

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION  
DIVISION 10. IMPLEMENTATION OF HOUSE BILL 4409  
28 TAC §5.4909 and §5.4910

1. INTRODUCTION. The Commissioner of Insurance adopts on an emergency basis, to take immediate effect, new §5.4909 and §5.4910 implementing the requirements of House Bill (HB) 4409, 81st Legislature, 2009 Regular Session, relating to the Texas Windstorm Insurance Association's (Association) plan of operation concerning the minimum retained premium requirement set forth in §5.4905 of this subchapter (relating to Minimum Retained Premium) by (i) adopting new insurance policies that incorporate the minimum retained premium requirement into the Association's dwelling, commercial and mobile home windstorm and hail insurance policy forms; and (ii) adopting rules that supersede the Association's existing manual rules relating to cancellations and refunds.

These new sections are necessary to implement the minimum retained premium requirement set forth in §5.4905, which provides applicants, policyholders, the Association, and other interested persons with requirements and procedures necessary for the Association to determine the minimum retained premium amount in the event of early cancellation and to conform the Association's current plan of operation set forth in §5.4001 of this subchapter with Chapter 2210 as amended by HB 4409. Section 5.4909 adopts new dwelling, commercial and mobile home windstorm and hail insurance policy forms that are necessary to contractually establish the minimum retained premium requirement and obligations. These new policy forms will supersede the Association's existing insurance policy forms for Association windstorm and hail insurance coverage (insurance coverage). Section 5.4910 adopts manual rules related to these new insurance policy forms and will supersede any conflicting current manual rule

concerning policy cancellations or refunds. These sections apply to each Association policy that is issued or renewed on or after November 1, 2009.

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. Thus the adoption of these sections 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 4409. To effect these amended requirements, they must be included in the Association's plan of operation either by amendment of the existing plan of operation requirements or as an addition to the existing plan of operation. Compliance with these statutory requirements is essential to assure potential policyholders that they may obtain insurance coverage through the Association.

Thus it was necessary to adopt superseding provisions in §5.4905 that effectively amend the plan of operation to address the minimum retained premium requirement set forth in the Insurance Code §2210.204. Further, the minimum retained premium is a significant legislative requirement affecting the cost of insurance coverage for Association policyholders. Establishing this requirement in the plan of operation, including the methods of paying the required minimum retained premium and the exceptions thereto, may be a determining factor as to whether many persons may be able to obtain Association insurance coverage. Because §5.4905 affects the contractual relationship between the Association and its policyholders concerning premium refunds, §5.4909 and §5.4910 are also necessary to implement the minimum retained premium requirement set forth in the Insurance Code §2210.204 and §5.4905 of this subchapter. During the period in which §5.4909 and §5.4910 are effective, the new policy forms and related manual rules will be used in the place of those forms adopted by reference in §5.4101 and §5.4401 of this subchapter and manual rules adopted by reference in §5.4501 of this subchapter. Undue delay in adopting §5.4909 and §5.4910 may prevent persons living and working in the designated catastrophe area from obtaining Association insurance coverage, placing those persons in imminent financial peril and possibly affecting the orderly development and the economic welfare of the state.

Additionally, because §§5.4905, 5.4909, and 5.4910 are necessary to conform the Association's current plan of operation with the requirements in the Insurance Code Chapter 2210 as amended by HB 4409, 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 on or after November 1, 2009, and in the future. Failure to conform the plan of operation to the requirements in the Insurance Code Chapter 2210, as amended, may cause persons to make decisions that they otherwise would not have made if they had been provided

with additional information. 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.

Further, the Legislature has directed the Department to implement these rules on an emergency basis. Section 46 of HB 4409 indicates the legislative intent for adopting these rules prior to the appointment and seating of the Association's new board of directors by instructing the Department to adopt rules required by Chapter 2210 as soon as possible, but not later than 30 days after the effective date of HB 4409. The minimum retained premium requirement stated in HB 4409 became effective June 19, 2009. The Department does not consider the 30-day rule adoption requirement to create a prohibition on adopting rules after that period. Such a reading would be unreasonable because it would be inconsistent with the Insurance Code §2210.008(b) (Commissioner may adopt reasonable and necessary rules); §2210.151 (Commissioner shall adopt the plan of operation by rule); and §36.001 (the Commissioner may adopt necessary and appropriate rules). Nor does the Department interpret the 30-day requirement to be a prohibition against adopting emergency rules after that date. The imminent need for rules to implement HB 4409 to protect the welfare of coastal residents and businesses did not expire in July, 2009, but continues. The need to obtain coverage exists before a catastrophic hurricane or other windstorm event occurs. Given the imminent need for these rules and the lack of a penalty for failure to comply with the 30-day requirement, it is reasonable to consider that the 30-day requirement is a directive to adopt emergency rules under the Government Code §2001.034. The legislative requirement is to adopt those rules *as soon as possible*. Consistent with this requirement, the Department has determined that it was necessary to obtain input concerning the adopted sections from various stakeholders, including legislative offices, the Association, coastal policyholder representatives, and insurers. This process was intended to reduce the possibility of

unintended consequences in the emergency rules. Additional emergency rules may follow this adoption as necessary.

Formal rule proposals subject to notice, public comment, and an opportunity for public hearing, will follow this emergency adoption. Future proposals may address the requirements stated herein and additional matters necessary to implement HB 4409. Further, HB 4409 directs the Association's board of directors to propose to the Commissioner amendments to the Association's plan of operation on or before March 1, 2010. The board's proposed amendments would then be proposed as a rule subject to notice, public comment, and an opportunity for public hearing.

Based on the foregoing facts, the Commissioner has determined that, to ensure that persons in the catastrophe area will be able to continue to obtain Association insurance coverage, the Association's existing plan of operation must be amended to conform with the Insurance Code Chapter 2210 as amended by HB 4409. The Commissioner has adopted §5.4905 relating to the minimum retained premium to conform the plan of operation with the Insurance Code Chapter 2210 as amended by HB 4409. Additionally, the Commissioner has determined that it is necessary to adopt by reference in §5.4909 new Association dwelling, commercial and mobile home windstorm and hail insurance policy forms that are consistent with §5.4905, and to adopt in §5.4910 a manual rule for such policies. Section 46, HB 4409 directs the Commissioner to adopt required rules as soon as possible, but not later than 30 days after the effective date of HB 4409, which is consistent with the requirement for an emergency rule under Government Code §2001.034. The inability to obtain insurance coverage from the Association, a market of last resort, places the welfare of persons in the designated catastrophe area in imminent financial peril and is also an impediment to the economic welfare and the orderly

development of the state. Therefore, it is necessary to adopt these sections on an emergency basis.

Section 5.4909(a) and (b) adopt by reference a new *T.W.I.A. Dwelling Windstorm and Hail Insurance Policy* and *T.W.I.A. Commercial Windstorm and Hail Insurance Policy*. These policies differ from the Association's existing forms because they have been changed to conform with the minimum retained premium requirement set forth in the Insurance Code §2210.204 and §5.4905 of this subchapter. Both insurance policy forms shall supersede current Association dwelling and commercial insurance policy forms adopted by reference under §5.4101 of this subchapter. Both insurance policies are changed in paragraph 18a to read as follows:

"You may cancel this policy at any time by notifying us in writing of the date cancellation is to take effect. We will send you any refund due when the policy is returned to us. The refund will be pro rata, subject to a policy minimum retained premium in an amount equal to 180 days or \$100, whichever is applicable. Payment of the minimum retained premium shall not create or extend coverage beyond the cancellation date that you requested. The minimum retained premium is fully earned on the effective date of the policy and you shall owe to us any unpaid balance of the minimum retained premium."

Section 5.4909(c) adopts by reference the Association's *Texas Special Mobile Home Windstorm and Hail Insurance Policy Deductible Coverage* that has been changed to conform with the minimum retained premium requirement set forth in the Insurance Code §2210.204 and §5.4905 of this subchapter. This insurance policy shall supersede the Association's current mobile home insurance policy form adopted by reference under §5.4401 of this subchapter. The mobile home insurance policy is changed in lines 31 - 46 of the Basic Conditions to provide the same cancellation provisions as the Association's Dwelling and Commercial Policies.

Section 5.4910 adopts a manual rule necessary for the Association to implement the insurance policies adopted under this section. This rule shall supersede the Association's existing manual rules adopted by reference under §5.4501 in the case of any conflict, including those existing manual rules in Section I, parts K and M of the *Texas Windstorm Insurance Association Manual*.

Specimen copies of the *T.W.I.A. Dwelling Windstorm and Hail Insurance Policy*, *T.W.I.A. Commercial Windstorm and Hail Insurance Policy*, and *Texas Special Mobile Home Windstorm and Hail Insurance Policy Deductible Coverage* are available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-9090. Copies may also be obtained by contacting the Personal Lines Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

2. STATUTORY AUTHORITY. New §5.4909 and §5.4910 are adopted on an emergency basis under the Government Code §2001.034 and the Insurance Code §§2210.008, 2210.151, 2210.204, and 36.001; and Section 46, HB 4409, 81st Legislature, 2009 Regular Session. The Insurance Code §2210.008(a) the commissioner may issue any orders that the commissioner considers necessary to implement this chapter. 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 §2210.151 authorizes the Commissioner to adopt the Association's plan of operation by rule. The Insurance Code §2210.204(d) and (e) require that the minimum retained premium be set forth in the plan of operation and that the plan of operation specify events that reflect a significant change in the exposure or the policyholder concerning the insured property that would be exemptions from the minimum retained premium requirement. 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 this state. Section 46 of HB 4409, directs the Commissioner to adopt rules required by Chapter 2210 as soon as possible but not later than the 30th day after the effective date of HB 4409. 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.

#### SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

##### DIVISION 10. IMPLEMENTATION OF HOUSE BILL 4409

###### §5.4909. Policy Forms and Manual Rules.

(a) The Texas Department of Insurance adopts by reference the Texas Windstorm Insurance Association Dwelling Policy effective November 1, 2009. Specimen copies of this policy form are available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-9090. They may also be obtained by contacting the Personal Lines Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

(b) The Texas Department of Insurance adopts by reference the Texas Windstorm Insurance Association Commercial Policy effective November 1, 2009. Specimen copies of this policy form are available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-9090. They may also be obtained by contacting the Personal Lines Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.



(c) The Texas Department of Insurance adopts by reference the Texas Special Mobile Home Windstorm and Hail Insurance Policy--Deductible Coverage effective November 1, 2009. Specimen copies of this policy form are available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-9090. Copies may also be obtained by contacting the Personal Lines Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

(d) Insurance policy forms adopted by reference under this subchapter shall supersede the Texas Windstorm Insurance Association's existing insurance policy forms adopted by reference under §5.4201 and §5.4501 of this subchapter (relating to TWIA Dwelling and Commercial Policy Forms and Texas Special Mobile Home Windstorm and Hail Insurance Policy--Deductible Coverage, respectively). This section applies to each Association policy that is issued or renewed on or after November 1, 2009.

§5.4910. Cancellations and Minimum Retained Premium.

(a) Cancellations.

(1) A policy may be canceled at any time at the request of the insured or a premium financier by notifying the Texas Windstorm Insurance Association (Association) in writing of the date cancellation is to take effect. The Association will refund premium in accordance with §5.4905 of this subchapter (relating to Minimum Retained Premium) when the policy is returned to the Association. The refund will be pro rata of the amount in excess of the minimum retained premium under subsection (b) of this section in which case the Association shall upon demand and surrender of the policy refund the unearned premium on a pro-rata basis.

(2) Non-payment of premium shall be deemed a request for cancellation by the insured.

(3) The Association may not initiate flat cancellation for any reason.

(4) The minimum retained premium shall not create or extend coverage beyond the date cancellation takes effect.

(5) The minimum retained premium is fully earned on the effective date of the policy and the insured shall owe to the Association the unpaid balance of the minimum retained premium.

(b) Minimum Retained Premium.

(1) The minimum retained premium per policy shall be the premium amount equal to 180 days of the annual policy term or \$100, as determined in accordance with §5.4905 of this subchapter.

(2) The minimum retained premium shall not create or extend coverage beyond the date cancellation takes effect.

(3) The minimum retained premium is fully earned on the effective date of the policy and the insured shall owe to the Association the unpaid balance of the minimum retained premium.

(4) In the event of cancellation of the policy by the Association, paragraphs (1) – (3) of this subsection shall not apply and the actual unearned premium must be refunded.

(c) This section shall control over any conflicting provision in the rules manual adopted by reference in §5.4501 of this subchapter (relating to Rules for the Texas Windstorm Insurance Association). This section applies to each Association policy that is issued or renewed on or after November 1, 2009.

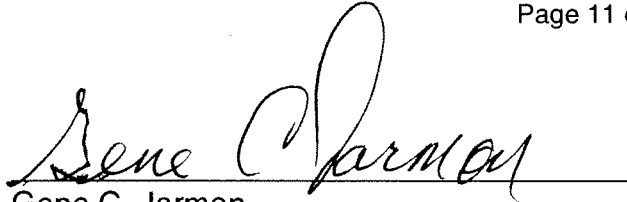
4. CERTIFICATION. The agency hereby certifies that this emergency adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued at Austin, Texas, on Sept 25, 2009.

**09-0795**

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

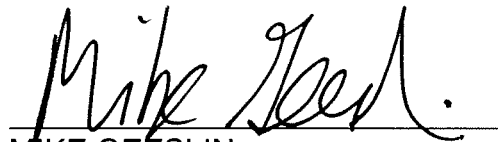
Emergency Sections  
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Gene C. Jarmon  
General Counsel and Chief Clerk

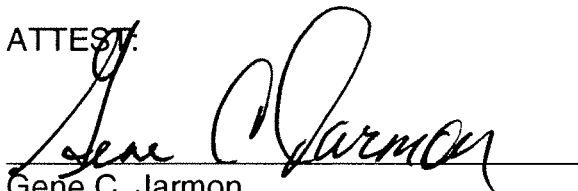
IT IS THEREFORE THE ORDER of the Commissioner of Insurance that §5.4909 and §5.4910 specified herein, relating to the Texas Windstorm Insurance Association's plan of operation concerning minimum retained premium and setting forth new Association dwelling, commercial and mobile home windstorm and hail insurance policy forms that are consistent with §5.4905 of this subchapter and manual rules for such policies are adopted on an emergency basis pursuant to the Government Code §2001.034, to take immediate effect.

AND IT IS SO ORDERED.



MIKE GEESLIN  
COMMISSIONER OF INSURANCE

ATTEST:



Gene C. Jarmon  
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO. **09-0795**  
SEP 25 2009