

By: Bonnen of Galveston

H.B. No. 1774

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to insurance claims and certain prohibited acts and  
3 practices in the business of insurance.

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

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

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

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

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

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

16 (2) breach of an express or implied warranty;

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

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

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

24 Sec. 541.151. PRIVATE ACTION FOR DAMAGES AUTHORIZED. (a)

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

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

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

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

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

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

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

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

26 SECTION 5. Section 542.060, Insurance Code, is amended by  
27 amending Subsection (a) and adding Subsection (c) to read as

1 follows:

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

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

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

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

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

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

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

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

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

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

27 Sec. 542A.002. APPLICABILITY OF CHAPTER. (a) This chapter

1 applies to an action brought by a claimant relating to or arising  
2 from the insured's claim for damage to or loss of covered property  
3 under an insurance policy providing coverage against damage to or  
4 loss of improvements to real property, including:

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

7 (2) an action brought under:

8 (A) Subchapter D, Chapter 541;

9 (B) Subchapter B, Chapter 542; or

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

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

15 (1) an insurance company;

16 (2) a reciprocal or interinsurance exchange;

17 (3) a mutual insurance company;

18 (4) a capital stock insurance company;

19 (5) a county mutual insurance company;

20 (6) a farm mutual insurance company;

21 (7) a Lloyd's plan;

22 (8) an eligible surplus lines insurer; or

23 (9) the FAIR Plan Association.

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

26 Sec. 542A.003. NOTICE REQUIRED. (a) In addition to any  
27 other notice required by law or the applicable insurance policy, as

1 a prerequisite to filing an action seeking damages under this  
2 chapter against any person, a claimant shall give written notice to  
3 the person not later than the 61st day before the date the claimant  
4 files an action to which this chapter applies.

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

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

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

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

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

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

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

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

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

27 (e) A presuit notice under Subsection (a) is not required if

1 giving notice is impracticable because the action:

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

4 (2) is asserted as a counterclaim.

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

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

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

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

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

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

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

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

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

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

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

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

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

26           (2) propose a date and time for the insurer to conduct  
27 the inspection, photographing, sampling, or testing that is not

1 later than the 10th day after the date proposed by the insurer; or

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

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

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

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

26 (b) If an insurer makes the election available to it under  
27 Subsection (a) before the claimant files an action to which this



1 chapter applies, the claimant shall not file an action against the  
2 agent.

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

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

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

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

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

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

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

27 (2) the amount of attorney's fees that may be awarded

1 under any other law; or

2 (3) the amount calculated by:

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

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

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

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

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

26 (1) did not have actual knowledge of or reason to know  
27 of the violation of Section 38.12, Penal Code, before accepting

1 representation of the claimant; and

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

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

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

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

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

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