

1-1 By: Hancock, et al. S.B. No. 10  
1-2 (In the Senate - Filed February 13, 2017; February 14, 2017,  
1-3 read first time and referred to Committee on Business & Commerce;  
1-4 April 24, 2017, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 7, Nays 2; April 24, 2017,  
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16		X		
1-17		X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 10 By: Hancock

1-19 A BILL TO BE ENTITLED  
1-20 AN ACT

1-21 relating to actions on and liability associated with certain  
1-22 insurance claims.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 541.156(a), Insurance Code, is amended  
1-25 to read as follows:

1-26 (a) A person who receives notice provided under Section  
1-27 541.154 or 542A.003 may make a settlement offer during a period  
1-28 beginning on the date notice under Section 541.154 or 542A.003 is  
1-29 received and ending on the 60th day after that date.

1-30 SECTION 2. Section 542.060, Insurance Code, is amended by  
1-31 amending Subsection (a) and adding Subsection (c) to read as  
1-32 follows:

1-33 (a) Except as provided by Subsection (c), if [~~If~~] an insurer  
1-34 that is liable for a claim under an insurance policy is not in  
1-35 compliance with this subchapter, the insurer is liable to pay the  
1-36 holder of the policy or the beneficiary making the claim under the  
1-37 policy, in addition to the amount of the claim, interest on the  
1-38 amount of the claim at the rate of 18 percent a year as damages,  
1-39 together with reasonable and necessary attorney's fees. Nothing in  
1-40 this subsection prevents the award of prejudgment interest on the  
1-41 amount of the claim, as provided by law.

1-42 (c) In an action to which Chapter 542A applies, if an  
1-43 insurer that is liable for a claim under an insurance policy is not  
1-44 in compliance with this subchapter, the insurer is liable to pay the  
1-45 holder of the policy, in addition to the amount of the claim, simple  
1-46 interest on the amount of the claim as damages each year at the rate  
1-47 determined on the date of judgment by adding five percent to the  
1-48 interest rate determined under Section 304.003, Finance Code,  
1-49 together with reasonable and necessary attorney's fees. Nothing in  
1-50 this subsection prevents the award of prejudgment interest on the  
1-51 amount of the claim, as provided by law. Interest awarded under  
1-52 this subsection as damages accrues beginning on the date the claim  
1-53 was required to be paid.

1-54 SECTION 3. Subtitle C, Title 5, Insurance Code, is amended  
1-55 by adding Chapter 542A to read as follows:

1-56 CHAPTER 542A. CERTAIN CONSUMER ACTIONS RELATED TO CLAIMS FOR  
1-57 PROPERTY DAMAGE

1-58 Sec. 542A.001. DEFINITIONS. In this chapter:

1-59 (1) "Agent" means an employee, agent, representative,  
1-60 or adjuster who performs any act on behalf of an insurer.

2-1                   (2) "Claim" means a first-party claim that:  
 2-2                   (A) is made by an insured under an insurance  
 2-3 policy providing coverage for real property or improvements to real  
 2-4 property;  
 2-5                   (B) must be paid by the insurer directly to the  
 2-6 insured; and  
 2-7                   (C) arises from damage to or loss of covered  
 2-8 property caused, wholly or partly, by forces of nature, including  
 2-9 an earthquake or earth tremor, a wildfire, a flood, a tornado,  
 2-10 lightning, a hurricane, hail, wind, a snowstorm, or a rainstorm.

2-11                   (3) "Claimant" means a person making a claim.

2-12                   (4) "Insurer" means a corporation, association,  
 2-13 partnership, or individual, other than the Texas Windstorm  
 2-14 Insurance Association, engaged as a principal in the business of  
 2-15 insurance and authorized or eligible to write property insurance in  
 2-16 this state, including:

- 2-17                   (A) an insurance company;
- 2-18                   (B) a reciprocal or interinsurance exchange;
- 2-19                   (C) a mutual insurance company;
- 2-20                   (D) a capital stock insurance company;
- 2-21                   (E) a county mutual insurance company;
- 2-22                   (F) a farm mutual insurance company;
- 2-23                   (G) a Lloyd's plan;
- 2-24                   (H) an eligible surplus lines insurer; or
- 2-25                   (I) the FAIR Plan Association.

2-26                   (5) "Person" means a corporation, association,  
 2-27 partnership, or other legal entity or individual.

2-28                   Sec. 542A.002. APPLICABILITY OF CHAPTER. (a) Except as  
 2-29 provided by Subsection (b), this chapter applies to an action on a  
 2-30 claim against an insurer or agent, including:

- 2-31                   (1) an action alleging a breach of contract;
- 2-32                   (2) an action alleging negligence, misrepresentation,  
 2-33 fraud, or breach of a common law duty; or
- 2-34                   (3) an action brought under:
  - 2-35                   (A) Subchapter D, Chapter 541;
  - 2-36                   (B) Subchapter B, Chapter 542; or
  - 2-37                   (C) Subchapter E, Chapter 17, Business & Commerce

2-38 Code.  
 2-39                   (b) This chapter does not apply to an action against the  
 2-40 Texas Windstorm Insurance Association or to an action relating to  
 2-41 or arising from a policy ceded to an insurer by the Texas Windstorm  
 2-42 Insurance Association under Subchapter O, Chapter 2210. An action  
 2-43 against the Texas Windstorm Insurance Association or that relates  
 2-44 to or arises from a policy ceded to an insurer by the Texas  
 2-45 Windstorm Insurance Association under Subchapter O, Chapter 2210,  
 2-46 is governed by Chapter 2210.

2-47                   Sec. 542A.003. NOTICE REQUIRED. (a) In addition to any  
 2-48 other notice required by law or the applicable insurance policy,  
 2-49 not later than the 61st day before the date a claimant files an  
 2-50 action to which this chapter applies in which the claimant seeks  
 2-51 damages from any person, the claimant must give written notice to  
 2-52 the person in accordance with this section as a prerequisite to  
 2-53 filing the action.

2-54                   (b) The notice required under this section must provide:  
 2-55                   (1) a statement of the acts or omissions giving rise to  
 2-56 the claim;

2-57                   (2) the specific amount alleged to be owed by the  
 2-58 insurer on the claim for damage to or loss of covered property; and

2-59                   (3) the amount of reasonable and necessary attorney's  
 2-60 fees incurred by the claimant, calculated by multiplying the number  
 2-61 of hours actually worked by the claimant's attorney, as of the date  
 2-62 the notice is given and as reflected in contemporaneously kept time  
 2-63 records, by an hourly rate that is customary for similar legal  
 2-64 services.

2-65                   (c) If an attorney or other representative gives the notice  
 2-66 required under this section on behalf of a claimant, the attorney or  
 2-67 representative shall:

- 2-68                   (1) provide a copy of the notice to the claimant; and
- 2-69                   (2) include in the notice a statement that a copy of

3-1 the notice was provided to the claimant.

3-2 (d) A presuit notice under Subsection (a) is not required if  
 3-3 giving notice is impracticable because:

3-4 (1) the claimant has a reasonable basis for believing  
 3-5 there is insufficient time to give the presuit notice before the  
 3-6 limitations period will expire; or

3-7 (2) the action is asserted as a counterclaim.

3-8 (e) To ensure that a claimant is not prejudiced by having  
 3-9 given the presuit notice required by this chapter, a court shall  
 3-10 dismiss without prejudice an action relating to the claim for which  
 3-11 notice is given by the claimant and commenced:

3-12 (1) before the 61st day after the date the claimant  
 3-13 provides presuit notice under Subsection (a);

3-14 (2) by a person to whom presuit notice is given under  
 3-15 Subsection (a); and

3-16 (3) against the claimant giving the notice.

3-17 (f) A claimant who gives notice in accordance with this  
 3-18 chapter is not relieved of the obligation to give notice under any  
 3-19 other applicable law. Notice given under this chapter may be  
 3-20 combined with notice given under any other law.

3-21 (g) Notice given under this chapter is admissible in  
 3-22 evidence in a civil action or alternative dispute resolution  
 3-23 proceeding relating to the claim for which the notice is given.

3-24 (h) The giving of a notice under this chapter does not  
 3-25 provide a basis for limiting the evidence of attorney's fees,  
 3-26 damage, or loss a claimant may offer at trial.

3-27 Sec. 542A.004. INSPECTION. Once notice is given under  
 3-28 Section 542A.003(a), a person to whom notice is given may send a  
 3-29 written request to the claimant to inspect, photograph, or  
 3-30 evaluate, in a reasonable manner and at a reasonable time, the  
 3-31 property that is the subject of the claim.

3-32 Sec. 542A.005. ABATEMENT. (a) In addition to taking any  
 3-33 other act allowed by contract or by any other law, a person against  
 3-34 whom an action to which this chapter applies is pending may file a  
 3-35 plea in abatement not later than the 30th day after the date the  
 3-36 person files an original answer in the court in which the action is  
 3-37 pending if the person:

3-38 (1) did not receive a presuit notice complying with  
 3-39 Section 542A.003; or

3-40 (2) requested under Section 542A.004 but was not  
 3-41 provided a reasonable opportunity to inspect, photograph, or  
 3-42 evaluate the property that is the subject of the claim.

3-43 (b) The court shall abate the action if the court finds that  
 3-44 the person filing the plea in abatement:

3-45 (1) did not, for any reason, receive a presuit notice  
 3-46 complying with Section 542A.003; or

3-47 (2) requested under Section 542A.004 but was not  
 3-48 provided a reasonable opportunity to inspect, photograph, or  
 3-49 evaluate the property that is the subject of the claim.

3-50 (c) An action is automatically abated without a court order  
 3-51 beginning on the 11th day after the date a plea in abatement is  
 3-52 filed if the plea:

3-53 (1) is verified and alleges that the person against  
 3-54 whom the action is pending:

3-55 (A) did not receive a presuit notice complying  
 3-56 with Section 542A.003; or

3-57 (B) requested under Section 542A.004 but was not  
 3-58 provided a reasonable opportunity to inspect, photograph, or  
 3-59 evaluate the property that is the subject of the claim; and

3-60 (2) is not controverted by an affidavit filed by the  
 3-61 claimant before the 11th day after the date the plea in abatement is  
 3-62 filed.

3-63 (d) An affidavit described by Subsection (c)(2)  
 3-64 controverting whether the person against whom the action is pending  
 3-65 received a presuit notice complying with Section 542A.003 must:

3-66 (1) include as an attachment a copy of the document the  
 3-67 claimant sent to give notice of the claimant's action; and

3-68 (2) state the date on which the notice was given.

3-69 (e) An abatement under this section continues until the

4-1 later of:

4-2 (1) the 60th day after the date a notice complying with  
4-3 Section 542A.003 is given; or

4-4 (2) the 15th day after the date of the requested  
4-5 inspection, photographing, or evaluating of the property is  
4-6 completed.

4-7 (f) If an action is abated under this section, a court may  
4-8 not compel participation in an alternative dispute resolution  
4-9 proceeding until after the abatement period provided by Subsection  
4-10 (e) has expired.

4-11 Sec. 542A.006. ACTION AGAINST AGENT; INSURER ELECTION OF  
4-12 LEGAL RESPONSIBILITY. (a) Except as provided by Subsection (h),  
4-13 in an action to which this chapter applies, an insurer that is a  
4-14 party to the action may elect to accept whatever liability an agent  
4-15 might have to the claimant for the agent's acts or omissions related  
4-16 to the claim by providing written notice to the claimant.

4-17 (b) If an insurer makes an election under Subsection (a)  
4-18 before a claimant files an action to which this chapter applies, no  
4-19 cause of action exists against the agent related to the claimant's  
4-20 claim, and, if the claimant files an action against the agent, the  
4-21 court shall dismiss that action with prejudice.

4-22 (c) If a claimant files an action to which this chapter  
4-23 applies against an agent and the insurer thereafter makes an  
4-24 election under Subsection (a) with respect to the agent, the court  
4-25 shall dismiss the action against the agent with prejudice.

4-26 (d) If an insurer makes an election under Subsection (a)  
4-27 but, after having been served with a notice of intent to take a  
4-28 deposition of the agent who is the subject of the election, fails to  
4-29 make that agent available at a reasonable time and place to give  
4-30 deposition testimony, Sections 542A.007(a), (b), and (c) do not  
4-31 apply to the action with respect to which the insurer made the  
4-32 election unless the court finds that:

4-33 (1) it is impracticable for the insurer to make the  
4-34 agent available due to a change in circumstances arising after the  
4-35 insurer made the election under Subsection (a);

4-36 (2) the agent whose liability was assumed would not  
4-37 have been a proper party to the action; or

4-38 (3) obtaining the agent's deposition testimony is not  
4-39 warranted under the law.

4-40 (e) An insurer's election under Subsection (a) is  
4-41 ineffective to obtain the dismissal of an action against an agent if  
4-42 the insurer's election is conditioned in a way that will result in  
4-43 the insurer avoiding liability for any claim-related damage caused  
4-44 to the claimant by the agent's acts or omissions.

4-45 (f) An insurer may not revoke, and a court may not nullify,  
4-46 an insurer's election under Subsection (a).

4-47 (g) If an insurer makes an election under Subsection (a) and  
4-48 the agent is not a party to the action, evidence of the agent's acts  
4-49 or omissions may be offered at trial and, if sufficient evidence  
4-50 supports the submission, a jury may be asked to determine the  
4-51 agent's responsibility for claim-related damage caused to the  
4-52 claimant. To the extent there is a conflict between this subsection  
4-53 and Chapter 33, Civil Practice and Remedies Code, this subsection  
4-54 prevails.

4-55 (h) If an insurer is in receivership at the time the  
4-56 claimant commences an action against the insurer, the insurer may  
4-57 not make an election under Subsection (a), and the court shall  
4-58 disregard any prior election made by the insurer relating to the  
4-59 claimant's claim.

4-60 (i) In an action tried by a jury, an insurer's election  
4-61 under Subsection (a) may not be made known to the jury.

4-62 Sec. 542A.007. AWARD OF ATTORNEY'S FEES. (a) Except as  
4-63 otherwise provided by this section, the amount of attorney's fees  
4-64 that may be awarded to a claimant in an action to which this chapter  
4-65 applies is the lesser of:

4-66 (1) the amount of reasonable and necessary attorney's  
4-67 fees supported at trial by sufficient evidence and determined by  
4-68 the trier of fact to have been incurred by the claimant in bringing  
4-69 the action;

5-1 (2) the amount of attorney's fees that may be awarded  
5-2 to the claimant under other applicable law; or

5-3 (3) the amount calculated by:

5-4 (A) dividing the amount to be awarded in the  
5-5 judgment to the claimant for the claimant's claim under the  
5-6 insurance policy for damage to or loss of covered property by the  
5-7 amount alleged to be owed on the claim for that damage or loss in a  
5-8 notice given under this chapter; and

5-9 (B) multiplying the amount calculated under  
5-10 Paragraph (A) by the total amount of reasonable and necessary  
5-11 attorney's fees supported at trial by sufficient evidence and  
5-12 determined by the trier of fact to have been incurred by the  
5-13 claimant in bringing the action.

5-14 (b) Except as provided by Subsection (d), the court shall  
5-15 award to the claimant the full amount of reasonable and necessary  
5-16 attorney's fees supported at trial by sufficient evidence and  
5-17 determined by the trier of fact to have been incurred by the  
5-18 claimant in bringing the action if the amount calculated under  
5-19 Subsection (a)(3)(A) is:

5-20 (1) greater than or equal to 0.8;

5-21 (2) not limited by this section or another law; and

5-22 (3) otherwise recoverable under law.

5-23 (c) The court may not award attorney's fees to the claimant  
5-24 if the amount calculated under Subsection (a)(3)(A) is less than  
5-25 0.2.

5-26 (d) If a defendant in an action to which this chapter  
5-27 applies pleads and proves that the defendant was entitled to but was  
5-28 not given a presuit notice stating the specific amount alleged to be  
5-29 owed by the insurer under Section 542A.003(b)(2) at least 61 days  
5-30 before the date the action was filed by the claimant, the court may  
5-31 not award to the claimant any attorney's fees incurred after the  
5-32 date the defendant files the pleading with the court. A pleading  
5-33 under this subsection must be filed not later than the 30th day  
5-34 after the date the defendant files an original answer in the court  
5-35 in which the action is pending.

5-36 SECTION 4. (a) Section 541.156, Insurance Code, as amended  
5-37 by this Act, and Chapter 542A, Insurance Code, as added by this Act,  
5-38 apply only to an action filed on or after the effective date of this  
5-39 Act. An action that is filed before the effective date of this Act  
5-40 is governed by the law as it existed immediately before the  
5-41 effective date of this Act, and that law is continued in effect for  
5-42 that purpose.

5-43 (b) Section 542.060(c), Insurance Code, as added by this  
5-44 Act, applies only to a claim, as defined by Section 542A.001,  
5-45 Insurance Code, as added by this Act, made on or after the effective  
5-46 date of this Act. A claim made before the effective date of this Act  
5-47 is governed by the law as it existed immediately before the  
5-48 effective date of this Act, and that law is continued in effect for  
5-49 that purpose.

5-50 SECTION 5. This Act takes effect immediately if it receives  
5-51 a vote of two-thirds of all the members elected to each house, as  
5-52 provided by Section 39, Article III, Texas Constitution. If this  
5-53 Act does not receive the vote necessary for immediate effect, this  
5-54 Act takes effect September 1, 2017.

5-55 \* \* \* \* \*