

By: Burnam

H.B. No. 113

A BILL TO BE ENTITLED

AN ACT

relating to the regulation and reform of certain consumer lines of property and casualty insurance; providing a penalty.

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

ARTICLE 1. APPLICATION OF BENCHMARK PROGRAM TO CERTAIN INSURERS

SECTION 1.01. Section 1, Article 5.101, Insurance Code, is amended by adding Subsection (d) to read as follows:

(d) This article applies to the rates for insurance described by this section that is written by any insurer engaged in business in this state, including a county mutual insurance company, a farm mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange.

SECTION 1.02. Section 912.002(a), Insurance Code, is amended to read as follows:

(a) A county mutual insurance company is exempt from the operation of all insurance laws of this state, [~~including the flexible rating program under Article 5.101,~~] except laws that are made applicable by their specific terms or except as specifically provided by this chapter.

SECTION 1.03. The following laws are repealed:

- (1) Section 941.003(c), Insurance Code; and
- (2) Section 942.003(c), Insurance Code.

ARTICLE 2. WITHDRAWAL OF INSURERS FROM MARKET

SECTION 2.01. Subsections (a)(1) and (3), Article 21.49-2C,

1 Insurance Code, are amended to read as follows:

2 (1) An [~~authorized~~] insurer shall file with the
3 commissioner a plan for orderly withdrawal if the insurer proposes
4 to withdraw from writing a line of insurance in this state or to
5 reduce its total annual premium volume by 75 percent or more or
6 proposes, in a personal line of motor vehicle comprehensive or
7 residential property insurance, to reduce its total annual premium
8 volume in a rating territory by 50 percent or more. The insurer's
9 plan shall be constructed to protect the interests of the people of
10 this state and shall indicate the date it intends to begin and
11 complete its withdrawal plan and must contain provisions for:

12 (A) meeting the insurer's contractual
13 obligations;

14 (B) providing service to its Texas policyholders
15 and claimants; and

16 (C) meeting any applicable statutory
17 obligations, such as the payment of assessments to the guaranty
18 fund and participation in any assigned risk plans or joint
19 underwriting arrangements.

20 (3) In this article:

21 (A) "Insurer" means any insurer authorized to
22 engage in business in this state, including a county mutual
23 insurance company, farm mutual insurance company, Lloyd's plan, or
24 reciprocal or interinsurance exchange.

25 (B) "Rating territory" means a rating territory
26 established by the department [~~Texas Department of Insurance~~].

27 ARTICLE 3. RESIDENTIAL PROPERTY INSURANCE PLAN

1 SECTION 3.01. Subchapter F, Chapter 21, Insurance Code, is
2 amended by adding Article 21.82 to read as follows:

3 Art. 21.82. TEXAS RESIDENTIAL PROPERTY INSURANCE PLAN

4 Sec. 1. DEFINITIONS. In this article:

5 (1) "Association" means the Texas Residential
6 Property Insurance Plan Association established under this
7 article.

8 (2) "Board" means the governing board of the
9 association.

10 (3) "Insurer" means an insurer authorized to write
11 residential property insurance under Chapter 5 of this code,
12 including a county mutual insurance company, farm mutual insurance
13 company, Lloyd's plan, or reciprocal or interinsurance exchange.

14 (4) "Plan of operation" means the plan of operation
15 adopted under Section 4 of this article.

16 (5) "Residential property insurance" means homeowners
17 or residential fire and allied lines insurance.

18 Sec. 2. TEXAS RESIDENTIAL PROPERTY INSURANCE PLAN
19 ASSOCIATION. The Texas Residential Property Insurance Plan
20 Association is a nonprofit corporate body composed of all insurers.
21 Each insurer is a member of the association and remains a member of
22 the association as long as the association is in existence as a
23 condition of the insurer's authority to write residential property
24 insurance in this state.

25 Sec. 3. ADMINISTRATION OF ASSOCIATION; GOVERNING
26 BOARD. (a) The association has the powers granted to a nonprofit
27 corporation under the Texas Non-Profit Corporation Act (Article

1 1396-1.01 et seq., Vernon's Texas Civil Statutes).

2 (b) The association is administered by a governing board
3 composed of 15 members as follows:

4 (1) eight members who represent the interests of
5 member insurers, selected in accordance with the plan of operation;

6 (2) two members who are general property and casualty
7 agents, selected in accordance with the plan of operation; and

8 (3) five public members nominated by the office of
9 public insurance counsel and selected by the commissioner.

10 (c) To be eligible to serve on the board as a representative
11 of insurers, a person must be a full-time employee of an insurer.

12 (d) A person may not serve on the board as a public member if
13 that person, an individual related to that person within the second
14 degree by consanguinity or affinity, or an individual residing in
15 the same household with that person is:

16 (1) required to be authorized, registered, or licensed
17 under this code;

18 (2) employed by or acts as a consultant to a person
19 required to be authorized, registered, or licensed under this code;

20 (3) the owner of, has a financial interest in, or
21 participates in the management of an organization required to be
22 authorized, registered, or licensed under this code;

23 (4) an officer, employer, or consultant of a trade
24 association in the field of insurance; or

25 (5) required to register as a lobbyist under Chapter
26 305, Government Code.

27 Sec. 4. PLAN OF OPERATION. (a) The board shall administer

1 the association in accordance with the plan of operation.

2 (b) The plan of operation must provide for the efficient,
3 economical, fair, and nondiscriminatory administration of the
4 association.

5 (c) Subject to the approval of the commissioner, the board
6 may adopt and amend the plan of operation.

7 (d) If the commissioner at any time believes that any part
8 of the plan of operation is not consistent with the purposes of this
9 article, the commissioner shall notify the board in writing so that
10 the board may take corrective action.

11 Sec. 5. ASSESSMENTS. (a) The association may assess the
12 member insurers to provide funds for the operation of the
13 association.

14 (b) An assessment made on an insurer must be in proportion
15 to that insurer's writings of residential property insurance in
16 this state.

17 (c) If an insurer does not pay an assessment within a
18 reasonable time, the association may bring an action to collect the
19 assessment. In addition, the association may report to the
20 commissioner the failure to pay, and the commissioner may institute
21 a disciplinary action under Chapter 82 of this code.

22 Sec. 6. INCENTIVE PROGRAMS. (a) The plan of operation
23 must include incentive programs to encourage member insurers to
24 write residential property insurance on a voluntary basis and to
25 minimize the use of the association as a means to obtain insurance.

26 (b) One of the incentive programs must target underserved
27 geographic areas, which shall be determined and designated by the

1 commissioner by rule. In determining which areas will be
2 designated as underserved, the commissioner shall consider the
3 availability of insurance, the number of persons insured through
4 the association, and any other relevant factor.

5 (c) An incentive program is effective on approval of the
6 commissioner.

7 Sec. 7. LIMITED ASSIGNMENT DISTRIBUTION PLAN. (a) The
8 plan of operation must include a voluntary, competitive limited
9 assignment distribution plan that allows members to contract
10 directly with a servicing carrier to accept assignments to that
11 carrier by the association.

12 (b) A servicing carrier must be an insurer authorized to
13 write residential property insurance in this state. An insurer is
14 qualified if the insurer has written residential property insurance
15 in this state for at least five years or is currently engaged as a
16 servicing carrier for assigned risk insurance business in at least
17 one other state.

18 (c) After notice and hearing, the commissioner may prohibit
19 an insurer from acting as a servicing carrier.

20 (d) The terms of the contract between the servicing carrier
21 and the insurer, including the buy-out fee, shall be determined by
22 negotiation between the parties.

23 (e) The board may adopt reasonable rules for the conduct of
24 business under the contract and may establish reasonable standards
25 of eligibility for servicing carriers.

26 Sec. 8. ASSIGNMENT OF INSURANCE THROUGH ASSOCIATION. (a)
27 The association shall provide a means by which an applicant for

1 insurance coverage may obtain residential property insurance
2 through assignment of that insurance to a member insurer.

3 (b) An applicant is not eligible for residential property
4 insurance through the association unless the applicant and the
5 servicing agent certify to the association as part of the
6 application that the applicant has been rejected for insurance by
7 at least two insurers authorized to engage in the business of
8 insurance in this state and actually writing residential property
9 insurance in this state.

10 Sec. 9. POLICY FORMS. Residential property insurance made
11 available through the association shall be written on policy forms
12 and endorsements adopted or approved under Article 5.35 of this
13 code, in accordance with the plan of operation.

14 Sec. 10. RATES; HEARING. (a) Rates to be charged for
15 residential property insurance provided through the association
16 shall be established in accordance with this section.

17 (b) The rates must be just, reasonable, adequate, not
18 excessive, not confiscatory, and not unfairly discriminatory for
19 the risks to which the rates apply. Rates shall be set in an amount
20 sufficient to carry all claims to maturity and to meet the expenses
21 incurred in the writing and servicing of the business. In making a
22 determination, the commissioner shall consider the reports of
23 aggregated premiums earned and losses and expenses incurred in the
24 writing of residential property insurance through the association
25 collected under the statistical plans required under Subsection (c)
26 of this section.

27 (c) The commissioner shall adopt statistical plans to be

1 used by each insurer to record and report:

2 (1) premium, loss, and expense experience, reported
3 separately for business assigned to the insurer; and

4 (2) other information required by the commissioner.

5 (d) The association shall file annually with the
6 department, for approval by the commissioner, the rates to be
7 charged for residential property insurance provided through the
8 association. The association may not make the filing more than once
9 in any 12-month period. Subchapter B, Chapter 40, of this code does
10 not apply to:

11 (1) a filing made under this subsection;

12 (2) Subsections (e)-(i) of this section; or

13 (3) a department action with respect to a filing made
14 under this subsection.

15 (e) Before approving, disapproving, or modifying a filing
16 made under Subsection (d) of this section, the commissioner shall
17 provide all interested persons a reasonable opportunity to:

18 (1) review the filing;

19 (2) obtain copies of the filing on payment of any
20 legally required copying cost; and

21 (3) submit to the commissioner written comments,
22 analyses, or information related to the filing.

23 (f) Not later than the 45th day after the date on which the
24 department receives the filing required under Subsection (d) of
25 this section, the commissioner shall schedule a hearing at which
26 interested persons may present written or oral comments relating to
27 the filing. A hearing under this subsection is not a contested case

1 hearing under Chapter 2001, Government Code. The association, the
2 office of public insurance counsel, and any other interested person
3 or entity that has submitted proposed changes or actuarial analyses
4 may ask questions of any person testifying at the hearing.

5 (g) The department shall file with the Texas Register notice
6 that a filing has been made under Subsection (d) of this section not
7 later than the seventh day after the date the filing is received by
8 the department. The notice must include information relating to:

9 (1) the availability of the filing for public
10 inspection at the department during regular business hours and the
11 procedures for obtaining copies of the filing;

12 (2) procedures for making written comments related to
13 the filing; and

14 (3) the time, place, and date of the hearing scheduled
15 under Subsection (f) of this section.

16 (h) After the conclusion of the hearing, the commissioner
17 shall approve, disapprove, or modify the filing in writing. If the
18 commissioner disapproves a filing, the commissioner shall state in
19 writing the reasons for the disapproval and the criteria to be met
20 by the association to obtain approval. The association may file
21 with the commissioner, not later than the 10th day after the date on
22 which the association receives the commissioner's written
23 disapproval, an amended filing to comply with the commissioner's
24 comments.

25 (i) Before approving or disapproving an amended filing, the
26 commissioner:

27 (1) shall provide all interested persons a reasonable

1 opportunity to review the amended filing, obtain copies of the
2 amended filing on payment of any legally required copying cost, and
3 submit to the commissioner written comments, analyses, or
4 information related to the amended filing in the manner provided by
5 Subsection (e) of this section; and

6 (2) may hold a hearing not later than the 20th day
7 after the date on which the department receives the amended filing
8 in the manner provided by Subsection (f) of this section.

9 (j) Not later than the 10th day after the date on which the
10 hearing under Subsection (i) on the amended filing is concluded,
11 the commissioner shall approve or disapprove the amended filing.
12 If, not later than the 30th day after the date on which the amended
13 filing is received by the department the commissioner has not
14 disapproved the amended filing, the amended filing is considered
15 approved. The requirements adopted under Subsections (g) and (h)
16 of this section apply to a hearing conducted under Subsection (i).

17 (k) A person aggrieved by a decision of the commissioner
18 under this section may, not later than the 30th day after the date
19 of the commissioner's decision, appeal the decision. An appeal of a
20 commissioner's decision under this section must be made in
21 accordance with Subchapter D, Chapter 36, of this code.

22 Sec. 11. IMMUNITY FROM LIABILITY. (a) The association, a
23 member of the board, and any employee of the association is not
24 personally liable for any act performed in good faith within the
25 scope of the person's authority as determined under this article or
26 the plan of operation or for damages occasioned by the person's
27 official acts or omissions except for an act or omission that is

1 corrupt or malicious. The association shall provide counsel to
2 defend any action brought against a member of the board or an
3 employee by reason of the person's official act or omission whether
4 or not at the time of the institution of the action the defendant
5 has terminated service with the association.

6 (b) This section is cumulative with and does not affect or
7 modify any common law or statutory privilege or immunity.

8 SECTION 3.02. Subchapter F, Chapter 21, Insurance Code, is
9 amended by amending the subchapter heading to read as follows:

10 SUBCHAPTER F. CERTAIN INSURANCE PLANS [~~JUDICIAL REVIEW~~]

11 SECTION 3.03. (a) Not later than November 1, 2003, the
12 commissioner of insurance shall appoint an initial governing board
13 for the Texas Residential Property Insurance Plan Association
14 composed of:

15 (1) eight members who represent the interests of
16 insurers, as that term is defined by Article 21.82, Insurance Code,
17 as added by this article, and appointed in accordance with Section
18 3(c), Article 21.82, Insurance Code, as added by this article;

19 (2) two members who are general property and casualty
20 agents; and

21 (3) five public members nominated by the Office of
22 Public Insurance Counsel.

23 (b) Not later than March 1, 2004, the initial governing
24 board shall submit a proposed plan of operation to the commissioner
25 of insurance for approval in accordance with Article 21.82,
26 Insurance Code, as added by this article.

27 (c) The Texas Residential Property Insurance Plan

1 Association shall make residential property insurance available in
2 accordance with Article 21.82, Insurance Code, as added by this
3 article, beginning not later than September 1, 2004.

4 (d) The terms of the initial governing board appointed under
5 this section expire February 1, 2005.

6 ARTICLE 4. TRAINING FOR INSURANCE ADJUSTERS

7 SECTION 4.01. Chapter 407, Acts of the 63rd Legislature,
8 Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance
9 Code), is amended by adding Section 7B to read as follows:

10 Sec. 7B. SPECIALIZED TRAINING REGARDING WATER AND MOLD
11 CLAIMS; CERTIFICATE. (a) The commissioner, by rule, shall
12 prescribe a specialized training program for adjusters who handle
13 claims involving water or mold damage. The training program must
14 include training on how to prevent or reduce mold damage in
15 water-related claims. The training program may be offered in
16 conjunction with a continuing education program conducted under
17 Section 7A of this Act.

18 (b) An adjuster may not handle a claim involving water or
19 mold damage unless the adjuster has successfully completed the
20 specialized training program prescribed by the commissioner in the
21 adjustment of those claims.

22 (c) The department shall issue a certificate of completion
23 to each adjuster who satisfies the requirements of this section. A
24 certificate issued under this section is valid until the first
25 anniversary of the date of issuance and may be renewed in the manner
26 prescribed by the department. The department shall collect from
27 each applicant for a certificate a certification fee set by the

1 department in an amount reasonable and necessary to cover the costs
2 of administering this section.

3 (d) An adjuster who violates Subsection (b) of this section
4 is subject to disciplinary action under Section 17 of this Act.

5 SECTION 4.02. (a) Not later than November 1, 2003, the
6 commissioner of insurance shall adopt rules as required by Section
7 7B, Chapter 407, Acts of the 63rd Legislature, Regular Session,
8 1973 (Article 21.07-4, Vernon's Texas Insurance Code), as added by
9 this article.

10 (b) A person licensed as an insurance adjuster by the Texas
11 Department of Insurance on September 1, 2003, is not required to
12 comply with the requirements of Section 7B, Chapter 407, Acts of the
13 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's
14 Texas Insurance Code), as added by this article, and the rules
15 adopted under that section until March 1, 2004.

16 SECTION 4.03. Section 7B, Chapter 407, Acts of the 63rd
17 Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas
18 Insurance Code), as added by this article, applies only to an
19 insurance claim filed with an insurer on or after March 1, 2004.

20 ARTICLE 5. TRANSITION; EFFECTIVE DATE

21 SECTION 5.01. This Act applies only to an insurance policy
22 that is delivered, issued for delivery, or renewed on or after
23 January 1, 2004. A policy that is delivered, issued for delivery,
24 or renewed before January 1, 2004, is governed by the law as it
25 existed immediately before the effective date of this Act, and that
26 law is continued in effect for that purpose.

27 SECTION 5.02. (a) Except as provided by Subsection (b) of

1 this section, this Act takes effect September 1, 2003.

2 (b) Article 2 of this Act takes effect immediately if this
3 Act receives a vote of two-thirds of all the members elected to each
4 house, as provided by Section 39, Article III, Texas Constitution.
5 If this Act does not receive the vote necessary for immediate
6 effect, Article 2 of this Act takes effect September 1, 2003.