

By: Buckingham, et al.

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A BILL TO BE ENTITLED

1 AN ACT

2 relating to the operations and functions of the Texas Windstorm
3 Insurance Association and the sunset review date for and programs
4 administered by the association; authorizing a fee.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 2210.002(b), Insurance Code, is amended
7 to read as follows:

19 SECTION 2. Section 2210.008, Insurance Code, is amended by
20 adding Subsections (d), (e), and (f) to read as follows:

21 (d) The association may propose a rule for adoption by the
22 commissioner. Except as provided by this section, the
23 association's proposal is governed by Subchapter B, Chapter 2001,
24 Government Code. The association is an interested person under

1 that subchapter for purposes of a proceeding initiated under this
2 section.

3 (e) Notwithstanding Section 2001.021(c), Government Code,
4 not later than the 30th day after the date the commissioner receives
5 a proposed rule from the association, the commissioner shall
6 initiate a rulemaking proceeding under Subchapter B, Chapter 2001,
7 Government Code.

8 (f) The association may request a public hearing under
9 Section 2001.029, Government Code, in connection with a rule
10 proposed under this section.

11 SECTION 3. Section 2210.102, Insurance Code, is amended by
12 adding Subsection (g) to read as follows:

13 (g) Members appointed to the board of directors under
14 Subsections (c) and (d), other than the member appointed under
15 Subsection (c-1), must represent the general public in the regions
16 described by those subsections. A person may not be appointed to
17 represent the general public under Subsection (c) or (d) if the
18 person or the person's spouse:

19 (1) is employed by or participates in the management
20 of a business entity or other organization:

21 (A) operating in the property and casualty
22 insurance industry in this state;

23 (B) receiving money from the association, other
24 than insurance claim payments; or

25 (C) receiving money from association
26 policyholders with respect to the policyholders' claims;

27 (2) owns or controls, directly or indirectly, more

1 than a 10 percent interest in a business entity or other
2 organization:

3 (A) operating in the property and casualty
4 insurance industry in this state;

5 (B) receiving money from the association, other
6 than insurance claim payments; or

7 (C) receiving money from association
8 policyholders with respect to the policyholders' claims; or

9 (3) uses or receives a substantial amount of tangible
10 goods, services, or money from the association, other than:

11 (A) insurance claim payments; or

12 (B) compensation or reimbursement authorized by
13 law for the board members' membership, attendance, or expenses.

14 SECTION 4. Subchapter C, Chapter 2210, Insurance Code, is
15 amended by adding Section 2210.1031 to read as follows:

16 Sec. 2210.1031. TRAINING. (a) A person who is appointed to
17 and qualifies for office as a member of the board of directors may
18 not vote, deliberate, or be counted as a member in attendance at a
19 meeting of the board of directors until the person completes a
20 training program that complies with this section.

21 (b) The training program must provide the person with
22 information regarding:

23 (1) the law governing the operation of the
24 association;

25 (2) the programs, functions, rules, and budget of the
26 association;

27 (3) the scope of and limitations on the rulemaking

1 authority of the board of directors;

2 (4) the results of the most recent formal audit of the
3 association;

4 (5) the requirements of:

5 (A) laws relating to open meetings, public
6 information, administrative procedure, and conflict of interest
7 disclosure; and

8 (B) other laws applicable to members of a state
9 policymaking body in performing their duties; and

10 (6) any applicable ethics policies adopted by the
11 association or the Texas Ethics Commission.

12 (c) The general manager of the association shall create a
13 training manual that includes the information required by
14 Subsection (b). The general manager shall distribute a copy of the
15 training manual annually to each member of the board of directors.
16 Each member of the board of directors shall sign and submit to the
17 general manager a statement acknowledging that the member received
18 and has reviewed the training manual.

19 SECTION 5. Subchapter C, Chapter 2210, Insurance Code, is
20 amended by adding Section 2210.109 to read as follows:

21 Sec. 2210.109. DISCLOSURE OF CONFLICTS. (a) A member of
22 the board of directors, or a member of a subcommittee of the board
23 of directors that relates to underwriting and actuarial matters,
24 shall disclose any potential conflict of interest of the member
25 known by the member with respect to a matter for discussion or vote
26 by the board or subcommittee, as applicable, before the discussion
27 or vote. A potential conflict of interest is an interest that may

1 reasonably be expected to diminish the member's independent
2 judgment with respect to the matter for discussion or vote.
3 Potential conflicts of interest required to be disclosed under this
4 section include:

5 (1) a financial or personal interest in an entity that
6 may financially benefit from the outcome of the discussion or vote;
7 and

8 (2) holding an insurance policy issued by the
9 association that may be affected by the discussion or vote.

10 (b) A disclosure under this section must be made available
11 to the public. A board or subcommittee member satisfies this
12 requirement if:

13 (1) with respect to an open meeting or meeting
14 broadcast live on the association's Internet website, the member
15 publicly discloses the conflict of interest in the meeting or
16 during the broadcast; or

17 (2) with respect to a meeting that is not an open
18 meeting or broadcast live on the association's Internet website,
19 the member discloses the conflict of interest in the agenda of the
20 meeting and makes the agenda publicly available on the
21 association's Internet website before the meeting.

22 SECTION 6. Section 2210.202, Insurance Code, is amended to
23 read as follows:

24 Sec. 2210.202. APPLICATION FOR COVERAGE; DECLINATION
25 REQUIREMENT. (a) A person who has an insurable interest in
26 insurable property may apply to the association for insurance
27 coverage provided under the plan of operation and an inspection of

1 the property, subject to any rules established by the board of
2 directors and approved by the commissioner. The association shall
3 make insurance available to each applicant in the catastrophe area
4 whose property is insurable property but who, after diligent
5 efforts, is unable to obtain property insurance through the
6 voluntary market, as evidenced by one declination from an insurer
7 authorized to engage in the business of, and writing, property
8 insurance providing windstorm and hail coverage in the first tier
9 coastal counties. For purposes of this section, "declination" has
10 the meaning assigned by the plan of operation and shall include a
11 refusal to offer coverage for the perils of windstorm and hail and
12 the inability to obtain substantially equivalent insurance
13 coverage for the perils of windstorm and hail. Notwithstanding
14 Section 2210.203(c), evidence of one declination every three
15 calendar years is [also] required before [with an application for]
16 renewal of an association policy.

17 (b) A property and casualty agent must submit an application
18 for initial insurance coverage on behalf of the applicant on forms
19 prescribed by the association. [The association shall develop a
20 simplified renewal process that allows for the acceptance of an
21 application for renewal coverage, and payment of premiums, from a
22 property and casualty agent or a person insured under this
23 chapter.] An application for initial [or renewal] coverage must
24 contain:

25 (1) a statement as to whether the applicant has
26 submitted or will submit the required premium payment [in full]
27 from personal funds or, if not, to whom a balance is or will be due;

1 and

2 (2) a statement that the agent acting on behalf of the
3 applicant possesses proof of the declination described by
4 Subsection (a) and proof of flood insurance coverage or
5 unavailability of that coverage as described by Section
6 [2210.203\(a-1\)](#).

7 SECTION 7. Sections [2210.203\(a\)](#) and (c), Insurance Code,
8 are amended to read as follows:

9 (a) If the association determines that the property for
10 which an application for initial insurance coverage is made is
11 insurable property, the association, on payment of the premium in
12 full or in part as authorized under Section 2210.2032, shall direct
13 the issuance of an insurance policy as provided by the plan of
14 operation.

15 (c) A policy may be renewed annually [~~on application for~~
16 ~~renewal~~] as long as the property continues to be insurable
17 property.

18 SECTION 8. Subchapter E, Chapter [2210](#), Insurance Code, is
19 amended by adding Sections 2210.2031 and 2210.2032 to read as
20 follows:

21 Sec. 2210.2031. AUTOMATIC RENEWAL. (a) The association
22 shall establish a process for automatic renewal of a policy in
23 accordance with this section.

24 (b) The process established under Subsection (a) must:

25 (1) provide for the association to verify:

26 (A) the declination required by Section
27 [2210.202](#);

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(B) flood insurance coverage required by Section 2210.203; and

(C) any other information related to insurability of a property, including changes to the condition or value of the property that would affect the availability of coverage or premium cost to insure the property; and

(2) provide an opportunity for the policyholder to
elect to cancel the policy before the policy automatically renews.

15 (b) The association shall provide to policyholders the
16 option to pay premium in installments. A policyholder that pays
17 premium in accordance with an installment payment plan established
18 by the association and remains current on the payments satisfies
19 the obligation for payment of premium under this chapter.

20 SECTION 9. Section 2210.205(a), Insurance Code, is amended
21 to read as follows:

22 (a) A windstorm and hail insurance policy issued by the
23 association must:

24 (1) require an insured to file a claim under the policy
25 not later than the first anniversary of the date on which the damage
26 to property that is the basis of the claim occurs; [and]

27 (2) contain, in boldface type, a conspicuous notice

1 concerning the resolution of disputes under the policy, including:
2 (A) the processes and deadlines for appraisal
3 under Section 2210.574 and alternative dispute resolution under
4 Section 2210.575;

5 (B) the binding effect of appraisal under Section
6 2210.574; and
7 (C) the necessity of complying with the
8 requirements of Subchapter L-1 to seek relief, including judicial
9 relief; and

10 (3) contain a conspicuous notice concerning the
11 availability of supplemental payments under the policy, including:
12 (A) a description of the process for requesting a
13 supplemental payment; and
14 (B) notice of applicable deadlines related to
15 supplemental payments.

16 SECTION 10. Sections 2210.207(c) and (d), Insurance Code,
17 are amended to read as follows:

18 (c) If, on the effective date of an association policy [at
19 ~~the time of loss]~~, the total amount of insurance applicable to a
20 dwelling is equal to 80 percent or more of the full replacement cost
21 of the dwelling or equal to the maximum amount of insurance
22 otherwise available through the association, coverage applicable
23 to the dwelling under the policy is extended to include the full
24 cost of repair or replacement, without a deduction for
25 depreciation.

26 (d) If, on the effective date of an association policy [at
27 ~~the time of loss]~~, the total amount of insurance applicable to a

1 dwelling is equal to less than 80 percent of the full replacement
2 cost of the dwelling and less than the maximum amount of insurance
3 available through the association, liability for loss under the
4 policy may not exceed the replacement cost of the part of the
5 dwelling that is damaged or destroyed, less depreciation.

6 SECTION 11. Section [2210.251](#)(g), Insurance Code, is amended
7 to read as follows:

8 (g) A certificate of compliance issued by the department [~~or~~
9 ~~association~~] under Section [2210.2515](#) demonstrates compliance with
10 the applicable building code under the plan of operation. The
11 certificate is evidence of insurability of the structure by the
12 association.

13 SECTION 12. Section [2210.2515](#), Insurance Code, is amended
14 by amending Subsection (c) and adding Subsections (c-1) and (i) to
15 read as follows:

16 (c) A person may apply to the department [~~association~~] on a
17 form prescribed by the department for a certificate of compliance
18 for a completed improvement. The department [~~association~~] shall
19 issue a certificate of compliance for a completed improvement if a
20 professional engineer licensed by the Texas Board of Professional
21 Engineers[~~+~~

22 ~~(1) has designed the improvement, has affixed the~~
23 ~~engineer's seal on the design, and submits to the association on a~~
24 ~~form prescribed by the department an affirmation of compliance with~~
25 ~~the applicable building code under the plan of operation; or~~

26 [~~(2)~~] completes and submits to the department a sealed
27 post-construction evaluation report that:

1 (1) confirms compliance with the applicable building
2 code under the plan of operation; and

3 (2) includes documentation supporting the engineer's
4 evaluation on a form prescribed by the department on which the
5 engineer has affixed the engineer's seal.

6 (c-1) The department may deny an application for a
7 certificate of compliance under Subsection (c) if the evaluation
8 report is not fully documented as required under Subsection (c).

9 (i) The department is authorized to submit a formal
10 complaint to the Texas Board of Professional Engineers related to
11 the work of a professional engineer as reflected in materials
12 submitted under Subsection (c).

13 SECTION 13. Subchapter H, Chapter 2210, Insurance Code, is
14 amended by adding Section 2210.3511 to read as follows:

15 Sec. 2210.3511. PUBLIC ACCESS TO RATE FILINGS. (a) The
16 association shall make a proposed rate filing publicly available on
17 its Internet website for at least seven days before the date the
18 board of directors votes on the submission of the proposed rate
19 filing to the department.

20 (b) The association shall accept public comment with
21 respect to a proposed rate filing at a public meeting of the board
22 of directors before the board of directors votes on the submission
23 of the proposed rate filing to the department.

24 SECTION 14. Section 2210.573, Insurance Code, is amended by
25 adding Subsection (f-1) to read as follows:

26 (f-1) In a notice described by Subsection (d)(1) or (2), the
27 association must include additional information concerning the

1 availability of supplemental payments under the policy, including:
2 (1) a description of the process for requesting a
3 supplemental payment; and
4 (2) applicable deadlines related to supplemental
5 payments.

6 SECTION 15. Subchapter L-1, Chapter [2210](#), Insurance Code,
7 is amended by adding Section 2210.5732 to read as follows:

8 Sec. 2210.5732. SUPPLEMENTAL PAYMENTS. (a) The
9 association is authorized to provide for supplemental payments
10 under a windstorm and hail insurance policy issued by the
11 association.

12 (b) The commissioner shall adopt rules clarifying the
13 deadlines related to supplemental payments. The commissioner shall
14 solicit and consider comments from the association, association
15 members, and policyholders in adopting rules under this section.

16 (c) The rules adopted under this section must ensure that a
17 request for supplemental payment will not impair a policyholder's
18 right to appraisal under Section [2210.574](#).

19 SECTION 16. Section [2210.705](#), Insurance Code, is amended to
20 read as follows:

21 Sec. 2210.705. TRANSFER OF POLICIES. The commissioner
22 shall by rule establish the procedure for the transfer of reinsured
23 policies. The rules may not contain deadlines that require a
24 property and casualty insurer or agent or a policyholder to take
25 action or make a decision on or after June 1 or before December 1 in
26 any year. The rule must provide that a reinsurance agreement
27 include:

1 (1) [an offer commencement date of December 1;
2 [(-2)] the opportunity for the policyholder to opt out
3 of the reinsurance agreement not more than 60 days after the
4 policyholder receives notice of the reinsurance agreement [on or
5 before May 31];

17 SECTION 17. Section 2210.107(b), Insurance Code, is
18 repealed.

19 SECTION 18. (a) Not later than January 1, 2020:

20 (1) the commissioner of insurance shall adopt or amend
21 rules as required by Section 2210.5732, Insurance Code, as added by
22 this Act, and Section [2210.705](#), Insurance Code, as amended by this
23 Act; and

24 (2) the Texas Windstorm Insurance Association shall
25 provide for a training program for members of the association's
26 board of directors as required by Section 2210.1031, Insurance
27 Code, as added by this Act.

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6 SECTION 19. (a) Except as provided by Section 18 of this
7 Act, Sections [2210.102\(g\)](#) and 2210.1031, Insurance Code, as added
8 by this Act, do not affect the entitlement of a member serving on
9 the board of directors of the Texas Windstorm Insurance Association
10 immediately before the effective date of this Act to continue to
11 serve on the board for the remainder of the term to which the member
12 was appointed.

13 (b) The Texas Windstorm Insurance Association is not
14 required to comply with Sections 2210.2031 and 2210.2032, Insurance
15 Code, as added by this Act, before January 1, 2020.

23 (d) Section 2210.251(g), Insurance Code, as amended by this
24 Act, does not affect the status of a certificate of compliance
25 issued by the Texas Windstorm Insurance Association before
26 September 1, 2019, or after September 1, 2019, in response to an
27 application made before that date for purposes of establishing

1 evidence of insurability.

2 (e) Section 2210.2515, Insurance Code, as amended by this
3 Act, applies only to an application for a certificate of compliance
4 made on or after September 1, 2019. An application for a
5 certificate of compliance made before September 1, 2019, is
6 governed by the law as it existed immediately before the effective
7 date of this Act, and that law is continued in effect for that
8 purpose.

9 (f) Section 2210.3511, Insurance Code, as added by this Act,
10 applies only to a rate filing made on or after the effective date of
11 this Act.

12 (g) Section 2210.573(f-1), Insurance Code, as added by this
13 Act, applies only to a notice with respect to a claim submitted
14 under an association policy on or after the effective date of this
15 Act.

16 SECTION 20. This Act takes effect September 1, 2019.