

## **BILL ANALYSIS**

C.S.H.B. 1774  
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Insurance  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Concerns have been raised regarding the handling of legal actions for certain insurance claims, including those arising from damage to or loss of property due to hailstorms and other forces of nature. C.S.H.B. 1774 addresses this issue by establishing requirements and procedures applicable to such an action, and makes other changes.

### **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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 1774 amends the Insurance Code to establish requirements and procedures applicable to an action on a claim against any insurer, defined to be a corporation, association, partnership, or individual, other than the Texas Windstorm Insurance Association (TWIA), engaged as a principal in the business of insurance and authorized or eligible to write property insurance in Texas, or agent, defined to be an employee, agent, representative, or adjuster who performs any act on behalf of an insurer,. The bill is expressly inapplicable to an action against TWIA or to an action relating to or arising from a policy ceded to an insurer by TWIA under the depopulation program provisions of the Texas Windstorm Insurance Association Act which are governed by the Texas Windstorm Insurance Association Act. The bill defines, among other terms, "claim" as a first-party claim that is made by an insured under an insurance policy providing coverage for real property or improvements to real property, that must be paid by the insurer directly to the insured, and that arises from damage to or loss of covered property caused, wholly or partly, by forces of nature.

C.S.H.B. 1774 requires a claimant, not later than the 61st day before the date the claimant files the action in which the claimant seeks damages from any person, to give written notice to the person as a prerequisite to filing the action. Such notice is in addition to any other notice required by law or the applicable insurance policy. The bill requires the written notice to provide a statement of the acts or omissions giving rise to the claim; the specific amount alleged to be owed by the insurer on the claim for damage to or loss of covered property; and the amount of reasonable and necessary attorney's fees incurred by the claimant as of the date of the notice. The bill provides the method for calculation of such attorney's fees and requires an attorney or other representative who gives the required notice on behalf of a claimant to provide a copy of the notice to the claimant and to include in the notice a statement that a copy of the notice was provided to the claimant. The bill establishes that a presuit notice is not required if giving notice

is impracticable because the claimant has a reasonable basis for believing there is insufficient time to give the presuit notice before the limitations period will expire or the action is asserted as a counterclaim. The bill requires a court, to ensure that a claimant is not prejudiced by having given the required presuit notice, to dismiss without prejudice an action relating to the claim for which notice is given by the claimant and commenced before the 61st day after the date the claimant provides presuit notice, by a person to whom presuit notice is given, and against the claimant giving the notice. A claimant who gives notice in accordance with the bill's provisions is not relieved of the obligation to give notice under any other applicable law and that notice given under the bill's provisions may be combined with notice given under any other law. The bill makes notice given under the bill's provisions admissible in evidence in a civil action or alternative dispute resolution proceeding relating to the claim for which the notice is given. The bill establishes that the giving of such notice does not provide a basis for limiting the evidence of attorney's fees, damage, or loss a claimant may offer at trial. The bill authorizes a person who receives such notice to make a settlement offer during a period beginning on the date the notice is received and ending on the 60th day after that date. The bill authorizes a person to whom such notice is given to send a written request to the claimant to inspect, photograph, or evaluate, in a reasonable manner and at a reasonable time, the property that is the subject of the claim.

C.S.H.B. 1774 authorizes a person against whom an action to which the bill's provisions apply is pending, in addition to taking any other act allowed by contract or by any other law, to 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 if the person did not receive a presuit notice complying with the bill's provisions or the person requested but was not provided a reasonable opportunity to inspect, photograph, or evaluate the property that is the subject of the claim. The bill requires the court to abate the action if the court finds that the person filing the plea in abatement did not receive a compliant presuit notice or requested but was not provided the opportunity to inspect, photograph, or evaluate the property. 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 is verified and alleges that the person against whom the action is pending did not receive a compliant presuit notice or requested but was not provided an opportunity to inspect, photograph, or evaluate the property and the plea is not controverted by an affidavit filed by the claimant before the 11th day after the date the plea in abatement is filed. The bill requires an affidavit controverting whether the person against whom the action is pending received a compliant presuit notice to include as an attachment a copy of the document the claimant sent to give notice of the claimant's action and to state the date on which the notice was given. The bill continues an abatement until the later of the 60th day after the date a compliant notice is given or the 15th day after the date the requested inspection, photographing, or evaluation of the property is completed. The bill prohibits a court, if an action is so abated, from compelling participation in an alternative dispute resolution proceeding until after the abatement period has expired.

C.S.H.B. 1774 authorizes an insurer that is a party to an action to which the bill's provisions apply to elect to accept whatever liability an agent might have to the claimant for the agent's acts or omissions related to the claim by providing a written notice to the claimant. The bill establishes that, if an insurer makes such an election of legal responsibility before a claimant files an applicable action, no cause of action exists against the agent related to the claimant's claim and requires the court to dismiss such action, if filed by the claimant, with prejudice. The bill also requires the court to dismiss an action against an agent with prejudice if, after the action is filed, the insurer makes an election of legal responsibility. The bill establishes that if an insurer makes an election of legal responsibility but, after having been served with a notice of intent to take a deposition of the agent who is the subject of the election, fails to make that agent available at a reasonable time and place to give deposition testimony, certain of the bill's provisions relating to the awarding of attorney's fees do not apply to the action with respect to which the insurer made the election unless the court finds that it is impracticable for the insurer to make the agent available due to a change in circumstances arising after the insurer made the election; the agent whose liability was assumed would not have been a proper party to the action; or obtaining the agent's deposition testimony is not warranted under the law. The bill specifies that an

insurer's election of legal responsibility is ineffective to obtain the dismissal of an action against an agent if the insurer's election is conditioned in a way that will result in the insurer avoiding liability for any claim-related damage caused to the claimant by the agent's acts or omissions. The bill authorizes evidence of an agent's acts or omissions, if an insurer makes an election of legal responsibility and the agent is not a party to the action, to be offered at trial and, if sufficient evidence supports the submission, authorizes a jury to be asked to determine the agent's responsibility for claim-related damage caused to the claimant. The bill establishes that those authorizations prevail to the extent there is a conflict between the authorizations and Civil Practice and Remedies Code provisions relating to proportionate responsibility. The bill prohibits an insurer in receivership at the time the claimant commences an action against the insurer from making an election of legal responsibility and requires the court to disregard any prior election made by the insurer relating to the claimant's claim. The bill prohibits an insurer from revoking its election, prohibits a court from nullifying an insurer's election, and prohibits an insurer's election, in an action tried by a jury, from being made known to the jury.

C.S.H.B. 1774 sets the amount of attorney's fees that may be awarded to a claimant in an action to which the bill's provisions apply at the lesser of the amount of reasonable and necessary attorney's fees supported at trial by sufficient evidence and determined by the trier of fact to have been incurred by the claimant in bringing the action, the amount of attorney's fees that may be awarded to the claimant under other applicable law, or the amount determined by a specified calculation involving a ratio based on the amount to be awarded in the judgment and the amount alleged to be owed on the claim in a notice given under the bill's provisions. The bill sets out the circumstances under which the court is required to award to the claimant the full amount of reasonable and necessary attorney's fees as determined by the trier of fact and sets out circumstances under which a court is prohibited from awarding attorney's fees to the claimant, including any attorney's fees incurred after the date a defendant files a pleading with the court if the defendant proves the defendant was entitled to a presuit notice but notice was not provided to the defendant within the time required. The bill requires such a pleading to be filed not later than the 30th day after the date the defendant files an original answer in the court in which the action is pending.

C.S.H.B. 1774 specifies that, with regard to the statute providing that an insurer that is liable for a claim under an insurance policy and not in compliance with statutory provisions relating to the prompt payment of claims is liable to pay the policy holder or the beneficiary making the claim under the policy certain interest and reasonable attorney's fees, the attorney's fees must also be necessary. The bill makes an insurer in an action to which the bill's provisions apply liable to the pay the policy holder, in addition to the amount of the claim, simple interest on the amount of the claim as damages each year at the rate determined on the date of judgment by adding five percent to the interest rate determined under a specified section of the Finance Code together with reasonable and necessary attorney's fees. The bill specifies that interest awarded as damages in an action to which the bill's provisions apply accrues beginning on the date the claim was required to be paid. The bill establishes that nothing in either of the foregoing provisions establishing an insurer's liability for a violation of statutory provisions relating to the prompt payment of claims prevents the award of prejudgment interest on the amount of the claim, as provided by law.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1774 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial

differences between the introduced and committee substitute versions of the bill.

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

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

No equivalent provision.

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

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

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

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

(2) breach of an express or implied warranty;

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

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

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

No equivalent provision.

Sec. 541.151. PRIVATE ACTION FOR DAMAGES AUTHORIZED. (a) Except as provided by Subsection (b), a [A] person who sustains actual damages may bring an action against another person for those damages caused by the other person engaging in an act or practice:

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

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

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

SECTION 3. Section 541.156(a), Insurance Code, is amended.

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

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

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

(a) If an insurer that is liable for a claim under an insurance policy delays payment of the claim in violation of Section 542.058 [~~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 amount of the claim as damages at the rate described by Subsection (c) [~~of 18 percent a year as damages~~], together with reasonable and necessary attorney's fees.

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

No equivalent provision. (*But see Subsection (c) above.*)

SECTION 1. Same as introduced version.

No equivalent provision.

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

(a) Except as provided by Subsection (c), if [~~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 amount of the claim at the rate of 18 percent a year as damages, together with reasonable and necessary attorney's fees. Nothing in this subsection prevents the award of prejudgment interest on the amount of the claim, as provided by law.

No equivalent provision. (*But see Subsection (c) below.*)

(c) In an action to which Chapter 542A applies, 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, in addition to the amount of the claim, simple interest on the amount of the claim as damages each year at the rate determined on the date of judgment by adding five percent to the interest rate determined under Section 304.003, Finance Code, together with reasonable and necessary attorney's fees. Nothing in this subsection prevents the award of prejudgment interest on the amount of the claim, as provided by law. Interest awarded under this subsection as damages accrues beginning on the date the claim was required to be paid.

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

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

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

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

(2) "Claim" means a first-party claim that:  
(A) is made by an insured or policyholder under an insurance policy or contract; and

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

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

No equivalent provision, but see Sec. 542A.002(b) below

No equivalent provision.

Sec. 542A.002. APPLICABILITY OF CHAPTER. (a) This chapter applies to an action brought by a claimant relating to or arising from the insured's claim for damage to or loss of covered property under an

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

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

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

(1). Same as introduced version.

(2) "Claim" means a first-party claim that:  
(A) is made by an insured under an insurance policy providing coverage for real property or improvements to real property;

(B) must be paid by the insurer directly to the insured; and

(C) arises from damage to or loss of covered property caused, wholly or partly, by forces of nature, including an earthquake or earth tremor, a wildfire, a flood, a tornado, lightning, a hurricane, hail, wind, a snowstorm, or a rainstorm.

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

(4) "Insurer" means a corporation, association, partnership, or individual, other than the Texas Windstorm Insurance Association, engaged as a principal in the business of insurance and authorized or eligible to write property insurance in this state, including:

(A) an insurance company;

(B) a reciprocal or interinsurance exchange;

(C) a mutual insurance company;

(D) a capital stock insurance company;

(E) a county mutual insurance company;

(F) a farm mutual insurance company;

(G) a Lloyd's plan;

(H) an eligible surplus lines insurer; or

(I) the FAIR Plan Association.

(5) "Person" means a corporation, association, partnership, or other legal entity or individual.

Sec. 542A.002. APPLICABILITY OF CHAPTER. (a) Except as provided by Subsection (b), this chapter applies to an action on a claim against an insurer or agent, including:

insurance policy providing coverage against damage to or loss of improvements to real property, including:

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

(2) an action brought under:

(A) Subchapter D, Chapter 541;

(B) Subchapter B, Chapter 542; or

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

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

(1) an insurance company;

(2) a reciprocal or interinsurance exchange;

(3) a mutual insurance company;

(4) a capital stock insurance company;

(5) a county mutual insurance company;

(6) a farm mutual insurance company;

(7) a Lloyd's plan;

(8) an eligible surplus lines insurer; or

(9) the FAIR Plan Association.

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

Sec. 542A.003. NOTICE REQUIRED.

(a) In addition to any other notice required by law or the applicable insurance policy, as a prerequisite to filing an action seeking damages under this chapter against any person, a claimant shall give written notice to the person not later than the 61st day before the date the claimant files an action to which this chapter applies.

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

(1) a statement of the acts or omissions

(1) an action alleging a breach of contract;

(2) an action alleging negligence, misrepresentation, fraud, or breach of a common law duty; or

(3) an action brought under:

(A) Subchapter D, Chapter 541;

(B) Subchapter B, Chapter 542; or

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

No equivalent provision, but see Sec. 542A.001(4) above.

(b) This chapter does not apply to an action against the Texas Windstorm Insurance Association or to an action relating to or arising from a policy ceded to an insurer by the Texas Windstorm Insurance Association under Subchapter O, Chapter 2210. An action against the Texas Windstorm Insurance Association or that relates to or arises from a policy ceded to an insurer by the Texas Windstorm Insurance Association under Subchapter O, Chapter 2210, is governed by Chapter 2210.

Sec. 542A.003. NOTICE REQUIRED.

(a). Substantially the same as introduced version.

(b) The notice required under this section must provide:

(1) a statement of the acts or omissions

giving rise to the claim;

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

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

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

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

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

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

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

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

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

(2) is asserted as a counterclaim.

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

No equivalent provision.

giving rise to the claim;

(2) the specific amount alleged to be owed by the insurer on the claim for damage to or loss of covered property; and

(3) the amount of reasonable and necessary attorney's fees incurred by the claimant, calculated by

multiplying the number of hours actually worked by the claimant's attorney, as of the date the notice is given and as reflected in contemporaneously kept time records, by an hourly rate that is customary for similar legal services.

(c). Same as introduced version.

(d) A presuit notice under Subsection (a) is not required if giving notice is impracticable because:

(1) the claimant has a reasonable basis for believing there is insufficient time to give the presuit notice before the limitations period will expire; or

(2) the action is asserted as a counterclaim.

No equivalent provision.

(e) To ensure that a claimant is not prejudiced by having given the presuit notice required by this chapter, a court shall dismiss without prejudice an action relating to the claim for which notice is given by the claimant and commenced:

(1) before the 61st day after the date the claimant provides presuit notice under Subsection (a);

(2) by a person to whom presuit notice is given under Subsection (a); and



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

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

No equivalent provision.

Sec. 542A.004. ABATEMENT. (a) A person against whom an action governed by this chapter is pending who does not receive a presuit notice complying Section 542A.003 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 the court finds that the person filing the plea in abatement did not receive a presuit notice complying with Section 542A.003.

(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 a presuit notice complying with Section 542A.003; and

(3) against the claimant giving the notice.

(f). Same as introduced version.

(g). Same as introduced version.

(h) The giving of a notice under this chapter does not provide a basis for limiting the evidence of attorney's fees, damage, or loss a claimant may offer at trial.

Sec. 542A.005. ABATEMENT. (a) In addition to taking any other act allowed by contract or by any other law, a person against whom an action to which this chapter applies is pending 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 if the person:

(1) did not receive a presuit notice complying with Section 542A.003; or  
(2) requested under Section 542A.004 but was not provided a reasonable opportunity to inspect, photograph, or evaluate the property that is the subject of the claim.

(b) The court shall abate the action if the court finds that the person filing the plea in abatement:

(1) did not, for any reason, receive a presuit notice complying with Section 542A.003; or  
(2) requested under Section 542A.004 but was not provided a reasonable opportunity to inspect, photograph, or evaluate the property that is the subject of the claim.

(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:

(A) did not receive a presuit notice complying with Section 542A.003; or  
(B) requested under Section 542A.004 but was not provided a reasonable opportunity to inspect, photograph, or evaluate the

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

No equivalent provision.

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

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

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

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

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

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

property that is the subject of the claim; 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 affidavit described by Subsection (c)(2) controverting whether the person against whom the action is pending received a presuit notice complying with Section 542A.003 must:

(1) include as an attachment a copy of the document the claimant sent to give notice of the claimant's action; and

(2) state the date on which the notice was given.

(e) An abatement under this section continues until the later of:

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

or

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

(f). Substantially the same as introduced version.

Sec. 542A.004. INSPECTION. Once notice is given under Section 542A.003(a), a person to whom notice is given may send a written request to the claimant to inspect, photograph, or evaluate, in a reasonable manner and at a reasonable time, the property that is the subject of the claim.

No equivalent provision.

10th day after the date proposed by the insurer; or  
(3) state that the claimant objects to the request for inspection, photographing, sampling, or testing and the basis of the objection.

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

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

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

(b) If an insurer makes the election available to it under Subsection (a) before the claimant files an action to which this chapter applies, the claimant shall not file an action against the agent.

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

No equivalent provision.

No equivalent provision.

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

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

(c). Substantially the same as introduced version.

with prejudice.

No equivalent provision.

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

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

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

No equivalent provision.

No equivalent provision.

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

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

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

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

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

No equivalent provision.

(f). Same as introduced version.

(g) If an insurer makes an election under Subsection (a) and the agent is not a party to the action, evidence of the agent's acts or omissions may be offered at trial and, if sufficient evidence supports the submission, a jury may be asked to determine the agent's responsibility for claim-related damage caused to the claimant. To the extent there is a conflict between this subsection and Chapter 33, Civil Practice and Remedies Code, this subsection prevails.

(h) If an insurer is in receivership at the time the claimant commences an action against the insurer, the insurer may not make an

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

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

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

(2) the amount of attorney's fees that may be awarded under any other law; or

(3) the amount calculated by:

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

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

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

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

(d) The court may not award attorney's fees to the claimant if a defendant in the action

election under Subsection (a), and the court shall disregard any prior election made by the insurer relating to the claimant's claim.

(i). Same as introduced version.

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

(1) the amount of reasonable and necessary attorney's fees supported at trial by sufficient evidence and determined by the trier of fact to have been incurred by the claimant in bringing the action;

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

(3) the amount calculated by:

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

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

(b). Substantially the same as introduced version.

(c). Same as introduced version.

No equivalent provision.

pleads as an affirmative defense, and proves by a preponderance of the evidence, that representation of the claimant resulted from conduct violating Section 38.12, Penal Code, unless the court determines that the claimant's attorney:

(1) did not have actual knowledge of or reason to know of the violation of Section 38.12, Penal Code, before accepting representation of the claimant; and

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

(e) If the court finds that the defendant was entitled to, but did not, receive a presuit notice

at least 61 days before the action was filed by the claimant, as required by Section 542A.003, the court may not award to the claimant any attorney's fees incurred after the date a defendant files a notice of intent to seek disallowance of fees due to the claimant's failure to provide a timely presuit notice.

#### SECTION 7.

(a) Section 17.50(a), Business & Commerce Code, and Section 541.151, Insurance Code, as amended by this Act, apply only to an action filed on or after the effective date of this Act. An action that is filed 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.

(b) Section 541.156(a), Insurance Code, as amended by this Act, and Chapter 542A, Insurance Code, as added by this Act, apply only to an action filed on or after the effective date of this Act. A claimant who files an action within 60 days after the effective date of this Act but who did not provide a presuit notice complying with

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

#### SECTION 4.

No equivalent provision.

(a) Section 541.156, Insurance Code, as amended by this Act, and Chapter 542A, Insurance Code, as added by this Act, apply only to an action filed on or after the effective date of this Act.

Section 542A.003 must give notice as provided in section 542A.003(f). An action that is filed 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.

(c) Section 542.060, Insurance Code, as amended by this Act, applies only to a claim, as defined under 542.051, made on or after the effective date of this Act by an insurer, policyholder, or beneficiary under an insurance policy or contract. A claim 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 8. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

An action that is filed 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.

(b) Section 542.060(c), Insurance Code, as added by this Act, applies only to a claim, as defined by Section 542A.001, Insurance Code, as added by this Act, made on or after the effective date of this Act. A claim 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 5. Same as introduced version.