

By: Fraser

S.B. No. 1740

A BILL TO BE ENTITLED

AN ACT

relating to the Texas Windstorm Insurance Association.

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

SECTION 1. Subchapter L, Chapter 2210, Insurance Code, is amended to read as follows:

SUBCHAPTER L. APPEALS AND OTHER ACTIONS

Sec. 2210.551. APPEAL BY THE ASSOCIATION. [APPEALS]

(a) ~~This section applies to:~~

~~(1) a person insured under this chapter or an authorized representative of the person; or~~

~~(2) an affected insurer.~~

~~[(b) A person or entity described by Subsection (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.]~~

[e] If the association is aggrieved by the action of the commissioner with respect to a ruling, order, or determination of the commissioner, the association may, not later than the 30th day after the date of the action, make a written request to the commissioner for a hearing on the action.

(b [d]) On 10 days' written notice of the time and place of the hearing, the commissioner shall conduct a hearing on the association's request or the appeal from an act, ruling, or decision of the association, not later than the 30th day after the

1 date of receipt of the request or appeal.

2 ~~[(c) A hearing on an act, ruling, or decision of the~~
3 ~~association relating to the payment of, the amount of, or the denial~~
4 ~~of a particular claim shall be held, at the request of the claimant,~~
5 ~~in the county in which the insured property is located or in Travis~~
6 ~~County.]~~

7 (c [f]) Not later than the 30th day after the date of the
8 hearing, the commissioner shall affirm, reverse, or modify the
9 commissioner's previous action or the act, ruling, or decision
10 appealed to the commissioner. Pending the hearing and decision,
11 the commissioner may suspend or postpone the effective date of the
12 previous action or of the act, ruling, or decision appealed to the
13 commissioner.

14 (d [g]) The association [~~, or the person or entity aggrieved~~
15 ~~by the order or decision of the commissioner,~~] may appeal to a
16 district court in the county in which the covered property is
17 located or a district court in Travis County.

18 (e [h]) An action brought under this section is subject to
19 the procedures established under Subchapter D, Chapter 36.

20 Sec. 2210.552. DEFINITIONS. "Damages" means all claims
21 under common law, statutory and equitable causes of action, for
22 actual damages including economic and non-economic damages, and all
23 forms of additional damages including without limitation
24 additional damages, knowing damages, punitive damages, trebling of
25 damages of any kind, penalties, prejudgment interest, post judgment
26 interest, attorneys fees, litigation costs, costs of court, and all
27 other damages of any kind or character.

1 ~~[CLAIM DISPUTES, VENUE. (a) Except as provided by Sections~~
2 ~~2210.007 and 2210.106, 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 claim~~
5 ~~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 ~~[(b) A person may not proceed under both Section 2210.551~~
11 ~~and this section for the same act, ruling, or decision.~~

12 ~~[(c) Except as provided by Subsection (d), venue in an~~
13 ~~action brought under this section, including an action under~~
14 ~~Chapter 541, against the association is in the county in which the~~
15 ~~insured property is located or in a district court in Travis County.~~

16 ~~[(d) Venue in an action, including an action under Chapter~~
17 ~~541, brought under this section in which the claimant joins the~~
18 ~~department as a party to the action is only in a district court in~~
19 ~~Travis County.]~~

20 Sec. 2210.553. APPEALS TO BOARD OF DIRECTORS. A person
21 aggrieved by a decision of the association relating to eligibility
22 for or amount of benefits payable to the person, or for damages
23 claimed by a person related to the eligibility for or amount of
24 benefits payable to a person may appeal the decision to the
25 Executive Director. An appeal to the Executive Director shall be
26 filed no more than 30 days after the date of the decision is made for
27 which review is sought. This subchapter provides the sole remedy

1 for the aggrieved person.

2 Sec. 2210.554. HEARING BY STATE OFFICE OF ADMINISTRATIVE
3 HEARINGS. The executive director or a person designated by the
4 executive director shall refer an appeal under this section to the
5 State Office of Administrative Hearings to conduct a hearing as
6 provided by Chapter 2001, Government Code.

7 Sec. 2210.555. CONTESTED CASE. An appeal under this
8 section is a contested case as defined by Chapter 2001, Government
9 Code. An aggrieved person appealing a decision under this section
10 has the burden of proof on all issues, including any affirmative
11 defense.

12 Sec. 2210.556. FINAL DECISION. A decision by the State
13 Office of Administrative Hearings is final within the meaning of
14 Sec. 2210.557

15 Sec. 2210.557. NEGOTIATED SETTLEMENT. (a) Notwithstanding
16 this Section, the association and a person aggrieved by a decision
17 of the association may at any time informally negotiate a
18 settlement of a claim.

19 (b) A negotiated settlement must be approved by the board of
20 directors if the settlement amount is in excess of \$25,000, or
21 includes consideration for attorney fees.

22 (c) A settlement negotiated under this section may not
23 exceed the applicable maximum liability limit established under the
24 policy.

25 Sec. 2210.558. JUDICIAL REVIEW. (a) A person aggrieved by
26 a final decision of the State Office of Administrative Hearings in a
27 contested case under this section is entitled to judicial review in

1 accordance with Chapter 2001, Government Code.

2 (b) The venue for appeal from a final decision of the State
3 Office of Administrative Hearings under this section is in district
4 court in Travis County.

5 (c) The review on appeal is governed by the substantial
6 evidence rule as described by Section 2001.174, Government Code.

7 Sec. 2210.559. PLAN OF OPERATION. The board of directors
8 may submit proposed changes to the plan of operation to implement
9 this subchapter.

10 Sec. 2210.560. NOTICE; INSPECTION. (a) As a prerequisite
11 to filing a an appeal under Sec. 2210.552 of this subchapter, a
12 person covered by an association policy shall give written notice
13 to the association at least 60 days before filing the appeal
14 advising the association in reasonable detail of the person's
15 specific complaint and the amount of damage and expenses, including
16 attorneys' fees, if any, reasonably incurred to date by the person
17 in asserting the claim against the association. During the 60-day
18 period a written request to inspect, in a reasonable manner and at a
19 reasonable time and place, the property that is the subject of the
20 person's action or claim may be presented to the person.

21 (b) If the giving of 60 days' written notice is rendered
22 impracticable by reason of the necessity of filing a claim in order
23 to prevent the expiration of the statute of limitations or if the
24 person's claim is asserted by way of counterclaim, the notice
25 provided for in Subsection (a) of this section is not required, but
26 the tender provided for by this subchapter may be made within 60
27 days after filing the appeal or counterclaim.

1 (c) If the association does not receive written notice, as
2 required by Subsection (a), then the association may file a plea in
3 abatement not later than the 30th day after the date the person
4 files an original answer in the venue in which the appeal is
5 pending. This subsection does not apply if Subsection (b) applies.

6 (d) The State Office of Administrative Hearings shall abate
7 the appeal if the administrative law judge, after a hearing, finds
8 that the association is entitled to an abatement because notice was
9 not provided as required by this section. An appeal is
10 automatically abated without the order of the administrative law
11 judge beginning on the 11th day after the date a plea in abatement
12 is filed under Subsection (c) if the plea in abatement:

13 (1) is verified and alleges that the association did
14 not receive the written notice as required by Subsection (a); and

15 (2) is not controverted by an affidavit filed by the
16 person before the 11th day after the date on which the plea in
17 abatement is filed.

18 (e) An abatement under Subsection (d) continues until the
19 60th day after the date that written notice is served in compliance
20 with Subsection (a).

21 Sec. 2210.561 (a) A person must file an appeal based in
22 whole or in part on an association policy not later than two years
23 after the day the cause of action accrues. The cause of action
24 accrues on the date of the loss.

25 (b) Civil Practices and Remedies Code Sec. 33.004 (e) does
26 not apply to a claim, civil action or appeal against or involving
27 the association, an officer agent or employee of the association,

1 or anyone acting on behalf of the association.

2 (c) A person is barred from filing an appeal or an original
3 civil action against the association, an officer, agent or employee
4 of the association, or anyone acting on behalf of association more
5 than four years of the date of the loss. This subsection is
6 intended as a statute of repose so that all claims of any type or
7 description must be brought within four years or they are time
8 barred.

9 (d) An appeal must be filed with the association within one
10 year of the date the right to file the appeal accrued.

11 Sec. 2210.562. STATE OF DISASTER. (a) When the Governor
12 issues a Declaration of State of Disaster pursuant to Gov. Code Sec.
13 418.014 then the Commissioner of Insurance shall toll the
14 application of Chapters 541 and 542 to the association. (b) The
15 Commissioner's authority under this section is limited (1) to the
16 geographical area identified in the Declaration and (2) for the
17 duration of the Declaration.

18 SECTION 2. EFFECTIVE DATE. (a) This Act takes effect
19 immediately if it receives a vote of two-thirds of all the members
20 elected to each house, as provided by Section 39, Article III, Texas
21 Constitution. If this Act does not receive the vote necessary for
22 immediate effect, this Act takes effect September 1, 2011.

23 (b) The change in law made by this Act applies only to an
24 appeal from a decision of the Texas Windstorm Insurance Association
25 made on or after January 1, 2012. An appeal from a decision of that
26 association made before January 1, 2012, applies to the law as it
27 existed immediately before the effective date of this Act, and that

1 law is continued in effect for that purpose.

2 (c) This Act, applies to all claims filed with the Texas
3 Windstorm Insurance Association on or after the effective date of
4 the Act.