

By: Seaman

H.B. No. 97

A BILL TO BE ENTITLED

AN ACT

1
2 relating to policy forms for certain residential property insurance
3 policies.

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

5 SECTION 1. Article 5.35, Insurance Code, is amended to read
6 as follows:

7 Art. 5.35. POLICY FORMS. (a) Notwithstanding any other
8 law, this article applies to a farm mutual insurance company or a
9 reciprocal or interinsurance exchange.

10 (b) The commissioner may ~~[shall]~~ adopt policy forms and
11 endorsements for each kind of insurance subject to this subchapter
12 other than a line regulated under Article 5.13-2 of this code that
13 may be used by an insurer ~~[without filing for approval to use such~~
14 ~~forms]~~.

15 ~~[(b) The commissioner may also adopt policy forms and~~
16 ~~endorsements of national insurers or policy forms and endorsements~~
17 ~~adopted by a national organization of insurance companies or~~
18 ~~similar organization on policy forms and endorsements. Policy~~
19 ~~forms and endorsements may be adopted under this subsection for~~
20 ~~each kind of insurance subject to this subchapter other than a line~~
21 ~~regulated under Article 5.13-2 of this code on the request of an~~
22 ~~insurer. For purposes of this subsection, "national insurer" means~~
23 ~~an insurer subject to this article that, either directly or~~
24 ~~together with its affiliates as part of an insurance holding~~

1 ~~company system as those terms are defined by Article 21.49-1 of this~~
2 ~~code, is licensed to do business and write the kinds of insurance~~
3 ~~that are subject to this subchapter in 26 or more states and~~
4 ~~maintains minimum annual direct written premiums for residential~~
5 ~~property insurance of \$750 million in the aggregate for all~~
6 ~~states.]~~

7 (c) An insurer may use ~~[The commissioner may approve the use~~
8 ~~of]~~ policy forms and endorsements other than those adopted under
9 Subsection (b) of this article ~~[adopted by a national organization~~
10 ~~of insurance companies or a similar organization,]~~ if the ~~[such]~~
11 forms or endorsements are filed with ~~[and are approved by]~~ the
12 department ~~[commissioner]~~ in accordance with this article.

13 (d) An insurer shall:

14 (1) make available to consumers detailed descriptions
15 of each policy form subject to this article that is offered by the
16 insurer, including side-by-side comparisons of each policy form
17 offered by the insurer; and

18 (2) notify the commissioner of the insurer's intent to
19 use or discontinue use of a form or endorsement adopted or filed
20 under this article not later than the 60th day before the date the
21 insurer uses or discontinues use of the form or endorsement. ~~[An~~
22 ~~insurer may use an endorsement to the policy forms adopted or~~
23 ~~approved by the commissioner under this article if the endorsement~~
24 ~~is approved by the commissioner pursuant to this article.]~~

25 (e) At least once during each state fiscal year, the
26 department, in cooperation with the office of public insurance
27 counsel, shall publish a consumer information booklet that explains

1 and outlines the differences among the policy forms and
2 endorsements subject to the article that are offered by insurers
3 and provide the booklet to consumers free of charge. The department
4 shall maintain similar information on the department's website and
5 update the information as necessary. [Unless adopted or approved by
6 the commissioner pursuant to Subsection (a), (b), or (c) of this
7 article or, in the case of an endorsement, under Subsection (d) of
8 this article, an insurance policy or endorsement for use in writing
9 the types of insurance subject to this article may not be delivered
10 or issued for delivery in this state.]

11 (f) Each filing pursuant to Subsection (c) [~~or (d)~~] of this
12 article shall be made not later than the 60th day before the date of
13 any use or delivery for use. [~~At the expiration of the 60-day~~
14 ~~period, a filed form or endorsement is approved unless before the~~
15 ~~expiration of the 60 days the commissioner either disapproves the~~
16 ~~form or endorsement by order or approves the form or endorsement.~~
17 ~~Approval of a form or endorsement by the commissioner constitutes a~~
18 ~~waiver of any unexpired portion of the 60-day period. The~~
19 ~~commissioner may extend, by not more than an additional 30 days, the~~
20 ~~period during which the commissioner may approve or disapprove a~~
21 ~~form or endorsement by giving notice to the filer of the extension~~
22 ~~before the expiration of the initial period. At the expiration of~~
23 ~~any extension and in the absence of any earlier approval or~~
24 ~~disapproval, the form or endorsement shall be considered approved.~~
25 ~~For good cause shown, the commissioner may withdraw the~~
26 ~~commissioner's approval at any time after notice and hearing.]~~

27 (g) [~~(1)~~] The commissioner may order an insurer to withdraw

1 a policy form or endorsement filed under Subsection (c) of
2 ~~[disapprove a policy form or endorsement filed under]~~ this article
3 ~~[, or withdraw any previous approval thereof,]~~ if the policy form or
4 endorsement:

5 (1) ~~[(A)]~~ violates or does not comply with this code,
6 or any valid rule relating thereto duly adopted by the
7 commissioner, or is otherwise contrary to law; or

8 (2) ~~[(B)]~~ contains provisions or has any titles or
9 headings which are unjust, unfairly discriminate, encourage
10 misrepresentation, are deceptive, or violate public policy.

11 (h) ~~[(2)]~~ The commissioner's order to withdraw a policy
12 ~~[disapproving any]~~ form or endorsement or any notice of the
13 commissioner's intention to issue an order to withdraw a policy
14 form or endorsement ~~[withdraw a previous approval]~~ must state the
15 grounds for ordering the withdrawal ~~[disapproval]~~ in enough detail
16 to reasonably inform the filer of the grounds. An order to withdraw
17 a policy ~~[of withdrawal of a previously filed]~~ form or endorsement
18 takes effect on the effective date of the order ~~[expiration of the~~
19 ~~prescribed period but not sooner than the 60th day after the~~
20 ~~effective date of the withdrawal order, as prescribed by the~~
21 ~~commissioner]~~.

22 (i) ~~[(h)]~~ The commissioner may not adopt and may order the
23 withdrawal of a ~~[or approve]~~ policy form ~~[forms]~~ for personal fire
24 or homeowner's insurance or any endorsement to the policy if the
25 policy or endorsement is not in plain language. For the purposes of
26 this subsection, a policy or endorsement is written in plain
27 language if it achieves the minimum score established by the

1 commissioner on the Flesch reading ease test or an equivalent test
2 selected by the commissioner or, at the option of the commissioner,
3 if it conforms to the language requirements in a National
4 Association of Insurance Commissioners model act relating to plain
5 language. This subsection does not apply to policy language that is
6 mandated by state or federal law.

7 ~~(j) [(i) An insurer may not use in this state any form or
8 endorsement after disapproval of the form or endorsement or
9 withdrawal of approval by the commissioner.~~

10 [(j)] Notwithstanding Article 1.35A of this code, the
11 office of public insurance counsel may submit written comments to
12 the commissioner and otherwise participate regarding individual
13 company filings made pursuant to this article.

14 (k) In addition to any other remedy available under law, the
15 commissioner shall order an insurer to pay restitution to the
16 holder of a policy or endorsement used in violation of this article.

17 (l) At the request of the commissioner, an insurer shall
18 provide to the department any information, including information
19 relating to the insurer's underwriting practices, that the
20 commissioner considers necessary to implement this article.
21 Underwriting guidelines obtained under this section are subject to
22 Section 38.002 of this code.

23 (m) The commissioner may adopt rules as necessary to
24 implement this article.

25 SECTION 2. Section 1, Article 5.25-2, Insurance Code, is
26 amended to read as follows:

27 Sec. 1. In this article: [7]

1 (1) "List" [~~"list"~~] means the list of fire and
2 lightning losses in excess of \$100 paid under policy forms adopted
3 or used [~~approved by the board~~] under Article 5.35 of this
4 subchapter in a particular city or town prepared by the Department
5 [~~State Board~~] of Insurance for distribution to the city or town. [~~+~~]

6 (2) "Board" [~~"board"~~] means the Department [~~State~~
7 ~~Board~~] of Insurance.

8 SECTION 3. Article 5.35-1, Insurance Code, is amended to
9 read as follows:

10 Art. 5.35-1. COVERAGES FOR SPOUSES AND FORMER SPOUSES. A
11 homeowner's policy or fire policy adopted or used [~~promulgated~~]
12 under Article 5.35 of this code may not be delivered, issued for
13 delivery, or renewed in this state unless the policy contains the
14 following language: "It is understood and agreed that this policy,
15 subject to all other terms and conditions contained in this policy,
16 when covering residential community property, as defined by state
17 law, shall remain in full force and effect as to the interest of
18 each spouse covered, irrespective of divorce or change of ownership
19 between the spouses unless excluded by endorsement attached to this
20 policy until the expiration of the policy or until canceled in
21 accordance with the terms and conditions of this policy."

22 SECTION 4. Section 912.152(b), Insurance Code, as effective
23 June 1, 2003, is amended to read as follows:

24 (b) The commissioner, in accordance with Article 5.35, may
25 adopt for use by county mutual insurance companies uniform policy
26 forms that differ from the forms adopted for [~~use by~~] other
27 companies [~~and shall prescribe the conditions under which a county~~

1 ~~mutual insurance company.~~

2 ~~[(1) may use the policy forms adopted under this~~
3 ~~subsection; or~~

4 ~~[(2) shall use the policy forms adopted for other~~
5 ~~companies].~~

6 SECTION 5. This Act applies only to a policy delivered,
7 issued for delivery, or renewed on or after the 60th day after the
8 effective date of this Act. A policy delivered, issued for
9 delivery, or renewed before the 60th day after the effective date of
10 this Act is governed by the law in effect immediately before the
11 effective date of this Act, and that law is continued in effect for
12 that purpose.

13 SECTION 6. This Act takes effect immediately if it receives
14 a vote of two-thirds of all the members elected to each house, as
15 provided by Section 39, Article III, Texas Constitution. If this
16 Act does not receive the vote necessary for immediate effect, this
17 Act takes effect September 1, 2003.