

BILL ANALYSIS

Senate Research Center

S.B. 615
By: Buckingham et al.
Business & Commerce
5/30/2019
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Windstorm Insurance Association (TWIA) is a nonprofit insurance provider created by the legislature in 1971 to serve as an insurer of last resort providing windstorm and hail insurance along the Texas coast to those who cannot obtain coverage from the private market.

The Sunset Advisory Commission (Sunset) adopted several recommendations that would increase the effectiveness and efficiency of TWIA's operations, improve TWIA's customer service, decrease costs to policyholders, and help ensure TWIA can respond more quickly to legislative changes. TWIA is subject to review but not abolishment under the Sunset Act; however, Sunset also adopted a recommendation to require a Sunset review again in 12 years. (Original Author's/Sponsor's Statement of Intent)

S.B. 615 amends current law relating to the operations and functions of the Texas Windstorm Insurance Association and the sunset review date for and programs administered by the association; and authorizes a fee.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance (commissioner) in SECTION 15 (Section 2210.5732, Insurance Code) of this bill.

Rulemaking authority previously granted to the commissioner is modified in SECTION 16 (Section 2210.705, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2210.002(b), Insurance Code, to require the Texas Windstorm Insurance Association (TWIA) to be reviewed during the period in which state agencies abolished in 2031, rather than 2019, are reviewed and to provide that this subsection expires September 1, 2031, rather than September 1, 2019.

SECTION 2. Amends Section 2210.008, Insurance Code, by adding Subsections (d), (e), and (f), as follows:

(d) Authorizes TWIA to propose a rule for adoption by the commissioner of insurance (commissioner). Provides that, except as provided by this section, TWIA's proposal is governed by Subchapter B (Rulemaking), Chapter 2001, Government Code. Provides that TWIA is an interested person under that subchapter for purposes of a proceeding initiated under this section.

(e) Requires the commissioner to initiate a rulemaking proceeding under Subchapter B, Chapter 2001, Government Code, not later than the 30th day after the date the commissioner receives a proposed rule from TWIA, notwithstanding Section 2001.021(c) (relating to a certain deadline for responding to petitions), Government Code.

(f) Authorizes TWIA to request a public hearing under Section 2001.029 (Public Comment), Government Code, in connection with a rule proposed under this section.

SECTION 3. Amends Section 2210.102, Insurance Code, by adding Subsection (g), as follows:

(g) Requires that members appointed to the TWIA board of directors (board) under Subsections (c) (relating to the requirement that three members reside in a first tier coastal county) and (d) (relating to the requirement that three members reside more than 100 miles from the Texas coastline), other than the member appointed under Subsection (c-1) (relating to the requirement that one of the members be a property and casualty agent who is licensed under this code and is not a captive agent), represent the general public in the regions described by those subsections. Prohibits a person from being appointed to represent the general public under Subsection (c) or (d) if the person or the person's spouse meets certain criteria relating to conflicts of interest.

SECTION 4. Amends Subchapter C, Chapter 2210, Insurance Code, by adding Section 2210.1031, as follows:

Sec. 2210.1031. TRAINING. (a) Prohibits a person who is appointed to and qualifies for office as a member of the board from voting, deliberating, or being counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) Requires the training program to provide the person with information regarding certain subjects.

(c) Requires the general manager of TWIA (general manager) to create a training manual that includes the information required by Subsection (b). Requires the general manager to distribute a copy of the training manual annually to each member of the board. Requires each member of the board to sign and submit to the general manager a statement acknowledging that the member received and has reviewed the training manual.

SECTION 5. Amends Subchapter C, Chapter 2210, Insurance Code, by adding Section 2210.109, as follows:

Sec. 2210.109. DISCLOSURE OF CONFLICTS. (a) Requires a member of the board, or a member of a subcommittee of the board that relates to underwriting and actuarial matters, to disclose any potential conflict of interest of the member known by the member with respect to a matter for discussion or vote by the board or subcommittee, as applicable, before the discussion or vote. Provides that a potential conflict of interest is an interest that may reasonably be expected to diminish the member's independent judgment with respect to the matter for discussion or vote. Provides that potential conflicts of interest required to be disclosed under this section include a financial or personal interest in an entity that may financially benefit from the outcome of the discussion or vote and holding an insurance policy issued by TWIA that may be affected by the discussion or vote.

(b) Requires a disclosure under this section to be made available to the public. Provides that a board or subcommittee member satisfies this requirement if, with respect to an open meeting or meeting broadcast live on TWIA's Internet website, the member publicly discloses the conflict of interest in the meeting or during the broadcast or, with respect to a meeting that is not an open meeting or broadcast live on TWIA's Internet website, the member discloses the conflict of interest in the agenda of the meeting and makes the agenda publicly available on the TWIA Internet website before the meeting.

SECTION 6. Amends Section 2210.202, Insurance Code, as follows:

Sec. 2210.202. New heading: APPLICATION FOR COVERAGE; DECLINATION REQUIREMENT. (a) Provides that, notwithstanding Section 2210.203(c), evidence of one declination every three calendar years is required before renewal of a TWIA policy, rather than is also required with an application for renewal of a TWIA policy.

(b) Deletes existing text requiring TWIA to develop a simplified renewal process that allows for the acceptance of an application for renewal coverage, and payment of premiums, from a property and casualty agent or a person insured under this chapter. Requires an application for initial coverage, rather than initial or renewal coverage, to contain certain information.

SECTION 7. Amends Sections 2210.203(a) and (c), Insurance Code, as follows:

(a) Requires TWIA, on payment of the premium in full or in part as authorized under Section 2210.2032, to direct the issuance of an insurance policy as provided by the plan of operation if TWIA determines that the property for which an application for initial insurance coverage is made is insurable property.

(c) Authorizes a policy to be renewed annually, rather than annually on application for renewal, as long as the property continues to be insurable property.

SECTION 8. Amends Subchapter E, Chapter 2110, Insurance Code, by adding Sections 2210.2031 and 2210.2032, as follows:

Sec. 2210.2031. AUTOMATIC RENEWAL. (a) Requires TWIA to establish a process for automatic renewal of a policy in accordance with this section.

(b) Requires the process established under Subsection (a) to:

(1) provide for TWIA to verify the declination required by Section 2210.202, flood insurance coverage required by Section 2210.203 (Issuance of Coverage; Term; Renewal), and any other information related to insurability of a property, including changes to the condition or value of the property that would affect the availability of coverage or premium cost to insure the property; and

(2) provide an opportunity for the policyholder to elect to cancel the policy before the policy automatically renews.

Sec. 2210.2032. PREMIUM PAYMENT METHODS. (a) Requires TWIA to accept payment of premium by credit card. Authorizes TWIA to impose a fee on a policyholder for the use of a credit card to pay premium. Prohibits the fee from exceeding the amount necessary to recoup the cost incurred by TWIA in connection with the policyholder's use of a credit card.

(b) Requires TWIA to provide to policyholders the option to pay premium in installments. Provides that a policyholder that pays premium in accordance with an installment payment plan established by TWIA and remains current on the payments satisfies the obligation for payment of premium under this chapter.

SECTION 9. Amends Section 2210.205(a), Insurance Code, to require the windstorm and hail insurance policy issued by TWIA to contain a conspicuous notice concerning the availability of supplemental payments under the policy, including a description of the process for requesting a supplemental payment and notice of applicable deadlines related to supplemental payments, among certain other requirements.

SECTION 10. Amends Sections 2210.207(c) and (d), Insurance Code, as follows:

(c) Provides that if, on the effective date of a TWIA policy, rather than at the time of loss, the total amount of insurance applicable to a dwelling is equal to 80 percent or more of the full replacement cost of the dwelling or equal to the maximum amount of insurance otherwise available through TWIA, coverage applicable to the dwelling under the policy is extended to include the full cost of repair or replacement, without a deduction for depreciation.

(d) Makes a conforming change to this subsection.

SECTION 11. Amends Section 2210.251(g), Insurance Code, to provide that a certificate of compliance issued by the Texas Department of Insurance (TDI), rather than TDI or TWIA, under Section 2210.2515 demonstrates compliance with the applicable building code under the plan of operation.

SECTION 12. Amends Section 2210.2515, Insurance Code, by amending Subsection (c) and adding Subsections (c-1), (c-2), and (i), as follows:

(c) Authorizes a person to apply to TDI, rather than TWIA, on a form prescribed by TDI for a certificate of compliance for a completed improvement. Requires TDI, rather than TWIA, to issue a certificate of compliance for a completed improvement if a professional engineer licensed by Texas Board of Professional Engineers (TBPE):

(1) has designed the improvement, has affixed the engineer's seal on the design, and submits to TDI on a form prescribed by TDI an affirmation that the design complies with the applicable building code under the plan of operation and that the improvement was constructed in accordance with the design, rather than has designed the improvement, has affixed the engineer's seal on the design, and submits to the TWIA on a form prescribed by TDI an affirmation of compliance with the applicable building code under the plan of operation; or

(2) completes and submits to TDI a sealed post-construction evaluation report that confirms the improvement's compliance with the applicable building code under the plan of operation and includes documentation supporting the engineer's post-construction evaluation report on a form prescribed by TDI on which the engineer has affixed the engineer's seal, rather than completes a sealed post-construction evaluation report that confirms compliance with the applicable building code under the plan of operation. Makes nonsubstantive changes.

(c-1) Authorizes TDI to deny an application for a certificate of compliance under Subsection (c) if the evaluation report is not fully documented as required under Subsection (c).

(c-2) Prohibits a form prescribed by TDI under Subsection (c) from requiring a professional engineer to assume liability for the construction of an improvement.

(i) Authorizes TDI to submit a formal complaint under Chapter 1001 (Engineers), Occupations Code, to TBPE related to the engineering work of a professional engineer as reflected in materials submitted by an engineer under Subsection (c).

SECTION 13. Amends Subchapter H, Chapter 2210, Insurance Code, by adding Section 2210.3511, as follows:

Sec. 2210.3511. PUBLIC ACCESS TO RATE ADEQUACY ANALYSIS. (a) Requires TWIA to make TWIA's rate adequacy analysis publicly available on its Internet website for at least 14 days before the date the board votes on the submission of a proposed rate filing based on the analysis to TDI. Requires the rate adequacy analysis to include:

(1) all user selected hurricane model input assumptions; and

(2) output data:

(A) with the same content and in the same format that is customarily provided to:

(i) TWIA by hurricane modelers; and

(ii) TDI by TWIA; and

(B) in a searchable electronic format that allows for efficient analysis and is sufficiently detailed to allow the historical experience in this state to be compared to results produced by the model.

(b) Requires TWIA to accept public comment with respect to a TWIA's rate adequacy analysis at a public meeting of the board before the board votes on the submission of the proposed rate filing to TDI.

SECTION 14. Amends Section 2210.573, Insurance Code, by adding Subsection (f-1), as follows:

(f-1) Requires TWIA, in a notice described by Subsection (d)(1) (relating to a notification that TWIA accepted a claim in full) or (2) (relating to a notification that TWIA accepted a claim in part or denied coverage for the claim in part), to include certain additional information concerning the availability of supplemental payments under the policy.

SECTION 15. Amends Subchapter L-1, Chapter 2210, Insurance Code, by adding Section 2210.5732, as follows:

Sec. 2210.5732. SUPPLEMENTAL PAYMENTS. (a) Authorizes TWIA to provide for supplemental payments under a windstorm and hail insurance policy issued by TWIA.

(b) Requires the commissioner to adopt rules clarifying the deadlines related to supplemental payments. Requires the commissioner to solicit and consider comments from TWIA, TWIA members, and policyholders in adopting rules under this section.

(c) Requires the rules adopted under this section to ensure that a request for supplemental payment will not impair a policyholder's right to appraisal under Section 2210.574 (Disputes Concerning Amount of Accepted Coverage).

SECTION 16. Amends Section 2210.705, Insurance Code, as follows:

Sec. 2210.705. TRANSFER OF POLICIES. Prohibits the rules adopted by the commissioner from containing deadlines that require a property and casualty insurer or agent or a policyholder to take action or make a decision on or after June 1 or before December 1 in any year. Requires the rule to provide that a reinsurance agreement include:

(1) the opportunity for the policyholder to opt out of the reinsurance agreement not more than 60 days after the policyholder receives notice of the reinsurance agreement, rather than on or before May 31. Deletes existing text providing for an offer commencement date of December 1 and redesignates existing Subdivision (2) as Subdivision (1); and

(2)–(4) Redesignates existing Subdivisions (3)–(5) as Subdivisions (2)–(4).

SECTION 17. Repealer: Section 2210.107(b) (relating to a requirement that the general manager of TWIA submit a report to TDI evaluating TWIA's performance), Insurance Code.

SECTION 18. (a) Requires TWIA, not later than January 1, 2020, to provide for a training program for members of TWIA's board as required by Section 2210.1031, Insurance Code, as added by this Act.

(b) Prohibits a member of the board from voting, deliberating, or being counted as a member in attendance at a meeting of the board held on or after January 1, 2020, until the

member completes the training required by Section 2210.1031, Insurance Code, as added by this Act.

(c) Requires the commissioner, not later than March 31, 2020, to adopt or amend rules as required by Section 2210.705, Insurance Code, as amended by this Act.

(d) Requires the commissioner, not later than June 1, 2020, to adopt or amend rules as required by Section 2210.5732, Insurance Code, as added by this Act.

SECTION 19. (a) Provides that, except as provided by Section 18 of this Act, Sections 2210.102(g) and 2210.1031, Insurance Code, as added by this Act, do not affect the entitlement of a member serving on the board of TWIA immediately before the effective date of this Act to continue to serve on the board for the remainder of the term to which the member was appointed.

(b) Provides that TWIA is not required to comply with Section 2210.2031, Insurance Code, as added by this Act, before January 1, 2020.

(c) Provides that TWIA is not required to comply with Section 2210.2032, Insurance Code, as added by this Act, before January 1, 2021.

(d) Makes application of Section 2210.205(a), Insurance Code, as amended by this Act, prospective to July 1, 2020.

(e) Makes application of Section 2210.207, Insurance Code, as amended by this Act, prospective to January 1, 2020.

(f) Provides that Section 2210.251(g), Insurance Code, as amended by this Act, does not affect the status of a certificate of compliance issued by TWIA before June 1, 2020, or after June 1, 2020, in response to an application made before that date for purposes of establishing evidence of insurability.

(g) Makes application of Section 2210.2515, Insurance Code, as amended by this Act, prospective to June 1, 2020.

(h) Makes application of Section 2210.3511, Insurance Code, as added by this Act, prospective.

(i) Makes application of Section 2210.573(f-1), Insurance Code, as added by this Act, prospective to July 1, 2020.

SECTION 20. Effective date: September 1, 2019.