

By: King of Hemphill

H.B. No. 3076

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of the Texas Tornado and Wildfire Insurance Association; authorizing fees.

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

SECTION 1. Subtitle G, Title 10, Insurance Code, is amended by adding Chapter 2214 to read as follows:

CHAPTER 2214. TEXAS TORNADO AND WILDFIRE INSURANCE ASSOCIATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2214.001. PURPOSE. The primary purpose of the Texas Tornado and Wildfire Insurance Association is the provision of an adequate market for property insurance to provide coverage for losses from tornado and wildfire in this state. The legislature finds that the provision of adequate tornado 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 tornado and wildfire insurance may be obtained in this state. The association is intended to serve as a residual insurer of last resort for tornado and wildfire insurance in this state. The association shall:

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

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

1 Sec. 2214.002. SHORT TITLE; COVERAGE AVAILABLE. (a) This
2 chapter may be cited as the Texas Tornado and Wildfire Insurance
3 Association Act.

4 (b) This chapter authorizes the association to issue only
5 tornado and wildfire insurance.

6 Sec. 2214.003. GENERAL DEFINITIONS. In this chapter,
7 unless the context clearly indicates otherwise:

8 (1) "Association" means the Texas Tornado and Wildfire
9 Insurance Association.

10 (2) "Board of directors" means the board of directors
11 of the association.

12 (3) "Net direct premium" means gross direct written
13 premium less return premium on each canceled contract, regardless
14 of assumed or ceded reinsurance, that is written on property in this
15 state, as defined by the board of directors.

16 (4) "Plan of operation" means the plan adopted under
17 this chapter for the operation of the association.

18 (5) "Tornado and wildfire insurance" means deductible
19 insurance against:

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

23 (B) indirect losses resulting from the direct
24 loss.

25 (6) "Wildfire" means an uncontrolled blaze fueled by
26 weather, wind, and dry underbrush, trees, grasses, or other
27 flammable material.

1 Sec. 2214.004. DEFINITION OF INSURABLE PROPERTY. For
2 purposes of this chapter and subject to this section, "insurable
3 property" has the meaning assigned by the plan of operation.

4 Sec. 2214.005. DESIGNATION AS CATASTROPHE AREA; REVOCATION
5 OF DESIGNATION. An area of this state may be designated as a
6 catastrophe area in the plan of operation. The commissioner by rule
7 may revoke the designation.

8 Sec. 2214.006. APPLICABILITY OF CHAPTER TO CERTAIN
9 INSURERS. (a) Except as provided by Subsection (b), this chapter
10 applies to each insurer authorized to engage in the business of
11 property insurance in this state, including a county mutual
12 insurance company, a Lloyd's plan, and a reciprocal or
13 interinsurance exchange.

14 (b) This chapter does not apply to:

15 (1) a farm mutual insurance company operating under
16 Chapter [911](#);

17 (2) a nonaffiliated county mutual fire insurance
18 company described by Section [912.310](#) that is writing exclusively
19 industrial fire insurance policies as described by Section
20 [912.310](#)(a)(2); or

21 (3) a mutual insurance company or a statewide mutual
22 assessment company engaged in business under Chapter 12 or 13,
23 Title 78, Revised Statutes, respectively, before those chapters'
24 repeal by Section 18, Chapter [40](#), Acts of the 41st Legislature, 1st
25 Called Session, 1929, as amended by Section 1, Chapter 60, General
26 Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, that
27 retains the rights and privileges under the repealed law to the

1 extent provided by those sections.

2 Sec. 2214.007. DEPARTMENT ORDERS; GENERAL RULEMAKING
3 AUTHORITY. (a) The commissioner may issue any orders that the
4 commissioner considers necessary to implement this chapter.

5 (b) The commissioner may adopt rules in the manner
6 prescribed by Subchapter A, Chapter 36, as reasonable and necessary
7 to implement this chapter.

8 Sec. 2214.008. LIST OF PRIVATE INSURERS; INCENTIVE PLAN.

9 (a) The department shall maintain a list of all insurers that
10 engage in the business of property and casualty insurance in the
11 voluntary market in this state.

12 (b) The department shall develop incentive programs to
13 encourage authorized insurers to write insurance on a voluntary
14 basis and to minimize the use of the association as a means to
15 obtain insurance.

16 SUBCHAPTER B. ADMINISTRATION OF THE ASSOCIATION

17 Sec. 2214.051. COMPOSITION OF ASSOCIATION; REQUIRED
18 MEMBERSHIP. (a) The association is composed of all property
19 insurers authorized to engage in the business of property insurance
20 in this state, other than insurers prevented by law from writing on
21 a statewide basis coverages available through the association.

22 (b) As a condition of the insurer's authority to engage in
23 the business of insurance in this state, each insurer subject to
24 Subsection (a) must be a member of the association and must remain a
25 member for the duration of the association's existence. An insurer
26 that ceases to be a member of the association remains liable on
27 insurance contracts entered into during the insurer's membership in

1 the association to the same extent and effect as if the insurer's
2 membership in the association had not been terminated.

3 (c) An insurer that becomes authorized to write and is
4 engaged in writing insurance that requires the insurer to be a
5 member of the association shall become a member of the association
6 on the January 1 following the effective date of that
7 authorization. The determination of the insurer's participation in
8 the association is made as of the date of the insurer's membership
9 in the manner used to determine participation for all other members
10 of the association.

11 Sec. 2214.052. MEMBER PARTICIPATION IN ASSOCIATION. (a)
12 Each member of the association shall participate in insured losses
13 and operating expenses of the association, in excess of premium and
14 other revenue of the association, in the proportion that the net
15 direct premiums of that member during the preceding calendar year
16 bears to the aggregate net direct premiums by all members of the
17 association, as determined using the information provided under
18 Subsection (b).

19 (b) The department shall review annual statements, other
20 reports, and other statistics that the department considers
21 necessary to obtain the information required under Subsection (a)
22 and shall provide that information to the association. The
23 department is entitled to obtain the annual statements, other
24 reports, and other statistics from any member of the association.

25 (c) Each member's participation in the association shall be
26 determined annually in the manner provided by the plan of
27 operation. For purposes of determining participation in the

association, two or more members that are subject to common ownership or that operate in this state under common management or control shall be treated as a single member. The determination shall also include the net direct premiums of an affiliate that is under that common management or control, including an affiliate that is not authorized to engage in the business of property insurance in this state.

(d) Notwithstanding Subsection (a), a member, in accordance with the plan of operation, is entitled to receive credit for similar insurance voluntarily written in areas designated by the commissioner. The member's participation in the insured losses and operating expenses of the association in excess of premium and other revenue of the association shall be reduced in accordance with the plan of operation.

(e) Notwithstanding Subsections (a)-(d), an insurer that becomes a member of the association and that has not previously been a member of the association is not subject to participation in any insured losses and operating expenses of the association in excess of premium and other revenue of the association until the second anniversary of the date on which the insurer first becomes a member of the association.

Sec. 2214.053. OPERATION OF ASSOCIATION. The association shall operate in accordance with the plan of operation.

Sec. 2214.054. ANNUAL STATEMENT. (a) The association shall file annually with the department and the state auditor's office a statement covering periods designated by the department that summarizes the transactions, conditions, operations, and

affairs of the association during the preceding year.

(b) The statement must:

(1) be filed at times designated by the department;

(2) contain the information prescribed by the department; and

(3) be in the form prescribed by the department.

Sec. 2214.055. USE OF ASSOCIATION ASSETS. (a) The association's net earnings may only be used in accordance with the plan of operation.

(b) On dissolution of the association, all assets of the association, other than assets pledged for the repayment of public securities issued under this chapter, revert to this state.

Sec. 2214.056. EXAMINATION OF ASSOCIATION. (a) The association is subject to Sections [401.051](#), [401.052](#), [401.054-401.062](#), [401.151](#), [401.152](#), [401.155](#), and [401.156](#) and Subchapter A, Chapter [86](#).

(b) A final examination report of the association resulting from an examination as provided by this section is a public record and is available to the public at the offices of the department in accordance with Chapter [552](#), Government Code.

Sec. 2214.057. AUDIT OF ASSOCIATION. (a) The association is subject to audit by the state auditor and shall pay the costs incurred by the state auditor in performing an audit under this section.

(b) The association shall pay the costs described by Subsection (a) promptly after receipt of a statement from the state auditor's office regarding the amount of those costs.

1 Sec. 2214.058. CLAIMS PRACTICES AUDIT. The commissioner,
2 in the manner and at the time the commissioner determines to be
3 necessary, may conduct a random audit of claim files concerning
4 claims the bases of which are damage to property insured under this
5 chapter.

6 SUBCHAPTER C. PAYMENT OF LOSSES

7 Sec. 2214.101. PAYMENT OF LOSSES. The association shall
8 pay insured losses and operating expenses of the association from
9 premium and other revenue of the association in accordance with the
10 plan of operation.

11 Sec. 2214.102. ASSESSMENTS. (a) Losses not paid under
12 Section 2214.101 shall be paid from member insurer assessments.

13 (b) A member of the association may not recoup an assessment
14 paid under this subsection through a premium surcharge or tax
15 credit.

16 SUBCHAPTER D. BOARD OF DIRECTORS; POWERS AND DUTIES

17 Sec. 2214.151. ACCOUNTABLE TO COMMISSIONER. The board of
18 directors is responsible and accountable to the commissioner.

19 Sec. 2214.152. COMPOSITION. (a) The board of directors is
20 composed of nine members appointed by the commissioner.

21 (b) All members must have demonstrated experience in
22 insurance, general business, or actuarial principles sufficient to
23 make the success of the association probable.

24 Sec. 2214.153. TERMS. (a) Members of the board of
25 directors serve six-year staggered terms, with the terms of three
26 members expiring on February 1 of each odd-numbered year.

27 (b) A person may serve on the board of directors for not more

1 than three consecutive full terms, not to exceed 18 years.

2 (c) A member of the board of directors may be removed by the
3 commissioner with cause stated in writing and posted on the
4 association's Internet website. The commissioner shall appoint the
5 replacement for a director who leaves or is removed from the board
6 of directors.

7 Sec. 2214.154. OFFICERS. The board of directors shall
8 elect from the board's membership an executive committee consisting
9 of a presiding officer, assistant presiding officer, and
10 secretary-treasurer.

11 Sec. 2214.155. MEETINGS. (a) Except for an emergency
12 meeting, the association shall call and conduct its meetings in
13 accordance with the plan of operation.

14 (b) Except for a closed meeting authorized by Subchapter D,
15 Chapter 551, Government Code, a meeting of the board of directors or
16 of the members of the association is open to the public.

17 (c) Notice of a meeting of the board of directors or the
18 association must be given as provided by Chapter 551, Government
19 Code.

20 Sec. 2214.156. OPEN MEETINGS AND OPEN RECORDS. (a) Except
21 as specifically provided by this chapter or another law, the board
22 of directors and the association are subject to Chapters 551 and
23 552, Government Code.

24 (b) A settlement agreement to which the association is a
25 party is public information and is not exempted from required
26 disclosure under Chapter 552, Government Code.

27 (c) Subsection (b) may not be construed to limit or

otherwise restrict the categories of information that are public information under Section 552.022, Government Code.

SUBCHAPTER E. PLAN OF OPERATION

Sec. 2214.201. ADOPTION OF PLAN OF OPERATION. With the advice of the board of directors, the commissioner by rule shall adopt the plan of operation to provide tornado and wildfire insurance in this state.

Sec. 2214.202. CONTENTS OF PLAN OF OPERATION. (a) The plan of operation must:

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

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

(b) The plan of operation may provide for liability limits for an insured structure and for the corporeal movable property located in the structure.

Sec. 2214.203. AMENDMENTS TO PLAN OF OPERATION. (a) The association may present a recommendation for a change in the plan of operation to the department at:

(1) periodic hearings conducted by the department for that purpose; or

(2) hearings relating to property and casualty insurance rates.

(b) The association must present a proposed change to the department in writing in the manner prescribed by the commissioner.

A proposed change does not take effect unless adopted by the commissioner by rule.

(c) An interested person may, in accordance with Chapter 2001, Government Code, petition the commissioner to modify the plan of operation.

SUBCHAPTER F. INSURANCE COVERAGE; APPLICATION AND INSPECTION

Sec. 2214.251. DEFINITION OF INSURABLE INTEREST. In this subchapter, "insurable interest" includes any lawful and substantial economic interest in the safety or preservation of property from loss, destruction, or pecuniary damage.

Sec. 2214.252. APPLICATION FOR COVERAGE. (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 in accordance with the plan of operation to each applicant in this state 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 tornado and wildfire coverage in this state.

(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 comply with the

1 requirements of the plan of operation.

2 Sec. 2214.253. ISSUANCE OF COVERAGE; TERM; RENEWAL. (a) If
3 the association determines that the property for which an
4 application for initial insurance coverage is made is insurable
5 property, the association, on payment of the premium, shall direct
6 the issuance of an insurance policy as provided by the plan of
7 operation.

8 (b) A policy issued under this section is for a one-year
9 term.

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

12 (d) The commissioner, after receiving a recommendation from
13 the board of directors, shall approve a commission structure for
14 payment of an agent who submits an application for coverage to the
15 association on behalf of a person who has an insurable interest in
16 insurable property. The commission structure adopted by the
17 commissioner must be fair and reasonable, taking into consideration
18 the amount of work performed by an agent in submitting an
19 application to the association and the prevailing commission
20 structure in the private insurance market.

21 Sec. 2214.254. CANCELLATION OF CERTAIN COVERAGE. (a) An
22 agent or insured may request cancellation of the insurance coverage
23 by:

24 (1) returning the policy, with proof that the insured
25 was notified of the return; or

26 (2) requesting the association to cancel the insurance
27 coverage by a notice mailed to the insured and to any others shown

1 in the policy as having an insurable interest in the property.

2 (b) On completion of cancellation under Subsection (a), the
3 association shall refund the unearned premium, less any minimum
4 retained premium set forth in the plan of operation, to the person,
5 firm, or corporation to whom the unpaid balance is due.

6 (c) If an insured requests cancellation of the insurance
7 coverage, the association shall refund the unearned premium, less
8 any minimum retained premium set forth in the plan of operation,
9 payable to the insured and the holder of an unpaid balance. The
10 property and casualty agent who received a commission as the result
11 of the issuance of an association policy providing the canceled
12 coverage shall refund the agent's commission on any unearned
13 premium in the same manner.

14 Sec. 2214.255. POLICY PROVISIONS. A tornado and wildfire
15 insurance policy issued by the association must comply with the
16 requirements of the plan of operation.

17 Sec. 2214.256. INSPECTION REQUIREMENT. (a) To be
18 considered insurable property eligible for insurance coverage from
19 the association, a structure must be inspected or approved by the
20 department for compliance with the plan of operation.

21 (b) The department shall issue a certificate of compliance
22 for each structure that qualifies for coverage. The certificate is
23 evidence of insurability of the structure by the association. The
24 decision whether to issue a certificate of compliance for a
25 structure is wholly within the discretion of the department.

26 (c) The department may enter into agreements and contracts
27 as necessary to implement this section.

1 (d) The department may charge reasonable fees to cover the
2 cost of implementing this section.

3 SUBCHAPTER G. RATES

4 Sec. 2214.301. ASSOCIATION FILINGS. (a) The association
5 must file with the department each manual of classifications,
6 rules, rates, including condition charges, and each rating plan,
7 and each modification of those items that the association proposes
8 to use.

9 (b) A filing under this section must indicate the character
10 and the extent of the coverage contemplated and must be accompanied
11 by the policy and endorsement forms proposed to be used. The forms
12 may be designed specifically for use by the association without
13 regard to other forms filed with, approved by, or prescribed by the
14 department for use in this state.

15 (c) As soon as reasonably possible after the filing has been
16 made, the commissioner in writing shall approve or disapprove the
17 filing. A filing is considered approved unless disapproved on or
18 before the 30th day after the date of the filing. If the
19 commissioner disapproves a filing, the commissioner shall state in
20 writing the reasons for the disapproval and the criteria the
21 association is required to meet to obtain approval.

22 (d) The department shall value the loss and loss adjustment
23 expense data to be used for a filing not earlier than March 31 of the
24 year before the year in which the filing is to be made.

25 Sec. 2214.302. MANUAL RATE FILINGS: ANNUAL FILING. (a) Not
26 later than August 15 of each year, the association shall file with
27 the department a proposed manual rate for all types and classes of

1 risks written by the association.

2 (b) Before approving or disapproving a filing under this
3 section, the commissioner shall provide all interested persons a
4 reasonable opportunity to:

5 (1) review the filing;

6 (2) obtain copies of the filing on payment of any
7 legally required copying cost; and

8 (3) submit to the commissioner written comments or
9 information related to the filing.

10 (c) The commissioner shall approve or disapprove the filing
11 in writing not later than October 15 of the year in which the filing
12 was made. If the filing is not approved or disapproved on or before
13 that date, the filing is considered approved.

14 (d) If the commissioner disapproves a filing, the
15 commissioner shall state in writing the reasons for the disapproval
16 and the criteria the association is required to meet to obtain
17 approval.

18 Sec. 2214.303. MANUAL RATE FILINGS: AMENDED ANNUAL FILING.

19 (a) Not later than the 30th day after the date the association
20 receives the commissioner's written disapproval under Section
21 2214.302, the association may file with the commissioner an amended
22 annual filing that conforms to all criteria stated in that written
23 disapproval.

24 (b) Not later than the 30th day after the date an amended
25 filing made under Subsection (a) is received, the commissioner
26 shall approve or disapprove the amended filing. If the filing is
27 not disapproved on or before the 30th day after the date of receipt,

1 the filing is considered approved. If the commissioner disapproves
2 a filing, the commissioner shall state in writing the reasons for
3 the disapproval and the criteria the association is required to
4 meet to obtain approval.

5 (c) Before approving or disapproving an amended annual
6 filing under this section, the commissioner shall, in the manner
7 provided by Section 2214.302, provide all interested persons a
8 reasonable opportunity to:

9 (1) review the amended annual filing;

10 (2) obtain copies of the amended annual filing on
11 payment of any legally required copying cost; and

12 (3) submit to the commissioner written comments or
13 information related to the amended annual filing.

14 Sec. 2214.304. MANUAL RATE FILINGS: ADDITIONAL SUPPORTING
15 INFORMATION. (a) In conjunction with the review of a filing under
16 Section 2214.302:

17 (1) the commissioner may request the association to
18 provide additional supporting information relating to the filing;
19 and

20 (2) any interested person may file a written request
21 with the commissioner, during a period specified by the
22 commissioner by rule, for additional supporting information
23 relating to the filing.

24 (b) A request under this section must be reasonable and must
25 be directly related to the filing.

26 (c) The commissioner shall submit to the association all
27 requests for additional supporting information made under this

1 section for the commissioner's use and the use of any interested
2 person not later than the 21st day after the date of receipt of the
3 filing.

4 (d) Unless a different period is requested by the
5 association and approved by the commissioner, the association shall
6 provide the information to the commissioner not later than the
7 fifth day after the date the written request for additional
8 supporting information is delivered to the association.

9 Sec. 2214.305. GENERAL RATE REQUIREMENTS; RATE STANDARDS.

10 (a) Rates for coverage under this chapter must be made in
11 accordance with the plan of operation.

12 (b) Rates must be reasonable, adequate, not unfairly
13 discriminatory, and nonconfiscatory as to any class of insurer.

14 (c) For the establishment of rates and minimum premiums, the
15 risks may be grouped by classification.

16 (d) A commission paid to an agent for a tornado and wildfire
17 insurance policy issued by the association must comply with the
18 commission structure established in the plan of operation and be
19 reasonable, adequate, not unfairly discriminatory, and
20 nonconfiscatory.

21 (e) The association may establish rating territories and
22 may vary rates among the territories as provided by the plan of
23 operation.

24 Sec. 2214.306. RATE CLASSIFICATIONS. All premiums written
25 and losses paid under this chapter, as appropriate, must be
26 included in applicable classifications for general ratemaking
27 purposes.

SUBCHAPTER H. LIABILITY LIMITS

Sec. 2214.351. MAXIMUM LIABILITY LIMITS. The maximum liability limits under a tornado and wildfire insurance policy issued by the association under this chapter are established by the plan of operation and may be adjusted by amendment to the plan of operation.

SECTION 2. (a) The governor shall appoint the members of the board of directors of the Texas Tornado and Wildfire Insurance Association under Chapter 2214, Insurance Code, as added by this Act, effective November 1, 2019. The initial directors shall draw lots to achieve staggered terms, with three of the directors serving two-year terms, three of the directors serving four-year terms, and three of the directors serving six-year terms.

(b) The plan of operation adopted under Chapter 2214, Insurance Code, as added by this Act, must provide that the Texas Tornado and Wildfire Insurance Association issue insurance policies under that chapter not later than January 1, 2020.

(c) The commissioner of insurance shall adopt rules necessary to ensure that the Texas Tornado and Wildfire Insurance Association issue insurance policies under Chapter 2214, Insurance Code, as added by this Act, not later than January 1, 2020.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.