

By: Hancock, et al.

S.B. No. 10

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Section 17.50(a), Business & Commerce Code, is amended to read as follows:

(a) A consumer may maintain an action where any of the following constitute a producing cause of economic damages or damages for mental anguish:

(1) the use or employment by any person of a false, misleading, or deceptive act or practice that is:

(A) specifically enumerated in a subdivision of Subsection (b) of Section 17.46 of this subchapter; and

(B) relied on by a consumer to the consumer's detriment;

(2) breach of an express or implied warranty;

(3) any unconscionable action or course of action by any person; or

(4) except as provided by Section 541.151, Insurance Code, the use or employment by any person of an act or practice in violation of Chapter 541, Insurance Code.

SECTION 2. Section 541.151, Insurance Code, is amended to read as follows:

Sec. 541.151. PRIVATE ACTION FOR DAMAGES AUTHORIZED.

1 (a) Except as provided by Subsection (b), a [A] person who
2 sustains actual damages may bring an action against another person
3 for those damages caused by the other person engaging in an act or
4 practice:

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

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

12 (b) A person who brings an action against another person
13 under this section for an act or practice in violation of Section
14 541.060 or 541.061 may not bring an action against that other person
15 under Subchapter E, Chapter 17, Business & Commerce Code, that is
16 related to the same claim.

17 SECTION 3. Section 541.156(a), Insurance Code, is amended
18 to read as follows:

19 (a) A person who receives notice provided under Section
20 541.154 or 542A.003 may make a settlement offer during a period
21 beginning on the date notice under Section 541.154 or 542A.003 is
22 received and ending on the 60th day after that date.

23 SECTION 4. The heading to Section 542.060, Insurance Code,
24 is amended to read as follows:

25 Sec. 542.060. LIABILITY FOR DELAY IN PAYMENT [~~VIOLATION OF~~
26 ~~SUBCHAPTER~~].

27 SECTION 5. Section 542.060, Insurance Code, is amended by

1 amending Subsection (a) and adding Subsection (c) to read as
2 follows:

3 (a) If an insurer that is liable for a claim under an
4 insurance policy delays payment of the claim in violation of
5 Section 542.058 [~~is not in compliance with this subchapter~~], the
6 insurer is liable to pay the holder of the policy or the beneficiary
7 making the claim under the policy, in addition to the amount of the
8 claim, interest on the amount of the claim as damages at the rate
9 described by Subsection (c) [~~of 18 percent a year as damages~~],
10 together with reasonable and necessary attorney's fees.

11 (c) Interest awarded under Subsection (a) accrues beginning
12 on the date the claim was required to be paid, and the interest rate
13 applied is determined by adding three percent to the interest rate
14 determined under Section 304.003, Finance Code.

15 SECTION 6. Subtitle C, Title 5, Insurance Code, is amended
16 by adding Chapter 542A to read as follows:

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

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

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

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

23 (A) is made by an insured or policyholder under
24 an insurance policy or contract; and

25 (B) must be paid by the insurer directly to the
26 insured.

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

1 Sec. 542A.002. APPLICABILITY OF CHAPTER. (a) This chapter
2 applies to an action brought by a claimant relating to or arising
3 from the insured's claim for damage to or loss of covered property
4 under an insurance policy providing coverage against damage to or
5 loss of improvements to real property, including:

6 (1) an action alleging a breach of contract or of a
7 common law duty; or

8 (2) an action brought under:

9 (A) Subchapter D, Chapter 541;

10 (B) Subchapter B, Chapter 542; or

11 (C) Subchapter E, Chapter 17, Business & Commerce
12 Code.

13 (b) Except as provided by subsection (c), this chapter
14 applies to any insurer authorized or eligible to write property
15 insurance in this state, including:

16 (1) an insurance company;

17 (2) a reciprocal or interinsurance exchange;

18 (3) a mutual insurance company;

19 (4) a capital stock insurance company;

20 (5) a county mutual insurance company;

21 (6) a farm mutual insurance company;

22 (7) a Lloyd's plan;

23 (8) an eligible surplus lines insurer; or

24 (9) the FAIR Plan Association.

25 (c) This chapter does not apply to any insurer operating
26 under Chapter 2210.

27 Sec. 542A.003. NOTICE REQUIRED. (a) In addition to any

1 other notice required by law or the applicable insurance policy, as
2 a prerequisite to filing an action seeking damages under this
3 chapter against any person, a claimant shall give written notice to
4 the person not later than the 61st day before the date the claimant
5 files an action to which this chapter applies.

6 (b) The notice required under this section must be in
7 writing and must provide:

8 (1) a statement of the acts or omissions giving rise to
9 the claim;

10 (2) the identity of any agent whose act or omission
11 caused or contributed to the claimant's damage or loss;

12 (3) the specific amount alleged to be owed on the claim
13 by the insurer; and

14 (4) the amount of reasonable and necessary attorney's
15 fees incurred by the claimant, as calculated under Subsection (c).

16 (c) The claimant shall calculate the amount of attorney's
17 fees stated under Subsection (b) by multiplying the number of hours
18 actually worked by the claimant's attorney, as of the date the
19 notice is given and as reflected in contemporaneously kept time
20 records, by an hourly rate that is customary for the same or similar
21 legal services.

22 (d) If an attorney or other representative gives the notice
23 required under this section on behalf of a claimant, the attorney or
24 representative shall:

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

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

1 (e) A presuit notice under Subsection (a) is not required if
2 giving notice is impracticable because the action:

3 (1) must be filed to prevent limitations from
4 expiring; or

5 (2) is asserted as a counterclaim.

6 (f) A claimant who does not give a presuit notice under
7 Subsection (a) because giving notice is impracticable as described
8 by Subsection (e)(1) must give notice in accordance with Section
9 542A.004.

10 (g) A claimant who gives notice in accordance with this
11 chapter is not relieved of the obligation to give notice under any
12 other applicable law. Notice given under this chapter may be
13 combined with notice given under any other law.

14 (h) Notice given under this chapter is admissible in
15 evidence in a civil action or alternative dispute resolution
16 proceeding relating to the claim for which the notice is given.

17 Sec. 542A.004. ABATEMENT. (a) A person against whom an
18 action governed by this chapter is pending who does not receive a
19 presuit notice complying Section 542A.003 may file a plea in
20 abatement not later than the 30th day after the date the person
21 files an original answer in the court in which the action is
22 pending.

23 (b) The court shall abate the action if the court finds that
24 the person filing the plea in abatement did not receive a presuit
25 notice complying with Section 542A.003.

26 (c) An action is automatically abated without a court order
27 beginning on the 11th day after the date a plea in abatement is

1 filed if the plea:

2 (1) is verified and alleges that the person against
3 whom the action is pending did not receive a presuit notice
4 complying with Section 542A.003; and

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

8 (d) An abatement under this section continues until the 60th
9 day after the date a notice complying with Section 542A.003 is
10 given.

11 (e) In an action to which this chapter applies,
12 participation in an alternative dispute resolution proceeding may
13 not be compelled by a court until after the abatement period
14 provided by Subsection (d) has expired.

15 Sec. 542A.005. INSPECTION. (a) After a claimant gives
16 notice to an insurer under Section 542A.003(a) and before the date
17 the claimant files the action for which notice is given, the insurer
18 may send a written request to the claimant to inspect, photograph,
19 sample, or test the property that is the subject of the claim,
20 stating a reasonable date and time for conducting the inspection,
21 photographing, sampling, or testing.

22 (b) A claimant shall respond in writing to a request for
23 inspection made pursuant to subsection (a) no later than the 10th
24 day after receipt of the request. The claimant's response shall:

25 (1) state that the claimant will allow the inspection,
26 photographing, sampling, or testing as requested by the insurer;

27 (2) propose a date and time for the insurer to conduct

1 the inspection, photographing, sampling, or testing that is not
2 later than the 10th day after the date proposed by the insurer; or

3 (3) state that the claimant objects to the request for
4 inspection, photographing, sampling, or testing and the basis of
5 the objection.

6 (c) If a claimant objects to an inspection requested by an
7 insurer, the claimant shall file a motion for protection in a
8 district court in the county in which the property is located not
9 later than the 10th day after making the response required by
10 Subsection (b).

11 (d) The trial court shall hear and decide a claimant's
12 motion for protection on or before the 10th day after the date the
13 motion was filed. The court shall sign an order for appropriate
14 inspection, photographing, sampling, or testing on a specified date
15 and time, unless the court finds that the request to inspect,
16 photograph, sample, or test was made in bad faith or for the purpose
17 of harassing the claimant. If the court finds that the request to
18 inspect, photograph, sample, or test was made in bad faith or for
19 the purpose of harassing the claimant, the court must state in a
20 written order the facts supporting the court's decision.

21 Sec. 542A.006. ACTION AGAINST AGENT; INSURER ELECTION OF
22 LEGAL RESPONSIBILITY. (a) In an action to which this chapter
23 applies, an insurer that is a party to the action may, by providing
24 a written notice to the claimant, accept whatever liability the
25 agent might have for the agent's acts or omissions related to the
26 claim.

27 (b) If an insurer makes the election available to it under

1 Subsection (a) before the claimant files an action to which this
2 chapter applies, the claimant shall not file an action against the
3 agent.

4 (c) If a claimant files an action to which this chapter
5 applies against an agent and the insurer thereafter makes the
6 election available to it under Subsection (a), the action against
7 the agent shall be dismissed with prejudice.

8 (d) The election made by an insurer under subsection (a)
9 must be unconditional. A conditional or qualified election by the
10 insurer shall be ineffective to obtain dismissal of an action
11 against an agent if the stated qualifications would result in the
12 insurer avoiding liability for all claim-related damages caused to
13 the claimant by the agent's acts or omissions.

14 (e) An election made by an insurer under Subsection (a) does
15 not affect an insurer's direct or vicarious liability for the
16 agent's acts or omissions.

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

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

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

25 (1) the amount of reasonable and necessary attorney's
26 fees incurred in bringing the action as determined by the trier of
27 fact;

1 (2) the amount of attorney's fees that may be awarded
2 under any other law; or

3 (3) the amount calculated by:

4 (A) dividing the amount awarded in the judgment
5 to the claimant for the claimant's claim under the insurance policy
6 by the amount alleged to be owed on the claim in a notice given under
7 Section 542A.003 or 542A.004; and

8 (B) multiplying the amount calculated under
9 Paragraph (A) by the total amount of reasonable and necessary
10 attorney's fees incurred by the claimant in bringing the action as
11 determined by the trier of fact.

12 (b) Except as provided by Subsection (d), the court shall
13 award to the claimant the full amount of reasonable and necessary
14 attorney's fees incurred by the claimant in bringing the action, as
15 determined by the trier of fact, if the amount calculated under
16 Subsection (a)(3)(A) is greater than or equal to 0.8, supported by
17 sufficient evidence, not limited by this section or another law,
18 and otherwise recoverable under law; and

19 (c) The court may not award attorney's fees to the claimant
20 if the amount calculated under Subsection (a)(3)(A) is less than
21 0.2.

22 (d) The court may not award attorney's fees to the claimant
23 if a defendant in the action pleads as an affirmative defense, and
24 proves by a preponderance of the evidence, that representation of
25 the claimant resulted from conduct violating Section 38.12, Penal
26 Code, unless the court determines that the claimant's attorney:

27 (1) did not have actual knowledge of or reason to know

1 of the violation of Section 38.12, Penal Code, before accepting
2 representation of the claimant; and

3 (2) reported the violation of Section 38.12, Penal
4 Code, as required by the Texas Disciplinary Rules of Professional
5 Conduct of the State Bar of Texas within a reasonable time after
6 learning facts that would lead a reasonable attorney to believe
7 that a violation of Section 38.12 had occurred.

8 (e) If the court finds that the defendant was entitled to,
9 but did not, receive a presuit notice at least 61 days before the
10 action was filed by the claimant, as required by Section 542A.003,
11 the court may not award to the claimant any attorney's fees incurred
12 after the date a defendant files a notice of intent to seek
13 disallowance of fees due to the claimant's failure to provide a
14 timely presuit notice.

15 SECTION 7. (a) Section 17.50(a), Business & Commerce Code,
16 and Section 541.151, Insurance Code, as amended by this Act, apply
17 only to an action filed on or after the effective date of this Act.
18 An action that is filed before the effective date of this Act is
19 governed by the law as it existed immediately before the effective
20 date of this Act, and that law is continued in effect for that
21 purpose.

22 (b) Section 541.156(a), Insurance Code, as amended by this
23 Act, and Chapter 542A, Insurance Code, as added by this Act, apply
24 only to an action filed on or after the effective date of this Act.
25 A claimant who files an action within 60 days after the effective
26 date of this Act but who did not provide a presuit notice complying
27 with Section 542A.003 must give notice as provided in section

1 542A.003(f). An action that is filed before the effective date of
2 this Act is governed by the law as it existed immediately before the
3 effective date of this Act, and that law is continued in effect for
4 that purpose.

5 (c) Section 542.060, Insurance Code, as amended by this Act,
6 applies only to a claim, as defined under 542.051, made on or after
7 the effective date of this Act by an insurer, policyholder, or
8 beneficiary under an insurance policy or contract. A claim made
9 before the effective date of this Act is governed by the law as it
10 existed immediately before the effective date of this Act, and that
11 law is continued in effect for that purpose.

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