

By: Bonnen of Galveston, Lucio III, Parker,  
Frullo, Phillips, et al.

H.B. No. 1774

Substitute the following for H.B. No. 1774:

By: Phillips

C.S.H.B. No. 1774

A BILL TO BE ENTITLED

AN ACT

relating to actions on and liability associated with certain  
insurance claims.

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

SECTION 1. Section 541.156(a), Insurance Code, is amended  
to read as follows:

(a) A person who receives notice provided under Section  
541.154 or 542A.003 may make a settlement offer during a period  
beginning on the date notice under Section 541.154 or 542A.003 is  
received and ending on the 60th day after that date.

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

(a) Except as provided by Subsection (c), if ~~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 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. Nothing in  
this subsection prevents the award of prejudgment interest on the  
amount of the claim, as provided by law.

(c) In an action to which Chapter 542A applies, if an  
insurer that is liable for a claim under an insurance policy is not

1 in compliance with this subchapter, the insurer is liable to pay the  
2 holder of the policy, in addition to the amount of the claim, simple  
3 interest on the amount of the claim as damages each year at the rate  
4 determined on the date of judgment by adding five percent to the  
5 interest rate determined under Section 304.003, Finance Code,  
6 together with reasonable and necessary attorney's fees. Nothing in  
7 this subsection prevents the award of prejudgment interest on the  
8 amount of the claim, as provided by law. Interest awarded under  
9 this subsection as damages accrues beginning on the date the claim  
10 was required to be paid.

11 SECTION 3. Subtitle C, Title 5, Insurance Code, is amended  
12 by adding Chapter 542A to read as follows:

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

15 Sec. 542A.001. DEFINITIONS. In this chapter:

16 (1) "Agent" means an employee, agent, representative,  
17 or adjuster who performs any act on behalf of an insurer.

18 (2) "Claim" means a first-party claim that:

19 (A) is made by an insured under an insurance  
20 policy providing coverage for real property or improvements to real  
21 property;

22 (B) must be paid by the insurer directly to the  
23 insured; and

24 (C) arises from damage to or loss of covered  
25 property caused, wholly or partly, by forces of nature, including  
26 an earthquake or earth tremor, a wildfire, a flood, a tornado,  
27 lightning, a hurricane, hail, wind, a snowstorm, or a rainstorm.

1           (3) "Claimant" means a person making a claim.

2           (4) "Insurer" means a corporation, association,  
3 partnership, or individual, other than the Texas Windstorm  
4 Insurance Association, engaged as a principal in the business of  
5 insurance and authorized or eligible to write property insurance in  
6 this state, including:

7                   (A) an insurance company;

8                   (B) a reciprocal or interinsurance exchange;

9                   (C) a mutual insurance company;

10                  (D) a capital stock insurance company;

11                  (E) a county mutual insurance company;

12                  (F) a farm mutual insurance company;

13                  (G) a Lloyd's plan;

14                  (H) an eligible surplus lines insurer; or

15                  (I) the FAIR Plan Association.

16           (5) "Person" means a corporation, association,  
17 partnership, or other legal entity or individual.

18           Sec. 542A.002. APPLICABILITY OF CHAPTER. (a) Except as  
19 provided by Subsection (b), this chapter applies to an action on a  
20 claim against an insurer or agent, including:

21                   (1) an action alleging a breach of contract;

22                   (2) an action alleging negligence, misrepresentation,  
23 fraud, or breach of a common law duty; or

24                   (3) an action brought under:

25                           (A) Subchapter D, Chapter 541;

26                           (B) Subchapter B, Chapter 542; or

27                           (C) Subchapter E, Chapter 17, Business & Commerce

1 Code.

2 (b) This chapter does not apply to an action against the  
3 Texas Windstorm Insurance Association or to an action relating to  
4 or arising from a policy ceded to an insurer by the Texas Windstorm  
5 Insurance Association under Subchapter O, Chapter 2210. An action  
6 against the Texas Windstorm Insurance Association or that relates  
7 to or arises from a policy ceded to an insurer by the Texas  
8 Windstorm Insurance Association under Subchapter O, Chapter 2210,  
9 is governed by Chapter 2210.

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

17 (b) The notice required under this section must provide:

18 (1) a statement of the acts or omissions giving rise to  
19 the claim;

20 (2) the specific amount alleged to be owed by the  
21 insurer on the claim for damage to or loss of covered property; and

22 (3) the amount of reasonable and necessary attorney's  
23 fees incurred by the claimant, calculated by multiplying the number  
24 of hours actually worked by the claimant's attorney, as of the date  
25 the notice is given and as reflected in contemporaneously kept time  
26 records, by an hourly rate that is customary for similar legal  
27 services.

1       (c) If an attorney or other representative gives the notice  
2 required under this section on behalf of a claimant, the attorney or  
3 representative shall:

4             (1) provide a copy of the notice to the claimant; and

5             (2) include in the notice a statement that a copy of  
6 the notice was provided to the claimant.

7       (d) A presuit notice under Subsection (a) is not required if  
8 giving notice is impracticable because:

9             (1) the claimant has a reasonable basis for believing  
10 there is insufficient time to give the presuit notice before the  
11 limitations period will expire; or

12            (2) the action is asserted as a counterclaim.

13       (e) To ensure that a claimant is not prejudiced by having  
14 given the presuit notice required by this chapter, a court shall  
15 dismiss without prejudice an action relating to the claim for which  
16 notice is given by the claimant and commenced:

17            (1) before the 61st day after the date the claimant  
18 provides presuit notice under Subsection (a);

19            (2) by a person to whom presuit notice is given under  
20 Subsection (a); and

21            (3) against the claimant giving the notice.

22       (f) A claimant who gives notice in accordance with this  
23 chapter is not relieved of the obligation to give notice under any  
24 other applicable law. Notice given under this chapter may be  
25 combined with notice given under any other law.

26       (g) Notice given under this chapter is admissible in  
27 evidence in a civil action or alternative dispute resolution

1 proceeding relating to the claim for which the notice is given.

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

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

10 Sec. 542A.005. ABATEMENT. (a) In addition to taking any  
11 other act allowed by contract or by any other law, a person against  
12 whom an action to which this chapter applies is pending may file a  
13 plea in abatement not later than the 30th day after the date the  
14 person files an original answer in the court in which the action is  
15 pending if the person:

16 (1) did not receive a presuit notice complying with  
17 Section 542A.003; or

18 (2) requested under Section 542A.004 but was not  
19 provided a reasonable opportunity to inspect, photograph, or  
20 evaluate the property that is the subject of the claim.

21 (b) The court shall abate the action if the court finds that  
22 the person filing the plea in abatement:

23 (1) did not, for any reason, receive a presuit notice  
24 complying with Section 542A.003; or

25 (2) requested under Section 542A.004 but was not  
26 provided a reasonable opportunity to inspect, photograph, or  
27 evaluate the property that is the subject of the claim.

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

4           (1) is verified and alleges that the person against  
5 whom the action is pending:

6                   (A) did not receive a presuit notice complying  
7 with Section 542A.003; or

8                   (B) requested under Section 542A.004 but was not  
9 provided a reasonable opportunity to inspect, photograph, or  
10 evaluate the property that is the subject of the claim; and

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

14       (d) An affidavit described by Subsection (c)(2)  
15 controverting whether the person against whom the action is pending  
16 received a presuit notice complying with Section 542A.003 must:

17           (1) include as an attachment a copy of the document the  
18 claimant sent to give notice of the claimant's action; and

19                   (2) state the date on which the notice was given.

20       (e) An abatement under this section continues until the  
21 later of:

22           (1) the 60th day after the date a notice complying with  
23 Section 542A.003 is given; or

24           (2) the 15th day after the date of the requested  
25 inspection, photographing, or evaluating of the property is  
26 completed.

27       (f) If an action is abated under this section, a court may

1 not compel participation in an alternative dispute resolution  
2 proceeding until after the abatement period provided by Subsection  
3 (e) has expired.

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

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

15 (c) If a claimant files an action to which this chapter  
16 applies against an agent and the insurer thereafter makes an  
17 election under Subsection (a) with respect to the agent, the court  
18 shall dismiss the action against the agent with prejudice.

19 (d) If an insurer makes an election under Subsection (a)  
20 but, after having been served with a notice of intent to take a  
21 deposition of the agent who is the subject of the election, fails to  
22 make that agent available at a reasonable time and place to give  
23 deposition testimony, Sections 542A.007(a), (b), and (c) do not  
24 apply to the action with respect to which the insurer made the  
25 election unless the court finds that:

26 (1) it is impracticable for the insurer to make the  
27 agent available due to a change in circumstances arising after the



1 insurer made the election under Subsection (a);

2 (2) the agent whose liability was assumed would not  
3 have been a proper party to the action; or

4 (3) obtaining the agent's deposition testimony is not  
5 warranted under the law.

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

11 (f) An insurer may not revoke, and a court may not nullify,  
12 an insurer's election under Subsection (a).

13 (g) If an insurer makes an election under Subsection (a) and  
14 the agent is not a party to the action, evidence of the agent's acts  
15 or omissions may be offered at trial and, if sufficient evidence  
16 supports the submission, a jury may be asked to determine the  
17 agent's responsibility for claim-related damage caused to the  
18 claimant. To the extent there is a conflict between this subsection  
19 and Chapter 33, Civil Practice and Remedies Code, this subsection  
20 prevails.

21 (h) If an insurer is in receivership at the time the  
22 claimant commences an action against the insurer, the insurer may  
23 not make an election under Subsection (a), and the court shall  
24 disregard any prior election made by the insurer relating to the  
25 claimant's claim.

26 (i) In an action tried by a jury, an insurer's election  
27 under Subsection (a) may not be made known to the jury.

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

5           (1) the amount of reasonable and necessary attorney's  
6 fees supported at trial by sufficient evidence and determined by  
7 the trier of fact to have been incurred by the claimant in bringing  
8 the action;

9           (2) the amount of attorney's fees that may be awarded  
10 to the claimant under other applicable law; or

11           (3) the amount calculated by:

12                   (A) dividing the amount to be awarded in the  
13 judgment to the claimant for the claimant's claim under the  
14 insurance policy for damage to or loss of covered property by the  
15 amount alleged to be owed on the claim for that damage or loss in a  
16 notice given under this chapter; and

17                   (B) multiplying the amount calculated under  
18 Paragraph (A) by the total amount of reasonable and necessary  
19 attorney's fees supported at trial by sufficient evidence and  
20 determined by the trier of fact to have been incurred by the  
21 claimant in bringing the action.

22       (b) Except as provided by Subsection (d), the court shall  
23 award to the claimant the full amount of reasonable and necessary  
24 attorney's fees supported at trial by sufficient evidence and  
25 determined by the trier of fact to have been incurred by the  
26 claimant in bringing the action if the amount calculated under  
27 Subsection (a)(3)(A) is:

1           (1) greater than or equal to 0.8;

2           (2) not limited by this section or another law; and

3           (3) otherwise recoverable under law.

4           (c) The court may not award attorney's fees to the claimant  
5 if the amount calculated under Subsection (a)(3)(A) is less than  
6 0.2.

7           (d) If a defendant in an action to which this chapter  
8 applies pleads and proves that the defendant was entitled to but was  
9 not given a presuit notice stating the specific amount alleged to be  
10 owed by the insurer under Section 542A.003(b)(2) at least 61 days  
11 before the date the action was filed by the claimant, the court may  
12 not award to the claimant any attorney's fees incurred after the  
13 date the defendant files the pleading with the court. A pleading  
14 under this subsection must be filed not later than the 30th day  
15 after the date the defendant files an original answer in the court  
16 in which the action is pending.

17           SECTION 4. (a) Section 541.156, Insurance Code, as amended  
18 by this Act, and Chapter 542A, Insurance Code, as added by this Act,  
19 apply only to an action filed on or after the effective date of this  
20 Act. An action that is filed before the effective date of this Act  
21 is governed by the law as it existed immediately before the  
22 effective date of this Act, and that law is continued in effect for  
23 that purpose.

24           (b) Section 542.060(c), Insurance Code, as added by this  
25 Act, applies only to a claim, as defined by Section 542A.001,  
26 Insurance Code, as added by this Act, made on or after the effective  
27 date of this Act. A claim made before the effective date of this Act

1 is governed by the law as it existed immediately before the  
2 effective date of this Act, and that law is continued in effect for  
3 that purpose.

4         SECTION 5. This Act takes effect immediately if it receives  
5 a vote of two-thirds of all the members elected to each house, as  
6 provided by Section 39, Article III, Texas Constitution. If this  
7 Act does not receive the vote necessary for immediate effect, this  
8 Act takes effect September 1, 2017.