

By: Jackson

S.B. No. 1889

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. Section 83.002, Insurance Code, is amended by
7 adding Subsection (c) to read as follows:

8 (c) This chapter also applies to:

9 (1) a person appointed as a qualified inspector under
10 Section 2210.254 or 2210.255; and

11 (2) a person acting as a qualified inspector under
12 Section 2210.254 or 2210.255 without being appointed as a qualified
13 inspector under either of those sections.

14 SECTION 2. Section 541.152, Insurance Code, is amended by
15 amending Subsection (b) and adding Subsection (c) to read as
16 follows:

17 (b) Except as provided by Subsection (c), on [On] a finding
18 by the trier of fact that the defendant knowingly committed the act
19 complained of, the trier of fact may award an amount not to exceed
20 three times the amount of actual damages.

21 (c) Subsection (b) does not apply to an action under this
22 subchapter brought against the Texas Windstorm Insurance
23 Association by a person who is insured under Chapter 2210.

24 SECTION 3. Subchapter A, Chapter 2210, Insurance Code, is

1 amended by adding Section 2210.010 to read as follows:

2 Sec. 2210.010. EXPERT PANEL. (a) The commissioner shall
3 appoint a panel of experts to advise the commissioner concerning
4 the manner in which, following a storm, the association should
5 evaluate the extent to which a loss to insurable property was
6 incurred as a result of wind, waves, tidal surges, rising waters not
7 caused by waves or surges, and wind-driven rain associated with the
8 storm. The commissioner shall appoint one member of the panel to
9 serve as the presiding officer of the panel.

10 (b) To be a member of the panel, a person must have
11 professional expertise in, and be knowledgeable concerning, the
12 geography of the seacoast territory, the meteorological patterns
13 common in the seacoast territory, the scientific basis for
14 meteorological patterns in coastal areas, or the technology
15 necessary to evaluate the geography of, or meteorological patterns
16 common to, the seacoast territory.

17 (c) The panel shall meet at the call of the commissioner or
18 the call of the presiding officer of the panel.

19 (d) The panel shall collect and evaluate the data necessary
20 to perform the panel's general duties under Subsection (a).

21 (e) Immediately following a storm, for geographic areas or
22 regions designated by the commissioner, the panel shall recommend
23 to the commissioner standardized data necessary to evaluate the
24 extent to which a loss to insurable property was incurred as a
25 result of wind, waves, tidal surges, rising waters not caused by
26 waves or surges, and wind-driven rain associated with the storm,
27 including wind speed, total rainfall, and the extent of wave action

1 or tidal surges.

2 (f) After consideration of the recommendations made by the
3 panel under Subsection (e), the commissioner by rule shall adopt
4 standardized data as part of the formula that the association will
5 use to settle claims following the storm from which the
6 standardized data recommendations were derived.

7 SECTION 4. Section 2210.072(b), Insurance Code, is amended
8 to read as follows:

9 (b) Public securities described by Subsection (a) shall be
10 issued as necessary in a principal amount not to exceed \$1 billion
11 per occurrence or series of occurrences in a calendar year that
12 results in insured losses.

13 SECTION 5. Section 2210.073(b), Insurance Code, is amended
14 to read as follows:

15 (b) Public securities described by Subsection (a) may be
16 issued as necessary in a principal amount not to exceed \$1 billion
17 per occurrence or series of occurrences in a calendar year that
18 results in insured losses. If the losses are paid with public
19 securities described by this section, the public securities shall
20 be repaid in the manner prescribed by Subchapter M.

21 SECTION 6. Section 2210.074(b), Insurance Code, is amended
22 to read as follows:

23 (b) Public securities described by Subsection (a) may be
24 issued as necessary in a principal amount not to exceed \$500 million
25 per occurrence or series of occurrences in a calendar year that
26 results in insured losses. If the losses are paid with public
27 securities described by this section, the public securities shall

1 be repaid in the manner prescribed by Subchapter M through member
2 assessments as provided by this section. The association shall
3 notify each member of the association of the amount of the member's
4 assessment under this section. The proportion of the losses
5 allocable to each insurer under this section shall be determined in
6 the manner used to determine each insurer's participation in the
7 association for the year under Section 2210.052. A member of the
8 association may not recoup an assessment paid under this subsection
9 through a premium surcharge or tax credit.

10 SECTION 7. Section 2210.105, Insurance Code, is amended by
11 amending Subsection (b) and adding Subsections (b-1), (e), and (f)
12 to read as follows:

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

16 ~~[(1) the commissioner or the commissioner's designated~~
17 ~~representative; and~~

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

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

23 (e) The association shall:

24 (1) broadcast live on the association's Internet
25 website all meetings of the board of directors, other than closed
26 meetings; and

27 (2) maintain on the association's Internet website an

1 archive of meetings of the board of directors.

2 (f) A recording of a meeting must be maintained in the
3 archive required under Subsection (e) through and including the
4 second anniversary of the meeting.

5 SECTION 8. Subchapter C, Chapter 2210, Insurance Code, is
6 amended by adding Section 2210.108 to read as follows:

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

10 SECTION 9. Section 2210.152, Insurance Code, is amended by
11 adding Subsection (c) to read as follows:

12 (c) The plan of operation shall require the association to
13 use the standardized data recommendations adopted by the
14 commissioner under Section 2210.010(f) in evaluating the extent to
15 which a loss to insurable property is incurred as a result of wind,
16 waves, tidal surges, rising waters not caused by waves or surges, or
17 wind-driven rain associated with a storm.

18 SECTION 10. Section 2210.204(e), Insurance Code, is amended
19 to read as follows:

20 (e) For cancellation of insurance coverage under this
21 section, the minimum retained premium in the plan of operation must
22 be for a period of not less than 90 [~~180~~] days, except for events
23 specified in the plan of operation that reflect a significant
24 change in the exposure or the policyholder concerning the insured
25 property, including:

26 (1) the purchase of similar coverage in the voluntary
27 market;

- (2) sale of the property to an unrelated party;
- (3) death of the policyholder; or
- (4) total loss of the property.

SECTION 11. Subchapter E, Chapter 2210, Insurance Code, is amended by adding Section 2210.205 to read as follows:

Sec. 2210.205. REQUIRED POLICY PROVISION: DEADLINE FOR FILING CLAIM. A windstorm and hail insurance policy issued by the association must 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.

SECTION 12. Section 2210.254, Insurance Code, is amended by adding Subsection (e) to read as follows:

(e) The department may establish an annual renewal period for persons appointed as qualified inspectors.

SECTION 13. Subchapter F, Chapter 2210, Insurance Code, is amended by adding Section 2210.2551 to read as follows:

Sec. 2210.2551. EXCLUSIVE ENFORCEMENT AUTHORITY; RULES.

(a) The department has exclusive authority over all matters relating to the appointment and oversight of qualified inspectors for purposes of this chapter.

(b) The commissioner by rule shall establish criteria to ensure that a person seeking appointment as a qualified inspector under this subchapter, including an engineer seeking appointment under Section 2210.255, possesses the knowledge, understanding, and professional competence to perform windstorm inspections under this chapter and to comply with other requirements of this chapter.

SECTION 14. The heading to Section 2210.256, Insurance

1 Code, is amended to read as follows:

2 Sec. 2210.256. DISCIPLINARY PROCEEDINGS REGARDING
3 APPOINTED INSPECTORS AND CERTAIN OTHER PERSONS.

4 SECTION 15. Section 2210.256, Insurance Code, is amended by
5 adding Subsection (a-2) to read as follows:

6 (a-2) In addition to any other action authorized under this
7 section, the commissioner ex parte may enter an emergency cease and
8 desist order under Chapter 83 against a qualified inspector, or a
9 person acting as a qualified inspector, if:

10 (1) the commissioner believes that:

11 (A) the qualified inspector has:

12 (i) through submitting or failing to submit
13 to the department sealed plans, designs, calculations, or other
14 substantiating information, failed to demonstrate that a structure
15 or a portion of a structure subject to inspection meets the
16 requirements of this chapter and department rules; or

17 (ii) refused to comply with requirements
18 imposed under this chapter or department rules; or

19 (B) the person acting as a qualified inspector is
20 acting without appointment as a qualified inspector under Section
21 2210.254 or 2210.255; and

22 (2) the commissioner determines that the conduct
23 described by Subdivision (1) is fraudulent or hazardous or creates
24 an immediate danger to the public.

25 SECTION 16. Section 2210.258(b), Insurance Code, is amended
26 to read as follows:

27 (b) The association may not insure a structure described by

1 Subsection (a) until:

2 (1) the structure has been inspected for compliance
3 with the plan of operation in accordance with Section 2210.251(a);
4 and

5 (2) except as provided by Section 2210.260, a
6 certificate of compliance has been issued for the structure in
7 accordance with Section 2210.251(g).

8 SECTION 17. Subchapter F, Chapter 2210, Insurance Code, is
9 amended by adding Section 2210.260 to read as follows:

10 Sec. 2210.260. ALTERNATIVE ELIGIBILITY FOR COVERAGE. On
11 and after September 1, 2011, a person who has an insurable interest
12 in insurable property may obtain insurance coverage through the
13 association for a residential structure without obtaining a
14 certificate of compliance under Section 2210.251(g) if:

15 (1) within the 12-month period preceding the date of
16 the application for initial coverage by the association, the
17 structure was insured on an annual basis under a residential
18 property insurance policy that included windstorm and hail
19 coverage;

20 (2) the insurer that issued the coverage described by
21 Subdivision (1) has ceased to:

22 (A) provide windstorm and hail insurance under
23 the policy; or

24 (B) issue residential property insurance
25 policies in the portion of the catastrophe area in which the
26 structure is located; and

27 (3) the applicant for coverage:

1 (A) complies with:

2 (i) the flood insurance requirement of
3 Section 2210.203(a-1), if applicable;

4 (ii) the mandatory building code
5 requirement of Section 2210.258(a); and

6 (iii) all other association underwriting
7 requirements, including maintaining the structure in an insurable
8 condition and paying premiums in the manner required by the
9 association; and

10 (B) provides evidence of declination as required
11 by Section 2210.202(a).

12 SECTION 18. The heading to Subchapter H, Chapter 2210,
13 Insurance Code, is amended to read as follows:

14 SUBCHAPTER H. RATES; DISCOUNTS AND CREDITS

15 SECTION 19. Subchapter H, Chapter 2210, Insurance Code, is
16 amended by adding Section 2210.363 to read as follows:

17 Sec. 2210.363. PREMIUM DISCOUNTS; SURCHARGE CREDITS. (a)
18 The association may offer a person insured under this chapter a
19 premium discount on a policy issued by the association, or a credit
20 against any surcharge assessed against the person, if the
21 construction, alteration, remodeling, enlargement, or repair of,
22 or an addition to, insurable property exceeds applicable building
23 code standards set forth in the plan of operation.

24 (b) The commissioner shall adopt rules necessary to
25 implement and enforce this section.

26 SECTION 20. The heading to Section 2210.552, Insurance
27 Code, is amended to read as follows:

1 Sec. 2210.552. CERTAIN CLAIM DISPUTES; VENUE AND NOTICE OF
2 INTENT TO BRING ACTION.

3 SECTION 21. Section 2210.552, Insurance Code, is amended by
4 adding Subsections (e) and (f) to read as follows:

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

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

9 (2) may not recover punitive or exemplary damages,
10 including damages under Section 541.152(b).

11 (f) A person insured under this chapter who brings an action
12 against the association in the manner described by Subsection
13 (a)(1) may not bring the action until the 61st day after the date
14 the person provides written notice to the association of the
15 person's intent to dispute the association's handling of the
16 person's claim. A notice provided under this section must advise
17 the association of the insured's specific complaint concerning the
18 handling of the person's claim.

19 SECTION 22. Subchapter L, Chapter 2210, Insurance Code, is
20 amended by adding Section 2210.553 to read as follows:

21 Sec. 2210.553. LIMITATIONS PERIOD. Notwithstanding any
22 other law, including Section 541.162, a person insured under this
23 chapter who brings an action against the association in the manner
24 described by Section 2210.552(a)(1) must bring the action not later
25 than the second anniversary of the date of the act, ruling, or
26 decision of the association by which the insured is aggrieved.

27 SECTION 23. Section 2210.604, Insurance Code, is amended by

1 amending Subsection (b) and adding Subsection (d) to read as
2 follows:

3 (b) The association shall specify in the association's
4 request to the board the maximum principal amount of the public
5 securities and the maximum term of the public securities. The
6 maximum principal requested under this subsection may not exceed
7 the amount of public securities the association determines to be
8 marketable.

9 (d) If the amount of marketable Class 1 public securities is
10 insufficient to pay the excess losses for which the securities are
11 issued, marketable Class 2 public securities may be issued. If the
12 amount of marketable Class 2 public securities is insufficient to
13 pay the excess losses for which the securities are issued,
14 marketable Class 3 public securities may be issued.

15 SECTION 24. Sections 2210.613(b), (c), and (d), Insurance
16 Code, are amended to read as follows:

17 (b) Seventy percent of the cost of the public securities
18 shall be paid by a ~~[nonrefundable]~~ premium surcharge collected
19 under this section in an amount set by the commissioner. On
20 approval by the commissioner, each insurer, the association, and
21 the Texas FAIR Plan Association shall assess, as provided by this
22 section, a premium surcharge to each policyholder of a policy that
23 is in effect on or after the 180th day after the date the
24 commissioner issues notice of the approval of the public securities
25 [its policyholders as provided by this section]. The premium
26 surcharge must be set in an amount sufficient to pay, for the
27 duration of the issued public securities, all debt service not

1 already covered by available funds and all related expenses on the
2 public securities.

3 (c) The premium surcharge under Subsection (b) shall be
4 assessed on all policyholders of policies that cover [~~who reside or~~
5 ~~have operations in, or whose~~] insured property that is located in a
6 catastrophe area, including automobiles principally garaged in a
7 catastrophe area. The premium surcharge shall be assessed on [~~for~~]
8 each Texas windstorm and hail insurance policy and each property
9 and casualty insurance policy, including an automobile insurance
10 policy, issued for automobiles and other property located in the
11 catastrophe area. A premium surcharge under Subsection (b) applies
12 to:

13 (1) all policies written under the following lines of
14 insurance:

15 (A) fire and allied lines;

16 (B) farm and ranch owners;

17 (C) residential property insurance;

18 (D) private passenger automobile liability and
19 physical damage insurance; and

20 (E) commercial passenger automobile liability
21 and physical damage insurance; and

22 (2) the property insurance portion of a commercial
23 multiple peril insurance [~~that provide coverage on any premises,~~
24 ~~locations, operations, or property located in the area described by~~
25 ~~this subsection for all property and casualty lines of insurance,~~
26 ~~other than federal flood insurance, workers' compensation~~
27 ~~insurance, accident and health insurance, and medical malpractice~~

1 ~~insurance~~].

2 (d) A premium surcharge under Subsection (b) is a separate
3 [~~nonrefundable~~] charge in addition to the premiums collected and is
4 not subject to premium tax or commissions. Failure by a
5 policyholder to pay the surcharge constitutes failure to pay
6 premium for purposes of policy cancellation.

7 SECTION 25. Section 2210.6135(a), Insurance Code, is
8 amended to read as follows:

9 (a) The association shall pay Class 3 public securities
10 issued under Section 2210.074 as provided by this section through
11 member assessments. The association, for the payment of the
12 losses, shall assess the members of the association an amount not to
13 exceed \$500 million per occurrence or series of occurrences that
14 results in insured losses in a calendar year [~~for the payment of the~~
15 ~~losses~~]. The association shall notify each member of the
16 association of the amount of the member's assessment under this
17 section.

18 SECTION 26. (a) The commissioner of insurance shall
19 appoint an advisory committee to advise the Texas Department of
20 Insurance and Texas Windstorm Insurance Association concerning
21 appropriate building code standards to be used by the association
22 in the performance of its duties under Chapter 2210, Insurance
23 Code. The commissioner shall designate one member of the committee
24 to serve as the presiding officer of the committee.

25 (b) The commissioner of insurance shall ensure that the
26 following groups or interests are represented on the advisory
27 committee:

1 (1) insurers that write windstorm insurance in the
2 private windstorm insurance market in this state;

3 (2) policyholders of windstorm insurance issued both
4 by the association and by insurers in the private windstorm
5 insurance market in this state; and

6 (3) building and construction professionals,
7 including qualified inspectors appointed under Sections 2210.254
8 and 2210.255, Insurance Code.

9 (c) The advisory committee shall submit a report to the
10 association, for inclusion in the association's biennial report to
11 be submitted on or before December 31, 2012, under Section
12 2210.0025, Insurance Code, containing recommendations concerning
13 appropriate building code standards to be used by the association
14 in the performance of its duties under Chapter 2210, Insurance
15 Code.

16 (d) Chapter 2110, Government Code, does not apply to the
17 size, composition, or duration of the advisory committee or to the
18 appointment of the committee's presiding officer.

19 (e) The advisory committee shall meet at least once each
20 year and may meet at other times at the call of the commissioner of
21 insurance or the committee's presiding officer.

22 (f) The advisory committee may meet by telephone conference
23 call, video conference call, or other similar audiovisual
24 telecommunication.

25 (g) This section expires January 1, 2013.

26 SECTION 27. This Act applies only to a Texas windstorm and
27 hail insurance policy, and a dispute arising under a Texas

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

11 SECTION 28. The Texas Windstorm Insurance Association
12 shall, not later than January 1, 2012, amend the association's plan
13 of operation as necessary to conform to the changes in law made by
14 this Act.

15 SECTION 29. This Act takes effect immediately if it
16 receives a vote of two-thirds of all the members elected to each
17 house, as provided by Section 39, Article III, Texas Constitution.
18 If this Act does not receive the vote necessary for immediate
19 effect, this Act takes effect September 1, 2011.