

By: Eiland

H.B. No. 2540

A BILL TO BE ENTITLED

AN ACT

relating to the establishment and operation of a disaster recovery insurance claims mediation program.

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

SECTION 1. Chapter 542, Insurance Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. DISASTER RECOVERY INSURANCE

CLAIMS MEDIATION PROGRAM

Sec. 542.351. PURPOSE. This subchapter establishes a non-adversarial mediation program to promote effective, fair, and timely handling of unresolved residential property insurance claims arising from damage caused by hurricanes, cyclones, tornados, or other disasters in an area designated a disaster area by the president of the United States.

Sec. 542.352. GENERAL DEFINITIONS. In this subchapter:

(1) "Administrator" means the department or its designee.

(2) "Business day" means a day other than a Saturday, a Sunday, or a holiday recognized by this state.

(3) "Insurer" has the meaning assigned by Section 801.001.

(4) "Mediator" means an individual designated by the administrator to mediate disputes under this subchapter.

(5) "Party" means an insured or insurer that

1 participates in mediation under this subchapter.

2 (6) "Program" means the disaster recovery insurance
3 claims mediation program established under this subchapter.

4 (7) "Residential property insurance" has the meaning
5 assigned by Section 2301.002, and includes coverage under:

6 (A) an industrial fire insurance policy, as
7 described by Section 912.310;

8 (B) a residential windstorm and hail insurance
9 policy under Chapter 2210; and

10 (C) a policy issued by the Texas FAIR Plan under
11 Chapter 2211.

12 Sec. 542.353. CLAIMS. (a) For purposes of this subchapter,
13 "claim" means a first-party insurance loss that is disputed or for
14 which the insurer has denied payment.

15 (b) A claim is limited to a loss that is:

16 (1) covered under a residential property insurance
17 policy that is in effect at the time of the loss; and

18 (2) incurred as a result of a declared disaster.

19 (c) The total amount of a loss under Subsection (b) must be
20 at least \$1,000. The difference between the positions of the
21 parties must be at least \$500 after any applicable deductible is
22 applied.

23 (d) A claim includes a dispute regarding the cause of a loss
24 that may be resolved through a forensic mediation conference in
25 which experts on meteorology, engineering, geography, and
26 construction present information regarding:

27 (1) the extent of damage caused by wind or other peril;

1 (2) the structural soundness of the property before
2 and after the disaster; and

3 (3) the cost of repairs.

4 Sec. 542.354. APPLICABILITY OF SUBCHAPTER; EXCEPTIONS. (a)
5 This subchapter applies only to first-party claims resulting from
6 damage to property located in this state that is covered under
7 residential property insurance issued by:

8 (1) an insurer;

9 (2) an eligible surplus lines insurer;

10 (3) the Texas Windstorm Insurance Association; or

11 (4) the Texas FAIR Plan.

12 (b) This subchapter does not apply to:

13 (1) a policy issued under the national flood insurance
14 program;

15 (2) a commercial insurance policy;

16 (3) a private passenger automobile insurance policy;

17 or

18 (4) liability coverage under a residential property
19 insurance policy.

20 Sec. 542.355. ENFORCEMENT; RULES. (a) The commissioner
21 shall enforce this subchapter.

22 (b) The commissioner may adopt rules as reasonable and
23 necessary to implement this subchapter.

24 (c) The commissioner by rule may establish specific
25 reporting requirements for insurers participating in the program.

26 Sec. 542.356. PROGRAM IMPLEMENTATION. (a) After a
27 disaster is declared by the president of the United States, the

1 commissioner, by order, may implement the disaster recovery
2 insurance claims mediation program under this subchapter.

3 (b) The program is available to a party only after the party
4 has had adequate time, as determined by the commissioner, to
5 inspect the damaged property, assess the damage, obtain
6 information, and attempt to resolve a claim without resorting to
7 the program.

8 (c) Mediation is not required under the program with regard
9 to a claim that:

10 (1) based on agreed facts between the parties
11 concerning the cause of the loss, is not covered under the policy;
12 or

13 (2) the insurer has alleged to be fraudulent and has
14 reported as fraudulent to the department.

15 Sec. 542.357. PROGRAM ADMINISTRATION. (a) The commissioner
16 may designate and contract with an administrator to develop and
17 administer the program. The administrator may:

18 (1) develop mediator qualification criteria and
19 select mediators;

20 (2) schedule mediation conferences;

21 (3) arrange the location for mediation conferences;

22 and

23 (4) grade, report, and analyze the performance of the
24 mediators and overall program performance.

25 (b) The commissioner may require the administrator to:

26 (1) correspond directly with insurers and insureds
27 with regard to a mediation;

1 (2) collect fees for the administration of a mediation
2 conference directly from the insurer and insured; and

3 (3) provide for the administration of mediation
4 conferences in specific locations and at specific frequencies.

5 (c) The commissioner shall retain the authority to
6 establish the scope and duration of the program.

7 (d) In the absence of a contract with an administrator, the
8 commissioner may by rule direct the department to administer the
9 program.

10 Sec. 542.358. FEES. (a) Except as provided by Subsection
11 (c), the insurer shall pay reasonable fees for scheduled mediation
12 conferences. The total fee for mediation under this subchapter is
13 \$350, with \$300 paid as the mediator fee and \$50 as the
14 administrator fee.

15 (b) If the parties reach an agreement before the mediation
16 conference is scheduled, no mediation fee is owed.

17 (c) If the mediation conference is canceled for any reason
18 by the insured or the insurer after the conference has been
19 scheduled, the insurer shall pay the mediator \$100 as the mediator
20 fee and the administrator the entire \$50 administrator fee, except
21 as provided by Subsection (d).

22 (d) If the insured fails to appear at the mediation
23 conference and does not show good cause for the failure to appear,
24 the mediation conference shall be considered to have been held, and
25 the insurer shall pay the fees in accordance with Subsection (c).
26 If the insured wishes to schedule a new conference after failing to
27 appear without good cause, the insured shall pay the fees for the

1 new mediation conference. A new mediation conference may be
2 rescheduled only on the insured's payment of the mediation fees in
3 the amounts specified under Subsection (a).

4 Sec. 542.359. PAYMENT OF EXPENSES. Except as provided by
5 Section 542.362, any expenses associated with participation in a
6 mediation conference, such as travel, telephone, postage, meals,
7 lodging, facilities, and other related expenses, shall be borne by
8 the party or other person incurring the expense.

9 Sec. 542.360. NOTICE TO INSUREDS OF RIGHT TO MEDIATION;
10 INSURER REQUIRED TO MEDIATE. (a) Each insurer shall provide, in the
11 manner prescribed by commissioner rule, notice to its insureds of
12 their right to mediate claims following an order of the
13 commissioner under Section 542.356.

14 (b) An insurer shall participate in mediation under this
15 subchapter if an insured elects to participate by filing a request
16 for mediation under Section 542.361. The failure without
17 reasonable cause of an insurer to participate in the program
18 constitutes a deceptive trade practice under Chapter 541 and an
19 unfair claims settlement practice under Subchapter A.

20 Sec. 542.361. REQUEST FOR MEDIATION; NOTICE TO INSURER. (a)
21 An insured may request mediation by completing a request form
22 prescribed by the department and delivering the form to the
23 administrator.

24 (b) The department or the administrator shall notify the
25 insurer of the request for mediation.

26 Sec. 542.362. DUTIES OF PARTIES; EFFECT OF FAILURE TO
27 APPEAR. (a) Each party to a mediation conducted under this

1 subchapter must negotiate in good faith and must have the authority
2 to settle claims, subject to the rescission period under Section
3 542.364.

4 (b) An insurer that fails to appear for a scheduled
5 mediation conference at which the insured appears shall pay:

6 (1) the insured for the insured's actual expenses
7 incurred in attending the conference, plus the value of any lost
8 wages; and

9 (2) the total fees for the rescheduled conference.

10 (c) An insured who fails to appear for a scheduled mediation
11 conference for good cause may reschedule once for a time set by the
12 administrator. If the insured subsequently fails to appear, that
13 insured loses the insured's right to mediate the claim under this
14 subchapter, and shall pay all the fees charged by the administrator
15 up to the time of the conference at which the insured failed to
16 appear.

17 Sec. 542.363. CONDUCT OF MEDIATION CONFERENCE. (a) An
18 insured may retain counsel to participate in the mediation
19 conference. If the insured is represented by counsel at the
20 conference, the insurer's counsel may also be present.

21 (b) A party may have the assistance of persons at the
22 mediation conference, including a public insurance adjuster or
23 other person who may assist in presenting the claim, such as a
24 contractor, engineer, or interpreter.

25 (c) Representatives from the department may be present to
26 observe the mediation conference, but are not parties to the
27 conference.

1 (d) Video and audio electronic recordings of mediation
2 conferences are prohibited.

3 Sec. 542.364. RESCISSION PERIOD; EFFECT OF SETTLEMENT
4 AGREEMENT. (a) Except as provided by Subsection (b), if the parties
5 agree to a settlement for the disputed matters resolved as a result
6 of the mediation, the insured may rescind the agreement until the
7 end of the third business day after the date of the settlement if
8 the insured has not, in relation to the settlement agreement:

9 (1) cashed or deposited any check or draft disbursed
10 to the insured; or

11 (2) agreed in writing to accept an electronic funds
12 transfer.

13 (b) If counsel for the insured is present at the mediation
14 conference and the parties concur in a settlement agreement that is
15 signed by the insured's counsel, the agreement is immediately
16 effective on the insured and may not be rescinded.

17 (c) If the insured rescinds a settlement agreement, the
18 agreement may not be admitted in evidence or disclosed unless the
19 insured and all other parties to the agreement expressly agree to
20 its disclosure.

21 (d) If the settlement agreement is not rescinded by the
22 insured, the agreement acts as a release of all specific claims for
23 damages that were known at the time of the mediation and were
24 presented and agreed to at the mediation conference.

25 (e) This section does not affect rights under existing law
26 for residential property insurance claims for damage that was
27 undetected as of the date of the mediation conference.

1 Sec. 542.365. EFFECT ON LITIGATION. (a) Referral to
2 mediation or the pendency of mediation under this subchapter does
3 not operate as a basis to prevent or stay the filing of civil
4 litigation arising wholly or partly out of the facts that are the
5 basis of the mediation.

6 (b) Any applicable statute of limitations or limitation on
7 the insured's right to sue is tolled, beginning on the date the
8 insurer was notified under Section 542.361 and ending on the date on
9 which:

10 (1) mediation is completed or declined;

11 (2) the insured loses the right to mediate because of a
12 failure to appear; or

13 (3) if a settlement agreement is completed, the
14 rescission period established under Section 542.364 expires.

15 Sec. 542.366. CONFIDENTIALITY REQUIREMENTS. (a)
16 Statements made by the parties, negotiations between the parties,
17 and documents produced during a mediation conducted under this
18 subchapter are confidential.

19 (b) Mediation documents, including settlement agreements,
20 obtained by the department are confidential and are not subject to
21 disclosure under Chapter 552, Government Code. This subchapter
22 does not affect the discoverability or admissibility of documents
23 that are otherwise discoverable or admissible.

24 (c) The confidentiality required under this section does
25 not restrict department access to documents or other information
26 the department seeks in order to evaluate the program or to comply
27 with reporting requirements.

1 SECTION 2. This Act takes effect immediately if it receives
2 a vote of two-thirds of all the members elected to each house, as
3 provided by Section 39, Article III, Texas Constitution. If this
4 Act does not receive the vote necessary for immediate effect, this
5 Act takes effect September 1, 2009.