

**House Bill 2439**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

No equivalent provision.

SENATE VERSION (CS)

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

Sec. 2210.251. PLAN OF OPERATION COMPLIANCE  
~~[INSPECTION]~~ REQUIREMENTS.

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

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

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

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

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No equivalent provision.

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

Sec. 2210.2515. ISSUANCE OF CERTIFICATES OF COMPLIANCE. (a) In this section:

(1) "Completed improvement" means:

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

(B) if a transfer under Paragraph (A) is not contemplated, an improvement that is substantially completed.

(2) "Improvement" means the construction of or repair, alteration, remodeling, or enlargement of a structure to which the plan of operation applies.

(3) "Ongoing improvement" means:

(A) an improvement in which the original transfer of title from the builder to the initial owner of the improvement has not occurred; or

(B) if a transfer under Paragraph (A) is not contemplated, an improvement that is not substantially completed.

(b) A person shall provide written notice on a form prescribed by and submitted to the department of the person's intent to construct, repair, alter, remodel, or enlarge a structure for which the person is seeking coverage under this chapter before the person begins to construct, repair, alter, remodel, or enlarge the structure.

(c) A person may apply to the association on a form prescribed by the department for a certificate of compliance for a completed improvement. The association shall issue a certificate of compliance for a completed improvement if a professional engineer licensed by the Texas Board of Professional Engineers:

(1) has designed the improvement, has affixed the engineer's

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seal on the design, and submits to the association on a form prescribed by the department an affirmation of compliance with the applicable building code under the plan of operation;

or

(2) completes a sealed post-construction evaluation report that confirms compliance with the applicable building code under the plan of operation.

(d) A person may apply to the department on a form prescribed by the department for a certificate of compliance for an ongoing improvement. Except as provided by Subsection (e), the department shall issue a certificate of compliance for an ongoing improvement if a qualified inspector under Section 2210.254 inspects the ongoing improvement in accordance with commissioner rule and affirms that the improvement:

(1) conforms to a design of the improvement that has a seal affixed by a professional engineer licensed by the Texas Board of Professional Engineers and complies with the applicable building code under the plan of operation; or

(2) complies with the applicable building code under the plan of operation.

(e) Except as otherwise provided by this subchapter, the department may not issue a certificate of compliance under Subsection (d) if within six months after the date of the final inspection of the structure that is the subject of the application, the department has not received:

(1) fully completed forms prescribed by the department demonstrating that the improvement satisfies the requirements under Subsection (d)(1) or (2); and

(2) payment in full of all inspection fees, including fees for prior department inspections, owed to the department.

(f) If the department determines not to issue a certificate of

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compliance under Subsection (e), a person may apply for a certificate of compliance under Subsection (c).

(g) The department may enter into contracts as necessary to implement this section.

(h) The department may charge a reasonable fee to cover the cost of making building requirements and inspection standards available to the public. The department shall charge a reasonable fee for each inspection of each structure under this section in an amount set by the commissioner.

SECTION 1. Section 2210.254(a), Insurance Code, is amended to read as follows:

(a) For purposes of this chapter, a "qualified inspector" includes:

(1) a person determined by the department to be qualified because of training or experience to perform building inspections;

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

(3) an inspector who:

(A) is certified by the International Code Council, the Building Officials and Code Administrators International, Inc., the International Conference of Building Officials, or the Southern Building Code Congress International, Inc.;

(B) has certifications as a buildings inspector and coastal construction inspector; and

(C) complies with other requirements specified by commissioner rule.

SECTION 4. Same as House version.

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SECTION 2. Section 2210.2551, Insurance Code, is amended by amending Subsection (b) and adding Subsection (f) to read as follows:

(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.

(f) The commissioner may not adopt or enforce a rule that requires an inspection to be performed by an engineer licensed by the Texas Board of Professional Engineers or requires an engineer to affix the engineer's seal to a document related to an inspection conducted under this subchapter.

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

(a-1) In addition to any other action authorized under this section, the commissioner ex parte may enter an emergency cease and desist order under Chapter 83 against a qualified

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

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

(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 for the issuance of a certificate of compliance under Section 2210.2515(d) [under this chapter] and to comply with other requirements of this chapter.

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

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

(a-1) In addition to any other action authorized under this section, the commissioner ex parte may enter an emergency cease and desist order under Chapter 83 against a qualified

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inspector, or a person acting as a qualified inspector, if:

(1) the commissioner believes that:

(A) the qualified inspector has[:

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

~~[(ii)] refused to comply with requirements imposed under this chapter or department rules; or~~

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

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

SECTION 4. Section 2210.258(a), Insurance Code, is amended to read as follows:

(a) Except as provided by Subsection (c) and Section 2210.2581 and notwithstanding any other provision of this chapter, to be eligible for insurance through the association, all construction, alteration, remodeling, enlargement, and repair of, or addition to, any structure located in the catastrophe area that is begun on or after the effective date of Sections 5 through 49, H.B. No. 4409, Acts of the 81st Legislature, Regular Session, 2009, must be performed in compliance with the applicable building code standards, as set forth in the plan of operation, unless the construction,

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inspector, or a person acting as a qualified inspector, if:

(1) the commissioner believes that:

(A) the qualified inspector has:

(i) through submitting or failing to submit to the department ~~[sealed plans, designs, calculations, or other]~~ substantiating information, failed to demonstrate that a structure or a portion of a structure subject to inspection is built to a design that conforms to the requirements described by Section 2210.2515(d) ~~[meets the requirements of this chapter and department rules]; or~~

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

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

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

**No equivalent provision.**

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alteration, remodeling, enlargement, and repair of, or addition to, the structure is an enhancement to the current applicable building code standards and has been designed and sealed by a professional engineer licensed by the Texas Board of Professional Engineers.

No equivalent provision.

SECTION 5. Section 83.002(c), Insurance Code, is amended to read as follows:

(c) This chapter also applies to:

(1) a person appointed as a qualified inspector under Section 2210.254 [~~or 2210.255~~]; and

(2) a person acting as a qualified inspector under Section 2210.254 [~~or 2210.255~~] without being appointed as a qualified inspector under either of those sections.

SECTION 6. The following laws are repealed:

(1) Section 2210.255, Insurance Code;

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

(b) Except as provided by Subsection (c), the association may not insure a structure described by Subsection (a) until[:

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

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

SECTION 8. Same as House version.

SECTION 9. The following laws are repealed:

(1) Sections 2210.251(c), (h), (i), (j), (k), (l), and (m), Insurance Code;

(2) Section 2210.255, Insurance Code;

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- (2) Sections 2210.2551(d) and (e), Insurance Code;
- (3) Section 2210.256(f), Insurance Code; and
- (4) Subchapter N, Chapter 1001, Occupations Code.

SECTION 7. The commissioner of insurance shall adopt rules to implement this Act not later than December 31, 2015.

No equivalent provision.

SECTION 8. This Act takes effect September 1, 2015.

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- (3) Sections 2210.2551(d) and (e), Insurance Code;
- (4) Section 2210.256(f), Insurance Code; and
- (5) Subchapter N, Chapter 1001, Occupations Code.

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

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

SECTION 12. Same as House version.

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