

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

SENATE BILL 1813

By: Paxton

AS INTRODUCED

An Act relating to insurance claims; defining terms; providing application of act; requiring compliance with act by insurer; providing for certain payments for noncompliance by insurer; construing provision; requiring Insurance Commissioner to determine postjudgment interest rate monthly; requiring posting of rate on Insurance Department website; setting postjudgment rates; providing date of accrual for interest awarded as damages; requiring presuit notice by claimant or representative of claimant prior to filing certain action; stating requirements of notice; stating exemptions from presuit notice; requiring court to dismiss certain claims under certain circumstances; providing for admissibility of presuit notice in civil action or alternative dispute resolution; authorizing inspection of property damage at issue upon written notice; providing procedure for inspection; authorizing filing of plea in abatement under certain circumstances; authorizing court to abate an action upon certain findings; providing for automatic abatement without court order under certain circumstances; providing requirements of affidavit by claimant controverting failure to provide presuit notice; providing for specified duration of abatement; prohibiting court from compelling alternative dispute resolution during abatement period; authorizing insurer to make election to accept liability of producer; providing for dismissal of action against producer under certain circumstances; requiring insurer to make producer available for deposition under certain circumstances; stating exception; stating exception to dismissing suit against producer; prohibiting revocation by insurer or nullification by court of election by insurer for producer liability; providing for

1           admissibility of certain evidence against producer  
2           under certain circumstances; providing admissibility  
3           of evidence for this act to supersede civil procedure  
4           provisions when conflict exists; prohibiting election  
5           of producer liability by insurer if insurer is in  
6           receivership; prohibiting making jury aware of  
7           election by insurer; providing for determination of  
8           amount of attorney fees as determined by trier of  
9           fact; stating exception for award of attorney fees;  
10          setting time of filing pleadings under this act;  
11          providing for codification; and providing an  
12          effective date.

13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14           SECTION 1.        NEW LAW        A new section of law to be codified  
15           in the Oklahoma Statutes as Section 1231 of Title 36, unless there  
16           is created a duplication in numbering, reads as follows:

17           A. As used in this section:

18           1. "Claim" means a first-party claim that:

- 19           a. is made by an insured under an insurance policy  
20           providing coverage for real property or improvements  
21           to real property,  
22           b. must be paid by the insurer directly to the insured,  
23           and  
24           c. arises from damage to or loss of covered property  
25           caused, wholly or partly, by forces of nature,  
26           including an earthquake or earth tremor, a wildfire, a  
27           flood, a tornado, lightning, a hurricane, hail, wind,  
28           a snowstorm, or a rainstorm;

1           2. "Claimant" means a claimant as defined pursuant to Section  
2 1250.2 of Title 36 of the Oklahoma Statutes;

3           3. "Insurance adjuster" or "adjuster" means an insurance  
4 adjuster as defined pursuant to Section 6202 of Title 36 of the  
5 Oklahoma Statutes;

6           4. "Insurer" means a corporation, association, partnership, or  
7 individual engaged as a principal in the business of insurance and  
8 authorized or eligible to write property insurance in this state,  
9 including:

- 10           a. an insurance company,
- 11           b. a reciprocal or interinsurance exchange,
- 12           c. a mutual insurance company,
- 13           d. a capital stock insurance company,
- 14           e. a county mutual insurance company,
- 15           f. a farm mutual insurance company,
- 16           g. a Lloyd's plan, or
- 17           h. an eligible surplus lines insurer; and

18           5. "Insurance producer" or "producer" means an insurance  
19 producer as defined pursuant to Section 1435.2 of Title 36 of the  
20 Oklahoma Statutes.

21           SECTION 2.       NEW LAW       A new section of law to be codified  
22 in the Oklahoma Statutes as Section 1232 of Title 36, unless there  
23 is created a duplication in numbering, reads as follows:

1 A. The provisions of this act shall apply to an action on a  
2 claim against an insurer, producer, or adjuster, including:

3 1. An action alleging a breach of contract;

4 2. An action alleging negligence, misrepresentation, fraud, or  
5 breach of a common law duty; or

6 3. An action brought under the Unfair Claims Settlement  
7 Practices Act.

8 B. Except as provided in subsection C of this section, if an  
9 insurer liable for a claim is not in compliance with this act, the  
10 insurer shall pay the holder of the policy or the beneficiary making  
11 the claim under the policy interest on the amount of the claim at  
12 the rate of eighteen percent (18%) a year as damages, together with  
13 reasonable attorney fees, in addition to the claim. Nothing in this  
14 section shall prevent the award of prejudgment interest on the  
15 amount of the claim as provided by law.

16 C. In an action constituting an unfair claim settlement  
17 practice, if an insurer of an insurance policy is not in compliance  
18 with this act, the insurer shall pay the holder of the policy, in  
19 addition to the claim, reasonable attorney fees, and simple interest  
20 on the amount of the claim as damages each year at the rate  
21 determined on the date of judgment by adding five percent (5%) to  
22 the interest rate determined in subsection D of this section.

23 D. 1. On the fifteenth day of each month, the Insurance  
24 Commissioner shall determine the postjudgment interest rate to be

1 applied to a money judgment rendered during the succeeding calendar  
2 month. The Insurance Department shall publish the determined rate  
3 on the website of the Department.

4 2. The postjudgment interest rate is:

5 a. the prime rate as published by the Board of Governors  
6 of the Federal Reserve System on the date of  
7 computation,

8 b. five percent (5%) a year if the prime rate as  
9 published by the Board of Governors of the Federal  
10 Reserve System described by subparagraph a is less  
11 than five percent (5%), or

12 c. fifteen percent (15%) a year if the prime rate as  
13 published by the Board of Governors of the Federal  
14 Reserve System described by subparagraph a is more  
15 than fifteen percent (15%).

16 Nothing in this section shall prevent the award of prejudgment  
17 interest on the amount of the claim as provided by law. Interest  
18 awarded under this section as damages shall accrue beginning on the  
19 date the claim was required to be paid.

20 SECTION 3. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 1233 of Title 36, unless there  
22 is created a duplication in numbering, reads as follows:

23 A. In addition to any other notice required by law or the  
24 applicable insurance policy, not later than the sixty-first day  
25

1 before the date a claimant files an action seeking damages from any  
2 insurer, the claimant shall give written notice to the insurer in  
3 accordance with this section as a prerequisite to filing an action  
4 pursuant to this act.

5 B. Notice required under this section shall provide:

6 1. A statement of the acts or omissions giving rise to the  
7 claim;

8 2. The specific amount alleged to be owed by the insurer on the  
9 claim for damage to or loss of covered property; and

10 3. Reasonable attorney fees.

11 C. If an attorney or other representative provides notice under  
12 this section on behalf of a claimant, the attorney or representative  
13 shall:

14 1. Provide a copy of the notice to the claimant; and

15 2. Include in the notice a statement that a copy of the notice  
16 was provided to the claimant.

17 D. Presuit notice required under this section is not required  
18 if giving notice is impracticable and:

19 1. The claimant has a reasonable belief that there is  
20 insufficient time to give presuit notice before the statute of  
21 limitations will expire; or

22 2. The action is asserted as a counterclaim.

23 E. To ensure that a claimant is not prejudiced by having given  
24 the presuit notice required by this section, a court shall dismiss

1 without prejudice an action relating to the claim for which notice  
2 is given by the claimant and commenced:

3 1. Before the sixty-first day after the date the claimant  
4 provides presuit notice under subsection A of this section;

5 2. By an insurer to whom presuit notice is given under  
6 subsection A of this section; and

7 3. Against the claimant giving the notice.

8 F. A claimant who gives notice in accordance with this section  
9 is not relieved of the obligation to give notice under any other  
10 applicable law. Notice given pursuant to this section may be  
11 combined with notice given under any other law.

12 G. Notice given pursuant to this section is admissible in  
13 evidence in a civil action or an alternative dispute resolution  
14 proceeding.

15 H. Giving notice pursuant to this section shall not provide a  
16 basis for limiting the evidence of attorney fees, damages, or losses  
17 a claimant may offer at trial.

18 I. An insurer who receives notice pursuant to this section may  
19 make a settlement offer during a period beginning the date notice is  
20 received and ending on the sixtieth day following the receipt date.

21 SECTION 4. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 1234 of Title 36, unless there  
23 is created a duplication in numbering, reads as follows:

1 Not later than the thirtieth day after receiving a presuit  
2 notice given under Section 3 of this act, an insurer to whom notice  
3 is given may send a written request to the claimant to inspect,  
4 photograph, or evaluate, in a reasonable manner and at a reasonable  
5 time, the property that is the subject of the claim. If reasonably  
6 possible, the inspection, photography, or evaluation must be  
7 completed not later than the sixtieth day after the date the insurer  
8 receives the presuit notice.

9 SECTION 5. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 1235 of Title 36, unless there  
11 is created a duplication in numbering, reads as follows:

12 A. In addition to taking any other act allowed by contract or  
13 by any other law, an insurer against whom an action to which this  
14 act applies is pending may file a plea in abatement not later than  
15 the thirtieth day after the date the insurer files an original  
16 answer in the court in which the action is pending if the insurer:

17 1. Did not receive a presuit notice complying with Section 3 of  
18 this act; or

19 2. Completed a request pursuant to Section 4 of this act but  
20 was not provided a reasonable opportunity to inspect, photograph, or  
21 evaluate the property that is the subject of the claim.

22 B. The court shall abate the action if the court finds that the  
23 insurer filing the plea in abatement:

1 1. Did not, for any reason, receive a presuit notice complying  
2 with Section 3 of this act; or

3 2. Completed a request pursuant to Section 4 of this act but  
4 was not provided a reasonable opportunity to inspect, photograph, or  
5 evaluate the property that is the subject of the claim.

6 C. An action is automatically abated without a court order  
7 beginning on the eleventh day after the date a plea in abatement is  
8 filed if the plea:

9 1. Is verified and alleges that the insurer against whom the  
10 action is pending:

11 a. did not receive a presuit notice complying with  
12 Section 3 of this act, or

13 b. completed a request under Section 4 of this act but  
14 was not provided a reasonable opportunity to inspect,  
15 photograph, or evaluate the property that is the  
16 subject of the claim; and

17 2. Is not controverted by an affidavit filed by the claimant  
18 before the eleventh day after the date the plea in abatement is  
19 filed.

20 D. An affidavit described by paragraph 2 of subsection C of  
21 this section controverting whether the insurer against whom the  
22 action is pending received a presuit notice complying with Section 3  
23 of this act shall:

1 1. Include as an attachment a copy of the document the claimant  
2 sent to give notice of the claimant's action; and

3 2. State the date on which the notice was given.

4 E. An abatement under this section continues until the later  
5 of:

6 1. The sixtieth day after the date a notice complying with  
7 Section 3 of this act is given; or

8 2. The fifteenth day after the date of the requested  
9 inspection, photography, or evaluation of the property is completed  
10 under Section 4 of this act.

11 F. If an action is abated under this section, a court may not  
12 compel participation in an alternative dispute resolution proceeding  
13 until after the abatement period provided by subsection E of this  
14 section has expired.

15 SECTION 6. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 1236 of Title 36, unless there  
17 is created a duplication in numbering, reads as follows:

18 A. Except as provided by subsection H of this section, in an  
19 action to which this act applies, an insurer that is a party to the  
20 action may elect to accept whatever liability a producer or adjuster  
21 might have to the claimant for the acts or omissions of the producer  
22 or adjuster related to the claim by providing written notice to the  
23 claimant.

1 B. If an insurer makes an election under subsection A of this  
2 section before a claimant files an action to which this act applies,  
3 no cause of action exists against the producer or adjuster related  
4 to the claim, and, if the claimant files an action against the  
5 producer or adjuster, the court shall dismiss that action with  
6 prejudice.

7 C. If a claimant files an action to which this act applies  
8 against a producer or adjuster and the insurer thereafter makes an  
9 election under subsection A of this section with respect to the  
10 producer or adjuster, the court shall dismiss the action against the  
11 producer or adjuster with prejudice.

12 D. If an insurer makes an election under subsection A of this  
13 section and, after having been served with a notice of intent to  
14 take a deposition of the producer or adjuster who is the subject of  
15 the election, fails to make that producer or adjuster available at a  
16 reasonable time and place to give deposition testimony, the  
17 provisions of subsections A, B, and C of Section 7 of this act shall  
18 not apply to the action with respect to which the insurer made the  
19 election unless the court finds that:

20 1. It is impracticable for the insurer to make the producer or  
21 adjuster available due to a change in circumstances arising after  
22 the insurer made the election under subsection A of this section;

23 2. The producer or adjuster whose liability was assumed would  
24 not have been a proper party to the action; or

1           3. Obtaining the producer or adjuster's deposition testimony is  
2 not warranted under the law.

3           E. An election by an insurer under subsection A of this section  
4 is ineffective to obtain the dismissal of an action against a  
5 producer or adjuster if the election is conditioned in a way that  
6 will result in the insurer avoiding liability for any claim-related  
7 damage caused to the claimant by the acts or omissions of the  
8 producer or adjuster.

9           F. An insurer may not revoke, and a court may not nullify, an  
10 insurer's election under subsection A of this section.

11           G. If an insurer makes an election under subsection A of this  
12 section and the producer or adjuster is not a party to the action,  
13 evidence of the acts or omissions of the producer or adjuster may be  
14 offered at trial and, if supported by sufficient evidence, the trier  
15 of fact may be asked to resolve fact issues as if the producer or  
16 adjuster were a defendant, and a judgment against the insurer must  
17 include any liability that would have been assessed against the  
18 producer or adjuster. To the extent that there is a conflict  
19 between this subsection and Title 12 of the Oklahoma Statutes, this  
20 subsection shall supersede the provisions of Title 12 of the  
21 Oklahoma Statutes.

22           H. If an insurer is in receivership at the time the claimant  
23 commences an action against the insurer, the insurer may not make an  
24 election under subsection A of this section, and the court shall

1 disregard any prior election made by the insurer relating to the  
2 claim.

3 I. In an action tried by a jury, an insurer's election under  
4 subsection A of this section may not be made known to the jury.

5 SECTION 7. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 1237 of Title 36, unless there  
7 is created a duplication in numbering, reads as follows:

8 A. In an action pursuant to this act and except as otherwise  
9 provided by this section, the amount of attorney fees that may be  
10 awarded to a claimant shall be the lesser of:

11 1. The amount of reasonable attorney fees supported at trial by  
12 sufficient evidence and determined by the trier of fact to have been  
13 incurred by the claimant in bringing the action;

14 2. The amount of attorney fees that may be awarded to the  
15 claimant under other applicable law; or

16 3. The amount calculated by:

17 a. dividing the amount to be awarded in the judgment to  
18 the claimant for the claim under the insurance policy  
19 for damage to or loss of covered property by the  
20 amount alleged to be owed on the claim for that damage  
21 or loss in a notice given under Section 3 of this act,  
22 and

23 b. multiplying the amount calculated under subparagraph a  
24 of this paragraph by the total amount of reasonable  
25

1 attorney fees supported at trial by sufficient  
2 evidence and determined by the trier of fact to have  
3 been incurred by the claimant in bringing the action.

4 B. Except as provided by subsection D of this section, the  
5 court shall award to the claimant the full amount of reasonable  
6 attorney fees supported at trial by sufficient evidence and  
7 determined by the trier of fact to have been incurred by the  
8 claimant in bringing the action if the amount calculated under  
9 subparagraph a of paragraph 3 of subsection A of this section is:

- 10 1. Greater than or equal to 0.8;
- 11 2. Not limited by this section or any other provision of law;
- 12 and
- 13 3. Otherwise recoverable under law.

14 C. The court may not award attorney fees to the claimant if the  
15 amount calculated under subparagraph a of paragraph 3 of subsection  
16 A of this section is less than 0.2.

17 D. If a defendant in an action to which this act applies pleads  
18 and proves that the defendant was entitled to but was not given a  
19 presuit notice stating the specific amount alleged to be owed by the  
20 insurer under Section 3 of this act at least sixty-one days before  
21 the date the action was filed by the claimant, the court shall not  
22 award to the claimant any attorney fees incurred after the date the  
23 defendant files the pleading with the court. A pleading under this  
24 subsection shall be filed not later than the thirtieth day after the

1 date the defendant files an original answer in the court where the  
2 action is pending.

3 SECTION 8. This act shall become effective November 1, 2024.  
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