

Amend **CSHB 4** by adding the following appropriately numbered ARTICLE and renumbering existing ARTICLES of the bill appropriately:

ARTICLE _____. RATES FOR PROFESSIONAL LIABILITY INSURANCE FOR
PHYSICIANS AND HEALTH CARE PROVIDERS

SECTION _____.01. Chapter 5, Insurance Code, is amended by adding Subchapter R to read as follows:

SUBCHAPTER R. RATES FOR PROFESSIONAL LIABILITY INSURANCE
FOR PHYSICIANS AND HEALTH CARE PROVIDERS

Art. 5.161. FINDINGS. The legislature finds that:

(1) the cost of professional liability insurance for physicians and health care providers, as defined by Section 1.03(a), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), has been a significant factor in the reduced availability of health care in this state;

(2) legislation under consideration by the regular session of the 78th Legislature should eliminate or significantly reduce the cost of claims under policies of professional liability insurance for physicians and health care providers, and legislation by future legislatures may have the same effect;

(3) while the monetary effect of these legislative changes can be actuarially determined within a reasonable degree of certainty, insurers will delay implementation of rate reductions until they have data evidencing actual loss experience;

(4) delay in implementation of rate reductions will result in a windfall for the insurers benefited by the changes described by this section, and this benefit should be passed on to insureds; and

(5) legislative action in the public interest and within the police power of the state is required to eliminate unnecessary delays to pass these benefits on to the insured physicians and health care providers of this state.

Art. 5.162. SCOPE OF SUBCHAPTER. (a) This subchapter applies to:

(1) any insurer that is authorized to engage in business in this state and that is authorized to write professional liability insurance for physicians and health care providers, including:

(A) a Lloyd's plan;

(B) a reciprocal or interinsurance exchange;

(C) the joint underwriting association established under Article 21.49-3 of this code; and

(D) a self-insurance trust established under Article 21.49-4 of this code; and

(2) a risk retention group and any other type of insurer selling professional liability insurance to a physician or health care provider who provides medical or health care in this state, regardless of whether the insurer is authorized to engage in business in this state.

(b) It is the intent of the legislature that all insurers, including insurers whose rates are not regulated, pass through the savings that accrue from the changes described by Article 5.161 of this code to their policyholders on a prospective basis. To monitor compliance with this legislative directive, the commissioner may require information in rate filings, special data calls, informational hearings, and any other means consistent with other provisions of this code applicable to the affected insurers. Information provided under this subsection is privileged and confidential to the same extent as the information is privileged and confidential under this code or other laws for other insurers described by this article licensed and writing the same line of insurance in this state.

(c) This subchapter applies only to professional liability insurance for physicians and health care providers.

Art. 5.163. EQUITABLE RATE REDUCTION

Sec. 1. HEARING. (a) Not later than September 1 of each year, the commissioner shall hold a rulemaking hearing under Chapter 2001, Government Code, to determine the percentage of equitable reductions in insurance rates required on an individual basis of each insurer writing professional liability insurance for physicians and health care providers.

(b) Not later than October 1 of each year, the commissioner shall issue rules mandating the appropriate rate reductions to rates for professional liability insurance for physicians and health care providers and developed without consideration of the effect of the changes described by Article 5.161 of this code.

(c) The commissioner shall set the percentage of the rate reduction for professional liability insurance for physicians and health care providers and may set different rate reductions for different types of policies. The commissioner's order establishing the rate reductions must be based on the evidence adduced at the rulemaking hearing, including the adequacy of the rate at the time of the hearing. Rates resulting from the rate reductions imposed by this article must comply with Section 3(d), Article 5.15-1, of this code.

(d) The rate reductions adopted under this section are applicable to each policy or coverage delivered, issued for delivery, or renewed on and after January 1, 2004, and to each policy or coverage delivered, issued for delivery, or renewed on and after the 90th day after the date of each subsequent rule adopted under this section. An insurer that is not otherwise rate-regulated but that is subject to this subchapter shall apply the rate reduction to the rates used by the insurer.

(e) Any rule or order of the commissioner that determines, approves, or sets a rate reduction under this section and is appealed or challenged remains in effect during the pendency of the appeal or challenge. During the pendency of the appeal or challenge, an insurer shall use rates that reflect the rate reduction provided in the order being appealed or challenged. The rate reduction is lawful and valid during the appeal or challenge.

Sec. 2. ADMINISTRATIVE RELIEF. (a) Except as provided by Subsection (b) of this section, a rate filed under Articles 5.13-2 and 5.15-1 of this code for professional liability insurance for physicians and health care providers on and after January 1, 2004, and a rate filed under those articles on and after the 90th day following the effective date of a subsequent rule adopted under Section 1(b) of this article, shall reflect each rate reduction imposed under Section 1 of this article.

(b) Notwithstanding Articles 5.13-2 and 5.15-1 of this code, the commissioner shall, after notice and opportunity for hearing, disapprove a filed rate, without regard to whether the rate complies with Articles 5.13-2 and 5.15-1 of this code, if the commissioner finds that the filed rate does not reflect the rate reduction imposed under Section 1 of this article. A proceeding under this section is a contested case under Chapter 2001, Government Code.

(c) The commissioner may approve a filed rate that reflects less than the full amount of the rate reduction imposed by Section 1 of this article if the commissioner determines based on evidence presented by an insurer that:

(1) the actual or anticipated loss experience for the insurer's rating classifications is or will be different than the presumptive rate reduction;

(2) the insurer will be financially unable to continue writing in a particular line of insurance;

(3) the rate reduction required under this article would likely result in placing the insurer in a hazardous financial condition described by Section 2, Article 1.32, of this code; or

(4) the resulting rates for the insurer would be unreasonable or confiscatory to the insurer.

Sec. 3. DURATION OF REDUCTION. Unless the commissioner grants relief under Section 2 of this article, each rate reduction required under Section 1 of this article remains in effect for the period specified in the commissioner's rule or order.

Sec. 4. MODIFICATION. The commissioner may, by bulletin or directive, based on the evidence accumulated by the commissioner before the bulletin or directive is issued, modify a rate reduction mandated by the commissioner under this article if a final, unappealable judgment of a court with appropriate jurisdiction stays the effect of, enjoins, or otherwise modifies or declares unconstitutional any legislation described by Article 5.161 of this code on which the commissioner based the rate reduction.

Sec. 5. HEARINGS AND ORDERS. Notwithstanding Chapter 40 of this code, a rulemaking hearing under this article shall be held before the commissioner or the commissioner's designee. The

rulemaking procedures established by this section do not apply to any other rate promulgation proceeding.

Sec. 6. PENDING RATE MATTERS. A rate filed pursuant to a commissioner's order issued before May 1, 2003, is not subject to the rate reductions required by this article before January 1, 2004.

Sec. 7. RECOMMENDATIONS TO LEGISLATURE. The commissioner shall assemble information, conduct hearings, and take other appropriate measures to assess and evaluate changes in the marketplace resulting from the implementation of this article and to report findings and recommendations to the legislature.

Art. 5.164. CONTINGENT ROLLBACK. If a \$250,000 cap on noneconomic damages in all health care liability claims, without exception, becomes constitutional by voter approval of an amendment to the Texas Constitution or is determined to be constitutional by the supreme court, an insurer that delivers, issues for delivery, or renews a policy of professional liability insurance for physicians or health care providers in this state on or after the 30th day after the effective date of the constitutional amendment or the date the cap was determined to be constitutional may not charge more for the policy than 85 percent of the amount the insurer charged that insured for the same coverage immediately before the effective date of the constitutional amendment or the date that the cap was determined to be constitutional, or, if the insurer did not insure that insured immediately before that date, 85 percent of the amount the insurer would have charged that insured. An insurer may petition the commissioner for an exception to the rate reduction. The commissioner shall grant the exception to the extent that the insurer provides evidence that the rate reduction is confiscatory.

SECTION __.02. The commissioner of insurance is not required to hold a hearing or determine equitable rate reductions under Section 1, Article 5.163, Insurance Code, as added by this article, before the 30th day after the effective date of this article.