

## **BILL ANALYSIS**

C.S.H.B. 2125  
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Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties assert that certain individuals and groups whose insured property was damaged by storms, hurricanes, or other disasters have filed lawsuits seeking more money in property damage than what the insurance companies initially paid or were willing to pay to settle their claims. Those parties further assert that the amounts demanded in these lawsuits often bear little or no relationship to the underlying value of the property damage in dispute, but instead are driven by statutory causes of action in the Insurance Code that allow the award of legal fees, penalties, and other costs in addition to the value of property lost. Some parties claim that there has been an increase in this sort of entrepreneurial litigation on behalf of property owners when there is little or no reason for litigation in the first place and suggest that such lawsuits are reducing market capacity and driving up the cost of property insurance. C.S.H.B. 2125 seeks to address these concerns by limiting the attorney's fees and interest that may be recovered by or awarded to an insured in connection with certain claims for property losses.

### **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. 2125 amends the Insurance Code to prohibit an insured that brings an action against an insurer pertaining to a property loss claim from recovering attorney's fees in an amount that is greater than 40 percent of the amount by which the property loss determined to be owed under the policy exceeds any amount of loss the insurer has already paid for the claim. The bill requires interest awarded to an insured under statutory provisions relating to prompt payment of claims in connection with a property loss claim to be computed using the postjudgment interest rate determined by the consumer credit commissioner and limits the interest to that amount.

C.S.H.B. 2125 applies its provisions to any claim under or related to an insurance policy that provides insurance coverage against damage to or loss of real property or tangible personal property and excludes from its provisions a claim under a policy issued by the Texas Windstorm Insurance Association, the FAIR Plan Association, or the Texas Automobile Insurance Plan Association. The bill's provisions apply only to a claim under or related to an insurance policy delivered, issued for delivery, or renewed on or after January 1, 2014.

### **EFFECTIVE DATE**

September 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2125 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial

differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subtitle A, Title 10, Insurance Code, is amended by adding Chapter 1808 to read as follows:

CHAPTER 1808. CLAIMS SETTLEMENT AND DISPUTE RESOLUTION FOR PROPERTY LOSS CLAIMS

Sec. 1808.001. DEFINITION.

Sec. 1808.002. APPLICABILITY OF CHAPTER. (a) Except as provided by Subsection (b), this chapter applies to a claim under an insurance policy that provides insurance coverage against damage to or loss of real property or tangible personal property, including a policy issued by an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock insurance company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write property insurance in this state.

(b) This chapter does not apply to a claim under a policy issued by:

- (1) the Texas Windstorm Insurance Association;
- (2) the FAIR Plan Association; or
- (3) the Texas Automobile Insurance Plan Association.

Sec. 1808.003. DISPUTE CONCERNING THE AMOUNT OF ACCEPTED COVERAGE: APPRAISAL REQUIRED.

(a) If an insurer accepts coverage for a property loss claim in full and the insured disputes only the amount of loss the insurer will pay for the claim, or if the insurer accepts coverage for a property loss claim in part and the insured disputes the amount of loss the insurer will pay for the accepted portion of the claim, the insured may request from the insurer a detailed summary of the manner in which the insurer determined the amount of loss the insurer will pay.

(b) If an insured disputes the amount of loss the insurer will pay for a property loss claim or a portion of a property loss claim, the insured must, before the insured brings an

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subtitle A, Title 10, Insurance Code, is amended by adding Chapter 1808 to read as follows:

CHAPTER 1808. CLAIMS FOR PROPERTY LOSSES

Sec. 1808.001. DEFINITION.

Sec. 1808.002. APPLICABILITY OF CHAPTER. (a) Except as provided by Subsection (b), this chapter applies to any claim under or related to an insurance policy that provides insurance coverage against damage to or loss of real property or tangible personal property, including a policy issued by an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock insurance company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write property insurance in this state.

(b) This chapter does not apply to a claim under a policy issued by:

- (1) the Texas Windstorm Insurance Association;
- (2) the FAIR Plan Association; or
- (3) the Texas Automobile Insurance Plan Association.

No equivalent provision.

action to resolve the dispute, demand appraisal in accordance with rules adopted by the commissioner for purposes of this section. A demand under this subsection tolls the applicable limitations period for filing the action until the 60th day after the date on which the appraisal decision is made.

(c) If an insurer demands appraisal under this section:

(1) the appraisal must be conducted as provided by the commissioner by rule; and

(2) the insured and the insurer are responsible in equal shares for paying any costs incurred or charged in connection with the appraisal, including a fee charged under Subsection (d).

(d) If an insured demands appraisal under this section and the appraiser retained by the insured and the appraiser retained by the insurer are able to agree on an appraisal umpire to participate in the resolution of the dispute, the appraisal umpire is the umpire chosen by the two appraisers. If the appraiser retained by the insured and the appraiser retained by the insurer are unable to agree on an appraisal umpire to participate in the resolution of the dispute, the commissioner shall select an appraisal umpire from a roster of qualified umpires maintained by the department. The department may:

(1) require appraisers to register with the department as a condition of being placed on the roster of umpires; and

(2) charge a reasonable registration fee to defray the cost incurred by the department in maintaining the roster and the commissioner in selecting an appraisal umpire under this subsection.

Sec. 1808.004. DISPUTE CONCERNING THE AMOUNT OF ACCEPTED COVERAGE: ATTORNEY'S FEES. An insured that brings an action to resolve a dispute for which an appraisal is required under Section 1808.003 may not recover attorney's fees in an amount that is greater than 40 percent of the amount by which the property loss awarded by the judgment exceeds the property loss awarded by the appraisal decision.

Sec. 1808.003. ATTORNEY'S FEES. An insured that brings an action against an insurer pertaining to a claim for property losses may not recover attorney's fees in an amount that is greater than 40 percent of the amount by which the property loss determined to be owed under the policy exceeds any amount of loss the insurer has already paid for the claim.

Sec. 1808.004. LIABILITY FOR VIOLATION OF SUBCHAPTER B.

Sec. 1808.005. JUDGMENT INTEREST. Notwithstanding Section 542.060, interest awarded to an insured under that section in connection with a claim for property losses must be computed using the postjudgment interest rate determined under Section 304.003, Finance Code.

Sec. 1808.006. EXCLUSIVITY OF REMEDIES FOR PROPERTY LOSS CLAIM. Notwithstanding Section 541.453 or 542.061 or any other law, an insured may not bring an action in connection with a claim for property losses to obtain a remedy provided by any statute other than this code.

SECTION 2. Chapter 1808, Insurance Code, as added by this Act, applies only to a claim under an insurance policy delivered, issued for delivery, or renewed on or after January 1, 2014. A claim under an insurance policy delivered, issued for delivery, or renewed before January 1, 2014, is governed by the law applicable to the claim immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2013.

CHAPTER 542. Interest awarded to an insured under Section 542.060 in connection with a claim for property losses must be computed using the postjudgment interest rate determined under Section 304.003, Finance Code, and is limited to that amount.

No equivalent provision.

SECTION 2. Chapter 1808, Insurance Code, as added by this Act, applies only to a claim under or related to an insurance policy delivered, issued for delivery, or renewed on or after January 1, 2014. A claim under or related to an insurance policy delivered, issued for delivery, or renewed before January 1, 2014, is governed by the law applicable to the claim immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. Same as introduced version.