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Measure would limit cases against wind insurer

By PURVA PATEL
HOUSTON CHRONICLE

The state House on Tuesday approved a bill pushed as a way to streamline the claims dispute process and cut costs for the state's wind insurer of last resort, but derided by opponents as a slap at consumer protections.

House Bill 272, sponsored by House Insurance Chairman John Smithee, R-Amarillo, would require policyholders with the Texas Windstorm Insurance Association to send disputes over coverage to a panel appointed by the state insurance commissioner before they could go to court. Those disputing the amount of a claim payment would be required to go to appraisal, a kind of arbitration that is optional in most insurance policies.

The bill also does away with punitive damages, limiting legal awards to the amount of coverage in a policy, plus attorney fees.

TWIA, which sells wind coverage for hurricane- vulnerable homes and businesses whose owners can't buy it elsewhere, has grown to insure more than 240,000 homes and businesses as private insurers have reduced or eliminated coastal coverage.

"First of all, they won't insure us no matter what the price," said Rep. Craig Eiland, D-Galveston, who opposed the bill and serves as an attorney to many TWIA policyholders. "Second, when they do insure us, they take away our rights under the insurance code."

Smithee said, however, that the bill streamlines handling of disputed claims to cut the insurer's legal costs, which spiked when thousands of policyholders sued after Hurricane Ike, alleging delays in claims payments and unfair claims practices.

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Smithee argued that insurance consumers are paying for mishandling of claims by TWIA officials, because TWIA covers some of its costs by assessing private insurance companies. Those assessments ultimately are passed on to policyholders statewide through higher rates.

Smithee said the bill's revisions in the claims dispute process also will make TWIA more attractive to bond buyers and reinsurance companies that fear TWIA is at excessive risk for litigation or bankruptcy. He cautioned, however, that TWIA must not rely heavily on issuing debt and must develop more funding options.

Consumer advocates and policyholders' lawyers say the dispute process mandated in the bill makes it harder to hold TWIA accountable.

Steve Mostyn, who represents hundreds of TWIA policyholders, said that evidence gathered through lawsuits uncovered unfair practices by the insurer. The threat of a trial and punitive damages provides policyholders leverage in negotiating fair settlements, he said — noting that none of his clients ever collected the treble damages allowed now.

"This bill protects the bad guys," Mostyn said. "It makes no sense."

Rather than focusing on legal remedies, lawmakers should eliminate TWIA's claims-handling role altogether, said Alex Winslow of consumer group Texas Watch, which contends private home insurers should adjust the losses and administer payments on behalf of TWIA.

That would allow verification by professional adjusters already on call with big insurers and would result in faster claims payments, he said.

"It solves a lot of the problems you had after Ike where TWIA wasn't prepared to handle the claims," Winslow said.

Claims arising from hurricanes Dolly and Ike drained TWIA's coffers.

Its claims-handling practices have led to several state investigations and a fraud inquiry by the Travis County district attorney. Earlier this year, the state insurance commissioner took over administering the agency.

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