

By: Smithee

H.B. No. 1757

A BILL TO BE ENTITLED

AN ACT

relating to rate filing and rate rollbacks for professional liability insurance for physicians and health care providers.

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

SECTION 1. Subchapter O, Chapter 5, Insurance Code, is amended by adding Article 5.134 to read as follows:

Art. 5.134. RATE FILING AND RATE ROLLBACKS FOR PROFESSIONAL LIABILITY INSURANCE FOR PHYSICIANS AND HEALTH CARE PROVIDERS

Sec. 1. FINDINGS. The legislature finds that:

(1) the cost of professional liability insurance for physicians and health care providers has been a significant factor in the reduced availability of health care in this state;

(2) legislation under consideration by the regular session of the 78th Legislature will eliminate or significantly reduce the cost of claims under policies of professional liability insurance for physicians and health care providers, and legislation by future legislatures may have the same effect;

(3) while the monetary effect of these legislative 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;

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

1 insureds; and

2 (5) legislative action in the public interest and  
3 within the police power of the state is required to eliminate  
4 unnecessary delays to pass these benefits on to the insured  
5 physicians and health care providers of this state.

6 Sec. 2. SCOPE OF ARTICLE. (a) This article applies to any  
7 insurer that is authorized to engage in business in this state and  
8 that is authorized to write professional liability insurance for  
9 physicians and health care providers, including:

- 10 (1) a Lloyd's plan;  
11 (2) a reciprocal or interinsurance exchange;  
12 (3) the joint underwriting association established  
13 under Article 21.49-3 of this code; and  
14 (4) a self-insurance trust established under Article  
15 21.49-4 of this code.

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

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

6 (c) This article applies only to professional liability  
7 insurance for physicians and health care providers.

8 Sec. 3. RATE ROLLBACK. (a) Not later than September 1 of  
9 each year, the commissioner shall hold a rulemaking hearing under  
10 Chapter 2001, Government Code, to determine the percentage of  
11 equitable across-the-board reductions in insurance rates required  
12 of insurers writing professional liability insurance for  
13 physicians and health care providers.

14 (b) Not later than October 1 of each year, the commissioner  
15 shall issue rules mandating the appropriate rate reductions to  
16 rates for professional liability insurance for physicians and  
17 health care providers and developed without consideration of the  
18 effect of the changes described by Section 1 of this article.

19 (c) The commissioner shall set the percentage of the rate  
20 reduction for professional liability insurance for physicians and  
21 health care providers and may set different rate reductions for  
22 different types of policies. The commissioner's order establishing  
23 the rate reductions must be based on the evidence adduced at the  
24 rulemaking hearing. Rates resulting from the rate reductions  
25 imposed by this article must comply with Section 3(d), Article  
26 5.15-1, of this code.

27 (d) The rate reductions adopted under this section are

applicable to each policy or coverage delivered, issued for delivery, or renewed on and after January 1, 2004, and to each policy or coverage delivered, issued for delivery, or renewed on and after the 90th day after the date of each subsequent rule adopted under this section. An insurer that is not otherwise rate-regulated but that is subject to this article shall apply the rate reduction to the rates used by the insurer.

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

Sec. 4. ADMINISTRATIVE RELIEF. (a) Except as provided by Subsection (b) of this section, a rate filed under Articles 5.13-2 and 5.15-1 of this code for professional liability insurance for physicians and health care providers on and after January 1, 2004, and a rate filed under those articles on and after the 90th day following the effective date of a subsequent rule adopted under Section 3(a) of this article, shall reflect each rate reduction imposed under Section 3 of this article.

(b) Notwithstanding Articles 5.13-2 and 5.15-1 of this code, the commissioner shall, after notice and opportunity for hearing, disapprove a filed rate, without regard to whether the rate complies with Articles 5.13-2 and 5.15-1 of this code, if the commissioner finds that the filed rate does not reflect the rate

1 reduction imposed under Section 3 of this article. A proceeding  
2 under this section is a contested case under Chapter 2001,  
3 Government Code.

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

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

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

14 Sec. 5. DURATION OF REDUCTION. Unless the commissioner  
15 grants relief under Section 4 of this article, each rate reduction  
16 required under Section 3 of this article remains in effect for the  
17 period specified in the commissioner's rule or order.

18 Sec. 6. MODIFICATION. The commissioner may, by bulletin or  
19 directive, based on the evidence accumulated by the commissioner  
20 before the bulletin or directive is issued, modify a rate reduction  
21 mandated by the commissioner under this article if a final,  
22 unappealable judgment of a court with appropriate jurisdiction  
23 stays the effect of, enjoins, or otherwise modifies or declares  
24 unconstitutional any legislation described by Section 1 of this  
25 article on which the commissioner based the rate reduction.

26 Sec. 7. HEARINGS AND ORDERS. Notwithstanding Chapter 40 of  
27 this code, a rulemaking hearing under this article shall be held

1 before the commissioner or the commissioner's designee. The  
2 rulemaking procedures established by this section do not apply to  
3 any other rate promulgation proceeding.

4 Sec. 8. PENDING RATE MATTERS. A rate filed pursuant to a  
5 commissioner's order issued before May 1, 2003, is not subject to  
6 the rate reductions required by this article before January 1,  
7 2004.

8 Sec. 9. RECOMMENDATIONS TO LEGISLATURE. The commissioner  
9 shall assemble information, conduct hearings, and take other  
10 appropriate measures to assess and evaluate changes in the  
11 marketplace resulting from the implementation of this article and  
12 to report findings and recommendations to the legislature.

13 SECTION 2. 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.