

**SYNOPSIS OF Sections 5 through 49, [Windstorm Insurance sections] HB 4409,  
5/30/09 CONFERENCE COMMITTEE REPORT**

Adopted by House 5/31/09; by Senate 6/1/09; governor signed 6/19/09.

*Sections 5 through 49 of HB 4409 are included in this informal synopsis only to the extent they represent noticeable or significant changes from current law—other sections are omitted. Review also HCR 287, which followed HB 4409, making 13 technical corrections.*

*This summary is intended as a “guide” to the act, not suitable for any official or formal purpose.*

Page / Bill Section

5 / 5 **Removes Fire and 226 Counties** from potential consideration for declaration of inclusion in TWIA [because of inadequate market], leaving only wind and hail perils in the 28 county Seacoast Territory for Catastrophe Area designation. TWIA is relegated to the status of “...residual market of last resort...”; “...not a direct competitor...”; for “...those who are unable to obtain that coverage in the private market.”

6 / 6 Requires TWIA to be reviewed by the **Sunset** Advisory Commission in 2015.

7 / 6 Requires TWIA board of directors to file a **report by December 31**, even # years:  
- proposed legislative changes, and reasons;  
- any information requested by TDI.

10 / 7 Designation of an area as Catastrophe Area is denied if “...such a determination results in an adverse impact to the exposure of the association.”

11 / 8 Existing **notice and hearing for rulemaking is repealed**. Chapter 35, Subchapter A procedure is required.

12 / 9 TDI must maintain a **list of insurers** ‘engaged’ in the Catastrophe Area.  
TDI must develop **incentive programs** to encourage voluntary writing.

12 / 9 TWIA members’ participation is changed to meet IRS **tax exempt** requirements. An insurer new to Texas, does not **‘participate’ until the 2<sup>nd</sup> anniversary** of its TWIA membership.

16 / 11 New Subchapter B – 1 provides for **prioritized ‘layers’ of funding** to pay claims:

- .071 Losses in excess of TWIA premiums are first paid by TWIA ‘reserves’, then the CRTF [Catastrophe Reserve Trust Fund];
- .072 In excess of .071, Class 1, post-event Securities, to **\$1B**, repaid by TWIA [see 2210.612]; OR, can ‘borrow’ by any means, including commercial paper;
- .073 In excess of .072, Class 2, post-event Securities, to **\$1B**, repaid [see 2210.613] up to 10 years 70% by Catastrophe Area property & casualty policies surcharge; 30% by insurer member non recoupable assessment.
- .074 In excess of .073, Class 3, post-event Securities, to **\$500M**, repaid [see 2210.6135] by non recoupable member assessment, or “.075 reinsurance” in lieu of assessment.

.075 Member insurers are allowed to purchase reinsurance in the amount of their .074 assessment as satisfaction of their potential obligation.

[Note: Page 11, Section 2210.452, et seq, authorizes TWIA to purchase reinsurance, without control as to its amount, or attaching point, cost, or commissioner approval.]

14 / 14 Ten **directors**, to be appointed by the commissioner, are:

4 insurer representatives, nominated by TWIA insurer members;

4 public, [OPIC nomination is repealed], from different first tier counties, at least one of which must be a non captive agent;

1 public, knowledgeable of insurance, “representative of an area of this state that is NOT located in the [28 county] Seacoast territory”;

1 Non Voting engineer resident of a first tier county.

22 / 16 Meetings of the board of directors may be by **telecommunication** under prescribed conditions.

23 / 17 The Plan of Operation must include procedures for obtaining and repaying authorized **financial instruments**.

26 / 18 Each application for coverage must include an agent’s statement of possession of one ‘**declination**’ from an insurer writing wind coverage in the Catastrophe Area, **AND**, must be accompanied by evidence of existing **flood policy** if the property is located in a “V zone”; if flood insurance is available. The agent must **offer flood insurance** if the property is located in an area designated by the commissioner. .

28 / 20 **Minimum** earned **premium** is not less than **180 days**, except in cases to be set out in the plan of operation, such as sale, death, or replacement with a voluntary policy.

30 / 21 Building code **inspection and certification** requirements are applicable to structures “... constructed, altered, remodeled, enlarged, or repaired or to which additions are made...” on or after 1/1/88. “A person must submit a notice... before beginning...”

-If construction, etc. was before 1/1/88, in an area governed by a TWIA acceptable building code, no inspection is required.

-If construction, etc. was before 1/1/88, in an area NOT governed by such a code, if the structure can be shown to have been insured for wind and hail by an ‘admitted’ insurer within 12 months prior to application to TWIA, and is in essentially unchanged condition it is an insurable structure; no inspection is required.

-A residential structure insured by TWIA September 1, 2009 “may continue coverage” subject to inspection requirements for work done after September 1, 2009.

-TDI shall issue certificates of compliance for eligible structures.

-TDI shall charge reasonable inspection fees, and fees for providing information on required ‘standards’.

-No certificate may be issued if fees, or required documentation, have not been furnished within 6 months from a final TDI inspection; in such a case, a new request and new inspection, subject to new fees, may be made.

31 / 24 Compliance with building code standards set forth in the plan of operation [evidenced by TDI CERTIFICATE] is **MANDATORY** for any structure on which construction, alteration, remodeling, enlargement, and repair of or addition to, which **BEGAN after the effective date of this act** [on or about June 10, 2009].

-A permanent **15% surcharge** is assessed to every “noncompliant” [no certificate of compliance] residential structure, the eligibility of which is based on “...approval process regulations in effect on September 1, 2009”.

32 / 25 Changes affecting **Rates** include the following:

2210.351 (d) Subject to certain requirements, TWIA may “**file and use**” [without notice, hearing, public input, or commissioner approval] a rate that is not more than a **5%** increase;

2210.351 (c) the commissioner may approve or disapprove a TWIA rate filing, but may no longer ‘modify’. Within 30 days, the commissioner must notify TWIA how to achieve approval of any disapproved filing;

- **notice and hearing** before commissioner action on TWIA rate filings is **repealed**.

33 / 26 “**Annual**” rate filings include the following:

2210.352 (a-1) TWIA may “file and use” a rate that is not more than a 5% increase;

2210.352 (b) “Annual” rate filings may only be filed one time per year;

- for “Annual” filings, all interested persons shall have “a reasonable opportunity to: review..., obtain copies..., and submit **written comments** or information related to the filing.”

- notice, commissioner hearing, and informal procedure is repealed.

- the commissioner’s power to ‘modify’ a filing is repealed.

34 / 28 Amended Annual filings are changed similarly to Annual filings.

35 / 29 2210.354 is amended to support changes to the above rate amendments.

36 / 30 Rate development ‘criteria’ includes the following changes:

- “recognized catastrophe **models** may be considered.” has been added.

- TWIA may establish “**rating territories**”, and may vary rates within a county not more than 5% higher than 2009 rates; 6% higher than 2010 rates; 7% higher than 2011 rates; 8% higher than 2012 rates.

37 / 31 2210.361 is amended to repeal: a) commissioner ‘modification’; and b) informality of hearings regarding TWIA proposals to reduce coverage or increase deductibles.

38 / 31 Changes are made to qualify TWIA for federal “tax exempt” status. Uses of TWIA ‘gain from operations’, are authorized: ‘funding’ new subchapter B – 1, purchase of reinsurance, and payment into the Catastrophe Reserve Trust Fund [CRTF].

39 / 32 TWIA may pay into the CRTF, and/or purchase reinsurance in addition to or in concert with authorized securities, financial instruments, and assessments.

41 / 33 New “**Securities**” **Subchapter M** is added [2210.601 through 2210.620—11 pages]. Within substantial “boiler plate” provisions setting out the legal basis for issuing public securities, the following are included [.600 section #s are used]:

- .608 Allows securities proceeds to be used to pay: claims and operating expenses; to purchase reinsurance; securities costs and administrative expenses; to provide a reserve; and capitalized interest and principal.
- .612 Class 1 securities [see 2210.072] [up to \$1 Billion per year] shall be paid by TWIA from its premium and other revenue;
- .613 30% of Class 2 securities [relate to 2210.073] [up to \$1 Billion per year] shall be paid by non recoupable ‘participation share’ member assessments; and 70% shall be paid by surcharges on each insurer, TWIA, or FAIR Plan property and casualty policy in the Catastrophe Area, except federal Flood, Accident and Health, Medical Malpractice, and Worker’s Compensation.
- .6135 Class 3 securities [relate to 2210.074] [up to \$500 Million per year] shall be paid by member ‘participation share’ assessments, which are not recoupable by surcharges or tax credits. [2210.075 allows member insurers to provide reinsurance in lieu of payment of this assessment.]

41 / 43 New “**Legislative Oversight Board**” **Subchapter N** is added [2210.651 through 2210.654—2 pages] [.650 section #s are used]:

- .652 Composition of the board is 4 Senators, including Chair of the Business and Commerce Committee, appointed by the Lieutenant Governor, and 4 Representatives appointed by the Speaker of the House.
- The board shall receive information about, and may comment to the commissioner about rules proposed by TDI;
- Monitor TWIA rates, operation, availability of coverage;
- review legislation proposed by TDI or TWIA;
- request reports necessary to support these purposes.
- .654 By November 15 each even numbered year, the board shall report its activities to the governor, lieutenant governor, and speaker of the house.
- reporting an analysis of any problems identified, and
- recommending legislative action to address such problems, and “... to foster stability, availability, and competition within the windstorm insurance industry.”

44 / 44 Nine sections of the existing law are **repealed**, including 2210.356, the provision for **experience based rate** development.

45 / 45-46 Various **effective dates** are provided, including:

- this act is effective immediately [passed unanimously, by more than 2/3 vote].
- the existing board of directors terms expire and that board is abolished December 31, 2009; the new commissioner appointed board commences January 1, 2010; expiring directors are eligible for appointment to the new board.
- the new board shall propose changes to the plan of operation based on this new law not later than March 1, 2010.
- 2210.202 and .203, imposing requirements for 1 declination, and in force flood insurance in certain areas are effective immediately.
- 2210.251 Inspection requirements; is effective September 1, 2009.

**Coastal Windstorm Insurance Coalition [CWIC], See also [www.cwictx.org](http://www.cwictx.org)**  
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