

By: Smithee

H.B. No. 747

A BILL TO BE ENTITLED

AN ACT

relating to procedures by insurers for handling water damage claims.

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

SECTION 1. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.55A to read as follows:

Art. 21.55A. WATER DAMAGE CLAIMS

Sec. 1. PURPOSE AND APPLICABILITY. The purpose of this article is to provide for the prompt, efficient, and effective handling and processing of water damage claims, which may include ensuing mold losses, filed under residential property insurance policies and to thereby reduce confusion and inconvenience to insureds and reduce claims costs and residential property insurance premiums in the state. This article applies to insurers that handle water damage claims filed under residential property insurance policies.

Sec. 2. DEFINITIONS. In this article:

(1) "Claim" means a first-party claim made by an insured or a policyholder under a residential property insurance policy or contract that must be paid by the insurer directly to the insured or policyholder.

(2) "Insurer" means an insurance company, reciprocal or interinsurance exchange, mutual, capital stock company, fraternal benefit society, local mutual aid association, farm

1 mutual insurance company, county mutual insurance company,
2 association, Lloyd's plan company, or other entity writing
3 residential property insurance in the state. The term includes a
4 surplus lines insurer authorized and operating under Chapter 981 of
5 this code. The term includes an affiliate as described by Section
6 823.003(a) of this code. The term does not include the Texas
7 Windstorm Insurance Association created and operated under Article
8 21.49 of this code.

9 (3) "Residential property insurance" means insurance
10 against loss to real or tangible personal property at a fixed
11 location provided under a homeowners policy, a tenant policy, a
12 condominium owners policy, or a residential fire and allied lines
13 policy.

14 Sec. 3. PROCEDURES FOR HANDLING CLAIMS. (a) Not later
15 than 24 hours after an insurer or the insured's agent receives
16 notice of a claim for water damage, the insurer shall:

17 (1) contact the insured by written, telephonic, or
18 electronic means of communication;

19 (2) provide the insured with information and guidance
20 regarding emergency repairs, mold prevention, and how to protect
21 the property from further damage, including the handling of active
22 leaks;

23 (3) advise the insured to contact a qualified
24 specialist, if needed, including plumbers and drying companies, who
25 can address a water damage problem immediately; the insurer may
26 provide a list of qualified specialists who can address the problem
27 immediately, but the insurer must advise the insured of the

1 insured's right to select a specialist not on the insurance
2 company's list;

3 (4) provide the insured with a reasonable estimated
4 timetable for the claims process in order to help the insured
5 understand the company's standard procedures and what the insured
6 can reasonably expect;

7 (5) advise the insured of the insured's
8 responsibilities under the insurance policy; and

9 (6) designate one company representative to oversee
10 the claim and to answer the insured's questions; provide the name
11 and contact information of that representative to the insured; and
12 advise the insured that several individuals may be involved with
13 the investigation and processing of the claim.

14 (b) Each insurer shall develop and implement its own
15 procedures for handling water damage claims in a prompt and
16 effective manner. In accordance with these procedures, each
17 insurer shall:

18 (1) have a company representative at the insured's
19 home within 24 to 72 hours of receipt of notice of the claim;
20 insurers should consider the severity of the potential claim in
21 determining when to send the company representative to the
22 insured's home;

23 (2) determine whether the claim is covered and provide
24 an initial estimate of damage in accordance with the time frames and
25 procedures adopted by rule by the commissioner and inform the
26 insured that the estimate is subject to change;

27 (3) provide an explanation of any changes in the

1 estimate and the reasons for the change;

2 (4) provide the insured with a written statement
3 confirming or denying coverage in accordance with the time frames
4 and procedures adopted by rule by the commissioner;

5 (5) provide advance payment for additional living
6 expense in accordance with the time frames established by rule by
7 the commissioner;

8 (6) promptly respond to inquiries and concerns from
9 the insured and keep a record of all communications in the claim
10 activity record, including the time calls were received, the nature
11 of the call, and when the call was returned;

12 (7) identify a range of reasonable costs and standards
13 for water damage, mold remediation, and repair and periodically
14 review methods used to assess repair and replacement costs in order
15 to ensure that they are current and accurate;

16 (8) when selecting or recommending mold remediation
17 specialists, select experienced and reputable contractors who have
18 the necessary safety equipment to do the job properly and safely and
19 ensure that there are no conflicts of interest involving the
20 contractors and specialists in providing testing, water
21 extraction, repair, and any other mold remediation-related
22 services;

23 (9) monitor the remediation and repair processes to
24 ensure that work is progressing and is completed in a timely manner;

25 (10) develop standard guidelines to follow when
26 determining whether additional living expense is applicable in
27 accordance with specific factors adopted by rule by the

1 commissioner;

2 (11) determine whether additional living expense
3 coverage is payable in accordance with the time frames established
4 by rule by the commissioner;

5 (12) reimburse covered additional living expense in
6 accordance with the time frames established by rule by the
7 commissioner;

8 (13) inform the insured of what is included in the
9 additional living expense coverage, how it may be used, and the
10 limits of coverage available under the policy and keep the insured
11 informed of the remaining coverage available under the additional
12 living expense provision;

13 (14) offer to set up and implement a direct-bill
14 system with the insured's selected vendors;

15 (15) identify and cease practices that may
16 unnecessarily increase the additional living expense coverage
17 costs; and

18 (16) return all telephone calls from the insured and
19 all other calls related to the claim within 24 hours.

20 (c) An insurer handling a claim under this article is
21 required to use only adjusters who have the necessary knowledge and
22 experience to handle water damage claims with ensuing mold losses.

23 Sec. 4. PAYMENT OF CLAIMS. Section 4, Article 21.55 of this
24 code, applies to the payment of water damage claims regulated under
25 this article.

26 Sec. 5. APPLICABILITY OF OTHER LAW. (a) To the extent that
27 Article 21.55 of this code addresses matters not covered under this

1 article, the provisions of Article 21.55 of this code apply to water
2 damage claims under this article, except as provided by Subsection
3 (b) of this section.

4 (b) Section 6, Article 21.55 of this code, shall not apply
5 for failure to comply with the requirements of this article, except
6 that that section shall apply for failure to comply with Section 4,
7 Article 21.55 of this code, for water damage claims regulated under
8 this article.

9 Sec. 6. CONFLICT WITH OTHER LAW. To the extent that Article
10 21.55 of this code addresses matters that are covered under this
11 article, the provisions of this article prevail unless otherwise
12 provided in this article. To the extent of any conflict between the
13 provisions of this article and any other provision of this code, the
14 provisions of this article prevail.

15 SECTION 2. Article 21.55, Insurance Code, is amended by
16 adding Section 9 to read as follows:

17 Sec. 9. CONFLICT WITH OTHER LAW. To the extent of any
18 conflict between this article and Article 21.55A of this code in the
19 handling of water damage claims under residential property
20 insurance policies, the provisions of Article 21.55A of this code
21 prevail.

22 SECTION 3. The commissioner of insurance shall adopt rules
23 implementing Article 21.55A, Insurance Code, as added by this Act,
24 not later than the 120th day after the effective date of this Act.

25 SECTION 4. (a) This Act takes effect June 1, 2003, if it
26 receives a vote of two-thirds of all the members elected to each
27 house, as provided by Section 39, Article III, Texas Constitution.

1 If this Act does not receive the vote necessary for effect on that
2 date, this Act takes effect September 1, 2003.

3 (b) The change in law made by this Act applies only to a
4 claim an insurer receives notice of on or after the effective date
5 of this Act, except that Subdivisions (2), (4), (5), (10), (11), and
6 (12), Subsection (b), Section 3, Article 21.55A, Insurance Code, as
7 added by this Act, shall apply only to a claim an insurer receives
8 notice of on or after the 120th day after the effective date of this
9 Act.