

By: Buckingham, et al.
(Paddie)

S.B. No. 615

Substitute the following for S.B. No. 615:

By: Lucio III

C.S.S.B. No. 615

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the operations and functions of the Texas Windstorm
3 Insurance Association and the sunset review date for and programs
4 administered by the association; authorizing a fee.

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

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

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

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

21 (d) The association may propose a rule for adoption by the
22 commissioner. Except as provided by this section, the
23 association's proposal is governed by Subchapter B, Chapter 2001,
24 Government Code. The association is an interested person under

1 that subchapter for purposes of a proceeding initiated under this
2 section.

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

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

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

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

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

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

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

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

27 (2) owns or controls, directly or indirectly, more

1 than a 10 percent interest in a business entity or other
2 organization:

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

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

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

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

11 (A) insurance claim payments; or

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

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

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

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

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

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

27 (3) the scope of and limitations on the rulemaking

1 authority of the board of directors;

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

4 (5) the requirements of:

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

8 (B) other laws applicable to the board of
9 directors in performing the board's duties; and

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

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

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

21 Sec. 2210.109. DISCLOSURE OF CONFLICTS. (a) A member of
22 the board of directors, or a member of a subcommittee of the board
23 of directors that relates to underwriting and actuarial matters,
24 shall disclose any potential conflict of interest of the member
25 known by the member with respect to a matter for discussion or vote
26 by the board or subcommittee, as applicable, before the discussion
27 or vote. A potential conflict of interest is an interest that may

1 reasonably be expected to diminish the member's independent
2 judgment with respect to the matter for discussion or vote.
3 Potential conflicts of interest required to be disclosed under this
4 section include:

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

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

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

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

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

22 SECTION 6. Section [2210.202](#), Insurance Code, is amended to
23 read as follows:

24 Sec. 2210.202. APPLICATION FOR COVERAGE; DECLINATION
25 REQUIREMENT. (a) A person who has an insurable interest in
26 insurable property may apply to the association for insurance
27 coverage provided under the plan of operation and an inspection of

1 the property, subject to any rules established by the board of
2 directors and approved by the commissioner. The association shall
3 make insurance available to each applicant in the catastrophe area
4 whose property is insurable property but who, after diligent
5 efforts, is unable to obtain property insurance through the
6 voluntary market, as evidenced by one declination from an insurer
7 authorized to engage in the business of, and writing, property
8 insurance providing windstorm and hail coverage in the first tier
9 coastal counties. For purposes of this section, "declination" has
10 the meaning assigned by the plan of operation and shall include a
11 refusal to offer coverage for the perils of windstorm and hail and
12 the inability to obtain substantially equivalent insurance
13 coverage for the perils of windstorm and hail. Notwithstanding
14 Section [2210.203\(c\)](#), evidence of one declination every three
15 calendar years is ~~[also]~~ required before ~~[with an application for]~~
16 renewal of an association policy.

17 (b) A property and casualty agent must submit an application
18 for initial insurance coverage on behalf of the applicant on forms
19 prescribed by the association. ~~[The association shall develop a
20 simplified renewal process that allows for the acceptance of an
21 application for renewal coverage, and payment of premiums, from a
22 property and casualty agent or a person insured under this
23 chapter.]~~ An application for initial ~~[or renewal]~~ coverage must
24 contain:

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

1 and

2 (2) a statement that the agent acting on behalf of the
3 applicant possesses proof of the declination described by
4 Subsection (a) and proof of flood insurance coverage or
5 unavailability of that coverage as described by Section
6 [2210.203\(a-1\)](#).

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

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

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

18 SECTION 8. Subchapter E, Chapter [2210](#), Insurance Code, is
19 amended by adding Sections 2210.2031 and 2210.2032 to read as
20 follows:

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

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

25 (1) provide for the association to verify:

26 (A) the declination required by Section
27 [2210.202](#);

1 (B) flood insurance coverage required by Section
2 2210.203; and

3 (C) any other information related to
4 insurability of a property, including changes to the condition or
5 value of the property that would affect the availability of
6 coverage or premium cost to insure the property; and

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

9 Sec. 2210.2032. PREMIUM PAYMENT METHODS. (a) The
10 association shall accept payment of premium by credit card. The
11 association may impose a fee on a policyholder for the use of a
12 credit card to pay premium. The fee may not exceed the amount
13 necessary to recoup the cost incurred by the association in
14 connection with the policyholder's use of a credit card.

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

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

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

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

27 (2) contain, in boldface type, a conspicuous notice

1 concerning the resolution of disputes under the policy, including:

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

5 (B) the binding effect of appraisal under Section
6 2210.574; and

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

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

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

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

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

18 (c) If, on the effective date of an association policy [~~at~~
19 ~~the time of loss~~], the total amount of insurance applicable to a
20 dwelling is equal to 80 percent or more of the full replacement cost
21 of the dwelling or equal to the maximum amount of insurance
22 otherwise available through the association, coverage applicable
23 to the dwelling under the policy is extended to include the full
24 cost of repair or replacement, without a deduction for
25 depreciation.

26 (d) If, on the effective date of an association policy [~~at~~
27 ~~the time of loss~~], the total amount of insurance applicable to a

1 dwelling is equal to less than 80 percent of the full replacement
2 cost of the dwelling and less than the maximum amount of insurance
3 available through the association, liability for loss under the
4 policy may not exceed the replacement cost of the part of the
5 dwelling that is damaged or destroyed, less depreciation.

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

8 (g) A certificate of compliance issued by the department [~~or~~
9 ~~association~~] under Section 2210.2515 demonstrates compliance with
10 the applicable building code under the plan of operation. The
11 certificate is evidence of insurability of the structure by the
12 association.

13 SECTION 12. Section 2210.2515, Insurance Code, is amended
14 by amending Subsection (c) and adding Subsections (c-1), (c-2), and
15 (i) to read as follows:

16 (c) A person may apply to the department [~~association~~] on a
17 form prescribed by the department for a certificate of compliance
18 for a completed improvement. The department [~~association~~] shall
19 issue a certificate of compliance for a completed improvement if a
20 professional engineer licensed by the Texas Board of Professional
21 Engineers:

22 (1) has designed the improvement, has affixed the
23 engineer's seal on the design, and submits to the department
24 [~~association~~] on a form prescribed by the department an affirmation
25 that the design complies [~~of compliance~~] with the applicable
26 building code under the plan of operation and that the improvement
27 was constructed in accordance with the design; or

1 (2) completes and submits to the department a sealed
2 post-construction evaluation report that:

3 (A) confirms the improvement's compliance with
4 the applicable building code under the plan of operation; and

5 (B) includes documentation supporting the
6 engineer's post-construction evaluation report on a form
7 prescribed by the department on which the engineer has affixed the
8 engineer's seal.

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

12 (c-2) A form prescribed by the department under Subsection
13 (c) may not require a professional engineer to assume liability for
14 the construction of an improvement.

15 (i) The department is authorized to submit a formal
16 complaint under Chapter 1001, Occupations Code, to the Texas Board
17 of Professional Engineers related to the engineering work of a
18 professional engineer as reflected in materials submitted by an
19 engineer under Subsection (c).

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

22 Sec. 2210.3511. PUBLIC ACCESS TO RATE ADEQUACY ANALYSIS.

23 (a) The association shall make the association's rate adequacy
24 analysis publicly available on its Internet website for at least 14
25 days before the date the board of directors votes on the submission
26 of a proposed rate filing based on the analysis to the department.

27 The rate adequacy analysis must include:

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

3 (2) output data:

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

6 (i) the association by hurricane modelers;
7 and

8 (ii) the department by the association; and

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

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

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

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

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

24 (2) applicable deadlines related to supplemental
25 payments.

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

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

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

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

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

14 Sec. 2210.705. TRANSFER OF POLICIES. The commissioner
15 shall by rule establish the procedure for the transfer of reinsured
16 policies. The rules may not contain deadlines that require a
17 property and casualty insurer or agent or a policyholder to take
18 action or make a decision on or after June 1 or before December 1 in
19 any year. The rule must provide that a reinsurance agreement
20 include:

21 (1) [~~an offer commencement date of December 1,~~
22 [~~2~~] the opportunity for the policyholder to opt out
23 of the reinsurance agreement not more than 60 days after the
24 policyholder receives notice of the reinsurance agreement [~~on or~~
25 ~~before May 31~~];

26 (2) [~~3~~] a transfer of the earned premium on a
27 reinsured policy to a trust account to be held until the expiration

1 of the opt-out period described by Subdivision (1) [~~(2)~~] when the
2 earned premium for the final reinsured policy will be transferred
3 to the reinsurer;

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

7 (4) [~~(5)~~] any other requirements as the commissioner
8 determines necessary for the protection of policyholders and the
9 policyholders' agents.

10 SECTION 17. Section [2210.107\(b\)](#), Insurance Code, is
11 repealed.

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

17 (b) A member of the board of directors may not vote,
18 deliberate, or be counted as a member in attendance at a meeting of
19 the board held on or after January 1, 2020, until the member
20 completes the training required by Section [2210.1031](#), Insurance
21 Code, as added by this Act.

22 (c) Not later than March 31, 2020, the commissioner of
23 insurance shall adopt or amend rules as required by Section
24 [2210.705](#), Insurance Code, as amended by this Act.

25 (d) Not later than June 1, 2020, the commissioner of
26 insurance shall adopt or amend rules as required by Section
27 [2210.5732](#), Insurance Code, as added by this Act.

1 SECTION 19. (a) Except as provided by Section 18 of this
2 Act, Sections [2210.102](#)(g) and [2210.1031](#), Insurance Code, as added
3 by this Act, do not affect the entitlement of a member serving on
4 the board of directors of the Texas Windstorm Insurance Association
5 immediately before the effective date of this Act to continue to
6 serve on the board for the remainder of the term to which the member
7 was appointed.

8 (b) The Texas Windstorm Insurance Association is not
9 required to comply with Section [2210.2031](#), Insurance Code, as added
10 by this Act, before January 1, 2020.

11 (c) The Texas Windstorm Insurance Association is not
12 required to comply with Section [2210.2032](#), Insurance Code, as added
13 by this Act, before January 1, 2021.

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

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

1 (f) Section 2210.251(g), Insurance Code, as amended by this
2 Act, does not affect the status of a certificate of compliance
3 issued by the Texas Windstorm Insurance Association before June 1,
4 2020, or after June 1, 2020, in response to an application made
5 before that date for purposes of establishing evidence of
6 insurability.

7 (g) Section 2210.2515, Insurance Code, as amended by this
8 Act, applies only to an application for a certificate of compliance
9 made on or after June 1, 2020. An application for a certificate of
10 compliance made before June 1, 2020, is governed by the law as it
11 existed immediately before the effective date of this Act, and that
12 law is continued in effect for that purpose.

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

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

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