

By: Truitt

H.B. No. 2665

A BILL TO BE ENTITLED

AN ACT

relating to mediation of certain disputes arising in connection with a personal automobile insurance policy.

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

SECTION 1. Subtitle B, Title 5, Insurance Code, is amended by adding Chapter 525 to read as follows:

CHAPTER 525. MEDIATION OF CERTAIN AUTOMOBILE INSURANCE DISPUTES

Sec. 525.001. DEFINITION. In this chapter, "mediation" means a nonbinding forum in which an impartial mediator facilitates communication between parties to promote reconciliation, settlement, or understanding between the parties.

Sec. 525.002. APPLICABILITY OF CHAPTER. (a) This chapter applies to any insurer that issues a personal automobile insurance policy, including a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange.

(b) This chapter does not apply to a dispute:

(1) that turns on a question that primarily relates to interpretation of a policy term of an insured's policy or to a matter that is solely a question of law;

(2) that involves the actions of an agent or broker in which the insurer is not alleged to have been responsible for the conduct;

(3) that is based on a complaint the commissioner determines is frivolous; or

1           (4) in which a party is alleged to have committed  
2 fraud.

3           Sec. 525.003. MEDIATION OF CERTAIN DISPUTES. If a dispute  
4 arises from a claim for damage to a motor vehicle under a personal  
5 automobile insurance policy and the claimant and the person against  
6 whom the claim is being asserted are each insured under a personal  
7 automobile insurance policy issued by the same insurer, the  
8 claimant may request that the insurer participate in mediation of  
9 the dispute with the claimant under this chapter.

10           Sec. 525.004. INSURER REQUIRED TO PARTICIPATE. If an  
11 insured requests mediation under this chapter, the insurer shall  
12 participate in the mediation.

13           Sec. 525.005. MEDIATOR. (a) By agreement, the claimant and  
14 the insurer shall select a mediator who is qualified to serve under  
15 Section 154.052(a), Civil Practice and Remedies Code.

16           (b) Sections 154.053 and 154.055, Civil Practice and  
17 Remedies Code, apply to a mediator under this chapter.

18           (c) A mediator may not impose the mediator's own judgment on  
19 the issues for that of the parties.

20           Sec. 525.006. LOCATION AND SCHEDULE OF MEDIATION. (a) The  
21 parties by agreement shall select a venue and schedule for  
22 mediation under this chapter. If the parties are unable to agree on  
23 a venue and schedule, the mediator shall select a venue and  
24 schedule.

25           (b) Except by written agreement of all the parties, the  
26 mediation must be held in this state.

27           (c) Except as provided by this subsection, the mediation

1 must be completed not later than the 60th day after the date on  
2 which the insurer receives the claimant's request to mediate. The  
3 deadline may be extended by written agreement of the parties.

4 Sec. 525.007. COSTS. Except as provided by Section  
5 525.008, the insurer shall pay the reasonable costs of the  
6 mediation.

7 Sec. 525.008. GOOD FAITH. (a) The parties to the mediation  
8 shall negotiate in good faith.

9 (b) An insurer that fails to appear for a scheduled  
10 mediation conference for which the insured appears shall pay the  
11 insured for the insured's actual expenses incurred in attending the  
12 conference plus the value of the insured's lost wages, if any.

13 (c) An insured who has good cause for a failure to appear at  
14 a mediation conference may reschedule the conference one time, at a  
15 time set by the mediator. If an insured fails to demonstrate good  
16 cause for a failure to appear at a mediation conference, the  
17 mediator shall, at the request of the insurer, terminate the  
18 mediation and the insured shall pay all costs of the mediation  
19 incurred before the time of the failure to appear that terminates  
20 the mediation.

21 Sec. 525.009. LAW APPLICABLE; CONFLICT OF LAWS. (a) Except  
22 as provided by Subsection (b) of this section, Section 154.073,  
23 Civil Practice and Remedies Code, applies to mediation under this  
24 chapter.

25 (b) This chapter controls over any other law relating to or  
26 requiring mediation between the complainant and the insured.

27 Sec. 525.010. EFFECT ON CIVIL SUIT. (a) A court may not,

1 because a dispute is submitted to mediation under this chapter,  
2 stay a civil action arising wholly or partly out of the same facts.

3 (b) The statute of limitations applicable to the claimant's  
4 right to bring a civil action arising wholly or partly out of the  
5 same facts as a dispute that is the subject of the mediation is  
6 tolled for the period beginning on the date the insurer receives the  
7 request for mediation and ending on the later of:

8 (1) the date the dispute is resolved; or

9 (2) the date the mediation is either completed or  
10 terminated.

11 Sec. 525.011. COURT COSTS; ATTORNEY'S FEES. If a dispute  
12 mediated under this chapter is decided by a court judgment, the  
13 court shall award the party that prevails court costs and  
14 reasonable and necessary attorney's fees.

15 Sec. 525.012. WAIVER PROHIBITED. The provisions of this  
16 chapter may not be waived by contract. A provision of an insurance  
17 policy or other contract that purports to waive a provision of this  
18 chapter is void and unenforceable.

19 Sec. 525.013. UNFAIR OR DECEPTIVE ACT OR PRACTICE. An  
20 insurer that refuses to participate in mediation under this chapter  
21 or that does not negotiate in good faith in connection with the  
22 mediation commits an unfair or deceptive act or practice in the  
23 business of insurance for the purposes of Chapter 541.

24 SECTION 2. Chapter 525, Insurance Code, as added by this  
25 Act, applies only to a dispute involving a claim for damages under  
26 an insurance policy that is delivered, issued for delivery, or  
27 renewed on or after January 1, 2008. A dispute involving a claim

1 for damages under an insurance policy that is delivered, issued for  
2 delivery, or renewed before January 1, 2008, is governed by the law  
3 in effect immediately before the effective date of this Act, and  
4 that law is continued in effect for that purpose.

5 SECTION 3. This Act takes effect September 1, 2007.