

BILL ANALYSIS

C.S.S.B. 1628
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Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas' unique geographical location makes it susceptible to catastrophic weather-related events and natural disasters such as hurricanes, tornadoes, wild fires, and hail storms. Interested parties observe that over the last few years, various hail storms have resulted in a significant number of claims filed against property and casualty insurers. While most claims are resolved without dispute, some involve disagreement between the policyholder and the insurance carrier. Moreover, the parties assert that there are also cases in which policyholders whose claims have been resolved have been targeted by various professionals involved in the claims process, which has resulted in mass litigation. The parties further note that in many cases third-party contractors, adjusters, and attorneys canvass consumers in post-event areas to solicit both business and representation to take legal action on behalf of the policyholder against the insurer. There are concerns that policyholders are being misinformed due to certain contractors circumventing statutory and policy guidelines, adjusters inflating damages, and attorneys applying mass tort models to simple property damage claims. C.S.S.B. 1628 seeks to address these issues as they relate to insurance claims and certain prohibited acts and practices in or in relation to the business of insurance.

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 SECTIONS 10 and 17 of this bill.

ANALYSIS

Provisions Relating to Unfair Methods of Competition and Unfair or Deceptive Acts or Practices

C.S.S.B. 1628 amends the Insurance Code to prohibit an insured seeking damages in an action brought by an insured relating to or arising from a claim for damage to or loss of real property or tangible personal property made under an insurance policy providing coverage for damage to or loss of real property from filing or maintaining a private action for damages against an employee, agent, representative, or adjuster issuing policies, handling claims, or performing other acts on behalf of an insurer, and to require any such action to be immediately dismissed, if the employee, agent, representative, or adjuster was not named in the notice given under the applicable provision of the bill relating to prior notice of an action relating to certain claims for property damage given to all potential defendants by a certain deadline or if the insurer agrees, not later than the 30th day after the date such notice is received, in a document provided to the

insured to be liable for any act or omission of the employee, agent, representative, or adjuster related to or arising out of the insured's claim.

C.S.S.B. 1628 establishes that such a dismissal or agreement does not limit the insurer's liability and does not limit the insurer's vicarious liability for any act or omission of the employee, agent, representative, or adjuster related to or arising out of the insured's claim. The bill authorizes an insured to file and maintain such a described action if the insured shows and the court finds that the insured cannot reasonably expect to secure complete relief unless the employee, agent, representative, or adjuster is made a party to the action.

C.S.S.B. 1628 requires an insured seeking damages in such an action to provide written notice to all potential defendants not later than the 61st day before the date the action is filed and prescribes the contents of the notice. The bill authorizes, if the amount sought by the insured in the action involves a claim for damage items not previously submitted to the insurer, the insurer to request, not later than the 15th day after the date such notice is provided to the insurer, that the insured provide copies of reports, estimates, photographs, and other items reasonably supporting the insured's additional damage items and requires the insured to provide the requested information before filing such an action if such a request is made in accordance with this provision. The bill establishes that a presuit notice is not required if giving notice is impracticable because the action must be filed to prevent the statute of limitations from expiring or because the action is asserted as a counterclaim.

C.S.S.B. 1628 revises applicable statutory provisions regarding unfair methods of competition and unfair or deceptive acts or practices as they relate to the authorized filing of a plea in abatement to make those abatement provisions applicable to a person against whom a private action for damages is pending who does not receive the prior notice or the requested information as required by the applicable provision of the bill relating to the requisite prior notice of an action relating to certain claims for property damage given to all potential defendants by a certain deadline. The bill establishes that such abatement provisions do not apply when the presuit notice is not required because giving notice is impracticable for the reasons established in the applicable bill provision.

Provisions Relating to the Processing and Settlement of Claims

C.S.S.B. 1628 amends the Insurance Code to prohibit an insured from bringing suit under statutory provisions and the bill's provisions relating to liability for violation of prompt payment of claims requirements in connection with a claim for damage to or loss of real property or tangible personal property made under an insurance policy providing coverage for damage to or loss of real property unless the insured has provided written notice to the insurer with respect to the claim and any information requested by the insurer in accordance with the applicable provision of the bill relating to prior notice of an action relating to certain claims for property damage given to all potential defendants by a certain deadline. The bill subjects such a suit for which such notice is required to abatement to the same extent and in the same manner provided by statutory provisions relating to abatement for an action under statutory provisions authorizing private action for damages in relation to unfair methods of competition and unfair or deceptive acts or practices.

C.S.S.B. 1628, for purposes of the statutory provision that makes an insurer that is liable for a claim under an insurance policy and that is not in compliance with statutory provisions relating to prompt payment of claims liable for payment to the holder of the policy or the beneficiary making the claim under the policy of the amount of the claim, reasonable attorney's fees, and interest on the amount of the claim at a certain rate, adds the specification that such interest is on the unpaid amount of the claim at that rate. The bill prescribes the matters a trier of fact is required to consider in determining the amount of attorney's fees to be awarded for a violation of statutory provisions and bill provisions relating to prompt payment of claims. The bill, for purposes of the statutory requirement that attorney's fees are to be taxed as part of the costs in the

case if a suit is filed, specifies that the interest payable is also required to be taxed as part of the costs in the case. The bill makes the liability for such interest and attorney's fees the exclusive remedy for a violation of statutory provisions and bill provisions relating to prompt payment of claims. The bill specifies that these statutory and bill provisions relating to such liability for prompt payment of claims are not intended to affect a right or remedy provided by statutory provisions and bill provisions regarding unfair methods of competition and unfair or deceptive acts or practices or any other law outside statutory and bill provisions relating to prompt payment of claims. The bill establishes that if a claim for a loss has been paid by the insurer and a suit under statutory and bill provisions regarding liability for prompt payment of claims arises out of a supplemental claim for that loss, the interest awarded on the supplemental claim begins to accrue on the 60th day after the date the insurer receives notice of the supplemental claim.

Provisions Relating to Certain Claims for Property Damage

C.S.S.B. 1628 amends the Insurance Code, for purposes of statutory provisions generally governing property and casualty insurance, to establish provisions applicable only to a first party claim for damage to or loss of real property or tangible personal property made under an insurance policy delivered, issued for delivery, or renewed on or after January 1, 2016, providing coverage for damage to or loss of real property and issued by any insurer authorized to write property insurance in Texas, an eligible surplus lines insurer, or the FAIR Plan Association. The bill establishes that failure to provide notice of such a claim for property damage by the second anniversary of the date on which the damage to or loss of property that is the basis of the claim occurs is an absolute bar to recovery on the claim. The bill establishes that recovery on such a claim for property damage is not barred if in an action to recover on the claim the trier of fact determines the claimant had good cause not to provide notice of the claim in the prescribed two-year claim filing period and the bill specifies that, for purposes of this provision, "good cause" includes military deployment. The bill establishes that nothing in the bill's provisions relating to the two-year claim filing period precludes an insurer from raising any defense available under the terms of its policy relating to prompt notice or that is otherwise available under the law. The bill specifies that if an insurer raises a defense based on the fact that notice of claim was not made in accordance with the policy terms, the defense applies only on a showing and to the extent that the insurer was prejudiced by notice not being made in accordance with the policy terms.

C.S.S.B. 1628 requires the commissioner of insurance by rule to adopt standards for minimum fairness for provisions in the described insurance policies that provide an appraisal process for such claims for property damage. The bill requires adopted appraisal standards to take into consideration the expense involved in submitting a claim to the appraisal process and to provide for a process that is not unnecessarily complicated and that is designed to yield a prompt and fair resolution of the disputed matter.

C.S.S.B. 1628 authorizes a described insurer to submit to the commissioner for purposes of liability limitations, as those limitations are established by the applicable bill provision, any policy form used or proposed to be used by the insurer to write the described policies that contains provisions that provide an appraisal process for such claims for property damage. The bill requires the commissioner to approve the appraisal provisions for purposes of those liability limitations if the commissioner determines the appraisal provisions in a submitted policy form comply with the minimum standards adopted by the commissioner.

C.S.S.B. 1628 establishes that an insurer is not liable in any private cause of action, under statutory and bill provisions relating to unfair methods of competition and unfair or deceptive acts or practices or under statutory and bill provisions relating to processing and settlement of claims, relating to or arising from such a claim for property damage under the following conditions: if the policy under which the claim is made contains appraisal provisions approved by the commissioner as provided by the bill or substantially similar to those approved provisions; if the insurer timely accepts the insured's demand for appraisal or makes a demand

for appraisal not later than the 30th day after the later of the date the insurer receives the notice of the claim required by the applicable bill provision or the date the insurer receives information related to the claim timely requested by the insurer in accordance with the applicable bill provision, including notice or requested information received after an abatement of an action under the applicable statutory and bill provisions regarding such abatement; and if the insurer participates in the appraisal process in good faith and pays or tenders, not later than the 15th day after the date the insurer receives the appraisal award, the full amount of the appraisal award, less the amount of any deductible or previous payment on the claim, and interest on that amount paid at the rate of 12 percent annually. The bill, for purposes of these bill provisions regarding liability limitations, requires the insurer, if there is a dispute as to whether the insurer is to pay actual cash value or replacement cost, requires the insurer to pay or tender the full amount of the appraisal award, as applicable, and interest on that amount that is based on the replacement cost. The bill establishes that interest to be paid under these bill provisions regarding liability limitations accrues beginning on the later of the fifth business day after the latest date on which the insurer is required to provide notice of acceptance or rejection of the relevant claim under the statutory provisions governing such acceptance or rejection or, if payment of the relevant claim or part of the relevant claim is conditioned on the performance of an act by the claimant, the fifth business day after the date the act is performed.

Provisions Relating to Licensed Public Insurance Adjusters

C.S.S.B. 1628 amends the Insurance Code to prohibit a licensed public insurance adjuster from entering into a contract for services with an insured and collecting a commission for services without the intent to actually perform the services customarily provided by a licensed public insurance adjuster for the insured.

C.S.S.B. 1628 expands the prohibition against a licensed public insurance adjuster from accepting any payment that violates the requirement that all persons paying any proceeds of a policy of insurance or making any payment affecting an insured's rights under a policy of insurance include the insured as a payee on the payment draft or check and require the written signature and endorsement of the insured on the payment draft or check to include in that prohibition the violation of any of the statutory provisions regarding commissions for services provided under the statutory provisions governing licensed public insurance adjusters. The bill provides that payment for a service performed under statutory provisions regarding commissions of a licensed public insurance adjuster that are performed before the bill's effective date or that are performed after the bill's effective date under a contract entered into before the bill's effective date is governed by the law as it existed immediately before the bill's effective date.

C.S.S.B. 1628 expands, for purposes of statutory provisions governing the prohibited conduct of licensed public insurance adjusters, the prohibition against an adjuster engaging in activities that may be reasonably construed as presenting a conflict of interest to include deriving any direct or indirect financial benefit from any salvage firm, repair firm, construction firm, or other firm that obtains business in connection with any claim the adjuster has a contract or agreement to adjust and includes a construction firm among the firms from which or in which an adjuster is prohibited from soliciting or accepting any remuneration or having a financial interest. The bill prohibits a licensed public insurance adjuster from directly or indirectly soliciting employment, as that term is described by Penal Code provisions relating to obstructing governmental operations, for an attorney or entering into a contract with an insured for the primary purpose of referring an insured to an attorney and without the intent to actually perform the services customarily provided by a licensed public insurance adjuster. The bill prohibits statutory provisions and bill provisions relating to licensed public insurance adjuster conflicts of interest from being construed to prohibit a licensed public insurance adjuster from recommending a particular attorney to an insured. The bill prohibits a licensed public insurance adjuster from acting on behalf of an attorney in having an insured sign an attorney representation agreement. The bill requires a licensed public insurance adjuster to become familiar with and at all times act in conformance with the criminal barratry statute set forth in the Penal Code.

C.S.S.B. 1628 revises the statutory provision prohibiting a licensed public insurance adjuster from paying, allowing, or giving or offering to pay, allow, or give a fee, commission, or other valuable consideration to a person who is not a licensed public insurance adjuster for the referral of an insured to that adjuster for the purposes of the insured entering into a contract with that adjuster by specifying that the prohibition is also applicable to a referral for any other purpose and by removing certain provisions to conform that statutory provision to that specification. The bill prohibits a licensed public insurance adjuster from accepting a fee, commission, or other valuable consideration of any nature, regardless of form or amount, in exchange for the referral by a licensed public insurance adjuster of an insured to any third-party individual or firm, including but not limited to an attorney, appraiser, umpire, construction company, contractor, or salvage company. The bill requires the commissioner to adopt rules necessary to implement and enforce the prohibition on the acceptance of referral payments.

C.S.S.B. 1628 repeals a statutory provision relating to the public insurance adjuster trainee registration program, which requires a public insurance adjuster trainee to register with the Texas Department of Insurance (TDI) for a temporary certificate, and specifies that the repeal of this provision does not affect the authority of a person to act under such a temporary certificate issued before the bill's effective date.

Provisions Relating to Certain Offers Made and Information Provided in Connection with Insurance Claims

C.S.S.B. 1628 amends the Business & Commerce Code to revise the statutory provisions regarding the Class A misdemeanor offense, as regards a person who sells goods or services applicable to the offense, relating to certain insurance claims for excessive charges by changing the conduct of such a person that constitutes that offense and by conforming the name of that offense to reflect that changed conduct. The bill, for purposes of those revised provisions, specifies that a person who sells goods or services, including a contractor, appraiser, estimator, or insurance restoration contractor, commits an offense if, in connection with a claim for property loss or damage under a property or casualty insurance policy: the person advertises or promises to pay, waive, absorb, rebate, subsidize, credit, or otherwise cover for any reason all or part of any applicable insurance deductible or other uninsured amount owed by an insured under the terms of the policy; the person knowingly provides or causes to be provided to an insurer any estimate or other statement as to the cost of repair for the good or service to be provided that has been increased, inflated, or otherwise manipulated by an amount equal to or greater than all or part of the applicable insurance deductible or other uninsured amount owed by an insured under the policy; or the person knowingly provides or causes to be provided to an insurer any false information within any estimate, bid, proposal, or other statement as to the scope of damage or cost of repair for the good or service to be provided.

Other Provisions

C.S.S.B. 1628 includes a temporary provision, set to expire January 1, 2019, requiring TDI to conduct a study to determine the effectiveness of the changes in law made by the bill. The bill requires the study to determine whether the changes in law made the affected insurance policies more affordable, whether such changes made such policies more available, whether such changes resulted in a change in the percentage of home buyers who qualify for home loans and requires the study to determine the effect of such changes on litigation, consumer complaints, and policy deductibles. The bill authorizes the commissioner to request and obtain data from insurers as necessary to perform the study. The bill requires TDI to submit, not later than November 1, 2018, a written report detailing the findings made by TDI to the lieutenant governor, speaker of the house of representatives, and members of the legislature.

C.S.S.B. 1628 repeals Section 4102.069, Insurance Code.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1628 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. The legislature finds that:

No equivalent provision.

- (1) there is an explosion in property insurance litigation, often related to hail claims, that has created a property insurance crisis for consumers that must be addressed for the benefit of consumers;
- (2) the property insurance crisis, if left unchecked, will severely affect the availability and affordability of property insurance for consumers, including coverage for hail claims, to the detriment of consumers;
- (3) this Act will help consumers who currently sometimes barely qualify for home loans, or may be unable to qualify for those loans, because of the increase in the cost of insurance attributable to hail claims litigation;
- (4) this Act will help consumers by:
 - (A) preventing further disruption of the insurance market and erosion in the availability of property insurance caused by hail claims litigation as have already been seen in certain parts of the state in which carriers have withdrawn from geographical markets and stopped offering insurance to consumers;
 - (B) preventing an increase in future premiums caused by the losses attributable to hail claims litigation;
 - (C) preventing an increase in deductibles in property insurance policies attributable to hail claims litigation;
 - (D) reducing the incentives to those unscrupulous public adjusters, roofers, contractors, and lawyers who provide fraudulent or inflated estimates and claims in the name of consumers;
 - (E) requiring lawyers to make sure the consumers have actual awareness of the claims being submitted on behalf of the consumers;

(F) requiring lawyers to inform consumers that lawsuits are being filed in the name of the consumers;

(G) requiring public adjusters, roofers, contractors, and lawyers to disclose their actual relationships to one another, which currently may not be disclosed;

(H) ensuring that each consumer in fact knows the damages the consumer is seeking in any claim or lawsuit that is filed;

(I) reducing instances of fraud or misinformation in the preparation and submission of property insurance claims and the filing of lawsuits related to those claims;

(J) encouraging consumers and those who act on behalf of consumers to diligently identify and pursue claims so consumers are not faced with insurance carrier assertions that policyholder claims are filed too late and can, as a result, be declined; and

(K) providing insurance policyholders a transparent and fair appraisal process to resolve disputes with insurance carriers without the need of expensive, risky, and time-consuming lawsuits, while maintaining consumers' rights to pursue lawsuits against carriers, if necessary;

(5) this Act will help deter corruption of the law and will help restore respect for the law by preventing rampant solicitation of fraudulent or non-meritorious claims and the filing of fraudulent, inflated, or otherwise non-meritorious claims; and

(6) this Act will help prevent disruption and dislocation in the real estate and financial markets by deterring abusive lawsuits that make property and casualty insurance unaffordable or unavailable to many Texans, resulting in artificial costs and barriers to the sale and rental of improved real estate properties and the placement of loans on those properties.

SECTION 2. Section 541.060, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) A bona fide dispute as to whether an insurer is liable for a claim made under an insurance policy covering real property or improvements to real property does not constitute an unfair settlement practice under this section.

SECTION 3. Section 541.151, Insurance Code, is amended.

No equivalent provision.

SECTION 1. Same as engrossed version.

SECTION 4. Subchapter D, Chapter 541, Insurance Code, is amended by adding Section 541.1511 to read as follows:

Sec. 541.1511. ACTION RELATING TO CLAIM FOR PROPERTY DAMAGE: INSURER ELECTION FOR LEGAL RESPONSIBILITY FOR ACTIONS OF AGENTS AND EMPLOYEES.

(a) This section applies only to an action brought by an insured relating to or arising from a claim made under an insurance policy for damage to or loss of real property or tangible personal property alleged to be covered by the policy.

(b) An insured seeking damages in an action to which this section applies may not file or maintain an action under this subchapter against an employee, agent, representative, or adjuster issuing policies, handling claims, or performing other acts on behalf of an insurer, and any such action shall be immediately dismissed, if:

(1) the employee, agent, representative, or adjuster was not named in a notice given under Section 541.1541; or

(2) not later than the 30th day after the date the notice given under Section 541.1541 is received, the insurer agrees in a document provided to the insured to be liable for any act or omission of the employee, agent, representative, or adjuster related to or arising out of the insured's claim.

(c) A dismissal under Subsection (b)(1) and agreement under Subsection (b)(2) do not limit the insurer's liability and do not limit the insurer's vicarious liability for any act or omission of the employee, agent, representative, or adjuster related to or arising out of the insured's claim.

SECTION 5. The heading to Section 541.152, Insurance Code, is amended.

SECTION 2. Subchapter D, Chapter 541, Insurance Code, is amended by adding Section 541.1511 to read as follows:

Sec. 541.1511. ACTION RELATING TO CERTAIN CLAIMS FOR PROPERTY DAMAGE: INSURER ELECTION FOR LEGAL RESPONSIBILITY FOR ACTIONS OF AGENTS AND EMPLOYEES.

(a) This section applies only to an action brought by an insured relating to or arising from a claim for damage to or loss of real property or tangible personal property made under an insurance policy providing coverage for damage to or loss of real property.

(b) Except as provided by Subsection (d), an insured seeking damages in an action to which this section applies may not file or maintain an action under this subchapter against an employee, agent, representative, or adjuster issuing policies, handling claims, or performing other acts on behalf of an insurer, and any such action shall be immediately dismissed, if:

(1) the employee, agent, representative, or adjuster was not named in a notice given under Section 541.1541; or

(2) not later than the 30th day after the date the notice given under Section 541.1541 is received, the insurer agrees in a document provided to the insured to be liable for any act or omission of the employee, agent, representative, or adjuster related to or arising out of the insured's claim.

(c) A dismissal under Subsection (b)(1) or an agreement under Subsection (b)(2) does not limit the insurer's liability and does not limit the insurer's vicarious liability for any act or omission of the employee, agent, representative, or adjuster related to or arising out of the insured's claim.

(d) An insured may file and maintain an action described by Subsection (b) if the insured shows and the court finds that the insured cannot reasonably expect to secure complete relief unless the employee, agent, representative, or adjuster is made a party to the action.

SECTION 3. Same as engrossed version.

SECTION 6. The heading to Section 541.154, Insurance Code, is amended.

SECTION 7. Section 541.154(a), Insurance Code, is amended.

SECTION 8. Subchapter D, Chapter 541, Insurance Code, is amended by adding Section 541.1541 to read as follows:

Sec. 541.1541. PRIOR NOTICE OF ACTION RELATING TO CLAIM FOR PROPERTY DAMAGE.

(a) This section applies only to an action brought by an insured relating to or arising from a claim made under an insurance policy for damage to or loss of real property or tangible personal property alleged to be covered by the policy.

(b) An insured seeking damages in an action to which this section applies must provide written notice complying with this section to all potential defendants not later than the 61st day before the date the action is filed.

(c) If the amount sought by the insured in the action involves a claim for damage items previously submitted to an insurer, the notice must be signed by the insured and state:

(1) the specific damage items and the amount alleged to be owed by the insurer under the insurance contract;

(2) the amount of the actual damages, other damages, interest, and expenses, specifically stated for each item, that the insured alleges are owed by the insurer;

(3) the amount of attorney's fees the insured reasonably has incurred as of the date the notice is given in asserting the claim against the insurer;

(4) an amount that includes the amounts described by Subdivisions (1) through (3) that the insured will accept in full and final satisfaction of the claim; and

(5) the name of every person to whom notice is given under this section and a brief description of each person's relationship to the insured's claim.

(d) If the amount sought by the insured in the action involves a claim for damage items not previously submitted to the insurer, the notice must contain, in addition to the items listed in Subsection (c):

SECTION 4. Same as engrossed version.

SECTION 5. Same as engrossed version.

SECTION 6. Subchapter D, Chapter 541, Insurance Code, is amended by adding Section 541.1541 to read as follows:

Sec. 541.1541. PRIOR NOTICE OF ACTION RELATING TO CERTAIN CLAIMS FOR PROPERTY DAMAGE.

(a) This section applies only to an action brought by an insured relating to or arising from a claim for damage to or loss of real property or tangible personal property made under an insurance policy providing coverage for damage to or loss of real property.

(b) An insured seeking damages in an action to which this section applies must provide written notice complying with this section to all potential defendants not later than the 61st day before the date the action is filed.

(c)

The notice required by this section must state:

(1) the specific damage items and the amount alleged to be owed by the insurer under the insurance policy;

(2) the amount of the actual damages, other damages, interest, and expenses, specifically stated for each item, that the insured alleges are owed by the insurer;

(3) the amount of attorney's fees the insured reasonably has incurred as of the date the notice is given in asserting the claim against the insurer;

(4) an amount that includes the amounts described by Subdivisions (1) through (3) that the insured will accept in full and final satisfaction of the claim; and

(5) the name of every person to whom notice is given under this section and a brief description of each person's relationship to the insured's claim.

(d) If the amount sought by the insured in the action involves a claim for damage items not previously submitted to the insurer, not later than the 15th day after the date notice under this section is provided to an insurer, the insurer may request that the insured

(1) a statement of the reason the damage items were not previously submitted to the insurer;

(2) copies of reports, estimates, photographs, and other items reasonably supporting the insured's additional damage items; and

(3) a statement that the insured will cooperate in allowing the insurer to inspect the insured property for purposes of investigating the additional damage items.

(e) Notice required by this section must be sent to the insurer by certified mail, return receipt requested.

(f) A presuit notice under this section is not required if giving notice is impracticable because the action:

(1) must be filed to prevent the statute of limitations from expiring; or

(2) is asserted as a counterclaim.

SECTION 9. Section 541.155, Insurance Code, is amended to read as follows:

Sec. 541.155. ABATEMENT; DISMISSAL.

(a) A person against whom an action under this subchapter is pending who does not receive [~~the~~] notice as required by Section 541.154 or 541.1541(c) may file a plea in abatement not later than the 30th day after the date the person files an original answer in the court in which the action is pending.

(b) The court shall abate the action if, after a hearing, the court finds that the person is entitled to an abatement because the claimant did not provide [~~the~~] notice as required by Section 541.154 or 541.1541(c).

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

(1) is verified and alleges that the person against whom the action is pending did not receive [~~the~~] notice as required by Section 541.154 or 541.1541(c); and

(2) is not controverted by an affidavit filed by the claimant before the 11th day after the

provide

copies of reports, estimates, photographs, and other items reasonably supporting the insured's additional damage items.

If a request is made in accordance with this subsection, the insured must provide the requested information before filing an action to which this section applies.

(e) A presuit notice under this section is not required if giving notice is impracticable because the action:

(1) must be filed to prevent the statute of limitations from expiring; or

(2) is asserted as a counterclaim.

SECTION 7. Section 541.155, Insurance Code, is amended to read as follows:

Sec. 541.155. ABATEMENT.

(a) A person against whom an action under this subchapter is pending who does not receive [~~the~~] notice or requested information as required by Section 541.154 or 541.1541 may file a plea in abatement not later than the 30th day after the date the person files an original answer in the court in which the action is pending.

(b) The court shall abate the action if, after a hearing, the court finds that the person is entitled to an abatement because the claimant did not provide [~~the~~] notice or requested information as required by Section 541.154 or 541.1541.

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

(1) is verified and alleges that the person against whom the action is pending did not receive [~~the~~] notice or requested information as required by Section 541.154 or 541.1541; and

(2) is not controverted by an affidavit filed by the claimant before the 11th day after the

date the plea in abatement is filed.

(d) An abatement under this section continues until the 60th day after the date notice is provided in compliance with Section 541.154 or 541.1541(c).

(d-1) A person against whom an action under this subchapter is pending who does not receive notice as required by Section 541.1541(d) may file a motion to dismiss not later than the 30th day after the date the person files an original answer in the court in which the action is pending.

(d-2) The court shall grant the motion under Subsection (d-1) if, after a hearing, the court finds that the person is entitled to dismissal because the claimant did not provide notice as required by Section 541.1541(d). A dismissal ordered under this section is without prejudice to the rights of the parties in a subsequent action.

(e) Subsections (d-1) and (d-2) do [~~This section—does~~] not apply if Section 541.1541(f) [~~541.154(e)~~] applies. If Section 541.1541(f) applies, the action may not be dismissed but shall be abated in accordance with Subsections (b), (c), and (d).

SECTION 10. Section 542.058(b), Insurance Code, is amended to read as follows:

(b) Subsection (a) does not apply in a case in which it is found as a result of arbitration or litigation that:

(1) a claim received by an insurer is invalid and should not be paid by the insurer; or

(2) there exists a bona fide dispute in a claim made under an insurance policy covering real property or improvements to real property as to the insurer's liability for payment of the claim.

SECTION 11. Subchapter B, Chapter 542, Insurance Code, is amended by adding Section 542.0595 to read as follows:

Sec. 542.0595. PRIOR NOTICE OF ACTION RELATING TO CLAIM FOR PROPERTY DAMAGE; ABATEMENT OR DISMISSAL.

(a) An insured may not bring suit under Section 542.060 in connection with a claim made under an insurance policy for damage

date the plea in abatement is filed.

(d) An abatement under this section continues until the 60th day after the date notice or requested information is provided in compliance with Section 541.154 or 541.1541.

(e) This section does not apply if Section 541.154(c) or 541.1541(e) applies.

No equivalent provision.

SECTION 8. Subchapter B, Chapter 542, Insurance Code, is amended by adding Section 542.0595 to read as follows:

Sec. 542.0595. PRIOR NOTICE OF ACTION RELATING TO CERTAIN CLAIMS FOR PROPERTY DAMAGE; ABATEMENT.

(a) An insured may not bring suit under Section 542.060 in connection with a claim for damage to or loss of real property or

to or loss of real property or tangible personal property unless the insured has provided written notice to the insurer with respect to the claim in accordance with Section 541.1541.

(b) A suit under Section 542.060 for which notice is required by this section is subject to abatement or dismissal to the same extent and in the same manner provided by Section 541.155 for an action under Subchapter D, Chapter 541.

SECTION 12. Section 542.060, Insurance Code, is amended to read as follows:

Sec. 542.060. LIABILITY FOR VIOLATION OF SUBCHAPTER. (a) 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 unpaid amount of the claim at the rate of 18 percent a year as damages, together with reasonable attorney's fees.

(a-1) In determining the amount of attorney's fees awarded under Subsection (a), the trier of fact shall consider:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the claimant, that the acceptance of the particular employment will preclude other employment by the attorney;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the claimant or by the circumstances;

(6) the nature and length of the professional relationship with the claimant;

(7) the experience, reputation, and ability of the attorney performing the services; and

(8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

(a-2) An attorney may not share attorney's fees awarded under Subsection (a) with the

tangible personal property made under an insurance policy providing coverage for damage to or loss of real property unless the insured has provided written notice to the insurer with respect to the claim in accordance with Section 541.1541 and any information requested by the insurer in accordance with that section.

(b) A suit under Section 542.060 for which notice is required by this section is subject to abatement to the same extent and in the same manner provided by Section 541.155 for an action under Subchapter D, Chapter 541.

SECTION 9. Section 542.060, Insurance Code, is amended to read as follows:

Sec. 542.060. LIABILITY FOR VIOLATION OF SUBCHAPTER. (a) 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 unpaid amount of the claim at the rate of 18 percent a year as damages, together with reasonable attorney's fees.

(a-1) In determining the amount of attorney's fees awarded under Subsection (a), the trier of fact shall consider:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the claimant, that the acceptance of the particular employment will preclude other employment by the attorney;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the claimant or by the circumstances;

(6) the nature and length of the professional relationship with the claimant;

(7) the experience, reputation, and ability of the attorney performing the services; and

(8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

claimant. If a court finds that an attorney has violated this subsection, the court shall order the attorney to pay a penalty in an amount equal to two times the amount shared with the claimant. A penalty under this section is payable to the court.

(b) If a suit is filed, interest and [the] attorney's fees payable under this section shall be taxed as part of the costs in the case.

(c) The liability for interest and attorney's fees provided by this section is the exclusive remedy for a violation of this subchapter. This section is not intended to affect a right or remedy provided by Chapter 541 or any other law outside this subchapter.

(d) If a claim for a loss has been paid by the insurer and a suit under this section arises out of a supplemental claim for that loss, interest awarded under this section on the supplemental claim begins to accrue on the 60th day after the date the insurer receives notice of the supplemental claim.

SECTION 13. Subchapter B, Chapter 542, Insurance Code, is amended by adding Section 542.0601 to read as follows:

Sec. 542.0601. LIABILITY WITH RESPECT TO CERTAIN CLAIMS. An insurer is not liable under Section 542.060 with respect to a claim made under an insurance policy covering real property or improvements to real property if the claim is resolved through appraisal in accordance with the terms of the policy.

SECTION 14. Subtitle A, Title 10, Insurance Code, is amended by adding Chapters 1808 and 1809 to read as follows:

CHAPTER 1808. CLAIMS FOR PROPERTY DAMAGE

Sec. 1808.001. DEFINITION. In this chapter, "claim for property damage" means a request for payment under an insurance policy for damage to or loss of real property or tangible personal property alleged to be covered by the policy.

Sec. 1808.002. APPLICABILITY OF CHAPTER. This chapter applies to any claim under or related to an insurance policy that provides insurance coverage against damage to or loss of real property or tangible personal property,

including a policy issued by

(b) If a suit is filed, interest and [the] attorney's fees payable under this section shall be taxed as part of the costs in the case.

(c) The liability for interest and attorney's fees provided by this section is the exclusive remedy for a violation of this subchapter. This section is not intended to affect a right or remedy provided by Chapter 541 or any other law outside this subchapter.

(d) If a claim for a loss has been paid by the insurer and a suit under this section arises out of a supplemental claim for that loss, interest awarded under this section on the supplemental claim begins to accrue on the 60th day after the date the insurer receives notice of the supplemental claim.

No equivalent provision.

SECTION 10. Subtitle A, Title 10, Insurance Code, is amended by adding Chapter 1808 to read as follows:

CHAPTER 1808. CERTAIN CLAIMS FOR PROPERTY DAMAGE

Sec. 1808.001. DEFINITION. In this chapter, "claim for property damage" means a claim to which this chapter applies.

Sec. 1808.002. APPLICABILITY OF CHAPTER. This chapter applies only to a first party claim for damage to or loss of real property or tangible personal property made under an insurance policy:

(1) providing coverage for damage to or loss of real property; and

(2) issued by:

(A) any insurer authorized to write property

an eligible surplus lines insurer or by an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock insurance company, county mutual insurance company, farm mutual insurance company, Lloyd's plan, or other legal entity authorized to write property insurance in this state.

Sec. 1808.003. CLAIM FILING PERIOD.

(a) Subject to Subsection (b), failure to provide notice of a claim for property damage by the second anniversary of the date on which the damage to or loss of property that is the basis of the claim occurs is an absolute bar to recovery on the claim.

(b) Subject to Subsection (c), the commissioner, using existing resources, may on a showing of good cause extend the deadline for providing notice of a claim prescribed by Subsection (a).

(c) The extension of a deadline under Subsection (b) may not exceed 120 days.

(d) For the purposes of Subsection (b), "good cause" includes military deployment.

(e) Nothing in this section precludes an insurer from raising any defense available under the terms of its policy relating to prompt notice or that is otherwise available under the law.

CHAPTER 1809. APPRAISAL PROCESS FOR CERTAIN POLICIES

Sec. 1809.001. NOTICE OF APPRAISAL PROVISIONS; APPRAISER SELECTION PROCESS. (a) If an insurance policy covering real property or improvements to

insurance in this state, including:

- (i) an insurance company;
- (ii) a reciprocal or interinsurance exchange;
- (iii) a mutual insurance company;
- (iv) a capital stock insurance company;
- (v) a county mutual insurance company;
- (vi) a farm mutual insurance company; or
- (vii) a Lloyd's plan;

(B) an eligible surplus lines insurer; or

(C) the FAIR Plan Association.

Sec. 1808.003. CLAIM FILING PERIOD.

(a) Subject to Subsection (b), failure to provide notice of a claim for property damage by the second anniversary of the date on which the damage to or loss of property that is the basis of the claim occurs is an absolute bar to recovery on the claim.

(b) Recovery on a claim for property damage is not barred if in an action to recover on the claim the trier of fact determines the claimant had good cause not to provide notice of the claim in the time prescribed by Subsection (a).

(c) For the purposes of Subsection (b), "good cause" includes military deployment.

(d) Except as provided by this subsection, nothing in this section precludes an insurer from raising any defense available under the terms of its policy relating to prompt notice or that is otherwise available under the law. If an insurer raises a defense based on the fact that notice of claim was not made in accordance with the policy terms, the defense applies only on a showing and to the extent that the insurer was prejudiced by notice not being made in accordance with the policy terms.

No equivalent provision.

No equivalent provision.

real property contains a provision allowing resolution of a dispute through appraisal, the policy must contain, in boldface type, a conspicuous notice concerning the resolution of disputes through the appraisal process, including:

(1) the processes and deadlines for appraisal; and

(2) the binding effect, if any, of the appraisal decision.

(b) The appraisal process must provide and the notice required by this section must inform the insured that:

(1) if the appraisal process is invoked, the insured and insurer each will be required to name an appraiser, and those two appraisers must agree on a competent and impartial appraisal umpire to participate in the resolution of the dispute; and

(2) if the appraisers named by the insured and insurer are unable to agree for any reason on a competent and impartial appraisal umpire to participate in the resolution of the dispute, the commissioner will select a competent and impartial appraisal umpire from a roster of qualified umpires maintained by the department.

Sec. 1809.002. APPRAISAL AWARD. An appraisal award made under a policy covering real property or improvements to real property must be consistent with the coverage, conditions, and limits provided by the policy and must account for any prior payments and applicable deductible amounts.

No equivalent provision.

No equivalent provision.

No equivalent provision.

Sec. 1808.004. APPRAISAL STANDARDS. (a) The commissioner by rule shall adopt standards for minimum fairness for provisions in insurance policies described by Section 1808.002 that provide an appraisal process for claims for property damage.

(b) Standards adopted under this section must:

(1) take into consideration the expense involved in submitting a claim to the appraisal process; and

(2) provide for a process that:

(A) is not unnecessarily complicated; and

(B) is designed to yield a prompt and fair resolution of the disputed matter.

Sec. 1808.005. APPROVAL OF APPRAISAL PROVISIONS. (a) An

insurer described by Section 1808.002 may submit to the commissioner for purposes of Section 1808.006 any policy form used or proposed to be used by the insurer to write insurance policies described by Section 1808.002 that contains provisions that provide an appraisal process for claims for property damage.

(b) If the commissioner determines the appraisal provisions in a policy form submitted under this section comply with the minimum standards adopted by the commissioner under Section 1808.004, the commissioner shall approve the appraisal provisions for purposes of Section 1808.006.

No equivalent provision.

Sec. 1808.006. LIABILITY LIMITATIONS. (a) Except as provided by this section, an insurer is not liable in any private cause of action under Chapter 541 or 542 relating to or arising from a claim for property damage if:

(1) the policy under which the claim is made contains appraisal provisions:

(A) approved by the commissioner under Section 1808.005; or

(B) substantially similar to provisions approved by the commissioner under that section;

(2) the insurer:

(A) timely accepts the insured's demand for appraisal; or

(B) makes a demand for appraisal not later than the 30th day after the later of the date the insurer receives the notice of the claim required by Section 541.1541 or 542.0595, as applicable, or the date the insurer receives information related to the claim timely requested by the insurer in accordance with Section 541.1541 for purposes of that section or Section 542.0595, as applicable, including notice or requested information received after an abatement of an action under Section 541.155 or 542.0595; and

(3) the insurer:

(A) participates in the appraisal process in good faith; and

(B) pays or tenders, not later than the 15th day after the date the insurer receives the appraisal award:

(i) the full amount of the appraisal award, less the amount of any deductible or previous payment on the claim; and

(ii) interest on the amount paid under

Subparagraph (i) at the rate of 12 percent annually.

(b) For purposes of this section, if there is a dispute as to whether the insurer is to pay actual cash value or replacement cost, the insurer must pay or tender an amount under Section (a)(3)(B) that is based on the replacement cost.

(c) Interest to be paid under Subsection (a) accrues beginning on the later of:

(1) the fifth business day after the latest date on which the insurer is required to provide notice of acceptance or rejection of the relevant claim under Section 542.056; or
(2) if payment of the relevant claim or part of the relevant claim is conditioned on the performance of an act by the claimant, the fifth business day after the date the act is performed.

SECTION 15. Section 4102.051(a), Insurance Code, is amended.

SECTION 11. Same as engrossed version.

SECTION 16. Sections 4102.066(a) and (b), Insurance Code, are amended.

SECTION 12. Same as engrossed version.

SECTION 17. Section 4102.103, Insurance Code, is amended.

SECTION 13. Same as engrossed version.

SECTION 18. Section 4102.104(d), Insurance Code, is amended.

SECTION 14. Same as engrossed version.

SECTION 19. Section 4102.158, Insurance Code, is amended.

SECTION 15. Same as engrossed version.

SECTION 20. Section 4102.160, Insurance Code, is amended.

SECTION 16. Same as engrossed version.

SECTION 21. Subchapter D, Chapter 4102, Insurance Code, is amended.

SECTION 17. Same as engrossed version.

SECTION 22. The heading to Section 27.02, Business & Commerce Code, is amended.

SECTION 18. Same as engrossed version.

SECTION 23. Sections 27.02(a) and (b), Business & Commerce Code, are amended to read as follows:

SECTION 19. Section 27.02(a), Business & Commerce Code, is amended to read as follows:

(a) A person who sells goods or services, including a contractor, appraiser, estimator, or insurance restoration contractor, commits an offense if, in connection with a claim for property loss or damage under a property or casualty insurance policy:

(a) A person who sells goods or services, including a contractor, appraiser, estimator, or insurance restoration contractor, commits an offense if, in connection with a claim for property loss or damage under a property or casualty insurance policy:

(1) the person advertises or promises to

(1) the person advertises or promises to

~~[provide the good or service and to] pay, waive, absorb, rebate, subsidize, credit, or otherwise cover for any reason[:~~

~~[(A)] all or part of any applicable insurance deductible or other uninsured amount owed by an insured under the terms of the policy;~~

~~[or~~

~~[(B) a rebate in an amount equal to all or part of any applicable insurance deductible;]~~

~~(2) [the good or service is paid for by the consumer from proceeds of a property or casualty insurance policy; and~~

~~[(3)] the person knowingly provides or causes to be provided to an insurer any estimate or other statement as to the cost of repair for the good or service to be provided that has been increased, inflated, or otherwise manipulated [~~charges an amount for the good or service that exceeds the usual and customary charge by the person for the good or service~~] by an amount equal to or greater than all or part of the applicable insurance deductible or other uninsured amount owed by an insured under the policy; or~~

~~(3) the person knowingly provides or causes to be provided to an insurer any false information within any estimate, bid, proposal, or other statement as to the scope of damage or cost of repair for the good or service to be provided [paid by the person to an insurer on behalf of an insured or remitted to an insured by the person as a rebate].~~

(b) A person who is insured under a property or casualty insurance policy commits an offense if the person:

(1) knowingly submits a claim under the policy based on conduct [~~charges that are~~] in violation of Subsection (a) [~~of this section~~]; or

(2) knowingly allows a claim in violation of Subsection (a) [~~of this section~~] to be submitted, unless the person promptly notifies the insurer of the conduct in violation of Subsection (a) [~~excessive charges~~].

SECTION 24. Section 4102.069, Insurance Code, is repealed.

No equivalent provision.

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~~[provide the good or service and to] pay, waive, absorb, rebate, subsidize, credit, or otherwise cover for any reason[:~~

~~[(A)] all or part of any applicable insurance deductible or other uninsured amount owed by an insured under the terms of the policy;~~

~~[or~~

~~[(B) a rebate in an amount equal to all or part of any applicable insurance deductible;]~~

~~(2) [the good or service is paid for by the consumer from proceeds of a property or casualty insurance policy; and~~

~~[(3)] the person knowingly provides or causes to be provided to an insurer any estimate or other statement as to the cost of repair for the good or service to be provided that has been increased, inflated, or otherwise manipulated [~~charges an amount for the good or service that exceeds the usual and customary charge by the person for the good or service~~] by an amount equal to or greater than all or part of the applicable insurance deductible or other uninsured amount owed by an insured under the policy; or~~

~~(3) the person knowingly provides or causes to be provided to an insurer any false information within any estimate, bid, proposal, or other statement as to the scope of damage or cost of repair for the good or service to be provided [paid by the person to an insurer on behalf of an insured or remitted to an insured by the person as a rebate].~~

SECTION 20. Same as engrossed version.

SECTION 21. (a) The Texas Department of Insurance shall conduct a study to

15.136.179

determine the effectiveness of the changes in law made by this Act. The study must determine:

- (1) whether the changes in law made the affected insurance policies more affordable;
- (2) whether the changes in law made the affected insurance policies more available;
- (3) whether the changes in law resulted in a change in the percentage of home buyers who qualify for home loans;
- (4) the effect of the changes in law on litigation;
- (5) the effect of the changes in law on consumer complaints; and
- (6) the effect of the changes in law on policy deductibles.

(b) The commissioner of insurance may request and obtain data from insurers as necessary to perform the study required by this section.

(c) Not later than November 1, 2018, the Texas Department of Insurance shall submit a written report detailing the findings made by the department under this section to the lieutenant governor, speaker of the house of representatives, and members of the legislature.

(d) This section expires January 1, 2019.

SECTION 25. Chapter 541, Insurance Code, as amended by this Act, applies only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 26. Subchapter B, Chapter 542, Insurance Code, as amended by this Act, applies only to a claim for which notice of claim is provided to an insurer on or after the effective date of this Act. A claim for which notice of claim is provided to an insurer before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 27. Chapter 1808, Insurance Code, as added by this Act, applies only to a claim under an insurance policy delivered,

SECTION 22. Same as engrossed version.

SECTION 23. Same as engrossed version.

SECTION 24. Same as engrossed version.

issued for delivery, or renewed on or after January 1, 2016. A claim under a policy delivered, issued for delivery, or renewed before January 1, 2016, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 28. Chapter 1809, Insurance Code, as added by this Act, applies only to an insurance policy delivered, issued for delivery, or renewed on or after January 1, 2016.

SECTION 29. The repeal by this Act of Section 4102.069, Insurance Code, does not affect the authority of a person to act under a temporary certificate issued by the Texas Department of Insurance under that section before the effective date of this Act.

SECTION 30. Sections 4102.103(d) and 4102.158(d), Insurance Code, as added by this Act, apply only to a contract entered into or solicitation made on or after the effective date of this Act.

SECTION 31. (a) Except as provided by this section, Section 4102.104, Insurance Code, as amended by this Act, applies only to payment for a service performed on or after the effective date of this Act.

(b) Payment for a service performed before the effective date of this Act or performed after the effective date of this Act under a contract entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 32. Section 4102.160, Insurance Code, as amended by this Act, and Section 4102.164, Insurance Code, as added by this Act, apply only to a referral made on or after the effective date of this Act. A referral made before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 33. The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An

No equivalent provision.

SECTION 25. Same as engrossed version.

SECTION 26. Same as engrossed version.

SECTION 27. Same as engrossed version.

SECTION 28. Same as engrossed version.

SECTION 29. Same as engrossed version.

offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 34. This Act takes effect September 1, 2015.

SECTION 30. Same as engrossed version.