

- SUBJECT:** Limiting penalties for filing insurance claims that are not paid
- COMMITTEE:** Insurance — favorable, with amendments
- VOTE:** 7 ayes — Smithee, Averitt, Counts, De La Garza, Driver, G. Lewis, Shields  
0 nays  
2 absent — Duncan, Dutton
- WITNESSES:** For — Bob Huxel, Texas Association of Insurance Agents; Rob Schneider, Consumers Union; Edwin Benjamin, Texas Loss Consultant Association; Richard S. Geiger, Association of Fire and Casualty Companies; Otis Fagan; Maxine Aaronson, Texas Neighborhoods Together; Lawrence DeMartino and Mary Wallace, San Antonio Coalition of Neighborhood Associations; Don Wilmarth, Dallas Homeowners League; Ephesian Hardern, Friendship Homeowner Association; Victoria Frayser, Houston Homeowners Association.  
  
Against — None
- BACKGROUND:** Insurance companies may decline to renew a policy, or charge a surcharge on the policy premium, because the holder of a homeowners', or farm or ranch owners' or fire policy makes a certain number of claims in a specified time. This is authorized in Insurance Code art. 21.49-2B, sec. 7.
- DIGEST:** HB 46, as amended, would exempt from the provision on nonrenewal and surcharges any claims that are filed but not paid or payable. HB 46 would take effect September 1, 1995, and apply to claims filed on or after January 1, 1996.
- SUPPORTERS SAY:** Insurance policyholders should be free to openly inquire about the terms of their policies and about possible claims without being fearful that this will result in the nonrenewal of the policy or a surcharge on the premium. Homeowners sometimes talk to their agents about potential claims that the insurer may decline to pay, or that the homeowner will not pursue. In these cases policyholders should be protected from the possibility that the

insurer will use the information, or the very fact that they considered a claim, against the policyholder.

Insurance policies can be confusing, and agent assistance or insurance company responses often help a policyholder decide whether or not to file a claim, or after a claim has been filed, whether to seek payment. Agents often file claims as a service to policyholders, to expedite the claims process. Information about unpaid claims, however, now may be used by the insurer for underwriting purposes. This is unfair, as claims that are not payable cost the insurance company nothing.

Policyholders who assume more financial liability than necessary in order to keep their overall insurance costs down should be rewarded, not punished. A policyholder might even be reporting a situation that is payable under their insurance policy but which ultimately will be paid by another person, such as a neighbor.

The proposed effective dates would give insurers time to adjust to statutory changes and the Texas Department of Insurance time to assess the need for, or to promulgate, new rules related to the change, under the Insurance Code, art. 21.49-2B, sec. 12.

**OPPONENTS  
SAY:**

Underwriting is the practice of assessing risk and the potential cost of that risk to the insurer. All claims or reported incidents, regardless of whether or not they are paid, help the insurance company assess the degree of risk that policyholder presents. But even now information reported to underwriters is not always used against the policyholder. Current law only authorizes, it does not require, insurers to assess premium surcharges or to decline renewal when a certain number of claims are filed. Many insurance companies do not use unpaid claims when evaluating a policy for renewal.

**OTHER  
OPPONENTS  
SAY:**

Implementation of HB 46 would be fairly easy and should be done sooner than proposed. Claims filed on or after the effective date of the act (September 1, 1995) should receive the protection of this act.

**NOTES:**

The committee amendment would add claims that are not "payable" to the exception for claims not paid.