

Amend HB 3 (house committee printing) as follows:

(1) On page 1, line 23, strike "by a person who is insured under Chapter 2210".

(2) On page 2, strike lines 4-20 and substitute the following appropriately numbered SECTION of the bill:

SECTION \_\_\_\_\_. Section 2210.002(a), Insurance Code, is amended to read as follows:

(a) This chapter may be cited as the Texas Coastal [~~Windstorm~~] Insurance Plan [~~Association~~] Act. A reference to the Texas Windstorm Insurance Association Act means this chapter.

(3) On page 4, at the end of line 2, insert:  
Notwithstanding any other provision of this code or this chapter, a class action under Subchapter F, Chapter 541, or under Rule 42, Texas Rules of Civil Procedure, may only be brought against the association by the attorney general at the request of the department.

(4) On page 5, lines 15-17, strike "A board member, employee of the association, or member of the windstorm insurance legislative oversight board established under Subchapter N" and substitute "A board member or employee of the association".

(5) On page 5, lines 18-21, strike "any board member, employee of the association, or member of the windstorm insurance legislative oversight board established under Subchapter N" and substitute "any board member or employee of the association".

(6) On page 5, line 23, strike "the Travis County district attorney or the department." and substitute "the department and may report the conduct and the identity of the person engaging in the conduct to another appropriate governmental authority. The department shall forward a report received under this subsection to the appropriate governmental authority if the department does not have the authority to finally resolve, or jurisdiction over, the matter that is the subject of the report."

(7) On page 6, line 17, strike "Section 2210.058" and substitute "Sections 2210.058 and 2210.061".

(8) On page 6, strike lines 18-22 and substitute:  
Sec. 2210.058. CLAIMS PRACTICES AUDIT. (a) The commissioner, in the manner and at the time the commissioner

determines to be necessary, shall conduct a random audit of claim files concerning claims the bases of which are damage to insured property caused by a particular storm to:

(9) On page 7, lines 2-3, strike "after the filing of the 100th claim described by Subsection (a)".

(10) On page 7, line 14, between "commissioner" and the underlined period, insert "and issue an order to that effect".

(11) On page 7, between lines 14 and 15, insert:

Sec. 2210.061. CONTRACTORS AND MANAGERIAL EMPLOYEES: COMPENSATION AND BONUSES. The association shall post on the association's Internet website any compensation, monetary or otherwise, and any bonus that, when aggregated, exceed \$100,000 in a calendar year and that are paid or given by the association to:

(1) a vendor or independent contractor with whom the association has a contract; and

(2) an association employee.

(12) On page 10, strike lines 1-10.

(13) On page 11, strike lines 1-8 and substitute:

(b-1) The commissioner or the commissioner's designated representative may attend a meeting of the board of directors or the members of the association, including a closed meeting authorized by Subchapter D, Chapter 551, Government Code, except for those portions of a closed meeting that involve the rendition of legal advice to the board concerning a regulatory matter or that would constitute an ex parte communication with the commissioner.

(14) On page 12, line 23, between "(1)" and "is", insert "subject to Subsection (d)".

(15) On page 12, line 26, strike "or adjuster involved with" and substitute "representing a claimant or the association in connection with".

(16) On page 13, between lines 3 and 4, insert:

(d) The association, before disclosing a settlement agreement to which the association is a party, shall redact from the settlement agreement any information that is confidential under Chapter 552, Government Code.

(17) On page 13, line 8, strike "2210.577(f)" and substitute "2210.578(f)".

(18) On page 13, strike lines 10-11 and substitute "surges, or rising waters not caused by waves or surges."

(19) On page 14, lines 8-10, strike "A person insured under this chapter may submit an application for renewal coverage directly to the association on forms prescribed by the association. An" and substitute "The association shall develop a simplified process that allows for the acceptance of an application for initial or renewal coverage from, and payment of premiums by, a property and casualty agent, a person insured under this chapter, or an applicant for coverage under this chapter. Each".

(20) On page 15, strike lines 3-7 and substitute:

(d) The commissioner, after receiving a recommendation from the board of directors, shall approve a commission structure for payment of an agent who submits an application for coverage to the association on behalf of a person who has an insurable interest in insurable property. The commission structure adopted by the commissioner must be fair and reasonable, taking into consideration the amount of work performed by an agent in submitting an application to the association and the prevailing commission structure in the private windstorm market.

(21) On page 16, lines 15 and 16, strike "Section 2210.575 and independent coverage review under Section 2210.576" and substitute "Section 2210.574 and alternative dispute resolution under Section 2210.575".

(22) On page 16, line 16, strike "and".

(23) On page 16, line 17, between "(B)" and "the necessity", insert:  
the binding effect of appraisal under Section 2210.574; and

(C)

(24) On page 17, line 2, between "gambling establishment" and the underlined semicolon, insert ", other than a premises on which bingo may be conducted under Chapter 2001, Occupations Code".

(25) On page 19, line 9, strike "January 1, 2012," and substitute "August 31, 2011,".

(26) On page 20, at the end of line 23, insert:  
A surcharge under this subsection must be developed and implemented in an amount that does not exceed the percentage of premium at which

a surcharge under Section 2210.259(a) is assessed.

(27) Strike page 23, line 15, through page 24, line 21.

(28) On page 25, strike lines 1-3 and 12-19 and renumber subdivisions of added Section 2210.571, Insurance Code, appropriately.

(29) On page 25, lines 24-25, strike "(b) The association or an agent or representative of the association" and substitute "(b) Subject to Section 2210.576, the association".

(30) On page 25, line 25, strike "on a claim".

(31) On page 25, line 26, strike the underlined colon.

(32) On page 25, line 27, strike "(1) amounts" and substitute "covered losses".

(33) On page 26, lines 1-2, strike "for loss to an insured structure, loss to contents of an insured structure, and additional living expenses; and" and substitute an underlined period.

(34) On page 26, strike line 3.

(35) On page 26, line 4, strike "association or an agent" and substitute "association, and an agent".

(36) On page 26, line 5, between "association" and "may", insert an underlined comma.

(37) On page 26, line 7, strike "trebling of damages" and substitute "additional damages, punitive damages,".

(38) Strike page 26, line 8, through page 33, line 22, and substitute:

Sec. 2210.573. FILING OF CLAIM; CLAIM PROCESSING. (a) Subject to Section 2210.205(b), an insured must file a claim under an association policy not later than the first anniversary of the date on which the damage to property that is the basis of the claim occurs.

(b) The claimant may submit written materials, comments, documents, records, and other information to the association relating to the claim. If the claimant fails to submit information in the claimant's possession that is necessary for the association to determine whether to accept or reject a claim, the association may, not later than the 30th day after the date the claim is filed, request in writing the necessary information from the claimant.

(c) The association shall, on request, provide a claimant

reasonable access to all information relevant to the determination of the association concerning the claim. The claimant may copy the information at the claimant's own cost or may request the association to provide a copy of all or part of the information to the claimant. The association may charge a claimant the actual cost incurred by the association in providing a copy of information under this section, excluding any amount for labor involved in making any information or copy of information available to a claimant.

(d) Unless the applicable 60-day period described by this subsection is extended by order of the commissioner, not later than the later of the 60th day after the date the association receives a claim or the 60th day after the date the association receives information requested under Subsection (b), the association shall provide the claimant, in writing, notification that:

(1) the association has accepted coverage for the claim in full;

(2) the association has accepted coverage for the claim in part and has denied coverage for the claim in part; or

(3) the association has denied coverage for the claim in full.

(e) In a notice described by Subsection (d)(1), the association must inform the claimant of the amount of loss the association will pay and of the time limit to request appraisal under Section 2210.574.

(f) In a notice described by Subsection (d)(2) or (3), the association must inform the claimant of, as applicable:

(1) the portion of the loss for which the association accepts coverage and the amount of loss the association will pay;

(2) the portion of the loss for which the association denies coverage and a detailed summary of the manner in which the association determined not to accept coverage for that portion of the claim; and

(3) the time limit to:

(A) request appraisal under Section 2210.574 of the portion of the loss for which the association accepts coverage; and

(B) provide notice of intent to bring an action as required by Section 2210.575.

(g) In addition to the notice required under Subsection (d)(2) or (3), the association shall provide a claimant with a form on which the claimant may provide the association notice of intent to bring an action as required by Section 2210.575.

Sec. 2210.574. DISPUTES CONCERNING AMOUNT OF ACCEPTED COVERAGE. (a) If the association accepts coverage for a claim in full and a claimant disputes only the amount of loss the association will pay for the claim, or if the association accepts coverage for a claim in part and a claimant disputes the amount of loss the association will pay for the accepted portion of the claim, the claimant may request from the association a detailed summary of the manner in which the association determined the amount of loss the association will pay.

(b) If a claimant disputes the amount of loss the association will pay for a claim or a portion of a claim, the claimant, not later than the 60th day after the date the claimant receives the notice described by Section 2210.573(d)(1) or (2), may demand appraisal in accordance with the terms of the association policy.

(c) If a claimant, on a showing of good cause and not later than the 15th day after the expiration of the 60-day period described by Subsection (b), requests in writing that the 60-day period be extended, the association may grant an additional 30-day period in which the claimant may demand appraisal.

(d) If a claimant demands appraisal under this section:

(1) the appraisal must be conducted as provided by the association policy; and

(2) the claimant and the association are responsible in equal shares for paying any costs incurred or charged in connection with the appraisal, including a fee charged under Subsection (e).

(e) If a claimant demands appraisal under this section and the appraiser retained by the claimant and the appraiser retained by the department are able to agree on an appraisal umpire to participate in the resolution of the dispute, the appraisal umpire

is the umpire chosen by the two appraisers. If the appraiser retained by the claimant and the appraiser retained by the department are unable to agree on an appraisal umpire to participate in the resolution of the dispute, the commissioner shall select an appraisal umpire from a roster of qualified umpires maintained by the department. The department may:

(1) require appraisers to register with the department as a condition of being placed on the roster of umpires; and

(2) charge a reasonable registration fee to defray the cost incurred by the department in maintaining the roster and the commissioner in selecting an appraisal umpire under this subsection.

(f) The appraisal decision is binding on the claimant and the association as to the amount of loss the association will pay for a fully accepted claim or the accepted portion of a partially accepted claim and is not appealable or otherwise reviewable. A claimant that does not demand appraisal before the expiration of the periods described by Subsections (b) and (c) waives the claimant's right to contest the association's determination of the amount of loss the association will pay with reference to a fully accepted claim or the accepted portion of a partially accepted claim.

(g) A claimant may not bring an action against the association with reference to a claim for which the association has accepted coverage in full.

Sec. 2210.575. DISPUTES CONCERNING DENIED COVERAGE. (a) If the association denies coverage for a claim in part or in full and the claimant disputes that determination, the claimant, not later than the 60th day after the date the claimant receives the notice described by Section 2210.573(d)(2) or (3), must provide the association with notice that the claimant intends to bring an action against the association concerning the partial or full denial of the claim.

(b) If a claimant, on a showing of good cause and not later than the 15th day after the expiration of the 60-day period described by Subsection (a), requests in writing that the 60-day period be extended, the association may grant an additional 30-day

period in which the claimant may provide the notice required under Subsection (a).

(c) If a claimant provides notice of intent to bring an action under Subsection (a) or (b), the association may require the claimant, as a prerequisite to filing the action against the association, to submit the dispute to alternative dispute resolution by mediation or moderated settlement conference, as provided by Chapter 154, Civil Practice and Remedies Code. A claimant that does not provide notice of intent to bring an action before the expiration of the periods described by Subsections (a) and (b) waives the claimant's right to contest the association's partial or full denial of coverage and is barred from bringing an action against the association concerning the denial of coverage.

(d) The association must request alternative dispute resolution of a dispute described by Subsection (c) not later than the 60th day after the date the association receives from the claimant notice of intent to bring an action.

(e) Alternative dispute resolution under this section must be completed not later than the 60th day after the date a request for alternative dispute resolution is made under Subsection (d). The 60-day period described by this subsection may be extended by the commissioner by rule or by the association and a claimant by mutual consent.

(f) If the claimant is not satisfied after completion of alternative dispute resolution, or if alternative dispute resolution is not completed before the expiration of the 60-day period described by Subsection (e) or any extension under that subsection, the claimant may bring an action against the association in a district court in the county in which the loss that is the subject of the coverage denial occurred. An action brought under this subsection shall be presided over by a judge appointed by the judicial panel on multidistrict litigation designated under Section 74.161, Government Code. A judge appointed under this section must be a resident of a first tier coastal county or a second tier coastal county.

(g) If a claimant brings an action against the association concerning a partial or full denial of coverage, the court shall



abate the action until the notice of intent to bring an action has been provided and, if requested by the association, the dispute has been submitted to alternative dispute resolution, in accordance with this section.

(h) A moderated settlement conference under this section may be conducted by a panel consisting of one or more impartial third parties.

(i) If the association requests mediation under this section, the claimant and the association are responsible in equal shares for paying any costs incurred or charged in connection with the mediation.

(j) If the association requests mediation under this section, and the claimant and the association are able to agree on a mediator, the mediator is the mediator agreed to by the claimant and the association. If the claimant and the association are unable to agree on a mediator, the commissioner shall select a mediator from a roster of qualified mediators maintained by the department. The department may:

(1) require mediators to register with the department as a condition of being placed on the roster; and

(2) charge a reasonable registration fee to defray the cost incurred by the department in maintaining the roster and the commissioner in selecting a mediator under this section.

(k) The commissioner shall establish rules to implement this section, including provisions for expediting alternative dispute resolution, facilitating the ability of a claimant to appear with or without counsel, establishing qualifications necessary for mediators to be placed on the roster maintained by the department under Subsection (j), and providing that formal rules of evidence shall not apply to the proceedings.

Sec. 2210.576. ISSUES BROUGHT TO SUIT; LIMITATIONS ON RECOVERY. (a) The only issues a claimant may raise in an action brought against the association under Section 2210.575 are:

(1) whether the association's denial of coverage was proper; and

(2) the amount of the damages described by Subsection (b) to which the claimant is entitled, if any.

(b) A claimant that brings an action against the association under Section 2210.575 may recover only:

(1) the covered loss payable under the terms of the association policy less, if applicable, the amount of loss already paid by the association for any portion of a covered loss for which the association accepted coverage;

(2) prejudgment interest from the 30th day after the date specified in Section 2210.573(d), at the prejudgment interest rate provided in Subchapter B, Chapter 304, Finance Code; and

(3) court costs and reasonable and necessary attorney's fees.

Sec. 2210.577. LIMITATIONS PERIOD. (a) Notwithstanding any other law, a claimant who brings an action against the association under Section 2210.575 must bring the action not later than the second anniversary of the date on which the person receives a notice described by Section 2210.573(d)(2) or (3).

(b) This section is a statute of repose and controls over any other applicable limitations period.

(39) On page 33, line 23, strike "Sec. 2210.577. TECHNICAL" and substitute "Sec. 2210.578. EXPERT".

(40) On page 33, line 24, strike "technical".

(41) On page 33, lines 25-26, strike "damage to property insured under an association policy" and substitute "a loss to insurable property".

(42) On page 33, line 27, between "tidal surges," and "rising waters", insert "or".

(43) On page 34, line 1, strike ", and wind-driven rain associated with a storm".

(44) On page 34, line 9, between "tidal surges," and "rising waters", insert "or".

(45) On page 34, line 10, strike ", and wind-driven rain associated with a storm".

(46) On page 34, strike lines 13-15.

(47) On page 34, lines 18 and 19, strike "and to provide guidance or other information requested by an independent review panel under Section 2210.576." and substitute ". The cost and expense incurred by the panel associated with the work of the panel".

under this section shall be paid or reimbursed by the association."

(48) On page 34, strike lines 20-26 and substitute:

(e) At the request of the commissioner, the panel shall recommend to the commissioner methods or models for determining the extent to which a loss to insurable property may be or was incurred as a result of wind, waves, tidal surges, or rising waters not caused by waves or surges for geographic areas or regions designated by the commissioner.

(49) On page 35, line 3, strike "technical".

(50) On page 35, between lines 6 and 7, insert:

(h) In any review of a claim under this subchapter, and in any action brought against the association under Section 2210.575, the guidelines published by the commissioner under Subsection (f) govern the claim and are presumed to be accurate and correct, unless clear and convincing evidence supports a deviation from the guidelines.

(51) Strike page 35, line 7, through page 37, line 14.

(52) On page 37, strike lines 18-23 and substitute:

Sec. 2210.580. RULEMAKING. (a) The commissioner shall adopt rules regarding the provisions of this subchapter, including rules concerning:

(1) qualifications and selection of appraisers for the appraisal procedure, mediators for the mediation process, and members of the expert panel;

(2) procedures and deadlines for the payment and handling of claims by the association as well as the procedures and deadlines for a review of a claim by the association;

(3) notice of expert panel meetings and the transparency of deliberations of the panel; and

(4) any other matters regarding the handling of claims that are not inconsistent with this subchapter.

(b) All rules adopted by the commissioner under this section shall promote the fairness of the process, protect the rights of aggrieved policyholders, and ensure that policyholders may participate in the claims review process without the necessity of engaging legal counsel.

(53) On page 42, line 21, strike "Section 2210.551(e),

Insurance Code, is" and substitute "Sections 2210.551(e) and 2210.552, Insurance Code, are".

(54) Strike page 42, line 27, through page 44, line 5, and substitute:

(b) The committee is composed of 12 members appointed as follows:

(1) four members of the senate appointed by the lieutenant governor, two of whom represent one or more first tier coastal counties and two of whom do not represent a first tier coastal county;

(2) four members of the house of representatives appointed by the speaker of the house of representatives, two of whom represent one or more first tier coastal counties and two of whom do not represent a first tier coastal county; and

(3) four public members with a background in actuarial science, law, business, or insurance, as follows:

(A) two members who do not reside in a first tier coastal county, appointed by the governor;

(B) one member who resides in a first tier coastal county, appointed by the lieutenant governor; and

(C) one member who resides in a first tier coastal county, appointed by the speaker of the house of representatives.

(c) The speaker of the house of representatives and the lieutenant governor shall jointly designate a chair or, alternatively, designate two co-chairs, from among the committee membership, one of whom represents or resides in a first tier coastal county.

(d) The committee shall:

(1) examine alternative ways to provide insurance to the seacoast territory of this state through a quasi-governmental entity, including providing insurance coverage through a system or program in which insurers in this state provide insurance in the seacoast territory of this state in proportion to the percentage of insurance coverage provided in geographic areas of this state other than the seacoast territory;

(2) study the residual markets for windstorm and hail

insurance in other states to determine if those markets operate more efficiently and effectively than the residual market for windstorm and hail insurance coverage in this state;

(3) study windstorm-related building codes and mitigation strategies to determine which codes or strategies are most effective;

(4) recommend:

(A) the appropriate scope of authority and responsibility for the entity to provide insurance to the seacoast territory of this state;

(B) an organizational structure to exercise authority and responsibility over the provision of insurance to the seacoast territory of this state;

(C) a timetable for implementation; and

(D) specific amendments to state laws and rules that are necessary to implement the committee's recommendations under this subdivision; and

(5) estimate funding requirements to implement the recommendations.

(55) On page 44, between lines 13 and 14, insert:

(h) This section expires June 1, 2013.

(56) Strike page 44, line 21, through page 46, line 6.

(57) Strike page 46, lines 7-18, and substitute the following appropriately numbered SECTION:

SECTION \_\_\_\_\_. (a) Except as otherwise specifically provided by this section, this Act applies only to a Texas windstorm and hail insurance policy, and to a dispute under a Texas windstorm and hail insurance policy, that is delivered, issued for delivery, or renewed by the Texas Windstorm Insurance Association on or after the 60th day after the effective date of this Act. A Texas windstorm and hail insurance policy, and a dispute under a Texas windstorm and hail insurance policy, that is delivered, issued for delivery, or renewed by the Texas Windstorm Insurance Association before the 60th day after the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(b) The deadline to file a claim under a Texas windstorm and

hail insurance policy delivered, issued for delivery, or renewed before the effective date of this Act by the Texas Windstorm Insurance Association is governed by the law in effect on the date the policy under which the claim is filed was delivered, issued for delivery, or renewed, and that law is continued in effect for that purpose.

(c) If a person insured by the Texas Windstorm Insurance Association disputes the amount the association will pay for a partially or fully accepted claim filed by the person, Section 2210.574, Insurance Code, as added by this Act, applies only if the claim is filed on or after the 60th day after the effective date of this Act.

(d) If a person insured by the Texas Windstorm Insurance Association disputes the amount the association will pay for a partially or fully accepted claim filed by the person and the claim is filed before the 60th day after the effective date of this Act:

(1) Section 2210.574, Insurance Code, as added by this Act, does not apply to the resolution of the dispute; and

(2) notwithstanding Section 2210.574, Insurance Code, as added by this Act, or any other provision of this Act, the claimant must attempt to resolve the dispute through the appraisal process contained in the association policy under which the claim is filed before an action may be brought against the Texas Windstorm Insurance Association concerning the claim.

(e) The person insured by the Texas Windstorm Insurance Association and the association may agree that an appraisal conducted under Subsection (d)(2) of this section is binding on the parties.

(f) An action brought against the association concerning a claim described by Subsection (d) of this section shall be abated until the appraisal process under Subsection (d)(2) of this section is completed.

(g) Notwithstanding Sections 2210.575 and 2210.576, Insurance Code, as added by this Act, Subsection (b) of this section, or any other provision of this Act, Sections 2210.576(b)(1)-(3), Insurance Code, apply to any cause of action that accrues against the Texas Windstorm Insurance Association on

or after the effective date of this Act and the basis of which is a claim filed under a Texas windstorm and hail policy that is delivered, issued for delivery, or renewed by the association, regardless of the date on which the policy was delivered, issued for delivery, or renewed.

(58) On page 46, line 21, strike "January 1, 2012" and substitute "the 60th day after the effective date of this Act".

(59) Correct cross-references and renumber SECTIONS of the bill accordingly.