

By: Smithee

H.B. No. 3061

A BILL TO BE ENTITLED

AN ACT

relating to arbitration 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. ARBITRATION OF CERTAIN AUTOMOBILE INSURANCE DISPUTES

Sec. 525.001. DEFINITIONS. In this chapter:

(1) "Arbitration" means a binding forum in which each party and counsel for the party, if desired by the party, present the party's position before an impartial third party who renders a specific, binding, and enforceable award.

(2) "Claimant" means an insured or another person making a claim under a personal automobile insurance policy, including a third-party claimant.

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

1 which the insurer is not alleged to have been responsible for the
2 conduct;

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

5 (4) in which a party is alleged to have committed
6 fraud.

7 Sec. 525.003. ARBITRATION OF CERTAIN DISPUTES. If a
8 dispute arises from a claim for damage to a motor vehicle under a
9 personal automobile insurance policy in which the claimant seeks
10 less than \$25,000, the claimant in writing may request that the
11 insurer participate in arbitration of the dispute with the claimant
12 under this chapter.

13 Sec. 525.004. INSURER PARTICIPATION; SETTLEMENT OFFER
14 REQUIRED. (a) Not later than the 15th day after the date a claimant
15 requests arbitration under this chapter, the insurer shall make a
16 written settlement offer to the claimant.

17 (b) Not later than the 15th day after the insurer makes a
18 settlement offer, the claimant shall in writing accept or reject
19 the offer. If the claimant does not accept or reject the offer
20 within that period, the offer is considered accepted. If the
21 claimant rejects the offer, the insurer shall participate in
22 arbitration under this chapter.

23 Sec. 525.005. ARBITRATORS; ARBITRATION FEE. (a) By
24 agreement, the claimant and the insurer shall select an arbitrator
25 from the list established by the commissioner under this section.

26 (b) The commissioner shall:

27 (1) establish a list of arbitrators located throughout

1 the state who are qualified to serve under Section 154.052(a),
2 Civil Practice and Remedies Code; and

3 (2) by rule adopt:

4 (A) fees that may be charged for an arbitration
5 under this chapter;

6 (B) procedures under which an arbitrator may for
7 good cause request and receive higher fees than the fees adopted
8 under this section; and

9 (C) procedures for selection of an arbitrator
10 when the claimant and insurer cannot agree under Subsection (a).

11 (c) Sections 154.053(b), (c), and (d) and 154.055, Civil
12 Practice and Remedies Code, apply to an arbitrator under this
13 chapter.

14 Sec. 525.006. PAYMENT OF COSTS. (a) If the arbitrator
15 awards the claimant an amount that is more than the amount of the
16 settlement offer rejected by the claimant under Section 525.004,
17 the insurer shall pay the costs of the arbitration.

18 (b) If the arbitrator does not award the claimant an amount
19 that is more than the amount of the settlement offer rejected by the
20 claimant under Section 525.004, the claimant shall pay the costs of
21 the arbitration.

22 Sec. 525.007. LAW APPLICABLE; CONFLICT OF LAWS. (a)
23 Section 154.073, Civil Practice and Remedies Code, applies to
24 arbitration under this chapter.

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

27 Sec. 525.008. WAIVER PROHIBITED. The provisions of this

1 chapter may not be waived by contract. A provision of an insurance
2 policy or other contract that purports to waive a provision of this
3 chapter is void and unenforceable.

4 Sec. 525.009. UNFAIR OR DECEPTIVE ACT OR PRACTICE. An
5 insurer that refuses to make a settlement offer as required by this
6 chapter or participate in arbitration as required by this chapter
7 or rules adopted under this chapter commits an unfair or deceptive
8 act or practice in the business of insurance for the purposes of
9 Chapter 541.

10 Sec. 525.010. APPLICATION OF OTHER LAW. To the extent not
11 inconsistent with this chapter and the rules adopted under this
12 chapter, Chapter 171, Civil Practice and Remedies Code, applies to
13 an arbitration conducted under this chapter.

14 Sec. 525.011. RULES. The commissioner may adopt rules
15 governing an arbitration conducted under this chapter, including
16 rules governing the communication of a written offer of settlement
17 and the acceptance or rejection of that offer.

18 SECTION 2. Chapter 525, Insurance Code, as added by this
19 Act, applies only to a dispute involving a claim for damages under
20 an insurance policy that is delivered, issued for delivery, or
21 renewed on or after January 1, 2012. A dispute involving a claim
22 for damages under an insurance policy that is delivered, issued for
23 delivery, or renewed before January 1, 2012, is governed by the law
24 in effect immediately before the effective date of this Act, and
25 that law is continued in effect for that purpose.

26 SECTION 3. This Act takes effect September 1, 2011.