

## **BILL ANALYSIS**

C.S.H.B. 2013  
By: Smithee  
Insurance  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

In *Brainard v. Trinity Universal Insurance Company*, 2006 WL 3751572 (Tex. 2006), the Texas Supreme Court held that a claimant can't recover attorney's fees for the successful prosecution of an underinsured motorist (UIM) claim. In that case, the court resolved a split among courts of appeals regarding the award of attorney's fees. It resolved the split in a manner harmful to the interest of the expectations of Texas policyholders and in a manner that only fosters additional, unnecessary litigation.

In *Brainard*, the plaintiff argued that it was entitled to recover attorney's fee because of the insurer's breach of the insurance contract by failing to pay UIM benefits. The insurer argued, and the court agreed, that there is no breach of contract until the underinsured motorist's liability and damages are legally determined. The court decided that the UIM insurer has no contractual duty to pay benefits until the insured "obtains a judgment establishing the liability and underinsured status of the other motorist" and that "[n]either requesting UIM benefits nor filing suit against the insurer triggers a contractual duty to pay." Rather than encourage the prompt and fair resolution of claims, this decision encourages expensive and unnecessary litigation.

This decision leaves Texas automobile policyholders with legitimate UIM claims at an unfair disadvantage when dealing with their insurers. C.S.H.B. 2013 addresses this situation by clarifying what constitutes notice of a claim under the UIM provisions of an automobile policy, and provides that an insurer cannot require a final judgment as a prerequisite to making a UIM claim.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2013 relates to recovery under uninsured and underinsured motorist insurance coverage.

C.S.H.B. 2013 seeks to amend Subchapter C, Chapter 1952 of the Texas Insurance Code by adding Sections 1952.1061 and 1952.1062.

SECTION 1, Section 1952.1061 discusses notice of claim and states that a claimant provides notice of a claim, including notice for the purposes of Subchapter D, Chapter 541, and Subchapter B, Chapter 542, for uninsured or underinsured motorist coverage by providing written notification to the insurer that reasonably informs the insurer of the facts of the claim.

Next, Section 1952.1062 discusses how legal determination is not a prerequisite to recovery. The Section reads that an insurer may not require as a prerequisite to asserting a claim under uninsured or underinsured motorist coverage a judgment or other legal determination establishing the other motorist's liability or uninsured or underinsured status. A judgment or other legal determination described by this subsection is not a prerequisite to having a claim for the purposes of Chapters 541 and 542. Also, an insurer may not require as a prerequisite to payment of benefits under uninsured or underinsured motorist coverage a judgment or other legal determination establishing the other motorist's liability or the extent of the insured's damages before benefits are paid under the policy.

SECTION 2 states that except as provided by this section, the change in law made by this Act applies only to a cause of action that accrues on or after the effective date of this Act. A cause of

action that accrues before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose. Also, the change in law made by this Act does not affect the enforceability of any provision in an insurance policy delivered, issued for delivery, or renewed before January 1, 2008, that conflicts with the change in law made by this Act.

Finally, SECTION 3 states that this Act takes effect September 1, 2007.

#### **EFFECTIVE DATE**

September 1, 2007.

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.H.B. 2013 makes a couple of changes to the original house bill. First, C.S.H.B. 2013 in SECTION 1, removes Subsection (c) under Section 1952.1062. This provision, as found in the original house bill, stated that an insurer must attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim once liability and damages have become reasonably clear.

Next, the substitute also removes Section 1952.1063 from SECTION 1 of the original house bill. This section, as found in the original house bill, discussed prejudgment interest and attorney's fees. It stated that prejudgment interest accrues on an uninsured or underinsured motorist claim on the earlier of the 180th day after the date the claimant notifies the insurer of the claim in accordance with Section 1952.1061 or the date on which suit is filed against the insurer to recover under the uninsured or underinsured motorist coverage. For the purposes of recovery of attorney's fees under Section 38.002, Civil Practices and Remedies Code, a claim for uninsured or underinsured motorist coverage is presented when the insurer receives notice of the claim in accordance with Section 1952.1061.