

SUBCHAPTER RR. Valuation Manual
28 TAC §3.9901

INTRODUCTION. The Texas Department of Insurance proposes to amend 28 TAC §3.9901, concerning 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, because Insurance Code §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_2019_edition.pdf.

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

Under Insurance Code §425.073(c), when the NAIC adopts changes to the valuation manual, TDI must adopt substantially similar changes. This subsection also requires the Commissioner must determine that the NAIC's changes were approved by an affirmative vote representing at least three-fourths of the members of the NAIC voting, but not less than a majority of the total membership, and by NAIC members representing 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 Insurance Code §425.073. On August 7, 2018, and September 10, 2018, the NAIC adopted changes to the valuation manual with a vote meeting the requirements

set out in Insurance Code §425.073(c). On October 31, 2018, the Commissioner issued Commissioner's Order No. 2018-5690, making the determination that the NAIC vote met the §423.073(c) requirements.

The valuation manual amendments proposed to be adopted by the Commissioner provide updated reserving and reporting requirements for the valuation manual that are substantially similar to changes adopted by the NAIC.

Section 3.9901 as amended adopts an 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 and §36.007, TDI must consider whether authority exists to enforce or adopt it. TDI has determined that neither Insurance Code §36.004 nor §36.007 prohibit the proposed rule, because Insurance Code §425.073 requires TDI to adopt a valuation manual that is substantially similar to the valuation manual approved by the NAIC and subsection (c) of the section 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 for each year of the first five years that 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 section. This determination was made because the proposed amendment does not add or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendment. Ms. Walker does not anticipate any measurable effect on local employment or the local economy as a result of

this proposal. This is because the proposed amendment does not have requirements that would directly affect local employment or the local economy.

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 Insurance Code §425.073 because it does not impose requirements beyond those in the statute. Insurance Code §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, 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 costs on regulated persons that are not mandated by law. In addition, no additional rule amendments are required under Government Code §2001.0045 because the proposed amendment provides reserve and

other requirements needed for solvency and required by statute. The proposed rule implements Insurance Code Section §425.073, as added by SB 1654, 84th Legislature, 2015.

GOVERNMENT GROWTH IMPACT STATEMENT. The department 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 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. Submit any written comments on the proposal no later than 5 p.m., Central time, on January 14, 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, 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, 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 the department no later than 5:00 p.m., Central time, on January 14, 2019. If the department holds a public hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §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 the 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(c), enacted by SB 1654, 84th Legislature, Regular Session (2015).

TEXT.

§3.9901. Adoption of Valuation Manual and Operative Date.

(a) The Commissioner [~~commissioner~~] adopts by reference the National Association of Insurance Commissioners (NAIC) Valuation Manual, including subsequent changes that were adopted by the NAIC through September 10, 2018, [~~August 9, 2017~~], 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 December 13, 2018.

/s/ Norma Garcia
Norma Garcia
General Counsel
Texas Department of Insurance