

By: Taylor of Galveston, et al.
(Smithee)

S.B. No. 1628

Substitute the following for S.B. No. 1628:

By: Frullo

C.S.S.B. No. 1628

A BILL TO BE ENTITLED

AN ACT

relating to insurance claims and certain prohibited acts and
practices in or in relation to the business of insurance.

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

SECTION 1. Section 541.151, Insurance Code, is amended to
read as follows:

Sec. 541.151. PRIVATE ACTION FOR ACTUAL DAMAGES AUTHORIZED.
Except as provided by Section 541.1511, a [A] person who sustains
actual damages may bring an action against another person for those
damages caused by the other person engaging in an act or practice:

(1) defined by Subchapter B to be an unfair method of
competition or an unfair or deceptive act or practice in the
business of insurance; or

(2) specifically enumerated in Section 17.46(b),
Business & Commerce Code, as an unlawful deceptive trade practice
if the person bringing the action shows that the person relied on
the act or practice to the person's detriment.

SECTION 2. Subchapter D, Chapter 541, Insurance Code, is
amended by adding Section 541.1511 to read as follows:

Sec. 541.1511. ACTION RELATING TO CERTAIN CLAIMS FOR
PROPERTY DAMAGE: INSURER ELECTION FOR LEGAL RESPONSIBILITY FOR
ACTIONS OF AGENTS AND EMPLOYEES. (a) This section applies only to
an action brought by an insured relating to or arising from a claim
for damage to or loss of real property or tangible personal property

1 made under an insurance policy providing coverage for damage to or
2 loss of real property.

3 (b) Except as provided by Subsection (d), an insured seeking
4 damages in an action to which this section applies may not file or
5 maintain an action under this subchapter against an employee,
6 agent, representative, or adjuster issuing policies, handling
7 claims, or performing other acts on behalf of an insurer, and any
8 such action shall be immediately dismissed, if:

9 (1) the employee, agent, representative, or adjuster
10 was not named in a notice given under Section 541.1541; or

11 (2) not later than the 30th day after the date the
12 notice given under Section 541.1541 is received, the insurer agrees
13 in a document provided to the insured to be liable for any act or
14 omission of the employee, agent, representative, or adjuster
15 related to or arising out of the insured's claim.

16 (c) A dismissal under Subsection (b)(1) or an agreement
17 under Subsection (b)(2) does not limit the insurer's liability and
18 does not limit the insurer's vicarious liability for any act or
19 omission of the employee, agent, representative, or adjuster
20 related to or arising out of the insured's claim.

21 (d) An insured may file and maintain an action described by
22 Subsection (b) if the insured shows and the court finds that the
23 insured cannot reasonably expect to secure complete relief unless
24 the employee, agent, representative, or adjuster is made a party to
25 the action.

26 SECTION 3. The heading to Section 541.152, Insurance Code,
27 is amended to read as follows:

1 Sec. 541.152. ACTUAL DAMAGES, ATTORNEY'S FEES, AND OTHER
2 RELIEF.

3 SECTION 4. The heading to Section 541.154, Insurance Code,
4 is amended to read as follows:

5 Sec. 541.154. PRIOR NOTICE OF ACTION OTHER THAN ACTION
6 RELATING TO CLAIM FOR PROPERTY DAMAGE.

7 SECTION 5. Section 541.154(a), Insurance Code, is amended
8 to read as follows:

9 (a) Except as provided by Section 541.1541, a [A] person
10 seeking damages in an action against another person under this
11 subchapter must provide written notice to the other person not
12 later than the 61st day before the date the action is filed.

13 SECTION 6. Subchapter D, Chapter 541, Insurance Code, is
14 amended by adding Section 541.1541 to read as follows:

15 Sec. 541.1541. PRIOR NOTICE OF ACTION RELATING TO CERTAIN
16 CLAIMS FOR PROPERTY DAMAGE. (a) This section applies only to an
17 action brought by an insured relating to or arising from a claim for
18 damage to or loss of real property or tangible personal property
19 made under an insurance policy providing coverage for damage to or
20 loss of real property.

21 (b) An insured seeking damages in an action to which this
22 section applies must provide written notice complying with this
23 section to all potential defendants not later than the 61st day
24 before the date the action is filed.

25 (c) The notice required by this section must state:

26 (1) the specific damage items and the amount alleged
27 to be owed by the insurer under the insurance policy;

1 (2) the amount of the actual damages, other damages,
2 interest, and expenses, specifically stated for each item, that the
3 insured alleges are owed by the insurer;

4 (3) the amount of attorney's fees the insured
5 reasonably has incurred as of the date the notice is given in
6 asserting the claim against the insurer;

7 (4) an amount that includes the amounts described by
8 Subdivisions (1) through (3) that the insured will accept in full
9 and final satisfaction of the claim; and

10 (5) the name of every person to whom notice is given
11 under this section and a brief description of each person's
12 relationship to the insured's claim.

13 (d) If the amount sought by the insured in the action
14 involves a claim for damage items not previously submitted to the
15 insurer, not later than the 15th day after the date notice under
16 this section is provided to an insurer, the insurer may request that
17 the insured provide copies of reports, estimates, photographs, and
18 other items reasonably supporting the insured's additional damage
19 items. If a request is made in accordance with this subsection, the
20 insured must provide the requested information before filing an
21 action to which this section applies.

22 (e) A presuit notice under this section is not required if
23 giving notice is impracticable because the action:

24 (1) must be filed to prevent the statute of
25 limitations from expiring; or

26 (2) is asserted as a counterclaim.

27 SECTION 7. Section [541.155](#), Insurance Code, is amended to

1 read as follows:

2 Sec. 541.155. ABATEMENT. (a) A person against whom an
3 action under this subchapter is pending who does not receive [~~the~~]
4 notice or requested information as required by Section 541.154 or
5 541.1541 may file a plea in abatement not later than the 30th day
6 after the date the person files an original answer in the court in
7 which the action is pending.

8 (b) The court shall abate the action if, after a hearing,
9 the court finds that the person is entitled to an abatement because
10 the claimant did not provide [~~the~~] notice or requested information
11 as required by Section 541.154 or 541.1541.

12 (c) An action is automatically abated without a court order
13 beginning on the 11th day after the date a plea in abatement is
14 filed if the plea:

15 (1) is verified and alleges that the person against
16 whom the action is pending did not receive [~~the~~] notice or requested
17 information as required by Section 541.154 or 541.1541; and

18 (2) is not controverted by an affidavit filed by the
19 claimant before the 11th day after the date the plea in abatement is
20 filed.

21 (d) An abatement under this section continues until the 60th
22 day after the date notice or requested information is provided in
23 compliance with Section 541.154 or 541.1541.

24 (e) This section does not apply if Section 541.154(c) or
25 541.1541(e) applies.

26 SECTION 8. Subchapter B, Chapter 542, Insurance Code, is
27 amended by adding Section 542.0595 to read as follows:

1 Sec. 542.0595. PRIOR NOTICE OF ACTION RELATING TO CERTAIN
2 CLAIMS FOR PROPERTY DAMAGE; ABATEMENT. (a) An insured may not
3 bring suit under Section 542.060 in connection with a claim for
4 damage to or loss of real property or tangible personal property
5 made under an insurance policy providing coverage for damage to or
6 loss of real property unless the insured has provided written
7 notice to the insurer with respect to the claim in accordance with
8 Section 541.1541 and any information requested by the insurer in
9 accordance with that section.

10 (b) A suit under Section 542.060 for which notice is
11 required by this section is subject to abatement to the same extent
12 and in the same manner provided by Section 541.155 for an action
13 under Subchapter D, Chapter 541.

14 SECTION 9. Section 542.060, Insurance Code, is amended to
15 read as follows:

16 Sec. 542.060. LIABILITY FOR VIOLATION OF SUBCHAPTER.
17 (a) If an insurer that is liable for a claim under an insurance
18 policy is not in compliance with this subchapter, the insurer is
19 liable to pay the holder of the policy or the beneficiary making the
20 claim under the policy, in addition to the amount of the claim,
21 interest on the unpaid amount of the claim at the rate of 18 percent
22 a year as damages, together with reasonable attorney's fees.

23 (a-1) In determining the amount of attorney's fees awarded
24 under Subsection (a), the trier of fact shall consider:

25 (1) the time and labor required, the novelty and
26 difficulty of the questions involved, and the skill requisite to
27 perform the legal service properly;

1 (2) the likelihood, if apparent to the claimant, that
2 the acceptance of the particular employment will preclude other
3 employment by the attorney;

4 (3) the fee customarily charged in the locality for
5 similar legal services;

6 (4) the amount involved and the results obtained;

7 (5) the time limitations imposed by the claimant or by
8 the circumstances;

9 (6) the nature and length of the professional
10 relationship with the claimant;

11 (7) the experience, reputation, and ability of the
12 attorney performing the services; and

13 (8) whether the fee is fixed or contingent on results
14 obtained or uncertainty of collection before the legal services
15 have been rendered.

16 (b) If a suit is filed, interest and ~~[the]~~ attorney's fees
17 payable under this section shall be taxed as part of the costs in
18 the case.

19 (c) The liability for interest and attorney's fees provided
20 by this section is the exclusive remedy for a violation of this
21 subchapter. This section is not intended to affect a right or
22 remedy provided by Chapter 541 or any other law outside this
23 subchapter.

24 (d) If a claim for a loss has been paid by the insurer and a
25 suit under this section arises out of a supplemental claim for that
26 loss, interest awarded under this section on the supplemental claim
27 begins to accrue on the 60th day after the date the insurer receives

notice of the supplemental claim.

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

CHAPTER 1808. CERTAIN CLAIMS FOR PROPERTY DAMAGE

Sec. 1808.001. DEFINITION. In this chapter, "claim for property damage" means a claim to which this chapter applies.

Sec. 1808.002. APPLICABILITY OF CHAPTER. This chapter applies only to a first party claim for damage to or loss of real property or tangible personal property made under an insurance policy:

(1) providing coverage for damage to or loss of real property; and

(2) issued by:

(A) any insurer authorized to write property insurance in this state, including:

(i) an insurance company;

(ii) a reciprocal or interinsurance exchange;

(iii) a mutual insurance company;

(iv) a capital stock insurance company;

(v) a county mutual insurance company;

(vi) a farm mutual insurance company; or

(vii) a Lloyd's plan;

(B) an eligible surplus lines insurer; or

(C) the FAIR Plan Association.

Sec. 1808.003. CLAIM FILING PERIOD. (a) Subject to Subsection (b), failure to provide notice of a claim for property

1 damage by the second anniversary of the date on which the damage to
2 or loss of property that is the basis of the claim occurs is an
3 absolute bar to recovery on the claim.

4 (b) Recovery on a claim for property damage is not barred if
5 in an action to recover on the claim the trier of fact determines
6 the claimant had good cause not to provide notice of the claim in
7 the time prescribed by Subsection (a).

8 (c) For the purposes of Subsection (b), "good cause"
9 includes military deployment.

10 (d) Except as provided by this subsection, nothing in this
11 section precludes an insurer from raising any defense available
12 under the terms of its policy relating to prompt notice or that is
13 otherwise available under the law. If an insurer raises a defense
14 based on the fact that notice of claim was not made in accordance
15 with the policy terms, the defense applies only on a showing and to
16 the extent that the insurer was prejudiced by notice not being made
17 in accordance with the policy terms.

18 Sec. 1808.004. APPRAISAL STANDARDS. (a) The commissioner
19 by rule shall adopt standards for minimum fairness for provisions
20 in insurance policies described by Section 1808.002 that provide an
21 appraisal process for claims for property damage.

22 (b) Standards adopted under this section must:

23 (1) take into consideration the expense involved in
24 submitting a claim to the appraisal process; and

25 (2) provide for a process that:

26 (A) is not unnecessarily complicated; and

27 (B) is designed to yield a prompt and fair

resolution of the disputed matter.

Sec. 1808.005. APPROVAL OF APPRAISAL PROVISIONS. (a) An insurer described by Section 1808.002 may submit to the commissioner for purposes of Section 1808.006 any policy form used or proposed to be used by the insurer to write insurance policies described by Section 1808.002 that contains provisions that provide an appraisal process for claims for property damage.

(b) If the commissioner determines the appraisal provisions in a policy form submitted under this section comply with the minimum standards adopted by the commissioner under Section 1808.004, the commissioner shall approve the appraisal provisions for purposes of Section 1808.006.

Sec. 1808.006. LIABILITY LIMITATIONS. (a) Except as provided by this section, an insurer is not liable in any private cause of action under Chapter 541 or 542 relating to or arising from a claim for property damage if:

(1) the policy under which the claim is made contains appraisal provisions:

(A) approved by the commissioner under Section 1808.005; or

(B) substantially similar to provisions approved by the commissioner under that section;

(2) the insurer:

(A) timely accepts the insured's demand for appraisal; or

(B) makes a demand for appraisal not later than the 30th day after the later of the date the insurer receives the

notice of the claim required by Section 541.1541 or 542.0595, as applicable, or the date the insurer receives information related to the claim timely requested by the insurer in accordance with Section 541.1541 for purposes of that section or Section 542.0595, as applicable, including notice or requested information received after an abatement of an action under Section 541.155 or 542.0595; and

(3) the insurer:

(A) participates in the appraisal process in good faith; and

(B) pays or tenders, not later than the 15th day after the date the insurer receives the appraisal award:

(i) the full amount of the appraisal award, less the amount of any deductible or previous payment on the claim; and

(ii) interest on the amount paid under Subparagraph (i) at the rate of 12 percent annually.

(b) For purposes of this section, if there is a dispute as to whether the insurer is to pay actual cash value or replacement cost, the insurer must pay or tender an amount under Section (a)(3)(B) that is based on the replacement cost.

(c) Interest to be paid under Subsection (a) accrues beginning on the later of:

(1) the fifth business day after the latest date on which the insurer is required to provide notice of acceptance or rejection of the relevant claim under Section 542.056; or

(2) if payment of the relevant claim or part of the

1 relevant claim is conditioned on the performance of an act by the
2 claimant, the fifth business day after the date the act is
3 performed.

4 SECTION 11. Section 4102.051(a), Insurance Code, is amended
5 to read as follows:

6 (a) A person may not act as a public insurance adjuster in
7 this state or hold himself or herself out to be a public insurance
8 adjuster in this state unless the person holds a license [~~or~~
9 ~~certificate~~] issued by the commissioner under Section 4102.053
10 or [7] 4102.054 [~~7~~, ~~or~~ 4102.069].

11 SECTION 12. Sections 4102.066(a) and (b), Insurance Code,
12 are amended to read as follows:

13 (a) The commissioner shall collect in advance the following
14 nonrefundable fees:

15 (1) for a public insurance adjuster license, an
16 application fee in an amount to be determined by rule by the
17 commissioner;

18 (2) for a nonresident public insurance adjuster
19 license, an application fee in an amount to be determined by rule by
20 the commissioner; and

21 (3) for each public insurance adjuster examination, a
22 fee in an amount to be determined by rule by the commissioner [~~and~~

23 [~~(4) for a public insurance adjuster trainee~~
24 ~~certificate under Section 4102.069, a registration fee in an amount~~
25 ~~to be determined by rule by the commissioner~~].

26 (b) The amount of the fee for the renewal of a license [~~or a~~
27 ~~certificate~~] issued under this chapter shall be determined by rule

1 by the commissioner.

2 SECTION 13. Section 4102.103, Insurance Code, is amended by
3 adding Subsection (d) to read as follows:

4 (d) A license holder may not enter into a contract with an
5 insured and collect a commission as provided by Section 4102.104
6 without the intent to actually perform the services customarily
7 provided by a licensed public insurance adjuster for the insured.

8 SECTION 14. Section 4102.104(d), Insurance Code, is amended
9 to read as follows:

10 (d) A public insurance adjuster may not accept any payment
11 that violates the provisions of this section [~~Subsection (c)~~].

12 SECTION 15. Section 4102.158, Insurance Code, is amended by
13 amending Subsection (a) and adding Subsections (d), (e), and (f) to
14 read as follows:

15 (a) A license holder may not:

16 (1) participate directly or indirectly in the
17 reconstruction, repair, or restoration of damaged property that is
18 the subject of a claim adjusted by the license holder; or

19 (2) engage in any other activities that may reasonably
20 be construed as presenting a conflict of interest, including
21 soliciting or accepting any remuneration from, [~~or~~] having a
22 financial interest in, or deriving any direct or indirect financial
23 benefit from, any salvage firm, repair firm, construction firm, or
24 other firm that obtains business in connection with any claim the
25 license holder has a contract or agreement to adjust.

26 (d) A license holder may not directly or indirectly solicit,
27 as described by Chapter 38, Penal Code, employment for an attorney

1 or enter into a contract with an insured for the primary purpose of
2 referring an insured to an attorney and without the intent to
3 actually perform the services customarily provided by a licensed
4 public insurance adjuster. This section may not be construed to
5 prohibit a license holder from recommending a particular attorney
6 to an insured.

7 (e) A license holder may not act on behalf of an attorney in
8 having an insured sign an attorney representation agreement.

9 (f) A license holder must become familiar with and at all
10 times act in conformance with the criminal barratry statute set
11 forth in Section 38.12, Penal Code.

12 SECTION 16. Section 4102.160, Insurance Code, is amended to
13 read as follows:

14 Sec. 4102.160. CERTAIN PAYMENTS PROHIBITED. A license
15 holder may not:

16 (1) advance money to any potential client or insured;
17 or

18 (2) pay, allow, or give, or offer to pay, allow, or
19 give, directly or indirectly, to a person who is not a licensed
20 public insurance adjuster a fee, commission, or other valuable
21 consideration for the referral of an insured to the public
22 insurance adjuster for purposes of ~~[based on]~~ the insured entering
23 into a contract with that public insurance adjuster or for any other
24 purpose ~~[, or~~

25 ~~[(3) otherwise offer to pay a fee, commission, or~~
26 ~~other valuable consideration exceeding \$100 to a person not~~
27 ~~licensed as a public insurance adjuster for referring an insured to~~

1 ~~the license holder]~~.

2 SECTION 17. Subchapter D, Chapter 4102, Insurance Code, is
3 amended by adding Section 4102.164 to read as follows:

4 Sec. 4102.164. ACCEPTANCE OF REFERRAL PAYMENTS PROHIBITED.

5 (a) A licensed public insurance adjuster may not accept a fee,
6 commission, or other valuable consideration of any nature,
7 regardless of form or amount, in exchange for the referral by a
8 licensed public insurance adjuster of an insured to any third-party
9 individual or firm, including but not limited to an attorney,
10 appraiser, umpire, construction company, contractor, or salvage
11 company.

12 (b) The commissioner shall adopt rules necessary to
13 implement and enforce this section.

14 SECTION 18. The heading to Section 27.02, Business &
15 Commerce Code, is amended to read as follows:

16 Sec. 27.02. CERTAIN OFFERS MADE AND INFORMATION PROVIDED IN
17 CONNECTION WITH INSURANCE CLAIMS ~~[FOR EXCESSIVE CHARGES]~~.

18 SECTION 19. Section 27.02(a), Business & Commerce Code, is
19 amended to read as follows:

20 (a) A person who sells goods or services, including a
21 contractor, appraiser, estimator, or insurance restoration
22 contractor, commits an offense if, in connection with a claim for
23 property loss or damage under a property or casualty insurance
24 policy:

25 (1) the person advertises or promises to ~~[provide the~~
26 ~~good or service and to]~~ pay, waive, absorb, rebate, subsidize,
27 credit, or otherwise cover for any reason ~~[+]~~

1 ~~[(A)]~~ all or part of any applicable insurance
2 deductible or other uninsured amount owed by an insured under the
3 terms of the policy; ~~[or~~

4 ~~[(B) a rebate in an amount equal to all or part of~~
5 ~~any applicable insurance deductible;]~~

6 (2) ~~[the good or service is paid for by the consumer~~
7 ~~from proceeds of a property or casualty insurance policy; and~~

8 ~~[(3)]~~ the person knowingly provides or causes to be
9 provided to an insurer any estimate or other statement as to the
10 cost of repair for the good or service to be provided that has been
11 increased, inflated, or otherwise manipulated ~~[charges an amount~~
12 ~~for the good or service that exceeds the usual and customary charge~~
13 ~~by the person for the good or service]~~ by an amount equal to or
14 greater than all or part of the applicable insurance deductible or
15 other uninsured amount owed by an insured under the policy; or

16 (3) the person knowingly provides or causes to be
17 provided to an insurer any false information within any estimate,
18 bid, proposal, or other statement as to the scope of damage or cost
19 of repair for the good or service to be provided ~~[paid by the person~~
20 ~~to an insurer on behalf of an insured or remitted to an insured by~~
21 ~~the person as a rebate].~~

22 SECTION 20. Section [4102.069](#), Insurance Code, is repealed.

23 SECTION 21. (a) The Texas Department of Insurance shall
24 conduct a study to determine the effectiveness of the changes in law
25 made by this Act. The study must determine:

26 (1) whether the changes in law made the affected
27 insurance policies more affordable;

1 (2) whether the changes in law made the affected
2 insurance policies more available;

3 (3) whether the changes in law resulted in a change in
4 the percentage of home buyers who qualify for home loans;

5 (4) the effect of the changes in law on litigation;

6 (5) the effect of the changes in law on consumer
7 complaints; and

8 (6) the effect of the changes in law on policy
9 deductibles.

10 (b) The commissioner of insurance may request and obtain
11 data from insurers as necessary to perform the study required by
12 this section.

13 (c) Not later than November 1, 2018, the Texas Department of
14 Insurance shall submit a written report detailing the findings made
15 by the department under this section to the lieutenant governor,
16 speaker of the house of representatives, and members of the
17 legislature.

18 (d) This section expires January 1, 2019.

19 SECTION 22. Chapter 541, Insurance Code, as amended by this
20 Act, applies only to conduct that occurs on or after the effective
21 date of this Act. Conduct that occurs before the effective date of
22 this Act is governed by the law as it existed immediately before the
23 effective date of this Act, and that law is continued in effect for
24 that purpose.

25 SECTION 23. Subchapter B, Chapter 542, Insurance Code, as
26 amended by this Act, applies only to a claim for which notice of
27 claim is provided to an insurer on or after the effective date of

1 this Act. A claim for which notice of claim is provided to an
2 insurer before the effective date of this Act is governed by the law
3 as it existed immediately before the effective date of this Act, and
4 that law is continued in effect for that purpose.

5 SECTION 24. Chapter 1808, Insurance Code, as added by this
6 Act, applies only to a claim under an insurance policy delivered,
7 issued for delivery, or renewed on or after January 1, 2016. A
8 claim under a policy delivered, issued for delivery, or renewed
9 before January 1, 2016, is governed by the law as it existed
10 immediately before the effective date of this Act, and that law is
11 continued in effect for that purpose.

12 SECTION 25. The repeal by this Act of Section 4102.069,
13 Insurance Code, does not affect the authority of a person to act
14 under a temporary certificate issued by the Texas Department of
15 Insurance under that section before the effective date of this Act.

16 SECTION 26. Sections 4102.103(d) and 4102.158(d),
17 Insurance Code, as added by this Act, apply only to a contract
18 entered into or solicitation made on or after the effective date of
19 this Act.

20 SECTION 27. (a) Except as provided by this section,
21 Section 4102.104, Insurance Code, as amended by this Act, applies
22 only to payment for a service performed on or after the effective
23 date of this Act.

24 (b) Payment for a service performed before the effective
25 date of this Act or performed after the effective date of this Act
26 under a contract entered into before the effective date of this Act
27 is governed by the law as it existed immediately before the

1 effective date of this Act, and that law is continued in effect for
2 that purpose.

3 SECTION 28. Section 4102.160, Insurance Code, as amended by
4 this Act, and Section 4102.164, Insurance Code, as added by this
5 Act, apply only to a referral made on or after the effective date of
6 this Act. A referral made before the effective date of this Act is
7 governed by the law as it existed immediately before the effective
8 date of this Act, and that law is continued in effect for that
9 purpose.

10 SECTION 29. The changes in law made by this Act apply only
11 to an offense committed on or after the effective date of this Act.
12 An offense committed before the effective date of this Act is
13 governed by the law in effect when the offense was committed, and
14 the former law is continued in effect for that purpose. For
15 purposes of this section, an offense was committed before the
16 effective date of this Act if any element of the offense occurred
17 before that date.

18 SECTION 30. This Act takes effect September 1, 2015.