

By: Smithee

H.B. No. 272

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the operation of the Texas Windstorm Insurance
3 Association and to the resolution of certain disputes concerning
4 claims made to that association.

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

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

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

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

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

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

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

24 (b) The association shall post on the association's

1 Internet website the salary of each officer of the association and
2 any bonuses paid to an officer of the association.

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

6 (a) Except for an emergency meeting, the association shall:

7 (1) notify the department not later than the 11th day
8 before the date of a meeting of the board of directors or of the
9 members of the association; and

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

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

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

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

20 (b-1) A meeting of the board of directors or the members of
21 the association, including a closed meeting authorized by
22 Subchapter D, Chapter 551, Government Code, is open to the
23 commissioner or the commissioner's designated representative.

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

27 SECTION 4. Section 2210.107, Insurance Code, is amended to

1 read as follows:

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

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

7 (2) complies with sound insurance principles; and

8 (3) meets all standards imposed under this chapter.

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

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

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

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

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

25 (1) a person who has an insurable interest in
26 insurable property may apply with the association for insurance
27 coverage; and

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

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

6 (a-1) [~~This subsection applies only to a structure~~
7 ~~constructed, altered, remodeled, or enlarged on or after September~~
8 ~~1, 2009, and only for insurable property located in areas~~
9 ~~designated by the commissioner.] Notwithstanding Subsection (a),
10 if all or any part of the property to be insured [~~which this~~
11 ~~subsection applies~~] is located in Zone A or another similar zone
12 with a high level of flood risk or in Zone V or another similar zone
13 with an additional hazard associated with storm waves, as defined
14 by the National Flood Insurance Program, [~~and if flood insurance~~
15 ~~under that federal program is available,~~] the association may not
16 issue an insurance policy for initial or renewal coverage unless
17 evidence is submitted to the association that the property to be
18 covered under the policy is also covered by a flood insurance policy
19 issued under the National Flood Insurance Program in an amount
20 equal to or greater than the amount of coverage under the policy to
21 be issued by the association. This subsection does not apply to
22 property for which flood insurance is not available under the
23 National Flood Insurance Program [~~is submitted to the association].~~~~

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

1 that coverage is available.

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

4 SUBCHAPTER E. INSURANCE COVERAGE; CLAIMS SETTLEMENT AND PAYMENT

5 SECTION 9. Subchapter E, Chapter 2210, Insurance Code, is
6 amended by adding Sections 2210.205, 2210.210, 2210.211, and
7 2210.212 to read as follows:

8 Sec. 2210.205. REQUIRED POLICY PROVISIONS: DEADLINE FOR
9 FILING CLAIM; NOTICE CONCERNING ARBITRATION. (a) A windstorm and
10 hail insurance policy issued by the association must:

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

14 (2) contain, in boldface type, a conspicuous notice
15 concerning the mandatory arbitration of coverage and claim disputes
16 under Section 2210.553, including the prerequisites and deadlines
17 for requesting arbitration described by Sections 2210.212 and
18 2210.553.

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

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

26 (1) a wind turbine;

27 (2) a structure used primarily as a casino or other

1 gambling establishment; or

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

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

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

16 Sec. 2210.212. NOTICE AND APPRAISAL OF CERTAIN CLAIMS. (a)
17 Not later than the 30th day after the date a person insured under
18 this chapter files a claim with the association, the association
19 shall provide the person notice of whether the claim is accepted or
20 denied and, if the claim is accepted, a written appraisal of the
21 damage to the insured property.

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

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

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

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

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

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

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

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

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

21 (2) after providing the association the notice
22 required under Subsection (f), dispute the written appraisal by
23 requesting binding arbitration in the manner described by Section
24 2210.553.

25 (f) Not later than the 30th day before the date a person
26 requests binding arbitration under Section 2210.553, the person
27 shall provide the association with written notice of the person's

1 intent to request binding arbitration. The notice provided under
2 this subsection must advise the association of each of the person's
3 specific complaints concerning the association's denial of the
4 claim or appraisal of the insured property, including the amount of
5 damage that the person believes should have been but was not
6 accounted for in any appraisal performed by the association.

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

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

18 (a) A noncompliant residential structure insured by the
19 association as of September 1, 2009, under Section 2210.251(f) that
20 had been approved for insurability under the approval process
21 regulations in effect on September 1, 2009, is subject to an annual
22 premium surcharge in an amount determined under Subsection (c)
23 ~~[equal to 15 percent of the premium for insurance coverage obtained~~
24 ~~through the association]~~. The surcharge under this subsection
25 applies to each policy issued or renewed by the association on or
26 after the effective date of Sections 5 through 49, H.B. No. 4409,
27 Acts of the 81st Legislature, Regular Session, 2009, and is due on

1 the issuance or renewal of the policy.

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

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

15 (g) A commission paid to an agent must be reasonable,
16 adequate, not unfairly discriminatory, and nonconfiscatory and
17 must comply with rules adopted by the commissioner under Section
18 2210.356.

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

21 Sec. 2210.356. AGENT COMMISSIONS. (a) The commissioner by
22 rule shall establish a commission structure for payment of an agent
23 who submits an application for coverage to the association on
24 behalf of a person who has an insurable interest in insurable
25 property.

26 (b) The commission structure adopted by the commissioner
27 must be fair and reasonable, taking into consideration the amount

1 of work performed by an agent in submitting an application to the
2 association and the prevailing commission structure in the private
3 windstorm insurance market.

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

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

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

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

19 (1) \$350,000 for:

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

22 (B) the corporeal movable property located in or
23 about the dwelling and, as an extension of coverage, away from those
24 premises, as provided under the policy;

25 (2) \$2,192,000 for a building, and the corporeal
26 movable property located in the building, if the building is:

27 (A) owned by, and at least 75 percent of which is

1 occupied by, a governmental entity; or

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

4 (3) \$125,000 for individually owned corporeal movable
5 property located in an apartment unit, residential condominium
6 unit, or townhouse unit that is occupied by the owner of that
7 property and, as an extension of coverage, away from those
8 premises, as provided under the policy; and

9 (4) \$1,500,000 for:

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

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

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

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

23 (e) The board of directors may not propose, and the
24 commissioner may not approve, maximum liability limits for
25 insurable property described by Section 2210.501(d), and for the
26 corporeal movable property located in or about that property, that
27 exceed the maximum liability limits in effect for the property or

1 contents under the National Flood Insurance Program.

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

4 SUBCHAPTER L. APPEALS AND OTHER ACTIONS; ARBITRATION

5 SECTION 17. Sections 2210.551(a) and (b), Insurance Code,
6 are amended to read as follows:

7 (a) This section:

8 (1) does not apply to a person insured under this
9 chapter who is required to resolve a dispute concerning the payment
10 of, the amount of, or the denial of a particular claim under Section
11 2210.553; and

12 (2) applies only to:

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

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

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

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

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

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

1 (a) Except as provided by Sections 2210.007, ~~[and]~~
2 2210.106, and 2210.553, a person insured under this chapter who is
3 aggrieved by an act, ruling, or decision of the association
4 ~~[relating to the payment of, the amount of, or the denial of a~~
5 ~~claim]~~ may:

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

8 (2) appeal the act, ruling, or decision under Section
9 2210.551.

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

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

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

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

19 Sec. 2210.553. ARBITRATION OF COVERAGE AND CLAIM DISPUTES.

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

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

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

27 (b) A person insured under this chapter who is aggrieved by

1 an act, ruling, or decision of the association relating to the
2 payment of, the amount of, or the denial of a claim may request
3 binding arbitration of the person's grievance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (i) The department shall maintain and make publicly
8 available a list of arbitrators certified to conduct arbitrations
9 under this section.

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

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

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

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

27 Sec. 2210.555. ABATEMENT OF ARBITRATION. (a) The

1 association, not later than the 30th day after the date a person
2 requests binding arbitration under Section 2210.553, may request
3 from the commissioner an abatement of the arbitration if the
4 association does not receive the notice required under Section
5 2210.212(f).

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

9 (c) An abatement under this section continues until the 30th
10 day after the date notice is provided in compliance with Section
11 2210.212(f).

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

14 SECTION 22. This Act applies only to a Texas windstorm and
15 hail insurance policy, and a dispute arising under a Texas
16 windstorm and hail insurance policy, delivered, issued for
17 delivery, or renewed by the Texas Windstorm Insurance Association
18 on or after the 30th day after the effective date of this Act. A
19 Texas windstorm and hail insurance policy, and a dispute arising
20 under a Texas windstorm and hail insurance policy, delivered,
21 issued for delivery, or renewed by the Texas Windstorm Insurance
22 Association before the 30th day after the effective date of this
23 Act, are governed by the law in effect on the date the policy was
24 delivered, issued for delivery, or renewed, and the former law is
25 continued in effect for that purpose.

26 SECTION 23. The Texas Windstorm Insurance Association shall
27 amend the association's plan of operation to conform to the changes

1 in law made by this Act not later than January 1, 2012.

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