

BILL ANALYSIS

C.S.H.B. 2924
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Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Many Texas property insurance policies have a two-year contractual limitations period on a legal action, but such policies generally do not clearly establish that the period runs from the date of loss. Allowing property insurance policies to contain a provision that allows the filing of a lawsuit within two years from the date of loss rather than from the time the insured's cause of action accrues would clarify current law and be more consistent with how other states regulate limitations periods in property insurance contracts. Although contracts generally do not include a limitations period shorter than two years, in the context of insurance claims, courts have interpreted such periods to mean two years from the time the cause of action accrues.

As numerous Hurricane Ike claims have shown, the date on which a cause of action accrues can be ambiguous, creating uncertainty as to when the statute of limitations has ended and often deterring further litigation. Some plaintiff's attorneys maintain that the cause of action does not accrue until the last activity on the claim or the date the insured discovers an underpayment. If a judge accepts this argument, the true limitation period can run closer to four years than two years. Millions of dollars may be spent litigating the issue of when a suit can be filed. C.S.H.B. 2924 seeks to address the need for a clearly defined statute of limitations and to create certainty for both insureds and insurers.

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. 2924 amends the Insurance Code to authorize a policy form or printed endorsement form for residential or commercial property insurance that is filed by an insurer or adopted by the Texas Department of Insurance to provide for a contractual limitations period for filing suit on a first-party claim under the policy. The bill prohibits such limitations period from ending before the earlier of two years from the date the insurer accepts or rejects the claim or three years from the date of the loss that is the subject of the claim. The bill authorizes such a policy or endorsement to contain a provision requiring that a claim be filed with the insurer not later than one year after the date of the loss that is the subject of the claim. The bill establishes that a contractual provision contrary to the limitations period described in the bill's provisions is void and that this voiding does not affect the validity of other contract provisions that may be given effect without the voided provision to the extent those provisions are severable.

C.S.H.B. 2924 amends the Civil Practice and Remedies Code to exempt a residential or commercial property insurance policy that complies with Insurance Code provisions establishing a contractual limitations period for filing suit on a first-party claim and authorizing a claim filing period in a policy or endorsement from a statutory prohibition against entering a stipulation, contract, or agreement that purports to limit the time in which to bring suit on the stipulation, contract, or agreement to a period shorter than two years.

C.S.H.B. 2924 makes its provisions establishing a contractual limitations period and authorizing a claim filing period in a policy or endorsement applicable only to an insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2012.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2924 differs from the original by authorizing a policy form or printed endorsement form for residential or commercial property insurance that is filed by an insurer or adopted by the Texas Department of Insurance (TDI) to provide for a contractual limitations period for filing suit on a first-party claim under the policy, whereas the original authorizes an insurer to file and requires TDI to approve policy forms or endorsements that provide for a contractual limitations period for filing suit for first party claims under the policy.

C.S.H.B. 2924 differs from the original by prohibiting the contractual limitations period from ending before the earlier of two years from the date the insurer accepts or rejects the claim or three years from the date of the loss that is the subject of the claim, whereas the original prohibits the contractual limitations period in a residential property or commercial property insurance policy for a first party claim from being less than two years from the date of the loss.

C.S.H.B. 2924 contains a provision not included in the original authorizing such a policy or endorsement to contain a requirement that a claim be filed with the insurer not later than one year after the date of the loss that is the subject of the claim.

C.S.H.B. 2924 differs from the original by establishing that a contractual provision contrary to the limitations period described in the bill's provisions is void and that this voiding does not affect the validity of other contract provisions that may be given effect without the voided provision to the extent those provisions are severable, whereas the original establishes that any limitation, condition, stipulation, or agreement in a policy in violation of the bill's provisions is void but that such voiding does not affect the validity of the other provisions of the policy.

C.S.H.B. 2924 omits a provision included in the original establishing that, to the extent of any conflict with a statutory prohibition in the Civil Practice and Remedies Code against entering a stipulation, contract, or agreement that purports to limit the time in which to bring suit to a period shorter than two years or conflict with any other law, the bill's provisions establishing a contractual limitations period for filing suit and authorizing a claim filing period in a policy or endorsement in the Insurance Code prevail.

C.S.H.B. 2924 differs from the original, in a provision exempting certain insurance policies from a Civil Practice and Remedies Code provision prohibiting a contractual limitations period shorter than two years, by exempting a residential or commercial property insurance policy that complies with Insurance Code provisions relating to a contractual limitations period and a claim filing period, whereas the original exempts insurance policies insuring residential or commercial property located in Texas containing stipulations, contracts, or agreements that establish a limitations period in the policy and prohibits those stipulations, contracts, or agreements from limiting the time to bring suit for a first party claim under the policy to a period shorter than two years from the date of loss.

C.S.H.B. 2924 contains a provision not included in the original making the bill's provisions applicable only to an insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2012, and omits a provision included in the original providing for the prospective application of the bill's provisions on or after the bill's effective date.

C.S.H.B. 2924 differs from the original in nonsubstantive ways.