

SUBJECT: Requiring pre-suit notice for certain claims against an insurer

COMMITTEE: Insurance — committee substitute recommended

VOTE: 6 ayes — Phillips, R. Anderson, Gooden, Oliverson, Paul, Sanford
3 nays — Muñoz, Turner, Vo

WITNESSES: For —Paul Ehlert, Germania Insurance; David Weber, Hochheim Prairie Insurance; James Dickey, IMGGA; Joel Moore, National Association of Independent Insurance Adjusters; Joe Woods, Property Casualty Insurers Association of America (PCI); Felipe Farias, State Farm Insurance; Lee Parsley and Mary Tipps, Texans for Lawsuit Reform; John Stephens, Texas Farm Bureau Insurance Companies; Luz Monarrez; Buddy Steves; (*Registered, but did not testify:* Jay Thompson, Afact; Michael Chatron, AGC Texas Building Branch; Deborah Polan, AIG; Billy Phenix, Allstate Insurance Company; Fred Bosse, American Insurance Association; Keith Hopkinson, Assurant Ins. Group; Kinnan Golemon, Austin White Lime Company; John Marlow, Chubb; Tom Sellers, ConocoPhillips; Frank Galitski, Farmers Insurance; Max Jones, Greater Houston Partnership; Lee Loftis, Independent Insurance Agents of Texas; Bill Oswald, Koch Companies; Mike Toomey, Liberty Mutual; Paul Martin, National Association of Mutual Insurance Companies; Brian Yarbrough, Nationwide; Mark Gipson, Pioneer Natural Resources; Jody Richardson, Plains All American Pipeline LP; Josiah Neeley, R Street Institute; Chris Shields, San Antonio Chamber of Commerce; Luz Monarrez, State Farm; John Stuckemeyer, State Farm Insurance; Tiffany Young, Texans Against Lawsuit Abuse, Citizens Against Lawsuit Abuse; Ned Munoz, Texas Association of Builders; Amanda Martin, Texas Association of Business; Stephanie Simpson, Texas Association of Manufacturers; Robert Flores, Texas Association of Mexican American Chambers of Commerce/TAMACC; Lisa Kaufman, Texas Civil Justice League; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; Keith Strama, Texas Surplus Lines Association; Anne O’Ryan, The Interinsurance Exchange of the Auto Club and Auto Club County Mutual; Michael Geary, The Texas Conservative Coalition; Lucas Meyers, The

Travelers Companies, Inc. and Subsidiaries; Robert (Bo) Gilbert, Eric Glenn and Kari King, United Services Automobile Association (USAA); Cary Roberts, U.S. Chamber Institute for Legal Reform; Robert Howden)

Against — Robert Ryan, Stallion Oilfield Services; Rene Sigman, Texas Association of Consumer Lawyers; Michael Gallagher, Texas Trial Lawyers Association; Bryan Blevins, Texas Trial Lawyers Association; Ware Wendell, Texas Watch; and eight individuals; (*Registered, but did not testify*: Tim Morstad, AARP; Jacob Smith, Texas Association of Consumer Lawyers; John Hubbard, Texas Association of Rural Schools, Kathleen Field; Cherilyn Stringer)

On — Jamie Walker, Texas Department of Insurance; (*Registered, but did not testify*: Joe Matetich, OPIC; Bill Stevens, Texas Alliance of Energy Producers; Marianne Baker, Cassie Brown, Mark Einfalt, Ginger Loeffler, Jesse McClure, David Muckerheide, Michael Nored, and Brian Ryder, Texas Department of Insurance; Sean Cameron; Kevin Pakenham)

BACKGROUND: Insurance Code, sec. 542.060 states that an insurer liable for a policy claim who violates Insurance Code, ch. 542 regulations for processing and settling claims is liable to pay the policyholder:

- the amount of the claim;
- interest on the amount of the claim at an annual interest rate of 18 percent; and
- reasonable attorney's fees.

DIGEST: CSHB 1774 would require an insured making a claim against an insurer or agent relating to damage to real property caused by an earthquake, earth tremor, wildfire, flood, tornado, lightning, hurricane, hail, wind, snowstorm, or rainstorm to provide written notice to the insurer at least 61 days before filing the claim. This pre-suit notice would have to provide a statement of the acts giving rise to the claim, the specific amount alleged to be owed, and amount of reasonable and necessary attorney's fees already incurred by the claimant. This notice would be admissible as evidence in a civil action or alternative dispute resolution.

Pre-suit notice would not be required if giving notice were impracticable based on a reasonable belief that there was insufficient time to give notice before the statute of limitations would expire or because the action was asserted as a counterclaim.

The bill would authorize persons receiving this pre-suit notice to send a written request to inspect, photograph, or evaluate the property in a reasonable manner.

The bill would require a court to abate the action if the defendant filed a claim for abatement and the court found that the defendant did not receive pre-suit notice or was denied a request to inspect, photograph, or evaluate the property. Abatement would continue for the later of 60 days after complying notice was given or 15 days after the requested inspection occurred.

The bill would allow an insurer to provide written notice to the claimant accepting the liability of its agent, removing any cause of action against that agent. The court would be required to dismiss action against the agent, unless the insurer failed to make the agent available for testimony at a reasonable time and place or the acceptance of liability was conditioned to result in the insurer avoiding liability.

The bill would require a court to dismiss action by the insurer against the claimant occurring within 61 days after notice was provided.

Attorney's fees would be calculated as the lesser of:

- the amount of reasonable and necessary attorney's fees supported by sufficient evidence at trial and determined 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 any other applicable law; or
- the amount to be awarded in the judgment, divided by the amount alleged to be owed, then multiplied by the total amount of

reasonable and necessary attorney's fees supported by sufficient evidence and determined to have been incurred in bringing the action.

The bill would require the court to award the full amount of reasonable and necessary attorney's fees if the amount to be awarded in the judgment divided by the amount alleged to be owed was at least 0.8, not limited by statute, and recoverable. The court would be prohibited from awarding attorney's fees if this fraction was less than 0.2, or if the claimant failed to provide pre-suit notice.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017, and would apply only to actions filed and claims made on or after that date.

**SUPPORTERS
SAY:**

CSHB 1774 would mitigate the growing trend of abusive severe weather event lawsuits. Opportunistic lawyers have been using extreme weather events as a pretext for exaggerating damages, suing innocent parties, and failing to give notice to insurers before filing lawsuits. The frequency of weather-related lawsuits against property insurers has risen 1,400 percent since 2012. This increase is motivated by profit, not actual damages to real property, and should be discouraged.

The bill also would minimize the increases in homeowners' insurance rates that have resulted from the recent explosion of lawsuits. Mass litigation is expensive for insurance companies, which pass these costs on to consumers in the form of higher premiums.

The bill would not damage the rights of policyholders to sue their insurers. Consumers still would have seven separate causes of action to sue, and carriers still would be subject to strict liability if shown to have underpaid a policyholder's claim. The bill simply would create penalties to enforce the existing pre-suit notice requirement.

OPPONENTS

CSHB 1774 would obstruct the ability and right of property insurance

SAY: policyholders. Texans whose property is damaged by extreme weather should not be restricted from suing insurance companies that deny or underpay their claims, which carriers are especially likely to do in extreme weather situations when they observe an increase in claims. Requiring 61 days' notice before filing would be especially burdensome in extreme weather situations in which damage can worsen over time.

NOTES: A companion bill, SB 10 by Hancock, was reported favorably from the Senate Business and Commerce Committee on April 24.