

Subchapter E. Texas Windstorm Insurance Association
Division 10. Eligibility and Forms
28 TAC §5.4905

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to amend 28 TAC §5.4905, concerning minimum retained premium. Amendments to §5.4905 implement House Bill 3208, 88th Legislature, 2023.

EXPLANATION. Amendments to §5.4905 are necessary to implement changes that HB 3208 made to Insurance Code §2210.204. HB 3208 limited the circumstances in which the Texas Windstorm Insurance Association (TWIA) must refund premium when an insured cancels an insurance policy.

Descriptions of the proposed amendments follow.

Section 5.4905. Amendments to subsection (a) clarify that the minimum retained premium provision is subject to Insurance Code §2210.204, and specify that--except as provided in the rule--the minimum retained premium on a TWIA policy is equal to the premium for the full annual policy term.

Existing subsection (b) is replaced by a new subsection (b). New subsection (b) still provides that a TWIA policy is subject to a \$100 minimum retained premium if it is canceled for specific reasons, but it now refers to the reasons specified in Insurance Code §2210.204(d). It also specifies that reasons include a change in the majority ownership of the insured property, including foreclosure or the death of the policyholder.

A new subsection (c) is added that maintains the requirement from current subsection (b) that if any unearned premium remains after applying the minimum retained premium, then it must be refunded pro rata. Existing subsections (c) and (d) are redesignated as (d) and (e) to reflect the insertion of new subsection (c).

In addition, the proposed amendments include nonsubstantive changes to conform the section to the agency's current drafting style and plain language preferences, and to improve the rule's clarity. Examples include replacing "Association" with "TWIA" and the phrase "shall not" with "may not" and "shall be" with "is."

Amendments also delete obsolete language specifying the applicable minimum retained premium for policies effective before and after November 27, 2011. To clarify the section, existing text is restructured and language that is effectively duplicative is eliminated.

TDI invited public comment on an informal draft posted on TDI's website on May 13, 2024, through May 27, 2024. No comments were received.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. David Muckerheide, assistant director of the Property and Casualty Lines Office, 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 them, other than those imposed by the statute. Mr. Muckerheide made this determination 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.

Mr. Muckerheide 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, Mr. Muckerheide expects that administering them will have the public benefit of ensuring that TDI's rules conform to Insurance Code §2210.204.

Mr. Muckerheide expects that the proposed amendments will not increase the cost of compliance with Insurance Code §2210.204 because they do not impose requirements beyond those in the statute.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. 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. Even if the proposal did impose costs, no additional rule amendments would be required under Government Code §2001.0045 because the amendments to §5.4905 are necessary to implement legislation. The proposed rule implements Insurance Code §2210.204, as amended by HB 3208.

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 expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- 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. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on September 16, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on September 16, 2024. If a public hearing is held, TDI will consider written and oral comments presented at the hearing.

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STATUTORY AUTHORITY. TDI proposes amendments to §5.4905 under Insurance Code §2210.008(b) and §36.001.

Insurance Code §2210.008(b) provides that the commissioner may adopt rules that are reasonable and necessary 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.

CROSS-REFERENCE TO STATUTE. Section 5.4905 implements Insurance Code §2210.204.

TEXT.

§5.4905 Minimum Retained Premium.

(a) Except as provided in this section and subject to Insurance Code §2210.204, concerning Cancellation of Certain Coverage, for cancellation of insurance coverage, the minimum retained premium on a TWIA [an Association] policy issued on an annual basis is equal to the premium for the full annual policy term. [~~shall be:~~]

~~[(1) equal to the greater of:]~~

~~[(A) 90 days of the annual policy term or \$100, for policies that become effective on and after November 27, 2011; or]~~

~~[(B) 180 days of the annual policy term or \$100, for policies that become effective before November 27, 2011; and]~~

~~[(2) fully earned on the effective date of the policy. Unearned premium in excess of the minimum retained premium set forth in this subsection shall be refunded pro-rata.]~~

(b) A TWIA policy is subject to a \$100 minimum retained premium if it is canceled because of:

(1) any of the reasons specified in Insurance Code §2210.204(d); or

~~[(b) An Association policy canceled due to the reasons specified in paragraphs (1) - (4) of this subsection is subject to the \$100 minimum retained premium. The minimum retained premium shall be fully earned on the effective date of the policy. Unearned premium in excess of the minimum retained premium set forth in this subsection shall be refunded pro-rata.]~~

(2) a [(1)-A] change in majority ownership of the insured property, including [sale of the insured property to an unrelated party, or] foreclosure of the insured property; or

[(2) the replacement of the Association policy with other similar coverage in the voluntary market;]

[(3) the removal of the item(s) insured under an Association policy due to a total loss of the item(s), including demolition of the item(s); or]

(3) [(4)] the death of the policyholder.

(c) Any unearned premium after the application of the minimum retained premium in this section must be refunded pro rata.

(d) TWIA may [(c) The Association shall] not issue a new or renewal policy to an applicant who owes premium on a prior TWIA [Association] policy.

(e) [(d)] The minimum retained premium may [shall] not create or extend coverage beyond the policy's effective cancellation date.

CERTIFICATION. The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Issued in Austin, Texas, on August 2, 2024.

Signed by:
Jessica Barta
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Jessica Barta, General Counsel
Texas Department of Insurance