

**SUBCHAPTER A. TEXAS WINDSTORM INSURANCE ASSOCIATION EMERGENCY
RULES
28 TAC §35.4**

INTRODUCTION. The Commissioner of Insurance adopts new 28 TAC §35.4, concerning Catastrophe Insurance Coverage, on an emergency basis, effective August 23, 2022. The emergency adoption is necessary to ensure certain property owners in the catastrophe area of the Texas seacoast territory have reasonable access to coverage through the Texas Windstorm Insurance Association (TWIA).

REASONED JUSTIFICATION. On August 8, 2022, Weston, a Florida property and casualty insurance company licensed in Texas, was declared insolvent. Weston was placed into liquidation by the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida. Weston has over 30,000 policyholders in Texas, including over 23,000 in the TWIA catastrophe area. These policyholders' coverage will end no later than 12:01 a.m. on September 7, 2022, leaving these policyholders without windstorm coverage during Texas' hurricane season.

The Weston policyholders can apply for coverage through TWIA, but two provisions in TWIA's Plan of Operation may make it difficult for them to obtain adequate coverage in a timely manner: (1) the prohibition on TWIA's acceptance of new or increased coverage applications once a hurricane is in the Gulf of Mexico or within the boundaries of 80 degrees west longitude and 20 degrees north latitude (the storm moratorium); and (2) the requirement that coverage will generally become effective on the date TWIA

receives both the policy application and the necessary premium payment. 28 TAC §5.4001(d)(2)(E)(ii).

If Weston policyholders were to apply during a storm moratorium, coverage would not go into effect until the moratorium ends; they would not have coverage during the storm. Also, Weston policyholders have already paid Weston for coverage and many do not have the means to pay a second insurance premium right away. This emergency rule addresses these issues and facilitates TWIA in providing windstorm and hail insurance to Weston's Texas policyholders.

The provision of adequate windstorm and hail insurance is necessary to the economic welfare of this state, and TWIA is tasked with providing an adequate market for such insurance in the seacoast territory to those who are unable to obtain that coverage in the private market. Tex. Ins. Code §2210.001.

According to the National Weather Service, the peak hurricane threat for the Texas coast exists from August through September; thus it is likely the storm moratorium will become effective just as Weston's policyholders are submitting applications for TWIA policies. For Weston's current policyholders, and any others who are similarly situated, the new emergency rule will exempt applications from the storm moratorium. This will help avoid any lapses in coverage should a hurricane emerge in the Gulf of Mexico.

The new rule also helps Weston policyholders, and any who are similarly situated, who may need time to be able to pay a second insurance premium. It does so in two ways: by allowing for backdating of coverage and by requiring TWIA to offer an additional payment option.

To obtain a TWIA policy that is backdated to be effective on the date an applicant's private market coverage ended, the applicant must send the application and any binding

payment within 60 days of the end of the private market coverage. An applicant can also submit their application and any binding payment before their private market coverage ends, in which case their TWIA policy will be effective when both are sent.

The new rule also requires TWIA to offer an additional payment option. An applicant can bind coverage by paying \$0 for the first 90 days of coverage.

An emergency rule is necessary

Pursuant to Government Code §2001.034 and §2001.036(a)(2), the new rule is adopted on an emergency basis and with an immediate effective date because an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice.

Thousands of Texas property owners will lose their current windstorm coverage on September 7, 2022. And many of those policyholders must look to TWIA for replacement coverage or risk going without it. To go without such coverage, especially during hurricane season, presents an unacceptable threat to these property owners' health, safety, and financial welfare. In addition, if a major storm hits while so many consumers are without coverage, the effect would severely impact the state's economic welfare, impeding the orderly growth and development of the state. *See* Tex. Ins. Code §2210.001. The new emergency rule is adopted to eliminate two of the biggest barriers to the affected policyholders obtaining new coverage.

STATUTORY AUTHORITY. The new rule is adopted on an emergency basis with an immediate effective date under Insurance Code §2210.008 and §36.001; and Government Code §2001.034 and §2001.036(a)(2).

Insurance Code §2210.008(b) authorizes the Commissioner to adopt reasonable and necessary rules to implement Insurance Code Chapter 2210.

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.

Government Code §2001.034 provides that a state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice and the agency states in writing the reasons for its finding.

Government Code §2001.036(a)(2) provides that if a state agency finds that an expedited effective date is necessary because of imminent peril to the public health, safety, or welfare, and subject to applicable constitutional or statutory provisions, a rule is effective immediately on filing with the secretary of state, or on a stated date less than 20 days after the filing date.

TEXT.**SUBCHAPTER A. TEXAS WINDSTORM INSURANCE ASSOCIATION EMERGENCY
RULES
28 TAC §35.4****§35.4. Catastrophe Insurance Coverage.**

(a) The storm moratorium on the Texas Windstorm Insurance Association's (TWIA's) acceptance of catastrophe insurance applications as described in §5.4001(d)(2)(E)(ii) of this title (relating to Plan of Operation) does not apply to applications for coverage of structures for which the following conditions are met:

(1) windstorm and hail insurance for that structure is canceled or nonrenewed by an insurer in the private market; and

(2) the cancellation or nonrenewal is due to the liquidation of the insurer in the private market.

(b) Notwithstanding §5.4001(d)(2)(E)(ii) of this title, if the conditions in subsection (a)(1) - (2) of this section are met, new coverage for a structure will be effective on either:

(1) the date the application and any binding payment are sent by any traceable method, including those in §5.4001(d)(2)(E)(ii) of this title, if the structure's private market coverage has not ended; or

(2) the date the structure's private market coverage ended, if the application and any binding payment are sent by any traceable method, including those in §5.4001(d)(2)(E)(ii) of this title, not later than the 60th day after the date the structure's private market coverage ends.

(c) If the conditions in subsection (a)(1) - (2) of this section are met, TWIA must offer an installment payment option in which a payment of \$0 qualifies as the binding payment for the first 90 days of coverage. This option must be offered in addition to existing payment options.

(d) For the installment payment option described in subsection (c) of this section, the remaining installment payments must consist of equal monthly payments.

(e) Nothing in this section prohibits TWIA from accepting payments of higher amounts than those due.

2022-7447

TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 35. Emergency Rules

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

Issued at Austin, Texas, on August 23, 2022.

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Allison Eberhart, Deputy General Counsel
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The Commissioner adopts new §35.4 on an emergency basis, effective immediately.

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Cbrown
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Cassie Brown
Commissioner of Insurance

Commissioner's Order No. **2022-7447**