

- SUBJECT:** Removing a legal judgment as a prerequisite for certain insurance claims
- COMMITTEE:** Insurance — favorable, without amendment
- VOTE:** 9 ayes — Oliverson, Vo, J. González, Hull, Israel, Middleton, Paul, Romero, Sanford
- 0 nays
- WITNESSES:** For — Will Adams, Texas Trial Lawyers Association; Ware Wendell, Texas Watch; Lani Burgar; Jim Clements; Rebekah Rogers; (*Registered, but did not testify*: Susana Carranza; Dorothy Ann Compton; Linda Guy; Jacob Smith; Gregg Vunderink)
- Against — Jay Thompson, AFACT; Joe Woods, American Property and Casualty Insurance Association; Jon Schnautz, National Association of Mutual Insurance Companies; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; (*Registered, but did not testify*: Daniel Hodge, Al Boenker Insurance; John Marlow, Chubb; Frank Galitski, Farmers Insurance; Jarrett Hill, Texas Farm Bureau Insurance)
- On — (*Registered, but did not testify*: Kimberly Donovan, Office of Public Insurance Counsel; Leah Gillum, Texas Department of Insurance)
- BACKGROUND:** Insurance Code sec. 541.151 allows a person who sustains actual damages to bring an action against another person for those damages caused by the other person engaging in an act or practice defined as an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.
- DIGEST:** HB 359 would establish that a judgment or other legal determination establishing the other motorist's liability or the extent of the insured's damages would not be a prerequisite to recovery in an action seeking damages for a violation of an unfair claim settlement. For statutory provisions related to unfair settlement practice, the insured could provide notice of a claim for uninsured or underinsured motorist coverage by

providing a written notification to the insurer that reasonably informed the insurer of the facts of the claim.

In regard to such a claim, the only extra-contractual cause of action available to an insured to recover damages for a violation related to unfair settlement practice would be provisions authorizing private action for damages under the Insurance Code.

The bill would apply only to a cause of action that accrued on or after the its effective date. It would not affect the enforceability of any provision in an insurance policy delivered or renewed before January 1, 2022.

The bill would take effect September 1, 2021.

**SUPPORTERS
SAY:**

HB 359 would reduce litigation and enable policyholders to receive the insurance benefits for which they already paid. The Texas Supreme Court in *Brainard v. Trinity Universal Ins. Co.* held in 2006 that an uninsured or underinsured motorist insurer is under no contractual duty to pay benefits until the insured obtained a judgment establishing the liability and underinsured status of the other motorist. This has caused delay, expense, and hardship for policyholders. By removing the judgment prerequisite, HB 359 would eliminate the need for litigation to receive a legal determination and discourage insurance companies from delaying or denying policyholders the benefits that are rightfully theirs. The bill would not prevent insurers from challenging claims when liability is unclear.

**CRITICS
SAY:**

HB 359 would place an undue burden on insurers by eliminating a mechanism that helps establish liability in certain claims cases. The current requirement of a legal judgment is needed for the small percentage of cases in which the liability or insurance status of the party being sued is unclear. Current law adequately balances the interests of all parties involved. The bill could lead to litigation over what constitutes notice that reasonably informs an insurer of the facts of a claim.