

By: Coleman

H.B. No. 2603

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Subchapter B, Chapter 5, Insurance Code, is amended by adding Article 5.15-1A to read as follows:

Art. 5.15-1A. STABILIZATION FUND FOR PROFESSIONAL LIABILITY INSURANCE FOR PHYSICIANS AND HEALTH CARE PROVIDERS. (a) The commissioner by rule shall establish a stabilization reserve fund to stabilize premium rates for professional liability insurance for physicians and health care providers. The reserve fund shall operate under a plan of operation adopted by the commissioner and shall be funded by assessments on insurers as provided under the plan of operation in accordance with Subsection (b) of this article.

(b) The commissioner shall require each insurer authorized to write professional liability insurance for physicians and health care providers in this state, including a Lloyd's plan, a reciprocal or interinsurance exchange, and a self-insurance trust established under Article 21.49-4 of this code, to pay annually into the stabilization reserve fund an assessment in an amount in proportion to the amount of total premium volume for professional liability insurance for physicians and health care providers written by that insurer in this state in the preceding year.

SECTION 2. Subchapter O, Chapter 5, Insurance Code, is amended by adding Article 5.134 to read as follows:

Art. 5.134. TEMPORARY RATE ROLLBACK 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;

(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 insureds; and

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

Sec. 2. SCOPE OF ARTICLE. (a) This article applies to any insurer that is authorized to engage in business in this state and that is authorized to write professional liability insurance for

1 physicians and health care providers, including:

2 (1) a Lloyd's plan;

3 (2) a reciprocal or interinsurance exchange;

4 (3) the joint underwriting association established
5 under Article 21.49-3 of this code; and

6 (4) a self-insurance trust established under Article
7 21.49-4 of this code.

8 (b) It is the intent of the legislature that all insurers,
9 including insurers whose rates are not regulated, pass through the
10 savings that accrue from the changes described by Section 1 of this
11 article to their policyholders on a prospective basis. To monitor
12 compliance with this legislative directive, the commissioner may
13 require information in rate filings, special data calls,
14 informational hearings, and any other means consistent with other
15 provisions of this code applicable to the affected insurers.
16 Information provided under this subsection is privileged and
17 confidential to the same extent as the information is privileged
18 and confidential under this code or other laws for other insurers
19 licensed and writing the same line of insurance in this state. The
20 information remains privileged and confidential unless and until
21 introduced into evidence at an administrative hearing or in a court
22 of competent jurisdiction. Section 4 of this article does not apply
23 to the insurers that are not rate-regulated but that are covered by
24 this subsection.

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

27 Sec. 3. RATE ROLLBACK. (a) Not later than September 1 of

1 each year, the commissioner shall hold a rulemaking hearing under
2 Chapter 2001, Government Code, to determine the percentage of
3 equitable across-the-board reductions in insurance rates required
4 of insurers writing professional liability insurance for
5 physicians and health care providers.

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

11 (c) The commissioner shall set the percentage of the rate
12 reduction for professional liability insurance for physicians and
13 health care providers and may set different rate reductions for
14 different types of policies. The commissioner's order establishing
15 the rate reductions must be based on the evidence adduced at the
16 rulemaking hearing. Rates resulting from the rate reductions
17 imposed by this article must comply with Section 3(d), Article
18 5.15-1, of this code.

19 (d) The rate reductions adopted under this section are
20 applicable to each policy or coverage delivered, issued for
21 delivery, or renewed on and after January 1, 2004, and to each
22 policy or coverage delivered, issued for delivery, or renewed on
23 and after the 90th day after the date of each subsequent rule
24 adopted under this section. An insurer that is not otherwise
25 rate-regulated but that is subject to this article shall apply the
26 rate reduction to the rates used by the insurer.

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

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

(1) the commissioner determines that based on clear
and convincing evidence an insurer will be financially unable to

1 continue writing professional liability insurance for physicians
2 or health care providers; or

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

7 Sec. 5. DURATION OF REDUCTION. Unless the commissioner
8 grants relief under Section 4 of this article, each rate reduction
9 required under Section 3 of this article remains in effect until
10 January 1, 2013.

11 Sec. 6. MODIFICATION. The commissioner may, by bulletin or
12 directive, based on the evidence accumulated by the commissioner
13 before the bulletin or directive is issued, modify a rate reduction
14 mandated by the commissioner under this article if a final,
15 unappealable judgment of a court with appropriate jurisdiction
16 stays the effect of, enjoins, or otherwise modifies or declares
17 unconstitutional any legislation described by Section 1 of this
18 article on which the commissioner based the rate reduction.

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

24 Sec. 8. PENDING RATE MATTERS. A rate filed pursuant to a
25 commissioner's order issued before May 1, 2003, is not subject to
26 the rate reductions required by this article before January 1,
27 2004.

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

6 SECTION 3. This Act takes effect immediately if it receives
7 a vote of two-thirds of all the members elected to each house, as
8 provided by Section 39, Article III, Texas Constitution. If this
9 Act does not receive the vote necessary for immediate effect, this
10 Act takes effect September 1, 2003.