

1-1 By: Buckingham, et al. S.B. No. 615  
 1-2 (In the Senate - Filed February 20, 2019; February 21, 2019,  
 1-3 read first time and referred to Committee on Business & Commerce;  
 1-4 April 1, 2019, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 9, Nays 0; April 1, 2019,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 615 By: Nichols

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to the operations and functions of the Texas Windstorm  
 1-22 Insurance Association and the sunset review date for and programs  
 1-23 administered by the association; authorizing a fee.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Section 2210.002(b), Insurance Code, is amended  
 1-26 to read as follows:

1-27 (b) The association is subject to review under Chapter 325,  
 1-28 Government Code (Texas Sunset Act), but is not abolished under that  
 1-29 chapter. The association shall be reviewed during the period in  
 1-30 which state agencies abolished in 2031 ~~[2019]~~ are reviewed. The  
 1-31 association shall pay the costs incurred by the Sunset Advisory  
 1-32 Commission in performing the review of the association under this  
 1-33 subsection. The Sunset Advisory Commission shall determine the  
 1-34 costs of the review performed under this subsection, and the  
 1-35 association shall pay the amount of those costs promptly on receipt  
 1-36 of a statement from the Sunset Advisory Commission regarding those  
 1-37 costs. This subsection expires September 1, 2031 ~~[2019]~~.

1-38 SECTION 2. Section 2210.008, Insurance Code, is amended by  
 1-39 adding Subsections (d), (e), and (f) to read as follows:

1-40 (d) The association may propose a rule for adoption by the  
 1-41 commissioner. Except as provided by this section, the  
 1-42 association's proposal is governed by Subchapter B, Chapter 2001,  
 1-43 Government Code. The association is an interested person under  
 1-44 that subchapter for purposes of a proceeding initiated under this  
 1-45 section.

1-46 (e) Notwithstanding Section 2001.021(c), Government Code,  
 1-47 not later than the 30th day after the date the commissioner receives  
 1-48 a proposed rule from the association, the commissioner shall  
 1-49 initiate a rulemaking proceeding under Subchapter B, Chapter 2001,  
 1-50 Government Code.

1-51 (f) The association may request a public hearing under  
 1-52 Section 2001.029, Government Code, in connection with a rule  
 1-53 proposed under this section.

1-54 SECTION 3. Section 2210.102, Insurance Code, is amended by  
 1-55 adding Subsection (g) to read as follows:

1-56 (g) Members appointed to the board of directors under  
 1-57 Subsections (c) and (d), other than the member appointed under  
 1-58 Subsection (c-1), must represent the general public in the regions  
 1-59 described by those subsections. A person may not be appointed to  
 1-60 represent the general public under Subsection (c) or (d) if the

2-1 person or the person's spouse:  
 2-2 (1) is employed by or participates in the management  
 2-3 of a business entity or other organization:  
 2-4 (A) operating in the property and casualty  
 2-5 insurance industry in this state;  
 2-6 (B) receiving money from the association, other  
 2-7 than insurance claim payments; or  
 2-8 (C) receiving money from association  
 2-9 policyholders with respect to the policyholders' claims;  
 2-10 (2) owns or controls, directly or indirectly, more  
 2-11 than a 10 percent interest in a business entity or other  
 2-12 organization:  
 2-13 (A) operating in the property and casualty  
 2-14 insurance industry in this state;  
 2-15 (B) receiving money from the association, other  
 2-16 than insurance claim payments; or  
 2-17 (C) receiving money from association  
 2-18 policyholders with respect to the policyholders' claims; or  
 2-19 (3) uses or receives a substantial amount of tangible  
 2-20 goods, services, or money from the association, other than:  
 2-21 (A) insurance claim payments; or  
 2-22 (B) compensation or reimbursement authorized by  
 2-23 law for the board members' membership, attendance, or expenses.  
 2-24 SECTION 4. Subchapter C, Chapter 2210, Insurance Code, is  
 2-25 amended by adding Section 2210.1031 to read as follows:  
 2-26 Sec. 2210.1031. TRAINING. (a) A person who is appointed  
 2-27 to and qualifies for office as a member of the board of directors  
 2-28 may not vote, deliberate, or be counted as a member in attendance at  
 2-29 a meeting of the board of directors until the person completes a  
 2-30 training program that complies with this section.  
 2-31 (b) The training program must provide the person with  
 2-32 information regarding:  
 2-33 (1) the law governing the operation of the  
 2-34 association;  
 2-35 (2) the programs, functions, rules, and budget of the  
 2-36 association;  
 2-37 (3) the scope of and limitations on the rulemaking  
 2-38 authority of the board of directors;  
 2-39 (4) the results of the most recent formal audit of the  
 2-40 association;  
 2-41 (5) the requirements of:  
 2-42 (A) laws relating to open meetings, public  
 2-43 information, administrative procedure, and conflict of interest  
 2-44 disclosure; and  
 2-45 (B) other laws applicable to members of a state  
 2-46 policymaking body in performing their duties; and  
 2-47 (6) any applicable ethics policies adopted by the  
 2-48 association or the Texas Ethics Commission.  
 2-49 (c) The general manager of the association shall create a  
 2-50 training manual that includes the information required by  
 2-51 Subsection (b). The general manager shall distribute a copy of the  
 2-52 training manual annually to each member of the board of directors.  
 2-53 Each member of the board of directors shall sign and submit to the  
 2-54 general manager a statement acknowledging that the member received  
 2-55 and has reviewed the training manual.  
 2-56 SECTION 5. Subchapter C, Chapter 2210, Insurance Code, is  
 2-57 amended by adding Section 2210.109 to read as follows:  
 2-58 Sec. 2210.109. DISCLOSURE OF CONFLICTS. (a) A member of  
 2-59 the board of directors, or a member of a subcommittee of the board  
 2-60 of directors that relates to underwriting and actuarial matters,  
 2-61 shall disclose any potential conflict of interest of the member  
 2-62 known by the member with respect to a matter for discussion or vote  
 2-63 by the board or subcommittee, as applicable, before the discussion  
 2-64 or vote. A potential conflict of interest is an interest that may  
 2-65 reasonably be expected to diminish the member's independent  
 2-66 judgment with respect to the matter for discussion or vote.  
 2-67 Potential conflicts of interest required to be disclosed under this  
 2-68 section include:  
 2-69 (1) a financial or personal interest in an entity that

3-1 may financially benefit from the outcome of the discussion or vote;  
 3-2 and

3-3 (2) holding an insurance policy issued by the  
 3-4 association that may be affected by the discussion or vote.

3-5 (b) A disclosure under this section must be made available  
 3-6 to the public. A board or subcommittee member satisfies this  
 3-7 requirement if:

3-8 (1) with respect to an open meeting or meeting  
 3-9 broadcast live on the association's Internet website, the member  
 3-10 publicly discloses the conflict of interest in the meeting or  
 3-11 during the broadcast; or

3-12 (2) with respect to a meeting that is not an open  
 3-13 meeting or broadcast live on the association's Internet website,  
 3-14 the member discloses the conflict of interest in the agenda of the  
 3-15 meeting and makes the agenda publicly available on the  
 3-16 association's Internet website before the meeting.

3-17 SECTION 6. Section 2210.202, Insurance Code, is amended to  
 3-18 read as follows:

3-19 Sec. 2210.202. APPLICATION FOR COVERAGE; DECLINATION  
 3-20 REQUIREMENT. (a) A person who has an insurable interest in  
 3-21 insurable property may apply to the association for insurance  
 3-22 coverage provided under the plan of operation and an inspection of  
 3-23 the property, subject to any rules established by the board of  
 3-24 directors and approved by the commissioner. The association shall  
 3-25 make insurance available to each applicant in the catastrophe area  
 3-26 whose property is insurable property but who, after diligent  
 3-27 efforts, is unable to obtain property insurance through the  
 3-28 voluntary market, as evidenced by one declination from an insurer  
 3-29 authorized to engage in the business of, and writing, property  
 3-30 insurance providing windstorm and hail coverage in the first tier  
 3-31 coastal counties. For purposes of this section, "declination" has  
 3-32 the meaning assigned by the plan of operation and shall include a  
 3-33 refusal to offer coverage for the perils of windstorm and hail and  
 3-34 the inability to obtain substantially equivalent insurance  
 3-35 coverage for the perils of windstorm and hail. Notwithstanding  
 3-36 Section 2210.203(c), evidence of one declination every three  
 3-37 calendar years is ~~[also]~~ required before ~~[with an application for]~~  
 3-38 renewal of an association policy.

3-39 (b) A property and casualty agent must submit an application  
 3-40 for initial insurance coverage on behalf of the applicant on forms  
 3-41 prescribed by the association. ~~[The association shall develop a~~  
 3-42 ~~simplified renewal process that allows for the acceptance of an~~  
 3-43 ~~application for renewal coverage, and payment of premiums, from a~~  
 3-44 ~~property and casualty agent or a person insured under this~~  
 3-45 ~~chapter.]~~ An application for initial ~~[or renewal]~~ coverage must  
 3-46 contain:

3-47 (1) a statement as to whether the applicant has  
 3-48 submitted or will submit the required premium payment ~~[in full]~~  
 3-49 from personal funds or, if not, to whom a balance is or will be due;  
 3-50 and

3-51 (2) a statement that the agent acting on behalf of the  
 3-52 applicant possesses proof of the declination described by  
 3-53 Subsection (a) and proof of flood insurance coverage or  
 3-54 unavailability of that coverage as described by Section  
 3-55 2210.203(a-1).

3-56 SECTION 7. Sections 2210.203(a) and (c), Insurance Code,  
 3-57 are amended to read as follows:

3-58 (a) If the association determines that the property for  
 3-59 which an application for initial insurance coverage is made is  
 3-60 insurable property, the association, on payment of the premium in  
 3-61 full or in part as authorized under Section 2210.2032, shall direct  
 3-62 the issuance of an insurance policy as provided by the plan of  
 3-63 operation.

3-64 (c) A policy may be renewed annually ~~[on application for~~  
 3-65 ~~renewal]~~ as long as the property continues to be insurable  
 3-66 property.

3-67 SECTION 8. Subchapter E, Chapter 2210, Insurance Code, is  
 3-68 amended by adding Sections 2210.2031 and 2210.2032 to read as  
 3-69 follows:

4-1 Sec. 2210.2031. AUTOMATIC RENEWAL. (a) The association  
4-2 shall establish a process for automatic renewal of a policy in  
4-3 accordance with this section.

4-4 (b) The process established under Subsection (a) must:

4-5 (1) provide for the association to verify:

4-6 (A) the declination required by Section  
4-7 2210.202;

4-8 (B) flood insurance coverage required by Section  
4-9 2210.203; and

4-10 (C) any other information related to  
4-11 insurability of a property, including changes to the condition or  
4-12 value of the property that would affect the availability of  
4-13 coverage or premium cost to insure the property; and

4-14 (2) provide an opportunity for the policyholder to  
4-15 elect to cancel the policy before the policy automatically renews.

4-16 Sec. 2210.2032. PREMIUM PAYMENT METHODS. (a) The  
4-17 association shall accept payment of premium by credit card. The  
4-18 association may impose a fee on a policyholder for the use of a  
4-19 credit card to pay premium. The fee may not exceed the amount  
4-20 necessary to recoup the cost incurred by the association in  
4-21 connection with the policyholder's use of a credit card.

4-22 (b) The association shall provide to policyholders the  
4-23 option to pay premium in installments. A policyholder that pays  
4-24 premium in accordance with an installment payment plan established  
4-25 by the association and remains current on the payments satisfies  
4-26 the obligation for payment of premium under this chapter.

4-27 SECTION 9. Section 2210.205(a), Insurance Code, is amended  
4-28 to read as follows:

4-29 (a) A windstorm and hail insurance policy issued by the  
4-30 association must:

4-31 (1) require an insured to file a claim under the policy  
4-32 not later than the first anniversary of the date on which the damage  
4-33 to property that is the basis of the claim occurs; ~~and~~

4-34 (2) contain, in boldface type, a conspicuous notice  
4-35 concerning the resolution of disputes under the policy, including:

4-36 (A) the processes and deadlines for appraisal  
4-37 under Section 2210.574 and alternative dispute resolution under  
4-38 Section 2210.575;

4-39 (B) the binding effect of appraisal under Section  
4-40 2210.574; and

4-41 (C) the necessity of complying with the  
4-42 requirements of Subchapter L-1 to seek relief, including judicial  
4-43 relief; and

4-44 (3) contain a conspicuous notice concerning the  
4-45 availability of supplemental payments under the policy, including:

4-46 (A) a description of the process for requesting a  
4-47 supplemental payment; and

4-48 (B) notice of applicable deadlines related to  
4-49 supplemental payments.

4-50 SECTION 10. Sections 2210.207(c) and (d), Insurance Code,  
4-51 are amended to read as follows:

4-52 (c) If, on the effective date of an association policy ~~at~~  
4-53 ~~the time of loss~~, the total amount of insurance applicable to a  
4-54 dwelling is equal to 80 percent or more of the full replacement cost  
4-55 of the dwelling or equal to the maximum amount of insurance  
4-56 otherwise available through the association, coverage applicable  
4-57 to the dwelling under the policy is extended to include the full  
4-58 cost of repair or replacement, without a deduction for  
4-59 depreciation.

4-60 (d) If, on the effective date of an association policy ~~at~~  
4-61 ~~the time of loss~~, the total amount of insurance applicable to a  
4-62 dwelling is equal to less than 80 percent of the full replacement  
4-63 cost of the dwelling and less than the maximum amount of insurance  
4-64 available through the association, liability for loss under the  
4-65 policy may not exceed the replacement cost of the part of the  
4-66 dwelling that is damaged or destroyed, less depreciation.

4-67 SECTION 11. Section 2210.251(g), Insurance Code, is amended  
4-68 to read as follows:

4-69 (g) A certificate of compliance issued by the department ~~is~~

5-1 ~~association]~~ under Section 2210.2515 demonstrates compliance with  
5-2 the applicable building code under the plan of operation. The  
5-3 certificate is evidence of insurability of the structure by the  
5-4 association.

5-5 SECTION 12. Section 2210.2515, Insurance Code, is amended  
5-6 by amending Subsection (c) and adding Subsections (c-1) and (i) to  
5-7 read as follows:

5-8 (c) A person may apply to the department ~~[association]~~ on a  
5-9 form prescribed by the department for a certificate of compliance  
5-10 for a completed improvement. The department ~~[association]~~ shall  
5-11 issue a certificate of compliance for a completed improvement if a  
5-12 professional engineer licensed by the Texas Board of Professional  
5-13 Engineers~~[-~~

5-14 ~~[(1) has designed the improvement, has affixed the~~  
5-15 ~~engineer's seal on the design, and submits to the association on a~~  
5-16 ~~form prescribed by the department an affirmation of compliance with~~  
5-17 ~~the applicable building code under the plan of operation; or~~

5-18 ~~[(2)]~~ completes and submits to the department a sealed  
5-19 post-construction evaluation report that:

5-20 (1) confirms compliance with the applicable building  
5-21 code under the plan of operation; and

5-22 (2) includes documentation supporting the engineer's  
5-23 evaluation on a form prescribed by the department on which the  
5-24 engineer has affixed the engineer's seal.

5-25 (c-1) The department may deny an application for a  
5-26 certificate of compliance under Subsection (c) if the evaluation  
5-27 report is not fully documented as required under Subsection (c).

5-28 (i) The department is authorized to submit a formal  
5-29 complaint to the Texas Board of Professional Engineers related to  
5-30 the work of a professional engineer as reflected in materials  
5-31 submitted under Subsection (c).

5-32 SECTION 13. Subchapter H, Chapter 2210, Insurance Code, is  
5-33 amended by adding Section 2210.3511 to read as follows:

5-34 Sec. 2210.3511. PUBLIC ACCESS TO RATE ADEQUACY ANALYSIS.

5-35 (a) The association shall make the association's rate adequacy  
5-36 analysis publicly available on its Internet website for at least 14  
5-37 days before the date the board of directors votes on the submission  
5-38 of a proposed rate filing based on the analysis to the department.  
5-39 The rate adequacy analysis must include in an accessible format:

5-40 (1) all user selected hurricane model input  
5-41 assumptions; and

5-42 (2) detailed output data.

5-43 (b) The association shall accept public comment with  
5-44 respect to the association's rate adequacy analysis at a public  
5-45 meeting of the board of directors before the board of directors  
5-46 votes on the submission of a proposed rate filing to the department.

5-47 SECTION 14. Section 2210.573, Insurance Code, is amended by  
5-48 adding Subsection (f-1) to read as follows:

5-49 (f-1) In a notice described by Subsection (d)(1) or (2), the  
5-50 association must include additional information concerning the  
5-51 availability of supplemental payments under the policy, including:

5-52 (1) a description of the process for requesting a  
5-53 supplemental payment; and

5-54 (2) applicable deadlines related to supplemental  
5-55 payments.

5-56 SECTION 15. Subchapter L-1, Chapter 2210, Insurance Code,  
5-57 is amended by adding Section 2210.5732 to read as follows:

5-58 Sec. 2210.5732. SUPPLEMENTAL PAYMENTS. (a) The  
5-59 association is authorized to provide for supplemental payments  
5-60 under a windstorm and hail insurance policy issued by the  
5-61 association.

5-62 (b) The commissioner shall adopt rules clarifying the  
5-63 deadlines related to supplemental payments. The commissioner shall  
5-64 solicit and consider comments from the association, association  
5-65 members, and policyholders in adopting rules under this section.

5-66 (c) The rules adopted under this section must ensure that a  
5-67 request for supplemental payment will not impair a policyholder's  
5-68 right to appraisal under Section 2210.574.

5-69 SECTION 16. Section 2210.705, Insurance Code, is amended to

6-1 read as follows:

6-2 Sec. 2210.705. TRANSFER OF POLICIES. The commissioner  
6-3 shall by rule establish the procedure for the transfer of reinsured  
6-4 policies. The rules may not contain deadlines that require a  
6-5 property and casualty insurer or agent or a policyholder to take  
6-6 action or make a decision on or after June 1 or before December 1 in  
6-7 any year. The rule must provide that a reinsurance agreement  
6-8 include:

6-9 (1) [~~an offer commencement date of December 1,~~

6-10 [~~2~~] the opportunity for the policyholder to opt out  
6-11 of the reinsurance agreement not more than 60 days after the  
6-12 policyholder receives notice of the reinsurance agreement [~~on or~~  
6-13 ~~before May 31~~];

6-14 (2) [~~3~~] a transfer of the earned premium on a  
6-15 reinsured policy to a trust account to be held until the expiration  
6-16 of the opt-out period described by Subdivision (1) [~~2~~] when the  
6-17 earned premium for the final reinsured policy will be transferred  
6-18 to the reinsurer;

6-19 (3) [~~4~~] a period of not less than 60 days for the  
6-20 agent of record to accept an appointment or other written agreement  
6-21 with the reinsurer; and

6-22 (4) [~~5~~] any other requirements as the commissioner  
6-23 determines necessary for the protection of policyholders and the  
6-24 policyholders' agents.

6-25 SECTION 17. Section 2210.107(b), Insurance Code, is  
6-26 repealed.

6-27 SECTION 18. (a) Not later than January 1, 2020, the Texas  
6-28 Windstorm Insurance Association shall provide for a training  
6-29 program for members of the association's board of directors as  
6-30 required by Section 2210.1031, Insurance Code, as added by this  
6-31 Act.

6-32 (b) A member of the board of directors may not vote,  
6-33 deliberate, or be counted as a member in attendance at a meeting of  
6-34 the board held on or after January 1, 2020, until the member  
6-35 completes the training required by Section 2210.1031, Insurance  
6-36 Code, as added by this Act.

6-37 (c) Not later than March 31, 2020, the commissioner of  
6-38 insurance shall adopt or amend rules as required by Section  
6-39 2210.705, Insurance Code, as amended by this Act.

6-40 (d) Not later than June 1, 2020, the commissioner of  
6-41 insurance shall adopt or amend rules as required by Section  
6-42 2210.5732, Insurance Code, as added by this Act.

6-43 SECTION 19. (a) Except as provided by Section 18 of this  
6-44 Act, Sections 2210.102(g) and 2210.1031, Insurance Code, as added  
6-45 by this Act, do not affect the entitlement of a member serving on  
6-46 the board of directors of the Texas Windstorm Insurance Association  
6-47 immediately before the effective date of this Act to continue to  
6-48 serve on the board for the remainder of the term to which the member  
6-49 was appointed.

6-50 (b) The Texas Windstorm Insurance Association is not  
6-51 required to comply with Sections 2210.2031 and 2210.2032, Insurance  
6-52 Code, as added by this Act, before January 1, 2020.

6-53 (c) Section 2210.207, Insurance Code, as amended by this  
6-54 Act, applies only to an insurance policy that is delivered, issued  
6-55 for delivery, or renewed on or after January 1, 2020. A policy  
6-56 delivered, issued for delivery, or renewed before January 1, 2020,  
6-57 is governed by the law as it existed immediately before the  
6-58 effective date of this Act, and that law is continued in effect for  
6-59 that purpose.

6-60 (d) Section 2210.251(g), Insurance Code, as amended by this  
6-61 Act, does not affect the status of a certificate of compliance  
6-62 issued by the Texas Windstorm Insurance Association before June 1,  
6-63 2019, or after June 1, 2019, in response to an application made  
6-64 before that date for purposes of establishing evidence of  
6-65 insurability.

6-66 (e) Section 2210.2515, Insurance Code, as amended by this  
6-67 Act, applies only to an application for a certificate of compliance  
6-68 made on or after June 1, 2019. An application for a certificate of  
6-69 compliance made before June 1, 2019, is governed by the law as it

7-1 existed immediately before the effective date of this Act, and that  
7-2 law is continued in effect for that purpose.

7-3 (f) Section 2210.3511, Insurance Code, as added by this Act,  
7-4 applies only to a rate adequacy analysis made in relation to a rate  
7-5 filing made on or after the effective date of this Act.

7-6 (g) Section 2210.205(a), Insurance Code, as amended by this  
7-7 Act, applies only to an association policy that is delivered,  
7-8 issued for delivery, or renewed on or after July 1, 2020. An  
7-9 association policy delivered, issued for delivery, or renewed  
7-10 before July 1, 2020, is governed by the law as it existed  
7-11 immediately before the effective date of this Act, and that law is  
7-12 continued in effect for that purpose.

7-13 (h) Section 2210.573(f-1), Insurance Code, as added by this  
7-14 Act, applies only to a notice with respect to a claim submitted  
7-15 under an association policy that is delivered, issued for delivery,  
7-16 or renewed on or after July 1, 2020. A notice with respect to a  
7-17 claim submitted under an association policy delivered, issued for  
7-18 delivery, or renewed before July 1, 2020, is governed by the law as  
7-19 it existed immediately before the effective date of this Act, and  
7-20 that law is continued in effect for that purpose.

7-21 SECTION 20. This Act takes effect September 1, 2019.

7-22

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