A BILL TO BE ENTITLED

AN ACT

relating to insurance claims and certain prohibited acts and
practices in or in relation to the business of insurance; amending
provisions that are or may be subject to a criminal penalty.

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

SECTION 1. The legislature finds that:

(1) there is an explosion in property insurance
litigation, often related to hail claims, that has created a
property insurance crisis for consumers that must be addressed for
the benefit of consumers;

(2) the property insurance crisis, if left unchecked,
will severely affect the availability and affordability of property
insurance for consumers, including coverage for hail claims, to the
detriment of consumers;

(3) this Act will help consumers who currently
sometimes barely qualify for home loans, or may be unable to qualify
for those loans, because of the increase in the cost of insurance
attributable to hail claims litigation;

(4) this Act will help consumers by:

(A) preventing further disruption of the
insurance market and erosion in the availability of property
insurance caused by hail claims litigation as have already been
seen in certain parts of the state in which carriers have withdrawn
from geographical markets and stopped offering insurance to
consumers;
  (B) preventing an increase in future premiums caused by the losses attributable to hail claims litigation;
  (C) preventing an increase in deductibles in property insurance policies attributable to hail claims litigation;
  (D) reducing the incentives to those unscrupulous public adjusters, roofers, contractors, and lawyers who provide fraudulent or inflated estimates and claims in the name of consumers;
  (E) requiring lawyers to make sure the consumers have actual awareness of the claims being submitted on behalf of the consumers;
  (F) requiring lawyers to inform consumers that lawsuits are being filed in the name of the consumers;
  (G) requiring public adjusters, roofers, contractors, and lawyers to disclose their actual relationships to one another, which currently may not be disclosed;
  (H) ensuring that each consumer in fact knows the damages the consumer is seeking in any claim or lawsuit that is filed;
  (I) reducing instances of fraud or misinformation in the preparation and submission of property insurance claims and the filing of lawsuits related to those claims;
  (J) encouraging consumers and those who act on behalf of consumers to diligently identify and pursue claims so
consumers are not faced with insurance carrier assertions that
policyholder claims are filed too late and can, as a result, be
declined; and

(K) providing insurance policyholders a
transparent and fair appraisal process to resolve disputes with
insurance carriers without the need of expensive, risky, and
time-consuming lawsuits, while maintaining consumers' rights to
pursue lawsuits against carriers, if necessary;

(5) this Act will help deter corruption of the law and
will help restore respect for the law by preventing rampant
solicitation of fraudulent or non-meritorious claims and the filing
of fraudulent, inflated, or otherwise non-meritorious claims; and

(6) this Act will help prevent disruption and
dislocation in the real estate and financial markets by deterring
abusive lawsuits that make property and casualty insurance
unaffordable or unavailable to many Texans, resulting in artificial
costs and barriers to the sale and rental of improved real estate
properties and the placement of loans on those properties.

SECTION 2. Section 541.060, Insurance Code, is amended by
adding Subsection (c) to read as follows:

(c) A bona fide dispute as to whether an insurer is liable
for a claim made under an insurance policy covering real property or
improvements to real property does not constitute an unfair
settlement practice under this section.

SECTION 3. Section 541.151, Insurance Code, is amended to
read as follows:

Sec. 541.151. PRIVATE ACTION FOR ACTUAL DAMAGES AUTHORIZED.
Except as provided by Section 541.1511, 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.

SECTION 4. Subchapter D, Chapter 541, Insurance Code, is amended by adding Section 541.1511 to read as follows:

Sec. 541.1511. ACTION RELATING TO CLAIM FOR PROPERTY DAMAGE: INSURER ELECTION FOR LEGAL RESPONSIBILITY FOR ACTIONS OF AGENTS AND EMPLOYEES. (a) This section applies only to an action brought by an insured relating to or arising from a claim made under an insurance policy for damage to or loss of real property or tangible personal property alleged to be covered by the policy.

(b) An insured seeking damages in an action to which this section applies may not file or maintain an action under this subchapter against an employee, agent, representative, or adjuster issuing policies, handling claims, or performing other acts on behalf of an insurer, and any such action shall be immediately dismissed, if:

(1) the employee, agent, representative, or adjuster was not named in a notice given under Section 541.1541; or

(2) not later than the 30th day after the date the
notice given under Section 541.1541 is received, the insurer agrees in a document provided to the insured to be liable for any act or omission of the employee, agent, representative, or adjuster related to or arising out of the insured’s claim.

(c) A dismissal under Subsection (b)(1) and agreement under Subsection (b)(2) do not limit the insurer's liability and do not limit the insurer's vicarious liability for any act or omission of the employee, agent, representative, or adjuster related to or arising out of the insured's claim.

SECTION 5. The heading to Section 541.152, Insurance Code, is amended to read as follows:

Sec. 541.152. ACTUAL DAMAGES, ATTORNEY’S FEES, AND OTHER RELIEF.

SECTION 6. The heading to Section 541.154, Insurance Code, is amended to read as follows:

Sec. 541.154. PRIOR NOTICE OF ACTION OTHER THAN ACTION RELATING TO CLAIM FOR PROPERTY DAMAGE.

SECTION 7. Section 541.154(a), Insurance Code, is amended to read as follows:

(a) Except as provided by Section 541.1541, a [A] person seeking damages in an action against another person under this subchapter must provide written notice to the other person not later than the 61st day before the date the action is filed.

SECTION 8. Subchapter D, Chapter 541, Insurance Code, is amended by adding Section 541.1541 to read as follows:

Sec. 541.1541. PRIOR NOTICE OF ACTION RELATING TO CLAIM FOR PROPERTY DAMAGE. (a) This section applies only to an action
brought by an insured relating to or arising from a claim made under an insurance policy for damage to or loss of real property or tangible personal property alleged to be covered by the policy.

(b) An insured seeking damages in an action to which this section applies must provide written notice complying with this section to all potential defendants not later than the 61st day before the date the action is filed.

(c) If the amount sought by the insured in the action involves a claim for damage items previously submitted to an insurer, the notice must be signed by the insured and state:

1. the specific damage items and the amount alleged to be owed by the insurer under the insurance contract;
2. the amount of the actual damages, other damages, interest, and expenses, specifically stated for each item, that the insured alleges are owed by the insurer;
3. the amount of attorney's fees the insured reasonably has incurred as of the date the notice is given in asserting the claim against the insurer;
4. an amount that includes the amounts described by Subdivisions (1) through (3) that the insured will accept in full and final satisfaction of the claim; and
5. the name of every person to whom notice is given under this section and a brief description of each person's relationship to the insured's claim.

(d) If the amount sought by the insured in the action involves a claim for damage items not previously submitted to the insurer, the notice must contain, in addition to the items listed in
Subsection (c):

(1) A statement of the reason the damage items were not previously submitted to the insurer;

(2) copies of reports, estimates, photographs, and other items reasonably supporting the insured's additional damage items; and

(3) a statement that the insured will cooperate in allowing the insurer to inspect the insured property for purposes of investigating the additional damage items.

(e) Notice required by this section must be sent to the insurer by certified mail, return receipt requested.

(f) A presuit notice under this section is not required if giving notice is impracticable because the action:

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

(2) is asserted as a counterclaim.

SECTION 9. Section 541.155, Insurance Code, is amended to read as follows:

Sec. 541.155. ABATEMENT; DISMISSAL. (a) A person against whom an action under this subchapter is pending who does not receive notice as required by Section 541.154 or 541.1541(c) 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, after a hearing, the court finds that the person is entitled to an abatement because the claimant did not provide notice as required by Section
541.154 or 541.1541(c).

(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 notice as required by Section 541.154 or 541.1541(c); 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 abatement under this section continues until the 60th day after the date notice is provided in compliance with Section 541.154 or 541.1541(c).

(d-1) A person against whom an action under this subchapter is pending who does not receive notice as required by Section 541.154(d) may file a motion to dismiss not later than the 30th day after the date the person files an original answer in the court in which the action is pending.

(d-2) The court shall grant the motion under Subsection (d-1) if, after a hearing, the court finds that the person is entitled to dismissal because the claimant did not provide notice as required by Section 541.154(d). A dismissal ordered under this section is without prejudice to the rights of the parties in a subsequent action.

(e) Subsections (d-1) and (d-2) do not apply if Section 541.154(f) applies. If Section 541.154(f) applies, the action may not be dismissed but shall be
SECTION 10. Section 542.058(b), Insurance Code, is amended to read as follows:

(b) Subsection (a) does not apply in a case in which it is found as a result of arbitration or litigation that:

(1) a claim received by an insurer is invalid and should not be paid by the insurer; or

(2) there exists a bona fide dispute in a claim made under an insurance policy covering real property or improvements to real property as to the insurer's liability for payment of the claim.

SECTION 11. Subchapter B, Chapter 542, Insurance Code, is amended by adding Section 542.0595 to read as follows:

Sec. 542.0595. PRIOR NOTICE OF ACTION RELATING TO CLAIM FOR PROPERTY DAMAGE; ABATEMENT OR DISMISSAL. (a) An insured may not bring suit under Section 542.060 in connection with a claim made under an insurance policy for damage to or loss of real property or tangible personal property unless the insured has provided written notice to the insurer with respect to the claim in accordance with Section 541.1541.

(b) A suit under Section 542.060 for which notice is required by this section is subject to abatement or dismissal to the same extent and in the same manner provided by Section 541.155 for an action under Subchapter D, Chapter 541.

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

Sec. 542.060. LIABILITY FOR VIOLATION OF SUBCHAPTER.
(a) 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 unpaid amount of the claim at the rate of 18 percent a year as damages, together with reasonable attorney's fees.

(a-1) In determining the amount of attorney's fees awarded under Subsection (a), the trier of fact shall consider:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the claimant, that the acceptance of the particular employment will preclude other employment by the attorney;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the claimant or by the circumstances;

(6) the nature and length of the professional relationship with the claimant;

(7) the experience, reputation, and ability of the attorney performing the services; and

(8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

(a-2) An attorney may not share attorney's fees awarded
under Subsection (a) with the claimant. If a court finds that an
attorney has violated this subsection, the court shall order the
attorney to pay a penalty in an amount equal to two times the amount
shared with the claimant. A penalty under this section is payable
to the court.

(b) If a suit is filed, interest and [the] attorney's fees
payable under this section shall be taxed as part of the costs in
the case.

(c) The liability for interest and attorney's fees provided
by this section is the exclusive remedy for a violation of this
subchapter. This section is not intended to affect a right or
remedy provided by Chapter 541 or any other law outside this
subchapter.

(d) If a claim for a loss has been paid by the insurer and a
suit under this section arises out of a supplemental claim for that
loss, interest awarded under this section on the supplemental claim
begins to accrue on the 60th day after the date the insurer receives
notice of the supplemental claim.

SECTION 13. Subchapter B, Chapter 542, Insurance Code, is
amended by adding Section 542.0601 to read as follows:

Sec. 542.0601. LIABILITY WITH RESPECT TO CERTAIN CLAIMS.

An insurer is not liable under Section 542.060 with respect to a
claim made under an insurance policy covering real property or
improvements to real property if the claim is resolved through
appraisal in accordance with the terms of the policy.

SECTION 14. Subtitle A, Title 10, Insurance Code, is
amended by adding Chapters 1808 and 1809 to read as follows:
CHAPTER 1808. CLAIMS FOR PROPERTY DAMAGE

Sec. 1808.001. DEFINITION. In this chapter, "claim for property damage" means a request for payment under an insurance policy for damage to or loss of real property or tangible personal property alleged to be covered by the policy.

Sec. 1808.002. APPLICABILITY OF CHAPTER. This chapter applies to any claim under or related to an insurance policy that provides insurance coverage against damage to or loss of real property or tangible personal property, including a policy issued by an eligible surplus lines insurer or by an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock insurance company, county mutual insurance company, farm mutual insurance company, Lloyd's plan, or other legal entity authorized to write property insurance in this state.

Sec. 1808.003. CLAIM FILING PERIOD. (a) Subject to Subsection (b), failure to provide notice of a claim for property damage by the second anniversary of the date on which the damage to or loss of property that is the basis of the claim occurs is an absolute bar to recovery on the claim.

(b) Subject to Subsection (c), the commissioner, using existing resources, may on a showing of good cause extend the deadline for providing notice of a claim prescribed by Subsection (a).

(c) The extension of a deadline under Subsection (b) may not exceed 120 days.

(d) For the purposes of Subsection (b), "good cause" includes military deployment.
(e) Nothing in this section precludes an insurer from raising any defense available under the terms of its policy relating to prompt notice or that is otherwise available under the law.

CHAPTER 1809. APPRAISAL PROCESS FOR CERTAIN POLICIES

Sec. 1809.001. NOTICE OF APPRAISAL PROVISIONS; APPRAISER SELECTION PROCESS. (a) If an insurance policy covering real property or improvements to real property contains a provision allowing resolution of a dispute through appraisal, the policy must contain, in boldface type, a conspicuous notice concerning the resolution of disputes through the appraisal process, including:

(1) the processes and deadlines for appraisal; and

(2) the binding effect, if any, of the appraisal decision.

(b) The appraisal process must provide and the notice required by this section must inform the insured that:

(1) if the appraisal process is invoked, the insured and insurer each will be required to name an appraiser, and those two appraisers must agree on a competent and impartial appraisal umpire to participate in the resolution of the dispute; and

(2) if the appraisers named by the insured and insurer are unable to agree for any reason on a competent and impartial appraisal umpire to participate in the resolution of the dispute, the commissioner will select a competent and impartial appraisal umpire from a roster of qualified umpires maintained by the department.

Sec. 1809.002. APPRAISAL AWARD. An appraisal award made
under a policy covering real property or improvements to real
property must be consistent with the coverage, conditions, and
limits provided by the policy and must account for any prior
payments and applicable deductible amounts.

SECTION 15. Section 4102.051(a), Insurance Code, is amended
to read as follows:

(a) A person may not act as a public insurance adjuster in
this state or hold himself or herself out to be a public insurance
adjuster in this state unless the person holds a license [or
certificate] issued by the commissioner under Section 4102.053
or[+] 4102.054[, or 4102.069].

SECTION 16. Sections 4102.066(a) and (b), Insurance Code,
are amended to read as follows:

(a) The commissioner shall collect in advance the following
nonrefundable fees:

(1) for a public insurance adjuster license, an
application fee in an amount to be determined by rule by the
commissioner;

(2) for a nonresident public insurance adjuster
license, an application fee in an amount to be determined by rule by
the commissioner; and

(3) for each public insurance adjuster examination, a
fee in an amount to be determined by rule by the commissioner[; and

(4) for a public insurance adjuster trainee
certificate under Section 4102.069, a registration fee in an amount
to be determined by rule by the commissioner].

(b) The amount of the fee for the renewal of a license [or a
certificate} issued under this chapter shall be determined by rule
by the commissioner.

SECTION 17. Section 4102.103, Insurance Code, is amended by
adding Subsection (d) to read as follows:

(d) A license holder may not enter into a contract with an
insured and collect a commission as provided by Section 4102.104
without the intent to actually perform the services customarily
provided by a licensed public insurance adjuster for the insured.

SECTION 18. Section 4102.104(d), Insurance Code, is amended
to read as follows:

(d) A public insurance adjuster may not accept any payment
that violates the provisions of this section [Subsection (c)].

SECTION 19. Section 4102.158, Insurance Code, is amended by
amending Subsection (a) and adding Subsections (d), (e), and (f) to
read as follows:

(a) A license holder may not:

(1) participate directly or indirectly in the
reconstruction, repair, or restoration of damaged property that is
the subject of a claim adjusted by the license holder; or

(2) engage in any other activities that may reasonably
be construed as presenting a conflict of interest, including
soliciting or accepting any remuneration from, [or]
having a financial interest in, or deriving any direct or indirect financial
benefit from, any salvage firm, repair firm, construction firm, or
other firm that obtains business in connection with any claim the
license holder has a contract or agreement to adjust.

(d) A license holder may not directly or indirectly solicit,
as described by Chapter 38, Penal Code, employment for an attorney
or enter into a contract with an insured for the primary purpose of
referring an insured to an attorney and without the intent to
actually perform the services customarily provided by a licensed
public insurance adjuster. This section may not be construed to
prohibit a license holder from recommending a particular attorney
to an insured.

(e) A license holder may not act on behalf of an attorney in
having an insured sign an attorney representation agreement.

(f) A license holder must become familiar with and at all
times act in conformance with the criminal barratry statute set
forth in Section 38.12, Penal Code.

SECTION 20. Section 4102.160, Insurance Code, is amended to
read as follows:

Sec. 4102.160. CERTAIN PAYMENTS PROHIBITED. A license
holder may not:

(1) advance money to any potential client or insured;
or

(2) pay, allow, or give, or offer to pay, allow, or
give, directly or indirectly, to a person who is not a licensed
public insurance adjuster a fee, commission, or other valuable
consideration for the referral of an insured to the public
insurance adjuster for purposes of [based on] the insured entering
into a contract with that public insurance adjuster or for any other
purpose;

(3) otherwise offer to pay a fee, commission, or
other valuable consideration exceeding $100 to a person not
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1 licensed as a public insurance adjuster for referring an insured to
2 the license holder].

3 SECTION 21. Subchapter D, Chapter 4102, Insurance Code, is
4 amended by adding Section 4102.164 to read as follows:

5 Sec. 4102.164. ACCEPTANCE OF REFERRAL PAYMENTS PROHIBITED.
6 (a) A licensed public insurance adjuster may not accept a fee,
7 commission, or other valuable consideration of any nature,
8 regardless of form or amount, in exchange for the referral by a
9 licensed public insurance adjuster of an insured to any third-party
10 individual or firm, including but not limited to an attorney,
11 appraiser, umpire, construction company, contractor, or salvage
12 company.
13 (b) The commissioner shall adopt rules necessary to
14 implement and enforce this section.

15 SECTION 22. The heading to Section 27.02, Business &
16 Commerce Code, is amended to read as follows:

17 Sec. 27.02. CERTAIN OFFERS MADE AND INFORMATION PROVIDED IN
18 CONNECTION WITH INSURANCE CLAIMS [FOR EXCESSIVE CHARGES].

19 SECTION 23. Sections 27.02(a) and (b), Business & Commerce
20 Code, are amended to read as follows:

21 (a) A person who sells goods or services, including a
22 contractor, appraiser, estimator, or insurance restoration
23 contractor, commits an offense if, in connection with a claim for
24 property loss or damage under a property or casualty insurance
25 policy:
26 (1) the person advertises or promises to [provide the
27 good or service and to] pay, waive, absorb, rebate, subsidize,
credit, or otherwise cover for any reason[+ 

[(A): all or part of any applicable insurance deductible or other uninsured amount owed by an insured under the terms of the policy; [or 

[(B): a rebate in an amount equal to all or part of any applicable insurance deductible;] 

(2) the good or service is paid for by the consumer from proceeds of a property or casualty insurance policy; and 

[(3): the person knowingly provides or causes to be provided to an insurer any estimate or other statement as to the cost of repair for the good or service to be provided that has been increased, inflated, or otherwise manipulated [charges an amount for the good or service that exceeds the usual and customary charge by the person for the good or service] by an amount equal to or greater than all or part of the applicable insurance deductible or other uninsured amount owed by an insured under the policy; or 

(3) the person knowingly provides or causes to be provided to an insurer any false information within any estimate, bid, proposal, or other statement as to the scope of damage or cost of repair for the good or service to be provided [paid by the person to an insurer on behalf of an insured or remitted to an insured by the person as a rebate]. 

(b) A person who is insured under a property or casualty insurance policy commits an offense if the person: 

(1) knowingly submits a claim under the policy based on conduct [charges that are] in violation of Subsection (a) [of this section]; or
(2) knowingly allows a claim in violation of Subsection (a) of this section to be submitted, unless the person promptly notifies the insurer of the conduct in violation of Subsection (a) [excessive charges].

SECTION 24. Section 4102.069, Insurance Code, is repealed.

SECTION 25. Chapter 541, Insurance Code, as amended by this Act, applies only to conduct that occurs on or after the effective date of this Act. Conduct that occurs 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 26. Subchapter B, Chapter 542, Insurance Code, as amended by this Act, applies only to a claim for which notice of claim is provided to an insurer on or after the effective date of this Act. A claim for which notice of claim is provided to an insurer 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 27. Chapter 1808, Insurance Code, as added by this Act, applies only to a claim under an insurance policy delivered, issued for delivery, or renewed on or after January 1, 2016. A claim under a policy delivered, issued for delivery, or renewed before January 1, 2016, 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 28. Chapter 1809, Insurance Code, as added by this Act, applies only to an insurance policy delivered, issued for
delivery, or renewed on or after January 1, 2016.

SECTION 29. The repeal by this Act of Section 4102.069, Insurance Code, does not affect the authority of a person to act under a temporary certificate issued by the Texas Department of Insurance under that section before the effective date of this Act.

SECTION 30. Sections 4102.103(d) and 4102.158(d), Insurance Code, as added by this Act, apply only to a contract entered into or solicitation made on or after the effective date of this Act.

SECTION 31. (a) Except as provided by this section, Section 4102.104, Insurance Code, as amended by this Act, applies only to payment for a service performed on or after the effective date of this Act.

(b) Payment for a service performed before the effective date of this Act or performed after the effective date of this Act under a contract entered into 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 32. Section 4102.160, Insurance Code, as amended by this Act, and Section 4102.164, Insurance Code, as added by this Act, apply only to a referral made on or after the effective date of this Act. A referral 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 33. The changes in law made by this Act apply only
to an offense committed on or after the effective date of this Act.

An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 34. This Act takes effect September 1, 2015.