

By: Seaman

H.B. No. 100

A BILL TO BE ENTITLED

AN ACT

relating to premium rates for certain lines of residential property and casualty insurance coverage.

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

SECTION 1. Subchapter M, Chapter 5, Insurance Code, is amended by adding Article 5.103 to read as follows:

Art. 5.103. PREMIUM RATES FOR CERTAIN RESIDENTIAL PROPERTY AND CASUALTY INSURANCE COVERAGE

Sec. 1. DEFINITIONS. In this article:

(1) "Benchmark rate" means the rate set annually by the commissioner, relative to which the flexibility bands and statutory rate limitations apply.

(2) "Classification" means the process of grouping risks with similar characteristics to recognize differences in costs.

(3) "Flexibility band" means the range of rates from 30 percent below to 30 percent above, inclusive, the benchmark rates approved or set by the commissioner by line, within which an insurer subject to rate regulation, during a set period, may increase or decrease rate levels by classification without prior approval by the commissioner.

(4) "Insurer" means a property and casualty insurer authorized to write homeowners insurance and residential fire and allied lines insurance in this state. The term includes:

1           (A) a Lloyd's plan, a county mutual insurance  
2 company, and a reciprocal or interinsurance exchange; and

3           (B) the affiliate of an insurer described by this  
4 subsection, as described by Section 823.003 of this code.

5           (5) "Residential property and casualty insurance"  
6 means homeowners insurance and residential fire and allied lines  
7 insurance.

8           Sec. 2. INITIAL DETERMINATION OF MARKET CONDITIONS;

9 HEARING. (a) The department shall conduct a public hearing to  
10 determine whether a noncompetitive residential property and  
11 casualty insurance market exists in this state. At the hearing, the  
12 department shall accept written and oral testimony from any  
13 interested party regarding market conditions. Based on the  
14 information obtained from the hearing, the commissioner shall  
15 determine whether a reasonable degree of competition exists in the  
16 market in this state as of the date of the hearing.

17           (b) The commissioner shall consider the following factors  
18 in determining whether a reasonable degree of competition exists in  
19 the residential property and casualty insurance market:

20           (1) the number of insurers or groups of affiliated  
21 insurers providing coverage in the market;

22           (2) measures of market concentration and changes in  
23 market concentration over time;

24           (3) the ease of an insurer's entry into the market and  
25 the existence of financial or economic barriers that could prevent  
26 new insurers from entering the market;

27           (4) the extent to which any one insurer or group of

1 affiliated insurers controls all or part of the market;

2 (5) whether the total number of insurers writing  
3 residential property and casualty insurance in this state is  
4 sufficient to provide multiple alternatives to consumers;

5 (6) whether insurers are offering a variety of  
6 residential property and casualty insurance products to consumers;

7 (7) the availability of residential property and  
8 casualty insurance coverage to consumers in the market; and

9 (8) the opportunities available to consumers in the  
10 market to acquire price information and other consumer information.

11 Sec. 3. FINDING OF NONCOMPETITIVE MARKET. (a) If the  
12 commissioner determines under Section 2 of this article that a  
13 reasonable degree of competition does not exist in the residential  
14 property and casualty insurance market in this state, the  
15 commissioner shall issue an initial order to that effect.

16 (b) The initial order expires on the first anniversary of  
17 the effective date of the order unless the commissioner:

18 (1) rescinds the order before the first anniversary;

19 or

20 (2) renews the order after a public hearing and a  
21 determination by the commissioner as to the continued lack of a  
22 reasonable degree of competition.

23 (c) After the expiration of an initial order issued under  
24 Subsection (a) of this section that is not renewed, the  
25 commissioner may issue a subsequent order if, after a hearing  
26 conducted in accordance with Section 2 of this article, the  
27 commissioner determines that the factors described by Section 2 of

1 this article have reoccurred.

2 (d) The commissioner shall identify, in an order issued  
3 under Subsection (a), (b)(2), or (c) of this section, the factors on  
4 which the determination is based.

5 (e) A competitive market is presumed to exist if the  
6 commissioner does not renew the initial order.

7 Sec. 4. DETERMINATION OF MARKET SHARE. If the commissioner  
8 issues an order finding that a reasonable degree of competition  
9 does not exist, the department shall determine the residential  
10 property and casualty insurance market share in this state of each  
11 insurer not later than the 30th day after the effective date of the  
12 order.

13 Sec. 5. RATE REGULATION FOR INSURERS WITH MORE THAN 10  
14 PERCENT OF MARKET. (a) Except as provided by Section 7 of this  
15 article, premium rates for residential property and casualty  
16 insurance products for an insurer with a market share in this state  
17 of more than 10 percent are regulated as provided by this section.

18 (b) An insurer subject to this section shall file with the  
19 department, not later than the 30th day after the effective date of  
20 the department's determination under Section 4 of this article, the  
21 insurer's premium rates as of the effective date of the  
22 determination for each residential property and casualty insurance  
23 product offered by the insurer, accompanied by the insurer's  
24 proposed rates, rating manuals, supplementary rating information,  
25 and other supporting information used by the insurer to determine  
26 the rate for each residential property and casualty insurance  
27 product.

1       (c) The commissioner shall provide written notice to the  
2 insurer not later than the 15th day after the date of receipt of the  
3 rate information filing. The rate filing shall be considered in  
4 compliance with this article unless the commissioner informs the  
5 insurer after receipt of the filing as to what supplementary rate  
6 information or supporting information is required to complete the  
7 filing.

8       (d) The commissioner shall review the filing not later than  
9 the 60th day after the date on which the filing is complete. The  
10 commissioner may not reject the filing unless the commissioner  
11 determines that the rates are excessive, inadequate, unfairly  
12 discriminatory, or unreasonable or violate this code and specifies  
13 the reasons for the rejection. If the commissioner does not take  
14 action within the 60-day period, the filed rates are adopted and  
15 presumed reasonable.

16       (e) After rates are adopted under Subsection (d) of this  
17 section, an insurer subject to this section may change its rate for  
18 a residential property and casualty insurance product without  
19 additional approval from the department if the new rate is within a  
20 flexibility band of 30 percent below to 30 percent above the rate  
21 approved by the commissioner under Subsection (d) of this section.  
22 The insurer's rate is not subject to further action or approval by  
23 the commissioner unless the insurer files a rate outside the  
24 flexibility band described by this subsection.

25       (f) If the commissioner rejects a rate filing made by an  
26 insurer for any of the reasons stated in Subsection (d) of this  
27 section, the commissioner shall schedule a public hearing not later

1 than the 30th day after the effective date of the rejection to  
2 determine a benchmark rate for that insurer. The department shall  
3 notify the insurer in writing of the rejection and the reasons for  
4 the rejection. The rejection notice must state the time and place  
5 for the public hearing. At the hearing under this subsection, the  
6 commissioner shall hear testimony from the insurer and other  
7 interested parties, including the office of public insurance  
8 counsel, regarding the appropriate benchmark rate and may accept  
9 supporting information from any party. Not later than the 30th day  
10 after the date of the public hearing, the commissioner shall  
11 determine the benchmark rate.

12 (g) In determining the benchmark rate under Subsection (f)  
13 of this section, the commissioner shall use the procedures adopted  
14 under Section 3, Article 5.101, of this code for promulgating a  
15 benchmark rate.

16 (h) After a benchmark rate is adopted under Subsection (g)  
17 of this section, the insurer may change its rates for a residential  
18 property and casualty insurance product without additional  
19 approval from the department if the new rate is within a flexibility  
20 band of 30 percent below to 30 percent above the benchmark rate.  
21 The insurer's rates are not subject to further action or approval  
22 by the commissioner unless the insurer files rates outside the  
23 flexibility band described by this subsection.

24 Sec. 6. INSURERS WITH 10 PERCENT OR LESS OF MARKET. Premium  
25 rates for residential property and casualty insurance products for  
26 insurers with a market share of 10 percent or less are not  
27 rate-regulated.

1       Sec. 7. FINDING OF COMPETITIVE MARKET. (a) If the  
2 commissioner determines that the residential property and casualty  
3 insurance market in this state is competitive or if the effective  
4 period of a previous order of a noncompetitive market expires  
5 without renewal, the premium rates for residential property and  
6 casualty insurance products for insurers writing those lines in  
7 this state are not rate-regulated.

8       (b) After a market has been determined to be competitive  
9 under this article, the commissioner may determine that a  
10 reasonable degree of competition does not exist in the residential  
11 property and casualty insurance market in this state and issue an  
12 order to that effect. The determination must be made in accordance  
13 with Section 2 of this article and the order must be issued in the  
14 manner described by Section 3 of this article.

15       Sec. 8. REVIEW BY COMMISSIONER OF NON-RATE-REGULATED  
16 INSURERS. (a) As provided by Subsection (b) of this section, the  
17 commissioner may review information regarding the residential  
18 property and casualty insurance rates of an insurer that, under  
19 Section 6 or 7 of this article, are not subject to rate regulation.

20       (b) The commissioner may review rating manuals,  
21 supplementary rating information, and other supporting information  
22 used by the insurer to determine the premium rate for each  
23 residential property and casualty insurance product if the  
24 department:

25       (1) receives a substantial number of consumer  
26 complaints, as determined by the commissioner, about an insurer's  
27 prices or practices; or

1           (2) otherwise reasonably determines that the rates may  
2 be inadequate or unfairly discriminatory.

3           Sec. 9. RULES. The commissioner shall adopt rules as  
4 necessary to implement this article.

5           SECTION 2. Article 5.01(f), Insurance Code, is amended to  
6 read as follows:

7           (f) Notwithstanding Subsections (a) through (d) of this  
8 article, [~~on and after March 1, 1992,~~] rates for motor vehicle  
9 insurance in this state are determined as provided by the flexible  
10 rating program adopted under Article 5.101 [~~Subchapter M~~] of this  
11 chapter.

12           SECTION 3. Article 5.01-2(b), Insurance Code, is amended to  
13 read as follows:

14           (b) Rates [~~On and after March 1, 1992, rates~~] for motor  
15 vehicle insurance written by a Lloyd's plan insurer or a reciprocal  
16 or interinsurance exchange are determined as provided by the  
17 flexible rating program adopted under Article 5.101 [~~Subchapter M~~]  
18 of this chapter.

19           SECTION 4. Section 3(c), Article 5.01-4, Insurance Code, is  
20 amended to read as follows:

21           (c) Premium rates used by an insurer under the mile-based  
22 rating plan adopted under this article are exempt from other rate  
23 regulation under this subchapter and the rating system [~~benchmark~~  
24 ~~rates~~] established under Article 5.101 [~~Subchapter M~~] of this  
25 chapter.

26           SECTION 5. Article 5.53(g), Insurance Code, is amended to  
27 read as follows:



1 (g) The writing of inland marine insurance, rain insurance  
2 and insurance against loss by hail on farm crops, shall be governed  
3 by the provisions of Articles 5.25 to 5.48, inclusive, and also  
4 Articles 5.50 to 5.51, inclusive, of this subchapter and Article  
5 5.67 of Subchapter D~~[-]~~ of this chapter, in the same manner and to  
6 the same extent as fire insurance and fire insurance rates are now  
7 affected by the provisions of said articles, except that wherever  
8 in any of said articles reference is made to making, fixing,  
9 prescribing, determination or promulgation by the Board of rates or  
10 policy forms or endorsements, the provisions of this article shall  
11 control. Notwithstanding any other provision of this subchapter,  
12 the flexible rating programs [~~program~~] created under Subchapter M  
13 of this chapter do [~~does~~] not apply to this article.

14 SECTION 6. Article 5.96(a-1), Insurance Code, is amended to  
15 read as follows:

16 (a-1) This [~~Except as provided by Section 5(d), Article~~  
17 ~~5.101, of this code, this~~] article does not apply to the setting of  
18 benchmark rates for motor vehicle insurance and fire and allied  
19 lines insurance under Subchapter M of this chapter.

20 SECTION 7. Section 1(c), Article 5.101, Insurance Code, is  
21 amended to read as follows:

22 (c) Notwithstanding Subsection (a) of this section, this  
23 article does not apply to premium rates for:

24 (1) motor vehicle insurance computed using a  
25 mile-based rating plan under Article 5.01-4 of this code; or

26 (2) residential property and casualty insurance  
27 computed under Article 5.103 of this code.

1 SECTION 8. Section 40.003(c), Insurance Code, is amended to  
2 read as follows:

3 (c) This chapter does not apply to:

4 (1) a proceeding conducted under Article 1.04D;

5 (2) ~~[or to]~~ a proceeding relating to:

6 (A) ~~[(1)]~~ approving or reviewing rates or rating  
7 manuals filed by an individual company, unless the rates or manuals  
8 are contested;

9 (B) ~~[(2)]~~ adopting a rule;

10 (C) ~~[(3)]~~ adopting or approving a policy form or  
11 policy form endorsement;

12 (D) ~~[(4)]~~ adopting or approving a plan of  
13 operation for an organization subject to the jurisdiction of the  
14 department; or

15 (E) ~~[(5)]~~ adopting a presumptive rate under  
16 Article 3.53; or

17 (3) an action governed by Article 5.103.

18 SECTION 9. Section 40.061, Insurance Code, is amended to  
19 read as follows:

20 Sec. 40.061. FLEXIBLE RATING PROGRAMS ~~[PROGRAM]~~.

21 (a) Notwithstanding Sections 40.051-40.060, hearings for  
22 benchmark rates for all lines of insurance subject to Article 5.101  
23 ~~[of this code]~~ are conducted as provided by Section 3(d) of that  
24 article.

25 (b) Notwithstanding Sections 40.051-40.060, hearings for  
26 benchmark rates for insurance subject to Article 5.103 are  
27 conducted as provided by that article.

1 SECTION 10. Section 912.002, Insurance Code, as effective  
2 June 1, 2003, is amended to read as follows:

3 Sec. 912.002. LIMITED EXEMPTION FROM INSURANCE LAWS;  
4 APPLICABILITY OF CERTAIN LAWS. (a) A county mutual insurance  
5 company is exempt from the operation of all insurance laws of this  
6 state, including ~~[the flexible rating program under]~~ Article 5.101,  
7 except laws that are made applicable by their specific terms or  
8 except as specifically provided by this chapter.

9 (b) A county mutual insurance company is subject to:

10 (1) Sections 38.001 and 822.204; and

11 (2) Articles 1.15, 1.15A, 1.16, 2.10, 4.10, 5.12,  
12 5.37, 5.38, 5.39, 5.40, 5.49, 5.103, 21.21, and 21.49.

13 SECTION 11. Section 941.003(c), Insurance Code, as  
14 effective June 1, 2003, is amended to read as follows:

15 (c) Article 5.101 ~~[Subchapter M, Chapter 5,]~~ applies to  
16 rates for motor vehicle insurance written by a Lloyd's plan.  
17 Article 5.103 applies to rates for homeowners insurance and  
18 residential fire and allied lines insurance written by a Lloyd's  
19 plan.

20 SECTION 12. Section 942.003(c), Insurance Code, as  
21 effective June 1, 2003, is amended to read as follows:

22 (c) Article 5.101 ~~[Subchapter M, Chapter 5,]~~ applies to the  
23 rates for motor vehicle insurance written by an exchange. Article  
24 5.103 applies to rates for homeowners insurance and residential  
25 fire and allied lines insurance written by an exchange.

26 SECTION 13. (a) The Texas Department of Insurance shall  
27 conduct the public hearing required under Section 2(a), Article

1 5.103, Insurance Code, as added by this Act, not later than the  
2 120th day after the effective date of this Act.

3 (b) The commissioner of insurance shall adopt rules as  
4 required under Article 5.103, Insurance Code, as added by this Act,  
5 not later than the 90th day after the effective date of this Act.

6 (c) Article 5.103, Insurance Code, as added by this Act,  
7 applies only to the rate applicable to a policy of homeowners  
8 insurance or residential fire and allied lines insurance that is  
9 delivered, issued for delivery, or renewed on or after the 150th day  
10 after the effective date of this Act. The rate applicable to a  
11 policy delivered, issued for delivery, or renewed before that date  
12 is governed by the law as it existed immediately before the  
13 effective date of this Act, and that law is continued in effect for  
14 that purpose.

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