

## BILL ANALYSIS

Senate Research Center  
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S.B. 1432  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Recently several issues have arisen with the state wind and hail insurance provider of last resort, the Texas Windstorm Insurance Association (TWIA). TWIA is a quasi-governmental agency that writes insurance in 14 coastal counties and parts of Harris County. Issues that arose as a result of the 2008 hurricanes, Ike and Dolly, revealed procedural flaws in the governing statute including internal processes for claims handling and general governance of the organization. There were also thousands of "slab claims," which involve claims where only a foundation remained after the storms. From these claims, questions were raised about coverage for losses from wind versus water, and whether TWIA ultimately overpaid insured for damage that may have been caused by water damage, which is not covered under TWIA policies.

S.B. 1432 addresses many of these issues, first by reorganizing TWIA and modernizing many of the processes that it has had in place for a decade or more, including processes relating to applications for insurance, claims processing and payment, and methods for determining the cause of damage to covered property. The bill also sets out specific directions for both TWIA and an insured for filing and appealing a claim after a storm. Additionally, S.B. 1432 requires certain covered properties to carry flood insurance in the same amount as windstorm coverage, which would lower the overall exposure for TWIA. Finally, the bill gives the commissioner of insurance rulemaking authority to implement sections of the bill, including binding arbitration procedures and rules.

As proposed, S.B. 1432 amends current law relating to the operation of the Texas Windstorm Insurance Association and to the resolution of certain disputes concerning claims made to that association.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 6 (Section 2210.202, Insurance Code), SECTION 10 (Section 2210.259, Insurance Code), SECTION 12 (Section 2210.356, Insurance Code), and SECTION 20 (Section 2210.553, Insurance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter A, Chapter 2210, Insurance Code, by adding Sections 2210.010 and 2210.011, as follows:

Sec. 2210.010. APPLICABILITY OF CERTAIN OTHER LAW. (a) Prohibits a person insured under this chapter from bringing an action against the Texas Windstorm Insurance Association (TWIA) under Chapter 541 (Unfair Methods of Competition and Unfair or Deceptive Acts or Practices).

(b) Provides that Chapter 542 (Processing and Settlement of Claims) does not apply to the processing and settlement of claims by TWIA.

Sec. 2210.011. CERTAIN CONDUCT IN DISPUTE RESOLUTION PROHIBITED. Prohibits a person insured under this chapter from presiding over a matter or action to which TWIA is a party, including by sitting as a judge or serving as an arbitrator.

SECTION 2. Amends Section 2210.104, Insurance Code, as follows:

Sec. 2210.104. New heading: OFFICERS; SALARIES AND BONUSES. (a) Creates this subsection from existing text. Makes no further changes to this subsection.

(b) Requires TWIA to post on TWIA's Internet website the salary of each officer of TWIA and any bonuses paid to an officer of TWIA.

SECTION 3. Amends Section 2210.105, Insurance Code, by amending Subsections (a) and (b) and adding Subsections (b-1) and (e), as follows:

(a) Requires TWIA, except for an emergency meeting, to:

(1) notify the Texas Department of Insurance (TDI) not later than the 11th day before the date of a meeting of the board of directors or of the members of TWIA; 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 TWIA's Internet website and TDI's Internet website.

(b) Provides that except for a closed meeting authorized by Subchapter D (Exceptions To Requirement That Meetings Be Open), Chapter 551, Government Code, a meeting of the board of directors or of the members of TWIA is open to the public, rather than the commissioner of insurance (commissioner) or the commissioner's designated representative and the public. Makes nonsubstantive changes.

(b-1) Provides that a meeting of the board of directors or the members of TWIA, including a closed meeting authorized by Subchapter D, Chapter 551, Government Code, is open to the commissioner or the commissioner's designated representative.

(e) Requires TWIA to broadcast live on TWIA's Internet website all meetings of the board of directors.

SECTION 4. Amends Section 2210.107, Insurance Code, as follows:

Sec. 2210.107. New heading: PRIMARY BOARD OBJECTIVES; REPORT. (a) Creates this subsection from existing text. Makes no further changes to this subsection.

(b) Requires TWIA, not later than June 1 of each year, to submit to the commissioner, the legislative oversight board established under Subchapter N (Legislative Oversight Board), 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) (relating to the primary objectives of the board of directors for TWIA) in the 12-month period immediately preceding the date of the report.

SECTION 5. Amends Subchapter C, Chapter 2210, Insurance Code, by adding Section 2210.108, as follows:

Sec. 2210.108. OPEN MEETINGS AND OPEN RECORDS. Provides that except as specifically provided by this chapter or another law, TWIA is subject to Chapters 551 (Open Meetings) and 552 (Public Information), Government Code.

SECTION 6. Amends Section 2210.202, Insurance Code, by adding Subsection (c) to require the commissioner to adopt rules to simplify and streamline the process through which a person who has an insurable interest in insurable property is authorized to apply with TWIA for

insurance coverage, and a person insured under this chapter is authorized to apply with TWIA for renewal of the person's insurance coverage.

SECTION 7. Amends Section 2210.203, Insurance Code, by amending Subsection (a-1) and adding Subsection (a-2), as follows:

(a-1) Prohibits TWIA, notwithstanding Subsection (a) (relating to requiring the association to direct the issuance of an insurance policy as provided by the plan of operation), if all or any part of the property to be insured, rather than to which this subsection applies, is located in Zone A or another similar zone with a high level of flood risk or in Zone V or another similar zone with an additional hazard associated with storm waves, as defined by the National Flood Insurance Program, from issuing an insurance policy for initial or renewal coverage unless evidence is submitted to TWIA that the property to be covered under the policy is also covered by a flood insurance policy issued under the National Flood Insurance Program. Provides that this subsection does not apply to property for which flood insurance is not available under the National Flood Insurance Program. Deletes existing text providing that 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. Makes nonsubstantive changes.

(a-2) Creates this subsection from existing text. Requires an agent offering or selling a Texas windstorm and hail insurance policy, rather than a Texas windstorm and hail insurance policy in any area designated by the commissioner under this subsection, to offer flood insurance coverage required under Subsection (a-1) to a prospective insured, if that coverage is available. Makes a nonsubstantive change.

SECTION 8. Amends the heading to Subchapter E, Chapter 2210, Insurance Code, to read as follows:

#### SUBCHAPTER E. INSURANCE COVERAGE; CLAIMS SETTLEMENT AND PAYMENT

SECTION 9. Amends Subchapter E, Chapter 2210, Insurance Code, by adding Sections 2210.205, 2210.210, 2210.211, and 2210.212, as follows:

Sec. 2210.205. **REQUIRED POLICY PROVISIONS: DEADLINE FOR FILING CLAIM; NOTICE CONCERNING ARBITRATION.** (a) Requires a windstorm and hail insurance policy issued by TWIA to:

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

(2) contain, in boldface type, a conspicuous notice concerning the mandatory arbitration of coverage and claim disputes under Section 2210.553, including the prerequisites and deadlines for requesting arbitration described by Sections 2210.212 and 2210.553.

(b) Authorizes the commissioner, on a showing of good cause by a person insured under this chapter, to extend the one-year period described by Subsection (a)(1) for a period not to exceed 90 days.

Sec. 2210.210. **COVERAGE OF CERTAIN STRUCTURES PROHIBITED.** Prohibits TWIA from issuing coverage for the following structures, regardless of whether the structure is otherwise insurable property under this chapter:

(1) a wind turbine;

(2) a structure used primarily as a casino or other gambling establishment;  
or

(3) a structure used as a sexually oriented business, as defined by Section 243.002 (Definition), Local Government Code.

Sec. 2210.211. PROOF OF OTHER COVERAGE REQUIRED FOR SETTLEMENT OF CERTAIN CLAIMS. (a) Provides that this section applies only to a claim filed under TWIA policy the issuance or renewal of which, under Section 2210.203(a-1), requires evidence of coverage by a flood insurance policy.

(b) Prohibits TWIA from paying or settling a claim described by Subsection (a) unless the person filing the claim provides evidence satisfactory to TWIA that, on the date of the loss that is the basis of the claim, the property insured under TWIA policy was also covered by a flood insurance policy in the amount required for issuance or renewal of TWIA policy under Section 2210.203(a-1).

Sec. 2210.212. NOTICE AND APPRAISAL OF CERTAIN CLAIMS. (a) Requires TWIA, not later than the 30th day after the date a person insured under this chapter files a claim with TWIA, to provide the person notice of whether the claim is accepted or denied and, if the claim is accepted, a written appraisal of the damage to the insured property.

(b) Authorizes a person who receives notice that a claim is denied, after providing TWIA the notice required by Subsection (f), to request binding arbitration under Section 2210.553.

(c) Requires the person, not later than the 60th day after the date TWIA provides a written appraisal under Subsection (a), to:

(1) accept the written appraisal and request payment of the person's claim in accordance with the appraisal; or

(2) request a supplemental review of the claim by TWIA.

(d) Requires TWIA, not later than the 30th day after the date of a request for a supplemental review under Subsection (c)(2), to:

(1) conduct the requested supplemental review and, if necessary, revise the written appraisal originally provided under Subsection (b) to reflect any changes resulting from the supplemental review; or

(2) notify the person who filed the claim that TWIA will not conduct the requested supplemental review.

(e) Authorizes the person who filed the claim, on receipt of the results of a supplemental review conducted under Subsection (d)(1), or notice under Subsection (d)(2) that TWIA will not conduct a supplemental review, to:

(1) accept the written appraisal following the supplemental review and request payment of the claim in accordance with that appraisal; or

(2) after providing TWIA the notice required under Subsection (f), dispute the written appraisal by requesting binding arbitration in the manner described by Section 2210.553.

(f) Requires the person, not later than the 30th day before the date a person requests binding arbitration under Section 2210.553, to provide TWIA with written notice of the person's intent to request binding arbitration. Requires that the notice provided under this subsection advise TWIA of each of the person's specific complaints concerning TWIA's denial of the claim or appraisal of the insured property, including the amount of damage that the person believes should have been but was not accounted for in any appraisal performed by TWIA.

(g) Requires the person who filed the disputed claim and TWIA, in addition to the notice required under Subsection (f), not later than the 30th day before the date of an arbitration under Section 2210.553, to submit to TDI all final offers of settlement concerning the disputed claim. Prohibits TDI, the person, and TWIA from disclosing the settlement offers received under this subsection to an arbitrator assigned under Section 2210.553.

SECTION 10. Amends Section 2210.259, Insurance Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Provides that a noncompliant residential structure insured by TWIA as of September 1, 2009, under Section 2210.251(f) (relating to authorizing a residential structure insured by the association to continue coverage subject to certain inspection requirements) that had been approved for insurability under the approval process regulations in effect on September 1, 2009, is subject to an annual premium surcharge in an amount determined under Subsection (c), rather than equal to 15 percent of the premium for insurance coverage obtained through TWIA.

(c) Requires the commissioner, after receiving a recommendation from the board concerning the amount of the annual premium surcharge required under Subsection (a), by rule to establish the amount of the annual premium surcharge. Provides that the amount of the surcharge is required to be actuarially justifiable and is prohibited from being less than 15 percent of the premium for insurance coverage obtained through TWIA. Requires the commissioner, before the commissioner by rule establishes the amount of the annual premium surcharge, to report to the legislative oversight board established under Subchapter N concerning the methodology the commissioner used to determine the amount of the annual premium surcharge.

SECTION 11. Amends Section 2210.355(g), Insurance Code, to require that a commission paid to an agent must be reasonable, adequate, not unfairly discriminatory, and nonconfiscatory and to comply with rules adopted by the commissioner under Section 2210.356.

SECTION 12. Amends Subchapter H, Chapter 2210, Insurance Code, by adding Section 2210.356, as follows:

Sec. 2210.356. AGENT COMMISSIONS. (a) Requires the commissioner by rule to establish a commission structure for payment of an agent who submits an application for coverage to TWIA on behalf of a person who has an insurable interest in insurable property.

(b) Requires that the commission structure adopted by the commissioner be fair and reasonable, taking into consideration the amount of work performed by an agent in submitting an application to TWIA and the prevailing commission structure in the private windstorm insurance market.

SECTION 13. Amends Section 2210.453, Insurance Code, by adding Subsection (c) to require the board, if TWIA does not purchase reinsurance as authorized by this section, not later than June 1 of each year, to 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 containing an actuarial plan for paying losses in the event of a catastrophe with estimated damages of \$2.5 billion or more.

SECTION 14. Amends Section 2210.501, Insurance Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Creates an exception to this subsection under Subsection (d). Makes no further changes.

(d) Prohibits the maximum liability limits for insurable property the issuance or renewal of coverage by TWIA of which requires evidence of coverage by a flood insurance policy under Section 2210.203(a-1) from exceeding the maximum liability limits in effect for the property under the National Flood Insurance Program on the date that the TWIA policy is issued.

SECTION 15. Amends Section 2210.502, Insurance Code, by adding Subsection (e) to prohibit the board of directors from proposing, and the commissioner from approving, maximum liability limits for insurable property described by Section 2210.501(d), and for the corporeal movable property located in or about that property, that exceed the maximum liability limits in effect for the property or contents under the National Flood Insurance Program.

SECTION 16. Amends the heading to Subchapter L, Chapter 2210, Insurance Code, to read as follows:

SUBCHAPTER L. APPEALS AND OTHER ACTIONS; ARBITRATION

SECTION 17. Amends Sections 2210.551(a) and (b), Insurance Code, as follows:

(a) Provides that this section:

(1) does not apply to a person insured under this chapter who is required to resolve a dispute concerning the payment of, the amount of, or the denial of a particular claim under Section 2210.553; 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.

Makes nonsubstantive changes.

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

SECTION 18. Amends the heading to Section 2210.552, Insurance Code, to read as follows:

Sec. 2210.552. DISPUTES OTHER THAN CLAIM AND COVERAGE DISPUTES; VENUE.

SECTION 19. Amends Section 2210.552, Insurance Code, by amending Subsection (a) and adding Subsection (e), as follows:

(a) Authorizes a person insured under this chapter, except as provided by Sections 2210.007 (Immunity From Liability in General), 2210.106 (Immunity of Director or Officer From Liability), and 2210.553 who is aggrieved by an act, ruling, or decision of TWIA, rather than an act, ruling, or decision of TWIA relating to the payment of, the amount of, or the denial of a claim, to:

(1) bring an action against TWIA, rather than bring an action against TWIA, including an action under Chapter 541; or

(2) appeal the act, ruling, or decision under Section 2210.551 (Appeals).

(e) Provides that a person who brings an action against TWIA under this section:

- (1) is authorized to recover the amount of actual damages, plus court costs and reasonable and necessary attorney's fees; and
- (2) is prohibited from recovering punitive or exemplary damages, including damages under Section 17.50 (Relief for Consumers), Business & Commerce Code.

SECTION 20. Amends Subchapter L, Chapter 2210, Insurance Code, by adding Sections 2210.553, 2210.554, and 2210.555, as follows:

Sec. 2210.553. ARBITRATION OF COVERAGE AND CLAIM DISPUTES. (a) Provides that a dispute involving an act, ruling, or decision of TWIA relating to the payment of, the amount of, or the denial of a particular claim:

- (1) is required to be resolved through binding arbitration in accordance with this section; and
  - (2) is prohibited from being resolved in the manner described by Section 2210.551 or 2210.552.
- (b) Authorizes a person insured under this chapter who is aggrieved by an act, ruling, or decision of TWIA relating to the payment of, the amount of, or the denial of a claim to request binding arbitration of the person's grievance.
- (c) Requires a person insured under this chapter, in the manner prescribed by the commissioner by rule, to request binding arbitration under this section not later than the earlier of:
- (1) the 90th day after the date the person receives under Section 2210.212 notice from TWIA that a claim is denied or receives notice concerning a supplemental review requested under Section 2210.212(c); or
  - (2) the second anniversary of the date on which the damage or loss that is the basis of the particular claim occurs.
- (d) Authorizes the commissioner, on a showing of good cause by a person insured under this chapter, to extend each of the deadlines described by Subsection (c) by a period not to exceed 90 days.
- (e) Requires the commissioner by rule to establish procedures for the conduct of the arbitration of grievances under this section. Requires that the rules adopted under this subsection:
- (1) be consistent with any applicable rules of the American Arbitration Association that were in effect on the date on which the policy under which the denied claim is filed was issued;
  - (2) establish the qualifications necessary for an arbitrator to become certified to conduct arbitrations under this section, including prohibiting a person to whom Section 2210.011 applies from serving as an arbitrator under this section;
  - (3) establish a procedure through which arbitrators may become certified to conduct arbitrations under this section;
  - (4) require an arbitrator conducting an arbitration under this section to be certified by TDI;
  - (5) provide that the commissioner will randomly assign a certified arbitrator to conduct an arbitration under this section;

(6) establish a procedure through which a certified arbitrator's fees under this section are paid, including the maximum allowable rate for those fees, which party or parties are liable for the payment of those fees, and the manner in which an arbitrator may seek the commissioner's approval of those fees;

(7) establish the parameters for mandatory and permissible discovery for an arbitration under this section; and

(8) establish deadlines for an arbitration conducted under this section and require an arbitrator conducting an arbitration under this section to issue a scheduling order in accordance with those deadlines.

(f) Authorizes a person insured under this chapter or TWIA, if either party is not satisfied with the commissioner's assignment of an arbitrator under Subsection (e)(5), not later than the 10th day after the date of assignment, to request that the commissioner randomly assign a different arbitrator to the dispute. Authorizes each party to request one reassignment under this section, and requires the commissioner to grant a request for reassignment authorized under this subsection.

(g) Requires that the procedure established by the commissioner under Subsection (e)(6) require that an arbitrator's fees be approved by the commissioner before those fees are paid.

(h) Authorizes the commissioner, in addition to the rules required under Subsection (e), to adopt any other rules necessary to implement this section, including rules that are specific to a particular storm or particular period and are intended to prevent unfair deviations in, and to encourage fairness in, arbitration awards under this section.

(i) Requires TDI to maintain and make publicly available a list of arbitrators certified to conduct arbitrations under this section.

(j) Provides that except to the extent of any conflict with this section, Chapter 171 (General Arbitration), Civil Practice and Remedies Code, applies to an arbitration conducted under this section.

(k) Authorizes a person insured under this chapter who requests binding arbitration under this section to be represented by an attorney.

Sec. 2210.554. ARBITRATION AWARDS; ATTORNEY'S FEES. (a) Authorizes the person insured under this chapter, if, after an arbitration under Section 2210.553, the arbitrator awards damages to a person insured under this chapter in an amount that is 110 percent or more of the final offer of settlement from TWIA, to also recover from TWIA reasonable and necessary attorney's fees.

(b) Authorizes an arbitrator who awards damages to the person insured under this chapter to assess interest on the damage recovery owed the insured, at a rate of six percent per annum from the date of loss through the date of payment of the arbitration award by TWIA.

Sec. 2210.555. ABATEMENT OF ARBITRATION. (a) Authorizes TWIA, not later than the 30th day after the date a person requests binding arbitration under Section 2210.553, to request from the commissioner an abatement of the arbitration if TWIA does not receive the notice required under Section 2210.212(f).



(b) Requires the commissioner to abate a requested arbitration if the commissioner finds that a person insured under this chapter did not provide the notice required under Section 2210.212(f).

(c) Provides that an abatement under this section continues until the 30th day after the date notice is provided in compliance with Section 2210.212(f).

SECTION 21. Repealer: Section 2210.551(e) (relating to a hearing on a act to be held in the county in which the insured property is located or in Travis County), Insurance Code.

SECTION 22. Makes application of this Act only to a Texas windstorm and hail insurance policy, and a dispute arising under a Texas windstorm and hail insurance policy, delivered, issued for delivery, or renewed by TWIA on or after the 30th day after the effective date of this Act, prospective to the 30th day after the effective date of this Act.

SECTION 23. Requires TWIA to amend TWIA's plan of operation to conform to the changes in law made by this Act not later than January 1, 2012.

SECTION 24. Effective date: upon passage or September 1, 2011.