

1-1 By: Bonnen of Galveston, et al. H.B. No. 1774  
 1-2 (Senate Sponsor - Hancock)  
 1-3 (In the Senate - Received from the House May 8, 2017;  
 1-4 May 8, 2017, read first time and referred to Committee on Business  
 1-5 & Commerce; May 11, 2017, reported favorably by the following vote:  
 1-6 Yeas 7, Nays 0; May 11, 2017, 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 A BILL TO BE ENTITLED  
 1-19 AN ACT

1-20 relating to actions on and liability associated with certain  
 1-21 insurance claims.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Section 541.156(a), Insurance Code, is amended  
 1-24 to read as follows:

1-25 (a) A person who receives notice provided under Section  
 1-26 541.154 or 542A.003 may make a settlement offer during a period  
 1-27 beginning on the date notice under Section 541.154 or 542A.003 is  
 1-28 received and ending on the 60th day after that date.

1-29 SECTION 2. Section 542.060, Insurance Code, is amended by  
 1-30 amending Subsection (a) and adding Subsection (c) to read as  
 1-31 follows:

1-32 (a) Except as provided by Subsection (c), if [~~If~~] an insurer  
 1-33 that is liable for a claim under an insurance policy is not in  
 1-34 compliance with this subchapter, the insurer is liable to pay the  
 1-35 holder of the policy or the beneficiary making the claim under the  
 1-36 policy, in addition to the amount of the claim, interest on the  
 1-37 amount of the claim at the rate of 18 percent a year as damages,  
 1-38 together with reasonable and necessary attorney's fees. Nothing in  
 1-39 this subsection prevents the award of prejudgment interest on the  
 1-40 amount of the claim, as provided by law.

1-41 (c) In an action to which Chapter 542A applies, if an  
 1-42 insurer that is liable for a claim under an insurance policy is not  
 1-43 in compliance with this subchapter, the insurer is liable to pay the  
 1-44 holder of the policy, in addition to the amount of the claim, simple  
 1-45 interest on the amount of the claim as damages each year at the rate  
 1-46 determined on the date of judgment by adding five percent to the  
 1-47 interest rate determined under Section 304.003, Finance Code,  
 1-48 together with reasonable and necessary attorney's fees. Nothing in  
 1-49 this subsection prevents the award of prejudgment interest on the  
 1-50 amount of the claim, as provided by law. Interest awarded under  
 1-51 this subsection as damages accrues beginning on the date the claim  
 1-52 was required to be paid.

1-53 SECTION 3. Subtitle C, Title 5, Insurance Code, is amended  
 1-54 by adding Chapter 542A to read as follows:

1-55 CHAPTER 542A. CERTAIN CONSUMER ACTIONS RELATED TO CLAIMS FOR  
 1-56 PROPERTY DAMAGE

1-57 Sec. 542A.001. DEFINITIONS. In this chapter:

1-58 (1) "Agent" means an employee, agent, representative,  
 1-59 or adjuster who performs any act on behalf of an insurer.

1-60 (2) "Claim" means a first-party claim that:

1-61 (A) is made by an insured under an insurance

2-1 policy providing coverage for real property or improvements to real  
 2-2 property;  
 2-3 (B) must be paid by the insurer directly to the  
 2-4 insured; and  
 2-5 (C) arises from damage to or loss of covered  
 2-6 property caused, wholly or partly, by forces of nature, including  
 2-7 an earthquake or earth tremor, a wildfire, a flood, a tornado,  
 2-8 lightning, a hurricane, hail, wind, a snowstorm, or a rainstorm.  
 2-9 (3) "Claimant" means a person making a claim.  
 2-10 (4) "Insurer" means a corporation, association,  
 2-11 partnership, or individual, other than the Texas Windstorm  
 2-12 Insurance Association, engaged as a principal in the business of  
 2-13 insurance and authorized or eligible to write property insurance in  
 2-14 this state, including:  
 2-15 (A) an insurance company;  
 2-16 (B) a reciprocal or interinsurance exchange;  
 2-17 (C) a mutual insurance company;  
 2-18 (D) a capital stock insurance company;  
 2-19 (E) a county mutual insurance company;  
 2-20 (F) a farm mutual insurance company;  
 2-21 (G) a Lloyd's plan;  
 2-22 (H) an eligible surplus lines insurer; or  
 2-23 (I) the FAIR Plan Association, unless a  
 2-24 claim-related dispute resolution procedure is available to  
 2-25 policyholders under Chapter 2211.  
 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. This  
 2-43 chapter applies to an action that relates to or arises from a policy  
 2-44 renewed under Section 2210.703.  
 2-45 Sec. 542A.003. NOTICE REQUIRED. (a) In addition to any  
 2-46 other notice required by law or the applicable insurance policy,  
 2-47 not later than the 61st day before the date a claimant files an  
 2-48 action to which this chapter applies in which the claimant seeks  
 2-49 damages from any person, the claimant must give written notice to  
 2-50 the person in accordance with this section as a prerequisite to  
 2-51 filing the action.  
 2-52 (b) The notice required under this section must provide:  
 2-53 (1) a statement of the acts or omissions giving rise to  
 2-54 the claim;  
 2-55 (2) the specific amount alleged to be owed by the  
 2-56 insurer on the claim for damage to or loss of covered property; and  
 2-57 (3) the amount of reasonable and necessary attorney's  
 2-58 fees incurred by the claimant, calculated by multiplying the number  
 2-59 of hours actually worked by the claimant's attorney, as of the date  
 2-60 the notice is given and as reflected in contemporaneously kept time  
 2-61 records, by an hourly rate that is customary for similar legal  
 2-62 services.  
 2-63 (c) If an attorney or other representative gives the notice  
 2-64 required under this section on behalf of a claimant, the attorney or  
 2-65 representative shall:  
 2-66 (1) provide a copy of the notice to the claimant; and  
 2-67 (2) include in the notice a statement that a copy of  
 2-68 the notice was provided to the claimant.  
 2-69 (d) A presuit notice under Subsection (a) is not required if

3-1 giving notice is impracticable because:  
3-2 (1) the claimant has a reasonable basis for believing  
3-3 there is insufficient time to give the presuit notice before the  
3-4 limitations period will expire; or  
3-5 (2) the action is asserted as a counterclaim.  
3-6 (e) To ensure that a claimant is not prejudiced by having  
3-7 given the presuit notice required by this chapter, a court shall  
3-8 dismiss without prejudice an action relating to the claim for which  
3-9 notice is given by the claimant and commenced:  
3-10 (1) before the 61st day after the date the claimant  
3-11 provides presuit notice under Subsection (a);  
3-12 (2) by a person to whom presuit notice is given under  
3-13 Subsection (a); and  
3-14 (3) against the claimant giving the notice.  
3-15 (f) A claimant who gives notice in accordance with this  
3-16 chapter is not relieved of the obligation to give notice under any  
3-17 other applicable law. Notice given under this chapter may be  
3-18 combined with notice given under any other law.  
3-19 (g) Notice given under this chapter is admissible in  
3-20 evidence in a civil action or alternative dispute resolution  
3-21 proceeding relating to the claim for which the notice is given.  
3-22 (h) The giving of a notice under this chapter does not  
3-23 provide a basis for limiting the evidence of attorney's fees,  
3-24 damage, or loss a claimant may offer at trial.  
3-25 Sec. 542A.004. INSPECTION. Not later than the 30th day  
3-26 after receiving a presuit notice given under Section 542A.003(a), a  
3-27 person to whom notice is given may send a written request to the  
3-28 claimant to inspect, photograph, or evaluate, in a reasonable  
3-29 manner and at a reasonable time, the property that is the subject of  
3-30 the claim. If reasonably possible, the inspection, photography,  
3-31 and evaluation must be completed not later than the 60th day after  
3-32 the date the person receives the presuit notice.  
3-33 Sec. 542A.005. ABATEMENT. (a) In addition to taking any  
3-34 other act allowed by contract or by any other law, a person against  
3-35 whom an action to which this chapter applies is pending may file a  
3-36 plea in abatement not later than the 30th day after the date the  
3-37 person files an original answer in the court in which the action is  
3-38 pending if the person:  
3-39 (1) did not receive a presuit notice complying with  
3-40 Section 542A.003; or  
3-41 (2) requested under Section 542A.004 but was not  
3-42 provided a reasonable opportunity to inspect, photograph, or  
3-43 evaluate the property that is the subject of the claim.  
3-44 (b) The court shall abate the action if the court finds that  
3-45 the person filing the plea in abatement:  
3-46 (1) did not, for any reason, receive a presuit notice  
3-47 complying with Section 542A.003; or  
3-48 (2) requested under Section 542A.004 but was not  
3-49 provided a reasonable opportunity to inspect, photograph, or  
3-50 evaluate the property that is the subject of the claim.  
3-51 (c) An action is automatically abated without a court order  
3-52 beginning on the 11th day after the date a plea in abatement is  
3-53 filed if the plea:  
3-54 (1) is verified and alleges that the person against  
3-55 whom the action is pending:  
3-56 (A) did not receive a presuit notice complying  
3-57 with Section 542A.003; or  
3-58 (B) requested under Section 542A.004 but was not  
3-59 provided a reasonable opportunity to inspect, photograph, or  
3-60 evaluate the property that is the subject of the claim; and  
3-61 (2) is not controverted by an affidavit filed by the  
3-62 claimant before the 11th day after the date the plea in abatement is  
3-63 filed.  
3-64 (d) An affidavit described by Subsection (c)(2)  
3-65 controverting whether the person against whom the action is pending  
3-66 received a presuit notice complying with Section 542A.003 must:  
3-67 (1) include as an attachment a copy of the document the  
3-68 claimant sent to give notice of the claimant's action; and  
3-69 (2) state the date on which the notice was given.

4-1 (e) An abatement under this section continues until the  
 4-2 later of:

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

4-5 (2) the 15th day after the date of the requested  
 4-6 inspection, photographing, or evaluating of the property is  
 4-7 completed.

4-8 (f) If an action is abated under this section, a court may  
 4-9 not compel participation in an alternative dispute resolution  
 4-10 proceeding until after the abatement period provided by Subsection  
 4-11 (e) has expired.

4-12 Sec. 542A.006. ACTION AGAINST AGENT; INSURER ELECTION OF  
 4-13 LEGAL RESPONSIBILITY. (a) Except as provided by Subsection (h), in  
 4-14 an action to which this chapter applies, an insurer that is a party  
 4-15 to the action may elect to accept whatever liability an agent might  
 4-16 have to the claimant for the agent's acts or omissions related to  
 4-17 the claim by providing written notice to the claimant.

4-18 (b) If an insurer makes an election under Subsection (a)  
 4-19 before a claimant files an action to which this chapter applies, no  
 4-20 cause of action exists against the agent related to the claimant's  
 4-21 claim, and, if the claimant files an action against the agent, the  
 4-22 court shall dismiss that action with prejudice.

4-23 (c) If a claimant files an action to which this chapter  
 4-24 applies against an agent and the insurer thereafter makes an  
 4-25 election under Subsection (a) with respect to the agent, the court  
 4-26 shall dismiss the action against the agent with prejudice.

4-27 (d) If an insurer makes an election under Subsection (a)  
 4-28 but, after having been served with a notice of intent to take a  
 4-29 deposition of the agent who is the subject of the election, fails to  
 4-30 make that agent available at a reasonable time and place to give  
 4-31 deposition testimony, Sections 542A.007(a), (b), and (c) do not  
 4-32 apply to the action with respect to which the insurer made the  
 4-33 election unless the court finds that:

4-34 (1) it is impracticable for the insurer to make the  
 4-35 agent available due to a change in circumstances arising after the  
 4-36 insurer made the election under Subsection (a);

4-37 (2) the agent whose liability was assumed would not  
 4-38 have been a proper party to the action; or

4-39 (3) obtaining the agent's deposition testimony is not  
 4-40 warranted under the law.

4-41 (e) An insurer's election under Subsection (a) is  
 4-42 ineffective to obtain the dismissal of an action against an agent if  
 4-43 the insurer's election is conditioned in a way that will result in  
 4-44 the insurer avoiding liability for any claim-related damage caused  
 4-45 to the claimant by the agent's acts or omissions.

4-46 (f) An insurer may not revoke, and a court may not nullify,  
 4-47 an insurer's election under Subsection (a).

4-48 (g) If an insurer makes an election under Subsection (a) and  
 4-49 the agent is not a party to the action, evidence of the agent's acts  
 4-50 or omissions may be offered at trial and, if supported by sufficient  
 4-51 evidence, the trier of fact may be asked to resolve fact issues as  
 4-52 if the agent were a defendant, and a judgment against the insurer  
 4-53 must include any liability that would have been assessed against  
 4-54 the agent. To the extent there is a conflict between this  
 4-55 subsection and Chapter 33, Civil Practice and Remedies Code, this  
 4-56 subsection prevails.

4-57 (h) If an insurer is in receivership at the time the  
 4-58 claimant commences an action against the insurer, the insurer may  
 4-59 not make an election under Subsection (a), and the court shall  
 4-60 disregard any prior election made by the insurer relating to the  
 4-61 claimant's claim.

4-62 (i) In an action tried by a jury, an insurer's election  
 4-63 under Subsection (a) may not be made known to the jury.

4-64 Sec. 542A.007. AWARD OF ATTORNEY'S FEES. (a) Except as  
 4-65 otherwise provided by this section, the amount of attorney's fees  
 4-66 that may be awarded to a claimant in an action to which this chapter  
 4-67 applies is the lesser of:

4-68 (1) the amount of reasonable and necessary attorney's  
 4-69 fees supported at trial by sufficient evidence and determined by

5-1 the trier of fact to have been incurred by the claimant in bringing  
5-2 the action;

5-3 (2) the amount of attorney's fees that may be awarded  
5-4 to the claimant under other applicable law; or

5-5 (3) the amount calculated by:

5-6 (A) dividing the amount to be awarded in the  
5-7 judgment to the claimant for the claimant's claim under the  
5-8 insurance policy for damage to or loss of covered property by the  
5-9 amount alleged to be owed on the claim for that damage or loss in a  
5-10 notice given under this chapter; and

5-11 (B) multiplying the amount calculated under  
5-12 Paragraph (A) by the total amount of reasonable and necessary  
5-13 attorney's fees supported at trial by sufficient evidence and  
5-14 determined by the trier of fact to have been incurred by the  
5-15 claimant in bringing the action.

5-16 (b) Except as provided by Subsection (d), the court shall  
5-17 award to the claimant the full amount of reasonable and necessary  
5-18 attorney's fees supported at trial by sufficient evidence and  
5-19 determined by the trier of fact to have been incurred by the  
5-20 claimant in bringing the action if the amount calculated under  
5-21 Subsection (a)(3)(A) is:

5-22 (1) greater than or equal to 0.8;

5-23 (2) not limited by this section or another law; and

5-24 (3) otherwise recoverable under law.

5-25 (c) The court may not award attorney's fees to the claimant  
5-26 if the amount calculated under Subsection (a)(3)(A) is less than  
5-27 0.2.

5-28 (d) If a defendant in an action to which this chapter  
5-29 applies pleads and proves that the defendant was entitled to but was  
5-30 not given a presuit notice stating the specific amount alleged to be  
5-31 owed by the insurer under Section 542A.003(b)(2) at least 61 days  
5-32 before the date the action was filed by the claimant, the court may  
5-33 not award to the claimant any attorney's fees incurred after the  
5-34 date the defendant files the pleading with the court. A pleading  
5-35 under this subsection must be filed not later than the 30th day  
5-36 after the date the defendant files an original answer in the court  
5-37 in which the action is pending.

5-38 SECTION 4. (a) Section 541.156, Insurance Code, as amended  
5-39 by this Act, and Chapter 542A, Insurance Code, as added by this Act,  
5-40 apply only to an action filed on or after the effective date of this  
5-41 Act. An action that is filed before the effective date of this Act  
5-42 is governed by the law as it existed immediately before the  
5-43 effective date of this Act, and that law is continued in effect for  
5-44 that purpose.

5-45 (b) Section 542.060(c), Insurance Code, as added by this  
5-46 Act, applies only to a claim, as defined by Section 542A.001,  
5-47 Insurance Code, as added by this Act, made on or after the effective  
5-48 date of this Act. A claim made before the effective date of this Act  
5-49 is governed by the law as it existed immediately before the  
5-50 effective date of this Act, and that law is continued in effect for  
5-51 that purpose.

5-52 SECTION 5. This Act takes effect September 1, 2017.

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