secure Association insurance coverage during the period between August 31, 2011 and September 28, 2011, the latter of which being the effective date of HB 3, 82st Legislature, 2011, First Called Session.

The Association offers insurance coverage in the designated catastrophe area, which consists of the 14 Texas coastal counties and parts of Harris County. The catastrophe area is underserved for insurance coverage. Persons seeking insurance coverage from the Association are unable to obtain comparable insurance coverage in the voluntary insurance market. Thus, persons who obtain coverage from the Association have few, if any, other sources from which they may obtain insurance coverage. Therefore, the ability to obtain insurance coverage from the Association has a direct effect on the welfare of persons living and working in the designated catastrophe area, and the possible inability of such persons to obtain insurance

coverage places them in imminent financial peril. The Legislature has found that the provision of windstorm and hail insurance is necessary for the economic welfare of the state. The Legislature further determined that without that insurance, the orderly growth and development of the state would be severely impeded. As this amendment affects a person's ability to obtain windstorm and hail insurance coverage, adoption of this amendment will affect the economic welfare of the state and the orderly development of the state.

The Association is created by the Legislature and may only engage in those activities the Legislature has authorized. The Association's primary activity is writing insurance coverage on eligible structures. Insurance coverage eligibility requirements were substantially amended by HB 3 which enacted the Insurance Code §2210.260.

The Insurance Code §2210.260 creates an alternative eligibility program as a means for persons living and working in the designated catastrophe area to obtain Association insurance coverage if their residential structure does not have a certificate of compliance issued in accordance with the Insurance Code §2210.251(g) and is not otherwise eligible for Association insurance coverage under §2210.251(d), (e), or (f). The Insurance Code 2210.260(d) provides a transition period to this alternative eligibility program by allowing a residential structure that is not eligible for Association insurance coverage to obtain that coverage. Under this transition program, initial coverage must be obtained on or before August 31, 2012, and cannot be renewed after August 31, 2013. Following those dates, coverage under the alternative eligibility program will only be available to those residential structures that have an alternative certification.

As provided in the Insurance Code §2210.260(a), this transition period was to take effect August 31, 2011, which would have coincided with the termination of the Certificate of Compliance Transition Program established in §5.4907 pursuant to the enactment of HB 4409, 81st Legislature, 2009, Regular Session. However, HB 3 will become effective September 28, 2011. This creates an unintended gap during hurricane season in which affected persons will not be able to obtain residential Association insurance coverage, despite legislative intent to the contrary.

The Certificate of Compliance Transition Program was adopted based on the statutory authority in the Insurance Code §2210.251(a), which has not been altered by HB 3. The Insurance Code §2210.251 (a) authorizes the Association's plan of operation to include an approval program for determining whether a structure is eligible for Association insurance coverage. Section 5.4907 was adopted as part of the Association's plan of operation and this amendment will amend the Association's plan of operation. The program requirements and time frame were established by the Commissioner. In enacting the Insurance Code §2210.260(d) to run through 2013, the Legislature essentially chose to extend the time frame of §5.4907, however, the Insurance Code §2210.260(d) does not impose on the program the requirements set forth in §5.4907 or require the Commissioner to establish any requirements in addition to those set forth in §2210.260(d).

Therefore to facilitate the legislative intent of the Insurance Code §2210.260(d), it is necessary to modify the Certificate of Compliance Transition Program requirements and extend the program to cover the period between August 31, 2011 and September 28, 2011. This will allow persons in the §5.4907 Certificate of Compliance Transition

Program to renew their coverage and persons to obtain initial Association residential insurance coverage prior to September 28, 2011, if needed. When the Insurance Code §2210.260(d) transition program becomes effective on September 28, 2011, it should be self-operating under the statute without the need for implementing rules. Coverage under the §5.4907 Certificate of Compliance Transition Program would qualify under the provisions of the Insurance Code §2210.260(d) for continuing coverage pending an alternative certificate or the expiration of that program. The §5.4907 Certificate of Compliance Transition Program will thus terminate on September 28, 2011.

Undue delay in adopting amended §5.4907 may result in the possible inability of persons living and working in the designated catastrophe area to obtain Association insurance coverage, placing those persons in imminent financial peril and may affect the orderly development and the economic welfare of the state. Additionally, because §5.4907 establishes Association insurance coverage eligibility, these rules are essential for persons in the designated catastrophe area when making decisions concerning their insurance requirements and their ability to obtain insurance coverage as of September 1, 2011 and in the future. Failure to adjust §5.4907 to fit the legislative intent may cause persons to make decisions that they otherwise would not have made. The possibility that these decisions could limit the ability of such persons to obtain insurance coverage places them in imminent financial peril and may affect the orderly development and the economic welfare of the state.

Therefore, it is necessary to adopt amended §5.4907 on an emergency basis with immediate effect. Formal rule proposals subject to notice, public comment, and an

opportunity for public hearing, concerning the alternative eligibility program described in the Insurance Code §2210.260 will follow this emergency adoption.

**2. STATUTORY AUTHORITY.** Section 5.4907 is amended under the Government Code §2001.034 and the Insurance Code §§2210.008, 2210.251, and 36.001. The Insurance Code §2210.008(b) authorizes the Commissioner to adopt reasonable and necessary rules in the manner prescribed in Subchapter A, Chapter 36, Insurance Code. The Insurance Code §2210.251 (a) authorizes the plan of operation to include an approval program for determining whether a structure is eligible for Association insurance coverage. The Insurance Code §2210.251 (f) establishes that structures insured by the Association as of September 1, 2009, may continue to be considered insurable property notwithstanding the requirements of §2210.251. The Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of the state. The Government Code §2001.034 authorizes a state agency to adopt administrative rules on an emergency basis without prior notice and hearing under certain statutorily specified circumstances, including a finding that there is imminent peril to the public health, safety, or welfare.

**3. TEXT.****§5.4907. Certificate of Compliance Transition Program.**

(a) Except as provided in §5.4906 of this division (relating to Certificate of Compliance Approval Program) after 12:01 a.m. September 1, 2009, and until expiration of this section, an applicant may obtain insurance through the Association for a residential structure without a certificate of compliance if[;]

~~[(1) within the 12 month period prior to the date of application for Association coverage the structure has been insured on an annual basis under a property policy that included windstorm and hail coverage;]~~

~~[(2) the insurer that underwrote the policy on the structure:]~~

~~[(A) discontinues providing windstorm and hail insurance under the policy; or]~~

~~[(B) the insurer that underwrote the policy on the structure discontinues providing residential property insurance in the portion of the catastrophe area where the structure is located; and]~~

~~[(3) the applicant complies with:~~

~~(1)[(A)] the mandatory building code requirement specified in the Insurance Code §2210.258, effective June 19, 2009;~~

~~(2)[(B)] the declination requirement specified in the Insurance Code §2210.202 and §5.4902 and §5.4903 of this division (relating to Additional Requirements and Declination of Coverage, respectively);~~

~~(3)(C)~~ if applicable, the flood insurance requirement specified in the Insurance Code §2210.203 and §5.4902 and §5.4904 of this division (relating to Additional Requirements and Flood Insurance, respectively); and

~~(4)(D)~~ all other Association underwriting requirements, including maintaining the structure in an insurable condition and payment of premium.

(b) Coverage issued under this section that expires before the expiration of this section may be renewed ~~one time~~ during the duration of the certificate of compliance transition program provided the policyholder complies with all statutory requirements and Association underwriting requirements as provided in subsection (a) ~~(a)(3)~~ of this section.

(c) This section expires on September 28 ~~August 31~~, 2011. No person may obtain insurance coverage through the Association under the certificate of compliance transition program described in this section after September 27 ~~August 31~~, 2011.

(d) On and after September 28, 2011, persons without a certificate of compliance may obtain Association Insurance coverage as prescribed in the Insurance Code §2210.260(d), and, when established, the alternative eligibility program described in the Insurance code §2210.260. ~~[Under an alternative certification being developed by the department, policyholders will be able to continue coverage on the structure through the Association after the transition program expires.]~~

**4. CERTIFICATION.** This agency hereby certifies that this emergency adoption has reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

**11-0668**

TITLE 28. INSURANCE  
Part I. Texas Department of Insurance  
Chapter 5. Property and Casualty Insurance

Emergency Rule Section  
Page 8 of 8

Issued at Austin, Texas, on August 12, 2011.

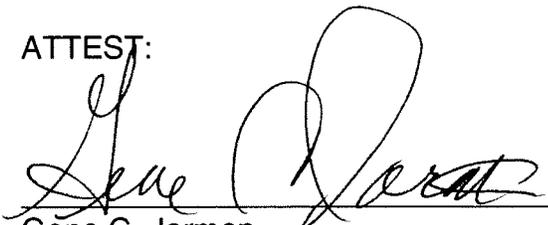
  
Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance

**IT IS THEREFORE THE ORDER** of the Commissioner of Insurance that amendments to §5.4907 specified herein, relating to the Texas Windstorm Insurance Association's (Association) Plan of Operation, to extend the Certificate of Compliance Transition Program through September 27, 2011, are adopted on an emergency basis pursuant to the Government Code §2001.034, to take immediate effect.

**AND IT SO ORDERED.**

  
Mike Geeslin  
Commissioner of Insurance

ATTEST:

  
Gene C. Jarmon  
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO. **11-0668**  
AUG 12 2011