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H.B. No. 4194

A BILL TO BE ENTITLED

AN ACT

relating to an appraisal process for disputed losses under personal automobile or residential property insurance policies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 10, Insurance Code, is amended by adding Chapter 1813 to read as follows:

CHAPTER 1813. APPRAISAL PROCESS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1813.001. APPLICABILITY OF CHAPTER. (a) This chapter applies only to an insurer writing a personal automobile or residential property insurance policy, including:

(1) a capital stock insurance company;

(2) a mutual insurance company;

(3) a county mutual insurance company;

(4) a Lloyd's plan;

(5) a reciprocal or interinsurance exchange;

(6) a farm mutual insurance company;

(7) an eligible surplus lines insurer if this state is the insured's home state as defined by Section 981.002; and

(8) the FAIR Plan Association.

(b) This chapter does not apply to:

(1) the Texas Windstorm Insurance Association; or

(2) a commercial insurance policy.

Sec. 1813.002. RULES. The commissioner may adopt rules

1 necessary to implement this chapter.

2 Sec. 1813.003. REQUIRED POLICY PROVISION: APPRAISAL  
3 PROCESS. (a) Any appraisal provision contained in an insurance  
4 policy described by Section 1813.001 must comply with this chapter.

5 (b) The requirements of this chapter control over terms of  
6 an insurance policy and other law only with respect to the specific  
7 issues addressed in this chapter. All other terms and conditions of  
8 the appraisal process remain subject to the terms of the insurance  
9 policy and applicable law.

10 (c) The provisions of this chapter are not the sole  
11 provisions that may be included in an appraisal process provided in  
12 an insurance policy. Subject to any other provision of law, a policy  
13 may include any other provision not in direct conflict with this  
14 chapter.

15 (d) This chapter does not alter or provide an exception to  
16 the prompt payment of claims deadlines under Subchapter B, Chapter  
17 542.

18 SUBCHAPTER B. APPRAISAL PROCESS

19 Sec. 1813.051. APPRAISAL DEMAND. (a) If the policyholder  
20 and insurer fail to agree to the amount of loss covered by the  
21 policy, the policyholder or insurer may provide a written demand  
22 for appraisal to the other party.

23 (b) The policyholder may not demand appraisal after the  
24 policyholder files a lawsuit asserting the claim that is the basis  
25 for the appraisal demand.

26 (c) The insurer may not demand appraisal after filing the  
27 insurer's original answer to the lawsuit.

1       (d) The insurer may incorporate a demand for appraisal with  
2 the insurer's original answer to the lawsuit.

3       (e) If the policyholder files a lawsuit and the insurer  
4 subsequently demands appraisal, the lawsuit may be abated until the  
5 appraisal process is complete, provided that the insurer has not:

6           (1) denied the claim; or

7           (2) reserved the right to dispute coverage following  
8 the appraisal process.

9       Sec. 1813.052. SELECTION OF APPRAISERS. Not later than the  
10 20th day after the date an appraisal demand is provided under  
11 Section 1813.051, the policyholder and insurer shall each:

12           (1) select a competent and impartial appraiser; and

13           (2) provide written notice to the other party of the  
14 appraiser's identity.

15       Sec. 1813.053. APPRAISAL OF LOSS BY APPRAISERS; SELECTION  
16 OF UMPIRE. (a) The appraisers shall appraise the loss that is the  
17 subject of the appraisal not later than the 30th day after the date  
18 both the policyholder and insurer have complied with Section  
19 1813.052.

20       (b) The appraisers may extend the deadline described by  
21 Subsection (a) for a period not to exceed 30 days on written  
22 agreement by the appraisers, policyholder, and insurer.

23       (c) If the appraisers agree on the amount of loss:

24           (1) the appraisers shall issue their award and provide  
25 written notice of the award to the policyholder and insurer; and

26           (2) the agreed amount as stated in the appraisal award  
27 is the amount of loss.

1       (d) If the appraisers fail to agree on the amount of loss,  
2 the appraisers shall select a competent and impartial umpire. If  
3 the appraisers do not agree on an umpire after the 20th day after  
4 the deadline for the appraisers to determine the amount of loss  
5 under this section, the umpire must be selected:

6           (1) by a policy provision, if applicable, that  
7 provides for the method of selecting an umpire; or

8           (2) on written request by either party to a court  
9 described by Subsection (e).

10       (e) A policy provision may provide that a competent and  
11 impartial umpire may be selected by a judge of a district court,  
12 county court at law, or constitutional county court in the county in  
13 which the policyholder resides or where the property is located.

14       (f) A party requesting court appointment of an umpire must  
15 provide the other party with 10 days' written notice of the intent  
16 to submit the request. The appointment may not be made on an ex  
17 parte basis without both parties having an opportunity to appear  
18 before the court.

19       (g) After the umpire is selected under Subsection (d) or  
20 (e), each appraiser shall provide written notice to the umpire and  
21 the other appraiser that includes:

22           (1) the appraiser's determination as to the amount of  
23 loss;

24           (2) any supporting documentation; and

25           (3) an itemized list of the disputed differences  
26 between the appraisers regarding the amount of loss.

27       Sec. 1813.054. AMOUNT OF LOSS DETERMINATION BY UMPIRE. (a)

1 The umpire shall determine the amount of loss by selecting:

2 (1) one of the amounts of loss submitted to the umpire;

3 or

4 (2) an amount in between the two amounts submitted to  
5 the umpire.

6 (b) The umpire must select an amount under Subsection (a)  
7 not later than the 30th day after the date the umpire receives the  
8 submissions of both appraisers.

9 (c) The umpire may extend the deadline described by  
10 Subsection (b) for a period not to exceed 30 days on written  
11 agreement of the appraisers, policyholder, and insurer.

12 (d) On deciding on the amount of loss, the umpire shall  
13 issue a written appraisal award that:

14 (1) states the amount of loss; and

15 (2) is signed by the umpire and at least one appraiser.

16 (e) The umpire may not alter any valuation or any portion of  
17 the amount of loss on which the appraisers agree.

18 (f) An appraisal award issued under Subsection (d) does not  
19 prevent either party from pursuing all other rights under the  
20 policy or law.

21 Sec. 1813.055. APPRAISAL EXPENSES; TERMINATION OF  
22 APPRAISAL PROCESS. (a) The policyholder and insurer shall equally  
23 divide and pay the umpire's expenses, as applicable, and all other  
24 appraisal expenses, except that each party shall pay their own  
25 appraiser.

26 (b) If a party's appraiser materially fails to comply with  
27 the deadlines under this chapter and the other party makes a good

1 faith effort to address the failure and continue the appraisal  
2 process, the other party may terminate the appraisal process and  
3 seek recovery of the party's reasonable hourly appraiser expenses  
4 incurred in the appraisal process.

5 (c) If the umpire materially fails to comply with the  
6 deadlines under this chapter after making a good faith effort to  
7 address the failure and continue the appraisal process, the  
8 policyholder, the insurer, or both may terminate the appraisal  
9 process and seek recovery of their reasonable hourly appraiser  
10 expenses from the umpire.

11 (d) If an appraisal process is terminated under Subsection  
12 (b), the party employing the noncompliant appraiser may not invoke  
13 the appraisal process for the dispute at issue. However, the other  
14 party may invoke the appraisal process for the dispute at issue.

15 (e) If an appraisal process is terminated under Subsection  
16 (c), the policyholder or the insurer may invoke the appraisal  
17 process for the dispute at issue.

18 (f) The appraisers for the policyholder and the insurer and  
19 the umpire must be paid on an hourly or flat-fee basis, using a  
20 reasonable hourly rate and based on the estimated number of hours  
21 reasonably necessary to complete the appraisal process. The  
22 appraisers for the policyholder and insurer may not be paid on any  
23 basis other than an hourly or flat-fee basis, including a  
24 contingent or success basis.

25 Sec. 1813.056. EFFECT OF APPRAISAL. (a) The appraisal does  
26 not affect any applicable policy terms.

27 (b) The amount of loss determined by the appraisal process

1 under this chapter is binding as to the policyholder and the  
2 insurer. The use of the process is not a condition precedent to  
3 bringing an action for a violation of this code, for a breach of  
4 contract, or for any other common-law or statutory remedy.

5 Sec. 1813.057. EXTENSION OF DEADLINES. If the disputed  
6 loss is the result of a weather-related catastrophe or major  
7 natural disaster, as defined by the commissioner, the appraisal  
8 deadlines imposed under Sections 1813.052 and 1813.053(a) and (b)  
9 are extended for an additional 30 days.

10 SECTION 2. (a) Chapter 1813, Insurance Code, as added by  
11 this Act, applies only to an insurance policy delivered, issued for  
12 delivery, or renewed on or after January 1, 2024.

13 (b) An insurance policy form providing for an appraisal  
14 process that is in use on September 1, 2023, and otherwise compliant  
15 with Chapter 1813, Insurance Code, as added by this Act, is not  
16 required to be filed with the Texas Department of Insurance as a  
17 consequence of this Act.

18 SECTION 3. This Act takes effect September 1, 2023.