

81R11268 PB-D

By: Smithee

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A BILL TO BE ENTITLED

AN ACT

relating to adoption of a temporary program for the operation and funding of the Texas Windstorm Insurance Association.

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

SECTION 1. Chapter 2210, Insurance Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. OPERATION AND FUNDING OF ASSOCIATION BETWEEN JUNE 1, 2009, AND SEPTEMBER 1, 2013

Sec. 2210.401. CONSTRUCTION WITH OTHER LAW. Notwithstanding any other provision of this chapter or other law, for the period beginning June 1, 2009, and ending September 1, 2013, the operation and funding of the association is subject to this subchapter.

Sec. 2210.402. INSURABLE PROPERTY. (a) For purposes of this subchapter and subject to this section, "insurable property" means only immovable property at a fixed location in a catastrophe area, or corporeal movable property located in that immovable property, 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, as determined by normal underwriting standards. A structure located in a catastrophe area that is not built in compliance with applicable building codes or continued in

compliance with those building codes does not constitute an insurable risk for purposes of windstorm and hail insurance under this subchapter.

(b) Residential property is insurable property for purposes of this subchapter only if the property is classified as the policyholder's residential homestead property under Section 11.13, Tax Code, or is used as the primary residence of a tenant of the policyholder. To be eligible for coverage through the association, the policyholder must certify, in the manner prescribed by the commissioner, that the property to be insured is the policyholder's primary residence or the primary residence of the policyholder's tenant. Residential property that is not used as a primary residence is not insurable property for purposes of this subchapter and is not eligible for coverage through the association.

(c) For purposes of this subchapter, a residential structure is insurable property if:

(1) the residential structure is not:

(A) a condominium, apartment, duplex, or other multifamily residence; or

(B) a hotel or resort facility;

(2) the residential structure is located within an area designated as a unit under the Coastal Barrier Resources Act (Pub. L. No. 97-348); and

(3) a building permit or plat for the residential structure was filed with the municipality, the county, or the

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United States Army Corps of Engineers before June 11, 2003.

(d) Commercial property is eligible for coverage through the association only as provided by this subchapter.

(e) Except as otherwise provided by this section, if repair of damage to a structure involves replacement of items covered in the building specifications set forth in the applicable building codes, the repairs must be completed in a manner that complies with those specifications for the structure to continue to be insurable property for windstorm and hail insurance.

(f) For purposes of this subchapter, a structure is not insurable property if the commissioner of the General Land Office notifies the association of a determination that the structure is located on the public beach under procedures established under Section 61.011, Natural Resources Code, and that the structure:

(1) constitutes an imminent hazard to safety, health, or public welfare; or

(2) substantially interferes with the free and unrestricted right of the public to enter or leave the public beach or traverse any part of the public beach.

(g) The commissioner, by rule, may adopt inspection requirements for this subchapter to supplement or replace the inspection requirements adopted under Subchapter F.

Sec. 2210.403. FLOOD INSURANCE REQUIRED. (a)
Notwithstanding Section 2210.402, if all or any part of the property for which an application for new or renewal insurance

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coverage is made is located in Zone V or another similar zone with an additional hazard associated with storm waves, as defined by the National Flood Insurance Program, and if flood insurance under that federal program is available, the association may not issue a new or renewal insurance policy unless evidence that the property is covered by a flood insurance policy is submitted to the association.

(b) If flood insurance described by Subsection (a) is unavailable in any portion of the seacoast territory, an association policy insuring a residential structure described by Section 2210.402(b) is subject to a premium surcharge for the insurance coverage obtained through the association in an amount equal to not less than 10 percent of the premium, as set by the commissioner after notice and a hearing.

Sec. 2210.404. MAXIMUM LIABILITY LIMITS. The maximum liability limits for coverage through the association under this subchapter on a single insurable property may not exceed:

(1) \$250,000 for a dwelling, and the corporeal movable property located in or about the dwelling, as provided under the policy;

(2) \$2,192,000 for a building, and the corporeal movable property located in the building, if the building is:

(A) owned by, and at least 75 percent of which is occupied by, a governmental entity; or

(B) not owned by, but is wholly and exclusively

occupied by, a governmental entity; and

(3) \$1 million for a structure other than a dwelling or a public building, and the corporeal movable property located in that structure, as provided under the policy.

Sec. 2210.405. ISSUANCE OF COVERAGE; TERM; RENEWAL. (a) If the association determines that the property for which an application for insurance coverage is made is insurable property under this subchapter, the association, on payment of the premium, shall direct the issuance of an insurance policy as provided by the plan of operation and commissioner rules for this subchapter. The policy is subject to the waiting period described by Section 2210.406.

(b) A policy issued under this section must be for a term of at least 12 months.

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

(d) Coverage under this subchapter does not include coverage for loss of use of insurable property.

Sec. 2210.406. WAITING PERIOD. (a) A policy of windstorm and hail insurance issued under this subchapter is subject to a 60-day waiting period before the policyholder is eligible to recover for losses under the policy.

(b) The waiting period under Subsection (a) begins on the date that the policy is first issued under this chapter.

Sec. 2210.407. FILE AND USE RATING. (a) Notwithstanding

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Subchapter H, rates for coverage issued by the association on and after June 1, 2009, are subject to this section.

(b) The association shall file with the department in the manner prescribed by Section 2251.101 each manual of classifications, rules, and rates, including condition charges, and each rating plan, and each modification of those items that the association proposes to use.

(c) After the filing has been made, the association may use a filed rate, and a filed rate is subject to disapproval by the commissioner in the manner prescribed by Subchapter C, Chapter 2251.

(d) If at any time the commissioner determines that a filed rate in effect under Subsection (c) no longer meets the requirements of this chapter, the commissioner may disapprove the filed rate in the manner prescribed by Section 2251.104 for disapproval of a rate.

(e) In adopting rates under this chapter, the association shall:

(1) comply with the rate standards adopted under Section 2251.052, to the extent that those standards are determined by the commissioner to be applicable to the purposes of the association;

(2) ensure that the rates are actuarially sound;

(3) use territorial rating within the catastrophe area, adjusted for relative risks; and

(4) include rating factors as necessary to:

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(A) fund the catastrophe reserve trust fund; and

(B) pay the losses and expenses of the association,

regardless of the ultimate source of funding for those losses and expenses.

(f) The catastrophe element used to develop rates under this subchapter must be developed using industry data, association data, and catastrophe models approved by the department for use in association filings. The commissioner shall adopt rules establishing:

(1) the procedure for approval by the department of catastrophe models used by the association in the development of its rates; and

(2) the methodology of use for those models.

(g) A person who is aggrieved by a rate under this subchapter may proceed as provided by Chapter 2251.

Sec. 2210.408. FUNDING OF LOSSES. (a) If, in any calendar year, an occurrence or series of occurrences in a catastrophe area results in insured losses and operating expenses of the association in excess of premium and other revenue of the association, the excess losses shall be paid as provided by this section.

(b) Losses in excess of those paid under Subsection (a) shall be paid with the proceeds of \$1.5 billion in loans obtained by the association from the economic stabilization fund established under Section 49-g, Article III, Texas Constitution. Loans obtained by the association under this subsection are subject to the loan terms

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approved in advance by the Legislative Budget Board. The board of
directors shall assess the members of the association for the
repayment to the Legislative Budget Board of loan proceeds
described by this subsection.

(c) Losses in excess of those paid under Subsections (a) and
(b) shall be paid through reinsurance as provided by this
subsection. Not later than July 1, 2009, the association shall
purchase reinsurance for the coverage of losses in a minimum amount
of \$2 billion. The initial cost of reinsurance purchased under
this subsection shall be paid by assessments on the members of the
association. The association may recoup the costs of reinsurance
under this subsection through pro-rata assessments on association
policyholders made on or before December 31, 2009, in the manner
prescribed by Subsection (e).

(d) Losses in excess of those paid under Subsections (a),
(b), and (c) shall be paid with the proceeds of additional loans
obtained by the association from the economic stabilization fund
established under Section 49-g, Article III, Texas Constitution.
Loans obtained by the association under this subsection are subject
to the loan terms approved in advance by the Legislative Budget
Board and shall be repaid from the general revenue fund.

(e) The commissioner shall notify each member of the
association of the amount of the member's assessment to repay loan
proceeds described by Subsection (b) and to purchase reinsurance
described by Subsection (c). The association may recoup the

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assessments through premium surcharges on each policy of windstorm
and hail insurance written by the association. A premium surcharge
under this section is a separate charge in addition to the premiums
collected and is not subject to premium tax or commissions. Failure
to pay the premium surcharge by a policyholder constitutes failure
to pay premium for purposes of policy cancellation.

Sec. 2210.409. RULES. The commissioner shall adopt rules in
the manner provided by Subchapter A, Chapter 36, as necessary to
implement this subchapter.

Sec. 2210.410. EXPIRATION. This subchapter expires September
1, 2013.

SECTION 2. Subchapter I, Chapter 2210, Insurance Code, as
added by this Act, takes effect June 1, 2009.

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, 2009.