

By: Middleton

H.B. No. 4419

A BILL TO BE ENTITLED

AN ACT

relating to settlement and resolution of claims against the Texas
Windstorm Insurance Association.

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

SECTION 1. Section 2210.573(a) and (f), Insurance Code, are
amended to read as follows:

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. For purposes of this Section, an insured is only required to
file one claim under an association policy per event. After a claim
has been filed, all losses under an association policy for the same
event shall be deemed claimed.

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

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

(2) a detailed explanation of 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

1 (3) the time limit to:

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

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

7 SECTION 2. Section 2210.5731, Insurance Code, is amended by
8 adding Subsection (c) to read as follows:

9 (c) If the association fails to make payment within the
10 timeline established by Subsection (a), the association shall pay
11 an additional interest at a rate of 18 per cent per annum on the
12 amount of the claim that has not been paid. Interest shall begin to
13 accrue on the date after the payment became past due until the claim
14 has been paid.

15 SECTION 3. Section 2210.574, Insurance Code, is amended to
16 read as follows:

17 Sec. 2210.574. DISPUTES CONCERNING AMOUNT OF ACCEPTED
18 COVERAGE. (a) If the association accepts coverage for a claim in
19 full and a claimant disputes only the amount of loss the association
20 will pay for the claim, or if the association accepts coverage for a
21 claim in part and a claimant disputes the amount of loss the
22 association will pay for the accepted portion of the claim, the
23 association shall provide to the claimant ~~[may request from the~~
24 ~~association]~~ a detailed summary of the manner in which the
25 association determined the amount of loss the association will pay
26 for each portion of the accepted claim.

27 (b) If a claimant disputes the amount of loss the

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

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

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

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

14 (2) the appraisal must be completed within a timeframe
15 agreed upon in writing by the appraisers of the parties, or as
16 ordered by an umpire, but may not exceed 180 days after the date an
17 appraisal is demanded;

18 (3) the association shall adequately detail the scope
19 of the appraisal, including, as applicable, a list of any portions
20 of the claim that have been accepted; and

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

25 (e) If a claimant demands appraisal under this section and
26 the appraiser retained by the claimant and the appraiser retained
27 by the association are able to agree on an appraisal umpire to

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

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

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

14 (f) If the claimant and the association fail to reach a
15 settlement agreement within 180 days from the date of the
16 appraisal, interest shall begin to accrue at a rate of 10 per cent
17 per annum on the higher of the appraised values. Once a settlement
18 has been reached, the amount of accrued interest shall be added to
19 the settlement amount and paid by the association.

20 (g) Except as provided by Subsection (h) [~~(g)~~], the
21 appraisal decision is binding on the claimant and the association
22 as to the amount of loss the association will pay for a fully
23 accepted claim or the accepted portion of a partially accepted
24 claim and is not appealable or otherwise reviewable. The appraisal
25 decision becomes binding once it is signed by the umpire and the
26 appraiser for the claimant or the association. A claimant that does
27 not demand appraisal before the expiration of the periods described

1 by Subsections (b) and (c) waives the claimant's right to contest
2 the association's determination of the amount of loss the
3 association will pay with reference to a fully accepted claim or the
4 accepted portion of a partially accepted claim.

5 (h) [~~(g)~~] A claimant or the association may, not later than
6 the 30 days after [~~second anniversary of~~] the date of an appraisal
7 decision becomes binding, give notice that the claimant or
8 association will dispute the appraisal decision. Within 30 days
9 after such notice is provided, the claimant or association may file
10 an action in a district court in the county in which the loss that is
11 the subject of the appraisal occurred to modify the appraisal
12 decision, or to vacate the appraisal decision and begin a new
13 appraisal process only if:

14 (1) the appraisal decision was obtained by corruption,
15 fraud, or other undue means;

16 (2) the rights of the claimant or the association were
17 prejudiced by:

18 (A) evident partiality by an appraisal umpire;

19 (B) corruption in an appraiser or appraisal
20 umpire; or

21 (C) misconduct or wilful misbehavior of an
22 appraiser or appraisal umpire; or

23 (3) an appraiser or appraisal umpire:

24 (A) exceeded the appraiser's or appraisal
25 umpire's powers;

26 (B) refused to postpone the appraisal after a
27 showing of sufficient cause for the postponement;

1 (C) refused to consider evidence material to the
2 claim; or

3 (D) conducted the appraisal in a manner that
4 substantially prejudiced the rights of the claimant or the
5 association.

6 (i) [~~(h)~~] Except as provided by Subsection (h) [~~(g)~~], a
7 claimant may not bring an action against the association with
8 reference to a claim for which the association has accepted
9 coverage in full.

10 SECTION 4. Section [2210.5741](#), Insurance Code, is amended to
11 read as follows:

12 Sec. 2210.5741. REPLACEMENT COST COVERAGE CLAIM
13 PROCESSING. (a) After the association accepts coverage for a claim
14 in full or in part, a claimant whose association policy includes
15 replacement cost coverage for a [~~the~~] claim may request the
16 replacement cost payment [~~by submitting to the association~~
17 ~~documentation of the cost and completion of the repairs related to~~
18 ~~the claim not later than the 545th day after the date the claimant~~
19 ~~receives a notification under Section [2210.573](#)(d)(1) or (2)].~~

20 (b) Not later than the 60th [~~30th~~] day after the date the
21 association receives a request [~~documentation~~] under Subsection
22 (a), the association shall provide the claimant, in writing,
23 notification of:

24 (1) the amount of the replacement cost payment the
25 association will make; and

26 (2) the deadline to request appraisal under this
27 section.

1 (c) The association shall pay the amount described by
2 Subsection (b)(1) not later than the 10th day after the date
3 notification is provided under Subsection (b).

4 (d) If a claimant has not demanded appraisal with respect to
5 a claim under Section 2210.574 and the claimant disputes the
6 replacement cost amount the association will pay with respect to
7 the claim, the claimant may demand appraisal of the replacement
8 cost amount not later than the 30th day after the date the claimant
9 receives the notification under Subsection (b). A claimant may
10 demand appraisal under this section without regard to whether ~~[all]~~
11 repairs related to the claim have begun or are complete.

12 (e) Except with respect to the deadlines applicable to an
13 appraisal under this section, the appraisal under this section
14 shall be conducted in the same manner as an appraisal demanded under
15 Section 2210.574.

16 (f) If a claimant's association policy includes replacement
17 cost coverage, the written notification provided to the claimant
18 under Section 2210.573(d)(1) or (2) must notify the claimant of the
19 deadlines under this section for ~~[+~~

20 ~~(1) completing repairs and submitting documentation~~
21 ~~under Subsection (a), and~~

22 ~~(2)]~~ demanding appraisal under this section.

23 SECTION 5. Section 2210.575(a), Insurance Code, is amended
24 to read as follows:

25 (a) If the association denies coverage for a claim in part
26 or in full and the claimant disputes that determination, the
27 claimant, not later than the expiration of the limitations period

1 described by Section 2210.577(a), but after the date the claimant
2 receives the notice described by Section 2210.573(d)(2) or (3),
3 must provide the association with notice that the claimant intends
4 to bring an action against the association concerning the partial
5 or full denial of the claim. The date the last notice by the
6 association under Section 2210.573(d)(2) or (3) is received shall
7 determine the deadline to provide a notice of intent to bring action
8 under this section.

9 SECTION 6. Section 2210.576, Insurance Code, is amended to
10 read as follows:

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

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

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

19 (b) Except as provided by Subsections (c) and (d), a
20 claimant who prevails in [~~that brings~~] an action against the
21 association under Section 2210.575 shall [~~may~~] recover [~~only~~]:

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

26 (2) prejudgment interest beginning the 11th [~~from the~~
27 ~~first~~] day after the date specified in Section 2210.573(d) [~~Section~~

1 ~~2210.5731~~ by which the association was or would have been required
2 to pay an accepted claim or the accepted portion of a claim,] at the
3 prejudgment interest rate provided in Subchapter B, Chapter 304,
4 Finance Code; and

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

7 (c) Nothing in this chapter, including Subsection (b), may
8 be construed to limit the consequential damages, or the amount of
9 consequential damages, that a claimant may recover under common law
10 in an action against the association.

11 (d) A claimant that brings an action against the association
12 under Section 2210.575 may, in addition to the covered loss
13 described by Subsection (b)(1) and any consequential damages
14 recovered by the claimant under common law, recover damages in an
15 amount not to exceed the aggregated amount of the covered loss
16 described by Subsection (b)(1) and the consequential damages
17 recovered under common law if the claimant proves by clear and
18 convincing evidence that the association mishandled the claimant's
19 claim to the claimant's detriment by intentionally:

20 (1) failing to meet the deadlines or timelines
21 established under this subchapter without good cause, including the
22 applicable deadline established under Section 2210.5731 for
23 payment of an accepted claim or the accepted portion of a claim;

24 (2) disregarding applicable guidelines published by
25 the commissioner under Section 2210.578(f);

26 (3) failing to provide the notice required under
27 Section 2210.573(d);

1 (4) rejecting a claim without conducting a reasonable
2 investigation with respect to the claim; ~~[or]~~

3 (5) denying coverage for a claim in part or in full if
4 the association's liability has become reasonably clear ~~[as a~~
5 ~~result of the association's investigation with respect to the~~
6 ~~portion of the claim that was denied];~~

7 (6) unreasonably delaying payment of a claim in part
8 or in full once the liability of the association has become
9 reasonably clear; or

10 (7) providing an amount of loss the association will
11 pay, in a notice under Section 2210.573, that is substantially less
12 than the amount awarded in an appraisal or as determined by a
13 factfinder in an action under this chapter.

14 (e) For purposes of Subsection (d), "intentionally" means
15 actual awareness of the facts surrounding the act or practice
16 listed in Subsection (d)(1), (2), (3), (4), or (5), coupled with the
17 specific intent that the claimant suffer harm or damages as a result
18 of the act or practice. Specific intent may be inferred from
19 objective manifestations that the association acted intentionally
20 or from facts that show that the association acted with flagrant
21 disregard of the duty to avoid the acts or practices listed in
22 Subsection (d)(1), (2), (3), (4), or (5).

23 SECTION 7. The Texas Windstorm Insurance Association shall
24 amend the association's plan of operation to conform to the changes
25 in law made by this Act not later than the 60th day after the
26 effective date of this Act.

27 SECTION 8. This Act takes effect September 1, 2021.