

By: Burnam

H.B. No. 117

A BILL TO BE ENTITLED

AN ACT

relating to a rate rollback for homeowners and residential fire and allied lines insurance.

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

SECTION 1. Subchapter O, Chapter 5, Insurance Code, is amended by adding Article 5.133 to read as follows:

Art. 5.133. TEMPORARY RATE ROLLBACK FOR HOMEOWNERS AND RESIDENTIAL FIRE AND ALLIED LINES INSURANCE

Sec. 1. FINDINGS. The legislature finds that:

(1) the cost of water damage, and specifically damage caused by mold, has been a significant factor in the high cost of homeowners and residential fire and allied lines insurance;

(2) action taken by insurers to respond to these claims, including action to limit the types of homeowners and residential fire and allied lines insurance coverage available to consumers, eliminates or significantly reduces the cost of these claims;

(3) legislation under consideration by the regular session of the 78th Legislature may also eliminate or significantly reduce the cost of these claims;

(4) while the monetary effect of these 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;

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

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

9           Sec. 2. SCOPE OF ARTICLE. (a) This article applies to any  
10 insurer that is authorized to engage in business in this state and  
11 that is authorized to write any of the types of coverages described  
12 by Subsection (c) of this section, including:

13                   (1) a county mutual insurance company;

14                   (2) a farm mutual insurance company;

15                   (3) a Lloyd's plan; and

16                   (4) a reciprocal or interinsurance exchange.

17           (b) It is the intent of the legislature that all insurers,  
18 including insurers whose rates are not regulated, pass through the  
19 savings that accrue from the changes described by Section 1 of this  
20 article to their policyholders on a prospective basis. To monitor  
21 compliance with this legislative directive, the commissioner may  
22 require information in rate filings, special data calls,  
23 informational hearings, and any other means consistent with other  
24 provisions of this code applicable to the affected insurers.  
25 Information provided under this subsection is privileged and  
26 confidential to the same extent as the information is privileged  
27 and confidential under this code or other laws for other insurers

1 licensed and writing the same line of insurance in this state. The  
2 information remains privileged and confidential unless and until  
3 introduced into evidence at an administrative hearing or in a court  
4 of competent jurisdiction. Section 4 of this article does not apply  
5 to the insurers that are not rate-regulated but that are covered by  
6 this subsection.

7 (c) This article applies only to residential fire and allied  
8 lines insurance and homeowners insurance.

9 Sec. 3. RATE ROLLBACK. (a) Not later than September 1 of  
10 each year, the commissioner shall hold a rulemaking hearing under  
11 Chapter 2001, Government Code, to determine the percentage of  
12 equitable across-the-board reductions in insurance rates required  
13 of insurers writing residential fire and allied lines insurance and  
14 homeowners insurance.

15 (b) Not later than October 1 of each year, the commissioner  
16 shall issue rules mandating the appropriate rate reductions to  
17 rates for residential fire and allied lines insurance and  
18 homeowners insurance and developed without consideration of the  
19 effect of the changes described by Section 1 of this article.

20 (c) The commissioner shall set the percentage of the rate  
21 reduction for residential fire and allied lines insurance and  
22 homeowners insurance and may set different rate reductions for  
23 different types of policies. The commissioner's order establishing  
24 the rate reductions must be based on the evidence adduced at the  
25 rulemaking hearing. Rates resulting from the rate reductions  
26 imposed by this article must be reasonable, adequate, not unfairly  
27 discriminatory, nonconfiscatory, and not excessive.

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

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

16       Sec. 4. ADMINISTRATIVE RELIEF. (a) Except as provided by  
17 Subsection (b) of this section, a rate filed under Article 5.101 of  
18 this code for residential fire and allied lines insurance and  
19 homeowners insurance on and after January 1, 2004, and a rate filed  
20 under that article on and after the 90th day following the effective  
21 date of a subsequent rule adopted under Section 3(a) of this  
22 article, shall reflect the rate reduction imposed under Section 3  
23 of this article.

24       (b) Notwithstanding Section 3, Article 5.101, of this code,  
25 the commissioner shall, after notice and opportunity for hearing,  
26 disapprove a filed rate, without regard to whether the rate is  
27 within or outside the upper or lower limits of the flexibility band

1 established under Article 5.101 of this code, if the commissioner  
2 finds that the filed rate does not reflect the rate reduction  
3 imposed under Section 3 of this article. A proceeding under this  
4 section is a contested case under Chapter 2001, Government Code.

5 (c) The commissioner is not required to disapprove a filed  
6 rate that reflects less than the full amount of the rate reduction  
7 imposed by Section 3 of this article if:

8 (1) the commissioner determines that based on clear  
9 and convincing evidence an insurer will be financially unable in a  
10 particular line of insurance to continue writing that line; or

11 (2) the rate reduction required by Section 3 of this  
12 article would likely result in placing the insurer in a hazardous  
13 financial condition described by Section 2, Article 1.32, of this  
14 code.

15 Sec. 5. DECLARATION OF INAPPLICABILITY TO CERTAIN  
16 LINES. The commissioner shall, by order, declare this article  
17 inapplicable to a line of insurance otherwise subject to this  
18 article at the time the commissioner finds, based on actuarially  
19 credible data, that rates in that line reflect the actual  
20 experience following the changes described by Section 1 of this  
21 article.

22 Sec. 6. DURATION OF REDUCTION. Unless the commissioner  
23 grants relief under Section 4 or 5 of this article, each rate  
24 reduction required under Section 3 of this article remains in  
25 effect until January 1, 2013.

26 Sec. 7. MODIFICATION. The commissioner may, by bulletin or  
27 directive, based on the evidence accumulated by the commissioner

1 before the bulletin or directive is issued, modify a rate reduction  
2 mandated by the commissioner under this article if a final,  
3 unappealable judgment of a court with appropriate jurisdiction  
4 stays the effect of, enjoins, or otherwise modifies or declares  
5 unconstitutional any legislation described by Section 1 of this  
6 article on which the commissioner based the rate reduction.

7 Sec. 8. HEARINGS AND ORDERS. Notwithstanding Chapter 40 of  
8 this code, a rulemaking hearing under this article shall be held  
9 before the commissioner or the commissioner's designee. The  
10 rulemaking procedures established by this section do not apply to  
11 any other rate promulgation proceeding.

12 Sec. 9. PENDING RATE MATTERS. A rate filed pursuant to a  
13 commissioner's order issued before May 1, 2003, is not subject to  
14 the rate reductions required by this article before January 1,  
15 2004.

16 Sec. 10. RECOMMENDATIONS TO LEGISLATURE. The commissioner  
17 shall assemble information, conduct hearings, and take other  
18 appropriate measures to assess and evaluate changes in the  
19 marketplace resulting from the implementation of this article and  
20 to report findings and recommendations to the legislature.

21 SECTION 2. This Act takes effect immediately if it receives  
22 a vote of two-thirds of all the members elected to each house, as  
23 provided by Section 39, Article III, Texas Constitution. If this  
24 Act does not receive the vote necessary for immediate effect, this  
25 Act takes effect September 1, 2003.