

Amend Amendment No. 1 by Smithee to **CSSB 14** as follows:

(1) Insert the following New Items, appropriately numbered:

() Strike Sections 3.02-3.04 of the bill (page 41, line 1, through page 42, line 16) and substitute the following:

SECTION 3.02. The heading of Article 5.13-2, Insurance Code, is amended to read as follows:

Art. 5.13-2. RATES AND FORMS FOR CERTAIN [~~GENERAL LIABILITY AND COMMERCIAL~~] PROPERTY AND CASUALTY INSURANCE [~~COVERAGE~~].

SECTION 3.03. Sections 1 and 2, Article 5.13-2, Insurance Code, are amended to read as follows:

Sec. 1. PURPOSE. This article governs the regulation of insurance described by Section 2 of this article [~~general liability, commercial property, which shall include farm and ranch owners and farm and ranch policies, all commercial casualty, and medical professional liability insurance rates and forms. It does not govern automobile, fidelity, surety, or guaranty bonds~~]. The purposes of this article are to:

(1) promote the public welfare by regulating insurance rates to prohibit excessive, inadequate, or unfairly discriminatory rates;

(2) promote availability of insurance;

(3) promote price competition among insurers to provide rates and premiums that are responsive to competitive market conditions;

(4) prohibit price-fixing agreements and other anticompetitive behavior by insurers;

(5) regulate the insurance forms used for lines of insurance subject to this article to ensure that they are not unjust, unfair, inequitable, misleading, or deceptive; and

(6) provide regulatory procedures for the maintenance of appropriate information reporting systems.

Sec. 2. SCOPE. (a) This article applies to all lines of the following insurance written under policies or contracts of insurance issued by an insurer authorized to engage in the business of insurance in this state:

(1) general liability insurance;

(2) [7] commercial property insurance, including farm

and ranch insurance and farm and ranch owners insurance;

(3) personal and~~[,---all]~~ commercial casualty insurance, except as provided by Subsection (b) of this section;

(4) [~~and~~] medical professional liability insurance;

(5) fidelity and surety bonds;

(6) personal umbrella insurance;

(7) personal liability insurance;

(8) guaranteed auto protection (GAP) insurance;

(9) involuntary unemployment insurance;

(10) financial guaranty insurance;

(11) inland marine insurance;

(12) rain insurance;

(13) hail insurance on farm crops; and

(14) commercial automobile insurance [~~written under policies or contracts of insurance issued by a licensed insurer, other than a fidelity, surety, or guaranty bond or an automobile insurance policy]~~.

(b) Except as otherwise specifically provided by this article, this article does not apply to a line of insurance regulated under Subchapter A or C of this chapter.

(c) The commissioner shall adopt rules governing the manner in which forms and rates for the various classifications of risks insured under inland marine insurance, as determined by the commissioner, are regulated.

SECTION 3.04. Section 3(2), Article 5.13-2, Insurance Code, is amended to read as follows:

(2) "Insurer" means an insurer to which Article 5.13 of this code applies, but does not include the Texas Windstorm Insurance Association or the Texas FAIR Plan Association. However, the provisions of Sections 4, 5, 6, and 7 of this article shall not apply to Lloyd's or reciprocals with respect to commercial property insurance, and the provisions of Sections 4, 5, 6, 7, and 8 of this article shall not apply to Lloyd's or reciprocals with respect to inland marine insurance, rain insurance, or hail insurance on farm crops. The provisions of Sections 4, 5, 6, and 7 of this article shall apply to county mutual insurance companies with respect to commercial automobile insurance.

(2) Strike items (23)-(25) of the amendment (page 10, lines 2-13) and substitute the following:

() Strike SECTIONS 4.02-4.03 of the bill (page 52, line 14, through page 53, line 21) and substitute the following:

SECTION 4.02. The heading of Article 5.13-2, Insurance Code, is amended to read as follows:

Art. 5.13-2. RATES AND FORMS FOR CERTAIN [~~GENERAL LIABILITY AND COMMERCIAL~~] PROPERTY AND CASUALTY INSURANCE [~~COVERAGE~~].

SECTION 4.03. Sections 1 and 2, Article 5.13-2, Insurance Code, are amended to read as follows:

Sec. 1. PURPOSE. This article governs the regulation of insurance described by Section 2 of this article [~~general liability, commercial property, which shall include farm and ranch owners and farm and ranch policies, all commercial casualty, and medical professional liability insurance rates and forms. It does not govern automobile, fidelity, surety, or guaranty bonds~~]. The purposes of this article are to:

(1) promote the public welfare by regulating insurance rates to prohibit excessive, inadequate, or unfairly discriminatory rates;

(2) promote availability of insurance;

(3) promote price competition among insurers to provide rates and premiums that are responsive to competitive market conditions;

(4) prohibit price-fixing agreements and other anticompetitive behavior by insurers;

(5) regulate the insurance forms used for lines of insurance subject to this article to ensure that they are not unjust, unfair, inequitable, misleading, or deceptive; and

(6) provide regulatory procedures for the maintenance of appropriate information reporting systems.

Sec. 2. SCOPE. (a) This article applies to all lines of the following insurance written under policies or contracts of insurance issued by an insurer authorized to engage in the business of insurance in this state:

(1) general liability insurance;

(2) residential and[7] commercial property insurance,

including farm and ranch insurance and farm and ranch owners insurance;

(3) personal and~~[,---all]~~ commercial casualty insurance, except as provided by Subsection (b) of this section;

(4) ~~[,and]~~ medical professional liability insurance;

(5) fidelity and surety bonds;

(6) personal umbrella insurance;

(7) personal liability insurance;

(8) guaranteed auto protection (GAP) insurance;

(9) involuntary unemployment insurance;

(10) financial guaranty insurance;

(11) inland marine insurance;

(12) rain insurance;

(13) hail insurance on farm crops; and

(14) personal and commercial automobile insurance ~~[written under policies or contracts of insurance issued by a licensed insurer, other than a fidelity, surety, or guaranty bond or an automobile insurance policy].~~

(b) The commissioner shall adopt rules governing the manner in which forms and rates for the various classifications of risks insured under inland marine insurance, as determined by the commissioner, are regulated.

(3) In item (26) of the amendment, strike amended Section 3(a)(3), Article 5.13-2, Insurance Code (page 11, lines 19-27) and substitute the following:

(2) ~~[(2)]~~ "Insurer" means an insurer to which Article 5.13 of this code applies, but does not include the Texas Windstorm Insurance Association or the Texas FAIR Plan Association, or the Texas Automobile Insurance Plan Association. All provisions of this article shall apply to Lloyd's plans, reciprocals and interinsurance exchanges, and county mutual insurance companies with respect to the lines of insurance described in Section 2 of this article, except that ~~[However,]~~ the provisions of Sections 4, 5, 6, and 7 of this article shall not apply to Lloyd's or reciprocals with respect to commercial property insurance, and the provisions of Sections 4, 5, 6, 7, and 8 of this article shall not apply to Lloyd's or reciprocals with respect to inland marine insurance, rain

insurance, or hail insurance on farm crops.

(4) Strike item (50) of the amendment (page 24, line 27 through page 25, line 7) and substitute the following:

() Strike SECTION 9.28 of the bill (page 84, line 9, through page 85, line 1) and substitute the following SECTIONS, appropriately numbered:

SECTION __. Article 5.52, Insurance Code, is amended to read as follows:

Art. 5.52. PROVISIONS GOVERNING LIGHTNING, WINDSTORM, HAIL, INVASION, RIOT, VANDALISM, STRIKES, LOCKOUTS AND OTHER INSURANCE; "EXPLOSION" DEFINED. (a) The writing of insurance against loss by lightning, tornado, windstorm, hail, smoke or smudge, cyclone, earthquake, volcanic eruption, rain, frost and freeze, weather or climatic conditions, excess or deficiency of moisture, flood, the rising of the waters of the ocean or its tributaries, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, strike or lockout, explosion, water or other fluid or substance, resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes or other conduits or containers, or resulting from casual water entering through leaks or openings in buildings, or by seepage through building walls, including insurance against accidental injury of such sprinklers, pumps, fire apparatus, conduits or containers, and the rates to be collected therefor in this State, and all matters pertaining to such insurance except as hereinafter set out as to [~~inland~~] marine insurance as defined by Article 5.53 of this code, [~~rain insurance and insurance against loss by hail on farm crops,~~] shall be governed and controlled by the provisions of Articles 5.25 to 5.48, inclusive, and also Articles 5.50 to 5.51, inclusive, of this subchapter and Article 5.67 of Subchapter D of this Chapter, in the same manner and to the same extent as fire insurance and fire insurance rates are now affected by the provisions of said articles of this code.

(b) Notwithstanding Subsection (a) of this section, rain

insurance and hail insurance on farm crops are governed by Article 5.13-2 of this code.

(c) The term "explosion" as used in this article [~~above~~] shall not include insurance against loss of or damage to any property of the insured, resulting from the explosion of or injury to (a) any boiler, heater, or other fired pressure vessel; (b) any unfired pressure vessel; (c) pipes or containers connected with any of said boilers or vessels; (d) any engine, turbine, compressor, pump, or wheel; (e) any apparatus generating, transmitting or using electricity; (f) any other machinery or apparatus connected with or operating by any of the previously named boilers, vessels or machines; nor shall same include the making of inspections and issuance of certificates of inspections upon any such boiler, apparatus or machinery, whether insured or otherwise. Said term shall include, but shall not be limited to (1) the explosion of pressure vessels (except steam boilers of more than fifteen pounds pressure) in buildings designed and used solely for residential purposes by not more than four (4) families; (2) explosion of any kind originating outside of the insured buildings or outside of the building containing the property insured; (3) explosion of pressure vessels which do not contain steam or which are not operated with steam coils or steam jets; (4) electric disturbance causing or concomitant with an explosion in public service or public utility property.

SECTION __. Article 5.53, Insurance Code, is amended to read as follows:

Art. 5.53. APPLICATION TO [~~INLAND~~] MARINE INSURANCE [~~, RAIN INSURANCE, OR HAIL INSURANCE ON FARM CROPS, DEFINITIONS, RATES AND RATING PLANS FILED, POLICY FORMS, CHECKING OFFICES~~]. The provisions of this article shall apply to all insurance which is now or hereafter defined by statute, by rules of the commissioner [~~ruling of the Board of Insurance Commissioners~~], or by lawful custom, as [~~inland~~] marine insurance [~~, rain insurance, or insurance against loss by hail on farm crops~~]. None of the terms contained in [~~this article and~~] Article 5.52 shall be deemed to include insurance of vessels or craft, their cargoes, marine builder's risk, marine protection and indemnity, or other risk commonly

insured under marine as distinguished from inland marine insurance policies.

The ~~[Whenever used in this article the]~~ term "Marine Insurance" shall mean and include insurance and reinsurance against any and all kinds of loss or damage to the following subject matters of insurance interest therein:

Marine Insurance. Hulls, vessels and craft of every kind, aids to navigation, dry docks and marine railways, including marine builders' and repairers' risks, and whether complete or in process of or awaiting construction; also all marine protection and indemnity risks; also all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests, and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit or transportation on or under any seas, lakes, rivers, or other waters or in the air, or on land in connection with or incident to export, import or waterborne risks, or while being assembled, packed, crated, baled, compressed or similarly prepared for such shipment or while awaiting the same, or during any delays, storage, transshipment or reshipment incident thereto, including the insurance of war risks in respect to any or all of the aforesaid subject matters of insurance.

~~[(a) As to all classes of insurance contained in this article, for which class rates or rating plans are customarily fixed by rating bureaus or associations of underwriters, rates or rating plans, together with applicable policy forms and endorsements, shall be filed by all authorized insurers writing such classes with the Board in such manner and form as it shall direct, and all rates on risks not falling within a recognized class fixed by any such bureau or association, together with applicable policy forms and endorsements, shall be similarly filed. Due consideration shall be given to past and prospective loss experience within and outside the State, including catastrophe hazard, to a reasonable margin for profit and contingencies, and to all other relevant factors within and outside the State.]~~

~~[(b) As soon as reasonably possible after the filing has been made, the Board shall in writing approve or disapprove the same, provided that any filing of class rates or rating plans, together with applicable policies and endorsements, shall be deemed approved unless disapproved within thirty (30) days, provided the Board may by official order postpone action for such further time not exceeding thirty (30) days, as it deems necessary for proper consideration, and provided further that rates on risks not falling within a recognized class fixed by a rating bureau or association of underwriters, together with applicable policies and endorsements, shall be deemed approved from the date of filing to the date of formal approval or disapproval. The Board may investigate rates not required to be filed under the provisions of this article and may require the filing of any particular rate, together with applicable policies and endorsements, not otherwise required to be filed.]~~

~~[(c) Any filing by an insurer of a rate less than an approved rate relative to any of the rates mentioned in sub-division (a) of this article may be used by such insurer after same shall have been approved by the Board, or after same shall have been on file with the Board without action for thirty (30) days.]~~

~~[(d) If at any time the Board finds that an approved filing no longer meets the requirements of this article, it may after hearing issue an order withdrawing its approval thereof.]~~

~~[(e) An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the Board to accept such filings on its behalf. A corporation, an un-incorporated association, a partnership, or an individual, whether located within or outside the State, may be licensed as a rating organization in connection with any of the sorts of insurance mentioned in this article, subject to the conditions, not inconsistent herewith, prescribed by law for such organizations in connection with other kinds of insurance, provided two or more insurers have designated it to act for them as to any such class or classes of insurance in the manner prescribed herein. An insurer may belong or subscribe to rating bureaus or associations for other~~

~~types of insurance.~~

~~[(f) Insurers may, subject to the supervision of the Board, operate any checking office or offices deemed necessary or advisable.~~

~~[(g) The writing of inland marine insurance, rain insurance and insurance against loss by hail on farm crops, shall be governed by the provisions of Articles 5.25 to 5.48, inclusive, and also Articles 5.50 to 5.51, inclusive, of this subchapter and Article 5.67 of Subchapter D. of this chapter, in the same manner and to the same extent as fire insurance and fire insurance rates are now affected by the provisions of said articles, except that wherever in any of said articles reference is made to making, fixing, prescribing, determination or promulgation by the Board of rates or policy forms or endorsements, the provisions of this article shall control. Notwithstanding any other provision of this subchapter, the flexible rating program created under Subchapter M of this chapter does not apply to this article.~~

~~[(h)] The provisions of Chapter 5 of this code, other than this article, shall not apply to marine insurance as defined [~~other than inland marine insurance governed~~] by this article.~~

SECTION __. Section 1(a), Article 5.53-A, Insurance Code, is amended to read as follows:

(a) Any company licensed to engage in the business of fire insurance and its allied lines, or inland marine insurance, or both, is authorized to write home warranty insurance or home protection insurance in this state.

(5) Insert the following new items, appropriately numbered:

() Following existing SECTION 9.29 of the bill (page 85, between lines 9 and 10), insert the following new SECTIONS, appropriately numbered:

SECTION __. Subsections (a), (b), (c), (d), (f), (g), (h), (i), (j), (k), (l), and (m), Article 5.97, Insurance Code, are amended to read as follows:

(a) The department [~~State Board of Insurance~~] may take action on filings for standard and uniform rates, rating plans, manual rules, classification plans, statistical plans, and policy and endorsement forms, or any modification of any of these for the

lines of insurance regulated in Subchapter B, Chapter 5, of this code [~~and for the regulated lines of insurance in Article 5.53 and Article 5.53-A of this code~~] under the procedure specified in this article.

(b) Any interested person may initiate proceedings before the commissioner [~~board~~] with respect to any matter specified in Section (a) of this article by filing a petition with the department [~~State Board of Insurance~~] that includes the following:

(1) specific identification of the matter that is proposed to be adopted, approved, amended, or repealed;

(2) the wording of the matter proposed to be adopted, approved, amended, or repealed; and

(3) justification for the proposed action in sufficient particularity to inform the commissioner [~~board~~] and any interested person of the petitioner's reasons and arguments.

(c) A copy of each petition initiating a proceeding shall be marked with the date it was received by the department [~~State Board of Insurance~~] and shall be made available for public inspection at the office of the chief clerk of the department [~~board~~] throughout the period the petition is pending. Except for emergency matters acted on under Section (j) of this article, the commissioner [~~board~~] may not act on a petition until it has been available for public inspection for at least 15 days after the date of filing and notice has been given in accordance with this section. Not later than the 10th day before the date the commissioner [~~board~~] takes action on any rule, rating plan, classification plan, statistical plan, or policy or endorsement form under this article, the department [~~board~~] shall publish in the Texas Register [~~a notice of the meeting or hearing at which the action will be taken. The notice must include~~] a brief summary of the substance of the proposed rule, rating plan, classification plan, statistical plan, or policy or endorsement form, and a statement that the full text of the rule, rating plan, classification plan, statistical plan, or policy or endorsement form is available for review in the office of the chief clerk of the department [~~State Board of Insurance~~].

(d) Any interested person may request [~~the board to hold~~] a hearing before the commissioner [~~it~~] acts on a pending petition.

Except as provided by Article 5.97A of this code, the commissioner [~~board~~] has discretion whether or not to hold such a hearing.

(f) The commissioner may [~~board shall~~] hold a hearing to consider the proposal or may [~~shall~~] enter an order implementing or denying the proposal. If the commissioner [~~board~~] denies a proposal, the commissioner [~~it~~] shall specify the reasons for the denial in the commissioner's [~~its~~] order.

(g) On its own motion, the department [~~board~~] may initiate a proceeding with respect to any matter specified in Section (a) of this article.

(h) If a hearing is scheduled to consider a proposal, the department [~~board~~] shall publish notice in the Texas Register not less than 10 days before the hearing and shall state the time, place, and legal authority for the hearing and the matters to be considered.

(i) After entering an order with respect to any matter specified in Section (a) of this article, the department [~~board~~] shall file a notice of the commissioner's [~~its~~] action for publication in the adopted rule section of the Texas Register. In addition, before the effective date of the action, the department [~~board~~] shall cause notice of the order to be mailed to the applicant, to all insurers writing the affected line of insurance in this state, and to all other persons who have made timely written request for notification. Failure to mail this notice will not invalidate any action taken.

(j) The commissioner's [~~board's~~] action takes effect 15 days after the date that notice of the action is published in the Texas Register or on a later specified date. If the commissioner [~~board~~] finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law requires the commissioner's [~~its~~] action to be effective before the end of the 15-day period, the commissioner [~~it~~] may take emergency action to be effective at an earlier time. The commissioner's [~~board's~~] action on an emergency matter may be effective for 120 days, and renewable once for a period not exceeding 60 days immediately following the 120-day period. The permanent adoption of an identical change is not precluded.

(k) Any person aggrieved by an order of the commissioner [~~board~~] is entitled to redress as provided by [~~Article 5.15,~~] Article 5.23[~~, Article 5.53, or Article 5.53-A~~] of this code[~~, whichever is applicable to the line of insurance addressed in the order~~].

(l) Chapters 2001 and 2002, Government Code, do [~~The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), does~~] not apply to commissioner or department [~~board~~] action taken under this article.

(m) The department [~~board~~] or the office of public insurance counsel may require that a person who has filed a petition under Subsection (b) of this article or who has otherwise presented materials to the department [~~board~~] in connection with a proceeding under this article provide additional information to the department [~~board~~] or office, including any statistical, actuarial, or other information on which the petition or other materials were based.

SECTION __. Subsection (c), Article 21.28-E, Insurance Code, is amended to read as follows:

(c) The provisions of this article shall not apply to marine insurance as defined [~~other than inland marine insurance governed~~] by Article 5.53.

SECTION __. Sections 4(b)(4) and (5), Article 21.49-3, Insurance Code, are amended to read as follows:

(4) After the initial year of operation, rates, rating plans, and rating rules, and any provision for recoupment should be based upon the association's loss and expense experience, together with such other information based upon such experience as the department [~~board~~] may deem appropriate. The resultant premium rates shall be on an actuarially sound basis and shall be calculated to be self-supporting.

(5) In the event that sufficient funds are not available for the sound financial operation of the association, in addition to assessments paid pursuant to the plan of operation in accordance with Section 3(c)(2) of this article and contributions from the policyholder's stabilization reserve fund, all members shall, on a basis authorized by the department [~~board~~], as long as the department [~~board~~] deems it necessary, contribute to the

financial requirements of the association in the manner provided for in Section 5. Any assessment or contribution shall be reimbursed to the members with interest at a rate to be approved by the department [~~board~~]. Pending recoupment or reimbursement of assessments or contributions paid to the association by a member, the unrepaid balance of such assessments and contributions may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements pursuant to Section 862.001 [~~Article 6.12~~] of this code.

SECTION __. Section 5(a), Article 21.55, Insurance Code, is amended to read as follows:

- (a) This article does not apply to:
- (1) workers' compensation insurance;
 - (2) mortgage guaranty insurance;
 - (3) title insurance;
 - (4) fidelity, surety, or guaranty bonds;
 - (5) marine insurance as defined [~~other than inland marine insurance governed~~] by Article 5.53 of this code; or
 - (6) a guaranty association created and operating under Article 9.48 of this code.

SECTION __. Article 21.56(e), Insurance Code, is amended to read as follows:

(e) The provisions of this article shall not apply to marine insurance as defined [~~other than inland marine insurance governed~~] by Article 5.53 of this code.

() Following existing SECTION 9.30 of the bill (page 85, between lines 15 and 16), insert the following new SECTION, appropriately numbered:

SECTION __. Article 21.79E, Insurance Code, is amended to read as follows:

Art. 21.79E. CREDIT INVOLUNTARY UNEMPLOYMENT INSURANCE. Any insurer authorized to write any form of casualty insurance in this state shall also be authorized to write group or individual credit involuntary unemployment insurance indemnifying a debtor for installment or other periodic payments on the indebtedness while the debtor is involuntarily unemployed, including policy forms and

endorsements which define involuntary unemployment to provide coverage and a premium charge for interruption or reduction of a debtor's income during periods of leave (paid or otherwise) authorized by the Federal Family and Medical Leave Act of 1993 (29 U.S.C. Section 2601 et seq.), as amended, or other state or federal laws. Such insurance may be written alone or in conjunction with credit life insurance, credit accident and health insurance, or both, in policies issued by any authorized insurer, but not in contravention of the Texas Free Enterprise and Antitrust Act of 1983 (Chapter 15, Business & Commerce Code). Rates and forms for such insurance may be made and filed in accordance with Article 5.13-2 [~~Articles 5.14 and 5.15~~] of this code.

(6) In item (58) of the amendment, in amended SECTION 9.57 of the bill, in Subdivision (4) (page 28, line 6), after the semicolon, strike "and".

(7) In item (58) of the amendment, in amended SECTION 9.57 of the bill, in Subdivision (5), between "1995" and the period (page 28, line 10), insert:

;

(6) Articles 5.14, 5.15, and 5.15B, Insurance Code;

(7) Article 5.97(e), Insurance Code; and

(8) Section 4(b)(2), Article 21.49-3, Insurance Code

(8) Insert the following new item to the amendment:

() Renumber SECTIONS of Article 9 of the bill accordingly.

(9) Renumber items of the amendment accordingly.