

By: Smithee

H.B. No. 748

A BILL TO BE ENTITLED

AN ACT

relating to automobile and residential property insurance rate regulation.

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

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

SUBCHAPTER P. PERSONAL AUTOMOBILE AND RESIDENTIAL PROPERTY

INSURANCE RATES AND FORMS

Art. 5.141. RATES FOR PERSONAL AUTOMOBILE AND RESIDENTIAL PROPERTY INSURANCE COVERAGE

Sec. 1. SCOPE; PURPOSE. (a) This article governs the regulation of rates for personal automobile insurance and residential property insurance.

(b) The purposes of this article are to:

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

(2) promote the availability of personal automobile and residential property insurance;

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

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

1 (c) Notwithstanding Subsection (a) of this section, this
2 article does not apply to premium rates for motor vehicle insurance
3 computed using a mile-based rating plan under Article 5.01-4 of
4 this code.

5 Sec. 2. DEFINITIONS. In this article:

6 (1) "Classification" means a generic application to
7 similar risks within the same line.

8 (2) "Disallowed expenses" means:

9 (A) administrative expenses, not including
10 acquisition expenses, not including acquisition, loss control, and
11 safety engineering expenses, that exceed 110 percent of the
12 industry median for those expenses;

13 (B) lobbying expenses;

14 (C) advertising expenses, except the following:

15 (i) advertising that is directly related to
16 the services or products provided by the insurer;

17 (ii) advertising designed and directed at
18 loss prevention; or

19 (iii) advertising for the promotion of
20 organizations exempt from federal taxation under Section
21 501(c)(3), Internal Revenue Code of 1986, and its subsequent
22 amendments;

23 (D) amounts paid by an insurer as damages in a
24 suit against the insurer for bad faith or as fines or penalties for
25 violation of law;

26 (E) contributions to organizations engaged in
27 legislative advocacy;

1 (F) fees and penalties imposed on the insurer for
2 civil or criminal violations of law;

3 (G) contributions to social, religious,
4 political, or fraternal organizations;

5 (H) fees and assessments paid to advisory
6 organizations; and

7 (I) any unreasonably incurred expenses, as
8 determined by the commissioner after notice and hearing.

9 (3) "Filer" means an insurer that files rates,
10 supplementary rating information, supporting information, rating
11 manuals, or any other information required to be filed under this
12 article.

13 (4) "Insurer" means an insurance company, reciprocal
14 or interinsurance exchange, mutual, capital stock company,
15 fraternal benefit society, local mutual aid association, county
16 mutual insurance company, association, Lloyd's plan company, or
17 other entity writing personal automobile insurance or residential
18 property insurance in the state. The term includes an affiliate, as
19 described by Section 823.003(a) of this code. The term does not
20 include the Texas Windstorm Insurance Association created and
21 operated under Article 21.49 of this code.

22 (5) "Line" means a type of insurance subject to this
23 article.

24 (6) "Personal automobile insurance" means an
25 automobile insurance policy providing insurance coverages for the
26 ownership, maintenance, or use of private passenger, utility, and
27 miscellaneous type motor vehicles and trailers including mobile

1 homes and recreational trailers, and not primarily used for the
2 delivery of goods, materials, or services, unless such use is in
3 farm or ranch operations, and provided that such vehicles are owned
4 or leased by an individual or individuals.

5 (7) "Rate" or "rating plan" means the charge for a
6 particular line for each unit of exposure.

7 (8) "Residential property insurance" means insurance
8 against loss to real or tangible personal property at a fixed
9 location provided in a homeowners policy, a tenant policy, a
10 condominium owners policy, or a residential fire and allied lines
11 policy.

12 (9) "Supplementary rating information" means any
13 manual, rating schedule, plan of rules, rating rules,
14 classification systems, territory codes and descriptions, rating
15 plans, and other similar information used by the insurer to
16 determine the applicable premium for an insured. The term includes
17 factors and relativities, such as increased limits factors,
18 classification relativities, deductible relativities, premium
19 discount, and other similar factors and rating plans such as
20 experience, schedule, and retrospective rating.

21 (10) "Supporting information" means:

22 (A) the experience and judgment of the filer and
23 the experience or information of other insurers relied on by the
24 filer;

25 (B) the interpretation of any other information
26 relied on by the filer;

27 (C) descriptions of methods used in making the

1 rates; and

2 (D) any other information required by the
3 department to be filed.

4 Sec. 3. RATE STANDARDS. (a) Rates under this article
5 shall be set in accordance with the provisions of this section.

6 (b) In setting rates, an insurer shall consider:

7 (1) past and prospective loss experience inside the
8 state, and outside the state if the state data are not credible;

9 (2) the peculiar hazards and experiences of individual
10 risks, past and prospective, inside and outside the state;

11 (3) the insurer's own historical premium, exposure,
12 loss, and expense experience to the extent that it is actuarially
13 credible;

14 (4) catastrophe hazards within the state;

15 (5) operating expenses excluding disallowed expenses;

16 (6) investment income;

17 (7) a reasonable margin for profit; and

18 (8) any other relevant factors inside and outside the
19 state.

20 (c) The insurer may group risks by classifications for the
21 establishment of rates and minimum premiums and may modify
22 classification rates to produce rates for individual risks in
23 accordance with rating plans that establish standards for measuring
24 variations in those risks on the basis of any factor listed in
25 Subsection (b) of this section.

26 (d) Rates may not be excessive, inadequate, unreasonable,
27 or unfairly discriminatory for the risks to which they apply.

1 (e) In setting rates applicable solely to policyholders in
2 the state, an insurer shall use its own historical premium and loss
3 data, as well as its own data for expenses and for profit and
4 contingency factors. The commissioner may require an audit of the
5 insurer's historical premium and loss data. The insurer may
6 separately supplement its own historical premium and loss data with
7 historical premium and loss data as necessary. The commissioner may
8 by rule establish requirements for reporting historical premium and
9 loss data under this subsection.

10 Sec. 4. RATE FILINGS. (a) An insurer must file with the
11 commissioner all rates, supplementary rating information,
12 reasonable and pertinent supporting information for risks written
13 in the state, and all applicable rating manuals. The insurer shall
14 include in the filing any statistics or other information to
15 support the rates to be used by the insurer as required by the
16 commissioner by rule, including information necessary to evidence
17 that the calculation of the rate does not include disallowed
18 expenses. The insurer shall include in the filing policy fees,
19 service fees, and other fees that are charged under Article 21.35A
20 or Article 21.35B of this code.

21 (b) Unless disapproved by the commissioner as provided by
22 Section 9 of this article, the new rate takes effect on the date
23 specified by the insurer in the filing, but not earlier than the
24 60th day after the date of filing of the rate with the commissioner,
25 except as provided by Subsection (c) of this section. For the
26 purposes of this section, the date the rate is received by the
27 commissioner is the date of filing of the rate with the

1 commissioner. From the date of filing of the rate with the
2 commissioner to the effective date of the new rate, the insurer's
3 previously filed rate that is in effect as provided in this article
4 shall remain in effect.

5 (c) The commissioner may approve a filing on written or
6 electronic notification to the filer at any time before the 60th day
7 after the date of filing of the rate with the commissioner or before
8 the effective date specified by the insurer in the filing. The new
9 rate may take effect on the receipt of the notice of the
10 commissioner's approval.

11 Sec. 5. SUPERVISION REQUIREMENT. If the commissioner
12 determines after a hearing that an insurer's rates require
13 supervision because of the insurer's financial condition or the
14 insurer's rating practices, the commissioner may require the
15 insurer to file with the commissioner all rates, supplementary rate
16 information, and any supporting information prescribed by the
17 commissioner.

18 Sec. 6. PUBLIC INFORMATION. Each filing and any supporting
19 information filed under this article is open to public inspection
20 as of the date of the filing.

21 Sec. 7. RIGHTS OF INSUREDS AND PUBLIC INSURANCE COUNSEL.

22 (a) With respect to any filing in effect, an aggrieved insured or
23 the public insurance counsel may make a written application to the
24 commissioner for a hearing on the filing. The application must
25 specify the grounds on which the applicant bases the grievance. If
26 the commissioner finds that the application is made in good faith,
27 that the applicant would be so aggrieved if the grounds in the

1 application are established, and that those grounds otherwise
2 justify holding the hearing, the commissioner shall hold a hearing
3 not later than the 30th day after the date of receipt of the
4 application. The commissioner shall give at least 10 days' written
5 notice of the hearing to the applicant and to the insurer that made
6 the filing in question.

7 (b) If, after the hearing, the commissioner finds that the
8 filing does not meet the requirements of this article, the
9 commissioner shall issue an order specifying how the filing fails
10 to meet the requirements of this article and stating the date on
11 which, within a reasonable period after the date of the order, the
12 filing is no longer in effect. The commissioner shall send copies
13 of the order to the applicant and to each affected insurer.

14 Sec. 8. QUARTERLY LEGISLATIVE REPORT. Each insurer subject
15 to this article shall file with the commissioner on a quarterly
16 basis information relating to changes in losses, premiums, and
17 market share. The first filing under this article must include the
18 information beginning with January 1, 2003. The commissioner
19 shall report on a quarterly basis to the governor, lieutenant
20 governor, and speaker of the house of representatives on the
21 information provided by the insurers' reports, information
22 obtained from market conduct examinations and analyses, and
23 consumer complaints received by the department.

24 Sec. 9. DISAPPROVAL. (a) The commissioner shall
25 disapprove a rate if the commissioner determines that the rate
26 filing made under this article does not meet the requirements of
27 this article. The commissioner may give due consideration to the

1 extent and nature of market competition in the personal automobile
2 insurance and residential property insurance markets and to the
3 availability or lack of availability of personal automobile
4 insurance and residential property insurance in determining
5 whether to disapprove any rates filed under this article.

6 (b) If the commissioner disapproves a filing before the 60th
7 day after the date of the filing of the rate with the commissioner,
8 the commissioner shall issue an order specifying in what respects
9 the filing fails to meet the requirements of this article. The
10 filer is entitled to a hearing on written request made to the
11 commissioner not later than the 30th day after the effective date of
12 the disapproval order.

13 (c) If the commissioner disapproves a rate that is in
14 effect, the commissioner may issue a disapproval order only after a
15 hearing held after at least 20 days' written notice to the insurer
16 that made the filing. The disapproval order must be issued not
17 later than the 15th day after the close of the hearing and must
18 specify how the rate fails to meet the requirements of this article.
19 The disapproval order must state the date on which the further use
20 of that rate is prohibited. If, after notice and opportunity for
21 hearing, the commissioner determines that a rate that is in effect
22 should be disapproved, the commissioner, in the event of any
23 overcharges to policyholders, shall require the insurer to refund
24 to policyholders the difference in the amount of premiums paid
25 under the disapproved rates and the amount of premiums payable
26 under rates that meet the requirements of this article, except that
27 refunds to policyholders the commissioner determines are de minimis

1 may not be required.

2 (d) If an insurer has no legally effective rate because of
3 an order disapproving rates, the commissioner shall specify an
4 interim rate at the time the order is issued. The interim rate may
5 be modified by the commissioner on the commissioner's own motion or
6 on motion by the insurer. The interim rate or any modification of
7 that rate shall take effect immediately on the commissioner's
8 decision setting the interim rate. When the rates are finally
9 determined, the commissioner shall order any overcharge in the
10 interim rates to be refunded to policyholders, except that refunds
11 to policyholders the commissioner determines are de minimis may not
12 be required.

13 Sec. 10. RATE HEARINGS. Subject to Chapter 40 of this code,
14 Chapter 2001, Government Code, applies to all hearings on rates
15 conducted under this article. To the extent of any conflict between
16 this article and Chapter 2001, Government Code, the provisions of
17 this article prevail.

18 Sec. 11. APPEAL. Any insurer or other party at interest as
19 described by Section 7 of this article aggrieved by an order of the
20 commissioner issued under this article may, not later than the 30th
21 day after the date on which the commissioner issued the order,
22 appeal the order in accordance with Subchapter D, Chapter 36 of this
23 code.

24 SECTION 2. Subsection (f), Article 5.01, Insurance Code, is
25 amended to read as follows:

26 (f) Notwithstanding Subsections (a) through (d) of this
27 article, on and after June 1, 2003 [~~March 1, 1992~~], rates for motor

1 vehicle insurance in this state are determined [~~as provided by the~~
2 ~~flexible rating program adopted~~] under Article 5.141 [~~Subchapter M~~]
3 of this code [~~chapter~~].

4 SECTION 3. Article 5.13, Insurance Code, is amended to read
5 as follows:

6 Art. 5.13. SCOPE OF SUBCHAPTER [~~SUB-CHAPTER~~]. (a) This
7 subchapter [~~Sub-chapter~~] applies to every insurance company,
8 corporation, interinsurance exchange, mutual, reciprocal,
9 association, Lloyds, or other organization or insurer writing any
10 of the characters of insurance business herein set forth,
11 hereinafter called "Insurer"; provided that nothing in this entire
12 subchapter [~~Sub-chapter~~] shall [~~ever~~] be construed to apply to any
13 county or farm mutual insurance company or association, as
14 regulated under Chapters 911 [~~16~~] and 912 [~~17~~] of this code, except
15 that Section 8, Article 5.13-2 of this code, shall apply to a county
16 mutual insurance company with respect to commercial automobile
17 insurance [~~Code~~].

18 (b) This subchapter [~~Sub-chapter~~] applies to the writing of
19 casualty insurance and the writing of fidelity, surety, and
20 guaranty bonds, on risks or operations in this State except as
21 herein stated.

22 (c) This subchapter [~~Sub-chapter~~] does not apply to the
23 writing of motor vehicle, life, health, accident, professional
24 liability, reinsurance, aircraft, fraternal benefit, fire,
25 lightning, tornado, windstorm, hail, smoke or smudge, cyclone,
26 earthquake, volcanic eruption, rain, frost and freeze, weather or
27 climatic conditions, excess or deficiency of moisture, flood, the

1 rising of the waters of the ocean or its tributaries, bombardment,
2 invasion, insurrection, riot, civil war or commotion, military or
3 usurped power, any order of a civil authority made to prevent the
4 spread of a conflagration, epidemic or catastrophe, vandalism or
5 malicious mischief, strike or lockout, water or other fluid or
6 substance, resulting from the breakage or leakage of sprinklers,
7 pumps, or other apparatus erected for extinguishing fires, water
8 pipes or other conduits or containers, or resulting from casual
9 water entering through leaks or opening in buildings or by seepage
10 through building walls, including insurance against accidental
11 injury of such sprinklers, pumps, fire apparatus, conduits or
12 container, workmen's compensation, inland marine, ocean marine,
13 marine, or title insurance; nor does this subchapter [~~Sub-chapter~~]
14 apply to the writing of explosion insurance, except insurance
15 against loss from injury to person or property which results
16 accidentally from steam boilers, heaters or pressure vessels,
17 electrical devices, engines and all machinery and appliances used
18 in connection therewith or operation thereby.

19 (d) This subchapter [~~Sub-chapter~~] shall not be construed as
20 limiting in any manner the types or classes of insurance which may
21 be written by the several types of insurers under appropriate
22 statutes or their charters or permits.

23 (e) The regulatory power herein conferred is vested in the
24 commissioner [~~Board of Insurance Commissioners of the State of~~
25 ~~Texas. Within the Board, the Casualty Insurance Commissioner shall~~
26 ~~have primary supervision of regulation herein provided, subject~~
27 ~~however to the final authority of the entire Board~~].

1 SECTION 4. The heading to Article 5.13-2, Insurance Code,
2 is amended to read as follows:

3 Art. 5.13-2. RATES FOR GENERAL LIABILITY, COMMERCIAL
4 AUTOMOBILE, AND COMMERCIAL PROPERTY INSURANCE COVERAGE

5 SECTION 5. Sections 1 and 2, Article 5.13-2, Insurance
6 Code, are amended to read as follows:

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

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

17 (2) promote availability of insurance;

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

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

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

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

1 Sec. 2. SCOPE. This article applies to all lines of general
2 liability, commercial automobile, commercial property, all
3 commercial casualty, and medical professional liability insurance
4 written under policies or contracts of insurance issued by a
5 licensed insurer, other than a fidelity, surety, or guaranty bond
6 or an automobile insurance policy.

7 SECTION 6. Subdivision (2), Section 3, Article 5.13-2,
8 Insurance Code, is amended to read as follows:

9 (2) "Insurer" means an insurer to which Article 5.13
10 of this code applies, but does not include the Texas Windstorm
11 Insurance Association. However, the provisions of Sections 4, 5,
12 6, and 7 of this article shall not apply to Lloyd's or reciprocals
13 with respect to commercial property insurance. The provisions of
14 Section 8 of this article shall apply to county mutual insurance
15 companies with respect to commercial automobile insurance.

16 SECTION 7. Section 912.002, Insurance Code, is amended to
17 read as follows:

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

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

25 (1) Sections 38.001 and 822.204; [~~and~~]

26 (2) Articles 1.15, 1.15A, 1.16, 2.10, 4.10, 5.12,
27 5.37, 5.38, 5.39, 5.40, 5.49, 21.21, and 21.49; and

1 (3) with respect to commercial automobile insurance,
2 Section 8 of Article 5.13-2.

3 SECTION 8. The following provisions of the Insurance Code
4 are repealed:

5 (1) Section (a-1), Article 5.96;

6 (2) Article 5.101; and

7 (3) Section 40.061.

8 SECTION 9. This Act takes effect June 1, 2003, if it
9 receives a vote of two-thirds of all the members elected to each
10 house, as provided by Section 39, Article III, Texas Constitution.
11 If this Act does not receive the vote necessary for effect on that
12 date, this Act takes effect September 1, 2003.