

BILL ANALYSIS

Senate Research Center
79R1183 AJA-F

S.B. 236
By: Van de Putte
State Affairs
3/31/2005
As Filed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently, a person seeking relief in court against an insurance agent or carrier may choose to bring a cause of action for certain violations under the Insurance Code, the Deceptive Trade Practices Act (DTPA), or both. Although these two statutes were originally enacted as part of the same bill with largely identical language, subsequent amendments to the DTPA have resulted in differing defenses, exemptions, and damage limits.

As proposed, S.B. 236 addresses the incongruities that have arisen between Article 21.21 of the Insurance Code and DTPA regarding exemptions from liability, damages provisions, and contributory negligence rules.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 541.002, Insurance Code, as effective April 1, 2005, as follows:

Sec. 541.002. DEFINITIONS. Defines "economic damages," "intentionally," "residence," and "unconscionable action or course of action." Redesignates numerical headings to make conforming changes.

SECTION 2. Amends Section 541.151, Insurance Code, as effective April 1, 2005, as follows:

Sec. 541.151. PRIVATE ACTION FOR DAMAGES AUTHORIZED. (a) Creates this subsection from existing text and makes a conforming change.

(b) Prohibits a person from bringing an action under this section against another person, or an entity that could be vicariously liable for the other person's conduct, for damages caused by the other person's provision of a professional service, the essence of which is the provision of advice, judgment, opinion, or a similar professional skill. Provides that this subsection does not apply to a claim for certain damages.

(c) Prohibits a person from bringing an action under this section against another person for a claim arising out of certain insurance policies or other written contracts, or a transaction, project, or set of transactions relating to the same project, involving total consideration by the person of more than \$500,000, other than a cause of action involving a person's residence.

SECTION 3. Amends Section 541.152, Insurance Code, as effective April 1, 2005, as follows:

Sec. 541.152. DAMAGES, ATTORNEY'S FEES, AND OTHER RELIEF. (a) Authorizes a plaintiff who prevails in an action under this subchapter to obtain the amount of economic damages determined by the trier of fact (trier), rather than the actual damages, an order enjoining the act or failure to act complained of, and, rather than or, any other relief the court determines is proper. Makes a conforming change.

(b) Authorizes the trier, if the trier determines that the defendant's conduct was committed knowingly, to award the amount of damages for mental anguish determined by the trier, and an amount that does not exceed three times the amount of economic, rather than actual, damages determined by the trier. Redesignates a numerical heading and makes conforming and nonsubstantive changes.

(c) Authorizes the trier, if the trier determines that the defendant's conduct was committed intentionally, to award the amount of damages for mental anguish determined by the trier and an amount that does not exceed three times the amount of economic damages and damages for mental anguish determined by the trier.

SECTION 4. Amends Section 33.002(a), Civil Practice and Remedies Code, to make this chapter applicable to any action brought under Subchapter D, Chapter 541, Insurance Code, in which a defendant, settling person, or responsible third party is found responsible for a percentage of the harm for which the relief is sought.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: upon passage or September 1, 2005.