

INSURANCE CODE

TITLE 10. PROPERTY AND CASUALTY INSURANCE

SUBTITLE G. POOLS, GROUPS, PLANS, AND SELF-INSURANCE

CHAPTER 2210. TEXAS WINDSTORM INSURANCE ASSOCIATION

SUBCHAPTER A. GENERAL PROVISIONS

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. The legislature finds that the provision of adequate windstorm and hail 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. The association is intended to serve as a residual insurer of last resort for windstorm and hail insurance in the seacoast territory. 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 to those who are unable to obtain that coverage in the private market.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 5, eff. June 19, 2009.

Sec. 2210.002. SHORT TITLE; SUNSET PROVISION. (a) This chapter may be cited as the Texas Windstorm Insurance Association Act.

(b) The association is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The association shall be reviewed during the period in which state agencies abolished in 2031 are reviewed. The

association shall pay the costs incurred by the Sunset Advisory Commission in performing the review of the association under this subsection. The Sunset Advisory Commission shall determine the costs of the review performed under this subsection, and the association shall pay the amount of those costs promptly on receipt of a statement from the Sunset Advisory Commission regarding those costs. This subsection expires September 1, 2031.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 6, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 1.04, eff. June 17, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 3, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1279 (H.B. 1675), Sec. 3.06, eff. June 14, 2013.

Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 1, eff. September 1, 2019.

Sec. 2210.0025. BIENNIAL REPORT TO LEGISLATURE. On or before December 31 of each even-numbered year, the board of directors shall submit to the commissioner, the appropriate committees of each house of the legislature, and the Sunset Advisory Commission a written report relating to the operations of the association during the preceding biennium. The report must include:

(1) any proposed changes in the laws relating to regulation of the association and a statement of the reasons for the changes; and

(2) any information regarding association operations or procedures that is requested by the department to be addressed in the report.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 7, eff. June 19, 2009.

Sec. 2210.003. GENERAL DEFINITIONS. In this chapter, unless the context clearly indicates otherwise:

(1) "Administrator" means an entity contractually retained to manage the association and administer the plan of operation under Section 2210.062.

(1-a) "Association" means the Texas Windstorm Insurance Association.

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

(3) "Catastrophe area" means a municipality, a part of a municipality, a county, or a part of a county designated by the commissioner under Section 2210.005.

(3-a) "Catastrophe reserve trust fund" means the trust fund established under Subchapter J.

(3-b) "Catastrophe year" means a calendar year in which an occurrence or a series of occurrences results in insured losses, regardless of when the insured losses are ultimately paid.

(4) "First tier coastal county" means:

- (A) Aransas County;
- (B) Brazoria County;
- (C) Calhoun County;
- (D) Cameron County;
- (E) Chambers County;
- (F) Galveston County;
- (G) Jefferson County;
- (H) Kenedy County;
- (I) Kleberg County;
- (J) Matagorda County;
- (K) Nueces County;
- (L) Refugio County;
- (M) San Patricio County; or
- (N) Willacy County.

(5) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1408, Sec. 44(1), eff. June 19, 2009.

(6) "Insurance" means Texas windstorm and hail insurance.

(7) "Net direct premium" means gross direct written

premium less return premium on each canceled contract, regardless of assumed or ceded reinsurance, that is written on property in this state, as defined by the board of directors.

(8) "New building code" means a building standard, specification, or guideline adopted by the commissioner after May 1, 1997, that must be satisfied before new residential construction qualifies for a certificate of compliance that constitutes evidence of insurability of the structure by the association.

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

(10) "Seacoast territory" means the territory of this state composed of the first tier coastal counties and the second tier coastal counties.

(11) "Second tier coastal county" means:

- (A) Bee County;
- (B) Brooks County;
- (C) Fort Bend County;
- (D) Goliad County;
- (E) Hardin County;
- (F) Harris County;
- (G) Hidalgo County;
- (H) Jackson County;
- (I) Jim Wells County;
- (J) Liberty County;
- (K) Live Oak County;
- (L) Orange County;
- (M) Victoria County; or
- (N) Wharton County.

(12) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1408, Sec. 44(1), eff. June 19, 2009.

(13) "Texas windstorm and hail insurance" means deductible insurance against:

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

(B) indirect losses resulting from the direct loss.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 8, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 44(1), eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 4, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 1, eff. September 1, 2015.

Sec. 2210.004. DEFINITION OF INSURABLE PROPERTY. (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, 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 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 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 of damage to a structure involves replacement of items covered in

the building specifications set forth in the plan of operation, 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.

(e) If repair to a structure, other than a roof repair that exceeds 100 square feet, is less than five percent of the total amount of property coverage on the structure, the repairs may be completed in a manner that returns the structure to the structure's condition immediately before the loss without affecting the eligibility of the structure to qualify as insurable property.

(f) This chapter does not preclude special rating of individual risks as may be provided in the plan of operation.

(g) For purposes of this chapter, 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 United States Army Corps of Engineers before June 11, 2003.

(h) For purposes of this chapter, 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.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.061(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.061(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 21, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 9, eff. June 19, 2009.

Sec. 2210.005. DESIGNATION AS CATASTROPHE AREA; REVOCATION OF DESIGNATION. (a) After at least 10 days' notice and a hearing, the commissioner may designate an area of the seacoast territory of this state as a catastrophe area if the commissioner determines, unless such a determination results in an adverse impact to the exposure of the association, that windstorm and hail insurance is not reasonably available to a substantial number of the owners of insurable property located in that territory because the territory is subject to unusually frequent and severe damage resulting from windstorms or hailstorms.

(b) The commissioner shall revoke a designation made under Subsection (a) if the commissioner determines, after at least 10 days' notice and a hearing, that the applicable insurance coverage is no longer reasonably unavailable to a substantial number of owners of insurable property within the designated territory.

(c) If the association determines that windstorm and hail insurance is no longer reasonably unavailable to a substantial number of owners of insurable property in a territory designated as a catastrophe area, the association may request in writing that the commissioner revoke the designation. After at least 10 days' notice and a hearing, but not later than the 30th day after the date of the hearing, the commissioner shall:

- (1) approve the request and revoke the designation; or
- (2) reject the request.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 10, eff. June 19, 2009.

Sec. 2210.006. APPLICABILITY OF CHAPTER TO CERTAIN INSURERS. (a) Except as provided by Subsection (b), this chapter applies to each insurer authorized to engage in the business of property insurance in this state, including a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange.

(b) This chapter does not apply to:

(1) a farm mutual insurance company operating under Chapter 911, unless the company is acting as a fronting insurer, as defined by Section 221.001(c);

(2) a nonaffiliated county mutual fire insurance company described by Section 912.310 that is writing exclusively industrial fire insurance policies as described by Section 912.310(a)(2); or

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

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.063(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.063(a), eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 1083 (H.B. 3496), Sec. 4, eff. September 1, 2017.

Sec. 2210.007. IMMUNITY FROM LIABILITY IN GENERAL. (a) This section applies to:

(1) the association and a director, agent, or association staff;

(2) the commissioner, the department, and department staff; and

(3) a participating insurer and the insurer's agents and staff.

(b) A person described by Subsection (a) is not liable, and a cause of action does not arise against the person, for:

(1) an inspection made under the plan of operation; or

(2) any statement made in good faith by the person:

(A) in a report or communication concerning risks submitted to the association; or

(B) at any administrative hearing conducted under this chapter in connection with the inspection or statement.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.008. DEPARTMENT ORDERS; GENERAL RULEMAKING AUTHORITY. (a) The commissioner may issue any orders that the commissioner considers necessary to implement this chapter.

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

(c) In rules adopted under this chapter, the commissioner shall define the meaning of "alter" and "alteration" for purposes of this chapter, specifically as used in Subchapters E and F.

(d) The association may propose a rule for adoption by the commissioner. Except as provided by this section, the association's proposal is governed by Subchapter B, Chapter 2001, Government Code. The association is an interested person under that subchapter for purposes of a proceeding initiated under this section.

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

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

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 11, eff. June 19, 2009.

Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 2, eff. September 1, 2019.

Sec. 2210.0081. CERTAIN ACTIONS BROUGHT AGAINST ASSOCIATION BY COMMISSIONER. In an action brought by the commissioner against the association under Chapter 441:

(1) the association's inability to satisfy obligations under Subchapter M related to the issuance of public securities under this chapter constitutes a condition that makes the association's continuation in business hazardous to the public or to the association's policyholders for the purposes of Section 441.052;

(2) the time for the association to comply with the requirements of supervision or for the conservator to complete the conservator's duties, as applicable, is limited to three years from the date the commissioner commences the action against the association; and

(3) unless the commissioner takes further action against the association under Chapter 441, as a condition of release from supervision, the association must demonstrate to the satisfaction of the commissioner that the association is able to satisfy obligations under Subchapter M related to the issuance of public securities under this chapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 5, eff. September 28, 2011.

Sec. 2210.009. LIST OF PRIVATE INSURERS; INCENTIVE PLAN.

(a) The department shall maintain a list of all insurers that engage in the business of property and casualty insurance in the

voluntary market in the seacoast territory.

(b) The department shall develop incentive programs in the manner described by Section 2210.053(b) to encourage authorized insurers to write insurance on a voluntary basis and to minimize the use of the association as a means to obtain insurance.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 12, eff. June 19, 2009.

Sec. 2210.010. CERTAIN CONDUCT IN DISPUTE RESOLUTION PROHIBITED. (a) For purposes of this section, "presiding officer" includes a judge, mediator, arbitrator, appraiser, or panel member.

(b) If a person insured under this chapter is assigned to act as presiding officer to preside over or resolve a dispute involving the association and another person insured under this chapter, the presiding officer shall, not later than the seventh day after the date of assignment, give written notice to the association and to each other party to the dispute, or the association's or other party's attorney, that the presiding officer is insured under this chapter.

(c) In a proceeding with respect to which the commissioner has authority to designate the presiding officer, the association or other party that receives notice under Subsection (b) may file with the commissioner a written objection to the assignment of the presiding officer to the dispute. The written objection must contain the factual basis on which the association or other party objects to the assignment.

(d) The commissioner shall assign a different presiding officer to the dispute if, after reviewing the objection filed under Subsection (c), the commissioner determines that the presiding officer originally assigned to the dispute has a direct financial or personal interest in the outcome of the dispute.

(e) The association or another party must file an objection under Subsection (c) not later than the earlier of:

(1) the seventh day after the date the association or other party receives actual notice that the presiding officer is insured under this chapter; or

(2) the seventh day before the date of the first

proceeding concerning the dispute.

(f) The commissioner may, on a showing of good cause, extend the deadline to file an objection under Subsection (e).

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 5, eff. September 28, 2011.

Sec. 2210.012. STANDARDS OF CONDUCT: BOARD OF DIRECTORS AND EMPLOYEES; REPORT OF CERTAIN FRAUDULENT CONDUCT. (a) A member of the board of directors or an employee of the association may not:

(1) accept or solicit any gift, favor, or service that might reasonably tend to influence the member or employee in the discharge of duties related to the operation or business of the association or that the member or employee knows or should know is being offered with the intent to influence the member's or employee's conduct related to the operation or business of the association;

(2) accept other employment or engage in a business or professional activity that the member or employee might reasonably expect would require or induce the member or employee to disclose confidential information acquired by reason of the member's or employee's position with the association;

(3) accept other employment or compensation that could reasonably be expected to impair the member's or employee's independence of judgment in the performance of the member's or employee's duties related to the operation or business of the association;

(4) make personal investments that could reasonably be expected to create a substantial conflict between the member's or employee's private interest and the interest of the association; or

(5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the member's or employee's powers related to the operation or business of the association or having performed, in favor of another, the member's or employee's duties related to the operation or business of the association.

(b) An association employee who violates Subsection (a) or a code of conduct established under Section 2210.107(a)(4) is subject

to an employment-related sanction, including termination of the employee's employment with the association.

(c) A member of the board of directors or an association employee who violates Subsection (a) is subject to any applicable civil or criminal penalty if the violation also constitutes a violation of another statute or rule.

(d) A board member or employee of the association who reasonably suspects that a fraudulent insurance act has been or is about to be committed by any board member or employee of the association shall, not later than the 30th day after discovering the conduct, report the conduct and identity of the person engaging in the conduct to the department and may report the conduct and the identity of the person engaging in the conduct to another authorized governmental agency. The department shall forward a report received under this subsection to the authorized governmental agency in accordance with Chapter 701.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 5, eff. September 28, 2011.

Sec. 2210.013. CERTAIN EMPLOYMENT AND CONTRACTS PROHIBITED. A member of the board of directors or an employee of the association may not appoint or employ, or contract with, the following individuals for the provision of goods or services in connection with the operation or business of the association, if the individual to be appointed or employed, or with whom a contract is to be entered into, is to be directly or indirectly compensated from funds of the association:

(1) an individual related to the member or employee within a degree of relationship described by Section 573.002, Government Code; or

(2) an individual related to any member of the board of directors or employee of the association within a degree of relationship described by Section 573.002, Government Code.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 5, eff. September 28, 2011.

Sec. 2210.014. APPLICABILITY OF CERTAIN OTHER LAW. (a) A

person may not bring a private action against the association, including a claim against an agent or representative of the association, under Chapter 541 or 542. Notwithstanding any other provision of this code or this chapter, a class action under Subchapter F, Chapter 541, or under Rule 42, Texas Rules of Civil Procedure, may only be brought against the association by the attorney general at the request of the department.

(b) Chapter 542 does not apply to the association or to an agent or representative of the association.

(c) An administrator contracted under Section 2210.062, if applicable, is an agent of the association for purposes of managing the association and administering the plan of operation under this chapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 5, eff. September 28, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 2, eff. September 1, 2015.

Sec. 2210.015. STUDY OF MARKET INCENTIVES; BIENNIAL REPORTING. (a) Each biennium, the department shall conduct a study of market incentives to promote participation in the voluntary windstorm and hail insurance market in the seacoast territory of this state. The study must address as possible incentives the mandatory or voluntary issuance of windstorm and hail insurance in conjunction with the issuance of a homeowners policy in the seacoast territory.

(b) The department shall include the results of the study conducted under this section in the report submitted under Section 32.022.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 3, eff. September 1, 2015.

SUBCHAPTER B. ADMINISTRATION OF ASSOCIATION

Sec. 2210.051. COMPOSITION OF ASSOCIATION; REQUIRED MEMBERSHIP. (a) The association is composed of all property

insurers authorized to engage in the business of property insurance in this state, other than insurers prevented by law from writing on a statewide basis coverages available through the association.

(b) As a condition of the insurer's authority to engage in the business of insurance in this state, each insurer subject to Subsection (a) must be a member of the association and must remain a member for the duration of the association's existence. An insurer that ceases to be a member of the association remains liable on insurance contracts entered into during the insurer's membership in the association to the same extent and effect as if the insurer's membership in the association had not been terminated.

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

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.052. MEMBER PARTICIPATION IN ASSOCIATION. (a) Each member of the association shall participate in insured losses and operating expenses of the association, in excess of premium and other revenue of the association, in the proportion that the net direct premiums of that member during the preceding calendar year bears to the aggregate net direct premiums by all members of the association, as determined using the information provided under Subsection (b).

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

(c) Each member's participation in the association shall be

determined annually in the manner provided by the plan of 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.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. [4409](#)), Sec. 13, eff. June 19, 2009.

Sec. 2210.053. OPERATION OF ASSOCIATION. (a) In accordance with this chapter and the plan of operation, and with respect to insurance on insurable property, the association, on behalf of the association's members, may:

- (1) cause issuance of insurance policies to applicants for insurance coverage;
- (2) assume reinsurance from the members;
- (3) cede reinsurance to the members; and

(4) purchase reinsurance on behalf of the members.

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

(c) The association may not be considered a debtor authorized to file a petition or seek relief in bankruptcy under Title 11, United States Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 6, eff. September 28, 2011.

Sec. 2210.054. 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.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 7, eff. September 28, 2011.

Sec. 2210.055. LEGAL COUNSEL. (a) The association shall establish a plan in the plan of operation under which the association's legal representation before the department and the legislature is without conflict of interest or the appearance of a

conflict of interest as defined by the Texas Disciplinary Rules of Professional Conduct.

(b) The association shall adopt separate and distinct procedures for legal counsel in disputes involving policyholder claims against the association.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.056. USE OF ASSOCIATION ASSETS. (a) The association's net earnings may not inure, in whole or in part, to the benefit of a private shareholder or individual.

(b) The association's assets may not be used for or diverted to any purpose other than to:

(1) satisfy, in whole or in part, the liability of the association on claims made on policies written by the association;

(2) make investments authorized under applicable law;

(3) pay reasonable and necessary administrative expenses incurred in connection with the operation of the association and the processing of claims against the association;

(4) satisfy, in whole or in part, the obligations of the association incurred in connection with Subchapters B-1, J, and M, including reinsurance, public securities, and financial instruments; or

(5) make remittance under the laws of this state to be used by this state to:

(A) pay claims made on policies written by the association;

(B) purchase reinsurance covering losses under those policies; or

(C) prepare for or mitigate the effects of catastrophic natural events.

(c) 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.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 14, eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 8, eff. September 28, 2011.

Sec. 2210.057. 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.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.058. 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.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 9, eff. September 28, 2011.

Sec. 2210.059. CLAIMS PRACTICES AUDIT. (a) The commissioner, in the manner and at the time the commissioner determines to be necessary, shall conduct a random audit of claim files concerning claims the bases of which are damage to insured property caused by a particular storm to:

(1) determine whether the association is adequately and properly documenting claims decisions in each claim file; and

(2) ensure that each claim is being handled appropriately, including being handled in accordance with the terms of the policy under which the claim is filed.

(b) The department shall conduct an audit required under

this section as soon as possible to ensure the quality of the process with which the association is handling claims described by Subsection (a).

(c) If, following an audit conducted under this section, the commissioner determines that the association is not adequately and properly documenting claims decisions or that claims described by Subsection (a) are not otherwise being handled appropriately, the commissioner shall:

(1) notify the board of directors of that determination; and

(2) identify the manner in which the association should correct any deficiencies identified by the commissioner and issue an order to that effect.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 9, eff. September 28, 2011.

Sec. 2210.060. INDEMNIFICATION BY ASSOCIATION. (a) Except as provided by Subsection (b), the association shall indemnify each director, officer, and employee of the association and each member of the association against all costs and expenses actually and necessarily incurred by the person or entity in connection with the defense of an action or proceeding in which the person or entity is made a party because of the person's status as a director, officer, or employee of the association or the member's status as a member of the association.

(b) Subsection (a) does not apply to a matter in which the person or entity is determined in the action or proceeding to be liable because of misconduct in the performance of duties as a director, officer, or employee of the association or a member of the association.

(c) Subsection (a) does not authorize the association to indemnify a member of the association for participating in the assessments made by the association in the manner provided by this chapter.

(d) Indemnification under this section is not exclusive of other rights to which the member or officer may be entitled as a matter of law.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 15, eff. June 19, 2009.

Sec. 2210.061. CONTRACTORS AND MANAGERIAL EMPLOYEES: COMPENSATION AND BONUSES. The association shall post on the association's Internet website any compensation, monetary or otherwise, and any bonus that, when aggregated, exceed \$100,000 in a calendar year and that are paid or given by the association to:

(1) a vendor or independent contractor with whom the association has a contract; or

(2) an association employee.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 9, eff. September 28, 2011.

Sec. 2210.062. ADMINISTRATION BY CONTRACTED ADMINISTRATOR AUTHORIZED. (a) Notwithstanding any other law, if determined by the commissioner to be in the best interest of the policyholders and the public, the commissioner may contract with an administrator to manage the association and administer the plan of operation.

(b) The commissioner shall adopt rules as necessary to implement this section if the commissioner determines management of the association and administration of the plan of operation by an administrator is in the best interest of the policyholders and the public.

(c) The administrator must hold either a managing general agent license issued under Chapter 4053 or a third-party administrator certificate of authority issued under Chapter 4151.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 4, eff. September 1, 2015.

SUBCHAPTER B-1. PAYMENT OF LOSSES

Sec. 2210.071. PAYMENT OF EXCESS LOSSES. (a) If, in a catastrophe 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 and operating expenses shall be paid as provided by this subchapter.

(b) The association may not pay insured losses and operating expenses resulting from an occurrence or series of occurrences in a catastrophe year with premium and other revenue earned in a subsequent year.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 16, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 10, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 5, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 790 (H.B. 1900), Sec. 1, eff. June 10, 2019.

Sec. 2210.0715. PAYMENT FROM RESERVES AND TRUST FUND.

(a) The association shall pay losses resulting from an occurrence or series of occurrences in a catastrophe year in excess of premium and other revenue of the association for that catastrophe year from reserves of the association available before or accrued during that catastrophe year and amounts in the catastrophe reserve trust fund available before or accrued during that catastrophe year.

(b) Proceeds of public securities issued or assessments made before or as a result of any occurrence or series of occurrences in a catastrophe year that results in insured losses may not be included in reserves available for a subsequent catastrophe year for purposes of this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 5, eff. September 1, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 790 (H.B. 1900), Sec. 2, eff. June 10, 2019.

Sec. 2210.072. PAYMENT FROM CLASS 1 PUBLIC SECURITIES;

FINANCIAL INSTRUMENTS. (a) Losses not paid under Section 2210.0715 shall be paid as provided by this section from the proceeds from Class 1 public securities issued in accordance with Subchapter M before, on, or after the date of any occurrence or series of occurrences that results in insured losses. Public securities described by this section must be paid within a period not to exceed 14 years, and may be paid sooner if the board of directors elects to do so and the commissioner approves.

(b) Public securities described by Subsection (a) that are issued before an occurrence or series of occurrences that results in incurred losses:

(1) may be issued on the request of the board of directors with the approval of the commissioner; and

(2) may not, in the aggregate, exceed \$500 million at any one time, regardless of the calendar year or years in which the outstanding public securities were issued.

(b-1) Public securities described by Subsection (a):

(1) shall be issued as necessary in a principal amount not to exceed \$500 million per catastrophe year, in the aggregate, for securities issued during that catastrophe year before the occurrence or series of occurrences that results in incurred losses in that year and securities issued on or after the date of that occurrence or series of occurrences, and regardless of whether for a single occurrence or a series of occurrences; and

(2) subject to the maximum described by Subdivision (1), may be issued, in one or more issuances or tranches, during the calendar year in which the occurrence or series of occurrences occurs or, if the public securities cannot reasonably be issued in that year, during the following calendar year.

(c) If public securities are issued as described by this section, the public securities shall be repaid in the manner prescribed by Subchapter M.

(d) The association may borrow from, or enter into other financing arrangements with, any market source, under which the market source makes interest-bearing loans or other financial instruments to the association to enable the association to pay losses under this section or to obtain public securities under this

section. For purposes of this subsection, financial instruments includes commercial paper.

(e) The proceeds of any outstanding public securities described by Subsection (a) that are issued before an occurrence or series of occurrences, together with the proceeds of any outstanding Class 1 public securities issued on or before June 1, 2015, shall be depleted before the proceeds of any securities issued after an occurrence or series of occurrences may be used. This subsection does not prohibit the association from issuing securities after an occurrence or series of occurrences before the proceeds of outstanding public securities issued during a previous catastrophe year have been depleted.

(f) If, under Subsection (e), the proceeds of any outstanding public securities issued during a previous catastrophe year, together with the proceeds of any outstanding Class 1 public securities issued on or before June 1, 2015, must be depleted, those proceeds shall count against the limit on public securities described by this section in the catastrophe year in which the proceeds must be depleted.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 16, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 11, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 6, eff. September 1, 2015.

Sec. 2210.0725. PAYMENT FROM CLASS 1 ASSESSMENTS.

(a) Losses in a catastrophe year not paid under Sections 2210.0715 and 2210.072 shall be paid as provided by this section from Class 1 member assessments not to exceed \$500 million for that catastrophe year.

(b) The association, with the approval of the commissioner, shall notify each member of the amount of the member's assessment under this section. The proportion of the losses allocable to each insurer under this section shall be determined in the manner used to determine each insurer's participation in the association for the

year under Section [2210.052](#).

(c) A member of the association may not recoup an assessment paid under this section through a premium surcharge or tax credit. Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. [900](#)), Sec. 7, eff. September 1, 2015.

Sec. 2210.073. PAYMENT FROM CLASS 2 PUBLIC SECURITIES.

(a) Losses not paid under Sections [2210.0715](#), [2210.072](#), and [2210.0725](#) shall be paid as provided by this section from the proceeds from Class 2 public securities authorized to be issued in accordance with Subchapter M on or after the date of any occurrence or series of occurrences that results in insured losses. Public securities issued under this section must be paid within a period not to exceed 10 years and may be paid sooner if the board of directors elects to do so and the commissioner approves.

(b) Public securities described by Subsection (a):

(1) shall be issued as necessary in a principal amount not to exceed \$250 million per catastrophe year, in the aggregate, whether for a single occurrence or a series of occurrences; and

(2) subject to the maximum described by Subdivision (1), may be issued, in one or more issuances or tranches, during the calendar year in which the occurrence or series of occurrences occurs or, if the public securities cannot reasonably be issued in that year, during the following calendar year.

(c) If the losses are paid with public securities described by this section, the public securities shall be paid in the manner prescribed by Subchapter M.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. [4409](#)), Sec. 16, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. [3](#)), Sec. 12, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. [900](#)), Sec. 8, eff. September 1, 2015.

Sec. 2210.074. PAYMENT THROUGH CLASS 2 ASSESSMENTS.

(a) Losses in a catastrophe year not paid under Sections

2210.0715, 2210.072, 2210.0725, and 2210.073 shall be paid as provided by this section from Class 2 member assessments not to exceed \$250 million for that catastrophe year.

(b) The association, with the approval of the commissioner, shall notify each member of the amount of the member's assessment under this section. The proportion of the losses allocable to each insurer under this section shall be determined in the manner used to determine each insurer's participation in the association for the year under Section 2210.052.

(c) A member of the association may not recoup an assessment paid under this section through a premium surcharge or tax credit. Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 16, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 13, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 9, eff. September 1, 2015.

Sec. 2210.0741. PAYMENT THROUGH CLASS 3 PUBLIC SECURITIES.

(a) Losses not paid under Sections 2210.0715, 2210.072, 2210.0725, 2210.073, and 2210.074 shall be paid as provided by this section from the proceeds from Class 3 public securities authorized to be issued in accordance with Subchapter M on or after the date of any occurrence or series of occurrences that results in insured losses. Public securities issued under this section must be paid within a period not to exceed 10 years, and may be paid sooner if the board of directors elects to do so and the commissioner approves.

(b) Public securities described by Subsection (a):

(1) shall be issued as necessary in a principal amount not to exceed \$250 million per catastrophe year, in the aggregate, whether for a single occurrence or a series of occurrences; and

(2) subject to the maximum described by Subdivision (1), may be issued, in one or more issuances or tranches, during the calendar year in which the occurrence or series of occurrences occurs or, if the public securities cannot reasonably be issued in that year, during the following calendar year.

(c) If the losses are paid with public securities described by this section, the public securities shall be paid in the manner prescribed by Subchapter M.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 10, eff. September 1, 2015.

Sec. 2210.0742. PAYMENT FROM CLASS 3 ASSESSMENTS.

(a) Losses in a catastrophe year not paid under Sections 2210.0715, 2210.072, 2210.0725, 2210.073, 2210.074, and 2210.0741 shall be paid as provided by this section from Class 3 member assessments not to exceed \$250 million for that catastrophe year.

(b) The association, with the approval of the commissioner, shall notify each member of the amount of the member's assessment under this section. The proportion of the losses allocable to each insurer under this section shall be determined in the manner used to determine each insurer's participation in the association for the year under Section 2210.052.

(c) A member of the association may not recoup an assessment paid under this section through a premium surcharge or tax credit.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 10, eff. September 1, 2015.

Sec. 2210.075. REINSURANCE. (a) Before any occurrence or series of occurrences, an insurer may elect to purchase reinsurance to cover an assessment for which the insurer would otherwise be liable under this subchapter.

(b) An insurer must notify the board of directors, in the manner prescribed by the association whether the insurer will be purchasing reinsurance. If the insurer does not elect to purchase reinsurance under this section, the insurer remains liable for any assessment imposed under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 16, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 14, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 11, eff.

September 1, 2015.

SUBCHAPTER C. ASSOCIATION BOARD OF DIRECTORS; GENERAL
POWERS AND DUTIES OF BOARD OF DIRECTORS

Sec. 2210.101. ACCOUNTABLE TO COMMISSIONER. The board of directors is responsible and accountable to the commissioner. Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.102. COMPOSITION. (a) The board of directors is composed of nine members appointed by the commissioner in accordance with this section.

(b) Three members must be representatives of the insurance industry who actively write and renew windstorm and hail insurance in the first tier coastal counties.

(c) Three members must, as of the date of the appointment, reside in the first tier coastal counties. Each of the following regions must be represented by a member residing in the region and appointed under this subsection:

(1) the region consisting of Cameron, Kenedy, Kleberg, and Willacy Counties;

(2) the region consisting of Aransas, Calhoun, Nueces, Refugio, and San Patricio Counties; and

(3) the region consisting of Brazoria, Chambers, Galveston, Jefferson, and Matagorda Counties and any part of Harris County designated as a catastrophe area under Section 2210.005.

(c-1) One of the members appointed under Subsection (c) must be a property and casualty agent who is licensed under this code and is not a captive agent.

(d) Three members must reside in an area of this state that is located more than 100 miles from the Texas coastline.

(e) All members must have demonstrated experience in insurance, general business, or actuarial principles and the member's area of expertise, if any, sufficient to make the success of the association probable.

(f) Insurers who are members of the association shall

nominate, from among those members, persons to fill any vacancy in the three board of director seats reserved for representatives of the insurance industry. The board of directors shall solicit nominations from the members and submit the nominations to the commissioner. The nominee slate submitted to the commissioner under this subsection must include at least three more names than the number of vacancies. The commissioner may appoint replacement insurance industry representatives from the nominee slate.

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

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

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

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

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

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization:

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

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

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

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

(A) insurance claim payments; or

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

(h) Repealed by Acts 2015, 84th Leg., R.S., Ch. 615 , Sec.

31(1), eff. September 1, 2015.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.14, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 18, eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 15, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 12, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 31(1), eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 3, eff. September 1, 2019.

Sec. 2210.103. TERMS. (a) Members of the board of directors serve three-year staggered terms, with the terms of three members expiring on the third Tuesday of March of each year.

(b) A person may serve on the board of directors for not more than three consecutive full terms, not to exceed nine years.

(c) A member of the board of directors may be removed by the commissioner with cause stated in writing and posted on the association's website. The commissioner shall appoint a replacement in accordance with Section 2210.102 for a member who leaves or is removed from the board of directors.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 19, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 13, eff. September 1, 2015.

Sec. 2210.1031. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board of directors may

not vote, deliberate, or be counted as a member in attendance at a meeting of the board of directors until the person completes a training program that complies with this section.

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

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

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

(3) the scope of and limitations on the rulemaking authority of the board of directors;

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

(5) the requirements of:

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

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

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

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

Added by Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. [615](#)), Sec. 4, eff. September 1, 2019.

Sec. 2210.104. OFFICERS. The board of directors shall elect from the board's membership an executive committee consisting of a presiding officer, assistant presiding officer, and secretary-treasurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 20, eff. June 19, 2009.

Sec. 2210.105. MEETINGS. (a) Except for an emergency meeting, the association shall:

(1) notify the department not later than the 11th day before the date of a meeting of the board of directors or of the members of the association; and

(2) not later than the seventh day before the date of a meeting of the board of directors, post notice of the meeting on the association's Internet website and the department's Internet website.

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

(b-1) The commissioner or the commissioner's designated representative may attend a meeting of the board of directors or the members of the association, including a closed meeting authorized by Subchapter D, Chapter 551, Government Code, except for those portions of a closed meeting that involve the rendition of legal advice to the board concerning a regulatory matter or that would constitute an ex parte communication with the commissioner.

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

(d) Except for an emergency meeting, a meeting of the board of directors shall be held at a location as determined by the board of directors.

(e) The association shall:

(1) broadcast live on the association's Internet website all meetings of the board of directors, other than closed meetings; and

(2) maintain on the association's Internet website an archive of meetings of the board of directors.

(f) A recording of a meeting must be maintained in the archive required under Subsection (e) through and including the

second anniversary of the meeting.

(g) The presence of the commissioner or the commissioner's designated representative at a closed meeting does not waive or impair any privilege, including attorney-client privilege, that exists in statute or at common law.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 21, eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 16, eff. September 28, 2011.

Sec. 2210.1051. MEETINGS OF BOARD OF DIRECTORS. (a) Notwithstanding Chapter 551, Government Code, or any other law, members of the board of directors may meet by telephone conference call, videoconference, or other similar telecommunication method. The board may use telephone conference call, videoconference, or other similar telecommunication method for purposes of establishing a quorum or voting or for any other meeting purpose in accordance with this subsection and Subsection (b). This subsection applies without regard to the subject matter discussed or considered by the members of the board at the meeting.

(b) A meeting held by telephone conference call, videoconference, or other similar telecommunication method:

(1) is subject to the notice requirements applicable to other meetings of the board of directors;

(2) may not be held unless notice of the meeting specifies the location of the meeting and a recording of the meeting is posted on the association's website;

(3) must be audible to the public at the location specified in the notice under Subdivision (2); and

(4) must provide two-way audio communication between all members of the board attending the meeting during the entire meeting, and if the two-way audio communication link with members attending the meeting is disrupted so that a quorum of the board is no longer participating in the meeting, the meeting may not

continue until the two-way audio communication link is reestablished.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 22, eff. June 19, 2009.

Sec. 2210.1052. EMERGENCY MEETING. If the ultimate loss estimate for an occurrence or series of occurrences made by the chief financial officer or chief actuary of the association indicates member insurers may be subject to an assessment under Subchapter B-1, the board of directors shall call an emergency meeting to notify the member insurers about the assessment.

Added by Acts 2019, 86th Leg., R.S., Ch. 790 (H.B. 1900), Sec. 3, eff. June 10, 2019.

Sec. 2210.106. IMMUNITY OF DIRECTOR OR OFFICER FROM LIABILITY. (a) A director or officer of the association is not individually liable for an act or failure to act in the performance of official duties in connection with the association.

(b) Subsection (a) does not apply to:

(1) an act or failure to act of the association or an employee of the association;

(2) an act or omission involving a motor vehicle; or

(3) an act or failure to act that constitutes bad faith, intentional misconduct, or gross negligence.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.107. PRIMARY BOARD OBJECTIVES; REPORT. (a) The primary objectives of the board of directors are to ensure that the board and the association:

(1) operate in accordance with this chapter, the plan of operation, and commissioner rules;

(2) comply with sound insurance principles;

(3) meet all standards imposed under this chapter;

(4) establish a code of conduct and performance standards for association employees and persons with which the association contracts; and

(5) establish, and adhere to terms of, an annual evaluation of association management necessary to achieve the statutory purpose, board objectives, and any performance or enterprise risk management objectives established by the board.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 17, eff. September 1, 2019.

(c) Not later than June 1 of each year, the association shall submit to the commissioner, the legislative oversight board established under Subchapter N, the governor, the lieutenant governor, and the speaker of the house of representatives a report evaluating the extent to which the board met the objectives described by Subsection (a) in the 12-month period immediately preceding the date of the report.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 23, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 17, eff. September 28, 2011.

Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 17, eff. September 1, 2019.

Sec. 2210.108. OPEN MEETINGS AND OPEN RECORDS. (a) Except as specifically provided by this chapter or another law, the association is subject to Chapters 551 and 552, Government Code.

(b) A settlement agreement to which the association is a party:

(1) is public information and is not exempted from required disclosure under Chapter 552, Government Code; and

(2) if applicable, must contain the name of any attorney or adjuster representing a claimant or the association in connection with the claim that is the basis of the settlement.

(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.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 18, eff. September 28, 2011.

Sec. 2210.109. DISCLOSURE OF CONFLICTS. (a) A member of the board of directors, or a member of a subcommittee of the board of directors that relates to underwriting and actuarial matters, shall disclose any potential conflict of interest of the member known by the member with respect to a matter for discussion or vote by the board or subcommittee, as applicable, before the discussion or vote. A potential conflict of interest is an interest that may reasonably be expected to diminish the member's independent judgment with respect to the matter for discussion or vote. Potential conflicts of interest required to be disclosed under this section include:

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

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

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

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

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

Added by Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 5, eff. September 1, 2019.

SUBCHAPTER D. PLAN OF OPERATION

Sec. 2210.151. 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 Texas windstorm and hail insurance in a catastrophe area.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 24, eff. June 19, 2009.

Sec. 2210.152. 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:

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

(B) underwriting standards;

(C) procedures for accepting and ceding reinsurance;

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

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

(F) time limits and procedures for processing 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 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; and

(H) 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.

(c) The plan of operation shall require the association to use the claim settlement guidelines published by the commissioner

under Section 2210.578(f) in evaluating the extent to which a loss to insured property is incurred as a result of wind, waves, tidal surges, or rising waters not caused by waves or surges.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 25, eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 19, eff. September 28, 2011.

Acts 2017, 85th Leg., R.S., Ch. 878 (H.B. 3018), Sec. 1, eff. January 1, 2018.

Sec. 2210.153. 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.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER E. INSURANCE COVERAGE

Sec. 2210.201. 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.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff.

April 1, 2007.

Sec. 2210.202. APPLICATION FOR COVERAGE; DECLINATION REQUIREMENT. (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. 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 and the inability to obtain substantially equivalent insurance coverage for the perils of windstorm and hail. Notwithstanding Section [2210.203\(c\)](#), evidence of one declination every three calendar years is required before renewal of an association policy.

(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. An application for initial coverage must contain:

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

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

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. [1263](#)), Sec. 2.15,

eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 26, eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 20, eff. September 28, 2011.

Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 6, eff. September 1, 2019.

Sec. 2210.203. ISSUANCE OF COVERAGE; TERM; RENEWAL.

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

(a-1) This subsection applies only to a structure constructed, altered, remodeled, or enlarged on or after September 1, 2009, and only for insurable property located in areas designated by the commissioner. Notwithstanding Subsection (a), if all or any part of the property to which this subsection applies 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 an insurance policy for initial or renewal coverage unless evidence that the property is covered by a flood insurance policy is submitted to the association. An agent offering or selling a Texas windstorm and hail insurance policy in any area designated by the commissioner under this subsection shall offer flood insurance coverage to the prospective insured, if that coverage is available.

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

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

(c-1) With the advice of the association, the commissioner shall adopt rules establishing a grace period of not more than 10 days after the due date for the receipt of payment of premium for

the renewal of a policy.

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

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 27, eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 21, eff. September 28, 2011.

Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 7, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 353 (H.B. 2920), Sec. 1, eff. September 1, 2021.

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

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

(1) provide for the association to verify:

(A) the declination required by Section 2210.202;

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

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

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

Added by Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 8, eff. September 1, 2019.

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

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

Added by Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 8, eff. September 1, 2019.

Sec. 2210.204. CANCELLATION OF CERTAIN COVERAGE. (a) Subsections (b) and (c) apply if:

(1) an agent or another person, firm, or corporation finances the payment of all or a portion of the premium for insurance coverage;

(2) there is an outstanding balance for the financing of the premium; and

(3) that balance, or an installment of that balance, is not paid before the expiration of the 10th day after the due date.

(b) The agent or other person, firm, or corporation to whom the balance described by Subsection (a) is due may request cancellation of the insurance coverage by:

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

(2) requesting the association to cancel the insurance coverage by a notice mailed to the insured and to any others shown in the policy as having an insurable interest in the property.

(c) On completion of cancellation under Subsection (b), the association shall refund the unearned premium, less any minimum

retained premium set forth in the plan of operation, to the person, firm, or corporation to whom the unpaid balance is due.

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

(e) For cancellation of insurance coverage under this section, the minimum retained premium in the plan of operation must be for a period of not less than 90 days, except for events specified in the plan of operation that reflect a significant change in the exposure or the policyholder concerning the insured property, including:

- (1) the purchase of similar coverage in the voluntary market;
- (2) sale of the property to an unrelated party;
- (3) death of the policyholder; or
- (4) total loss of the property.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. [1263](#)), Sec. 2.16, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. [4409](#)), Sec. 28, eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. [3](#)), Sec. 22, eff. September 28, 2011.

Sec. 2210.2041. NONREFUNDABLE SURCHARGE. A nonrefundable surcharge established under this chapter is not refundable under this code for any reason or purpose.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. [4409](#)), Sec. 29, eff. June 19, 2009.

Sec. 2210.205. REQUIRED POLICY PROVISIONS: DEADLINE FOR FILING CLAIM; NOTICE CONCERNING RESOLUTION OF CERTAIN DISPUTES.

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

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

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

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

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

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

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

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

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

(b) The commissioner, on a showing of good cause by a person insured under this chapter, may extend the one-year period described by Subsection (a)(1) for a period not to exceed 180 days. Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 23, eff. September 28, 2011.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 9, eff. September 1, 2019.

Sec. 2210.207. WINDSTORM AND HAIL INSURANCE: REPLACEMENT COST COVERAGE. (a) In this section, "roof covering" means:

(1) the roofing material exposed to the weather;

(2) the underlayments applied for moisture protection; and

(3) all flashings required in the replacement of a roof covering.

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

(c) If, on the effective date of an association policy, the total amount of insurance applicable to a dwelling is equal to 80 percent or more of the full replacement cost of the dwelling or equal to the maximum amount of insurance otherwise available through the association, coverage applicable to the dwelling under the policy is extended to include the full cost of repair or replacement, without a deduction for depreciation.

(d) If, on the effective date of an association policy, the total amount of insurance applicable to a dwelling is equal to less than 80 percent of the full replacement cost of the dwelling and less than the maximum amount of insurance available through the association, liability for loss under the policy may not exceed the replacement cost of the part of the dwelling that is damaged or destroyed, less depreciation.

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

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

(2) establish:

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

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

(C) the disclosure that must be provided to the policyholder, prominently displayed on the face of the windstorm and hail insurance policy.

(f) Notwithstanding Chapter 40, a hearing under Subsection

(e) shall be held before the commissioner or the commissioner's designee.

(g) The commissioner may adopt rules as necessary to implement this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 10, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 790 (H.B. 1900), Sec. 4, eff. June 10, 2019.

Sec. 2210.208. WINDSTORM AND HAIL INSURANCE: COVERAGE FOR CERTAIN INDIRECT LOSSES. (a) Except as provided by Subsections (e) and (f), a windstorm and hail insurance policy issued by the association for a dwelling, as that term is defined by the department or a successor to the department, must include coverage for:

(1) wind-driven rain damage, regardless of whether an opening is made by the wind;

(2) loss of use; and

(3) consequential losses.

(b) A windstorm and hail insurance policy issued by the association for tenant contents of a dwelling or other residential building must include coverage for loss of use and consequential losses.

(c) The coverage required under Subsection (a) or (b) must be made:

(1) according to forms approved by the commissioner; and

(2) for a premium paid by the insured based on rates established by commissioner rule.

(d) The association shall provide coverage under this section as directed by commissioner rule.

(e) The association is not required to offer coverage for indirect losses as provided by Subsection (a) or (b) unless that coverage was excluded from a companion policy in the voluntary

market.

(f) The association is not required to provide coverage for:

(1) loss of use, if the loss is loss of rent or loss of rental value; or

(2) additional living expenses, if the insured property is a secondary or a nonprimary residence.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.209. WINDSTORM AND HAIL INSURANCE: COVERAGE FOR CERTAIN PROPERTY LOCATED OVER WATER. (a) A windstorm and hail insurance policy issued by the association may include coverage for:

(1) a building or other structure located in the seacoast territory that is built wholly or partially over water; and

(2) the corporeal movable property contained in a building or structure described by Subdivision (1).

(b) The association may impose appropriate limits of coverage and deductibles for coverage described by Subsection (a).

(c) The board of directors of the association shall submit any proposed changes to the plan of operation necessary to implement Subsections (a) and (b) to the commissioner in the manner provided by Section 2210.153.

(d) The commissioner shall adopt rules as necessary to implement this section, including any rules necessary to implement changes in the plan of operation proposed under Subsection (c).

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.062(a), eff. September 1, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.062(a), eff. September 1, 2007.

Sec. 2210.210. COVERAGE OF CERTAIN STRUCTURES PROHIBITED. The association may not issue coverage for a wind turbine regardless of whether the turbine could otherwise be considered insurable property under this chapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 23,

eff. September 28, 2011.

SUBCHAPTER F. PROPERTY INSPECTIONS FOR WINDSTORM AND HAIL
INSURANCE

Sec. 2210.251. PLAN OF OPERATION COMPLIANCE REQUIREMENTS.

(a) Except as provided by this section, to be considered insurable property eligible for windstorm and hail insurance coverage from the association, a structure that is constructed, altered, remodeled, enlarged, or repaired or to which additions are made on or after January 1, 1988, must comply with the plan of operation.

(b) After January 1, 2004, for geographic areas specified by the commissioner, the commissioner by rule shall adopt the 2003 International Residential Code for one- and two-family dwellings published by the International Code Council. For those geographic areas, the commissioner by rule may adopt a subsequent edition of that code and may adopt any supplements published by the International Code Council and amendments to that code.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 9(1), eff. September 1, 2015.

(d) A structure constructed, altered, remodeled, enlarged, or repaired or to which additions were made before January 1, 1988, that is located in an area that was governed at the time of the construction, alteration, remodeling, enlargement, repair, or addition by a building code recognized by the association is insurable property eligible for windstorm and hail insurance coverage from the association without compliance with the inspection or approval requirements of this section or the plan of operation.

(e) A structure constructed, altered, remodeled, enlarged, or repaired or to which additions were made before January 1, 1988, that is located in an area not governed by a building code recognized by the association is insurable property eligible for windstorm and hail insurance coverage from the association without compliance with the inspection or approval requirements of this section or the plan of operation if the structure was previously insured by an insurer authorized to engage in the business of

insurance in this state and the structure is in essentially the same condition as when previously insured, except for normal wear and tear, and is without any structural change other than a change made according to code. For purposes of this subsection, evidence of previous insurance coverage must reflect coverage for the perils of windstorm and hail for the property within the 12-month period immediately preceding the date of the application for coverage through the association and includes:

- (1) a copy of a previous insurance policy;
- (2) copies of canceled checks or agent's records that show payments for previous policies; and
- (3) a copy of the title to the structure or mortgage company records that show previous policies.

(f) Notwithstanding any other provision of this subchapter, insurance coverage for a residential structure may be issued or renewed through the association subject to the inspection requirements imposed under Section [2210.258](#), if applicable.

(g) A certificate of compliance issued by the department under Section [2210.2515](#) demonstrates compliance with the applicable building code under the plan of operation. The certificate is evidence of insurability of the structure by the association.

(h) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. [2439](#)), Sec. 9(1), eff. September 1, 2015.

(i) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. [2439](#)), Sec. 9(1), eff. September 1, 2015.

(j) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. [2439](#)), Sec. 9(1), eff. September 1, 2015.

(k) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. [2439](#)), Sec. 9(1), eff. September 1, 2015.

(l) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. [2439](#)), Sec. 9(1), eff. September 1, 2015.

(m) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. [2439](#)), Sec. 9(1), eff. September 1, 2015.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 30, eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 24, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1228 (S.B. 1702), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 188 (S.B. 498), Sec. 1, eff. May 28, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 9(1), eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 10.003, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 11, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 790 (H.B. 1900), Sec. 5, eff. June 10, 2019.

Sec. 2210.2515. ISSUANCE OF CERTIFICATES OF COMPLIANCE.

(a) In this section:

(1) "Completed improvement" means:

(A) an improvement in which the original transfer of title from the builder to the initial owner of the improvement has occurred; or

(B) if a transfer under Paragraph (A) is not contemplated, an improvement that is substantially completed.

(2) "Improvement" means the construction of or repair, alteration, remodeling, or enlargement of a structure to which the plan of operation applies.

(3) "Ongoing improvement" means:

(A) an improvement in which the original transfer of title from the builder to the initial owner of the improvement has not occurred; or

(B) if a transfer under Paragraph (A) is not

contemplated, an improvement that is not substantially completed.

(b) A person shall provide written notice on a form prescribed by and submitted to the department of the person's intent to construct, repair, alter, remodel, or enlarge a structure for which the person is seeking coverage under this chapter before the person begins to construct, repair, alter, remodel, or enlarge the structure.

(c) A person may apply to the department on a form prescribed by the department for a certificate of compliance for a completed improvement. The department shall issue a certificate of compliance for a completed improvement if a professional engineer licensed by the Texas Board of Professional Engineers and Land Surveyors:

(1) has designed the improvement, has affixed the engineer's seal on the design, and submits to the department on a form prescribed by the department an affirmation that the design complies with the applicable building code under the plan of operation and that the improvement was constructed in accordance with the design; or

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

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

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

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

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

(d) A person may apply to the department on a form prescribed by the department for a certificate of compliance for an ongoing improvement. Except as provided by Subsection (e), the

department shall issue a certificate of compliance for an ongoing improvement if a qualified inspector under Section [2210.254](#) inspects the ongoing improvement in accordance with commissioner rule and affirms that the improvement:

(1) conforms to a design of the improvement that has a seal affixed by a professional engineer licensed by the Texas Board of Professional Engineers and Land Surveyors and complies with the applicable building code under the plan of operation; or

(2) complies with the applicable building code under the plan of operation.

(e) Except as otherwise provided by this subchapter, the department may not issue a certificate of compliance under Subsection (d) if within six months after the date of the final inspection of the structure that is the subject of the application, the department has not received:

(1) fully completed forms prescribed by the department demonstrating that the improvement satisfies the requirements under Subsection (d)(1) or (2); and

(2) payment in full of all inspection fees, including fees for prior department inspections, owed to the department.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 790 (H.B. [1900](#)), Sec. 12, eff. June 10, 2019.

(g) The department may enter into contracts as necessary to implement this section.

(h) The department may charge a reasonable fee to cover the cost of making building requirements and inspection standards available to the public. The department shall charge a reasonable fee for each inspection of each structure under this section in an amount set by the commissioner.

(i) The department is authorized to submit a formal complaint under Chapter [1001](#), Occupations Code, to the Texas Board of Professional Engineers and Land Surveyors related to the engineering work of a professional engineer as reflected in the sealed post-construction evaluation report or other materials submitted by an engineer under Subsection (c).

(j) If the department finds that a person acting as a qualified inspector under Section [2210.254](#) has failed to provide

complete and accurate information in connection with an inspection for a certificate of compliance under this section, the department may impose a reasonable penalty on the inspector, including by prohibiting the inspector from applying for certificates of compliance under this section. The commissioner may adopt rules as necessary to implement this subsection.

(k) The department may not rescind a certificate of compliance after issuing the certificate under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 3, eff. September 1, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 12, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 790 (H.B. 1900), Sec. 6, eff. June 10, 2019.

Acts 2019, 86th Leg., R.S., Ch. 790 (H.B. 1900), Sec. 12, eff. June 10, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 2.10, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 494 (H.B. 3564), Sec. 1, eff. June 14, 2021.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 12.001, eff. September 1, 2021.

Sec. 2210.252. INTERNATIONAL RESIDENTIAL CODE BUILDING SPECIFICATIONS. (a) After January 1, 2004, for geographic areas specified by the commissioner, the commissioner by rule may supplement the plan of operation building specifications with the structural provisions of the International Residential Code for one- and two-family dwellings, as published by the International Code Council or an analogous entity recognized by the department.

(b) For a geographic area specified under Subsection (a), the commissioner by rule may adopt a subsequent edition of the International Residential Code for one- and two-family dwellings and may adopt a supplement published by the International Code Council or an amendment to that code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff.

April 1, 2007.

Sec. 2210.253. 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.

(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 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.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.254. QUALIFIED INSPECTORS. (a) For purposes of this chapter, a "qualified inspector" includes:

(1) a person determined by the department to be qualified because of training or experience to perform building inspections;

(2) a licensed professional engineer; and

(3) an inspector who:

(A) is certified by the International Code Council, the Building Officials and Code Administrators International, Inc., the International Conference of Building Officials, or the Southern Building Code Congress International, Inc.;

(B) has certifications as a buildings inspector and coastal construction inspector; and

(C) complies with other requirements specified by commissioner rule.

(b) A windstorm inspection may be performed only by a qualified inspector.

(c) Before performing building inspections, a qualified inspector must be approved and appointed or employed by the department.

(d) The department may charge a reasonable fee for the filing of applications by and determining the qualifications of persons for appointment as qualified inspectors.

(e) The department may establish an annual renewal period for persons appointed as qualified inspectors.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 25, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 4, eff. September 1, 2015.

Sec. 2210.2551. ENFORCEMENT AUTHORITY; RULES. (a) The department has exclusive authority over all matters relating to the appointment and oversight of qualified inspectors for purposes of this chapter and to the physical inspection of structures for the purposes of determining whether to issue a certificate of compliance under Section 2210.2515(d), including the submission of documents to the department or association regarding the physical inspection of structures.

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

(c) Subsection (b) applies only to a determination

concerning the appointment of a qualified inspector under this chapter. The exclusive jurisdiction of the department under this section does not apply to the practice of engineering as defined by Section 1001.003, Occupations Code, or to a license issued, qualification required, determination made, order issued, judgment rendered, or other action of a board operating under Chapter 1001, Occupations Code. In the event of conflict, the authority of that board prevails with regard to the practice of engineering.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1073 , Sec. 9(3), eff. September 1, 2015.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1073 , Sec. 9(3), eff. September 1, 2015.

(f) The commissioner may not adopt or enforce a rule that requires an engineer to affix the engineer's seal to an inspection form submitted under this subchapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 27, eff. September 28, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 5, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 9(3), eff. September 1, 2015.

Sec. 2210.256. DISCIPLINARY PROCEEDINGS REGARDING APPOINTED INSPECTORS AND CERTAIN OTHER PERSONS. (a) After notice and hearing, the department may revoke an appointment made under Section 2210.254 if the appointee is found to be in violation of this subchapter or a rule of the commissioner adopted under this subchapter.

(a-1) In addition to any other action authorized under this section, the commissioner ex parte may enter an emergency cease and desist order under Chapter 83 against a qualified inspector, or a person acting as a qualified inspector, if:

(1) the commissioner believes that:

(A) the qualified inspector has:

(i) through submitting or failing to submit to the department substantiating information, failed to

demonstrate that a structure or a portion of a structure subject to inspection is built to a design that conforms to the requirements described by Section 2210.2515(d); or

(ii) refused to comply with requirements imposed under this chapter or department rules; or

(B) the person acting as a qualified inspector is acting without appointment as a qualified inspector under Section 2210.254; and

(2) the commissioner determines that the conduct described by Subdivision (1) is fraudulent or hazardous or creates an immediate danger to the public.

(b) The commissioner, instead of revocation, may impose one or more of the following sanctions if the commissioner determines from the facts that the sanction would be fair, reasonable, or equitable:

(1) suspension of the appointment for a specific period, not to exceed one year;

(2) issuance of an order directing the appointee to cease and desist from the specified activity or failure to act determined to be in violation of this subchapter or rules of the commissioner adopted under this subchapter; or

(3) if the commissioner finds that the appointee knowingly, wilfully, fraudulently, or with gross negligence signed or caused to be prepared an inspection report that contains a false or fraudulent statement, issuance of an order directing the appointee to pay within a specified time, not to exceed 60 days, a fine not to exceed \$5,000 for the violation.

(c) A fine paid as a result of an order issued under Subsection (b)(3) shall be deposited in the general revenue fund.

(d) If it is found after a hearing that an appointee has failed to comply with an order issued under Subsection (b), the department shall, unless the order is stayed, revoke the appointment of the person.

(e) The department may informally dispose of any matter under Subsection (a) or (b) by consent order or default.

(f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1073 , Sec. 9(4), eff. September 1, 2015.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. [3](#)), Sec. 28, eff. September 28, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. [3](#)), Sec. 29, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. [2439](#)), Sec. 6, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. [2439](#)), Sec. 9(4), eff. September 1, 2015.

Sec. 2210.257. DEPOSIT OF FEES. All fees collected by the department under this subchapter shall be deposited to the credit of the Texas Department of Insurance operating account.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 2, eff. April 1, 2007.

Sec. 2210.258. COMPLIANCE WITH BUILDING CODES; ELIGIBILITY. (a) Except as provided by Subsections (c) and (d) and notwithstanding any other provision of this chapter, to be eligible for insurance through the association, all construction, alteration, remodeling, enlargement, and repair of, or addition to, any structure located in the catastrophe area that is begun on or after the effective date of Sections 5 through 49, H.B. 4409, 81st Legislature, Regular Session, 2009, must be performed in compliance with the applicable building code standards, as set forth in the plan of operation.

(b) Except as provided by Subsections (c) and (d), the association may not insure a structure described by Subsection (a) until a certificate of compliance has been issued for the structure in accordance with Section [2210.2515](#).

(c) The association may insure a residential structure constructed, altered, remodeled, enlarged, repaired, or added to on or after June 19, 2009, that is not in compliance with the applicable building code standards, as set forth in the plan of operation, provided that:

(1) the structure had been insured on or after June 19, 2009, by an insurer in the private market that canceled or nonrenewed the insurance coverage of the structure;

(2) the applicant provides to the association proof that insurance coverage that was issued to the applicant or the previous insured for the structure was canceled or nonrenewed in the private market as described by Subdivision (1); and

(3) no construction, alteration, remodeling, enlargement, or repair of, or addition to, the structure occurred after cancellation or nonrenewal of the coverage and before submission of an application for coverage through the association.

(d) The association may insure a structure described by Subsection (a) for a policy term not to exceed 30 days if an inspection verification form or other inspection form adopted by the department has been issued for the structure for purposes of providing temporary coverage while an applicant seeks to secure a certificate of compliance for the structure if the structure is otherwise insurable property.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 31, eff. June 19, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1228 (S.B. 1702), Sec. 2, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 188 (S.B. 498), Sec. 2, eff. May 28, 2015.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 14, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 7, eff. September 1, 2015.

Sec. 2210.259. SURCHARGE FOR CERTAIN NONCOMPLIANT STRUCTURES. (a) Except as provided by Subsection (a-1), an insurance policy insuring a noncompliant residential structure under Section 2210.251(f) is subject to an annual premium surcharge in an amount equal to 15 percent of the premium for insurance coverage obtained through the association. The surcharge under this subsection applies to each policy issued or renewed by the

association on or after the effective date of Sections 5 through 49, H.B. No. 4409, Acts of the 81st Legislature, Regular Session, 2009, and is due on the issuance or renewal of the policy.

(a-1) For a policy insuring a noncompliant residential structure eligible for coverage under Section 2210.258(c), the association shall charge:

(1) a premium based on the rate charged in the voluntary market for the portion of the canceled or nonrenewed policy that provides windstorm and hail insurance coverage for the applicable risk; and

(2) an annual premium surcharge in an amount equal to 10 percent of that premium.

(b) A premium surcharge collected under this section shall be deposited in the catastrophe reserve trust fund. A premium surcharge under this section is a separate nonrefundable charge in addition to the premiums collected and is not subject to premium tax or commissions. Failure to pay the surcharge by a policyholder constitutes failure to pay premium for purposes of policy cancellation.

(c) The commissioner by rule may provide for a discount of, or a credit against, a surcharge assessed under Subsection (a) in instances in which a policyholder demonstrates that the noncompliant structure was constructed with at least one structural building component that complies with the building code standards set forth in the plan of operation.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 31, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 30, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1228 (S.B. 1702), Sec. 4, eff. June 14, 2013.

SUBCHAPTER H. RATES; DISCOUNTS AND CREDITS

Sec. 2210.351. ASSOCIATION FILINGS. (a) The association must file with the department each manual of classifications,

rules, rates, including condition charges, and each rating plan, and each modification of those items that the association proposes to use.

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

(c) Except as provided by Subsection (d), as soon as reasonably possible after the filing has been made, the commissioner in writing shall approve or disapprove the filing. A filing is considered approved unless disapproved on or before the 30th day after the date of the filing. If the commissioner disapproves a filing, the commissioner shall state in writing the reasons for the disapproval and the criteria the association is required to meet to obtain approval.

(d) The association may use a rate filed by the association without prior commissioner approval if:

(1) the filing is made not later than the 30th day before the date of any use or delivery for use of the rate;

(2) the filed rate does not exceed the rate in effect on the date on which the filing is made; and

(3) the commissioner has not disapproved the filing in writing, advising of the reasons for the disapproval and the criteria the association is required to meet to obtain approval.

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

(f) The association may not file a rate under this section that exceeds the rate in effect on the date on which the filing is made unless two-thirds of the board of directors votes to approve the rate.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. [4409](#)), Sec. 32,

eff. June 19, 2009.

Acts 2021, 87th Leg., R.S., Ch. 147 (S.B. 1448), Sec. 1, eff. September 1, 2021.

Sec. 2210.3511. PUBLIC ACCESS TO RATE ADEQUACY ANALYSIS.

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

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

(2) output data:

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

(i) the association by hurricane modelers; and

(ii) the department by the association; and

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

(b) The association shall accept public comment with respect to the association's rate adequacy analysis at a public meeting of the board of directors before the board of directors votes on the submission of a proposed rate filing to the department. Added by Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 13, eff. September 1, 2019.

Added by Acts 2019, 86th Leg., R.S., Ch. 790 (H.B. 1900), Sec. 7, eff. June 10, 2019.

Sec. 2210.3512. REQUIREMENT FOR VOTE ON RATE FILING. The board of directors may not vote on a proposed rate increase if:

(1) there is a vacancy on the board; and

(2) the vacancy has existed for at least 60 days at the time the vote is to be taken.

Added by Acts 2021, 87th Leg., R.S., Ch. 639 (H.B. 769), Sec. 1,

eff. September 1, 2021.

Sec. 2210.352. MANUAL RATE FILINGS: ANNUAL FILING. (a) Not later than August 15 of each year, the association shall file with the department a proposed manual rate for all types and classes of risks written by the association.

(a-1) The association may use a rate filed by the association under this section without prior commissioner approval if:

(1) the filing is made not later than the 30th day before the date of any use or delivery for use of the rate; and

(2) the filed rate does not exceed the rate used by the association in effect on the date on which the filing is made.

(a-2) The association may not file to use a rate described by Subsection (a-1) more than once per year.

(a-3) The association may not file a rate under this section that exceeds the rate in effect on the date on which the filing is made unless two-thirds of the board of directors votes to approve the rate.

(b) Except as provided by Subsection (a-1), before approving or disapproving a filing under this section, the commissioner shall provide all interested persons a reasonable opportunity to:

(1) review the filing;

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

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

(c) Except as provided by Subsection (a-1), the commissioner shall approve or disapprove the filing in writing not later than October 15 of the year in which the filing was made. If the filing is not approved or disapproved on or before that date, the filing is considered approved.

(d) Except as provided by Subsection (a-1), if the commissioner disapproves a filing, the commissioner shall state in writing the reasons for the disapproval and the criteria the association is required to meet to obtain approval.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 33, eff. June 19, 2009.

Acts 2021, 87th Leg., R.S., Ch. 147 (S.B. 1448), Sec. 2, eff. September 1, 2021.

Sec. 2210.353. MANUAL RATE FILINGS: AMENDED ANNUAL FILING.

(a) Not later than the 30th day after the date the association receives the commissioner's written disapproval under Section 2210.352(c), the association may file with the commissioner an amended annual filing that conforms to all criteria stated in that written disapproval.

(b) Not later than the 30th day after the date an amended filing made under Subsection (a) is received, the commissioner shall approve or disapprove the amended filing. If the filing is not disapproved on or before the 30th day after the date of receipt, the filing is considered approved. If the commissioner disapproves a filing, the commissioner shall state in writing the reasons for the disapproval and the criteria the association is required to meet to obtain approval.

(c) Before approving or disapproving an amended annual filing under this section, the commissioner shall, in the manner provided by Section 2210.352(b), provide all interested persons a reasonable opportunity to:

- (1) review the amended annual filing;
- (2) obtain copies of the amended annual filing on payment of any legally required copying cost; and
- (3) submit to the commissioner written comments or information related to the amended annual filing.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 34, eff. June 19, 2009.

Sec. 2210.354. MANUAL RATE FILINGS: ADDITIONAL SUPPORTING INFORMATION. (a) In conjunction with the review of a filing under Section 2210.352, other than a filing made under Subsection (a-1) of that section:

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

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

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

(c) The commissioner shall submit to the association all requests for additional supporting information made under this section for the commissioner's use and the use of any interested person not later than the 21st day after the date of receipt of the filing.

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

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 35, eff. June 19, 2009.

Sec. 2210.355. GENERAL RATE REQUIREMENTS; RATE STANDARDS.

(a) Rates for coverage under this chapter must be made in accordance with this section.

(b) In adopting rates under this chapter, the following must be considered:

(1) the past and prospective loss experience within and outside this state of hazards for which insurance is made available through the plan of operation, if any;

(2) expenses of operation, including acquisition costs;

(3) a reasonable margin for profit and contingencies;

(4) payment of public security obligations issued under this chapter, including the additional amount of any debt service coverage determined by the association to be required for the issuance of marketable public securities; and

(5) all other relevant factors, within and outside this state.

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

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

(e) Classification rates may be modified to produce rates for individual risks in accordance with rating plans that establish standards for measuring variations in those risks on the basis of any or all of the factors described by Subsection (b). The classification rates may include rules for classification of risks insured under this chapter and rate modifications to those classifications.

(f) Each provision regarding a rate, classification, standard, or premium must be made without prejudice to, or prohibition of, provision by the association for consent rates on individual risks if the rate and risk are acceptable to the association, and are analogous to the rate provided for under Article 5.26(a). This subsection applies regardless of whether such a risk would otherwise be subject to or the subject of a rate classification provision or eligibility provision.

(g) A commission paid to an agent for a windstorm and hail insurance policy issued by the association must comply with the commission structure approved by the commissioner under Section [2210.203\(d\)](#) and be reasonable, adequate, not unfairly discriminatory, and nonconfiscatory.

(h) In adopting rates under this chapter, recognized catastrophe models may be considered.

(i) The association may establish rating territories and may vary rates among the territories as provided by this

subsection. A rating territory that subdivides a county may be used only if the rate for any subdivision in the county is not more than:

(A) five percent higher than the rate used by the association in 2009 in any other subdivision in the county;

(B) six percent higher than the rate used by the association in 2010 in any other subdivision in the county;

(C) seven percent higher than the rate used by the association in 2011 in any other subdivision in the county; and

(D) eight percent higher than the rate used by the association in 2012 in any other subdivision in the county.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 36, eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 33, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 16, eff. September 1, 2015.

Sec. 2210.357. RATE CLASSIFICATIONS. All premiums written and losses paid under this chapter, as appropriate, must be included in applicable classifications for general ratemaking purposes.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.358. EXPERIENCE DATA. (a) Not later than June 1 of each year, the department shall provide to the association and other interested persons the experience data to be used in establishing the rates under this subchapter in that year.

(b) On request from the department, an insurer shall provide the data to the department or the department may obtain the data from a designated statistical agent, as defined by Section 38.201.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.359. LIMITATION ON CERTAIN RATE CHANGES. (a) Except as otherwise provided by this subsection, a rate approved by the commissioner under this subchapter may not reflect an average rate change that is more than 10 percent higher or lower than the rate for commercial windstorm and hail insurance or 10 percent higher or lower than the rate for noncommercial windstorm and hail insurance in effect on the date the filing is made. The rate may not reflect a rate change for an individual rating class that is 15 percent higher or lower than the rate for that individual rating class in effect on the date the filing is made. This subsection does not apply to a rate filed under Sections [2210.351\(a\)-\(d\)](#).

(b) The commissioner may, after notice and hearing, suspend this section on a finding that a catastrophe loss or series of occurrences resulting in losses in the catastrophe area justify a need to ensure:

- (1) rate adequacy in the catastrophe area; and
- (2) availability of insurance outside the catastrophe area.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 3B.0631, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. [3167](#)), Sec. 9.0631, eff. September 1, 2007.

Sec. 2210.361. ASSOCIATION RECOMMENDATIONS REGARDING REDUCTIONS IN COVERAGES OR INCREASES IN DEDUCTIBLES. (a) The association may make recommendations to the commissioner that would result in a reduction of coverages or an increase in an applicable deductible if the resultant reduction in coverages or increase in deductibles is accompanied by proposed rate credits.

(b) After notice and hearing, the commissioner may accept or reject a recommendation made by the association under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 37, eff. June 19, 2009.

Sec. 2210.362. IMPLIED CONSENT BY APPLICANT FOR INSURANCE COVERAGE. For purposes of this chapter, an applicant for insurance coverage is considered to have consented to the appropriate rates and classifications authorized by this chapter regardless of any other rates or classifications.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.363. PREMIUM DISCOUNTS; SURCHARGE CREDITS.

(a) The association may offer a person insured under this chapter an actuarially justified premium discount on a policy issued by the association, or an actuarially justified credit against a surcharge assessed against the person, other than a surcharge assessed under Subchapter M, if:

(1) the construction, alteration, remodeling, enlargement, or repair of, or an addition to, insurable property exceeds applicable building code standards set forth in the plan of operation; or

(2) the person elects to purchase a binding arbitration endorsement under Section 2210.554.

(b) A premium discount or a credit against a surcharge under Subsection (a)(2) may not exceed 10 percent of the premium for the policy, before the application of the discount.

(c) The commissioner shall adopt rules necessary to implement and enforce this section, including rules defining "actuarially justified" for the purposes of this section.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 34, eff. September 28, 2011.

SUBCHAPTER J. CATASTROPHE RESERVE TRUST FUND; REINSURANCE AND ALTERNATIVE RISK FINANCING

Sec. 2210.451. DEFINITION. In this subchapter, "trust

fund" means the catastrophe reserve trust fund.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.452. ESTABLISHMENT AND USE OF TRUST FUND.

(a) The commissioner shall adopt rules under which the association makes payments to the catastrophe reserve trust fund. Except as otherwise specifically provided by this section, the trust fund may be used only for purposes directly related to funding the payment of insured losses, including:

(1) funding the obligations of the trust fund under Subchapter B-1; and

(2) purchasing reinsurance or using alternative risk financing mechanisms under Section 2210.453.

(b) All money, including investment income, deposited in the trust fund constitutes state funds until disbursed as provided by this chapter and commissioner rules. The comptroller shall hold the money outside the state treasury on behalf of, and with legal title in, the department. The department shall keep and maintain the trust fund in accordance with this chapter and commissioner rules. The comptroller, as custodian of the trust fund, shall administer the trust fund strictly and solely as provided by this chapter and commissioner rules.

(c) At the end of each calendar year or policy year, the association shall use the net gain from operations of the association, including all premium and other revenue of the association in excess of incurred losses, operating expenses, public security obligations, and public security administrative expenses, to make payments to the trust fund, procure reinsurance, or use alternative risk financing mechanisms, or to make payments to the trust fund and procure reinsurance or use alternative risk financing mechanisms.

(d) The commissioner by rule shall establish the procedure relating to the disbursement of money from the trust fund to policyholders and for association administrative expenses directly related to funding the payment of insured losses in the event of an occurrence or series of occurrences within a catastrophe area that

results in a disbursement under Subchapter B-1.

(e) The trust fund may be terminated only by law. On termination of the trust fund, all assets of the trust fund revert to the state to provide funding for the mitigation and preparedness plan established under Section [2210.454](#).

(f) The commissioner by rule shall establish the procedure relating to the disbursement of money from the trust fund to pay for operating expenses, including reinsurance or alternative risk financing mechanisms under Section [2210.453](#), if the association does not have sufficient premium and other revenue.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. [4409](#)), Sec. 38, eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. [3](#)), Sec. 35, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. [900](#)), Sec. 18, eff. September 1, 2015.

Sec. 2210.4521. INVESTMENT OF TRUST FUND BALANCES.

(a) The comptroller shall invest in accordance with the investment standard described by Section [404.024\(j\)](#), Government Code, the portion of the trust fund balance that exceeds the amount of the sufficient balance determined under Subsection (b). The comptroller's investment of that portion of the balance is not subject to any other limitation or other requirement provided by Section [404.024](#), Government Code.

(b) At least once each 12-month period, the board of directors shall determine a balance for the trust fund that the board considers to be sufficient to meet the cash flow requirements of the fund in funding the payment of insured losses as provided by Section [2210.452\(a\)](#). After determining that sufficient balance, the board shall provide notice of the sufficient balance to the comptroller.

(c) Not later than the 30th day after the date the board of directors provides notice of the sufficient balance determined

under Subsection (b), the comptroller shall adjust the investment portfolio of trust fund money to ensure that only the portion of the fund that exceeds the sufficient balance is invested as required by Subsection (a).

(d) The comptroller shall include the fair market value of the investment portfolio of the trust fund in calculating the amount in the fund for purposes of this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 19, eff. September 1, 2015.

Sec. 2210.453. FUNDING LEVELS; REINSURANCE AND ALTERNATIVE RISK FINANCING MECHANISMS; REINSURANCE FROM CERTAIN INSURER OR BROKER PROHIBITED. (a) The association may purchase reinsurance or use alternative risk financing mechanisms or both as necessary.

(b) The association shall maintain total available loss funding in an amount not less than the probable maximum loss for the association for a catastrophe year with a probability of one in 100. If necessary, the required funding level shall be achieved through the purchase of reinsurance or the use of alternative financing mechanisms, or both, to operate in addition to or in concert with the trust fund, public securities, financial instruments, and assessments authorized by this chapter.

(c) The attachment point for reinsurance purchased under this section may not be less than the aggregate amount of all funding available to the association under Subchapter B-1.

(d) The cost of the reinsurance purchased or alternative financing mechanisms used under this section in excess of the minimum funding level required by Subsection (b) shall be paid by assessments as provided by this subsection. The association, with the approval of the commissioner, shall notify each member of the association of the amount of the member's assessment under this subsection. The proportion of the cost to each insurer under this subsection shall be determined in the manner used to determine each insurer's participation in the association for the year under Section 2210.052.

(e) A member of the association may not recoup an assessment paid under Subsection (d) through a premium surcharge or tax

credit.

(f) The association may not purchase reinsurance under this section from an insurer or broker involved in the execution of a catastrophe model on which the association relies in:

(1) determining the probable maximum loss applicable for the period covered by the reinsurance; or

(2) adopting rates under Section [2210.355](#).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. [4409](#)), Sec. 39, eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. [3](#)), Sec. 36, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. [900](#)), Sec. 20, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 790 (H.B. [1900](#)), Sec. 8, eff. June 10, 2019.

Acts 2021, 87th Leg., R.S., Ch. 639 (H.B. [769](#)), Sec. 2, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 639 (H.B. [769](#)), Sec. 3, eff. September 1, 2021.

Sec. 2210.454. MITIGATION AND PREPAREDNESS PLAN. (a) The commissioner shall annually develop and implement a mitigation and preparedness plan.

(b) Each state fiscal year, the department may fund the mitigation and preparedness plan using available funds.

(c) The mitigation and preparedness plan must provide for actions to be taken in the seacoast territory by the commissioner, or by a local government, state agency, educational institution, or nonprofit organization designated by the commissioner in the plan, to implement programs to:

(1) improve preparedness for windstorm and hail catastrophes;

(2) reduce potential losses in the event of such a catastrophe; and

(3) provide research into the means to:

(A) reduce those losses;

(B) educate or inform the public in determining the appropriateness of particular upgrades to structures; or

(C) protect infrastructure from potential damage from those catastrophes.

(d) Money in excess of \$1 million may not be used under this section if the commissioner determines that an expenditure of investment income from the trust fund would jeopardize the actuarial soundness of the fund or materially impair the ability of the fund to serve the state purposes for which the fund was established.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 40, eff. June 19, 2009.

Sec. 2210.455. CATASTROPHE PLAN. (a) Not later than June 1 of each year, the board shall submit to the commissioner, the legislative oversight board established under Subchapter N, the governor, the lieutenant governor, and the speaker of the house of representatives a catastrophe plan covering the period beginning on the date the plan is submitted and ending on the following May 31.

(b) The catastrophe plan must:

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

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

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

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

(2) include, if the association does not purchase reinsurance under Section 2210.453 for the period covered by the

plan, an actuarial plan for paying losses in the event of a catastrophe with estimated damages of \$2.5 billion or more.

(c) The catastrophe plan must include a description of how losses under association policies will be paid, and how claims under association policies will be administered and adjusted, during the period covered by the plan.

(d) The catastrophe plan submitted under this section is for informational purposes only and does not bind the association to a particular course of action.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 37, eff. September 28, 2011.

SUBCHAPTER K. LIABILITY LIMITS

Sec. 2210.501. MAXIMUM LIABILITY LIMITS. (a) The board of directors shall propose the maximum liability limits under a windstorm and hail insurance policy issued by the association under this chapter. The maximum liability limits are considered approved by the commissioner unless the commissioner disapproves or modifies the liability limits by order issued not later than the 30th day after the date of receipt of a filing under Section [2210.503](#).

(b) Subject to Section [2210.502](#), the maximum liability limits for coverage on a single insurable property may not be less than:

(1) \$350,000 for:

(A) a dwelling, including an individually owned townhouse unit; and

(B) the corporeal movable property located in or about the dwelling and, as an extension of coverage, away from those premises, 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;

(3) \$125,000 for individually owned corporeal movable property located in an apartment unit, residential condominium unit, or townhouse unit that is occupied by the owner of that property and, as an extension of coverage, away from those premises, as provided under the policy; and

(4) \$1,500,000 for:

(A) a structure other than a dwelling or a public building; and

(B) the corporeal movable property located in that structure and, as an extension of coverage, away from those premises, as provided under the policy.

(c) Maximum liability limits for insurable property not described by Subsection (b) are established by the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 307 (H.B. 1902), Sec. 1, eff. September 1, 2019.

Sec. 2210.502. ADJUSTMENTS TO MAXIMUM LIABILITY LIMITS.

(a) Not later than September 30 of each year, the board of directors shall propose inflation adjustments to the maximum liability limits imposed under Section 2210.501 in increments of \$1,000, rounded to the nearest \$1,000, considering the limits imposed by Section 2210.501(b), at a rate that reflects any change in the BOECKH Index. If the BOECKH Index ceases to exist, the board of directors shall propose the adjustments in the same manner based on another index that the board of directors determines accurately reflects changes in the cost of construction or residential values in the catastrophe area.

(b) An adjustment to the maximum liability limits that is approved by the commissioner applies to each windstorm and hail 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.

(c) The board of directors may propose additional increases in the maximum liability limits as the board determines necessary to implement the purposes of this chapter.

(d) Notwithstanding Section 2210.501(b), the maximum liability limit imposed under Section 2210.501(b)(2) is frozen, and the indexing and adjustments provided by this section do not apply to that limit, until the limit imposed on a structure subject to Section 2210.501(b)(4) and the corporeal property located in that structure reaches or exceeds \$2,192,000, at which time the limit imposed under Section 2210.501(b)(2) shall be indexed and adjusted as provided for a risk under Section 2210.501(b)(4).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.503. FILING OF PROPOSED ADJUSTMENTS WITH COMMISSIONER. Not later than the 10th day after the date a proposed adjustment to the maximum liability limits is determined under Section 2210.501(a) or (b) or Section 2210.502, the association shall file the proposed adjustments with the commissioner in writing. The filing must include:

- (1) a statement of the proposed adjusted limits;
- (2) a statement of the limits in effect immediately preceding the effective date of the proposed adjustment;
- (3) a brief summary of the changes to the BOECKH Index or other index on which the proposed adjustments are based; and
- (4) a brief summary of the computations used in determining the proposed adjustments.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.504. COMMISSIONER ACTION ON PROPOSED ADJUSTMENTS. (a) Not later than the 30th day after the date the commissioner disapproves or modifies a filing under Section 2210.503, and after notice and hearing, the commissioner by order shall approve, disapprove, or modify the proposed adjustment to the maximum liability limits.

(b) Notwithstanding Subsection (a) and Sections

2210.501(c), 2210.502(a)-(c), and 2210.503, the commissioner may not approve adjustments of maximum liability limits to amounts lower than the amounts prescribed under Section 2210.501(b).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 307 (H.B. 1902), Sec. 2, eff. September 1, 2019.

Sec. 2210.505. REINSURED EXCESS LIMITS. (a) Notwithstanding any other law, the association may issue a windstorm and hail 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.

(b) The premium charged by the association for the excess coverage must equal the amount of the reinsurance premium charged to the association by the reinsurer, plus any payment to the association that is approved by the commissioner.

(c) The commissioner shall adopt rules as necessary to implement this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.506. EXCEPTION FROM CERTAIN ADMINISTRATIVE PROCEDURES. Chapter 40 does not apply to an action taken under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER L. CERTAIN APPEALS AND OTHER ACTIONS

Sec. 2210.551. APPEALS. (a) This section:

(1) does not apply to:

(A) a person who is required to resolve a dispute under Subchapter L-1; or

(B) a person insured under this chapter who has elected to purchase a binding arbitration endorsement offered by the association under Section [2210.554](#); and

(2) applies only to:

(A) a person not described by Subdivision (1) who is insured under this chapter or an authorized representative of the person; or

(B) an affected insurer.

(b) A person or entity described by Subsection (a)(2) who is aggrieved by an act, ruling, or decision of the association may appeal to the commissioner not later than the 30th day after the date of that act, ruling, or decision.

(c) If the association is aggrieved by the action of the commissioner with respect to a ruling, order, or determination of the commissioner, the association may, not later than the 30th day after the date of the action, make a written request to the commissioner for a hearing on the action.

(d) On 10 days' written notice of the time and place of the hearing, the commissioner shall conduct a hearing on the association's request or the appeal from an act, ruling, or decision of the association, not later than the 30th day after the date of receipt of the request or appeal.

(e) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 2, Sec. 57, eff. September 28, 2011.

(f) Not later than the 30th day after the date of the hearing, the commissioner shall affirm, reverse, or modify the commissioner's previous action or the act, ruling, or decision appealed to the commissioner. Pending the hearing and decision, the commissioner may suspend or postpone the effective date of the previous action or of the act, ruling, or decision appealed to the commissioner.

(g) The association, or the person or entity aggrieved by the order or decision of the commissioner, may appeal to a district court in the county in which the covered property is located or a district court in Travis County.

(h) An action brought under this section is subject to the procedures established under Subchapter [D](#), Chapter [36](#).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 39, eff. September 28, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 57, eff. September 28, 2011.

Sec. 2210.554. VOLUNTARY ARBITRATION OF CERTAIN COVERAGE AND CLAIM DISPUTES. (a) A person insured under this chapter may elect to purchase a binding arbitration endorsement in a form prescribed by the commissioner. A person who elects to purchase an endorsement under this section must arbitrate a dispute involving an act, ruling, or decision of the association relating to the payment of, the amount of, or the denial of the claim.

(b) An arbitration under this section shall be conducted in the manner and under rules and deadlines prescribed by the commissioner by rule.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 40, eff. September 28, 2011.

SUBCHAPTER L-1. CLAIMS: SETTLEMENT AND DISPUTE RESOLUTION

Sec. 2210.571. DEFINITIONS. In this subchapter:

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

(2) "Claim" means a request for payment under an association policy. The term also includes any other claim against the association, or an agent or representative of the association, relating to an insured loss, under any theory or cause of action of any kind, regardless of the theory under which the claim is asserted, the cause of action brought, or the type of damages sought.

(3) "Claimant" means a person who makes a claim.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

Sec. 2210.572. EXCLUSIVE REMEDIES AND LIMITATION ON AWARD.

(a) This subchapter provides the exclusive remedies for a claim against the association, including an agent or representative of the association.

(b) Subject to Section 2210.576, the association may not be held liable for any amount other than covered losses payable under the terms of the association policy.

(c) The association, and an agent or representative of the association, may not be held liable for damages under Chapter 17, Business & Commerce Code, or, except as otherwise specifically provided by this chapter, under any provision of any law providing for additional damages, punitive damages, or a penalty.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

Sec. 2210.573. FILING OF CLAIM; CLAIM PROCESSING.

(a) Subject to Section 2210.205(b), an insured must file a claim under an association policy not later than the first anniversary of the date on which the damage to property that is the basis of the claim occurs.

(b) The claimant may submit written materials, comments, documents, records, and other information to the association relating to the claim. If the claimant fails to submit information in the claimant's possession that is necessary for the association to determine whether to accept or reject a claim, the association may, not later than the 30th day after the date the claim is filed, request in writing the necessary information from the claimant.

(c) The association shall, on request, provide a claimant reasonable access to all information relevant to the determination of the association concerning the claim. The claimant may copy the information at the claimant's own cost or may request the association to provide a copy of all or part of the information to the claimant. The association may charge a claimant the actual cost incurred by the association in providing a copy of information under this section, excluding any amount for labor involved in making any information or copy of information available to a claimant.

(d) Unless the applicable 60-day period described by this subsection is extended by the commissioner under Section [2210.581](#), not later than the later of the 60th day after the date the association receives a claim or the 60th day after the date the association receives information requested under Subsection (b), the association shall provide the claimant, in writing, notification that:

(1) the association has accepted coverage for the claim in full;

(2) the association has accepted coverage for the claim in part and has denied coverage for the claim in part; or

(3) the association has denied coverage for the claim in full.

(e) In a notice described by Subsection (d)(1), the association must inform the claimant of the amount of loss the association will pay and of the time limit to request appraisal under Section [2210.574](#).

(f) In a notice described by Subsection (d)(2) or (3), the association must inform the claimant of, as applicable:

(1) the portion of the loss for which the association accepts coverage and the amount of loss the association will pay;

(2) the portion of the loss for which the association denies coverage and a detailed summary of the manner in which the association determined not to accept coverage for that portion of the claim; and

(3) the time limit to:

(A) request appraisal under Section [2210.574](#) of the portion of the loss for which the association accepts coverage; and

(B) provide notice of intent to bring an action as required by Section [2210.575](#).

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

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

(2) applicable deadlines related to supplemental

payments.

(g) In addition to the notice required under Subsection (d)(2) or (3), the association shall provide a claimant with a form on which the claimant may provide the association notice of intent to bring an action as required by Section 2210.575.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 14, eff. September 1, 2019.

Sec. 2210.5731. PAYMENT OF CLAIM. (a) Except as provided by Subsection (b), if the association notifies a claimant under Section 2210.573(d)(1) or (2) that the association has accepted coverage for a claim in full or has accepted coverage for a claim in part, the association shall pay the accepted claim or accepted portion of the claim not later than the 10th day after the date notice is made.

(b) If payment of the accepted claim or accepted portion of the claim is conditioned on the performance of an act by the claimant, the association shall pay the claim not later than the 10th day after the date the act is performed.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

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

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

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

Added by Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 15, eff. September 1, 2019.

Sec. 2210.574. DISPUTES CONCERNING AMOUNT OF ACCEPTED COVERAGE. (a) If the association accepts coverage for a claim in full and a claimant disputes only the amount of loss the association will pay for the claim, or if the association accepts coverage for a claim in part and a claimant disputes the amount of loss the association will pay for the accepted portion of the claim, the claimant may request from the association a detailed summary of the manner in which the association determined the amount of loss the association will pay.

(b) If a claimant disputes the amount of loss the association will pay for a claim or a portion of a claim, the claimant, not later than the 60th day after the date the claimant receives the notice described by Section 2210.573(d)(1) or (2), may demand appraisal in accordance with the terms of the association policy.

(c) If a claimant, on a showing of good cause and not later than the 15th day after the expiration of the 60-day period described by Subsection (b), requests in writing that the 60-day period be extended, the association may grant an additional 30-day period in which the claimant may demand appraisal.

(d) If a claimant demands appraisal under this section:

(1) the appraisal must be conducted as provided by the association policy; and

(2) the claimant and the association are responsible in equal shares for paying any costs incurred or charged in connection with the appraisal, including a fee charged under Subsection (e).

(e) If a claimant demands appraisal under this section and the appraiser retained by the claimant and the appraiser retained by the association are able to agree on an appraisal umpire to participate in the resolution of the dispute, the appraisal umpire is the umpire chosen by the two appraisers. If the appraiser retained by the claimant and the appraiser retained by the association are unable to agree on an appraisal umpire to

participate in the resolution of the dispute, the commissioner shall select an appraisal umpire from a roster of qualified umpires maintained by the department. The department may:

(1) require appraisers to register with the department as a condition of being placed on the roster of umpires; and

(2) charge a reasonable registration fee to defray the cost incurred by the department in maintaining the roster and the commissioner in selecting an appraisal umpire under this subsection.

(f) Except as provided by Subsection (g), the appraisal decision is binding on the claimant and the association as to the amount of loss the association will pay for a fully accepted claim or the accepted portion of a partially accepted claim and is not appealable or otherwise reviewable. A claimant that does not demand appraisal before the expiration of the periods described by Subsections (b) and (c) waives the claimant's right to contest the association's determination of the amount of loss the association will pay with reference to a fully accepted claim or the accepted portion of a partially accepted claim.

(g) A claimant or the association may, not later than the second anniversary of the date of an appraisal decision, file an action in a district court in the county in which the loss that is the subject of the appraisal occurred to vacate the appraisal decision and begin a new appraisal process if:

(1) the appraisal decision was obtained by corruption, fraud, or other undue means;

(2) the rights of the claimant or the association were prejudiced by:

(A) evident partiality by an appraisal umpire;

(B) corruption in an appraiser or appraisal umpire; or

(C) misconduct or wilful misbehavior of an appraiser or appraisal umpire; or

(3) an appraiser or appraisal umpire:

(A) exceeded the appraiser's or appraisal umpire's powers;

(B) refused to postpone the appraisal after a

showing of sufficient cause for the postponement;

(C) refused to consider evidence material to the claim; or

(D) conducted the appraisal in a manner that substantially prejudiced the rights of the claimant or the association.

(h) Except as provided by Subsection (g), a claimant may not bring an action against the association with reference to a claim for which the association has accepted coverage in full.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

Sec. 2210.5741. REPLACEMENT COST COVERAGE CLAIM PROCESSING.

(a) After the association accepts coverage for a claim in full or in part, a claimant whose association policy includes replacement cost coverage for the claim may request the replacement cost payment by submitting to the association documentation of the cost and completion of the repairs related to the claim not later than the 545th day after the date the claimant receives a notification under Section 2210.573(d)(1) or (2).

(b) Not later than the 30th day after the date the association receives documentation under Subsection (a), the association shall provide the claimant, in writing, notification of:

(1) the amount of the replacement cost payment the association will make; and

(2) the deadline to request appraisal under this section.

(c) The association shall pay the amount described by Subsection (b)(1) not later than the 10th day after the date notification is provided under Subsection (b).

(d) If a claimant has not demanded appraisal with respect to a claim under Section 2210.574 and the claimant disputes the replacement cost amount the association will pay with respect to the claim, the claimant may demand appraisal of the replacement cost amount not later than the 30th day after the date the claimant receives the notification under Subsection (b). A claimant may

demand appraisal under this section without regard to whether all repairs related to the claim are complete.

(e) Except with respect to the deadlines applicable to an appraisal under this section, the appraisal under this section shall be conducted in the same manner as an appraisal demanded under Section 2210.574.

(f) If a claimant's association policy includes replacement cost coverage, the written notification provided to the claimant under Section 2210.573(d)(1) or (2) must notify the claimant of the deadlines under this section for:

(1) completing repairs and submitting documentation under Subsection (a); and

(2) demanding appraisal under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 790 (H.B. 1900), Sec. 9, eff. June 10, 2019.

Sec. 2210.575. DISPUTES CONCERNING DENIED COVERAGE.

(a) If the association denies coverage for a claim in part or in full and the claimant disputes that determination, the claimant, not later than the expiration of the limitations period described by Section 2210.577(a), but after the date the claimant receives the notice described by Section 2210.573(d)(2) or (3), must provide the association with notice that the claimant intends to bring an action against the association concerning the partial or full denial of the claim.

(b) If a claimant provides notice of intent to bring an action under Subsection (a), the association may require the claimant, as a prerequisite to filing the action against the association, to submit the dispute to alternative dispute resolution by mediation or moderated settlement conference, as provided by Chapter 154, Civil Practice and Remedies Code. A claimant that does not provide notice of intent to bring an action before the expiration of the period described by Subsection (a) waives the claimant's right to contest the association's partial or full denial of coverage and is barred from bringing an action against the association concerning the denial of coverage.

(c) The association must request alternative dispute

resolution of a dispute described by Subsection (b) not later than the 60th day after the date the association receives from the claimant notice of intent to bring an action.

(d) Alternative dispute resolution under this section must be completed not later than the 60th day after the date a request for alternative dispute resolution is made under Subsection (c). The 60-day period described by this subsection may be extended by the commissioner by rule in accordance with Section [2210.581](#) or by the association and a claimant by mutual consent.

(e) If the claimant is not satisfied after completion of alternative dispute resolution, or if alternative dispute resolution is not completed before the expiration of the 60-day period described by Subsection (d) or any extension under that subsection, the claimant may bring an action against the association in a district court in the county in which the loss that is the subject of the coverage denial occurred. An action brought under this subsection shall be presided over by a judge appointed by the judicial panel on multidistrict litigation designated under Section [74.161](#), Government Code. A judge appointed under this section must be an active judge, as defined by Section [74.041](#), Government Code, who is a resident of the county in which the loss that is the basis of the disputed denied coverage occurred or of a first tier coastal county or a second tier coastal county adjacent to the county in which that loss occurred.

(f) If a claimant brings an action against the association concerning a partial or full denial of coverage, the court shall abate the action until the notice of intent to bring an action has been provided and, if requested by the association, the dispute has been submitted to alternative dispute resolution, in accordance with this section.

(g) A moderated settlement conference under this section may be conducted by a panel consisting of one or more impartial third parties.

(h) If the association requests mediation under this section, the claimant and the association are responsible in equal shares for paying any costs incurred or charged in connection with the mediation.

(i) If the association requests mediation under this section, and the claimant and the association are able to agree on a mediator, the mediator is the mediator agreed to by the claimant and the association. If the claimant and the association are unable to agree on a mediator, the commissioner shall select a mediator from a roster of qualified mediators maintained by the department. The department may:

(1) require mediators to register with the department as a condition of being placed on the roster; and

(2) charge a reasonable registration fee to defray the cost incurred by the department in maintaining the roster and the commissioner in selecting a mediator under this section.

(j) The commissioner shall establish rules to implement this section, including provisions for expediting alternative dispute resolution, facilitating the ability of a claimant to appear with or without counsel, establishing qualifications necessary for mediators to be placed on the roster maintained by the department under Subsection (i), and providing that formal rules of evidence shall not apply to the proceedings.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

Sec. 2210.576. ISSUES BROUGHT TO SUIT; LIMITATIONS ON RECOVERY. (a) The only issues a claimant may raise in an action brought against the association under Section 2210.575 are:

(1) whether the association's denial of coverage was proper; and

(2) the amount of the damages described by Subsection (b) to which the claimant is entitled, if any.

(b) Except as provided by Subsections (c) and (d), a claimant that brings an action against the association under Section 2210.575 may recover only:

(1) the covered loss payable under the terms of the association policy less, if applicable, the amount of loss already paid by the association for any portion of a covered loss for which the association accepted coverage;

(2) prejudgment interest from the first day after the

date specified in Section 2210.5731 by which the association was or would have been required to pay an accepted claim or the accepted portion of a claim, at the prejudgment interest rate provided in Subchapter B, Chapter 304, Finance Code; and

(3) court costs and reasonable and necessary attorney's fees.

(c) Nothing in this chapter, including Subsection (b), may be construed to limit the consequential damages, or the amount of consequential damages, that a claimant may recover under common law in an action against the association.

(d) A claimant that brings an action against the association under Section 2210.575 may, in addition to the covered loss described by Subsection (b)(1) and any consequential damages recovered by the claimant under common law, recover damages in an amount not to exceed the aggregated amount of the covered loss described by Subsection (b)(1) and the consequential damages recovered under common law if the claimant proves by clear and convincing evidence that the association mishandled the claimant's claim to the claimant's detriment by intentionally:

(1) failing to meet the deadlines or timelines established under this subchapter without good cause, including the applicable deadline established under Section 2210.5731 for payment of an accepted claim or the accepted portion of a claim;

(2) disregarding applicable guidelines published by the commissioner under Section 2210.578(f);

(3) failing to provide the notice required under Section 2210.573(d);

(4) rejecting a claim without conducting a reasonable investigation with respect to the claim; or

(5) denying coverage for a claim in part or in full if the association's liability has become reasonably clear as a result of the association's investigation with respect to the portion of the claim that was denied.

(e) For purposes of Subsection (d), "intentionally" means actual awareness of the facts surrounding the act or practice listed in Subsection (d)(1), (2), (3), (4), or (5), coupled with the specific intent that the claimant suffer harm or damages as a result

of the act or practice. Specific intent may be inferred from objective manifestations that the association acted intentionally or from facts that show that the association acted with flagrant disregard of the duty to avoid the acts or practices listed in Subsection (d)(1), (2), (3), (4), or (5).

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

Sec. 2210.577. LIMITATIONS PERIOD. (a) Notwithstanding any other law, a claimant who brings an action against the association under Section 2210.575 must bring the action not later than the second anniversary of the date on which the person receives a notice described by Section 2210.573(d)(2) or (3).

(b) This section is a statute of repose and controls over any other applicable limitations period.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

Sec. 2210.578. EXPERT PANEL. (a) The commissioner shall appoint a panel of experts to advise the association concerning the extent to which a loss to insurable property was incurred as a result of wind, waves, tidal surges, or rising waters not caused by waves or surges. The panel shall consist of a number of experts to be decided by the commissioner. The commissioner shall appoint one member of the panel to serve as the presiding officer of the panel.

(b) Members of the panel must have professional expertise in, and be knowledgeable concerning, the geography and meteorology of the Texas seacoast territory, as well as the scientific basis for determining the extent to which damage to property is caused by wind, waves, tidal surges, or rising waters not caused by waves or surges.

(c) The panel shall meet at the request of the commissioner or the call of the presiding officer of the panel.

(d) The panel shall investigate, collect, and evaluate the information necessary to provide recommendations under Subsection (e). The cost and expense incurred by the panel associated with the work of the panel under this section shall be paid or reimbursed

by the association.

(e) At the request of the commissioner, the panel shall recommend to the commissioner methods or models for determining the extent to which a loss to insurable property may be or was incurred as a result of wind, waves, tidal surges, or rising waters not caused by waves or surges for geographic areas or regions designated by the commissioner.

(f) After consideration of the recommendations made by the panel under Subsection (e), the commissioner shall publish guidelines that the association will use to settle claims.

(g) A member of the panel is not individually liable for an act or failure to act in the performance of the official duties in connection with the individual's work on the panel.

(h) In any review of a claim under this subchapter, and in any action brought against the association under Section 2210.575, the guidelines published by the commissioner under Subsection (f) govern the claim and are presumed to be accurate and correct, unless clear and convincing evidence supports a deviation from the guidelines.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

Sec. 2210.579. CONSTRUCTION WITH OTHER LAW. (a) To the extent of any conflict between a provision of this subchapter and any other law, the provision of this subchapter prevails.

(b) Notwithstanding any other law, the association may not bring an action against a claimant, for declaratory or other relief, before the 180th day after the date an appraisal under Section 2210.574, or alternate dispute resolution under Section 2210.575, is completed.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

Sec. 2210.580. RULEMAKING. (a) The commissioner shall adopt rules regarding the provisions of this subchapter, including rules concerning:

(1) qualifications and selection of appraisers for the

appraisal procedure, mediators for the mediation process, and members of the expert panel;

(2) procedures and deadlines for the payment and handling of claims by the association as well as the procedures and deadlines for a review of a claim by the association;

(3) notice of expert panel meetings and the transparency of deliberations of the panel; and

(4) any other matters regarding the handling of claims that are not inconsistent with this subchapter.

(b) All rules adopted by the commissioner under this section shall promote the fairness of the process, protect the rights of aggrieved policyholders, and ensure that policyholders may participate in the claims review process without the necessity of engaging legal counsel.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

Sec. 2210.581. COMMISSIONER EXTENSION OF DEADLINES.

(a) Subject to Subsection (b), the commissioner, on a showing of good cause, may by rule:

(1) extend any deadline established under this subchapter; and

(2) set the length of the extension.

(b) With reference to deadlines applicable to the association only, all deadline extensions related to claims arising from an occurrence may not exceed 120 days in the aggregate. This subsection does not affect the extension of a deadline applicable to a claimant or to both the association and a claimant.

(c) For the purposes of Subsection (a), "good cause" includes military deployment.

(d) The commissioner shall adopt rules as necessary to implement this section. Section 2001.0045, Government Code, does not apply to rules adopted under this section.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 140 (H.B. 1944), Sec. 1, eff.

September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 790 (H.B. 1900), Sec. 10, eff. June 10, 2019.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 12.002, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 12.003, eff. September 1, 2021.

Sec. 2210.582. OMBUDSMAN PROGRAM. (a) The department shall establish an ombudsman program to provide information and educational programs to assist persons insured under this chapter with the claim processes under this subchapter.

(b) Not later than March 1 of each year, the department shall prepare and submit to the commissioner a budget for the ombudsman program, including approval of all expenditures incurred in administering and operating the program. The commissioner shall adopt or modify and adopt the budget not later than April 1 of the year in which the budget is submitted.

(c) Not later than May 1 of each year, the association shall transfer to the ombudsman program money in an amount equal to the amount of the budget adopted under Subsection (b). The ombudsman program, not later than April 30 of each year, shall return to the association any unexpended funds that the program received from the association in the previous year.

(d) The department shall, not later than 60 days after the date of a catastrophic event, prepare and submit an amended budget to the commissioner for approval and report to the commissioner the approximate number of claimants eligible for ombudsman services. The commissioner shall adopt rules as necessary to implement an amended budget submitted under this section, including rules regarding the transfer of additional money from the association to the program.

(e) The ombudsman program may provide to persons insured under this chapter information and educational programs through:

- (1) informational materials;
- (2) toll-free telephone numbers;
- (3) public meetings;

- (4) outreach centers;
- (5) the Internet; and
- (6) other reasonable means.

(f) The ombudsman program is administratively attached to the department. The department shall provide the staff, services, and facilities necessary for the ombudsman program to operate, including:

- (1) administrative assistance and service, including budget planning and purchasing;
- (2) personnel services;
- (3) office space; and
- (4) computer equipment and support.

(g) The ombudsman program shall prepare and make available to each person insured under this chapter information describing the functions of the ombudsman program.

(h) The association, in the manner prescribed by the commissioner by rule, shall notify each person insured under this chapter concerning the operation of the ombudsman program.

(i) The commissioner may adopt rules as necessary to implement this section.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

SUBCHAPTER M. PUBLIC SECURITIES PROGRAM

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 in certain designated portions of the state is for the benefit of the public and in furtherance of a public purpose.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Sec. 2210.602. DEFINITIONS. In this subchapter:

(1) "Authority" means the Texas Public Finance Authority.

(1-a) "Board" means the board of directors of the

Texas Public Finance Authority.

(1-b) "Catastrophic event" means an occurrence or a series of occurrences that occurs in a catastrophe area during a calendar year and that results in insured losses and operating expenses of the association in excess of premium and other revenue of the association.

(2) "Class 1 public securities" means public securities authorized to be issued by Section [2210.072](#), including a commercial paper program authorized before the occurrence of a catastrophic event.

(2-a) "Class 1 public security trust fund" means the dedicated trust fund established by the board and held by the Texas Treasury Safekeeping Trust Company into which premium surcharges collected under Section [2210.612](#) for the purpose of paying Class 1 public securities are deposited.

(3) "Class 2 public securities" means public securities authorized to be issued on or after the occurrence of a catastrophic event by Section [2210.073](#).

(3-a) "Class 2 public security trust fund" means the dedicated trust fund established by the board and held by the Texas Treasury Safekeeping Trust Company into which premium surcharges collected under Section [2210.613](#) for the purpose of paying Class 2 public securities are deposited.

(4) "Class 3 public securities" means public securities authorized to be issued on or after the occurrence of a catastrophic event by Section [2210.0741](#).

(4-a) "Class 3 public security trust fund" means the dedicated trust fund established by the board and held by the Texas Treasury Safekeeping Trust Company into which premium surcharges collected under Section [2210.6131](#) for the purpose of paying Class 3 public securities are deposited.

(5) "Credit agreement" has the meaning assigned by Chapter [1371](#), Government Code.

(5-a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 615 , Sec. 31(2), eff. September 1, 2015.

(6) Repealed by Acts 2015, 84th Leg., R.S., Ch. 615 , Sec. 31(2), eff. September 1, 2015.

(6-b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 615 , Sec. 31(2), eff. September 1, 2015.

(6-c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 615 , Sec. 31(2), eff. September 1, 2015.

(7) "Public security" means a debt instrument or other public security issued by the Texas Public Finance Authority.

(8) "Public security administrative expenses" means expenses incurred to administer public securities issued under this subchapter, including fees for credit enhancement, paying agents, trustees, and attorneys, and for other professional services.

(9) "Public security obligations" means the principal of a public security and any premium and interest on a public security issued under this subchapter, together with any amount owed under a related credit agreement.

(10) Repealed by Acts 2015, 84th Leg., R.S., Ch. 615 , Sec. 31(2), eff. September 1, 2015.

(11) "Public security resolution" means the resolution or order authorizing public securities to be issued under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. [4409](#)), Sec. 41, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. [3](#)), Sec. 42, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. [900](#)), Sec. 21, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. [900](#)), Sec. 31(2), eff. September 1, 2015.

Sec. 2210.603. APPLICABILITY OF OTHER LAWS. (a) The board shall issue the public securities as described by Section [2210.604](#) in accordance with and subject to the requirements of Chapter [1232](#), Government Code, other than Section 1232.108 of that chapter, and in accordance with and subject to other provisions of Title 9, Government Code, that apply to issuance of a public security by a state agency. In the event of a conflict, this subchapter controls.

(b) A purpose for which public securities are issued under this chapter constitutes an eligible project for purposes of Chapter 1371, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Sec. 2210.604. ISSUANCE OF PUBLIC SECURITIES AUTHORIZED.

(a) At the request of the association and with the approval of the commissioner, the Texas Public Finance Authority shall issue Class 1, Class 2, or Class 3 public securities. The association shall submit to the commissioner a cost-benefit analysis of various financing methods and funding structures when requesting the issuance of public securities under this subsection.

(a-1) The association and the commissioner must approve each tranche of commercial paper issued under a commercial paper program established under this chapter.

(b) The association shall specify in the association's request to the board the maximum principal amount of the public securities and the maximum term of the public securities.

(c) The principal amount determined by the association under Subsection (b) may be increased to include an amount sufficient to:

(1) pay the costs related to issuance of the public securities;

(2) provide a public security reserve fund;

(3) capitalize interest for the period determined necessary by the association, not to exceed two years; and

(4) provide the amount of debt service coverage for public securities determined by the association, in consultation with the authority, to be required for the issuance of marketable public securities.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 43, eff. September 28, 2011.

Sec. 2210.605. TERMS OF ISSUANCE. (a) The board shall determine the method of sale, type and form of public security, maximum interest rates, and other terms of the public securities that, in the board's judgment, best achieve the goals of the association and effect the borrowing at the lowest practicable cost. The board may enter into a credit agreement in connection with the public securities.

(b) Public securities must be issued by the board on behalf of the association.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 615 , Sec. 31(3), eff. September 1, 2015.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 44, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 31(3), eff. September 1, 2015.

Sec. 2210.606. ADDITIONAL COVENANTS. The board may make additional covenants with respect to the public securities and the designated income and receipts of the association pledged to their payment, and provide for the flow of funds and the establishment, maintenance, and investment of funds and accounts with respect to the public securities, and the administration of those funds and accounts, as provided in the proceedings authorizing the public securities.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Sec. 2210.607. PUBLIC SECURITY PROCEEDS. The proceeds of public securities issued by the board under this subchapter may be deposited with the Texas Treasury Safekeeping Trust Company.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Sec. 2210.608. USE OF PUBLIC SECURITY PROCEEDS.

(a) Public security proceeds, including investment income, shall be held in trust for the exclusive use and benefit of the association. The association may use the proceeds to:

(1) pay incurred claims and operating expenses of the association;

(2) purchase reinsurance for the association;

(3) pay the costs of issuing the public securities, and public security administrative expenses, if any;

(4) provide a public security reserve;

(5) pay capitalized interest and principal on the public securities for the period determined necessary by the association;

(6) pay private financial agreements entered into by the association as temporary sources of payment of losses and operating expenses of the association; and

(7) reimburse the association for any cost described by Subdivisions (1)-(6) paid by the association before issuance of the public securities.

(b) Any excess public security proceeds remaining after the purposes for which the public securities were issued are satisfied may be used to purchase or redeem outstanding public securities. If there are no outstanding public security obligations or public security administrative expenses, the excess proceeds shall be transferred to the catastrophe reserve trust fund.

(c) Notwithstanding Subsection (a)(2), the proceeds from public securities issued under Section 2210.072 before an occurrence or series of occurrences that results in incurred losses, including investment income, may not be used to purchase reinsurance for the association.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 45, eff. September 28, 2011.

Sec. 2210.609. REPAYMENT OF ASSOCIATION'S PUBLIC SECURITY

OBLIGATIONS. (a) The board and the association shall enter into an agreement under which the association shall provide for the payment of all public security obligations from available funds collected by the association and deposited as required by this subchapter. If the association determines that it is unable to pay the public security obligations and public security administrative expenses, if any, with available funds, the association shall pay those obligations and expenses in accordance with Sections [2210.612](#), [2210.613](#), and [2210.6131](#) as applicable. Class 1, Class 2, or Class 3 public securities may be issued on a parity or subordinate lien basis with other Class 1, Class 2, or Class 3 public securities, respectively.

(b) If any public securities issued under this chapter are outstanding, the authority shall notify the association of the amount of the public security obligations and the estimated amount of public security administrative expenses, if any, each calendar year in a period sufficient, as determined by the association, to permit the association to determine the availability of funds and assess a premium surcharge if necessary.

(c) The association shall deposit all revenue collected under Section [2210.612](#) in the Class 1 public security trust fund, all revenue collected under Section [2210.613](#) in the Class 2 public security trust fund, and all revenue collected under Section [2210.6131](#) in the Class 3 public security trust fund. Money deposited in a fund may be invested as permitted by general law. Money in a fund required to be used to pay public security obligations and public security administrative expenses, if any, shall be transferred to the appropriate funds in the manner and at the time specified in the proceedings authorizing the public securities to ensure timely payment of obligations and expenses. This may include the board establishing funds and accounts with the comptroller that the board determines are necessary to administer and repay the public security obligations. If the association has not transferred amounts sufficient to pay the public security obligations to the board's designated interest and sinking fund in a timely manner, the board may direct the Texas Treasury Safekeeping Trust Company to transfer

from the Class 1 public security trust fund, the Class 2 public security trust fund, or the Class 3 public security trust fund to the appropriate account the amount necessary to pay the public security obligation.

(d) The association shall provide for the payment of the public security obligations and the public security administrative expenses by irrevocably pledging revenues received from premiums, premium surcharges, and amounts on deposit in the Class 1 public security trust fund, the Class 2 public security trust fund, and the Class 3 public security trust fund, together with any public security reserve fund, as provided in the proceedings authorizing the public securities and related credit agreements.

(e) An amount owed by the board under a credit agreement shall be payable from and secured by a pledge of revenues received by the association from the Class 1 public security trust fund, the Class 2 public security trust fund, and the Class 3 public security trust fund to the extent provided in the proceedings authorizing the credit agreement.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 46, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 22, eff. September 1, 2015.

Sec. 2210.610. PUBLIC SECURITY PAYMENTS. (a) Revenues received from the premium surcharges under Sections 2210.612, 2210.613, and 2210.6131 may be applied only as provided by this subchapter.

(b) The association may pay public security obligations with other legally available funds.

(c) Public security obligations are payable only from sources provided for payment in this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 47, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 23, eff. September 1, 2015.

Sec. 2210.611. EXCESS REVENUE COLLECTIONS AND INVESTMENT EARNINGS. Revenue collected in any calendar year from a premium surcharge under Sections 2210.612, 2210.613, and 2210.6131 that exceeds the amount of the public security obligations and public security administrative expenses payable in that calendar year and interest earned on the funds may, in the discretion of the association, be:

(1) used to pay public security obligations payable in the subsequent calendar year, offsetting the amount of the premium surcharge that would otherwise be required to be levied for the year under this subchapter;

(2) used to redeem or purchase outstanding public securities; or

(3) deposited in the catastrophe reserve trust fund.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 48, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 24, eff. September 1, 2015.

Sec. 2210.612. PAYMENT OF CLASS 1 PUBLIC SECURITIES.

(a) The association shall pay Class 1 public securities issued under Section 2210.072 from:

(1) net premium and other revenue; and

(2) if net premium and other revenue are not sufficient to pay the securities, a catastrophe area premium surcharge collected in accordance with this section.

(b) On approval by the commissioner, the association shall assess, as provided by this section, a premium surcharge to each policyholder of a policy described by Subsection (c). The premium

surcharge must be set in an amount sufficient to pay, for the duration of the issued public securities, all debt service not already covered by available funds and all related expenses on the public securities.

(c) The premium surcharge under this section shall be assessed on all policyholders of association policies issued under this chapter.

(d) 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 by a policyholder to pay the surcharge constitutes failure to pay premium for purposes of policy cancellation.

(e) The association may enter financing arrangements as described by Section 2210.072(d) as necessary to obtain public securities issued under Section 2210.072. Nothing in this subsection shall prevent the authorization and creation of one or more programs for the issuance of commercial paper before the date of an occurrence or series of occurrences that results in insured losses under Section 2210.072(a).

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 49, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 25, eff. September 1, 2015.

Sec. 2210.613. PAYMENT OF CLASS 2 PUBLIC SECURITIES.

(a) The association shall pay Class 2 public securities issued under Section 2210.073 from:

- (1) net premium and other revenue; and
- (2) if net premium and other revenue are not sufficient to pay the securities, a catastrophe area premium surcharge collected in accordance with this section.

(b) On approval by the commissioner, the association shall assess, as provided by this section, a premium surcharge to each policyholder of a policy described by Subsection (c). The premium

surcharge must be set in an amount sufficient to pay, for the duration of the issued public securities, all debt service not already covered by available funds and all related expenses on the public securities.

(c) The premium surcharge under this section shall be assessed on all policyholders of association policies issued under this chapter.

(d) 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 by a policyholder to pay the surcharge constitutes failure to pay premium for purposes of policy cancellation.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 50, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 26, eff. September 1, 2015.

Sec. 2210.6131. PAYMENT OF CLASS 3 PUBLIC SECURITIES.

(a) The association shall pay Class 3 public securities issued under Section 2210.0741 from:

- (1) net premium and other revenue; and
- (2) if net premium and other revenue are not sufficient to pay the securities, a catastrophe area premium surcharge collected in accordance with this section.

(b) On approval by the commissioner, the association shall assess, as provided by this section, a premium surcharge to each policyholder of a policy described by Subsection (c). The premium surcharge must be set in an amount sufficient to pay, for the duration of the issued public securities, all debt service not already covered by available funds and all related expenses on the public securities.

(c) The premium surcharge under this section shall be assessed on all policyholders of association policies issued under this chapter.

(d) 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 by a policyholder to pay the surcharge constitutes failure to pay premium for purposes of policy cancellation.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 27, eff. September 1, 2015.

Sec. 2210.6132. CONTINGENT SOURCE OF PAYMENT FOR CLASS 2 AND CLASS 3 PUBLIC SECURITIES. (a) The commissioner may determine, in consultation with the board and the authority, that:

(1) the authority is unable to issue Class 2 or Class 3 public securities to be payable under Section 2210.613 or 2210.6131, as applicable; or

(2) the issuance of Class 2 or Class 3 public securities to be payable under Section 2210.613 or 2210.6131, as applicable, is financially unreasonable for the association.

(b) If the commissioner makes a determination under Subsection (a), the commissioner shall order the Class 2 or Class 3 public securities, as applicable, to be paid by a premium surcharge assessed by each insurer, the association, and the Texas FAIR Plan Association on all policyholders of policies that are in effect on or after the 180th day after the date the commissioner issues the order. The premium surcharge must be set in an amount sufficient to pay all debt service not already covered by available funds and all related expenses on the public securities.

(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 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.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 27, eff. September 1, 2015.

Sec. 2210.614. REFINANCING PUBLIC SECURITIES. The association may request the board to refinance any public securities issued in accordance with Subchapter B-1, whether Class 1, Class 2, or Class 3 public securities, with public securities payable from the same sources as the original public securities.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Sec. 2210.615. SOURCE OF PAYMENT; STATE DEBT NOT CREATED.

(a) A public security or credit agreement is payable solely from revenue as provided by this subchapter.

(b) A public security issued under this subchapter, and any related credit agreement, is not a debt of this state or any state agency or political subdivision of this state, and does not constitute a pledge of the faith and credit of this state or any state agency or political subdivision of this state.

(c) Each public security, and any related credit agreement, issued under this subchapter must state on the security's face that:

(1) neither the state nor a state agency, political corporation, or political subdivision of the state is obligated to pay the principal of or interest on the public security except as provided by this subchapter; and

(2) neither the faith and credit nor the taxing power of the state or any state agency, political corporation, or

political subdivision of the state is pledged to the payment of the principal of or interest on the public security.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Sec. 2210.616. STATE NOT TO IMPAIR PUBLIC SECURITY OBLIGATIONS. (a) The state pledges for the benefit and protection of financing parties, the board, and the association that the state will not take or permit any action that would:

(1) impair the collection of premium surcharges or the deposit of those funds into the applicable trust fund;

(2) reduce, alter, or impair the premium surcharges to be imposed, collected, and remitted to financing parties until the principal, interest, and premium, and any other charges incurred and contracts to be performed in connection with the related public securities, have been paid and performed in full; or

(3) in any way impair the rights and remedies of the public security owners until the public securities are fully discharged.

(b) A party issuing public securities under this subchapter may include the pledge described by Subsection (a) in any documentation relating to those securities.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 53, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 28, eff. September 1, 2015.

Sec. 2210.6165. PROPERTY RIGHTS. If public securities issued under this subchapter are outstanding, the rights and interests of the association, a successor to the association, any member of the association, or any member of the Texas FAIR Plan Association, including the right to impose, collect, and receive a premium surcharge authorized under this subchapter, are only contract rights until those revenues are first pledged for the

repayment of the association's public security obligations as provided by Section [2210.609](#).

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. [3](#)), Sec. 54, eff. September 28, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. [900](#)), Sec. 29, eff. September 1, 2015.

Sec. 2210.617. ENFORCEMENT BY MANDAMUS. A writ of mandamus and any other legal and equitable remedies are available to a party at interest to require the association or another party to fulfill an agreement and to perform functions and duties under:

- (1) this subchapter;
- (2) the Texas Constitution; or
- (3) a relevant public security resolution.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. [4409](#)), Sec. 41, eff. June 19, 2009.

Sec. 2210.618. EXEMPTION FROM TAXATION. A public security issued under this subchapter, any transaction relating to the public security, and profits made from the sale of the public security are exempt from taxation by this state or by a municipality or other political subdivision of this state.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. [4409](#)), Sec. 41, eff. June 19, 2009.

Sec. 2210.619. NO PERSONAL LIABILITY. The members of the association, members of the association board of directors, association employees, the board, the employees of the Texas Public Finance Authority, the commissioner, and department employees are not personally liable as a result of exercising the rights and responsibilities granted under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. [4409](#)), Sec. 41, eff. June 19, 2009.

Sec. 2210.620. AUTHORIZED INVESTMENTS. Public securities issued under this subchapter are authorized investments under:

- (1) Subchapter B, Chapter 424;
- (2) Subchapter C, Chapter 425; and
- (3) Sections 425.203-425.213.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

SUBCHAPTER N. LEGISLATIVE OVERSIGHT BOARD

Sec. 2210.651. DEFINITION. In this subchapter, "board" means the windstorm insurance legislative oversight board.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

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.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Sec. 2210.653. POWERS AND DUTIES OF BOARD. (a) The board shall:

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

(2) monitor windstorm insurance in this state, including:

(A) the adequacy of rates;

(B) the operation of the association; and

(C) the availability of coverage; and

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

(b) The board may request reports and other information from the department and the association as necessary to implement this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Sec. 2210.654. REPORT. (a) Not later than November 15 of each even-numbered year, the board shall report on the board's activities under Section 2210.653 to:

- (1) the governor;
- (2) the lieutenant governor; and
- (3) the speaker of the house of representatives.

(b) The report must include:

- (1) an analysis of any problems identified; and
- (2) recommendations for any legislative action necessary to address those problems and to foster stability, availability, and competition within the windstorm insurance industry.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

For expiration of this section, see Subsection (d).

Sec. 2210.655. TEMPORARY POWERS AND DUTIES OF BOARD; STUDY OF FUNDING AND FUNDING STRUCTURE. (a) The board shall:

- (1) gather information regarding:
 - (A) how the association's current funding and funding structure operate;
 - (B) how the catastrophic risk pools of other states operate; and
 - (C) other information that the board considers necessary to prepare the information required by Subsection (c); and
- (2) hold public meetings to hear testimony from experts, stakeholders, and other interested parties regarding recommendations and proposals for establishing and implementing sustainable funding and a sustainable funding structure for the association.

(b) The board may request reports and other information as necessary to implement this section from:

- (1) the department;
- (2) the association; and
- (3) experts, stakeholders, and other interested parties described by Subsection (a)(2).

(c) The board shall include in the report described by Section 2210.654 the board's findings regarding the current funding and funding structure of the association, problems with the funding and funding structure, and recommendations for legislative action related to the funding, funding structure, and sustainability of the association. The report must include:

- (1) an analysis of the current funding, funding structure, and sustainability of the association, including the association's reliance on debt and reinsurance; and

- (2) recommendations for legislative action necessary to:

- (A) address problems with the current funding and funding structure of the association; and

- (B) foster the stability and sustainability of the association.

(d) This section expires September 1, 2023.
Added by Acts 2021, 87th Leg., R.S., Ch. 147 (S.B. 1448), Sec. 3, eff. September 1, 2021.

SUBCHAPTER O. DEPOPULATION PROGRAM

Sec. 2210.701. DEPOPULATION PROGRAM. (a) The association shall administer, subject to commissioner approval, a depopulation program that encourages the transfer of association policies to insurers through the voluntary market or assumption reinsurance.

(b) An insurer engaged in the business of property and casualty insurance in this state may elect to participate in the depopulation program.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 30, eff. September 1, 2015.

Sec. 2210.702. ASSUMPTION REINSURANCE DEPOPULATION.

(a) The association shall make available to insurers who elect to participate in the depopulation program association policy information necessary for the insurers to determine whether to reinsure a policy ceded to the insurer by the association. The commissioner shall by rule establish the information that is necessary to provide to an insurer under this subsection.

(b) If an insurer elects to reinsure a policy under this section, the reinsurance must be provided as assumption reinsurance by novation and the insurer is legally and contractually responsible for the association policy ceded to the insurer on the effective date of the reinsurance agreement regardless of whether the association continues to provide some services on the policy. The association is not liable under the policy on and after the effective date of the assumption reinsurance agreement. Except as specifically provided in an agreement between the association and the insurer, the insurer shall administer the policy and process, adjust, and pay claims in accordance with the policy.

(c) If an insurer elects to provide reinsurance under this section, the insurer shall comply with the applicable provisions of Chapters 202 and 493.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 30, eff. September 1, 2015.

Sec. 2210.703. RENEWAL OF REINSURED POLICIES; COMPARABLE COVERAGE. (a) An insurer electing to offer a policy under Section 2210.702 shall offer a renewal of that policy to the association policyholder for each of the next three years subject to the insurer's rate and underwriting guidelines as filed under this code.

(b) An insurer may not offer a policy to an association policyholder under this section unless the policy contains generally comparable coverage and premiums to the association policy as determined by commissioner rule. The premiums for a policy of generally comparable coverage may not exceed 115 percent of the premiums for the association policy.

(c) Subchapter L-1 does not apply to a policy renewed under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 30, eff. September 1, 2015.

Sec. 2210.704. CONFIDENTIALITY OF INFORMATION; USE OF POLICYHOLDER'S AGENT. (a) An insurer may use information concerning a specific policy or insured provided by the association under Section 2210.702(a) only for the purposes of this subchapter and may not use or disclose the information for any other purpose.

(b) If an insurer elects to renew a policy for an association policyholder identified from information provided to the insurer under Section 2210.702, the insurer must offer the policy through the insurance agent of record for the association policyholder under the prevailing terms, conditions, and commissions of the agent.

(c) An insurer that offers to renew a policy under Section 2210.703 shall allow the policyholder's agent to enter into a limited service agreement with the insurer for the agent to continue to provide services to the policyholder.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 30, eff. September 1, 2015.

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

(1) the opportunity for the policyholder to opt out of the reinsurance agreement not more than 60 days after the policyholder receives notice of the reinsurance agreement;

(2) a transfer of the earned premium on a reinsured policy to a trust account to be held until the expiration of the opt-out period described by Subdivision (1) when the earned premium for the final reinsured policy will be transferred to the

reinsurer;

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

(4) any other requirements as the commissioner determines necessary for the protection of policyholders and the policyholders' agents.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 30, eff. September 1, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 16, eff. September 1, 2019.