

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 10  
By: Hancock et al.  
Business & Commerce  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Over the last few years, various hailstorms have resulted in tens of thousands of claims filed against property and casualty insurers statewide, resulting in mass litigation. In many cases, third-party contractors, adjusters, and attorneys canvass consumers in post-event areas to solicit business and/or representation to take legal action on behalf of the policyholder against the insurer. As a result, policyholders are misinformed, contractors are circumventing statutory and policy guidelines, adjusters inflate actual damages, and attorneys are applying mass tort models to simple property damage claims.

S.B. 10 addresses this issue by eliminating the ability of an insured to sue under both the Deceptive Trade Practices Act and the Insurance Code. An insured could choose either one, but not use both. S.B. 10 also changes the interest rate applicable to late-paid claims from 18 percent to a floating rate: Prime Rate amount plus three percent. Prime Rate comes from the Office of the Consumer Credit Commission of Texas determined under Section 304.003 (Judgment Interest Rate: Interest Rate or Time Price Differential Not in Contract), Finance Code.

No attorney fees can be recovered if an insurer can prove that barratry was used to procure representation of the insured. S.B. 10 creates a reporting mechanism during referral process between attorneys where a bad actor can be reported and kept from recovering attorney fees if found to have committed barratry while preserving the right of the consumer to still recover damages. If an attorney reports the barratry, they can maintain their attorney fees. If an insurer accepts responsibility for its agent or adjuster, the adjuster or agent must be dismissed from the law suit.

S.B. 10 seeks to address these issues as they relate to insurance claims and certain prohibited acts and practices in or in relation to the business of insurance. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 10 amends current law relating to actions on and liability associated with certain insurance claims.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 541.156(a), Insurance Code, to include Section 542A.003, Insurance Code, among certain sections relating to a settlement offer.

SECTION 2. Amends Section 542.060, Insurance Code, by amending Subsection (a) and adding Subsection (c), as follows:

- (a) Provides that, except as provided by Subsection (c), if an insurer that is liable for a claim under an insurance policy is not in compliance with this subchapter (Prompt Payment of Claims), the insurer is liable to pay the holder of the policy or the beneficiary making the claim under the policy, in addition to the amount of the claim, interest on the

amount of the claim at the rate of 18 percent a year as damages, together with reasonable and necessary attorney's fees. Provides that nothing in this subsection prevents the award of prejudgment interest on the amount of the claim, as provided by law.

(c) Provides that, in an action to which Chapter 542A applies, if an insurer that is liable for a claim under an insurance policy is not in compliance with this subchapter, the insurer is liable to pay the holder of the policy, in addition to the amount of the claim, simple interest on the amount of the claim as damages each year at the rate determined on the date of judgment by adding five percent to the interest rate determined under Section 304.003 (Judgment Interest Rate: Interest Rate or Time Price Differential Not in Contract), Finance Code, together with reasonable and necessary attorney's fees. Provides that nothing in this subsection prevents the award of prejudgment interest on the amount of the claim as provided by law. Provides that interest awarded under this subsection as damages accrues beginning on the date the claim was required to be paid.

SECTION 3. Amends Subtitle C, Title 5, Insurance Code, by adding Chapter 542A, as follows:

#### CHAPTER 542A. CERTAIN CONSUMER ACTIONS RELATED TO CLAIMS FOR PROPERTY DAMAGE

Sec. 542A.001. DEFINITIONS. Defines "agent," "claim," "claimant," "insurer," and "person."

Sec. 542A.002. APPLICABILITY OF CHAPTER (a) Provides that, except as provided by Subsection (b), this chapter applies to certain actions on a claim against an insurer or agent.

(b) Provides that this chapter does not apply to an action against the Texas Windstorm Insurance Association (TWIA) or to an action relating to or arising from a policy ceded to an insurer by TWIA under Subchapter O (Depopulation Program), Chapter 2210 (Texas Windstorm Insurance Association). Provides that an action against TWIA or that relates to or arises from a policy ceded to an insurer by TWIA under Subchapter O, Chapter 2210, is governed by Chapter 2210.

Sec. 542A.003. NOTICE REQUIRED. (a) Requires a claimant, in addition to any other notice required by law or the applicable insurance policy, not later than the 61st day before the date a claimant files an action to which this chapter applies in which the claimant seeks damages from any person, to give written notice to the person in accordance with this section as a prerequisite to filing the action.

(b) Requires that the required notice provide certain information.

(c) Requires the attorney or other representative, if an attorney or other representative gives the required notice on behalf of a claimant, to take certain actions.

(d) Provides that a presuit notice under Subsection (a) is not required if giving notice is impracticable for certain listed reasons.

(e) Requires a court, to ensure that a claimant is not prejudiced by having given the presuit notice required by this chapter, to dismiss without prejudice an action relating to the claim for which notice is given by the claimant and commenced before the 61st day after the date the claimant provides presuit notice under Subsection (a), by a person to whom presuit notice is given under Subsection (a), and against the claimant giving the notice.

(f) Provides that a claimant who gives notice in accordance with this chapter is not relieved of the obligation to give notice under any other applicable law.

Authorizes notice given under this chapter to be combined with notice given under any other law.

(g) Provides that notice given under this chapter is admissible in evidence in a civil action or alternative dispute resolution proceeding relating to the claim for which the notice is given.

(h) Provides that the giving of a notice under this chapter does not provide a basis for limiting the evidence of attorney's fees, damage, or loss a claimant may offer at trial.

Sec. 542A.004. INSPECTION. Authorizes a person to whom notice is given, once notice is given under Section 542A.003(a), to send a written request to the claimant to inspect, photograph, or evaluate, in a reasonable manner and at a reasonable time, the property that is the subject of the claim.

Sec. 542A.005. ABATEMENT. (a) Authorizes a person against whom an action to which this chapter applies is pending, in addition to taking any other act allowed by contract or by any other law, to file a plea in abatement not later than the 30th date after the date the person files an original answer in the court in which the action is pending if certain conditions are met.

(b) Requires the court to abate the action if the court finds that the person filing the plea in abatement did not, for any reason, receive a presuit notice complying with Section 542A.003 or requested under Section 542A.004 but was not provided a reasonable opportunity to inspect, photograph, or evaluate the property that is the subject of the claim.

(c) Provides that an action is automatically abated without a court order beginning on the 11th day after the date a plea in abatement is filed if the plea meets certain conditions.

(d) Requires that a certain affidavit controverting whether the person against whom the action is pending received a presuit notice complying with Section 542A.003 to include certain information.

(e) Provides that an abatement under this section continues until the later of the 60th day after the date a notice complying with Section 542A.003 is given or the 15th day after the date of the requested inspection, photographing, or evaluating of the property is completed.

(f) Prohibits a court, if an action is abated under this section, from compelling participation in an alternative dispute resolution proceeding until after the abatement period provided by Subsection (e) has expired.

Sec. 542A.006. ACTION AGAINST AGENT; INSURER ELECTION OF LEGAL RESPONSIBILITY. (a) Authorizes an insurer that is a party to the action, except as provided by Subsection (h), in an action to which this chapter applies, to elect to accept whatever liability an agent might have to the claimant for the agent's acts or omissions related to the claim by providing a written notice to the claimant.

(b) Provides that, if an insurer makes an election under Subsection (a) before a claimant files an action to which this chapter applies, no cause of action exists against the agent related to the claimant's claim, and, if the claimant files an action against the agent, requires the court to dismiss that action with prejudice.

(c) Requires the court, if a claimant files an action to which this chapter applies against an agent and the insurer thereafter makes an election under Subsection (a) with respect to the agent, to dismiss the action against the agent with prejudice.

(d) Provides that, if an insurer makes an election under Subsection (a) but, after having been served with a notice of intent to take a deposition of the agent who is the subject of the election, fails to make that agent available at a reasonable time and place to give deposition testimony, Sections 542A.007(a), (b), and (c) do not apply to the action with respect to which the insurer made the election unless the court finds that certain conditions are met.

(e) Provides that an insurer's election under Subsection (a) is ineffective to obtain dismissal of an action against an agent if the insurer's election is conditioned in a way that will result in the insurer avoiding liability for any claim-related damages caused to the claimant by the agent's acts or omissions.

(f) Prohibits an insurer from revoking, and a court from nullifying, an insurer's election made under Subsection (a).

(g) Authorizes evidence of the agent's acts or omissions, if an insurer makes an election under Subsection (a) and the agent is not a party to the action, to be offered at trial and, if sufficient evidence supports the submission, authorizes a jury to be asked to determine the agent's responsibility for claim-related damage caused to the claimant. Provides that, to the extent there is a conflict between this subsection and Chapter 33 (Proportionate Responsibility), Civil Practice and Remedies Code, this subsection prevails.

(h) Prohibits an insurer, if the insurer is in receivership at the time the claimant commences an action against the insurer, from making an election under Subsection (a), and requires the court to disregard any prior election made by the insurer relating to the claimant's claim.

(i) Prohibits an insurer's election under Subsection (a) from being made known to the jury in an action tried by a jury.

Sec. 542A.007. AWARD OF ATTORNEY'S FEES. (a) Provides that, except as otherwise provided by this section, the amount of attorney's fees that may be awarded to a claimant in an action to which this chapter applies is the lesser of certain amounts.

(b) Requires the court, except as provided by Subsection (d), to award to the claimant the full amount of reasonable and necessary attorney's fees supported at trial by sufficient evidence and determined by the trier of fact to have been incurred by the claimant in bringing the action, if the amount calculated under Subsection (a)(3)(A) (relating to calculating the amount of attorney's fees that may be awarded to the claimant by a certain formula) is greater than or equal to 0.8, not limited by this section or another law, and otherwise recoverable under law.

(c) Prohibits the court from awarding attorney's fees to the claimant if the amount calculated under Subsection (a)(3)(A) is less than 0.2.

(d) Prohibits the court, if a defendant in an action to which this chapter applies pleads and proves that the defendant was entitled to but was not given a presuit notice stating the specific amount alleged to be owed by the insurer under Section 542A.003(b)(2) (relating to requiring the required notice to provide the specific amount alleged to be owed by the insurer on the claim for damage to or loss of covered property) at least 61 days before the date the action was filed by the claimant, from awarding to the claimant any attorney's fees incurred after the date the defendant files the pleading with the court. Requires that a pleading under this subsection be filed not later than a certain date.

SECTION 4. (a) Makes application of Section 541.156, Insurance Code, as amended by this Act, and Chapter 542A, Insurance Code, as added by this Act, prospective.

(b) Makes application of Section 542.060(c), Insurance Code, as added by this Act, to a claim as defined by Section 542A.001, Insurance Code, as added by this Act, prospective.

SECTION 5. Effective date: upon passage or September 1, 2017.