

A BILL TO BE ENTITLED

AN ACT

1
2 relating to liability for certain unfair methods of competition or
3 deceptive acts or practices in the business of insurance.

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

5 SECTION 1. Section 541.002, Insurance Code, as effective
6 April 1, 2005, is amended to read as follows:

7 Sec. 541.002. DEFINITIONS. In this chapter:

8 (1) "Economic damages" means compensatory damages for
9 pecuniary loss, including costs of repair and replacement. The
10 term does not include exemplary damages or damages for physical
11 pain and mental anguish, loss of consortium, disfigurement,
12 physical impairment, or loss of companionship and society.

13 (2) "Intentionally" means actual awareness of the
14 falsity, unfairness, or deceptiveness of the act or practice on
15 which a claim for damages under Subchapter D is based, coupled with
16 the specific intent that the consumer act in detrimental reliance
17 on the falsity or deception or in detrimental ignorance of the
18 unfairness. Intention may be inferred from objective
19 manifestations that indicate that the person acted intentionally or
20 from facts showing that a defendant acted with flagrant disregard
21 of prudent and fair business practices to the extent that the
22 defendant should be treated as having acted intentionally.

23 (3) "Knowingly" means actual awareness of the falsity,
24 unfairness, or deceptiveness of the act or practice on which a claim

1 for damages under Subchapter D is based. Actual awareness may be
2 inferred if objective manifestations indicate that a person acted
3 with actual awareness.

4 (4) [~~(2)~~] "Person" means an individual, corporation,
5 association, partnership, reciprocal or interinsurance exchange,
6 Lloyd's plan, fraternal benefit society, or other legal entity
7 engaged in the business of insurance, including an agent, broker,
8 adjuster, or life and health insurance counselor.

9 (5) "Residence" means a building:

10 (A) that is a single-family house, duplex,
11 triplex, or quadruplex, or a unit in a multiunit residential
12 structure in which title to the individual units is transferred to
13 the owners under a condominium or cooperative system; and

14 (B) that is occupied or to be occupied as the
15 person's residence.

16 (6) "Unconscionable action or course of action" means
17 an act or practice which, to a person's detriment, takes advantage
18 of the lack of knowledge, ability, experience, or capacity of the
19 person to a grossly unfair degree.

20 SECTION 2. Section 541.151, Insurance Code, as effective
21 April 1, 2005, is amended to read as follows:

22 Sec. 541.151. PRIVATE ACTION FOR DAMAGES AUTHORIZED. (a)
23 Except as provided by Subsections (b) and (c), a [A] person who
24 sustains actual damages may bring an action against another person
25 for those damages caused by the other person engaging in an act or
26 practice:

27 (1) defined by Subchapter B to be an unfair method of

1 competition or an unfair or deceptive act or practice in the
2 business of insurance; or

3 (2) specifically enumerated in Section 17.46(b),
4 Business and Commerce Code, as an unlawful deceptive trade practice
5 if the person bringing the action shows that the person relied on
6 the act or practice to the person's detriment.

7 (b) A person may not bring an action under this section
8 against another person, or an entity that could be vicariously
9 liable for the other person's conduct, for damages caused by the
10 other person's provision of a professional service, the essence of
11 which is the provision of advice, judgment, opinion, or a similar
12 professional skill. This subsection does not apply to a claim for
13 damages caused by:

14 (1) an express misrepresentation of a material fact
15 that cannot be characterized as advice, judgment, or opinion;

16 (2) a failure to disclose a matter in violation of
17 Section 541.061(5);

18 (3) an unconscionable action or course of action that
19 cannot be characterized as advice, judgment, or opinion;

20 (4) breach of an express warranty that cannot be
21 characterized as advice, judgment, or opinion; or

22 (5) a violation of Section 17.46(b)(26), Business &
23 Commerce Code.

24 (c) A person may not bring an action under this section
25 against another person for a claim arising out of:

26 (1) an insurance policy or other written contract if:

27 (A) the contract relates to a transaction, a

1 project, or a set of transactions related to a single project,
2 involving total consideration by the person of more than \$100,000;

3 (B) in negotiating the contract the person is
4 represented by legal counsel who is not directly or indirectly
5 identified, suggested, or selected by the defendant or an agent of
6 the defendant; and

7 (C) the contract does not involve the person's
8 residence; or

9 (2) a transaction, project, or set of transactions
10 relating to the same project, involving total consideration by the
11 person of more than \$500,000, other than a cause of action involving
12 a person's residence.

13 SECTION 3. Section 541.152, Insurance Code, as effective
14 April 1, 2005, is amended to read as follows:

15 Sec. 541.152. DAMAGES, ATTORNEY'S FEES, AND OTHER RELIEF.

16 (a) A plaintiff who prevails in an action under this subchapter may
17 obtain:

18 (1) the amount of economic damages determined by the
19 trier of fact [~~actual damages,~~] plus court costs and reasonable and
20 necessary attorney's fees;

21 (2) an order enjoining the act or failure to act
22 complained of; and [~~or~~]

23 (3) any other relief the court determines is proper.

24 (b) If [~~On a finding by~~] the trier of fact determines that
25 the defendant's [~~defendant~~] conduct was committed knowingly
26 [~~committed the act complained of~~], the trier of fact may award:

27 (1) the amount of damages for mental anguish

1 determined by the trier of fact; and

2 (2) an amount that does not [~~to~~] exceed three times the
3 amount of economic [~~actual~~] damages determined by the trier of
4 fact.

5 (c) If the trier of fact determines that the defendant's
6 conduct was committed intentionally, the trier of fact may award:

7 (1) the amount of damages for mental anguish
8 determined by the trier of fact; and

9 (2) an amount that does not exceed three times the
10 amount of economic damages and damages for mental anguish
11 determined by the trier of fact.

12 SECTION 4. Section 33.002(a), Civil Practice and Remedies
13 Code, is amended to read as follows:

14 (a) This chapter applies to:

15 (1) any cause of action based on tort in which a
16 defendant, settling person, or responsible third party is found
17 responsible for a percentage of the harm for which relief is sought;
18 [~~or~~]

19 (2) any action brought under the Deceptive Trade
20 Practices-Consumer Protection Act (Subchapter E, Chapter 17,
21 Business & Commerce Code) in which a defendant, settling person, or
22 responsible third party is found responsible for a percentage of
23 the harm for which relief is sought; or

24 (3) any action brought under Subchapter D, Chapter
25 541, Insurance Code, in which a defendant, settling person, or
26 responsible third party is found responsible for a percentage of
27 the harm for which the relief is sought.

1 SECTION 5. The changes in law made by this Act apply only to
2 a cause of action that accrues on or after the effective date of
3 this Act. A cause of action that accrues before the effective date
4 of this Act is governed by the law in effect immediately before that
5 date, and that law is continued in effect for that purpose.

6 SECTION 6. This Act takes effect immediately if it receives
7 a vote of two-thirds of all the members elected to each house, as
8 provided by Section 39, Article III, Texas Constitution. If this
9 Act does not receive the vote necessary for immediate effect, this
10 Act takes effect September 1, 2005.