

By: Smithee

H.B. No. 3605

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the payment of losses by the Texas Windstorm Insurance  
3 Association

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

5 SECTION 1. Section 2210.003, Insurance Code, is amended to  
6 read as follows:

7 Sec. 2210.003. GENERAL DEFINITIONS. In this chapter,  
8 unless the context clearly indicates otherwise:

9 (1) "Accident year" means the year in which a  
10 windstorm or hail event or events occur that results in insured  
11 losses, regardless of when the insured losses are ultimately paid.

12 ~~(1)~~(2) "Association" means the Texas Windstorm  
13 Insurance Association.

14 ~~(2)~~(3) "Board of directors" means the board of  
15 directors of the association.

16 ~~(3)~~(4) "Catastrophe area" means a municipality, a part  
17 of a municipality, a county, or a part of a county designated by the  
18 commissioner under Section 2210.005.

19 ~~(3-a)~~(5) "Catastrophe reserve trust fund" means the  
20 trust fund established under Subchapter J.

21 (6) "Exposure to loss" means a measurement for  
22 determining exposure to windstorm losses. Exposure to loss can  
23 include, but is not limited to, net direct premiums and amounts for  
24 which properties are insured.

1           ~~(4)~~(7) "First tier coastal county" means:

- 2                   (A) Aransas County;
- 3                   (B) Brazoria County;
- 4                   (C) Calhoun County;
- 5                   (D) Cameron County;
- 6                   (E) Chambers County;
- 7                   (F) Galveston County;
- 8                   (G) Jefferson County;
- 9                   (H) Kenedy County;
- 10                  (I) Kleberg County;
- 11                  (J) Matagorda County;
- 12                  (K) Nueces County;
- 13                  (L) Refugio County;
- 14                  (M) San Patricio County; or
- 15                  (N) Willacy County.

16           ~~(5) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1408,~~  
17 ~~Sec. 44(1), eff. June 19, 2009.~~

18           ~~(6)~~(8) "Insurance" means Texas windstorm and hail  
19 insurance.

20           ~~(7)~~(9) "Net direct premium" means gross direct written  
21 premium less return premium on each canceled contract, regardless  
22 of assumed or ceded reinsurance, that is written on property in this  
23 state, as defined by the board of directors.

24           ~~(8)~~(10) "New building code" means a building standard,  
25 specification, or guideline adopted by the commissioner after May  
26 1, 1997, that must be satisfied before new residential construction  
27 qualifies for a certificate of compliance that constitutes evidence

1 of insurability of the structure by the association.

2 ~~(9)~~(11) "Plan of operation" means the plan adopted  
3 under this chapter for the operation of the association.

4 ~~(10)~~(12) "Seacoast territory" means the territory of  
5 this state composed of the first tier coastal counties and the  
6 second tier coastal counties.

7 ~~(11)~~(13) "Second tier coastal county" means:

- 8 (A) Bee County;
- 9 (B) Brooks County;
- 10 (C) Fort Bend County;
- 11 (D) Goliad County;
- 12 (E) Hardin County;
- 13 (F) Harris County;
- 14 (G) Hidalgo County;
- 15 (H) Jackson County;
- 16 (I) Jim Wells County;
- 17 (J) Liberty County;
- 18 (K) Live Oak County;
- 19 (L) Orange County;
- 20 (M) Victoria County; or
- 21 (N) Wharton County.

22 ~~(12) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1408,~~  
23 ~~Sec. 44(1), eff. June 19, 2009.~~

24 ~~(13)~~(14) "Texas windstorm and hail insurance" means  
25 deductible insurance against:

- 26 (A) direct loss to insurable property incurred as  
27 a result of windstorm or hail, as those terms are defined and

1 limited in policies and forms approved by the department; and

2 (B) indirect losses resulting from the direct  
3 loss.

4 SECTION 2. Section 2210.052, Insurance Code, is amended to  
5 read as follows:

6 Sec. 2210.052. MEMBER PARTICIPATION IN ASSOCIATION. (a)  
7 Each member of the association shall participate in accident year  
8 insured losses and operating expenses of the association, in excess  
9 of premium and other revenue of the association, in the proportion  
10 that the ~~net direct premiums~~ exposure to loss of that member during  
11 the preceding calendar year bears to the aggregate ~~net direct~~  
12 ~~premiums~~ exposure to loss by all members of the association, as  
13 determined using the information provided under Subsection (b).

14 (b) The department shall review annual statements, other  
15 reports, and other statistics that the department considers  
16 necessary to obtain the information required under Subsection (a)  
17 and shall provide that information to the association. The  
18 department is entitled to obtain the annual statements, other  
19 reports, and other statistics from any member of the association.

20 (c) Each member's participation in the association shall be  
21 determined annually in the manner provided by the plan of  
22 operation. For purposes of determining participation in the  
23 association, two or more members that are subject to common  
24 ownership or that operate in this state under common management or  
25 control shall be treated as a single member. The determination  
26 shall also include the ~~net direct premiums~~ exposure to loss of an  
27 affiliate that is under that common management or control,

1 including an affiliate that is not authorized to engage in the  
2 business of property insurance in this state.

3 (d) Notwithstanding Subsection (a), a member, in accordance  
4 with the plan of operation, is entitled to receive credit for  
5 similar insurance voluntarily written in areas designated by the  
6 commissioner. The member's participation in the accident year  
7 insured losses and operating expenses of the association in excess  
8 of premium and other revenue of the association shall be reduced in  
9 accordance with the plan of operation.

10 (e) Notwithstanding Subsections (a)-(d), an insurer that  
11 becomes a member of the association and that has not previously been  
12 a member of the association is not subject to participation in any  
13 insured losses and operating expenses of the association in excess  
14 of premium and other revenue of the association until the second  
15 anniversary of the date on which the insurer first becomes a member  
16 of the association.

17 SECTION 3. Section 2210.071, Insurance Code, is amended to  
18 read as follows:

19 Sec. 2210.071. PAYMENT OF EXCESS LOSSES; PAYMENT FROM  
20 RESERVES AND TRUST FUND. (a) If an occurrence or series of  
21 occurrences in an accident year in a catastrophe area results in  
22 insured losses and operating expenses of the association in excess  
23 of premium and other revenue of the association, the excess losses  
24 and operating expenses shall be paid as provided by this  
25 subchapter.

26 (b) The association shall pay losses in excess of premium  
27 and other revenue of the association from available reserves of the

1 association and available amounts in the catastrophe reserve trust  
2 fund.

3 SECTION 4. Section 2210.072, Insurance Code, is amended to  
4 read as follows:

5 Sec. 2210.072. PAYMENT FROM CLASS 1 PUBLIC SECURITIES;  
6 FINANCIAL INSTRUMENTS. (a) Losses not paid under Section 2210.071  
7 shall be paid as provided by this section from the proceeds from  
8 Class 1 public securities authorized to be issued in accordance  
9 with Subchapter M on or after the date of any occurrence or series  
10 of occurrences that results in insured losses. Public securities  
11 issued under this section must be repaid within a period not to  
12 exceed 10 years, and may be repaid sooner if the board of directors  
13 elects to do so and the commissioner approves.

14 (b) Public securities described by Subsection (a) shall be  
15 issued as necessary in a principal amount not to exceed \$1 billion  
16 per accident year.

17 (c) If the losses are paid with public securities described  
18 by this section, the public securities shall be repaid in the manner  
19 prescribed by Subchapter M from association premium revenue.

20 (d) The association may borrow from, or enter into other  
21 financing arrangements with, any market source, under which the  
22 market source makes interest-bearing loans or other financial  
23 instruments to the association to enable the association to pay  
24 losses under this section or to obtain public securities under this  
25 section. For purposes of this subsection, financial instruments  
26 includes commercial paper.

27 SECTION 5. Section 2210.073, Insurance Code, is amended to

1 read as follows:

2           Sec. 2210.073. PAYMENT FROM CLASS 2 PUBLIC SECURITIES. (a)  
3 Losses not paid under Sections 2210.071 and 2210.072 shall be paid  
4 as provided by this section from proceeds from Class 2 public  
5 securities authorized to be issued in accordance with Subchapter M  
6 on or after the date of any occurrence that results in insured  
7 losses under this subsection. Public securities issued under this  
8 section must be repaid within a period not to exceed 10 years, and  
9 may be repaid sooner if the board of directors elects to do so and  
10 the commissioner approves.

11           (b) Public securities described by Subsection (a) may be  
12 issued as necessary in a principal amount not to exceed \$1 billion  
13 per accident year. If the losses are paid with public securities  
14 described by this section, the public securities shall be repaid in  
15 the manner prescribed by Subchapter M.

16           SECTION 6. Section 2210.074, Insurance Code, is amended to  
17 read as follows:

18           Sec. 2210.074. PAYMENT THROUGH CLASS 3 PUBLIC SECURITIES.  
19 (a) Losses not paid under Sections 2210.071, 2210.072, and  
20 2210.073 shall be paid as provided by this section from proceeds  
21 from public securities authorized to be issued in accordance with  
22 Subchapter M on or after the date of any occurrence that results in  
23 insured losses under this subsection or through reinsurance as  
24 described by Section 2210.075. Public securities issued under  
25 this section must be repaid within a period not to exceed 10 years,  
26 and may be repaid sooner if the board of directors elects to do so  
27 and the commissioner approves.

1           (b) Public securities described by Subsection (a) may be  
2 issued as necessary in a principal amount not to exceed \$500 million  
3 per accident year. If the losses are paid with public securities  
4 described by this section, the public securities shall be repaid in  
5 the manner prescribed by Subchapter M through member assessments as  
6 provided by this section. The association shall notify each member  
7 of the association of the amount of the member's assessment under  
8 this section. The proportion of the losses allocable to each  
9 insurer under this section shall be determined in the manner used to  
10 determine each insurer's participation in the association for the  
11 year under Section 2210.052. A member of the association may not  
12 recoup an assessment paid under this subsection through a premium  
13 surcharge or tax credit.

14           SECTION 7. This Act takes effect immediately if it receives  
15 a vote of two-thirds of all the members elected to each house, as  
16 provided by Section 39, Article III, Texas Constitution. If this  
17 Act does not receive the vote necessary for immediate effect, this  
18 Act takes effect January 1, 2012.