

SUBJECT: Prohibiting certain requirements before paying UIM insurance claims

COMMITTEE: Insurance — favorable, without amendment

VOTE: 5 ayes — Lucio, Oliverson, Julie Johnson, Lambert, C. Turner

0 nays

4 absent — G. Bonnen, S. Davis, Paul, Vo

WITNESSES: For — Craig Eiland and Will Adams, Texas Trial Lawyers Association; Ware Wendell, Texas Watch; Michael Andrade; Scott Lidji; Seth McCloskey; Paula Mentzer; Rebekah Rogers; (*Registered, but did not testify*: Steve Bresnen, Texas Trial Lawyers Association)

Against — Jay Thompson, AFACT; Emily Stroup; (*Registered, but did not testify*: Joe Woods, American Property Casualty Insurance Association; John Marlow, Chubb; Paul Martin, National Association of Mutual Insurance Companies; Connie Johnson, Progressive; Lee Parsley, Texans for Lawsuit Reform; Jessica Boston, Texas Association of Business; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; Marti Luparello, Texas Farm Bureau Insurance Companies; Kari King, USAA)

On — (*Registered, but did not testify*: Marianne Baker, Texas Department of Insurance)

DIGEST: HB 1739 would prohibit an insurer, as a prerequisite to asserting a claim under uninsured or underinsured motorist (UIM) coverage, from requiring a judgment or other legal determination establishing the liability or uninsured or underinsured status of another motorist. A judgment or other legal determination would not be a prerequisite to having a claim alleging unfair methods of competition or failure to promptly pay claims.

An insurer also could not, as a prerequisite to payment of benefits under UIM coverage, require a judgment or other legal determination

establishing another motorist's liability or the extent of the insured's damages before benefits were paid under the policy.

An insurer would be required to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim once liability and damages had become reasonably clear.

The bill would establish that a claimant provided notice of a claim, including a claim alleging unfair methods of competition or failure to promptly pay claims, for UIM coverage by providing written notification to the insurer that reasonably informed the insurer of the facts of the claim.

Prejudgment interest would begin accruing on a UIM claim on the earlier of the 180th day after the claimant provided notice of a claim or the date suit was filed against the insurer.

For purposes of recovering attorney's fees, a claim for UIM coverage would be presented when the insurer received notice of the claim.

The bill would take effect September 1, 2019, and the change in law would apply only to a cause of action that accrued on or after the effective date, except that the bill would not affect the enforceability of any provision in an insurance policy delivered, issued for delivery, or renewed before January 1, 2020, that conflicted with this bill.

**SUPPORTERS
SAY:**

HB 1739 would reduce litigation and would restore policyholders' legal rights in relation to their insurers when they purchased uninsured or underinsured motorist (UIM) coverage.

The Texas Supreme Court in *Brainard v. Trinity Universal Ins. Co.* (2006) held that an uninsured or underinsured motorist insurer is under no contractual duty to pay benefits until the insured obtained a judgment establishing the liability and underinsured status of the other motorist. That decision has caused delay, expense, and hardship for policyholders.

Policyholders in Texas currently are forced to sue their insurance company and obtain a judgment in court before their insurer is obligated to pay UIM policy benefits. The policyholder could have paid premiums on the policy for years only to be denied coverage when they need it most.

The bill also would allow policyholders the possibility of recovering attorney's fees. Under current law, if the insurer is ever forced to pay, payment is limited to what was originally owed, and the policyholder is never made whole due to litigation expenses.

Concerns that the bill would lead to increased litigation due to its references to the Insurance Code and attorney's fees provisions could be addressed in a floor amendment.

OPPONENTS
SAY:

HB 1739 could have the unintended effect of actually encouraging more litigation by making overbroad references to the Insurance Code and reversing the *Brainard* decision on attorney's fees.

NOTES:

The author intends to offer a floor amendment that would strike provisions of HB 1739 and substitute the following:

- for the purpose of an unfair settlement practice under Insurance Code sec. 541.060, an insured could provide notice of a claim for UIM coverage by providing a written notification to the insurer that reasonably informed the insurer of the facts of the claim;
- a judgment or other legal determination establishing the other motorist's liability or the extent of the insured's damages would not be a prerequisite to recovery in a private action for damages under Insurance Code sec. 541.151 for a violation of the statute prohibiting unfair settlement practices; and
- in regard to a claim for UIM coverage, the only extra-contractual cause of action available to an insured would be provided by Insurance Code sec. 541.151 to recover damages for a violation of an unfair settlement practice under Insurance Code sec. 541.060.

