

By: Creighton

S.B. No. 1367

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of commercial property and casualty insurance and insurance for certain large risks.

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

SECTION 1. Section 981.004, Insurance Code, is amended by adding Subsection (g) to read as follows:

(g) Except with respect to a line of insurance for which the commissioner has temporarily reinstated the requirements for rate and form filings under Section 2251.0031(d) or 2301.0031(d), Subsections (a)(1) and (b) do not apply to an insurance policy issued by an eligible surplus lines insurer for any line of the kinds of insurance described by Sections 2251.0031(a) and 2301.0031(a) or exempted under Section 2251.0031(c) or 2301.0031(c).

SECTION 2. Section 2251.003(b), Insurance Code, is amended to read as follows:

(b) Except as provided by Section 2251.0031, this ~~[This]~~ subchapter and Subchapters B, C, and D apply to all lines of the following kinds of insurance written under an insurance policy or contract issued by an insurer authorized to engage in the business of insurance in this state:

- (1) general liability insurance;
- (2) residential and commercial property insurance, including farm and ranch insurance and farm and ranch owners

- 1 insurance;
- 2 (3) personal and commercial casualty insurance,
- 3 except as provided by Section 2251.004;
- 4 (4) medical professional liability insurance;
- 5 (5) fidelity, guaranty, and surety bonds other than
- 6 criminal court appearance bonds;
- 7 (6) personal umbrella insurance;
- 8 (7) personal liability insurance;
- 9 (8) guaranteed auto protection (GAP) insurance;
- 10 (9) involuntary unemployment insurance;
- 11 (10) financial guaranty insurance;
- 12 (11) inland marine insurance;
- 13 (12) rain insurance;
- 14 (13) hail insurance on farm crops;
- 15 (14) personal and commercial automobile insurance;
- 16 (15) multi-peril insurance; and
- 17 (16) identity theft insurance issued under Chapter
- 18 706.

19 SECTION 3. Subchapter A, Chapter 2251, Insurance Code, is

20 amended by adding Section 2251.0031 to read as follows:

21 Sec. 2251.0031. EXCEPTIONS FOR CERTAIN LINES. (a) Except

22 as provided by Subsection (d), Subchapter C does not apply to any

23 line of the following kinds of insurance written under a commercial

24 insurance policy or contract issued by an insurer authorized to

25 engage in the business of insurance in this state:

- 26 (1) surety bonds;
- 27 (2) fidelity bonds;

- 1 (3) commercial inland marine;
2 (4) boiler and machinery;
3 (5) environmental impairment or pollution liability;
4 (6) kidnap and ransom;
5 (7) political risk or expropriation;
6 (8) commercial excess liability or umbrella
7 liability;
8 (9) directors' and officers' liability;
9 (10) fiduciary liability;
10 (11) employment practices liability;
11 (12) errors and omission and professional liability
12 other than medical professional liability;
13 (13) media liability;
14 (14) product liability, product recall, or completed
15 operations;
16 (15) commercial cybersecurity, including first- and
17 third-party commercial lines coverage for losses arising out of or
18 relating to data privacy breaches, network security, computer
19 viruses, and similar exposures;
20 (16) highly protected commercial property;
21 (17) commercial flood insurance not provided through
22 the National Flood Insurance Program; or
23 (18) any combination of only the kinds of insurance
24 listed in this subsection or exempted under Subsection (c).

25 (b) For purposes of Subsection (a), "highly protected
26 commercial property" is commercial property that is subject to a
27 much lower than normal probability of loss due to low-hazard

1 occupancy or property type, superior construction, special fire
2 protection equipment and procedures, and management commitment to
3 loss prevention.

4 (c) The commissioner by rule may exempt a commercial line of
5 insurance or commercial risk not listed in Subsection (a) from the
6 rate filing requirements of Subchapter C to promote enhanced
7 competition or more effectively use the resources of the department
8 that might otherwise be used to review commercial lines filings.

9 (d) Notwithstanding Subsection (a), the commissioner may
10 temporarily require rate filings under Subchapter C for a specific
11 kind of insurance listed in Subsection (a) for a period of not
12 longer than one year if, after notice and hearing, the commissioner
13 issues an order that:

14 (1) includes a finding that a reasonable degree of
15 competition does not exist for that specific kind of insurance; and

16 (2) specifies the relevant tests and test results used
17 to determine the degree of competition for that kind of insurance.

18 (e) In the absence of a finding described by Subsection (d)
19 with respect to a specific kind of insurance, a competitive market
20 is presumed to exist for that kind of insurance.

21 (f) The commissioner may adopt reasonable and necessary
22 rules to implement this section.

23 SECTION 4. Section [2251.101](#), Insurance Code, is amended by
24 adding Subsection (c) to read as follows:

25 (c) This section does not apply to rates for use with an
26 insured that has:

27 (1) total insured property values of \$5 million or

1 more;

2 (2) total annual gross revenues of \$10 million or
3 more; or

4 (3) a total premium of \$25,000 or more for property
5 insurance, \$25,000 or more for general liability insurance, or
6 \$50,000 or more for multi-peril insurance.

7 SECTION 5. Section 2301.003(b), Insurance Code, is amended
8 to read as follows:

9 (b) Except as provided by Section 2301.0031, this [~~This~~]
10 subchapter applies to all lines of the following kinds of insurance
11 written under an insurance policy or contract issued by an insurer
12 authorized to engage in the business of insurance in this state:

13 (1) general liability insurance;

14 (2) residential and commercial property insurance,
15 including farm and ranch insurance and farm and ranch owners
16 insurance;

17 (3) personal and commercial casualty insurance,
18 except as provided by Section 2301.005;

19 (4) medical professional liability insurance;

20 (5) fidelity, guaranty, and surety bonds other than
21 criminal court appearance bonds;

22 (6) personal umbrella insurance;

23 (7) personal liability insurance;

24 (8) guaranteed auto protection (GAP) insurance;

25 (9) involuntary unemployment insurance;

26 (10) financial guaranty insurance;

27 (11) inland marine insurance;

- 1 (12) rain insurance;
- 2 (13) hail insurance on farm crops;
- 3 (14) personal and commercial automobile insurance;
- 4 (15) multi-peril insurance; and
- 5 (16) identity theft insurance issued under Chapter
- 6 706.

7 SECTION 6. Subchapter A, Chapter 2301, Insurance Code, is
8 amended by adding Section 2301.0031 to read as follows:

9 Sec. 2301.0031. EXCEPTIONS FOR CERTAIN LINES. (a) Except
10 as provided by Subsection (d), Sections 2301.006, 2301.007(a) and
11 (b), and 2301.008 do not apply to any line of the following kinds of
12 insurance written under a commercial insurance policy or contract
13 issued by an insurer authorized to engage in the business of
14 insurance in this state:

- 15 (1) surety bonds;
- 16 (2) fidelity bonds;
- 17 (3) commercial inland marine;
- 18 (4) boiler and machinery;
- 19 (5) environmental impairment or pollution liability;
- 20 (6) kidnap and ransom;
- 21 (7) political risk or expropriation;
- 22 (8) commercial excess liability or umbrella
- 23 liability;
- 24 (9) directors' and officers' liability;
- 25 (10) fiduciary liability;
- 26 (11) employment practices liability;
- 27 (12) errors and omission and professional liability

1 other than medical professional liability;

2 (13) media liability;

3 (14) product liability, product recall, or completed
4 operations;

5 (15) commercial cybersecurity, including first- and
6 third-party commercial lines coverage for losses arising out of or
7 relating to data privacy breaches, network security, computer
8 viruses, and similar exposures;

9 (16) highly protected commercial property;

10 (17) commercial flood insurance not provided through
11 the National Flood Insurance Program; or

12 (18) any combination of only the kinds of insurance
13 listed in this subsection or exempted under Subsection (c).

14 (b) For purposes of Subsection (a), "highly protected
15 commercial property" is commercial property that is subject to a
16 much lower than normal probability of loss due to low-hazard
17 occupancy or property type, superior construction, special fire
18 protection equipment and procedures, and management commitment to
19 loss prevention.

20 (c) The commissioner by rule may exempt a commercial line of
21 insurance or commercial risk not listed in Subsection (a) from the
22 form filing requirements of this subchapter to promote enhanced
23 competition or more effectively use the resources of the department
24 that might otherwise be used to review commercial lines filings.

25 (d) Notwithstanding Subsection (a), the commissioner may
26 temporarily impose the requirements of Sections 2301.006,
27 2301.007(a) and (b), and 2301.008 for a specific kind of insurance

1 listed in Subsection (a) for a period of not longer than one year
2 if, after notice and hearing, the commissioner issues an order
3 that:

4 (1) includes a finding that a reasonable degree of
5 competition does not exist for that specific kind of insurance; and

6 (2) specifies the relevant tests and test results used
7 to determine the degree of competition for that kind of insurance.

8 (e) In the absence of a finding described by Subsection (d)
9 with respect to a specific kind of insurance, a competitive market
10 is presumed to exist for that kind of insurance.

11 (f) The commissioner may adopt reasonable and necessary
12 rules to implement this section.

13 SECTION 7. The changes in law made by this Act apply only to
14 an insurance policy that is delivered, issued for delivery, or
15 renewed on or after September 1, 2021. An insurance policy
16 delivered, issued for delivery, or renewed before September 1,
17 2021, is governed by the law as it existed immediately before the
18 effective date of this Act, and that law is continued in effect for
19 that purpose.

20 SECTION 8. This Act takes effect September 1, 2021.