By:  Buckingham, et al. S.B. No. 615

(In the Senate - Filed February 20, 2019; February 21, 2019, read first time and referred to Committee on Business & Commerce; April 1, 2019, reported adversely, with favorable Committee Substitute by the following vote: Yeas 9, Nays 0; April 1, 2019, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Hancock              X

Nichols              X

Campbell             X

Creighton            X

Menéndez             X

Paxton               X

Schwertner           X

Whitmire             X

Zaffirini            X

COMMITTEE SUBSTITUTE FOR S.B. No. 615 By:  Nichols

A BILL TO BE ENTITLED

AN ACT

relating to the operations and functions of the Texas Windstorm Insurance Association and the sunset review date for and programs administered by the association; authorizing a fee.

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

SECTION 1.  Section 2210.002(b), Insurance Code, is amended to read as follows:

(b)  The association is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The association shall be reviewed during the period in which state agencies abolished in 2031 [~~2019~~] are reviewed. The association shall pay the costs incurred by the Sunset Advisory Commission in performing the review of the association under this subsection. The Sunset Advisory Commission shall determine the costs of the review performed under this subsection, and the association shall pay the amount of those costs promptly on receipt of a statement from the Sunset Advisory Commission regarding those costs. This subsection expires September 1, 2031 [~~2019~~].

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

(d)  The association may propose a rule for adoption by the commissioner. Except as provided by this section, the association's proposal is governed by Subchapter B, Chapter 2001, Government Code. The association is an interested person under that subchapter for purposes of a proceeding initiated under this section.

(e)  Notwithstanding Section 2001.021(c), Government Code, not later than the 30th day after the date the commissioner receives a proposed rule from the association, the commissioner shall initiate a rulemaking proceeding under Subchapter B, Chapter 2001, Government Code.

(f)  The association may request a public hearing under Section 2001.029, Government Code, in connection with a rule proposed under this section.

SECTION 3.  Section 2210.102, Insurance Code, is amended by adding Subsection (g) to read as follows:

(g)  Members appointed to the board of directors under Subsections (c) and (d), other than the member appointed under Subsection (c-1), must represent the general public in the regions described by those subsections. A person may not be appointed to represent the general public under Subsection (c) or (d) if the person or the person's spouse:

(1)  is employed by or participates in the management of a business entity or other organization:

(A)  operating in the property and casualty insurance industry in this state;

(B)  receiving money from the association, other than insurance claim payments; or

(C)  receiving money from association policyholders with respect to the policyholders' claims;

(2)  owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization:

(A)  operating in the property and casualty insurance industry in this state;

(B)  receiving money from the association, other than insurance claim payments; or

(C)  receiving money from association policyholders with respect to the policyholders' claims; or

(3)  uses or receives a substantial amount of tangible goods, services, or money from the association, other than:

(A)  insurance claim payments; or

(B)  compensation or reimbursement authorized by law for the board members' membership, attendance, or expenses.

SECTION 4.  Subchapter C, Chapter 2210, Insurance Code, is amended by adding Section 2210.1031 to read as follows:

Sec. 2210.1031.  TRAINING. (a)  A person who is appointed to and qualifies for office as a member of the board of directors may not vote, deliberate, or be counted as a member in attendance at a meeting of the board of directors until the person completes a training program that complies with this section.

(b)  The training program must provide the person with information regarding:

(1)  the law governing the operation of the association;

(2)  the programs, functions, rules, and budget of the association;

(3)  the scope of and limitations on the rulemaking authority of the board of directors;

(4)  the results of the most recent formal audit of the association;

(5)  the requirements of:

(A)  laws relating to open meetings, public information, administrative procedure, and conflict of interest disclosure; and

(B)  other laws applicable to members of a state policymaking body in performing their duties; and

(6)  any applicable ethics policies adopted by the association or the Texas Ethics Commission.

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

SECTION 5.  Subchapter C, Chapter 2210, Insurance Code, is amended by adding Section 2210.109 to read as follows:

Sec. 2210.109.  DISCLOSURE OF CONFLICTS. (a)  A member of the board of directors, or a member of a subcommittee of the board of directors that relates to underwriting and actuarial matters, shall 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. 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. Potential conflicts of interest required to be disclosed under this section include:

(1)  a financial or personal interest in an entity that may financially benefit from the outcome of the discussion or vote; and

(2)  holding an insurance policy issued by the association that may be affected by the discussion or vote.

(b)  A disclosure under this section must be made available to the public. A board or subcommittee member satisfies this requirement if:

(1)  with respect to an open meeting or meeting broadcast live on the association's Internet website, the member publicly discloses the conflict of interest in the meeting or during the broadcast; or

(2)  with respect to a meeting that is not an open meeting or broadcast live on the association's Internet website, the member discloses the conflict of interest in the agenda of the meeting and makes the agenda publicly available on the association's Internet website before the meeting.

SECTION 6.  Section 2210.202, Insurance Code, is amended to read as follows:

Sec. 2210.202.  APPLICATION FOR COVERAGE; DECLINATION REQUIREMENT. (a)  A person who has an insurable interest in insurable property may apply to the association for insurance coverage provided under the plan of operation and an inspection of the property, subject to any rules established by the board of directors and approved by the commissioner. The association shall make insurance available to each applicant in the catastrophe area whose property is insurable property but who, after diligent efforts, is unable to obtain property insurance through the voluntary market, as evidenced by one declination from an insurer authorized to engage in the business of, and writing, property insurance providing windstorm and hail coverage in the first tier coastal counties. For purposes of this section, "declination" has the meaning assigned by the plan of operation and shall include a refusal to offer coverage for the perils of windstorm and hail and the inability to obtain substantially equivalent insurance coverage for the perils of windstorm and hail. Notwithstanding Section 2210.203(c), evidence of one declination every three calendar years is [~~also~~] required before [~~with an application for~~] renewal of an association policy.

(b)  A property and casualty agent must submit an application for initial insurance coverage on behalf of the applicant on forms prescribed by the association. [~~The association shall 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.~~] An application for initial [~~or renewal~~] coverage must contain:

(1)  a statement as to whether the applicant has submitted or will submit the required premium payment [~~in full~~] from personal funds or, if not, to whom a balance is or will be due; and

(2)  a statement that the agent acting on behalf of the applicant possesses proof of the declination described by Subsection (a) and proof of flood insurance coverage or unavailability of that coverage as described by Section 2210.203(a-1).

SECTION 7.  Sections 2210.203(a) and (c), Insurance Code, are amended to read as follows:

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

(c)  A policy may be renewed annually [~~on application for renewal~~] as long as the property continues to be insurable property.

SECTION 8.  Subchapter E, Chapter 2210, Insurance Code, is amended by adding Sections 2210.2031 and 2210.2032 to read as follows:

Sec. 2210.2031.  AUTOMATIC RENEWAL. (a)  The association shall establish a process for automatic renewal of a policy in accordance with this section.

(b)  The process established under Subsection (a) must:

(1)  provide for the association to verify:

(A)  the declination required by Section 2210.202;

(B)  flood insurance coverage required by Section 2210.203; and

(C)  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)  The association shall accept payment of premium by credit card. The association may impose a fee on a policyholder for the use of a credit card to pay premium. The fee may not exceed the amount necessary to recoup the cost incurred by the association in connection with the policyholder's use of a credit card.

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

SECTION 9.  Section 2210.205(a), Insurance Code, is amended to read as follows:

(a)  A windstorm and hail insurance policy issued by the association must:

(1)  require an insured to file a claim under the policy not later than the first anniversary of the date on which the damage to property that is the basis of the claim occurs; [~~and~~]

(2)  contain, in boldface type, a conspicuous notice concerning the resolution of disputes under the policy, including:

(A)  the processes and deadlines for appraisal under Section 2210.574 and alternative dispute resolution under Section 2210.575;

(B)  the binding effect of appraisal under Section 2210.574; and

(C)  the necessity of complying with the requirements of Subchapter L-1 to seek relief, including judicial relief; and

(3)  contain a conspicuous notice concerning the availability of supplemental payments under the policy, including:

(A)  a description of the process for requesting a supplemental payment; and

(B)  notice of applicable deadlines related to supplemental payments.

SECTION 10.  Sections 2210.207(c) and (d), Insurance Code, are amended to read as follows:

(c)  If, on the effective date of an association policy [~~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 the association, 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)  If, on the effective date of an association policy [~~at the time of loss~~], the total amount of insurance applicable to a dwelling is equal to less than 80 percent of the full replacement cost of the dwelling and less than the maximum amount of insurance available through the association, liability for loss under the policy may not exceed the replacement cost of the part of the dwelling that is damaged or destroyed, less depreciation.

SECTION 11.  Section 2210.251(g), Insurance Code, is amended to read as follows:

(g)  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. The certificate is evidence of insurability of the structure by the association.

SECTION 12.  Section 2210.2515, Insurance Code, is amended by amending Subsection (c) and adding Subsections (c-1) and (i) to read as follows:

(c)  A person may apply to the department [~~association~~] on a form prescribed by the department for a certificate of compliance for a completed improvement. The department [~~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 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 and submits to the department a sealed post-construction evaluation report that:

(1)  confirms compliance with the applicable building code under the plan of operation; and

(2)  includes documentation supporting the engineer's evaluation on a form prescribed by the department on which the engineer has affixed the engineer's seal.

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

(i)  The department is authorized to submit a formal complaint to the Texas Board of Professional Engineers related to the work of a professional engineer as reflected in materials submitted under Subsection (c).

SECTION 13.  Subchapter H, Chapter 2210, Insurance Code, is amended by adding Section 2210.3511 to read as follows:

Sec. 2210.3511.  PUBLIC ACCESS TO RATE ADEQUACY ANALYSIS. (a)  The association shall make the association's rate adequacy analysis publicly available on its Internet website for at least 14 days before the date the board of directors votes on the submission of a proposed rate filing based on the analysis to the department. The rate adequacy analysis must include in an accessible format:

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

(2)  detailed output data.

(b)  The association shall accept public comment with respect to the association's rate adequacy analysis at a public meeting of the board of directors before the board of directors votes on the submission of a proposed rate filing to the department.

SECTION 14.  Section 2210.573, Insurance Code, is amended by adding Subsection (f-1) to read as follows:

(f-1)  In a notice described by Subsection (d)(1) or (2), the association must include additional information concerning the availability of supplemental payments under the policy, including:

(1)  a description of the process for requesting a supplemental payment; and

(2)  applicable deadlines related to supplemental payments.

SECTION 15.  Subchapter L-1, Chapter 2210, Insurance Code, is amended by adding Section 2210.5732 to read as follows:

Sec. 2210.5732.  SUPPLEMENTAL PAYMENTS. (a)  The association is authorized to provide for supplemental payments under a windstorm and hail insurance policy issued by the association.

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

(c)  The rules adopted under this section must ensure that a request for supplemental payment will not impair a policyholder's right to appraisal under Section 2210.574.

SECTION 16.  Section 2210.705, Insurance Code, is amended to read as follows:

Sec. 2210.705.  TRANSFER OF POLICIES. The commissioner shall by rule establish the procedure for the transfer of reinsured policies. The rules may not contain 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. The rule must provide that a reinsurance agreement include:

(1)  [~~an offer commencement date of December 1;~~

[~~(2)~~]  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 [~~on or before May 31~~];

(2) [~~(3)~~]  a transfer of the earned premium on a reinsured policy to a trust account to be held until the expiration of the opt-out period described by Subdivision (1) [~~(2)~~]  when the earned premium for the final reinsured policy will be transferred to the reinsurer;

(3) [~~(4)~~]  a period of not less than 60 days for the agent of record to accept an appointment or other written agreement with the reinsurer; and

(4) [~~(5)~~]  any other requirements as the commissioner determines necessary for the protection of policyholders and the policyholders' agents.

SECTION 17.  Section 2210.107(b), Insurance Code, is repealed.

SECTION 18.  (a)  Not later than January 1, 2020, the Texas Windstorm Insurance Association shall provide for a training program for members of the association's board of directors as required by Section 2210.1031, Insurance Code, as added by this Act.

(b)  A member of the board of directors may not vote, deliberate, or be 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)  Not later than March 31, 2020, the commissioner of insurance shall adopt or amend rules as required by Section 2210.705, Insurance Code, as amended by this Act.

(d)  Not later than June 1, 2020, the commissioner of insurance shall adopt or amend rules as required by Section 2210.5732, Insurance Code, as added by this Act.

SECTION 19.  (a)  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 directors of the Texas Windstorm Insurance Association 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)  The Texas Windstorm Insurance Association is not required to comply with Sections 2210.2031 and 2210.2032, Insurance Code, as added by this Act, before January 1, 2020.

(c)  Section 2210.207, Insurance Code, as amended by this Act, applies only to an insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2020. A policy delivered, issued for delivery, or renewed before January 1, 2020, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(d)  Section 2210.251(g), Insurance Code, as amended by this Act, does not affect the status of a certificate of compliance issued by the Texas Windstorm Insurance Association before June 1, 2019, or after June 1, 2019, in response to an application made before that date for purposes of establishing evidence of insurability.

(e)  Section 2210.2515, Insurance Code, as amended by this Act, applies only to an application for a certificate of compliance made on or after June 1, 2019. An application for a certificate of compliance made before June 1, 2019, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(f)  Section 2210.3511, Insurance Code, as added by this Act, applies only to a rate adequacy analysis made in relation to a rate filing made on or after the effective date of this Act.

(g)  Section 2210.205(a), Insurance Code, as amended by this Act, applies only to an association policy that is delivered, issued for delivery, or renewed on or after July 1, 2020. An association policy delivered, issued for delivery, or renewed before July 1, 2020, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(h)  Section 2210.573(f-1), Insurance Code, as added by this Act, applies only to a notice with respect to a claim submitted under an association policy that is delivered, issued for delivery, or renewed on or after July 1, 2020. A notice with respect to a claim submitted under an association policy delivered, issued for delivery, or renewed before July 1, 2020, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 20.  This Act takes effect September 1, 2019.

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