

By: Eiland

H.B. No. 1898

A BILL TO BE ENTITLED

AN ACT

1
2 relating to requiring certain residential property insurers to
3 adjust certain claims under Texas Windstorm Insurance Association
4 policies; imposing fees.

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

6 SECTION 1. Chapter 2210, Insurance Code, is amended by
7 adding Subchapter L-2 to read as follows:

8 SUBCHAPTER L-2. ADJUSTMENT OF CLAIMS BY CERTAIN INSURERS

9 Sec. 2210.591. DEFINITIONS. In this subchapter:

10 (1) "Association policy," "claim," and "claimant"
11 have the meanings assigned by Section 2210.571.

12 (2) "Residential property insurance" means insurance
13 coverage against loss to real or tangible personal property at a
14 fixed location that is provided through a homeowners insurance
15 policy, including a tenants insurance policy, a condominium owners
16 insurance policy, or a residential fire and allied lines insurance
17 policy.

18 Sec. 2210.592. APPLICABILITY. This subchapter applies to
19 an insurer that delivers, issues for delivery, or renews a
20 residential property insurance policy that provides coverage for a
21 risk located in the seacoast territory.

22 Sec. 2210.593. CLAIMS ADJUSTMENT REQUIRED. (a) An insurer
23 acting under this subchapter shall adjust a claim or loss under an
24 association policy that occurs on a property covered under a

1 residential property insurance policy issued by the insurer.

2 (b) For purposes of adjusting a claim under this subchapter,
3 the insurer is an agent or representative of the association as
4 described by Section 2210.572(a).

5 (c) The insurer is not responsible for payment of the
6 adjusted claim. The insurer shall submit the claim to the
7 association for payment to the insured under Section 2210.5731.

8 (d) The association shall pay to the insurer for the
9 adjustment of the claim three percent of the amount of the adjusted
10 claim, subject to completion of the audit required under Section
11 2210.597.

12 Sec. 2210.594. EXCLUSIVE REMEDIES AND LIMITATION ON AWARD.

13 (a) Section 2210.572 applies to, and Subchapter L-1 provides the
14 exclusive remedies for, a claim against the insurer or the
15 association with respect to:

- 16 (1) a claim adjusted under Section 2210.593; or
17 (2) to the extent provided by a policy provision
18 described by Subsection (b), a loss under a residential property
19 insurance policy that arises from the same occurrence as the
20 adjusted claim.

21 (b) An insurer that writes a residential property insurance
22 policy in the seacoast territory may include in the policy a
23 provision that, with respect to a loss described by Subsection
24 (a)(2), establishes substantially the same procedures and
25 limitations of rights with respect to the loss that are applicable
26 to a claim under an association policy under Subchapter L-1. The
27 commissioner by rule may adopt form policy language to implement

1 this subsection.

2 Sec. 2210.595. FILING OF CLAIM WITH INSURER; CLAIM
3 PROCESSING. (a) Subject to Section 2210.205(b), an insured must
4 file a claim under an association policy with an insurer that issued
5 a residential property insurance policy for the same property
6 covered by the association policy, if any, not later than the first
7 anniversary of the date on which the damage to property that is the
8 basis of the claim occurs.

9 (b) The claimant may submit written materials, comments,
10 documents, records, and other information to the insurer relating
11 to the claim. If the claimant fails to submit information in the
12 claimant's possession that is necessary for the insurer to
13 determine whether to accept or reject a claim, the insurer may, not
14 later than the 30th day after the date the claim is filed, request
15 in writing the necessary information from the claimant.

16 (c) The insurer shall, on request, provide a claimant
17 reasonable access to all information relevant to the claim. The
18 claimant may copy the information at the claimant's own cost or may
19 request the insurer to provide a copy of all or part of the
20 information to the claimant. The insurer may charge a claimant the
21 actual cost incurred by the insurer in providing a copy of
22 information under this section, excluding any amount for labor
23 involved in making any information or copy of information available
24 to a claimant.

25 Sec. 2210.596. NOTICE OF DETERMINATION. (a) Unless the
26 applicable 60-day period described by this subsection is extended
27 by the commissioner in the manner described by Section 2210.581,

1 not later than the later of the 60th day after the date the insurer
2 receives a claim or the 60th day after the date the insurer receives
3 information requested under Section 2210.595(b), the insurer shall
4 provide written notification of the insurer's determination of the
5 claim under the association policy to the claimant and the
6 association.

7 (b) If the insurer on behalf of the association accepts
8 coverage for the claim in full, the notice described by Subsection
9 (a) must state the amount of loss that the association will pay and
10 the time limit to demand appraisal under Section 2210.574.

11 (c) If the insurer on behalf of the association accepts
12 coverage for the claim in part or has denied coverage for the claim
13 in part or in full, the notice described by Subsection (a) must
14 inform the claimant of, as applicable:

15 (1) the portion of the loss for which the insurer, on
16 behalf of the association, accepted coverage and the amount of loss
17 the association will pay;

18 (2) the portion of the loss for which the insurer, on
19 behalf of the association, denies coverage and a detailed summary
20 of the manner in which the insurer determined not to accept coverage
21 for that portion of the loss; and

22 (3) the time limit to:
23 (A) demand appraisal under Section 2210.574 of
24 the portion of the loss for which coverage is accepted; and
25 (B) provide notice of intent to bring an action
26 as required by Section 2210.575.

27 (d) In addition to the notice required under Subsection

1 (c)(1) or (2), the insurer shall provide to the claimant a form on
2 which the claimant may provide the association notice of intent to
3 bring an action as required by Section 2210.575.

4 Sec. 2210.597. INDEPENDENT AUDIT OF INSURER; FEES. The
5 commissioner by rule shall:

6 (1) require the audit by an independent auditor of an
7 insurer's adjustment of claims under this subchapter; and

8 (2) set and impose fees for the audit to be paid by the
9 insurer audited.

10 SECTION 2. Sections 2210.572(a) and (c), Insurance Code,
11 are amended to read as follows:

12 (a) This subchapter provides the exclusive remedies for a
13 claim against the association, including an agent or representative
14 of the association and an insurer acting under Subchapter L-2.

15 (c) The association, and an agent or representative of the
16 association, including an insurer acting under Subchapter L-2, may
17 not be held liable for damages under Chapter 17, Business & Commerce
18 Code, or, except as otherwise specifically provided by this
19 chapter, under any provision of any law providing for additional
20 damages, punitive damages, or a penalty.

21 SECTION 3. Section 2210.573(a), Insurance Code, is amended
22 to read as follows:

23 (a) Subject to Section 2210.205(b) and except as provided by
24 Section 2210.595, an insured must file with the association a claim
25 under an association policy not later than the first anniversary of
26 the date on which the damage to property that is the basis of the
27 claim occurs.

1 SECTION 4. Section 2210.5731, Insurance Code, is amended by
2 adding Subsection (a-1) to read as follows:

3 (a-1) Except as provided by Subsection (b), if an insurer
4 notifies a claimant under Section 2210.596 that the insurer, on
5 behalf of the association, has accepted coverage for a claim in full
6 or accepted coverage for a claim in part, the association shall pay
7 the accepted claim or accepted portion of the claim not later than
8 the 10th day after the date the association receives the notice.

9 SECTION 5. Sections 2210.574(b) and (h), Insurance Code,
10 are amended to read as follows:

11 (b) If a claimant disputes the amount of loss the
12 association will pay for a claim or a portion of a claim, the
13 claimant, not later than the 60th day after the date the claimant
14 receives the notice described by Section 2210.573(d)(1) or (2) or
15 Section 2210.596, may demand appraisal in accordance with the terms
16 of the association policy.

17 (h) Except as provided by Subsection (g), a claimant may not
18 bring an action against the association with reference to a claim
19 for which the association, or an insurer acting on behalf of the
20 association under Subchapter L-2, has accepted coverage in full.

21 SECTION 6. Section 2210.575(a), Insurance Code, is amended
22 to read as follows:

23 (a) If the association or an insurer acting under Subchapter
24 L-2 denies coverage for a claim in part or in full and the claimant
25 disputes that determination, the claimant, not later than the
26 expiration of the limitations period described by Section
27 2210.577(a), but after the date the claimant receives the notice

1 described by Section 2210.573(d)(2) or (3) or Section 2210.596,
2 must provide the association with notice that the claimant intends
3 to bring an action against the association concerning the partial
4 or full denial of the claim.

5 SECTION 7. Sections 2210.576(a) and (d), Insurance Code,
6 are amended to read as follows:

7 (a) The only issues a claimant may raise in an action
8 brought against the association under Section 2210.575 are:

9 (1) whether the [~~association's~~] denial of coverage by
10 the association or the insurer acting under Subchapter L-2 was
11 proper; and

12 (2) the amount of the damages described by Subsection
13 (b) to which the claimant is entitled, if any.

14 (d) A claimant that brings an action against the association
15 under Section 2210.575 may, in addition to the covered loss
16 described by Subsection (b)(1) and any consequential damages
17 recovered by the claimant under common law, recover damages in an
18 amount not to exceed the aggregated amount of the covered loss
19 described by Subsection (b)(1) and the consequential damages
20 recovered under common law if the claimant proves by clear and
21 convincing evidence that the association or the insurer acting
22 under Subchapter L-2 mishandled the claimant's claim to the
23 claimant's detriment by intentionally:

24 (1) failing to meet the deadlines or timelines
25 established under this subchapter without good cause, including the
26 applicable deadline established under Section 2210.5731 for
27 payment of an accepted claim or the accepted portion of a claim;

1 (2) disregarding applicable guidelines published by
2 the commissioner under Section 2210.578(f);

3 (3) failing to provide the notice required under
4 Section 2210.573(d) or 2210.596;

5 (4) rejecting a claim without conducting a reasonable
6 investigation with respect to the claim; or

7 (5) denying coverage for a claim in part or in full if
8 the association's liability has become reasonably clear as a result
9 of the association's or insurer's investigation with respect to the
10 portion of the claim that was denied.

11 SECTION 8. Sections 2210.578(a) and (f), Insurance Code,
12 are amended to read as follows:

13 (a) The commissioner shall appoint a panel of experts to
14 advise the association or an insurer acting under Subchapter L-2
15 concerning the extent to which a loss to insurable property was
16 incurred as a result of wind, waves, tidal surges, or rising waters
17 not caused by waves or surges. The panel shall consist of a number
18 of experts to be decided by the commissioner. The commissioner
19 shall appoint one member of the panel to serve as the presiding
20 officer of the panel.

21 (f) After consideration of the recommendations made by the
22 panel under Subsection (e), the commissioner shall publish
23 guidelines that:

24 (1) the association will use to settle claims; and
25 (2) an insurer will use to adjust claims under
26 Subchapter L-2.

27 SECTION 9. Section 2210.580(a), Insurance Code, is amended

1 to read as follows:

2 (a) The commissioner shall adopt rules regarding the
3 provisions of this subchapter, including rules concerning:

4 (1) qualifications and selection of appraisers for the
5 appraisal procedure, mediators for the mediation process, and
6 members of the expert panel;

7 (2) procedures and deadlines for:

8 (A) the payment and handling of claims by the
9 association;

10 (B) the adjusting of claims under Subchapter L-2;
11 and

12 (C) [~~as well as~~] the procedures and deadlines for
13 a review of a claim by the association;

14 (3) notice of expert panel meetings and the
15 transparency of deliberations of the panel; and

16 (4) any other matters regarding the handling of claims
17 that are not inconsistent with this subchapter or Subchapter L-2.

18 SECTION 10. This Act applies only to an insurer that writes
19 a residential property insurance policy that is delivered, issued
20 for delivery, or renewed on or after January 1, 2014.

21 SECTION 11. This Act takes effect September 1, 2013.