

BILL ANALYSIS

Senate Research Center

S.B. 1740
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Business & Commerce
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Windstorm Insurance Association (TWIA) is a pool of all property and casualty insurance companies authorized to write coverage in Texas. TWIA is the provider of last resort of basic wind and hail insurance coverage for Gulf Coast property owners who might otherwise be left uninsured.

As proposed, S.B. 1740 amends current law relating to the Texas Windstorm Insurance Association.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter L, Chapter 2210, Insurance Code, as follows:

SUBCHAPTER L. APPEALS AND OTHER ACTIONS

Sec. 2210.551. New heading: APPEAL BY THE ASSOCIATION. (a) Redesignates existing Subsection (c) as Subsection (a). Authorizes Texas Windstorm Insurance Association (TWIA), if TWIA is aggrieved by the action of the commissioner of insurance (commissioner) with respect to a ruling, order, or determination of the commissioner, to, 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.

(b) Redesignates existing Subsection (d) as Subsection (b). Requires the commissioner to, on 10 days' written notice of the time and place of the hearing, conduct a hearing on TWIA request or the appeal from an act, ruling, or decision of TWIA, not later than the 30th day after the date of receipt of the request or appeal.

(c) Redesignates existing Subsection (f) as Subsection (c). Requires the commissioner, not later than the 30th day after the date of the hearing, to affirm, reverse, or modify the commissioner's previous action or the act, ruling, or decision appealed to the commissioner. Authorizes the commissioner, pending the hearing and decision, to suspend or postpone the effective date of the previous action or of the act, ruling, or decision appealed to the commissioner.

(d) Redesignates existing Subsection (g) as Subsection (d). Authorizes TWIA, rather than TWIA or person or entity aggrieved by the order or decision of the commissioner, to appeal to a district court in the county in which the covered property is located or a district court in Travis County.

(e) Redesignates existing Subsection (h) as Subsection (e). Provides that an action brought under this section is subject to the procedures established under Subchapter D (Judicial Review), Chapter 36 (Department Rules and Procedures).

Deletes existing Subsection (a) providing that this section applies to a person injured under this chapter or an authorized representative of the person or an affected insurer. Deletes existing Subsection (b) authorizing a person or entity described by Subsection (a) who is aggrieved by an act, ruling, or decision of TWIA to appeal to the commissioner not later than the 30th day after the date of that act, ruling, or decision. Deletes existing Subsection (e) requiring that a hearing on an act, ruling, or decision of the association relating to the payment of, the amount of, or the denial of a particular claim be held, at the request of the claimant, in the county in which the insured property is located or in Travis County.

Sec. 2210.552. New heading: DEFINITIONS. Defines, in this section, "damages." Deletes existing text authorizing a person insured under this chapter, except as provided by Sections 2210.007 (Immunity from Liability in General) and 2210.106 (Immunity of Director or Officer from Liability), 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 bring an action against TWIA, including an action under Chapter 541 or appeal the act, ruling, or decision under Section 2210.551; prohibits a person from proceeding under both Section 2210.551 (Appeals) and this section for the same act, ruling, or decision; providing that except as provided by Subsection (d), venue in an action brought under this section, including an action under Chapter 541 (Unfair Methods of Competition and Unfair or Deceptive Acts or Practices), against TWIA is in the county in which the insured property is located or in a district court in Travis County; provides that a venue in an action, including an action under Chapter 541, brought under this section in which the claimant joins the Texas Department of Insurance as a party to the action is only in a district court in Travis County.

Sec. 2210.553. APPEALS TO BOARD OF DIRECTORS. Authorizes a person aggrieved by a decision of TWIA relating to eligibility for or amount of benefits payable to the person, or for damages claimed by a person related to the eligibility for or amount of benefits payable to a person to appeal the decision to the executive director. Requires that an appeal to the executive director be filed no more than 30 days after the date of the decision is made for which review is sought. Provides that this subchapter provides the sole remedy for the aggrieved person.

Sec. 2210.554. HEARING BY STATE OFFICE OF ADMINISTRATIVE HEARINGS. Requires the executive director or a person designated by the executive director to refer an appeal under this section to the State Office of Administrative Hearings (SOAH) to conduct a hearing as provided by Chapter 2001 (Administrative Procedure), Government Code.

Sec. 2210.555. CONTESTED CASE. Provides that an appeal under this section is a contested case as defined by Chapter 2001, Government Code. Provides that an aggrieved person appealing a decision under this section has the burden of proof on all issues, including any affirmative defense.

Sec. 2210.556. FINAL DECISION. Provides that a decision by SOAH is final within the meaning of Sec. 2210.557.

Sec. 2210.557. NEGOTIATED SETTLEMENT. (a) Authorizes TWIA and a person aggrieved by a decision of TWIA, notwithstanding this Section, to at any time informally negotiate a settlement of a claim.

(b) Requires that a negotiated settlement be approved by the board of directors if the settlement amount is in excess of \$25,000, or includes consideration for attorney fees.

(c) Prohibits a settlement negotiated under this section from exceeding the applicable maximum liability limit established under the policy.

Sec. 2210.558. JUDICIAL REVIEW. (a) Entitles a person aggrieved by a final decision of SOAH in a contested case under this section to judicial review in accordance with Chapter 2001, Government Code.

(b) Provides that the venue for appeal from a final decision of SOAH under this section is in district court in Travis County.

(c) Provides that the review on appeal is governed by the substantial evidence rule as described by Section 2001.174 (Review Under Substantial Evidence Rule or Undefined Scope of Review), Government Code.

Sec. 2210.559. PLAN OF OPERATION. Authorizes the board of directors of TWIA to submit proposed changes to the plan of operation to implement this subchapter.

Sec. 2210.560. NOTICE; INSPECTION. (a) Requires a person covered by a TWIA policy, as a prerequisite to filing an appeal under Sec. 2210.552 of this subchapter, to give written notice to TWIA at least 60 days before filing the appeal advising TWIA in reasonable detail of the person's specific complaint and the amount of damage and expenses, including attorneys' fees, if any, reasonably incurred to date by the person in asserting the claim against TWIA. Authorizes the property that is the subject of the person's action or claim, during the 60-day period a written request to inspect, in a reasonable manner and at a reasonable time and place, to be presented to the person.

(b) Provides that if the giving of 60 days' written notice is rendered impracticable by reason of the necessity of filing a claim in order to prevent the expiration of the statute of limitations or if the person's claim is asserted by way of counterclaim, the notice provided for in Subsection (a) of this section is not required, but the tender provided for by this subchapter is authorized to be made within 60 days after filing the appeal or counterclaim.

(c) Authorizes TWIA, if the association does not receive written notice, as required by Subsection (a), to file a plea in abatement not later than the 30th day after the date the person files an original answer in the venue in which the appeal is pending. Provides that this subsection does not apply if Subsection (b) applies.

(d) Requires SOAH to abate the appeal if the administrative law judge, after a hearing, finds that TWIA is entitled to an abatement because notice was not provided as required by this section. Provides that an appeal is automatically abated without the order of the administrative law judge beginning on the 11th day after the date a plea in abatement is filed under Subsection (c) if the plea in abatement:

(1) is verified and alleges that the association did not receive the written notice as required by Subsection (a); and

(2) is not controverted by an affidavit filed by the person before the 11th day after the date on which the plea in abatement is filed.

(e) Provides that an abatement under Subsection (d) continues until the 60th day after the date that written notice is served in compliance with Subsection (a).

Sec. 2210.561 (a) Requires a person to file an appeal based in whole or in part on an association policy not later than two years after the day the cause of action accrues. Provides that the cause of action accrues on the date of the loss.

(b) Provides that Section 33.004(e) (relating to limitations of a third party), Civil Practice and Remedies, does not apply to a claim, civil action or appeal against or involving the association, an officer agent, or employee of the association, or anyone acting on behalf of the association.

(c) Provides that a person is barred from filing an appeal or an original civil action against TWIA, an officer, agent or employee of TWIA, or anyone acting on behalf of TWIA more than four years of the date of the loss. Provides that this subsection is intended as a statute of repose so that all claims of any type or description must be brought within four years or they are time barred.

(d) Requires that an appeal to be filed with the association within one year of the date the right to file the appeal accrued.

Sec. 2210.562. STATE OF DISASTER. (a) Requires the commissioner, when the governor issues a declaration of state of disaster pursuant to Sec. 418.014 (Declaration of State of Disaster), Government Code, to toll the application of Chapters 541 (Unfair Methods of Competition and Unfair or Deceptive Acts or Practices) and 542 (Processing and Settlement of Claims) to TWIA.

(b) Provides that the commissioner's authority under this section is limited to the geographical area identified in the declaration and for the duration of the declaration.

SECTION 2. (a) Effective date: upon passage of September 1, 2011.

(b) Makes application of this Act prospective to January 1, 2012.

(c) Provides that this Act, applies to all claims filed with TWIA on or after the effective date of this Act.