SUBJECT: Revising prompt payment requirements for insurance claims.

COMMITTEE: Insurance — committee substitute recommended

VOTE: 8 ayes — Smithee, Eiland, Burnam, J. Moreno, Olivo, Seaman, Thompson, Wise

0 nays

1 absent — G. Lewis

WITNESSES: (*On original bill:*)
For — Mark L. Kincaid

Against — Robert Bass, Texas Coalition of Sureties; Burnie Burner, Texas Title Insurance Guaranty Association and Mortgage Insurance Companies of America; Will D. Davis, Texas Association of Life and Health Insurers; Tom Rutledge, Texas Land Title Association

On — Ken Tooley, Texas Association of Life Underwriters

BACKGROUND: The Texas Insurance Code, Art. 21.55 sets out a timeline for insurers to investigate and accept or reject claims promptly. The Act applies only to insurers "authorized to do business as an insurance company or to provide insurance" and does not apply to certain specified types of insurance.

The statutory timeline begins when the insurer receives written notice of a claim reasonably appraising the insurer of the facts relating to the claim. Within 15 days of receiving notice, insurers must acknowledge receipt of the claim, commence the investigation of the claim, and request relevant documents from the claimant. Eligible surplus lines insurers have 30 days to complete these actions.

The second timeline in the statute gives an insurer 15 days after receiving all requested documents to accept or deny a claim. For claims where there is a reasonable basis to believe arson was involved, insurers have 30 days after receiving all requested documents to accept or deny a claim.

Insurers who do not comply with the statutory timelines are liable for the amount of the claim in addition to 18 percent per annum of the claim amount as damages.

DIGEST:

HB 3041 would require any insurer engaged in the business of insurance, rather than just an authorized insurer, to comply with prompt payment laws.

Either written notice or nonwritten notice could begin the first timeline for the claims process. An insurer could require written notice if the claimant was advised of a written notice requirement within three days of giving nonwritten notice. If the insurer did not require written notice within three days, nonwritten notice would begin the 15-day timeline for most insurers or the 30-day timeline for surplus lines insurers.

The second timeline for the insurer to accept or reject a claim would begin when the insurer had received all the documents required from the claimant rather than all the documents required from all sources. This timeline would remain 15 days for non-arson claims and 30 days for arson-related claims.

CSHB 3041 would specify that insurers who do not comply with the statutory timelines would not be able to deny liability for a claim. The bill also would add that the 18 percent damages would begin to accrue on the date of the violation and end when the claim was paid in full.

The bill would take effect September 1, 1999 and apply to claims made on or after that date.

SUPPORTERS SAY:

The rules governing the prompt payment of insurance claims are being thwarted by insurers who do not inform claimants that their verbal notifications of a claim are insufficient to begin the statutory timelines. These claimants may make several telephone calls to the insurer and its adjusters without ever knowing that the insurer is under no statutory timeline to respond without written notice. Under CSHB 3041, insurers still would be able to require written notice if they notified the claimant of this requirement within three days of the nonwritten notice. However, insurers no longer would be able to avoid the statutory timelines by neglecting to inform claimants of the need for written notice.

CSHB 3041 would begin the statutory timeline for accepting or rejecting a claim once the claimant had provided all the documents that the insurer required. Claimants should not be penalized or forced to wait for documents that are not under their control. There should be prompt action on a claim once the claimant has complied with the requests of the insurer.

Although current law clearly mandates that a noncompliant insurer is liable for the amount of the claim, nothing in the current law prevents a noncompliant insurer from denying a claim. There also is no provision for when the 18 percent damages begin to accrue. CSHB 3041 would specify that a noncompliant insurer may not deny liability for the claim. This provision would close a loophole that allows insurers to accept liability for the amount of the claim, but deny the claim itself. CSHB 3041 also would set out the dates when penalty interest begins to accrue and end.

OPPONENTS SAY:

Allowing nonwritten notice to start the statutory timelines for the insurance claims process could result in swearing matches between the claimant and the insurer over whether and when notice actually has been given. Since there is no record of a verbal notice, there is no way to know what the notice included without relying on the word of the claimant or the insurer. Written notice should be required for all claims since it would provide better protection for both the claimant and the insurer.

Liability for an insurance claim is established by the contract between the insurer and the insured. It is unconstitutional for the state to require insurers to pay claims that are not included in the terms of the contract. Under CSHB 3041, an insurer could not deny liability for a claim once the insurer went beyond a statutory deadline, even if the claim was not supported by the terms of the insurance contract. A delay of a single day might make an insurer liable to pay for an accident caused by a driver it did not insure or cover an illness that clearly was excluded from coverage in the policy.

OTHER OPPONENTS SAY:

The current law is vague regarding who should be given notice. It is not clear whether notice should be given to an independent insurance agent, an adjuster, or some other person. This problem would be exacerbated if verbal or nonwritten notice was allowed. The law should spell out who should receive notice from the claimant to begin the statutory timelines.

Even under CSHB 3041, an insurer still could delay accepting or rejecting a claim by requiring documents from the claimant that the claimant cannot provide. The second timeline should begin once the insurer has received all required documents from the claimant that are under the claimant's control.

NOTES:

The committee substitute deleted provisions from the original bill that would have applied the statute to some lines of insurance currently exempted. Those lines included mortgage guaranty insurance, title insurance, marine insurance other than inland marine, certain guaranty associations, and fidelity, surety or guaranty bonds. The original bill also would have applied to health maintenance organizations and would have eliminated special timelines for surplus lines insurers.