

1-1 By: Smith (Senate Sponsor - Eltife) H.B. No. 2439
1-2 (In the Senate - Received from the House April 20, 2015;
1-3 May 4, 2015, read first time and referred to Committee on Business
1-4 and Commerce; May 22, 2015, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 May 22, 2015, sent to printer.)

1-7 COMMITTEE VOTE

| | Yea | Nay | Absent | PNV |
|------|-----|-----|--------|-----|
| 1-8 | | | | |
| 1-9 | X | | | |
| 1-10 | X | | | |
| 1-11 | X | | | |
| 1-12 | X | | | |
| 1-13 | X | | | |
| 1-14 | X | | | |
| 1-15 | X | | | |
| 1-16 | X | | | |
| 1-17 | X | | | |

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 2439 By: Watson

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to inspections and other activities conducted by engineers
1-22 in connection with the issuance of certain windstorm and hail
1-23 insurance; authorizing a fee.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. The heading to Section 2210.251, Insurance Code,
1-26 is amended to read as follows:

1-27 Sec. 2210.251. PLAN OF OPERATION COMPLIANCE [~~INSPECTION~~]
1-28 REQUIREMENTS.

1-29 SECTION 2. Sections 2210.251(a), (f), and (g), Insurance
1-30 Code, are amended to read as follows:

1-31 (a) Except as provided by this section, to be considered
1-32 insurable property eligible for windstorm and hail insurance
1-33 coverage from the association, a structure that is constructed,
1-34 altered, remodeled, enlarged, or repaired or to which additions are
1-35 made on or after January 1, 1988, must comply [~~be inspected or~~
1-36 ~~approved by the department for compliance~~] with the plan of
1-37 operation.

1-38 (f) Notwithstanding any other provision of this subchapter
1-39 [~~section~~], insurance coverage for a residential structure may be
1-40 issued or renewed through the association subject to the inspection
1-41 requirements imposed under Section 2210.258, if applicable. This
1-42 subsection expires December 31, 2015.

1-43 (g) A [~~The department shall issue a~~] certificate of
1-44 compliance issued by the department or association under Section
1-45 2210.2515 demonstrates compliance with the applicable building
1-46 code under the plan of operation [~~for each structure that qualifies~~
1-47 ~~for coverage~~]. The certificate is evidence of insurability of the
1-48 structure by the association. [~~The decision whether to issue a~~
1-49 ~~certificate of compliance for a structure is wholly within the~~
1-50 ~~discretion of the department and is not dependent on the actions of~~
1-51 ~~the Texas Board of Professional Engineers or any other regulatory~~
1-52 ~~agency.~~]

1-53 SECTION 3. Subchapter F, Chapter 2210, Insurance Code, is
1-54 amended by adding Section 2210.2515 to read as follows:

1-55 Sec. 2210.2515. ISSUANCE OF CERTIFICATES OF COMPLIANCE.

1-56 (a) In this section:

1-57 (1) "Completed improvement" means:

1-58 (A) an improvement in which the original transfer
1-59 of title from the builder to the initial owner of the improvement
1-60 has occurred; or

2-1 (B) if a transfer under Paragraph (A) is not
2-2 contemplated, an improvement that is substantially completed.
2-3 (2) "Improvement" means the construction of or repair,
2-4 alteration, remodeling, or enlargement of a structure to which the
2-5 plan of operation applies.
2-6 (3) "Ongoing improvement" means:
2-7 (A) an improvement in which the original transfer
2-8 of title from the builder to the initial owner of the improvement
2-9 has not occurred; or
2-10 (B) if a transfer under Paragraph (A) is not
2-11 contemplated, an improvement that is not substantially completed.
2-12 (b) A person shall provide written notice on a form
2-13 prescribed by and submitted to the department of the person's
2-14 intent to construct, repair, alter, remodel, or enlarge a structure
2-15 for which the person is seeking coverage under this chapter before
2-16 the person begins to construct, repair, alter, remodel, or enlarge
2-17 the structure.
2-18 (c) A person may apply to the association on a form
2-19 prescribed by the department for a certificate of compliance for a
2-20 completed improvement. The association shall issue a certificate
2-21 of compliance for a completed improvement if a professional
2-22 engineer licensed by the Texas Board of Professional Engineers:
2-23 (1) has designed the improvement, has affixed the
2-24 engineer's seal on the design, and submits to the association on a
2-25 form prescribed by the department an affirmation of compliance with
2-26 the applicable building code under the plan of operation; or
2-27 (2) completes a sealed post-construction evaluation
2-28 report that confirms compliance with the applicable building code
2-29 under the plan of operation.
2-30 (d) A person may apply to the department on a form
2-31 prescribed by the department for a certificate of compliance for an
2-32 ongoing improvement. Except as provided by Subsection (e), the
2-33 department shall issue a certificate of compliance for an ongoing
2-34 improvement if a qualified inspector under Section 2210.254
2-35 inspects the ongoing improvement in accordance with commissioner
2-36 rule and affirms that the improvement:
2-37 (1) conforms to a design of the improvement that has a
2-38 seal affixed by a professional engineer licensed by the Texas Board
2-39 of Professional Engineers and complies with the applicable building
2-40 code under the plan of operation; or
2-41 (2) complies with the applicable building code under
2-42 the plan of operation.
2-43 (e) Except as otherwise provided by this subchapter, the
2-44 department may not issue a certificate of compliance under
2-45 Subsection (d) if within six months after the date of the final
2-46 inspection of the structure that is the subject of the application,
2-47 the department has not received:
2-48 (1) fully completed forms prescribed by the department
2-49 demonstrating that the improvement satisfies the requirements
2-50 under Subsection (d)(1) or (2); and
2-51 (2) payment in full of all inspection fees, including
2-52 fees for prior department inspections, owed to the department.
2-53 (f) If the department determines not to issue a certificate
2-54 of compliance under Subsection (e), a person may apply for a
2-55 certificate of compliance under Subsection (c).
2-56 (g) The department may enter into contracts as necessary to
2-57 implement this section.
2-58 (h) The department may charge a reasonable fee to cover the
2-59 cost of making building requirements and inspection standards
2-60 available to the public. The department shall charge a reasonable
2-61 fee for each inspection of each structure under this section in an
2-62 amount set by the commissioner.
2-63 SECTION 4. Section 2210.254(a), Insurance Code, is amended
2-64 to read as follows:
2-65 (a) For purposes of this chapter, a "qualified inspector"
2-66 includes:
2-67 (1) a person determined by the department to be
2-68 qualified because of training or experience to perform building
2-69 inspections;

3-1 (2) a licensed professional engineer [~~who is on the~~
3-2 ~~roster described by Section 1001.652, Occupations Code, and meets~~
3-3 ~~the requirements specified by commissioner rule for appointment to~~
3-4 ~~conduct windstorm inspections~~]; and

3-5 (3) an inspector who:
3-6 (A) is certified by the International Code
3-7 Council, the Building Officials and Code Administrators
3-8 International, Inc., the International Conference of Building
3-9 Officials, or the Southern Building Code Congress International,
3-10 Inc.;

3-11 (B) has certifications as a buildings inspector
3-12 and coastal construction inspector; and

3-13 (C) complies with other requirements specified
3-14 by commissioner rule.

3-15 SECTION 5. Section 2210.2551, Insurance Code, is amended by
3-16 amending Subsections (a) and (b) and adding Subsection (f) to read
3-17 as follows:

3-18 (a) The department has exclusive authority over all matters
3-19 relating to the appointment and oversight of qualified inspectors
3-20 for purposes of this chapter and to the physical inspection of
3-21 structures for the purposes of determining whether to issue a
3-22 certificate of compliance under Section 2210.2515(d) [~~this~~
3-23 ~~chapter~~], including the submission of documents to the department
3-24 or association regarding the physical inspection of structures.

3-25 (b) The commissioner by rule shall establish criteria to
3-26 ensure that a person seeking appointment as a qualified inspector
3-27 under this subchapter [~~, including an engineer seeking appointment~~
3-28 ~~under Section 2210.255,~~] possesses the knowledge, understanding,
3-29 and professional competence to perform windstorm inspections for
3-30 the issuance of a certificate of compliance under Section
3-31 2210.2515(d) [~~under this chapter~~] and to comply with other
3-32 requirements of this chapter.

3-33 (f) The commissioner may not adopt or enforce a rule that
3-34 requires an engineer to affix the engineer's seal to an inspection
3-35 form submitted under this subchapter.

3-36 SECTION 6. Section 2210.256(a-1), Insurance Code, is
3-37 amended to read as follows:

3-38 (a-1) In addition to any other action authorized under this
3-39 section, the commissioner ex parte may enter an emergency cease and
3-40 desist order under Chapter 83 against a qualified inspector, or a
3-41 person acting as a qualified inspector, if:

3-42 (1) the commissioner believes that:
3-43 (A) the qualified inspector has:
3-44 (i) through submitting or failing to submit
3-45 to the department [~~sealed plans, designs, calculations, or other~~]
3-46 substantiating information, failed to demonstrate that a structure
3-47 or a portion of a structure subject to inspection is built to a
3-48 design that conforms to the requirements described by Section
3-49 2210.2515(d) [~~meets the requirements of this chapter and department~~
3-50 ~~rules~~]; or

3-51 (ii) refused to comply with requirements
3-52 imposed under this chapter or department rules; or

3-53 (B) the person acting as a qualified inspector is
3-54 acting without appointment as a qualified inspector under Section
3-55 2210.254 [~~or 2210.255~~]; and

3-56 (2) the commissioner determines that the conduct
3-57 described by Subdivision (1) is fraudulent or hazardous or creates
3-58 an immediate danger to the public.

3-59 SECTION 7. Section 2210.258(b), Insurance Code, is amended
3-60 to read as follows:

3-61 (b) Except as provided by Subsection (c), the association
3-62 may not insure a structure described by Subsection (a) until[+]

3-63 [~~(1) the structure has been inspected for compliance~~
3-64 ~~with the plan of operation in accordance with Section 2210.251(a),~~
3-65 ~~and~~

3-66 [+2+] a certificate of compliance has been issued for
3-67 the structure in accordance with Section 2210.2515 [~~2210.251(g)~~].

3-68 SECTION 8. Section 83.002(c), Insurance Code, is amended to
3-69 read as follows:

4-1 (c) This chapter also applies to:
 4-2 (1) a person appointed as a qualified inspector under
 4-3 Section 2210.254 [~~or 2210.255~~]; and
 4-4 (2) a person acting as a qualified inspector under
 4-5 Section 2210.254 [~~or 2210.255~~] without being appointed as a
 4-6 qualified inspector under either of those sections.

4-7 SECTION 9. The following laws are repealed:
 4-8 (1) Sections 2210.251(c), (h), (i), (j), (k), (l), and
 4-9 (m), Insurance Code;
 4-10 (2) Section 2210.255, Insurance Code;
 4-11 (3) Sections 2210.2551(d) and (e), Insurance Code;
 4-12 (4) Section 2210.256(f), Insurance Code; and
 4-13 (5) Subchapter N, Chapter 1001, Occupations Code.

4-14 SECTION 10. The commissioner of insurance shall adopt rules
 4-15 to implement this Act not later than December 31, 2016.

4-16 SECTION 11. The changes in law made by this Act apply only
 4-17 to a Texas Windstorm Insurance Association policy delivered, issued
 4-18 for delivery, or renewed on or after January 1, 2017. An association
 4-19 policy delivered, issued for delivery, or renewed before January 1,
 4-20 2017, is governed by the law in effect immediately before the
 4-21 effective date of this Act, and that law is continued in effect for
 4-22 that purpose.

4-23 SECTION 12. This Act takes effect September 1, 2015.

4-24 * * * * *