

By: Ritter, Smith of Harris

H.B. No. 986

Substitute the following for H.B. No. 986:

By: Seaman

C.S.H.B. No. 986

A BILL TO BE ENTITLED

AN ACT

1
2 relating to insurance coverage provided through the Texas Windstorm
3 Insurance Association.

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

5 SECTION 1. Section 3(f), Article 21.49, Insurance Code, is
6 amended to read as follows:

7 (f) "Insurable Property" means immovable property at fixed
8 locations in a catastrophe area or corporeal movable property
9 located therein (as may be designated in the plan of operation)
10 which property is determined by the Association, pursuant to the
11 criteria specified in the plan of operation to be in an insurable
12 condition against windstorm, hail and/or fire and explosion as
13 appropriate, as determined by normal underwriting standards;
14 provided, however, that insofar as windstorm and hail insurance is
15 concerned, any structure located within a catastrophe area,
16 commenced on or after the 30th day following the publication of the
17 plan of operation, not built or continuing in compliance with any
18 requirements [~~building specifications~~] set forth in the plan of
19 operation shall not be an insurable risk under this Act except as
20 otherwise provided under this Act. A structure, or an addition
21 thereto, which is constructed in conformity with plans [~~and~~
22 ~~specifications~~] that comply with the requirements [~~specifications~~]
23 set forth in the plan of operation at the time construction
24 commences shall not be declared ineligible for windstorm and hail

1 insurance as a result of subsequent changes [~~in the building~~
2 ~~specifications~~] set forth in the plan of operation. When repair of
3 damage to a structure involves replacement of items covered in
4 requirements [~~the building specifications as~~] set forth in the plan
5 of operation, such repairs must be completed in a manner to comply
6 with those requirements [~~such specifications~~] for the structure to
7 continue within the definition of Insurable Property for windstorm
8 and hail insurance. Nothing in this Act shall preclude special
9 rating of individual risks as may be provided in the plan of
10 operation. For purposes of this Act, all structures which are
11 located within those areas designated as units under the federal
12 Coastal Barrier Resources Act (Public Law 97-348) and for which
13 construction has commenced on or after July 1, 1991 shall not be
14 considered insurable property.

15 SECTION 2. Section 6A, Article 21.49, Insurance Code, is
16 amended by amending Subsections (a), (d), (h), (j), and (k) and
17 adding Subsections (j-1) and (k-1) to read as follows:

18 (a) Except as otherwise provided by this Subsection, all
19 structures that are constructed or repaired or to which additions
20 are made on or after January 1, 1988, to be considered insurable
21 property for windstorm and hail insurance from the Association,
22 must be inspected or approved by the Board for compliance with [~~the~~
23 ~~building specifications in~~] the plan of operation. After January
24 1, 2004 [~~2002~~], for [~~in~~] geographic areas specified by the
25 commissioner, the commissioner by rule shall adopt [~~may supplement~~
26 ~~the building specifications in the plan of operation with the~~
27 ~~structural provisions of~~] the 2003 International Residential Code

1 for one- and two-family dwellings published by the International
2 Code Council. For those geographic areas, the commissioner by rule
3 may adopt a subsequent edition of that code and may adopt any
4 supplements published by the International Code Council and
5 amendments to the code. [~~Roofing materials satisfy the building~~
6 ~~specifications in the plan of operation if those materials pass the~~
7 ~~UL Standard 997 or a comparable test certified by the Board and are~~
8 ~~installed as required by the Board to promote the wind resistance of~~
9 ~~the materials.]~~ A structure constructed, repaired, or to which
10 additions were made before January 1, 1988, that is located in an
11 area covered at the time by a building code recognized by the
12 Association shall be considered an insurable property for windstorm
13 and hail insurance from the Association without compliance with the
14 inspection or approval requirements of this Section or the plan of
15 operation. A structure constructed, repaired, or to which
16 additions were made before January 1, 1988, that is located in an
17 area not covered by a building code recognized by the Association
18 shall be considered an insurable property for windstorm and hail
19 insurance from the Association without compliance with the
20 inspection or approval requirements of this Section or the plan of
21 operation if that structure has been previously insured by a
22 licensed insurance company authorized to do business in this State
23 and the risk is in essentially the same condition as when previously
24 insured, except for normal wear and tear, and without any
25 structural change other than a change made according to code.
26 Evidence of previous insurance includes a copy of a previous
27 policy, copies of canceled checks or agent's records that show

1 payments for previous policies, and a copy of the title to the
2 structure or mortgage company records that show previous policies.
3 After January 1, 2004 [~~2002~~], a person must submit a notice of a [~~an~~
4 ~~application for~~] windstorm inspection to the unit responsible for
5 certification of windstorm inspections [~~inspection~~] at the
6 department before beginning to construct, alter, remodel, enlarge,
7 or repair a structure. [~~Failure to submit a timely application may~~
8 ~~result in a certificate of compliance not being issued unless plans~~
9 ~~and calculations, testing information, manufacturer's installation~~
10 ~~instructions, or any other documentation required by the~~
11 ~~commissioner is submitted to the unit responsible for windstorm~~
12 ~~inspection at the department as may be requested in order to fulfill~~
13 ~~the requirements of this section. The Board may appoint or employ~~
14 ~~qualified inspectors as defined in this Section to perform any~~
15 ~~inspections required by this Section.]~~

16 (d) A windstorm inspection may only be performed by a
17 qualified inspector. For purposes of this article, a "qualified
18 inspector" includes:

19 (1) a person determined by the Board to be qualified to
20 perform building inspections because of training or experience;

21 (2) a licensed professional engineer meeting the
22 requirements of the rules adopted by the commissioner for
23 appointment to conduct windstorm inspections; and

24 (3) an inspector who is certified by the International
25 Code Council, the Building Officials and Code Administrators
26 International, Inc., the International Conference of Building
27 Officials, or the Southern Building Code Congress International,

1 Inc., who has certifications as a buildings inspector and coastal
2 construction inspector, and who also complies with other
3 requirements specified by rule by the commissioner. A qualified
4 inspector must be approved and appointed or employed by the
5 department [~~Board~~] to perform building inspections. The department
6 [~~Board~~] may charge a reasonable fee [~~not to exceed \$200~~] for the
7 filing of applications and determining the qualifications of
8 persons for appointment as qualified inspectors.

9 (h) The department [~~Board~~] may charge a reasonable fee to
10 cover the cost of making building requirements [~~specifications~~] and
11 inspection standards available to the public.

12 (j) After notice and hearing, the department [~~Board~~] may
13 cancel or revoke an appointment [~~or authorization~~] made[, ~~issued,~~
14 ~~or existing~~] under this Section if the holder [~~or possessor~~] of the
15 appointment [~~or authorization~~] is found to be in violation of, or to
16 have failed to comply with, specific provisions of this Section or
17 any rule or regulation of the commissioner [~~Board~~] made under this
18 Section. In lieu of cancellation or revocation, the commissioner
19 [~~Board~~] may order one or more of the following sanctions, if the
20 commissioner [~~it~~] determines from the facts that it would be fair,
21 reasonable, or equitable:

22 (1) suspending the [~~authorization or~~] appointment for
23 a specific period, not to exceed one year;

24 (2) an order directing the holder [~~or possessor~~] of
25 the [~~authorization or~~] appointment to cease and desist from the
26 specified activity determined to be in violation of specific
27 provisions of this Section or rules and regulations of the

1 commissioner [~~Board~~] made pursuant to this Section or from failing
2 to comply with those provisions of this Section or the rules and
3 regulations promulgated under this Section; or

4 (3) if the appointed person [~~authorized or appointed~~]
5 is found by the commissioner [~~Board~~] to have knowingly, wilfully,
6 fraudulently, or with gross negligence signed or caused to be
7 prepared an inspection report that contains a false, fictitious, or
8 fraudulent statement or entry, directing the appointed person
9 [~~holder or possessor of the authorization or appointment~~] to remit
10 within a specified time, not to exceed 60 days, a specified monetary
11 forfeiture not to exceed \$5,000 for the violation or failure to
12 comply.

13 (j-1) If an appointed person is an engineer licensed by the
14 Texas Board of Professional Engineers who is found by the
15 department to have knowingly, wilfully, fraudulently, or with gross
16 negligence signed or caused to be prepared an inspection report
17 that contains a false or fraudulent statement or entry, the
18 commissioner may take action against the appointed person in the
19 manner provided by Subsection (j) of this Section, but may not levy
20 any monetary fine against an appointed person who is a licensed
21 engineer.

22 (k) A monetary forfeiture paid as a result of an order
23 issued under Subsection (j)(3) of this Section shall be deposited
24 to the credit of the general revenue fund. If it is found after
25 hearing that any appointed person [~~holder or possessor~~] has failed
26 to comply with an order issued under Subsection (j) of this Section,
27 the department [~~Board~~] shall, unless the [~~its~~] order is lawfully

1 stayed, cancel the [~~authorization or~~] appointment of the person
2 [~~holder or possessor~~]. The department [~~Board~~] may informally
3 dispose of any matter under Subsection (j) of this Section by
4 consent order or default.

5 (k-1) The commissioner shall notify the Texas Board of
6 Professional Engineers of each order issued by the commissioner
7 against an appointed person who is an engineer licensed by the Texas
8 Board of Professional Engineers, including an order suspending,
9 canceling, or revoking the appointment of that person.

10 SECTION 3. Sections 6C(b), (f), (g), (h), (k), (l), and (m),
11 Article 21.49, Insurance Code, are amended to read as follows:

12 (b) The Windstorm Building Code Advisory Committee on
13 Specifications and Maintenance is established as an advisory
14 committee to the commissioner to advise and make recommendations to
15 the commissioner on building requirements [~~specifications~~] and
16 maintenance in the plan of operation.

17 (f) The advisory committee shall analyze and make
18 recommendations for changes regarding procedures described under
19 Section 5(d) of this article that are [~~building specifications~~]
20 adopted by the commissioner in the plan of operation. In making
21 recommendations, the advisory committee shall [~~consider~~
22 ~~technological developments in building products and windstorm~~
23 ~~research and shall~~] seek to balance the concerns of all affected
24 parties, including consumers, builders, and the Association.

25 (g) Each proposal for a change in an applicable procedure
26 [~~building specification~~] must be submitted to the commissioner.
27 Each proposal must be submitted separately in writing and must

1 contain:

2 (1) the name, mailing address, and telephone number of
3 the proponent, or, if the proponent is a group or organization, the
4 name of the group or organization and the mailing address and
5 telephone number of the group or organization;

6 (2) a citation of any applicable statute or rule [~~the~~
7 ~~building code section regarding that specification, as published in~~
8 ~~the latest edition of that code~~];

9 (3) the text of the proposed change, with deletions
10 from current [~~code~~] language struck through with a single line and
11 new language underlined; and

12 (4) a statement of the purpose of the proposed change,
13 with supporting written or printed information.

14 (h) The commissioner by rule shall adopt a form to be used by
15 a person in presenting a proposal for a change in an applicable
16 procedure [~~building specification~~] to the commissioner.

17 (k) At an advisory committee meeting, any interested person
18 may present the person's views on a proposal for a change in an
19 applicable procedure [~~building specification~~] that is included on
20 the advisory committee's published agenda. The advisory committee
21 shall consider each comment presented in its action on the
22 disposition of each proposal.

23 (l) After consideration of a proposal for a change in an
24 applicable procedure [~~building specification~~], the advisory
25 committee by vote shall:

26 (1) recommend adoption of the proposal as initially
27 submitted;

1 (2) recommend adoption of the proposal with
2 modifications;

3 (3) recommend rejection of the proposal; or

4 (4) suspend consideration of the proposal and request
5 additional evaluation and study of the proposal.

6 (m) The advisory committee shall submit its recommendation
7 on each proposal to the commissioner. The commissioner shall
8 notify the advisory committee of the acceptance or rejection of
9 each recommendation not later than the 30th day after the date of
10 receipt by the commissioner. Acceptance of a recommendation by the
11 commissioner means that the commissioner will consider adoption of
12 that recommendation at a rulemaking hearing. Before adopting a
13 recommendation, the commissioner must determine that the proposal,
14 if adopted, will not weaken the integrity or diminish the
15 effectiveness of a procedure [~~building specification~~]. [~~The~~
16 ~~commissioner by rule may adopt a recommendation of the advisory~~
17 ~~committee by amending the plan of operation and, in amending the~~
18 ~~plan, may adopt a specification by reference.~~]

19 SECTION 4. Article 21.49, Insurance Code, is amended by
20 adding Section 6D to read as follows:

21 Sec. 6D. APPOINTMENT OF ENGINEERS; RULES. (a) The
22 commissioner, on the request of an engineer licensed by the Texas
23 Board of Professional Engineers, shall appoint the engineer under
24 this article not later than the 10th day after the date of the
25 engineer's delivery to the commissioner of information
26 demonstrating that the engineer is qualified to perform windstorm
27 inspections under this article.

1 (b) The commissioner shall adopt rules to determine the
2 information the commissioner will consider in appointing engineers
3 under Subsection (a) of this section.

4 SECTION 5. Sections 6A(c) and (e), Article 21.49, Insurance
5 Code, are repealed.

6 SECTION 6. Article 21.49, Insurance Code, as amended by
7 this Act, applies only to a policy of windstorm or hail insurance
8 that is delivered, issued for delivery, or renewed after January 1,
9 2004. A policy that is delivered, issued for delivery, or renewed
10 on or before January 1, 2004, is governed by the law as it existed
11 immediately before the effective date of this Act, and that law is
12 continued in effect for that purpose.

13 SECTION 7. This Act takes effect September 1, 2003.