

GOOD FAITH REQUIREMENTS & UNFAIR CLAIM SETTLEMENT PRACTICES

Texas Administrative Code Section 21.203

No insurer may engage in unfair claim settlement practices. Unfair claim settlement practices mean committing or performing any of the following:

- (1) Misrepresenting to claimants pertinent facts or policy provisions relating to coverage at issue;
- (2) Failing to acknowledge with reasonable promptness pertinent communications with respect to claim arising under its policies, provided that “pertinent communications” will exclude written communications that are direct responses to specific inquiries made by the insurer after initial report of a claim. An acknowledgement within 15 business days is presumed reasonably prompt.
- (3) Failing to adopt and implement reasonable standards for prompt investigation of claims arising under its policies;
- (4) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear;
- (5) Compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them;
- (6) Failure of any insurer to maintain, in substantial compliance with Section 21.2504 of this title (relating to Complaint Record; Required Elements; Explanation of Instruction), a complete record of all complaints, as that term is defined in Section 21.202(4) of

	<p>this title (relating to Definitions), which it has received during the preceding three years or since the date of its most recent financial examination by the Commissioner of Insurance, which time is shorter. For purposes of this section “substantial compliance” has the meaning set out in Section 21.2503 of this title (relating to Compliance Standard);</p> <p>(7) Failing to provide promptly, when provided for in the policy, claim forms when the insurer requires such forms as a prerequisite for a claim settlement;</p> <p>(8) Not attempting in good faith to promptly settle claims where liability has become reasonably clear under on portion of the policy in order to influence settlement under other portion of the policy coverage. (This provision does not apply to those situations where payment under one portion of coverage constitutes evidence of liability under another portion of coverage.);</p> <p>(9) Failing to promptly provide to a policy holder a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;</p> <p>(10) Failing to affirm or deny coverage of a claim to a policyholder within a reasonable time. The reasonable submission of a reservation of rights letter by an insurer to a policyholder within a reasonable time is</p>
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	<p>deemed compliance with the provisions of this paragraph;</p> <p>(11) Except as may be specifically provided in the policy, to refuse, fail, or unreasonably delay offer of settlement under applicable first-party coverage on the basis that other coverage may be available, or third parties are responsible in law for damages suffered;</p> <p>(12) Attempting to settle a claim for less than the amount to which a reasonable person would have believed she/he was entitled by reference to an advertisement, as described in Section 21.102 of this title (relating to Scope), made by an insurer or person acting on behalf of an insurer;</p> <p>(13) Undertaking to enforce a full and final release from a policyholder when, in fact, only a partial payment has been made. (This provision will not prevent or have application to the compromise settlement of doubtful or disputed claim.);</p> <p>(14) Failing to establish a policy and proper controls to make certain that agent calculate and deliver to policyholders or their assignees funds due under policy provisions relative to cancellation of coverage within a reasonable time after such coverages are terminated;</p> <p>(15) Refusing to pay claims without conducting a reasonable investigation based upon all available information;</p> <p>(16) Failing to respond promptly to a request by a claimant for personal contact about or review of the claim;</p>
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	<p>(17) With respect to the Texas personal auto policy, delaying or refusing settlement of a claim solely because there is other insurance of a different time available to satisfy partially or entirely the loss forming the basis of that claim. The claimant who has a right to recover from either or both insurers is entitled to choose under which coverage and in what order payment is to be made;</p> <p>(18) A violation of Insurance Code Chapter 542, Subchapter B, by an insurer subject to its provisions; or</p> <p>(19) Requiring a claimant, as a condition of settling a claim, to provide the claimant's federal income tax returns for examination or investigation by the insurer unless the claimant is ordered to produce those tax returns by a court or competent jurisdiction, the claims involve a fire loss; or the claim involves a loss of profits or income.</p>
<p>Texas Insurance Code Section 541.003</p>	<p>A person may not engage in this state in a trade practice that is defined in this chapter as or determined under this chapter to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.</p>
<p>Texas Insurance Code Section 541.060 (a)</p>	<p>It is an unfair method of competition or deceptive act or practice in the business of insurance to engage in the following unfair settlement practices with respect to a claim by an insured or beneficiary:</p> <ul style="list-style-type: none"> (1) Misrepresenting to a claimant a material fact or policy provision relating to coverage at issue; (2) Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of:

	<ul style="list-style-type: none">(A) A claim with respect to which the insurer's liability has become reasonably clear; or(B) A claim under one portion of a policy with respect to the insurer's liability has become reasonably clear to influence the claimant to settle another claim under another portion of the coverage unless payment under one portion of the coverage constitutes evidence of liability under another portion; <p>(3) Failing to promptly provide to a policyholder a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or offer of a compromise settlement of a claim;</p> <p>(4) Failing within a reasonable time to:</p> <ul style="list-style-type: none">(A) Affirm or deny coverage of a claim to a policyholder; or(B) Submit a reservation of rights to a policyholder; <p>(5) Refusing, failing, or unreasonably delaying a settlement offer under applicable first-party coverage on the basis that other coverage may be available or that third parties are responsible for damages suffered, except as may be specifically provided in the policy; I</p> <p>(6) Undertaking to enforce a full and final release of a claim from a policyholder when only a partial payment has been made, unless the payment is a compromise</p>
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	<p>settlement of a doubtful or disputed claim;</p> <p>(7) Refusing to pay a claim without conducting a reasonable investigation with respect to the claim;</p> <p>(8) With respect a Texas personal automobile insurance policy, delaying or refusing settlement of a claim solely because there is other insurance of a different kind available to satisfy all or part of the loss forming the basis of that claim; or</p> <p>(9) Requiring a claimant as a condition of settling a claim to produce the claimant's federal income tax returns for examination or investigation by the person unless:</p> <ul style="list-style-type: none"> (A) A court order the claimant to produce those tax returns; (B) The claim involves a fire loss; or (C) The claim involves lost profits or income.
Texas Insurance Code Section 541.060 (b)	Subsection (a) does not provide a cause of action to a third-party asserting one or more claims against an insured covered under a liability insurance policy.
Texas Insurance Code Section 541.061	<p>It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to misrepresent an insurance policy by:</p> <ul style="list-style-type: none"> (1) Making an untrue statement of material fact; (2) Failing to state a material fact necessary to make other states made not misleading, considering the circumstances under which the statements were made; (3) Making a state in a manner that would mislead a reasonably prudent person to a false conclusion of a material fact;

	<ul style="list-style-type: none"> (4) Making a material misstatement of law; or (5) Failing to disclose a matter required by law to be disclosed, including failing to make a disclosure in accordance with another provide of this code.
<p>Texas Insurance Code Section 541.151</p>	<p>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:</p> <ul style="list-style-type: none"> (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 act shows that the person relied on the act or practice to the person’s detriment. <p>Note: This statutory provision permits a claimant to bring a cause of action under both the Texas Insurance Code and the Texas Deceptive Trade Practices Act for a violation of these provisions, which may expose the insurer to additional, exemplary, or treble damages, in addition to attorneys’ fees if the claimant is successful.</p>
<p>Texas Insurance Code Section 541.152 (a)</p>	<p>A plaintiff who prevails in an action under this subchapter may obtain:</p> <ul style="list-style-type: none"> (1) The amount of actual damages, plus court costs and reasonable and necessary attorney’s fees; (2) An order enjoining the act or failure to act complain of; or (3) Any other relief the court determines is proper.
<p>Texas Insurance Code Section 541.152 (b)</p>	<p>Except as provided by Subsection (c), on a finding by the trier of fact that the</p>

	defendant knowingly committed the act complained of, the trier of fact may award an amount not to exceed three times the amount of actual damages.
Texas Insurance Code Section 541.152 (c)	Subsection (b) does not apply to an action under this subchapter brought against the Texas Windstorm Insurance Association.
Texas Insurance Code Section 542.003 (a)	An insurer engaging in business in the State of Texas may not engaged in an unfair claim settlement practice
Texas Insurance Code Section 542.003 (b)	<p>Any of the following acts by an insurer constitutes unfair claim settlement practices:</p> <ol style="list-style-type: none"> (1) Knowingly misrepresenting to a claimant pertinent facts or policy provisions relating to coverage at issue; (2) Failing to acknowledge with reasonable promptness pertinent communications relating to a claim arising under the insurer's policy; (3) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under the insurer's policies; (4) Not attempting in good faith to effect a prompt, fair, and equitable settlement of a claim submitted in which liability has become reasonably clear; (5) Compelling a policyholder to institute a suit to recover an amount due under a policy by offering substantially less than the amount ultimately recovered in a suit brought by the policyholder; (6) Failing to maintain the information required by Section 542.005; or (7) Committing another act, the commissioner determines by rule constitutes an unfair claim

	<p>settlement practice. (See reference to bulletin notice from the Texas Department of Insurance regarding repairs to motor vehicles)</p>
<p>LIABILITY FOR NON-COMPLIANCE</p>	
<p>Texas Insurance Code Section 542.060</p>	<p>(a) If an insurer is liable for a claim under an insurance policy and is not in compliance with this subchapter, the insurer is liable to pay the holder of the policy or the claimant under the policy, in addition to the amount of the claim, interest on the amount of the claim at a rate of 18 percent a year as damages, together with reasonable and necessary attorney's fees</p> <p>(b) If suit is filed, the attorney's fees shall be taxed as part of the costs in the case.</p> <p>(c) In an action to which Chapter 542A applies, 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, in addition to the amount of the claim, simple interest on the amount of the claim as damages each year at the rate determined on the date of judgment by adding five percent to the interest rate determined under Section 304.003, Finance Code, together with reasonable and necessary attorney's fees. Nothing in this subsection prevents the award of prejudgment interest on the amount of the Claim, as provided by law. Interest awarded under this subsection as damages accrues beginning on the date the claim was required to be paid.</p>