

## CHAPTER 22

## H.B. No. 316

An Act relating to notice, settlement, damages, and attorney's fees in claims of misrepresentation or unfair competition in the business of insurance and to the statute of limitations for those claims.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1.** Section 1, Article 21.21, Insurance Code, is amended to read as follows:

Sec. 1. **DECLARATION OF PURPOSE.** (a) The purpose of this Act is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress), by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

(b) *This Article shall be liberally construed and applied to promote its underlying purposes as set forth in this section.*

**SECTION 2.** Section 2, Article 21.21, Insurance Code, is amended to read as follows:

Sec. 2. **DEFINITIONS.** When used in this *Article* [Aet]:

(a) "Person" shall mean any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, brokers, adjusters and life insurance counselors.

(b) "Board" shall mean the *State Board of Insurance* [~~Board of Insurance Commissioners of this state~~].

(c) "*Knowingly*" means actual awareness of the falsity, unfairness, or deception of the act or practice made the basis for a claim for damages under Section 16 of this Article. "*Actual awareness*" may be inferred where objective manifestations indicate that a person acted with actual awareness.

**SECTION 3.** Section 16, Article 21.21, Insurance Code, is amended to read as follows:

Sec. 16. **RELIEF AVAILABLE TO INJURED PARTIES.** (a) Any person who has sustained actual damages as a result of [~~been injured by~~] another's engaging in an act or practice [~~any of the practices~~] declared in Section 4 of this Article or in rules or regulations lawfully adopted by the Board under this Article to be unfair methods of competition or [~~and~~] unfair or [~~and~~] deceptive acts or practices in the business of insurance or in any practice defined by Section 17.46 of the Business & Commerce Code, as amended, as an unlawful deceptive trade practice may maintain an action against the person or persons [~~company or companies~~] engaging in such acts or practices.

(b) In a suit filed under this section, any plaintiff who prevails may obtain:

(1) [~~three times~~] the amount of actual damages plus court costs and reasonable and necessary attorneys' fees. *If the trier of fact finds that the defendant knowingly committed the acts complained of, the court shall award, in addition, two times the amount of actual damages; or* [~~reasonable in relation to the amount of work expended;~~]

(2) an order enjoining such acts or failure to act; or

(3) any other relief which the court deems proper.

(c) On a finding by the court that an action under this section was groundless and brought in bad faith or brought for the purpose of harassment, the court shall [~~may~~] award to the defendant reasonable and necessary attorneys' fees and court costs [~~in relation to the amount of work expended~~].

(d) *All actions under this Article must be commenced within two years after the date on which the unfair method of competition or unfair or deceptive act or practice occurred or within two years after the person bringing the action discovered or, in the exercise of reasonable diligence, should*

have discovered the occurrence of the unfair method of competition or unfair or deceptive act or practice. The period of limitation provided in this section may be extended for a period of 180 days if the person bringing the action proves that the failure to timely commence the action was caused by the defendant's engaging in conduct solely calculated to induce the plaintiff to refrain from or postpone the commencement of the action.

(e) As a prerequisite to filing a suit seeking damages under this section against any person, the person seeking damages shall give written notice to the other person at least 30 days before filing suit. The notice must advise the person of the specific complaint and the amount of actual damages and expenses, including any attorneys' fees reasonably incurred in asserting the claim against the defendant.

(f) If giving 30 days' written notice is impracticable because the suit must be filed in order to prevent the expiration of the statute of limitations or because the claim is asserted as a counterclaim, the notice provided for in Subsection (e) of this section is not required, and the tender of a written offer of settlement provided for by Subsection (g) of this section may be made not later than the 30th day after the date of filing of the suit or counterclaim.

(g) A person who receives the written notice provided by Subsection (e) of this section may tender, not later than the 30th day after the date of receipt of the notice, to the person seeking damages, a written offer of settlement, including an agreement to reimburse the person for any attorneys' fees reasonably incurred in asserting the claim to the date of the written notice. A person who does not receive a written notice because the suit or counterclaim is filed as provided for by Subsection (f) of this section may tender, not later than the 30th day after the date of filing of the suit or counterclaim, a written offer of settlement, including an agreement to reimburse the person for any attorneys' fees reasonably incurred in asserting the claim to the date the suit or counterclaim was filed. An offer of settlement is rejected if it is not accepted on or before the 30th day after the date of receipt by the person seeking damages.

(h) A rejected settlement offer made in compliance with Subsection (g) of this section may be filed with the court with an affidavit certifying its rejection. If the court finds that the amount tendered in the settlement offer is the same or substantially the same as the actual damages found by the trier of fact, the plaintiff may not recover an amount that exceeds the lesser of:

- (1) the amount tendered in the settlement offer; or
- (2) the amount of actual damages found by the trier of fact.

(i) The tender of an offer of settlement is not an admission of engaging in an unlawful act or practice or of liability under this Article. Evidence of a settlement offer may be introduced only to determine the reasonableness of the settlement offer as provided for by Subsection (h) of this section. ~~[In an action under this section, damages may not include any damages incurred beyond a point two years prior to the institution of the action.]~~

**SECTION 4.** This Act applies to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues under Section 16, Article 21.21, Insurance Code, before the effective date of this Act is covered by that law as it existed on the date the cause of action accrued, and that law is continued in effect for that purpose.

**SECTION 5.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

\* Passed by the House on February 28, 1985, by the following vote: Yeas 121, Nays 8, 5 present, not voting; House concurred in Senate amendments to H.B. No. 316 on March 19, 1985, by the following vote: Yeas 142, Nays 1, 1 present, not voting; passed by the Senate, with amendments, on March 13, 1985, by the following vote: Yeas 30, Nays 0.

Approved: April 4, 1985

Effective: Immediately