

Amend CSHB 272 by striking everything below the enacting clause and replace with the following.

SECTION 1. Subchapter A, Chapter 2210, Insurance Code, is amended by adding Sections 2210.010 and 2210.011 to read as follows:

Sec. 2210.010. APPLICABILITY OF CERTAIN OTHER LAW. (a) A person insured under this chapter may not bring an action against the association under Chapter 541.

(b) Chapter 542 does not apply to the processing and settlement of claims by the association.

Sec. 2210.011. CERTAIN CONDUCT IN DISPUTE RESOLUTION PROHIBITED. A person insured under this chapter may not preside over a matter or action to which the association is a party, including by sitting as a judge or serving as an arbitrator.

SECTION 2. Section 2210.104, Insurance Code, is amended to read as follows:

Sec. 2210.104. OFFICERS; SALARIES AND BONUSES. (a) The board of directors shall elect from the board's membership an executive committee consisting of a presiding officer, assistant presiding officer, and secretary-treasurer.

(b) The association shall post on the association's Internet website the salary of each officer of the association and any bonuses paid to an officer of the association.

SECTION 3. Section 2210.105, Insurance Code, is amended by amending Subsections (a) and (b) and adding Subsections (b-1) and (e) to read as follows:

(a) Except for an emergency meeting, the association shall:  
(1) notify the department not later than the 11th day before the date of a meeting of the board of directors or of the members of the association; and

(2) not later than the seventh day before the date of a meeting of the board of directors, post notice of the meeting on the association's Internet website and the department's Internet website.

(b) Except for a closed meeting authorized by Subchapter D, Chapter 551, Government Code, a meeting of the board of directors or of the members of the association is open to[+]

~~[(1) the commissioner or the commissioner's designated representative, and~~

~~[(2)] the public.~~

(b-1) 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, is open to the commissioner or the commissioner's designated representative.

(e) The association shall broadcast live on the association's Internet website all meetings of the board of directors.

SECTION 4. Section 2210.107, Insurance Code, is amended to read as follows:

Sec. 2210.107. PRIMARY BOARD OBJECTIVES; REPORT. (a) The primary objectives of the board of directors are to ensure that the association:

(1) operates in accordance with this chapter and commissioner rules;

(2) complies with sound insurance principles; and

(3) meets all standards imposed under this chapter.

(b) Not later than June 1 of each year, the association shall submit to the commissioner, the legislative oversight board established under Subchapter N, the governor, the lieutenant governor, and the speaker of the house of representatives a report evaluating the extent to which the board met the objectives described by Subsection (a) in the 12-month period immediately preceding the date of the report.

SECTION 5. Subchapter C, Chapter 2210, Insurance Code, is amended by adding Section 2210.108 to read as follows:

Sec. 2210.108. OPEN MEETINGS AND OPEN RECORDS. Except as specifically provided by this chapter or another law, the association is subject to Chapters 551 and 552, Government Code.

SECTION 6. Section 2210.202, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) The commissioner shall adopt rules to simplify and streamline the process through which:

(1) a person who has an insurable interest in insurable property may apply with the association for insurance

coverage; and

(2) a person insured under this chapter may apply with the association for renewal of the person's insurance coverage.

SECTION 7. Section 2210.203, Insurance Code, is amended by amending Subsection (a-1) and adding Subsection (a-2) to read as follows:

(a-1) [~~This subsection applies only to a structure constructed, altered, remodeled, or enlarged on or after September 1, 2009, and only for insurable property located in areas designated by the commissioner.~~] Notwithstanding Subsection (a), if all or any part of the property to be insured [~~which this subsection applies~~] is located in Zone A or another similar zone with a high level of flood risk or in Zone V or another similar zone with an additional hazard associated with storm waves, as defined by the National Flood Insurance Program, [and if flood insurance under that federal program is available, the association may not issue an insurance policy for initial or renewal coverage unless evidence is submitted to the association that the property to be covered under the policy is also covered by a flood insurance policy issued under the National Flood Insurance Program in an amount equal to or greater than the amount of coverage under the policy to be issued by the association. This subsection does not apply to property for which flood insurance is not available under the National Flood Insurance Program [is submitted to the association].

(a-2) An agent offering or selling a Texas windstorm and hail insurance policy [~~in any area designated by the commissioner under this subsection~~] shall offer flood insurance coverage required under Subsection (a-1) to a [the] prospective insured, if that coverage is available.

SECTION 8. The heading to Subchapter E, Chapter 2210, Insurance Code, is amended to read as follows:

SUBCHAPTER E. INSURANCE COVERAGE; CLAIMS SETTLEMENT AND PAYMENT

SECTION 9. Subchapter E, Chapter 2210, Insurance Code, is amended by adding Sections 2210.205, 2210.210, 2210.211, and 2210.212 to read as follows:

Sec. 2210.205. REQUIRED POLICY PROVISIONS: DEADLINE FOR FILING CLAIM; NOTICE CONCERNING ARBITRATION. (a) A windstorm and

hail insurance policy issued by the association must:

(1) require an insured to file a claim under the policy not later than the first anniversary of the date on which the damage or loss that is the basis of the claim occurs; and

(2) contain, in boldface type, a conspicuous notice concerning the mandatory arbitration of coverage and claim disputes under Section 2210.553, including the prerequisites and deadlines for requesting arbitration described by Sections 2210.212 and 2210.553.

(b) The commissioner, on a showing of good cause by a person insured under this chapter, may extend the one-year period described by Subsection (a)(1) for a period not to exceed 90 days.

Sec. 2210.210. COVERAGE OF CERTAIN STRUCTURES PROHIBITED. The association may not issue coverage for the following structures, regardless of whether the structure is otherwise insurable property under this chapter:

(1) a wind turbine;

(2) a structure used primarily as a casino or other gambling establishment; or

(3) a structure used as a sexually oriented business, as defined by Section 243.002, Local Government Code.

Sec. 2210.211. PROOF OF OTHER COVERAGE REQUIRED FOR SETTLEMENT OF CERTAIN CLAIMS. (a) This section applies only to a claim filed under an association policy the issuance or renewal of which, under Section 2210.203(a-1), requires evidence of coverage by a flood insurance policy.

(b) The association may not pay or settle a claim described by Subsection (a) unless the person filing the claim provides evidence satisfactory to the association that, on the date of the loss that is the basis of the claim, the property insured under the association policy was also covered by a flood insurance policy in the amount required for issuance or renewal of the association policy under Section 2210.203(a-1).

Sec. 2210.212. NOTICE AND APPRAISAL OF CERTAIN CLAIMS. (a) Not later than the 30th day after the date a person insured under this chapter files a claim with the association, the association shall provide the person notice of whether the claim is accepted or

denied and, if the claim is accepted, a written appraisal of the damage to the insured property.

(b) A person who receives notice that a claim is denied may, after providing the association the notice required by Subsection (f), request binding arbitration under Section 2210.553.

(c) Not later than the 60th day after the date the association provides a written appraisal under Subsection (a), the person shall:

(1) accept the written appraisal and request payment of the person's claim in accordance with the appraisal; or

(2) request a supplemental review of the claim by the association.

(d) Not later than the 30th day after the date of a request for a supplemental review under Subsection (c)(2), the association shall:

(1) conduct the requested supplemental review and, if necessary, revise the written appraisal originally provided under Subsection (b) to reflect any changes resulting from the supplemental review; or

(2) notify the person who filed the claim that the association will not conduct the requested supplemental review.

(e) On receipt of the results of a supplemental review conducted under Subsection (d)(1), or notice under Subsection (d)(2) that the association will not conduct a supplemental review, the person who filed the claim may:

(1) accept the written appraisal following the supplemental review and request payment of the claim in accordance with that appraisal; or

(2) after providing the association the notice required under Subsection (f), dispute the written appraisal by requesting binding arbitration in the manner described by Section 2210.553.

(f) Not later than the 30th day before the date a person requests binding arbitration under Section 2210.553, the person shall provide the association with written notice of the person's intent to request binding arbitration. The notice provided under this subsection must advise the association of each of the person's

specific complaints concerning the association's denial of the claim or appraisal of the insured property, including the amount of damage that the person believes should have been but was not accounted for in any appraisal performed by the association.

(g) In addition to the notice required under Subsection (f), not later than the 30th day before the date of an arbitration under Section 2210.553, the person who filed the disputed claim and the association shall submit to the department all final offers of settlement concerning the disputed claim. The department, the person, and the association may not disclose the settlement offers received under this subsection to an arbitrator assigned under Section 2210.553.

SECTION 10. Section 2210.259, Insurance Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) A noncompliant residential structure insured by the association as of September 1, 2009, under Section 2210.251(f) that had been approved for insurability under the approval process regulations in effect on September 1, 2009, is subject to an annual premium surcharge in an amount determined under Subsection (c) [~~equal to 15 percent of the premium for insurance coverage obtained through the association~~]. The surcharge under this subsection applies to each policy issued or renewed by the association on or after the effective date of Sections 5 through 49, **HB 4409**, Acts of the 81st Legislature, Regular Session, 2009, and is due on the issuance or renewal of the policy.

(c) The commissioner, after receiving a recommendation from the board concerning the amount of the annual premium surcharge required under Subsection (a), by rule shall establish the amount of the annual premium surcharge. The amount of the surcharge must be actuarially justifiable and may not be less than 15 percent of the premium for insurance coverage obtained through the association. Before the commissioner by rule establishes the amount of the annual premium surcharge, the commissioner shall report to the legislative oversight board established under Subchapter N concerning the methodology the commissioner used to determine the amount of the annual premium surcharge.

SECTION 11. Section 2210.355(g), Insurance Code, is amended to read as follows:

(g) A commission paid to an agent must be reasonable, adequate, not unfairly discriminatory, and nonconfiscatory and must comply with rules adopted by the commissioner under Section 2210.356.

SECTION 12. Subchapter H, Chapter 2210, Insurance Code, is amended by adding Section 2210.356 to read as follows:

Sec. 2210.356. AGENT COMMISSIONS. (a) The commissioner by rule shall establish 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.

(b) 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 insurance market.

SECTION 13. Section 2210.453, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) If the association does not purchase reinsurance as authorized by this section, the board, not later than June 1 of each year, shall submit to the commissioner, the legislative oversight board established under Subchapter N, the governor, the lieutenant governor, and the speaker of the house of representatives a report containing an actuarial plan for paying losses in the event of a catastrophe with estimated damages of \$2.5 billion or more.

SECTION 14. Section 2210.501, Insurance Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) Except as provided by Subsection (d) and subject [~~Subject~~] to Section 2210.502, the maximum liability limits for coverage on a single insurable property may not be less than:

(1) \$350,000 for:

(A) a dwelling, including an individually owned townhouse unit; and

(B) the corporeal movable property located in or

about the dwelling and, as an extension of coverage, away from those premises, as provided under the policy;

(2) \$2,192,000 for a building, and the corporeal movable property located in the building, if the building is:

(A) owned by, and at least 75 percent of which is occupied by, a governmental entity; or

(B) not owned by, but is wholly and exclusively occupied by, a governmental entity;

(3) \$125,000 for individually owned corporeal movable property located in an apartment unit, residential condominium unit, or townhouse unit that is occupied by the owner of that property and, as an extension of coverage, away from those premises, as provided under the policy; and

(4) \$1,500,000 for:

(A) a structure other than a dwelling or a public building; and

(B) the corporeal movable property located in that structure and, as an extension of coverage, away from those premises, as provided under the policy.

(d) The maximum liability limits for insurable property the issuance or renewal of coverage by the association of which requires evidence of coverage by a flood insurance policy under Section 2210.203(a-1) may not exceed the maximum liability limits in effect for the property under the National Flood Insurance Program on the date the association policy is issued.

SECTION 15. Section 2210.502, Insurance Code, is amended by adding Subsection (e) to read as follows:

(e) The board of directors may not propose, and the commissioner may not approve, maximum liability limits for insurable property described by Section 2210.501(d), and for the corporeal movable property located in or about that property, that exceed the maximum liability limits in effect for the property or contents under the National Flood Insurance Program.

SECTION 16. The heading to Subchapter L, Chapter 2210, Insurance Code, is amended to read as follows:

SUBCHAPTER L. APPEALS AND OTHER ACTIONS; ARBITRATION

SECTION 17. Sections 2210.551(a) and (b), Insurance Code,



are amended to read as follows:

(a) This section:

(1) does not apply to a person insured under this chapter who is required to resolve a dispute concerning the payment of, the amount of, or the denial of a particular claim under Section 2210.553; and

(2) applies only to:

(A) [~~(1)~~] a person not described by Subdivision (1) who is insured under this chapter or an authorized representative of the person; or

(B) [~~(2)~~] an affected insurer.

(b) A person or entity described by Subsection (a)(2) [~~(a)~~] who is aggrieved by an act, ruling, or decision of the association may appeal to the commissioner not later than the 30th day after the date of that act, ruling, or decision.

SECTION 18. The heading to Section 2210.552, Insurance Code, is amended to read as follows:

Sec. 2210.552. [~~CLAIM~~] DISPUTES OTHER THAN CLAIM AND COVERAGE DISPUTES; VENUE.

SECTION 19. Section 2210.552, Insurance Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) Except as provided by Sections 2210.007, [~~and~~] 2210.106, and 2210.553, a person insured under this chapter who is aggrieved by an act, ruling, or decision of the association [~~relating to the payment of, the amount of, or the denial of a claim~~] may:

(1) bring an action against the association [~~including an action under Chapter 541~~]; or

(2) appeal the act, ruling, or decision under Section 2210.551.

(e) A person who brings an action against the association under this section:

(1) may recover the amount of actual damages, plus court costs and reasonable and necessary attorney's fees; and

(2) may not recover punitive or exemplary damages, including damages under Section 17.50, Business & Commerce Code.

SECTION 20. Subchapter L, Chapter 2210, Insurance Code, is amended by adding Sections 2210.553, 2210.554, and 2210.555 to read as follows:

Sec. 2210.553. ARBITRATION OF COVERAGE AND CLAIM DISPUTES.

(a) A dispute involving an act, ruling, or decision of the association relating to the payment of, the amount of, or the denial of a particular claim:

(1) must be resolved through binding arbitration in accordance with this section; and

(2) may not be resolved in the manner described by Section 2210.551 or 2210.552.

(b) A person insured under this chapter who is aggrieved by an act, ruling, or decision of the association relating to the payment of, the amount of, or the denial of a claim may request binding arbitration of the person's grievance.

(c) A person insured under this chapter must, in the manner prescribed by the commissioner by rule, request binding arbitration under this section not later than the earlier of:

(1) the 90th day after the date the person receives under Section 2210.212 notice from the association that a claim is denied or receives notice concerning a supplemental review requested under Section 2210.212(c); or

(2) the second anniversary of the date on which the damage or loss that is the basis of the particular claim occurs.

(d) The commissioner, on a showing of good cause by a person insured under this chapter, may extend each of the deadlines described by Subsection (c) by a period not to exceed 90 days.

(e) The commissioner by rule shall establish procedures for the conduct of the arbitration of grievances under this section. The rules adopted under this subsection must:

(1) be consistent with any applicable rules of the American Arbitration Association that were in effect on the date on which the policy under which the denied claim is filed was issued;

(2) establish the qualifications necessary for an arbitrator to become certified to conduct arbitrations under this section, including prohibiting a person to whom Section 2210.011 applies from serving as an arbitrator under this section;

(3) establish a procedure through which arbitrators may become certified to conduct arbitrations under this section;

(4) require an arbitrator conducting an arbitration under this section to be certified by the department;

(5) provide that the commissioner will randomly assign a certified arbitrator to conduct an arbitration under this section;

(6) establish a procedure through which a certified arbitrator's fees under this section are paid, including the maximum allowable rate for those fees, which party or parties are liable for the payment of those fees, and the manner in which an arbitrator may seek the commissioner's approval of those fees;

(7) establish the parameters for mandatory and permissible discovery for an arbitration under this section; and

(8) establish deadlines for an arbitration conducted under this section and require an arbitrator conducting an arbitration under this section to issue a scheduling order in accordance with those deadlines.

(f) If a person insured under this chapter or the association is not satisfied with the commissioner's assignment of an arbitrator under Subsection (e)(5), either party may, not later than the 10th day after the date of assignment, request that the commissioner randomly assign a different arbitrator to the dispute. Each party may request one reassignment under this section, and the commissioner shall grant a request for reassignment authorized under this subsection.

(g) The procedure established by the commissioner under Subsection (e)(6) must require that an arbitrator's fees be approved by the commissioner before those fees are paid.

(h) In addition to the rules required under Subsection (e), the commissioner may adopt any other rules necessary to implement this section, including rules that are specific to a particular storm or particular period and are intended to prevent unfair deviations in, and to encourage fairness in, arbitration awards under this section.

(i) The department shall maintain and make publicly available a list of arbitrators certified to conduct arbitrations

under this section.

(j) Except to the extent of any conflict with this section, Chapter 171, Civil Practice and Remedies Code, applies to an arbitration conducted under this section.

(k) A person insured under this chapter who requests binding arbitration under this section may be represented by an attorney.

Sec. 2210.554. ARBITRATION AWARDS; ATTORNEY'S FEES. (a) If, after an arbitration under Section 2210.553, the arbitrator awards damages to a person insured under this chapter in an amount that is 110 percent or more of the final offer of settlement from the association, the person insured under this chapter may also recover from the association reasonable and necessary attorney's fees.

(b) An arbitrator who awards damages to the person insured under this chapter may assess interest on the damage recovery owed the insured, at a rate of six percent per annum from the date of loss through the date of payment of the arbitration award by the association.

Sec. 2210.555. ABATEMENT OF ARBITRATION. (a) The association, not later than the 30th day after the date a person requests binding arbitration under Section 2210.553, may request from the commissioner an abatement of the arbitration if the association does not receive the notice required under Section 2210.212(f).

(b) The commissioner shall abate a requested arbitration if the commissioner finds that a person insured under this chapter did not provide the notice required under Section 2210.212(f).

(c) An abatement under this section continues until the 30th day after the date notice is provided in compliance with Section 2210.212(f).

SECTION 21. Section 2210.551(e), Insurance Code, is repealed.

SECTION 22. This Act applies only to a Texas windstorm and hail insurance policy, and a dispute arising under a Texas windstorm and hail insurance policy, delivered, issued for delivery, or renewed by the Texas Windstorm Insurance Association on or after the 30th day after the effective date of this Act. A

Texas windstorm and hail insurance policy, and a dispute arising under a Texas windstorm and hail insurance policy, delivered, issued for delivery, or renewed by the Texas Windstorm Insurance Association before the 30th day after the effective date of this Act, are governed by the law in effect on the date the policy was delivered, issued for delivery, or renewed, and the former law is continued in effect for that purpose.

SECTION 23. The Texas Windstorm Insurance Association shall amend the association's plan of operation to conform to the changes in law made by this Act not later than January 1, 2012.

SECTION 24. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.