

By: \_\_\_\_\_

\_\_\_\_. B. \_\_\_\_\_

A BILL TO BE ENTITLED

1 AN ACT

2 Relating to recovery of penalties for delays in the payment of  
3 first party insurance claims.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS

5 SECTION 1. FINDINGS; PURPOSE. (a) It is the intent of  
6 the Legislature to ensure that consumers are protected from  
7 unfair and deceptive practices by insurers with which they do  
8 business, that consumers have access to multiple sources of  
9 insurance provided through a market that is competitive and  
10 stable, and that impediments to having affordable property  
11 insurance products in Texas be limited or eliminated for the  
12 benefit of Texas consumers.

13 (b) The Legislature finds:

14 (1) Lawsuits against insurers by their insureds for  
15 damages to improvements to real property have increased  
16 substantially over the past several years, without an  
17 explanation related to the handling of claims by the insurers.  
18 Historically, insurers settled approximately 98% of claims  
19 arising from hail storms and other weather events without being  
20 sued by the insureds. Recent storms, however, have been followed

1 by a marked increase in litigation. Property and casualty  
2 insurers throughout Texas have reported a substantial increase  
3 in property-claim litigation following recent Texas hail storms,  
4 with some insurers reporting that 30 to 45 percent of their  
5 claims have resulted in litigation.

6 (2) The spike in post-storm litigation has been driven  
7 by current Texas law allowing the recovery of unlimited attorney  
8 fees for the smallest underpayment of a claim. Texas law gives  
9 property owners the ability to sue their insurers for breach of  
10 contract, breach of common law duties, breach of two chapters of  
11 the Insurance Code, and breach of the Deceptive Trade Practices-  
12 Consumer Protection Act, among other causes of action. The  
13 lawsuits typically give rise to pretrial discovery that is  
14 unrelated and disproportional to the amount of property damage,  
15 making the litigation process disproportionately time consuming  
16 and expensive. Current law thus encourages claimants to over-  
17 value alleged property damage and make the litigation expensive,  
18 knowing that if a jury can be convinced that the insurer  
19 underpaid the claim by a single dollar, Texas law requires the  
20 insurer to pay a penalty plus all attorney fees incurred by the  
21 claimant in the litigation process. The attorney fees often  
22 dwarf the amount of the property owners' claim, which benefits  
23 lawyers but does little to ensure the prompt and fair payment of  
24 legitimate claims.

1 (3) Unless excessive litigation is reined in, property and  
2 casualty insurance rates will increase and insurers will exit  
3 the Texas property and casualty market, all to the detriment to  
4 Texas's consumers. Texas law must provide a mechanism for Texas  
5 consumers to resolve disputes with their insurers quickly and  
6 fairly, without excess expense or the imposition of unnecessary  
7 costs that drive up rates. The law must discourage economically  
8 unproductive litigation while providing a mechanism to compel  
9 insurers to deal with their customers quickly and in good faith.  
10 This legislation is intended to achieve these goals.

11 SECTION 2. Section 542.003, Insurance Code, is amended to  
12 read as follows:

13 Sec. 542.003. UNFAIR CLAIM SETTLEMENT PRACTICES  
14 PROHIBITED. (a) An insurer engaging in business in this state  
15 may not engage in an unfair claim settlement practice.

16 (b) Any of the following acts by an insurer constitutes  
17 unfair claim settlement practices:

18 (1) [~~knowingly~~] misrepresenting to a claimant  
19 pertinent facts or policy provisions relating to coverage at  
20 issue;

21 (2) failing to acknowledge with reasonable promptness  
22 pertinent communications relating to a claim arising under the  
23 insurer's policy;

1           (3) failing to provide to a policyholder with  
2 reasonable promptness a reasonable explanation of the basis in  
3 the policy, in relation to the facts or applicable law, for the  
4 insurer's rejection of a claim or offer of a compromise  
5 settlement of a claim;

6           ~~[-3-]~~ (4) failing to adopt and implement reasonable  
7 standards for the prompt investigation of claims arising under  
8 the insurer's policies;

9           (5) refusing to pay a claim without conducting a  
10 reasonable investigation with respect to the claim;

11           ~~[-4-]~~ (6) [not attempting] failing to attempt in  
12 good faith to effect a prompt, fair, and equitable settlement  
13 of:

14           (A) a claim submitted in which the insurer's  
15 liability has become reasonably clear; or

16           (B) a claim under one portion of a policy with  
17 respect to which the insurer's liability has become reasonably  
18 clear to influence the claimant to settle another claim under  
19 another portion of the coverage unless payment under one portion  
20 of the coverage constitutes evidence of liability under another  
21 portion;

22           (7) refusing or unreasonably delaying acceptance of a  
23 settlement offer under applicable first-party coverage on the  
24 basis that other coverage may be available or that third parties

1 are responsible for the damages suffered, except as may be  
2 specifically provided in the policy;

3 (8) undertaking to enforce a full and final release  
4 of a claim from a policyholder when only a partial payment has  
5 been made, unless the payment is a compromise settlement of a  
6 doubtful or disputed claim;

7 ~~[(5)]~~ (9) compelling a policyholder to institute a  
8 suit to recover an amount due under a policy by offering  
9 substantially less than the amount ultimately recovered in a  
10 suit brought by the policyholder;

11 (10) with respect to a Texas personal automobile  
12 insurance policy, delaying or refusing settlement of a claim  
13 solely because there is other insurance of a different kind  
14 available to satisfy all or part of the loss forming the basis  
15 of that claim;

16 ~~[(6)]~~ (11) failing to maintain the information  
17 required by Section 542.005; or

18 ~~[(7)]~~ (12) committing another act the commissioner  
19 determines by rule constitutes an unfair claim settlement  
20 practice.

21 (c) An insurer's good faith dispute about coverage,  
22 causation, or damages does not constitute an unfair claim  
23 settlement practice.

1        (d) Subsection (b) does not provide a basis for an action  
2 under this Chapter or any other law against an insurer by a  
3 person who is not a party to the insurance contract.

4        SECTION 3. Section 542.004, Insurance Code, is amended to  
5 read as follows:

6        Sec. 542.004. EXAMINATION OF TAX RETURNS PROHIBITED. (a)

7 An insurer regulated under this code may not require a claimant,  
8 as a condition of settling a claim, to produce the claimant's  
9 federal income tax returns for examination or investigation by  
10 the insurer unless:

11            (1) the claimant is ordered to produce the tax  
12 returns by a court; or

13            (2) the claim involves:

14                    (A) a fire loss; or

15                    (B) a loss of profits or income.

16        (b) An insurer that violates this section commits[÷

17        ~~(1)] a prohibited practice under this subchapter[÷~~

18 and

19        ~~(2) a deceptive trade practice under Subchapter E,~~  
20 ~~Chapter 17, Business & Commerce Code].~~

21        ~~[(c) A claimant affected by a violation of this section is~~  
22 ~~entitled to remedies under Subchapter E, Chapter 17, Business &~~  
23 ~~Commerce Code.]~~

1 SECTION 4. Section 542.051, Insurance Code, is amended to  
2 read as follows:

3 Sec. 542.051. DEFINITIONS. In this subchapter:

4 (1) "Business day" means a day other than a Saturday,  
5 Sunday, or holiday recognized by this state.

6 (2) "Claim" means a first-party claim that:

7 (A) is made by an insured or policyholder under  
8 an insurance policy or contract or by a beneficiary named in the  
9 policy or contract; and

10 (B) must be paid by the insurer directly to the  
11 insured or beneficiary.

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

13 (4) "Notice of claim" means any written notification  
14 provided by a claimant to an insurer that reasonably apprises  
15 the insurer of the facts relating to the claim. Notice of claim  
16 includes a verified proof of claim provided under Section  
17 542.062.

18 SECTION 5. Subchapter B, Chapter 542, Insurance Code, is  
19 amended by adding Sections 542.0545 and 542.0546 to read as  
20 follows:

21 Sec. 542.0545. NOTICE OF CLAIM. Subject to Section  
22 542.066, an insured must give an insurer notice of a claim under  
23 an insurance policy not later than the first anniversary of the

1 date on which the damage to property that is the basis of the  
2 claim occurs.

3 Sec. 542.0546. REQUIRED POLICY PROVISIONS: DEADLINE FOR  
4 GIVING NOTICE OF A CLAIM. An insurance policy subject to this  
5 subchapter must:

6 (1) require an insured to provide notice to the  
7 insurer of a claim under a policy not later than the first  
8 anniversary of the date on which the damage to property that is  
9 the basis of the claim occurs;

10 (2) inform the insured that a notice and verified  
11 proof of claim as required by Section 542.062, sent to the  
12 insurer by certified mail, return receipt requested, is a  
13 prerequisite to filing or pursuing an action against an insurer  
14 for violation of the Texas Insurance Code.

15 SECTION 6. Section 542.055, Insurance Code, is amended to  
16 read as follows:

17 Sec. 542.055. RECEIPT OF NOTICE OF CLAIM. (a) Not later  
18 than the 15th business day or, if the insurer is an eligible  
19 surplus lines insurer, the 30th business day after the date an  
20 insurer receives notice of a claim, the insurer shall:

21 (1) acknowledge receipt of the claim;

22 (2) commence any investigation of the claim; and

23 (3) request from the claimant all items, statements,  
24 inspection reports, and forms that the insurer reasonably



1 believes, at that time, will be required from the claimant.

2 (a-1) The forms an insurer may require to be provided by  
3 the claimant under Subsection (a)(3) may include a verified  
4 proof-of-loss form, which may require to claimant to state the  
5 claim under oath. An insurer may require that a statement  
6 provided by a claimant under Subsection (a)(3) be made under  
7 oath.

8 (a-2) In addition to requesting items, statements,  
9 reports, and forms under Subsection (a)(3), the insurer also may  
10 request within the time provided in Subsection (a)(3) to inspect  
11 damaged property or tangible items or to examine the claimant or  
12 others under oath.

13 (b) An insurer may make additional requests for  
14 information under Subsections (a), (a-1), or (a-2) if during the  
15 investigation of the claim the insurer determines that  
16 additional requests are necessary.

17 (c) If the acknowledgment of receipt of a claim is not  
18 made in writing, the insurer shall make a record of the date,  
19 manner, and content of the acknowledgment.

20 (d) An insurer's failure to comply with a deadline  
21 provided by Subsection (a) is not an unfair claim settlement  
22 practice under Section 542.003 and is not actionable under  
23 Section 542.058.

24 (e) Upon receipt of a complaint from the claimant that the

1 insurer failed to comply with the deadlines provided in  
2 Subsection (a), the department may:

3 (1) assess interest against the insurer as provided in  
4 Section 542.058(a)(1), payable to the claimant, for an insurer's  
5 failure to meet a deadline specified in Subsection (a); and

6 (2) enter an order compelling the insurer to comply  
7 with Subsection (a).

8 SECTION 7. Section 542.056, Insurance Code, is amended to  
9 read as follows:

10 Sec. 542.056. NOTICE OF ACCEPTANCE OR REJECTION OF CLAIM.

11 (a) Except as provided by Subsection (b) or (d), an insurer  
12 shall notify a claimant in writing of the acceptance or  
13 rejection of a claim not later than the 15th business day after  
14 the date the insurer receives all items, statements, reports,  
15 and forms [~~required by the insurer to secure final proof of~~  
16 ~~loss~~] requested under Section 542.055.

17 (b) If an insurer has a reasonable basis to believe that a  
18 loss resulted from arson, the insurer shall notify the claimant  
19 in writing of the acceptance or rejection of the claim not later  
20 than the 30th day after the date the insurer receives all items,  
21 statements, reports, and forms [~~required by the insurer~~]  
22 requested under Section 542.055.

23 (c) If the insurer rejects the claim, the notice required  
24 by Subsection (a) or (b) must state the reasons for the

1 rejection.

2 (d) If the insurer is unable to accept or reject the claim  
3 within the period specified by Subsection (a) or (b), the  
4 insurer, within ~~[that same]~~ the period provided in either  
5 Subsection (a) or (b), as applicable, shall notify the claimant  
6 of the reasons that the insurer needs additional time. The  
7 insurer shall accept or reject the claim not later than the 45th  
8 day after the date the insurer notifies a claimant under this  
9 subsection that additional time is needed.

10 (e) An insurer's failure to comply with a deadline provided  
11 by this section is not an unfair claim settlement practice under  
12 Section 542.003 and is not actionable under Section 542.058.

13 (f) Upon receipt of a complaint from the claimant that the  
14 insurer failed to comply with the deadlines provided in this  
15 section, the department may:

16 (1) assess interest against the insurer as provided in  
17 Section 542.058(a)(1), payable to the claimant, for an insurer's  
18 failure to comply with this section; and

19 (2) enter an order compelling the insurer to comply  
20 with this section.

21 SECTION 8. Section 542.057, Insurance Code, is amended to  
22 read as follows:

23 Sec. 542.057. PAYMENT OF CLAIM. (a) Except as otherwise  
24 provided by this section, if an insurer notifies a claimant

1 under Section 542.056 that the insurer will pay a claim or part  
2 of a claim, the insurer shall pay the part of the claim it has  
3 accepted not later than the fifth business day after the date  
4 notice is made.

5 (b) If payment of the claim or part of the claim is  
6 conditioned on the performance of an act by the claimant, the  
7 insurer shall pay the part of the claim it has accepted not  
8 later than the fifth business day after the date the act is  
9 performed.

10 (c) If the insurer is an eligible surplus lines insurer,  
11 the insurer shall pay the part of the claim it has accepted not  
12 later than the 20th business day after the notice or the date  
13 the act is performed, as applicable.

14 SECTION 9. Subchapter B, Chapter 542, Insurance Code is  
15 amended by adding Section 542.0575 to read as follows:

16 Sec. 542.0575. EFFECT OF MULTIPLE CLAIM NOTICES. A  
17 claimant may give an insurer multiple notices of claim related  
18 to a single event or occurrence. The deadlines provided by  
19 Sections 542.055, 542.056, and 542.057 began anew with each  
20 notice of claim given by an insurer.

21 SECTION 10. Section 542.058, Insurance Code, is amended to  
22 read as follows:

23 Sec. 542.058. PENALTY FOR COMMITTING UNFAIR CLAIM  
24 SETTLEMENT PRACTICES AND FOR DELAY IN PAYMENT OF CLAIM. (a)

1 ~~[Except as otherwise provided, if an]~~ An insurer that is liable  
2 for a claim under an insurance policy, that has received a  
3 verified proof of claim under Section 542.062, and that violates  
4 a provision of Section 542.003(a) or fails to pay the claim  
5 within the period specified by Section 542.057 after ~~[receiving]~~  
6 having obtained all examinations and inspections and having  
7 received all items, statements, reports, and forms reasonably  
8 requested and required under Section 542.055 ~~[delays payment of~~  
9 ~~the claim for a period exceeding the period specified by other~~  
10 ~~applicable statutes, or if other statutes do not specify a~~  
11 ~~period, for more than 60 days the insurer, shall]~~ may be  
12 required to pay ~~[damages and other items as provided by Section~~  
13 ~~542.060],~~ in addition to the part of the claim that it has  
14 accepted:

15 (1) per annum simple interest at rate provided by  
16 Subsection (d) on the amount of the claim that was not timely  
17 paid;

18 (2) reasonable and necessary attorney's fees;

19 (3) pre- and post-judgment interest as allowed by  
20 law; and

21 (4) court costs.

22 (b) ~~Subsection (a) does not apply [in a case in which it~~  
23 ~~is found as a result of arbitration or litigation that a claim~~  
24 ~~received by an insurer is invalid and should not be paid by the~~

1 ~~insurer]~~ and an insurer does not have liability for interest,  
2 attorney's fees, or costs under this section with respect to:

3 (1) a claim in which it is found as a result of  
4 arbitration, litigation, or other dispute resolution process  
5 that the claim received by the insurer is not covered, was  
6 properly rejected, is invalid, or should not be paid by the  
7 insurer;

8 (2) a claim in which an appraisal process within the  
9 terms of the applicable policy is used and within 15 business  
10 days of receiving a valid, signed award, the insurer pays the  
11 entire undisputed amount of the appraisal award within the  
12 coverage, conditions, and limits provided by the policy, less  
13 prior payments and the deductible amount.

14 (c) A life insurer that receives notice of an adverse,  
15 bona fide claim to all or part of the proceeds of the policy  
16 before the applicable payment deadline under Subsection (a)  
17 shall pay the claim or properly file an interpleader action and  
18 tender the benefits into the registry of the court not later  
19 than the 90th day after the date the insurer receives all items,  
20 statements, and forms reasonably requested and required under  
21 Section 542.055. A life insurer that delays payment of the  
22 claim or the filing of an interpleader and tender of policy  
23 proceeds for more than 90 days shall pay damages and other items

1 as provided by [~~Section 542.060~~] Subsection (a) until the claim  
2 is paid or an interpleader is properly filed.

3 (d) Interest awarded under Subsection (a)(1) is calculated  
4 by adding three percent to the post-judgment interest rate  
5 provided by law, provided however that the interest awarded  
6 under Subsection (a)(1) may not exceed 18 percent per annum.

7 (e) Interest awarded under Subsection (a)(1) and  
8 prejudgment interest awarded under Subsection (a)(3) shall  
9 accrue from the date the insurer was required to pay the claim  
10 under Section 542.057.

11 (e) If an action is filed under this section, any  
12 attorney's fees awarded shall be taxed as part of the costs in  
13 the case.

14 SECTION 11. Section 542.059, Insurance Code, is amended to  
15 read as follows:

16 Sec. 542.059. EXTENSION OF DEADLINES. (a) A court may  
17 grant a request by a guaranty association for an extension of  
18 the periods under this subchapter on a showing of good cause and  
19 after reasonable notice to policyholders.

20 (b) In the event of a weather-related catastrophe or major  
21 natural disaster, as defined by the commissioner, each of the  
22 claim-handling deadlines imposed under this subchapter is [are]  
23 extended for an additional 15 days.

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

3 Sec. 542.060. LIABILITY FOR KNOWING VIOLATION OF  
4 SUBCHAPTER. (a) ~~[If an insurer that is liable for a claim~~  
5 ~~under an insurance policy is not in compliance with this~~  
6 ~~subchapter, the insurer is liable to pay the holder of the~~  
7 ~~policy or the beneficiary making the claim under the policy, in~~  
8 ~~addition to the amount of the claim, interest on the amount of~~  
9 ~~the claim at the rate of 18 percent a year as damages, together~~  
10 ~~with reasonable attorney's fees.] A claimant who prevails in an~~  
11 ~~action under Section 542.058 for a violation of Section 542.003~~  
12 ~~may obtain, in addition to the amounts provided by Section~~  
13 ~~542.058, an amount not to exceed three times the amount of~~  
14 ~~actual damages suffered by the claimant if the trier of fact~~  
15 ~~finds that the insurer knowingly committed an act prohibited by~~  
16 ~~Section 542.003.~~

17 (b) ~~[If a suit is filed, the attorney's fees shall be~~  
18 ~~taxed as part of the costs in the case.] For purposes of this~~  
19 ~~section:~~

20 (1) "actual damages" in this subchapter means an  
21 economic injury that is distinct from and independent of the  
22 failure to pay the policy benefits or interest and attorney fees  
23 provided by Section 542.058. "Actual damages" does not include  
24 the policy benefits or noneconomic damages.



1           (2) "knowingly" means actual awareness at the time  
2 the action or failure to act took place that the action or  
3 failure to act was in violation of this Subsection. Actual  
4 awareness may be inferred if objective manifestations indicate  
5 that a person acted with actual awareness.

6           SECTION 13. Section 542.061, Insurance Code, is amended to  
7 read as follows:

8           Sec. 542.061. [~~REMEDIES NOT EXCLUSIVE~~] EXCLUSIVE REMEDY.

9 [~~The remedies provided by this subchapter are in addition to any~~  
10 ~~other remedy or procedure provided by law or at common law.]~~

11 This subchapter provides the exclusive remedies in an action  
12 against an insurer and its agents and representatives arising  
13 from or relating to an unfair claim settlement practice as  
14 defined by Section 542.003 or a failure to comply with the  
15 deadlines provided by Section 542.057. If the action is one that  
16 may be pursued under this subchapter by the person, this  
17 subchapter preempts all statutory and common law actions against  
18 an insurer or an agent or representative of the insurer,  
19 regardless of the theory under which the claim is asserted, the  
20 cause of action asserted, or the type of damages sought. An  
21 insurer, and an agent or representative of an insurer, may not  
22 be held liable for any amount other than the amounts allowed in  
23 this subchapter, and may not be held liable for damages under  
24 Chapter 17, Business & Commerce Code, or, except as otherwise

1 specifically provided by this chapter, under any provision of  
2 any law providing for additional damages, punitive damages, or a  
3 penalty. This subchapter does not preempt a common law action  
4 for breach of an insurance contract.

5 SECTION 14. Title 5, Subtitle C, Chapter 542, Subchapter  
6 B, Insurance Code, is amended by adding Sections 542.062 through  
7 542.067 to read as follows:

8 Sec. 542.062. NOTICE PRIOR TO ACTION. (a) Not later than  
9 the 61st day before the date the action is filed, a claimant  
10 seeking damages in an action brought against an insurer under  
11 this subchapter must provide to the insurer:

12 (1) a verified proof of claim providing a detailed  
13 statement of the insured's claim; and

14 (2) a written notice advising the insurer of:

15 (A) the acts or omissions giving rise to the  
16 insurer's alleged liability;

17 (B) the names of all persons against whom a  
18 complaint may be made and their relationship to the insurer;

19 (C) the amount of interest that is alleged to  
20 have accrued under Section 542.058(a) (1);

21 (D) the amount of actual damages, as defined in  
22 Section 542.060, that are alleged to have been caused to the  
23 claimant by the insurer's actions; and

1                   (E) the actual amount of attorney's fees  
2 reasonably and necessarily actually incurred by the claimant in  
3 asserting the claim against the insurer as of the date the  
4 notice is given.

5           (b) A verified proof of claim or notice required by this  
6 subsection must be sent to the insurer by certified mail, return  
7 receipt requested.

8           (c) The verified proof of claim or notice required by this  
9 subsection are not required if providing the verified proof of  
10 claim or notice is impracticable because the action:

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

13                   (2) is asserted as a counterclaim.

14           Sec. 542.063 ABATEMENT OF ACTION IF NOTICE INADEQUATE OR  
15 NOT GIVEN. (a) If a notice is given under Section 542.062(a)(2)  
16 and an action against the insurer under this subchapter is  
17 subsequently filed, the insurer may, not later than the 30th day  
18 after the date the insurer files an original answer in the court  
19 in which the action is pending, file an objection to the  
20 adequacy of the claimant's notice along with a plea in  
21 abatement.

22           (b) An insurer against which an action under this  
23 subchapter is pending that does not receive the notice required  
24 by Section 542.062(a)(2) may file a plea in abatement not later

1 than the 30th day after the date the insurer files an original  
2 answer in the court in which the action is pending.

3 (c) The court shall abate the action if, after a hearing,  
4 the court finds that the insurer is entitled to an abatement  
5 because the claimant did not provide the notice as required by  
6 this section or because the claimant's notice required by  
7 Section 542.062(a) (2) was inadequate.

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

11 (1) is verified and alleges that the insurer did not  
12 receive the notice as required by this section; and

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

16 (e) An abatement under this section continues until the  
17 60th day after the date an adequate notice is provided in  
18 compliance with this section.

19 Sec. 542.064. INSURER AGREEMENT TO BE RESPONSIBLE FOR  
20 AGENTS AND EMPLOYEES. (a) A claimant may not file or pursue an  
21 action under Section 542.058 against an employee, agent,  
22 representative, or adjuster issuing policies, handling claims,  
23 or performing other acts on behalf of an insurer if:

1           (1) the employee, agent, representative, or adjuster  
2 was not named in the notice given under Section 542.062(b)(2);  
3 or

4           (2) the insurer has agreed in writing in a notice  
5 provided to the claimant to be liable for any acts and omissions  
6 of the employee, agent, representative, or adjuster related to  
7 or arising out of the conduct specified by the claimant under  
8 Section 542.062(a)(2)(A).

9           (b) If a claimant files an action under Section 542.058  
10 against an insurer's employee, agent, representative, or  
11 adjuster before receiving a notice from the insurer under  
12 Subsection (a)(2), the employee, agent, representative, or  
13 adjuster is entitled to the immediate dismissal of the  
14 claimant's action against the employee, agent, representative,  
15 or adjuster when the insurer's files with the court in which the  
16 action is pending the notice provided by Subsection (a)(2).

17           Sec. 542.065. SETTLEMENT OFFER. (a) An insurer that  
18 receives notice provided under Section 542.062(a) may make a  
19 settlement offer during the period:

20           (1) beginning on the date notice under Section  
21 542.062(a) is received and ending on the 60th day after that  
22 date; or

1           (2) if an action is filed against the insurer by the  
2 claimant, beginning on the date an original answer is filed in  
3 the action and ending on the 90th day after that date.

4           (b) A settlement offer made under this section must  
5 include an offer to pay the following amounts, separately  
6 stated:

7           (1) an amount of money as settlement of a claim for  
8 interest alleged to be owed under Section 542.058(a)(1);

9           (2) an amount of money as settlement of a claim for  
10 actual damages alleged to be owed under Section 542.060; and

11           (3) an amount of money to reimburse the claimant for  
12 the claimant's reasonable and necessary attorney's fees actually  
13 incurred as of the date of the offer.

14           (c) A settlement offer is rejected unless all parts of the  
15 offer required under Subsection (b) are accepted by the claimant  
16 not later than the 30th day after the date the offer is made. A  
17 settlement offer that is rejected by the claimant may be filed  
18 with the court accompanied by an affidavit certifying the  
19 offer's rejection.

20           (d) If the court finds that the amount stated in the  
21 settlement offer for interest and actual damages is the same as,  
22 substantially the same as, or more than the amount of interest  
23 and actual damages found by the court to be owed under this

1 subchapter, the claimant may not recover any amount in excess of  
2 the lesser of:

3 (1) the amount of interest and actual damages stated  
4 in the offer; or

5 (2) the amount of interest and actual damages found  
6 by the court to be owed under this subchapter.

7 (e) If the court makes the finding described by Subsection  
8 (d), the court shall determine the reasonable and necessary  
9 attorney's fees actually incurred by the claimant before the  
10 date and time the rejected settlement offer was made. If the  
11 court finds that the amount stated by the claimant in the notice  
12 under Subsection (b) is the same as, substantially the same as,  
13 or more than the amount of reasonable and necessary attorney's  
14 fees actually incurred by the claimant as of the date of the  
15 settlement offer, the claimant may not recover any amount of  
16 attorney's fees in excess of the amount of fees found by the  
17 court to have been actually, reasonably, necessarily incurred by  
18 the claimant as of the time of the settlement offer.

19 (f) A settlement offer made under this section is not an  
20 admission of engaging in an unfair claim settlement practice, a  
21 failure to promptly pay a claim, or an act or practice defined  
22 by law to be an unfair method of competition or unfair or  
23 deceptive act or practice in the business of insurance.

1       Sec. 542.066. LIMITATIONS PERIOD. (a) Notwithstanding  
2 Section 542.055 and any other law, a person must bring an action  
3 under this chapter before the second anniversary of the  
4 following:

5           (1) the date the unfair claim settlement practice  
6 occurred; or

7           (2) the date the person discovered or, by the  
8 exercise of reasonable diligence, should have discovered that  
9 the unfair claim settlement practice occurred.

10       (b) The limitations period provided by Subsection (a) may  
11 be extended for 180 days if the person bringing the action  
12 proves that the person's failure to bring the action within that  
13 period was caused by the defendant's engaging in conduct solely  
14 calculated to induce the person to refrain from or postpone  
15 bringing the action.

16       (c) Notwithstanding any other law, a claimant who brings  
17 an action against an insurer under Section 542.058 must bring  
18 the action not later than the fourth anniversary of the date on  
19 which the event giving rise to the claim occurred. This  
20 subsection is a statute of repose and controls over any other  
21 applicable limitations period.

22       Sec. 542.067. RULEMAKING. (a) The commissioner shall  
23 promulgate such rules and policy forms as are necessary to  
24 implement this subchapter.



1       (b) The commissioner shall approve policy forms providing  
2 that in an appraisal process allowed by a policy:

3           (1) the insured and insurer each will be required to  
4 name an appraiser who will be tasked with agreeing on an  
5 appraisal umpire to participate in the resolution of the  
6 dispute; and

7           (2) if the appraisers named by the insured and insurer  
8 are unable to agree on an appraisal umpire to participate in the  
9 resolution of the dispute, the commissioner will select an  
10 appraisal umpire from a roster of qualified umpires maintained  
11 by the department.

12       (c) All rules adopted by the commissioner under this  
13 section shall promote the fairness of the process, protect the  
14 rights of aggrieved policyholders, and ensure that policyholders  
15 may participate in the claims-resolution process without the  
16 necessity of engaging legal counsel.

17       SECTION 15. Section 541.060, Insurance Code, is repealed.

18       SECTION 16. Section 42.004, Civil Practice and Remedies  
19 Code, is amended by adding Subsection (g) to read as follows:

20       (g) A party against whom litigation costs are awarded may  
21 not recover the interest provided for under Section  
22 542.058(a)(1), Insurance Code, to the extent the interest  
23 accrued after the date the party rejected the settlement offer  
24 that is the basis of the award of litigation costs.

1 SECTION 17. Section 38.12(d), Penal Code, is amended to  
2 read as follows:

3 (d) A person commits an offense if the person:

4 (1) is an attorney, chiropractor, physician, surgeon,  
5 public insurance adjuster as the term is defined in Section  
6 4102.001(3), Insurance Code, or private investigator licensed to  
7 practice in this state or any person licensed, certified, or  
8 registered by a health care regulatory agency of this state;

9 (2) with the intent to obtain professional employment  
10 for himself or for another, sends or knowingly permits to be  
11 sent to an individual who has not sought the person's  
12 employment, legal representation, advice, or care a written or  
13 oral communication that:

14 (A) concerns an action for personal injury or  
15 wrongful death or otherwise relates to an accident or disaster  
16 involving the person to whom the communication is addressed or a  
17 relative of that person and that was mailed before the 31st day  
18 after the date on which the accident or disaster occurred;

19 (B) concerns a specific matter and relates to  
20 legal representation and the person knows or reasonably should  
21 know that the person to whom the communication is directed is  
22 represented by a lawyer in the matter;

23 (C) concerns an arrest of or issuance of a  
24 summons to the person to whom the communication is addressed or

1 a relative of that person and that was mailed before the 31st  
2 day after the date on which the arrest or issuance of the  
3 summons occurred;

4 (D) concerns a lawsuit of any kind, including an  
5 action for divorce, in which the person to whom the  
6 communication is addressed is a defendant or a relative of that  
7 person, unless the lawsuit in which the person is named as a  
8 defendant has been on file for more than 31 days before the date  
9 on which the communication was mailed;

10 (E) is sent or permitted to be sent by a person  
11 who knows or reasonably should know that the injured person or  
12 relative of the injured person has indicated a desire not to be  
13 contacted by or receive communications concerning employment;

14 (F) involves coercion, duress, fraud,  
15 overreaching, harassment, intimidation, or undue influence; [~~or~~]

16 (G) contains a false, fraudulent, misleading,  
17 deceptive, or unfair statement or claim; or

18 (H) concerns an insurance claim for damage to  
19 real property, improvements to real property, or to the contents  
20 of improvements to real property involving the person to whom  
21 the communication is made or a relative of that person, and that  
22 was mailed before the 31st day after the date on which the event  
23 giving rise to the claim occurred.

1 (e) For purposes of Subsection (d)(2)(E), a desire not to  
2 be contacted is presumed if an accident report reflects that  
3 such an indication has been made by an injured person or that  
4 person's relative.

5 (f) An offense under Subsection (a) or (b) is a felony of  
6 the third degree.

7 (g) Except as provided by Subsection (h), an offense under  
8 Subsection (d) is a Class A misdemeanor.

9 (h) An offense under Subsection (d) is a felony of the  
10 third degree if it is shown on the trial of the offense that the  
11 defendant has previously been convicted under Subsection (d).

12 (i) Final conviction of felony barratry is a serious crime  
13 for all purposes and acts, specifically including the State Bar  
14 Rules and the Texas Rules of Disciplinary Procedure.

15 SECTION 18. If any provision of this Act or its  
16 application to any person or circumstance is held invalid, the  
17 invalidity does not affect other provisions or applications of  
18 this Act that can be given effect without the invalid provision  
19 or application, and to this end the provisions of this Act are  
20 severable.

21 SECTION 19. This Act takes effect immediately if it  
22 receives a vote of two-thirds of all the members elected to each  
23 house, as provided by Section 39, Article III, Texas  
24 Constitution. If this Act does not receive the vote necessary

1 for immediate effect, this Act takes effect on September 1,  
2 2015.