

By: Alonzo

H.B. No. 3394

A BILL TO BE ENTITLED

AN ACT

relating to a direct action against an insurer and insured by third parties and required provisions of a liability insurance policy.

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

SECTION 1. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 100B to read as follows:

CHAPTER 100B. THIRD-PARTY LIABILITY OF INSURERS AND INSURED

Sec. 100B.001. DEFINITIONS. In this chapter:

(1) "Insured" means an individual who is issued, is a party to, or is a beneficiary under a liability insurance policy.

(2) "Insurer" means an insurance company or other entity admitted to engage in business and authorized to write liability insurance in this state, including a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange.

Sec. 100B.002. DIRECT ACTION AGAINST INSURERS AND INSURED.

(a) Except as provided by Subsection (c), a third party who is injured by an insured or is a survivor of an individual who was injured by the insured may bring an action under this chapter against the insured and the insured's insurer if the insurer is liable under the terms of the insured's policy to indemnify the insured for damages for the injury.

(b) The third party may bring an action under this chapter only in the county in which the injury occurred or in a county in

1 which an action may be brought against the insured or insurer under
2 Chapter 15.

3 (c) A third party may bring an action under this chapter
4 against the insurer only if:

5 (1) the insured has received a discharge in bankruptcy
6 by a court of competent jurisdiction that is applicable to the third
7 party's claim or that evidences that the insured is unable to pay
8 the claim;

9 (2) at the time the third party brings the action,
10 bankruptcy proceedings are pending for the insured in a court of
11 competent jurisdiction;

12 (3) the insured is insolvent;

13 (4) service of citation or other process cannot be
14 made on the insured;

15 (5) the third party is a child, parent, or spouse of
16 the insured;

17 (6) the third party is seeking to recover under the
18 insured's uninsured or underinsured motorist coverage; or

19 (7) the insured is deceased.

20 (d) A third party may bring an action under this chapter
21 regardless of whether the insured's policy prohibits an action
22 under this chapter or is written or delivered outside of this state.

23 Sec. 100B.003. EFFECT ON INSURANCE POLICIES. (a) This
24 chapter may not be construed to affect the provisions of an
25 insurance policy if the provisions are not in violation of the laws
26 of this state.

27 (b) An action brought under this chapter is subject to the

1 lawful conditions of the applicable insurance policy and the
2 defenses which an insurer may raise.

3 SECTION 2. Subchapter A, Chapter 2301, Insurance Code, is
4 amended by adding Section 2301.011 to read as follows:

5 Sec. 2301.011. REQUIRED POLICY PROVISIONS. (a) An insurer
6 may not deliver or issue for delivery in this state a form for use in
7 writing liability insurance described by Section 2301.003 unless
8 the form contains the provisions described by this section.

9 (b) A form must contain a provision providing that the
10 insolvency or bankruptcy of the insured does not release the
11 insurer from the payment of damages for an injury or loss by a third
12 party for which the insurer is liable under the policy.

13 (c) A form must contain a provision providing that a
14 judgment against an insured from which a third party cannot collect
15 any damages is prima facie evidence of the insured's insolvency and
16 the third party may bring an action against the insurer within the
17 terms and limits of the policy against the insurer under Chapter
18 100B, Civil Practice and Remedies Code.

19 (d) A form must contain a provision providing that the
20 purpose of the policy includes:

21 (1) providing benefits to all injured third parties
22 and the third parties' survivors to whom the insured is liable; and

23 (2) providing protection and coverage to each person
24 insured under the policy, regardless of whether the person is a
25 named insured or an additional insured, for any legal liability the
26 person may incur under the terms and limits of the policy.

27 SECTION 3. The changes in law made by this Act apply only to

1 an insurance policy delivered, issued for delivery, or renewed on
2 or after the effective date of this Act. An insurance policy
3 delivered, issued for delivery, or renewed before the effective
4 date of this Act is governed by the law in effect immediately before
5 the effective date of this Act, and that law is continued in effect
6 for that purpose.

7 SECTION 4. This Act takes effect September 1, 2015.