

By: King of Hemphill

H.B. No. 3074

A BILL TO BE ENTITLED

AN ACT

relating to the coverage of damage from tornadoes and wildfires by the Texas Windstorm Insurance Association.

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

SECTION 1. Section 2210.001, Insurance Code, is amended to read as follows:

Sec. 2210.001. PURPOSE. The primary purpose of the Texas Windstorm Insurance Association is the provision of an adequate market for windstorm and hail insurance in the seacoast territory of this state and tornado insurance and wildfire insurance statewide. The legislature finds that the provision of adequate windstorm and hail insurance, tornado insurance, and wildfire insurance is necessary to the economic welfare of this state, and without that insurance, the orderly growth and development of this state would be severely impeded. This chapter provides a method by which adequate windstorm and hail insurance may be obtained in certain designated portions of the seacoast territory of this state and tornado insurance and wildfire insurance may be obtained statewide. The association is intended to serve as a residual insurer of last resort for windstorm and hail insurance in the seacoast territory and tornado insurance and wildfire insurance statewide. The association shall:

(1) function in such a manner as to not be a direct competitor in the private market; and

(2) provide windstorm and hail insurance coverage, tornado insurance coverage, and wildfire insurance coverage to those who are unable to obtain ~~that~~ coverage in the private market.

SECTION 2. Section 2210.003, Insurance Code, is amended by amending Subdivision (6) and adding Subdivisions (14), (15), and (16) to read as follows:

(6) "Insurance" means:

(A) Texas windstorm and hail insurance;

(B) tornado insurance; and

(C) wildfire insurance.

(14) "Tornado insurance" means insurance against:

(A) direct loss to insurable property incurred as a result of a tornado, as those terms are defined and limited in policies and forms approved by the department; and

(B) indirect losses resulting from the direct loss.

(15) "Wildfire" means an uncontrolled blaze fueled by weather, wind, and dry underbrush, trees, grasses, and other flammable material.

(16) "Wildfire insurance" means insurance against:

(A) direct loss to insurable property incurred as a result of wildfire, as those terms are defined and limited in policies and forms approved by the department; and

(B) indirect losses resulting from the direct loss.

SECTION 3. Sections 2210.004(a), (b), (c), and (d),

Insurance Code, are amended to read as follows:

(a) Except as provided by Subsection (h), for purposes of this chapter and subject to this section, "insurable property" means immovable property at a fixed location in a catastrophe area or corporeal movable property located in that immovable property, as designated in the plan of operation, that is determined by the association according to the criteria specified in the plan of operation to be in an insurable condition against windstorm and hail, tornado, and wildfire, as determined by normal underwriting standards. The term includes property described by Section [2210.209](#).

(b) A structure located in a catastrophe area, construction of which began on or after the 30th day after the date of publication of the plan of operation, that is not built in compliance with building specifications set forth in the plan of operation or continued in compliance with those specifications, does not constitute an insurable risk for purposes of windstorm and hail insurance, tornado insurance, or wildfire insurance except as otherwise provided by this chapter.

(c) A structure, or an addition to a structure, that is constructed in conformity with plans and specifications that comply with the specifications set forth in the plan of operation at the time construction begins may not be declared ineligible for windstorm and hail insurance, tornado insurance, or wildfire insurance as a result of subsequent changes in the building specifications set forth in the plan of operation.

(d) Except as otherwise provided by this section, if repair

1 of damage to a structure involves replacement of items covered in
2 the building specifications set forth in the plan of operation, the
3 repairs must be completed in a manner that complies with those
4 specifications for the structure to continue to be insurable
5 property for windstorm and hail insurance, tornado insurance, and
6 wildfire insurance.

7 SECTION 4. Sections 2210.005(a) and (c), Insurance Code,
8 are amended to read as follows:

9 (a) After at least 10 days' notice and a hearing, the
10 commissioner may designate, with respect to windstorm and hail
11 insurance, an area of the seacoast territory of this state as a
12 catastrophe area or, with respect to tornado insurance and wildfire
13 insurance, any area of this state as a catastrophe area if the
14 commissioner determines, unless such a determination results in an
15 adverse impact to the exposure of the association, that windstorm
16 and hail insurance, tornado insurance, or wildfire insurance is not
17 reasonably available to a substantial number of the owners of
18 insurable property located in the area [~~that territory~~] because the
19 area [~~territory~~] is subject to unusually frequent and severe damage
20 resulting from windstorms, [or] hailstorms, tornadoes, or
21 wildfires.

22 (c) If the association determines that windstorm and hail
23 insurance, tornado insurance, or wildfire insurance is no longer
24 reasonably unavailable to a substantial number of owners of
25 insurable property in a territory designated as a catastrophe area,
26 the association may request in writing that the commissioner revoke
27 the designation. After at least 10 days' notice and a hearing, but

1 not later than the 30th day after the date of the hearing, the
2 commissioner shall:

3 (1) approve the request and revoke the designation; or

4 (2) reject the request.

5 SECTION 5. Section 2210.015(a), Insurance Code, is amended
6 to read as follows:

7 (a) Each biennium, the department shall conduct a study of
8 market incentives to promote participation in the voluntary
9 windstorm and hail insurance, tornado insurance, and wildfire
10 insurance markets [market] in [~~the seacoast territory of~~] this
11 state. The study must address as possible incentives the mandatory
12 or voluntary issuance of windstorm and hail insurance, tornado
13 insurance, and wildfire insurance in conjunction with the issuance
14 of a homeowners policy [~~in the seacoast territory~~].

15 SECTION 6. Section 2210.053(b), Insurance Code, is amended
16 to read as follows:

17 (b) The department may develop programs to improve the
18 efficient operation of the association, including a program for
19 approving policy forms under Section 2301.010 and a program
20 designed to create incentives for insurers to write windstorm and
21 hail insurance, tornado insurance, and wildfire insurance
22 voluntarily to cover property located in a catastrophe area,
23 especially property located on the barrier islands of this state.

24 SECTION 7. Section 2210.102(b), Insurance Code, is amended
25 to read as follows:

26 (b) Three members must be representatives of the insurance
27 industry who actively write and renew tornado insurance or wildfire

1 insurance or write and renew windstorm and hail insurance in the
2 first tier coastal counties.

3 SECTION 8. Section 2210.151, Insurance Code, is amended to
4 read as follows:

5 Sec. 2210.151. ADOPTION OF PLAN OF OPERATION. With the
6 advice of the board of directors, the commissioner by rule shall
7 adopt the plan of operation to provide Texas windstorm and hail
8 insurance, tornado insurance, and wildfire insurance in a
9 catastrophe area.

10 SECTION 9. Section 2210.152(a), Insurance Code, is amended
11 to read as follows:

12 (a) The plan of operation must:

13 (1) provide for the efficient, economical, fair, and
14 nondiscriminatory administration of the association; and

15 (2) include:

16 (A) a plan for the equitable assessment of the
17 members of the association to defray losses and expenses;

18 (B) underwriting standards;

19 (C) procedures for accepting and ceding
20 reinsurance;

21 (D) procedures for obtaining and repaying
22 amounts under any financial instruments authorized under this
23 chapter;

24 (E) procedures for determining the amount of
25 insurance to be provided to specific risks;

26 (F) time limits and procedures for processing
27 applications for insurance;

(G) a requirement that a nonresident agent licensed under Section 4056.052 may not offer or sell a Texas windstorm and hail insurance policy, tornado insurance policy, or wildfire insurance policy under this chapter unless the nonresident agent's state of residence authorizes a resident agent licensed in this state to act in the nonresident agent's state as an agent for that state's residual insurer of last resort for windstorm and hail insurance, tornado insurance, or wildfire insurance; and

(H) other provisions as considered necessary by the department to implement the purposes of this chapter.

SECTION 10. Sections 2210.202(a) and (b), Insurance Code, are amended to read as follows:

(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 or tornado insurance or wildfire insurance in this state. 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, tornado, or

1 wildfire and the inability to obtain substantially equivalent
2 insurance coverage for the perils of windstorm and hail, tornado,
3 or wildfire. Notwithstanding Section 2210.203(c), evidence of one
4 declination every three calendar years is also required with an
5 application for renewal of an association policy.

6 (b) A property and casualty agent must submit an application
7 for initial insurance coverage on behalf of the applicant on forms
8 prescribed by the association. The association shall develop a
9 simplified renewal process that allows for the acceptance of an
10 application for renewal coverage, and payment of premiums, from a
11 property and casualty agent or a person insured under this chapter.
12 An application for initial or renewal coverage must contain:

13 (1) a statement as to whether the applicant has
14 submitted or will submit the premium in full from personal funds or,
15 if not, to whom a balance is or will be due; and

16 (2) a statement that the agent acting on behalf of the
17 applicant possesses proof of the declination described by
18 Subsection (a) and, with respect to windstorm and hail insurance,
19 proof of flood insurance coverage or unavailability of that
20 coverage as described by Section 2210.203(a-1).

21 SECTION 11. Section 2210.203(a-1), Insurance Code, is
22 amended to read as follows:

23 (a-1) This subsection applies only to windstorm and hail
24 insurance and a structure constructed, altered, remodeled, or
25 enlarged on or after September 1, 2009, and only for insurable
26 property located in areas designated by the commissioner.
27 Notwithstanding Subsection (a), if all or any part of the property

1 to which this subsection applies is located in Zone V or another
2 similar zone with an additional hazard associated with storm waves,
3 as defined by the National Flood Insurance Program, and if flood
4 insurance under that federal program is available, the association
5 may not issue an insurance policy for initial or renewal coverage
6 unless evidence that the property is covered by a flood insurance
7 policy is submitted to the association. An agent offering or
8 selling a Texas windstorm and hail insurance policy in any area
9 designated by the commissioner under this subsection shall offer
10 flood insurance coverage to the prospective insured, if that
11 coverage is available.

12 SECTION 12. Section 2210.205(a), Insurance Code, is amended
13 to read as follows:

14 (a) A windstorm and hail insurance policy, tornado
15 insurance policy, or wildfire insurance policy issued by the
16 association must:

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

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

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

25 (B) the binding effect of appraisal under Section
26 2210.574; and

27 (C) the necessity of complying with the

1 requirements of Subchapter L-1 to seek relief, including judicial
2 relief.

3 SECTION 13. The heading to Section 2210.207, Insurance
4 Code, is amended to read as follows:

5 Sec. 2210.207. WINDSTORM AND HAIL INSURANCE, TORNADO
6 INSURANCE, AND WILDFIRE INSURANCE: REPLACEMENT COST COVERAGE.

7 SECTION 14. Sections 2210.207(b) and (e), Insurance Code,
8 are amended to read as follows:

9 (b) Subject to any applicable deductibles and the limits for
10 the coverage purchased by the insured, a windstorm and hail
11 insurance policy, tornado insurance policy, or wildfire insurance
12 policy issued by the association may include replacement cost
13 coverage for one- and two-family dwellings, including
14 outbuildings, as provided under the dwelling extension coverage in
15 the policy.

16 (e) Notwithstanding this chapter or any other law, the
17 commissioner, after notice and hearing, may adopt rules to:

18 (1) authorize the association to provide actual cash
19 value coverage instead of replacement cost coverage on the roof
20 covering of a building insured by the association; and

21 (2) establish:

22 (A) the conditions under which the association
23 may provide that actual cash value coverage;

24 (B) the appropriate premium reductions when
25 coverage for the roof covering is provided on an actual cash value
26 basis; and

27 (C) the disclosure that must be provided to the

1 policyholder, prominently displayed on the face of the windstorm
2 and hail insurance policy, tornado insurance policy, or wildfire
3 insurance policy.

4 SECTION 15. The heading to Section 2210.208, Insurance
5 Code, is amended to read as follows:

6 Sec. 2210.208. WINDSTORM AND HAIL INSURANCE, TORNADO
7 INSURANCE, AND WILDFIRE INSURANCE: COVERAGE FOR CERTAIN INDIRECT
8 LOSSES.

9 SECTION 16. Sections 2210.208(a) and (b), Insurance Code,
10 are amended to read as follows:

11 (a) Except as provided by Subsections (e) and (f), a
12 windstorm and hail insurance policy, tornado insurance policy, or
13 wildfire insurance policy issued by the association for a dwelling,
14 as that term is defined by the department or a successor to the
15 department, must include coverage for:

16 (1) with respect to a windstorm and hail insurance
17 policy, wind-driven rain damage, regardless of whether an opening
18 is made by the wind;

19 (2) loss of use; and

20 (3) consequential losses.

21 (b) A windstorm and hail insurance policy, tornado
22 insurance policy, or wildfire insurance policy issued by the
23 association for tenant contents of a dwelling or other residential
24 building must include coverage for loss of use and consequential
25 losses.

26 SECTION 17. The heading to Subchapter F, Chapter 2210,
27 Insurance Code, is amended to read as follows:

SUBCHAPTER F. PROPERTY INSPECTIONS [~~FOR WINDSTORM AND HAIL~~
~~INSURANCE~~]

SECTION 18. Section 2210.253, Insurance Code, is amended to read as follows:

Sec. 2210.253. INITIAL INSURER ASSESSMENT[~~:- FIRST TIER COASTAL COUNTY~~]. (a) In this section, "property insurance" means a commercial or residential insurance policy prescribed or approved by the department that provides coverage for windstorm and hail damage, including a Texas windstorm and hail insurance policy, or loss from tornado or wildfire.

(b) The department shall assess each insurer that provides property insurance in [~~a first tier coastal county in~~] accordance with this section.

(c) The total assessment under this section in a state fiscal year must be in the amount estimated by the department as necessary to cover the administrative costs of the [~~windstorm~~] inspection program under Section 2210.251 to be incurred in [~~the first tier coastal counties in~~] that fiscal year.

(d) The assessment must be based on each insurer's proportionate share of the total extended coverage and other allied lines premium received by all insurers for property insurance in the state [~~first tier coastal counties~~] in the calendar year preceding the year in which the assessment is made.

(e) The commissioner shall adopt rules to implement the assessment of insurers under this section.

SECTION 19. Section 2210.2551(b), Insurance Code, is amended to read as follows:

1 (b) The commissioner by rule shall establish criteria to
2 ensure that a person seeking appointment as a qualified inspector
3 under this subchapter possesses the knowledge, understanding, and
4 professional competence to perform [~~windstorm~~] inspections for the
5 issuance of a certificate of compliance under Section 2210.2515(d)
6 and to comply with other requirements of this chapter.

7 SECTION 20. Section 2210.258, Insurance Code, is amended by
8 adding Subsection (a-1) to read as follows:

9 (a-1) This section applies only to windstorm and hail
10 insurance.

11 SECTION 21. Section 2210.355(g), Insurance Code, is amended
12 to read as follows:

13 (g) A commission paid to an agent for a windstorm and hail
14 insurance policy, tornado insurance policy, or wildfire insurance
15 policy issued by the association must comply with the commission
16 structure approved by the commissioner under Section 2210.203(d)
17 and be reasonable, adequate, not unfairly discriminatory, and
18 nonconfiscatory.

19 SECTION 22. Section 2210.359(a), Insurance Code, is amended
20 to read as follows:

21 (a) Except as otherwise provided by this subsection, a rate
22 approved by the commissioner under this subchapter may not reflect
23 an average rate change that is more than 10 percent higher or lower
24 than the rate for commercial windstorm and hail insurance,
25 commercial tornado insurance, or commercial wildfire insurance or
26 10 percent higher or lower than the rate for noncommercial
27 windstorm and hail insurance, noncommercial tornado insurance, or

1 noncommercial wildfire insurance in effect on the date the filing
2 is made. The rate may not reflect a rate change for an individual
3 rating class that is 15 percent higher or lower than the rate for
4 that individual rating class in effect on the date the filing is
5 made. This subsection does not apply to a rate filed under Sections
6 2210.351(a)-(d).

7 SECTION 23. Section 2210.455(b), Insurance Code, is amended
8 to read as follows:

9 (b) The catastrophe plan must:

10 (1) describe the manner in which the association will,
11 during the period covered by the plan, evaluate losses and process
12 claims after the following windstorms affecting an area of maximum
13 exposure to the association:

14 (A) a windstorm with a four percent chance of
15 occurring during the period covered by the plan;

16 (B) a windstorm with a two percent chance of
17 occurring during the period covered by the plan; and

18 (C) a windstorm with a one percent chance of
19 occurring during the period covered by the plan; ~~and~~

20 (2) include, if the association does not purchase
21 reinsurance under Section 2210.453 for the period covered by the
22 plan, an actuarial plan for paying losses in the event of a
23 catastrophe with estimated damages of \$2.5 billion or more; and

24 (3) describe the manner in which the association will,
25 during the period covered by the plan, evaluate losses and process
26 claims after tornadoes or wildfires affecting an area of maximum
27 exposure to the association.

SECTION 24. Section 2210.501(a), Insurance Code, is amended to read as follows:

(a) The board of directors shall propose the maximum liability limits under a windstorm and hail insurance policy, tornado insurance policy, and wildfire insurance policy issued by the association under this chapter. The maximum liability limits must be approved by the commissioner.

SECTION 25. Section 2210.502(b), Insurance Code, is amended to read as follows:

(b) An adjustment to the maximum liability limits that is approved by the commissioner applies to each windstorm and hail insurance policy, tornado insurance policy, and wildfire insurance policy delivered, issued for delivery, or renewed on or after January 1 of the year following the date of the approval. The indexing of the limits shall adjust for changes occurring on and after January 1, 1997.

SECTION 26. Section 2210.505(a), Insurance Code, is amended to read as follows:

(a) Notwithstanding any other law, the association may issue a windstorm and hail insurance policy, tornado insurance policy, or wildfire insurance policy that includes coverage for an amount in excess of a maximum liability limit established under Sections 2210.501-2210.504 if the association first obtains from a reinsurer approved by the commissioner reinsurance for the full amount of policy exposure above that limit.

SECTION 27. Section 2210.571(1), Insurance Code, is amended to read as follows:

(1) "Association policy" means a windstorm and hail insurance policy, tornado insurance policy, or wildfire insurance policy issued by the association.

SECTION 28. Section 2210.601, Insurance Code, is amended to read as follows:

Sec. 2210.601. PURPOSE. The legislature finds that authorizing the issuance of public securities to provide a method to raise funds to provide [~~windstorm and hail insurance~~] through the association windstorm and hail insurance in certain designated portions of the state and tornado insurance and wildfire insurance statewide is for the benefit of the public and in furtherance of a public purpose.

SECTION 29. Section 2210.6132(c), Insurance Code, is amended to read as follows:

(c) The premium surcharge under this section shall be assessed on all policyholders of policies that cover insured property that is located in a catastrophe area, including automobiles principally garaged in a catastrophe area. The premium surcharge shall be assessed on each Texas windstorm and hail insurance policy, each tornado insurance policy, and each wildfire insurance policy issued by the association and each property and casualty policy, including an automobile insurance policy, issued for automobiles and other property located in the catastrophe area. A premium surcharge under Subsection (b) applies to:

(1) all policies written under the following lines of insurance:

(A) fire and allied lines;

(B) farm and ranch owners;

(C) residential property insurance;

(D) private passenger automobile liability and physical damage insurance; and

(E) commercial automobile liability and physical damage insurance; and

(2) the property insurance portion of a commercial multiple peril insurance policy.

SECTION 30. Section 2210.652, Insurance Code, is amended to read as follows:

Sec. 2210.652. COMPOSITION OF BOARD. The ~~[windstorm insurance legislative oversight]~~ board is composed of eight members as follows:

(1) four members of the senate appointed by the lieutenant governor, including the chairperson of the Senate Business and Commerce Committee, who shall serve as co-chairperson of the board; and

(2) four members of the house of representatives appointed by the speaker of the house of representatives.

SECTION 31. Section 2210.653(a), Insurance Code, is amended to read as follows:

(a) The board shall:

(1) receive information about rules proposed by the department relating to windstorm and hail insurance, tornado insurance, and wildfire insurance, and may submit comments to the commissioner on the proposed rules;

(2) monitor windstorm and hail insurance, tornado

1 insurance, and wildfire insurance in this state, including:

2 (A) the adequacy of rates;

3 (B) the operation of the association; and

4 (C) the availability of coverage; and

5 (3) review recommendations for legislation proposed
6 by the department or the association.

7 SECTION 32. Section 2210.654(b), Insurance Code, is amended
8 to read as follows:

9 (b) The report must include:

10 (1) an analysis of any problems identified; and

11 (2) recommendations for any legislative action
12 necessary to address those problems and to foster stability,
13 availability, and competition within the windstorm and hail
14 insurance, tornado insurance, and wildfire insurance industries
15 ~~[industry]~~.

16 SECTION 33. (a) The plan of operation adopted under
17 Chapter 2210, Insurance Code, as amended by this Act, must provide
18 that the Texas Windstorm Insurance Association issue tornado
19 insurance policies and wildfire insurance policies under that
20 chapter not later than January 1, 2020.

21 (b) The commissioner of insurance shall adopt rules
22 necessary to ensure that the Texas Windstorm Insurance Association
23 issue insurance policies under Chapter 2210, Insurance Code, as
24 amended by this Act, not later than January 1, 2020.

25 SECTION 34. This Act takes effect September 1, 2019.