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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, unless a
16 claim-related dispute resolution procedure is available to
17 policyholders under Chapter 2211.

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

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

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

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

26 (3) an action brought under:

27 (A) Subchapter D, Chapter 541;

1 (B) Subchapter B, Chapter 542; or

2 (C) Subchapter E, Chapter 17, Business & Commerce
3 Code.

4 (b) This chapter does not apply to an action against the
5 Texas Windstorm Insurance Association or to an action relating to
6 or arising from a policy ceded to an insurer by the Texas Windstorm
7 Insurance Association under Subchapter O, Chapter 2210. This
8 chapter applies to an action that relates to or arises from a policy
9 renewed under Section 2210.703.

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. Not later than the 30th day
6 after receiving a presuit notice given under Section 542A.003(a), a
7 person to whom notice is given may send a written request to the
8 claimant to inspect, photograph, or evaluate, in a reasonable
9 manner and at a reasonable time, the property that is the subject of
10 the claim. If reasonably possible, the inspection, photography,
11 and evaluation must be completed not later than the 60th day after
12 the date the person receives the presuit notice.

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

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

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

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

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

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

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

7 (1) is verified and alleges that the person against
8 whom the action is pending:

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

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

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

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

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

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

23 (e) An abatement under this section continues until the
24 later of:

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

27 (2) the 15th day after the date of the requested

1 inspection, photographing, or evaluating of the property is
2 completed.

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

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

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

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

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

1 election unless the court finds that:

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

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

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

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

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

16 (g) If an insurer makes an election under Subsection (a) and
17 the agent is not a party to the action, evidence of the agent's acts
18 or omissions may be offered at trial and, if supported by sufficient
19 evidence, the trier of fact may be asked to resolve fact issues as
20 if the agent were a defendant, and a judgment against the insurer
21 must include any liability that would have been assessed against
22 the agent. To the extent there is a conflict between this
23 subsection and Chapter 33, Civil Practice and Remedies Code, this
24 subsection prevails.

25 (h) If an insurer is in receivership at the time the
26 claimant commences an action against the insurer, the insurer may
27 not make an election under Subsection (a), and the court shall

1 disregard any prior election made by the insurer relating to the
2 claimant's claim.

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

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

9 (1) the amount of reasonable and necessary attorney's
10 fees supported at trial by sufficient evidence and determined by
11 the trier of fact to have been incurred by the claimant in bringing
12 the action;

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

15 (3) the amount calculated by:

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

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

26 (b) Except as provided by Subsection (d), the court shall
27 award to the claimant the full amount of reasonable and necessary

1 attorney's fees supported at trial by sufficient evidence and
2 determined by the trier of fact to have been incurred by the
3 claimant in bringing the action if the amount calculated under
4 Subsection (a)(3)(A) is:

5 (1) greater than or equal to 0.8;

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

7 (3) otherwise recoverable under law.

8 (c) The court may not award attorney's fees to the claimant
9 if the amount calculated under Subsection (a)(3)(A) is less than
10 0.2.

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

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

1 (b) Section 542.060(c), Insurance Code, as added by this
2 Act, applies only to a claim, as defined by Section 542A.001,
3 Insurance Code, as added by this Act, made on or after the effective
4 date of this Act. A claim made before the effective date of this Act
5 is governed by the law as it existed immediately before the
6 effective date of this Act, and that law is continued in effect for
7 that purpose.

8 SECTION 5. This Act takes effect September 1, 2017.