

## **BILL ANALYSIS**

C.S.H.B. 597  
By: Jetton  
Insurance  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

An appraisal is a form of dispute resolution for the settlement of insurance claims when the insurance carrier and insured policyholder disagree on the value of the loss. Due to a lack of uniform standards and procedures for these appraisals under state law, specifically regarding timeliness, the appraisal process can protract the claim settlement process to the detriment of the insured policyholder, who needs a timely resolution to make them whole again. C.S.H.B. 597 seeks to establish an appraisal procedure for disputed losses under certain property and casualty insurance policies.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 597 amends the Insurance Code to establish appraisal procedures for disputed losses under certain property and casualty insurance policies. In establishing these procedures, the bill does the following:

- authorizes the policyholder or insurer, if the policyholder and insurer fail to agree to the amount of a loss covered by the policy, to provide a written demand for an appraisal to the other party not later than the 180th day after the date the policyholder receives the initial offer from the insurer;
- requires the insurer to include written notification of the 180-day deadline to demand appraisal in the insurer's initial offer to the policyholder;
- authorizes the policyholder and the insurer to agree in writing not later than the 20th day after the date on which a demand for appraisal is provided to waive any deadlines imposed by the bill's provisions;
- requires the policyholder and insurer, not later than the 20th day after the date an appraisal demand is provided, to each select a disinterested and competent appraiser and provide written notice to the other party of the appraiser's identity;
- requires the selected appraisers to appraise the loss that is the subject of the appraisal not later than the 90th day after the date both the policyholder and insurer have selected an appraiser and notified the other party but authorizes the policyholder and insurer by agreement to twice extend this deadline for a period not to exceed 60 days each time;
- requires appraisers who agree on the amount of the loss to provide written notice of the agreement to the policyholder and insurer, in which case the agreed amount is set as the amount of the loss;

- requires appraisers who fail to agree on the amount of the loss to select a competent and impartial umpire and, if the appraisers do not agree on an umpire before the 20th day after the deadline to determine the amount of the loss, requires a judge of a court in the county in which the policyholder resides or where the property is located to select the umpire on request of the policyholder or insurer; and
- requires the policyholder or insurer to provide at least 10 days' notice of a request for an umpire selection to the other party before the request is submitted to the court.

C.S.H.B. 597 does the following with respect to disputes for which an umpire is selected:

- requires the appraisers to provide written notice to the umpire that includes the amount each appraiser sets for the loss and any supporting documentation;
- requires the umpire to present a draft award to both appraisers not later than the 30th day after the date the umpire receives the notice from each appraiser but authorizes the policyholder and insurer by agreement to extend this deadline for a period not to exceed 60 days;
- requires the umpire to set the amount of loss by agreement of either appraiser with the umpire's draft award;
- requires the umpire, if neither appraiser agrees to the umpire's draft award on or before the 15th day after the date on which the appraisers are presented that award, to revise the award in an attempt to reach an agreement with either appraiser not later than the 15th day after the date of that deadline;
- requires the umpire to continue revising the award every 15 days until an agreement is reached with at least one of the appraisers;
- prohibits the umpire from removing or reducing any items to which both appraisers previously agreed;
- requires the umpire, on reaching an agreement on the amount of the loss, to provide a written determination setting the amount of the loss to the policyholder and insurer and requires that the determination be signed by the umpire and the appraiser with whom the umpire reached the agreement; and
- specifies that a determination by the umpire does not prevent either party from pursuing its rights under the policy or law.

C.S.H.B. 597 requires the policyholder and insurer to equally divide and pay the umpire's expenses, as applicable, and all other appraisal expenses. The bill specifies the following regarding the effect of the appraisal procedure:

- the appraisal does not affect any applicable policy terms, including deductibles;
- the appraisal decision on the amount of loss is binding; and
- the use of the appraisal procedure is not a condition precedent to bringing an action for a violation of the Insurance Code, for a breach of contract, or for any other common-law or statutory remedy.

C.S.H.B. 597 makes these appraisal procedures applicable to an insurer writing a property or casualty insurance policy, including the FAIR Plan Association, the Texas Automobile Insurance Plan Association, a Lloyd's plan, a reciprocal or interinsurance exchange, a farm mutual insurance company, and a county mutual insurance company. The bill requires an insurance policy written by such an insurer to contain an appraisal procedure for first-party property damage claims that complies with the bill's provisions. The bill's provisions expressly do not apply to the Texas Windstorm Insurance Association.

C.S.H.B. 597 authorizes the commissioner of insurance to adopt any rules necessary to implement the bill's provisions, which apply only to an insurance policy delivered, issued for delivery, or renewed on or after January 1, 2024.

## **EFFECTIVE DATE**

September 1, 2023.

## **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 597 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

While both the introduced and substitute require an applicable insurance policy to contain an appraisal procedure that complies with the bill's provisions, the substitute specifies that the procedure is for first-party property damage claims.

The substitute sets a deadline for a policyholder or insurer to provide a written demand for an appraisal of a covered loss to the other party of not later than the 180th day after the date the policyholder receives the initial offer from the insurer, whereas the introduced did not include any deadline for providing this demand.

The substitute includes the following provisions absent from the introduced:

- a requirement for the insurer to include written notification of the 180-day deadline to demand appraisal in the insurer's initial offer to the policyholder; and
- an authorization for the policyholder and insurer to agree in writing not later than the 20th day after the date on which a demand for appraisal is provided to waive any deadlines imposed by the bill's provisions.

With respect to the selection of an appraiser, the substitute includes as a qualification that the appraiser is disinterested in the matter, whereas the introduced did not.

The substitute changes the deadline for the appraisers to appraise the loss from not later than the 30th day after the date both the policyholder and insurer have selected an appraiser and provided notice of the appraiser's identity to the other party, as in the introduced, to not later than the 90th day after that date. Whereas the introduced authorized the appraisers to extend such deadline for a period not to exceed 60 days on agreement by the appraisers, policyholder, and insurer, the substitute authorizes the policyholder and insurer by agreement to twice extend the deadline for a period not to exceed 60 days each time.

Both the introduced and substitute provide for the selection of an umpire by a judge on request of a policyholder or insurer if the appraisers do not agree on an umpire by a specific deadline. However, the substitute provides for the selection to be made by a judge of a court in the county in which the policyholder resides or where the property is located, whereas the introduced provided for selection only by a judge of a court in a county where the policyholder resides. Additionally, the substitute includes a requirement absent from the introduced for a policyholder or insurer to provide at least 10 days' notice of a request for an umpire selection to the other party before the request is submitted to the court.

Whereas the introduced required the umpire to determine the amount of the loss not later than the 30th day after the date the umpire receives notice from the appraisers by selecting one of the amounts submitted to the umpire, the substitute sets out the following process for determining an appraisal through an umpire:

- the umpire presents a draft award to both the appraisers not later than the 30th day after the date the umpire receives notice from the appraisers;
- the umpire sets the amount of the loss by agreement of either appraiser with the draft award;
- if neither party agrees to the draft award by a certain deadline, the umpire revises the award in an attempt to reach an agreement with either appraiser not later than the 15th

day after the date of that deadline and continues revising the award every 15 days until an agreement is reached with at least one of the appraisers; and

- the umpire may not remove or reduce any items to which both appraisers previously agreed.

Whereas the introduced authorized the umpire to extend the deadline for their determination of the amount of the loss on agreement by the appraisers, policyholder, and insurer, the substitute authorizes the policyholder and insurer by agreement to extend the deadline for the umpire to present the draft award.

The substitute omits the following requirements that appeared in the introduced relating to payment of appraisal expenses:

- the requirement for the party selecting an appraiser to pay that appraiser; and
- the requirement for the insurer to refund the policyholder's reasonable expenses incurred as a result of the appraisal if, at the end of the appraisal process, the amount of the loss is determined to be at least \$1 more than the amount of the insurer's proposed undisputed loss statement.

The substitute omits a provision in the introduced specifying that the appraisal procedure provided by the bill is intended to function as a liquidated damages clause.

The substitute includes a provision that did not appear in the introduced specifying that the appraisal decision on the amount of loss is binding.