

By: Bonnen

H.B. No. 2876

A BILL TO BE ENTITLED

AN ACT

relating to automobile 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 INSURANCE RATES AND FORMS

Art. 5.141. RATES FOR PERSONAL AUTOMOBILE INSURANCE COVERAGE

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

(b) The purposes of this article are to:

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

(2) promote the availability of personal automobile 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.

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

1 this code.

2 Sec. 2. DEFINITIONS. In this article:

3 (1) "Allocated loss adjustment expenses" means the
4 industry's historic costs per exposure associated with the
5 adjustment of specific claims. These historic costs are recorded in
6 insurers' Annual Statements as "defense and cost containment
7 expenses", and shall include all paid amounts, case reserve amounts
8 and incurred but not reported (IBNR) amounts reported by each
9 insurer.

10 (2) "Classification" means a generic application to
11 similar risks within the same line.

12 (3) "Coverage" means a type of insurance within a line
13 of insurance as defined in Section 2(8).

14 (A) For the private passenger automobile
15 liability line, the coverages are bodily injury liability (BI),
16 property damage liability (PD), personal injury protection (PIP),
17 medical payments (MP), uninsured/underinsured motorist BI (UMBI),
18 and uninsured/underinsured motorist PD (UMPD).

19 (B) For the private passenger automobile
20 physical damage line, the coverages are collision, and other than
21 collision (OTC).

22 (4) "Disallowed expenses" means:

23 (A) Administrative expenses, not including
24 acquisition, loss control, and safety engineering expenses, that
25 exceed 110 percent of the industry median for those expenses;

26 (B) lobbying expenses;

27 (C) advertising expenses, except the following:

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

3 (ii) advertising designed and directed at
4 loss prevention; or

5 (iii) advertising for the promotion of
6 organizations exempt from federal taxation under Section
7 501(c)(3), Internal Revenue Code of 1986, and its subsequent
8 amendments;

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

12 (E) contributions to organizations engaged in
13 legislative advocacy;

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

16 (G) contributions to social, religious,
17 political, or fraternal organizations;

18 (H) fees and assessments paid to advisory
19 organizations; and

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

22 (5) "Filer" means an insurer that files rates,
23 supplementary rating information, supporting information, rating
24 manuals, or any other information required to be filed under this
25 article.

26 (6) "Fixed expenses" means the industry's historic
27 fixed expenses per exposure. Fixed expenses include:

1 (1) other acquisition, field supervision, and
2 collection expenses incurred

3 (2) plus general expenses incurred as reported in
4 the Insurance Expense Exhibit, Section III-Texas Direct Premium.
5 Commission and brokerage expenses shall not be included in fixed
6 expenses.

7 (7) "Insurer" means an insurance company, reciprocal
8 or interinsurance exchange, mutual, capital stock company,
9 fraternal benefit society, local mutual aid association, Lloyd's
10 plan company, or other entity writing personal automobile insurance
11 or residential property insurance in the state.

12 (8) "Line" means a type of insurance subject to this
13 article. Two lines of insurance are covered by this article:

14 (1) private passenger automobile liability

15 (2) private passenger automobile physical
16 damage.

17 (9) "Loss trend" is the process by which factors that
18 are not reflected in historical loss data are expected to affect
19 losses in the prospective rating period.

20 (10) "Losses" means the industry's historic losses per
21 exposure, adjusted by catastrophe adjustment as prescribed by
22 Section 4(b) of this article. Historic losses shall include all
23 paid amounts, case reserve amounts and IBNR amounts reported by
24 each insurer.

25 (11) "Personal automobile insurance" means an
26 automobile insurance policy providing insurance coverages for the
27 ownership, maintenance, or use of private passenger, utility, and

1 miscellaneous type motor vehicles and trailers not primarily used
2 for the delivery of goods, materials, or services, unless such use
3 is in farm or ranch operations, and provided that such vehicles are
4 owned or leased by an individual or individuals. This term does not
5 include single interest insurance or to insurance on mobile homes,
6 motor homes, travel trailers, motorcycles, or antique, classic,
7 custom, or specialty insurance.

8 (12) "Profit Load" means the provision in the rate,
9 varying as a percentage of premium, for insurer profitability. For
10 the private passenger auto liability line, the profit load is 2.5%.
11 For the private passenger automobile physical damage line, the
12 profit load is 5%.

13 (13) "Projected allocated loss adjustment expenses"
14 means the allocated loss adjustment expenses, as defined in Section
15 2(1), trended in the manner described in Section 4(c) of this
16 article.

17 (14) "Projected fixed expenses" means the fixed
18 expenses, as defined in Section 2(6), trended in the manner
19 described in Section 4(c) of this article.

20 (15) "Projected losses" means the losses, as defined
21 in Section 2(10), trended in the manner described in Section 4(c) of
22 this article. Historic losses shall be on an accident-year basis.

23 (16) "Projected unallocated loss adjustment expenses"
24 means the unallocated loss adjustment expenses, as defined in
25 Section 2(24), trended in the manner described in Section 4(c) of
26 this article.

27 (17) "Rate" or "rating plan" means the charge for a

1 particular line for each unit of exposure.

2 (18) "Rate index" means the amount calculated by line,
3 in accordance with Section 4 of this article, relative to which the
4 rating bands and statutory rate limitations apply.

5 (19) "Rating band" means the range of rates above or
6 below the index calculated by line.

7 (20) "Rating period" shall be one calendar year
8 commencing on the effective date of the rates. Nothing in this
9 article shall be construed to specify the frequency of rate
10 filings.

11 (21) "Recorded period" means the historical period
12 from which data are taken to provide the basis for the proposed
13 rate. The recorded period shall be the most recent three calendar
14 years for which reliable data are available.

15 (22) "Supplementary rating information" means any
16 manual, rating schedule, plan of rules, rating rules,
17 classification systems, territory codes and descriptions, rating
18 plans, and other similar information used by the insurer to
19 determine the applicable premium for an insured. The term includes
20 factors and relativities, such as increased limits factors,
21 classification relativities, deductible relativities, premium
22 discount, and other similar factors and rating plans such as
23 experience, schedule, and retrospective rating. [determine whether
24 presupposes companies can do their own classification freedom; need
25 for it this section]

26 (23) "Supporting information" means:

27 (A) the experience and judgment of the filer and

1 the experience or information of other insurers relied on by the
2 filer;

3 (B) the interpretation of any other information
4 relied on by the filer;

5 (C) descriptions of methods used in making the
6 rates; and

7 (D) any other information required by the
8 department to be filed.

9 (24) "Unallocated loss adjustment expense" means the
10 industry's historic costs per exposure associated with the
11 adjustment of claims but not to specific claims as captured in
12 allocated loss adjustment expenses. These expenses are reported in
13 insurers' Annual Statements as "adjusting and other expenses."

14 (25) "Variable expense factor" means the sum of the
15 variable expenses, expressed as a percentage of the corresponding
16 direct written premium.

17 (26) "Variable expenses" consist of the following:

18 (A) commission and brokerage expenses incurred

19 (B) state premium taxes, licenses, and fees
20 incurred.

21 as reported in the Insurance Expense Exhibit, Section III-Texas
22 Direct Premium.

23 Sec. 3. RATE STANDARDS.

24 (a) Rates under this article shall be set in accordance with
25 the provisions of this section.

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

27 (1) past and prospective loss experience inside the

1 state, and outside the state if the state data are not credible;

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

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

7 (4) catastrophe hazards within the state;

8 (5) operating expenses excluding disallowed expenses;

9 (6) investment income;

10 (7) a reasonable margin for profit; and

11 (8) any other relevant factors inside and outside the
12 state.

13 (c) Rates may not be excessive, inadequate, unreasonable,
14 or unfairly discriminatory for the risks to which they apply.

15 (d) In setting rates applicable solely to policyholders in
16 the state, an insurer shall use its own historical premium and loss
17 data, as well as its own data for expenses and for profit and
18 contingency factors. The commissioner may require an audit of the
19 insurer's historical premium and loss data. The insurer may
20 separately supplement its own historical premium and loss data with
21 external historical premium and loss data as necessary. The
22 commissioner may by rule establish requirements for reporting
23 historical premium and loss data under this subsection.

24 Sec. 4. DETERMINATION OF THE RATE INDEX.

25 (a) Rate index. The "rate index" shall be calculated for
26 each coverage, as defined in Section 2(3), as follows:

27 (1) The sum of:

1 (A) projected losses, as defined in Section 2(15)
2 of this article, plus

3 (B) projected allocated loss adjustment expenses
4 ("ALAE"), as defined in Section 2(13) of this article; and plus

5 (C) projected unallocated loss adjustment
6 expense ("ULAE"), as defined in Section 2(16) of this article; and
7 plus

8 (D) projected fixed expenses, as defined in
9 Section 2(14) of this article.

10 (2) The sum of the calculation of subsection (a)(1)
11 will then be divided by the quantity 1.0 minus the variable expense
12 factor, as defined in Section 2(25) of this article, and the profit
13 load, as defined in Section 2(12) of this article, with the result
14 being the rate index.

15 (3) Stated as a formula:

$$\begin{aligned} \text{Rate index} = & (\text{projected losses} + \text{ALAE} + \text{ULAE} + \text{projected fixed} \\ & \text{expenses}) / \\ & (1 - \text{variable expenses} - \text{profit load}) \end{aligned}$$

19 (b) Catastrophe Adjustment. In those insurance lines and
20 coverages where catastrophes occur, the catastrophic losses of any
21 one year in the recorded period shall be replaced by a loading based
22 on an estimate of the expected long-term average annual catastrophe
23 claim costs per exposure. The Commissioner shall be responsible for
24 determination of the appropriate catastrophe loading.

25 (c) Trend Factor.

26 (1) Separate trend factors shall be calculated for
27 losses, allocated loss adjustment expenses, unallocated loss

1 adjustment expenses, and fixed expenses for each coverage covered
2 by this article.

3 (2) The trend factor shall be based on the average of
4 the two annual percentage changes during the three year recorded
5 period.

6 (3) Catastrophe losses, as defined by the Texas
7 Private Passenger Auto Statistical Plan, shall be excluded from the
8 loss trend calculations.

9 (4) The Commissioner may, upon the request of an
10 affected insurer or the Office of Public Insurance Counsel, specify
11 the manner in which loss data predating a specific change in law
12 shall be adjusted in affected lines to take such change in the law
13 into account. A specific change in law, as specified in the
14 subsection, may be either legislation or a judicial decision that
15 the Commissioner may reasonably anticipate will affect the loss
16 payouts of insurer issuing personal automobile or motor vehicle
17 policies.

18 (d) Class and Territory Relativities. Using standard
19 actuarial techniques and based on the actual loss data by territory
20 and driver classification for the recorded period, the Commissioner
21 shall adjust the rate index to rates for individual territories and
22 driver classes.

23 Sec. 5. RATE FILINGS. An insurer must file with the
24 commissioner all rates, supplementary rating information,
25 reasonable and pertinent supporting information for risks written
26 in the state, and all applicable rating manuals. The insurer shall
27 include in the filing any statistics or other information to

1 support the rates to be used by the insurer as required by the
2 commissioner by rule, including information necessary to evidence
3 that the calculation of the rate does not include disallowed
4 expenses. The insurer shall include in the filing policy fees,
5 service fees, and other fees that are charged under Article 21.35A
6 or Article 21.35B of this code.

7 Sec 6. RATE APPROVALS. (a) USE AND FILE.

8 (1) If an insurer's rate filing is less than or equal
9 to 5% above or below the rate index, the insurer's rate filing is
10 effective on the date specified by the insurer provided the filing
11 is made within 10 days of the effective date.

12 (2) Rates filed under this subsection are presumed to
13 be valid and in compliance with the requirements of this article.
14 However, if, after notice and hearing, the commissioner finds that
15 an insurer's filing under this subsection does not meet the
16 requirements of this article, the commissioner shall issue an order
17 that specifies how the filing fails to meet the requirements of this
18 article and states the date on which, within a reasonable period
19 after the order date, the insurer's filing is no longer in effect.
20 Rates filed by an insurer under this subsection shall remain in
21 effect until a final order disapproving such rates is issued by the
22 commissioner.

23 (b) FILE AND USE

24 (1) If an insurer's rate as specified in a rate filing
25 is over 5% but less than or equal to 10% above or below the rate
26 index, the insurer's rate filing is effective on the date specified
27 by the insurer but, except as provided in subsection 6(b)(3) below,

1 not earlier than the 30th day after the date the filing is received
2 by the commissioner.

3 (2) Within such 30 day period after receipt of the
4 filing, and after a hearing, the commissioner may disapprove a
5 filing under this Subsection. A hearing under this subsection may
6 be initiated by the Department or, if the Commissioner makes an
7 initial determination that a grievance states a legitimate prima
8 facie case and was filed in good faith, upon the motion of the
9 Office of Public Insurance Counsel.

10 (3) The commissioner may approve a filing by written
11 or electronic notification to the filer at any time before the 30th
12 day after the date of receipt by the commissioner or before the
13 effective date specified by the insurer in the filing. The new rate
14 may take effect on the receipt of the notice of the commissioner's
15 approval.

16 (c) PRIOR APPROVAL

17 (1) If an insurer's rate as specified in a rate filing
18 is over 10% above or below the rate index, the insurer's rate filing
19 must be approved by the commissioner before the insurer may use such
20 rates. An insurer making a filing under this subsection bears the
21 burden to prove that relevant markets are inadequate for the risks
22 insured, that failure to approve the filing will cause a lack of
23 availability in the relevant market and that approval of the filing
24 will not adversely affect the financial condition of the insurer.
25 Upon approval by the commissioner, the insurer's rate filing under
26 this subsection is effective on the date specified by the insurer or
27 upon receipt of the commissioner's approval, whichever is later.

1 (2) Notwithstanding Subsection 5(c)(1) above, a
2 filing under this subsection is deemed approved on the 60th day
3 following the Commissioner's receipt of the filing unless, prior to
4 60th day following receipt, the commissioner notifies the insurer
5 in writing that the filing has been disapproved or that additional
6 information is required. The commissioner's written notification
7 disapproving a filing under this subsection must specify how the
8 filing fails to meet the requirements of this article. If the
9 Commissioner finds that additional information regarding the
10 filing is required, the Commissioner shall act within 30 days after
11 the insurer's response to that request.

12 (3) An insurer whose filing under this subsection has
13 been disapproved by written notification from the commissioner may
14 request a hearing to appeal the disapproval, and the commissioner
15 shall schedule such hearing within 20 days of receiving the notice
16 of appeal.

17 (4) With respect to any filing in effect under this
18 subsection, an aggrieved insured or the public insurance counsel
19 may make a written application to the commissioner for a hearing on
20 the filing. The application must specify the grounds on which the
21 applicant bases the grievance. If the commissioner finds that the
22 application is made in good faith, that the applicant would be so
23 aggrieved if the grounds in the application are established, and
24 that those grounds otherwise justify holding the hearing, the
25 commissioner shall hold a hearing not later than the 30th day after
26 the date of receipt of the application. The commissioner shall give
27 at least 10 days' written notice of the hearing to the applicant and

1 to the insurer that made the filing in question. If, after the
2 hearing, the commissioner finds that the filing does not meet the
3 requirements of this article, the commissioner shall issue an order
4 specifying how the filing fails to meet the requirements of this
5 article and stating the date on which, within a reasonable period
6 after the date of the order the filing is no longer in effect. The
7 commissioner shall send copies of the order to the applicant and to
8 each affected insurer.

9 (d) CONTINUATION OF PRIOR RATES. From the date of filing of
10 the rates with the commissioner to the effective date of the new
11 rates in accordance with section 6 of this article, the insurer's
12 previously filed rates that are in effect shall remain in effect.

13 Sec. 7. 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. 8. 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 Sec. 7. GENERAL PROVISIONS (a) To avoid circumvention of
25 the rating program established by this article and to stop the
26 deregulation of the motor vehicle insurance market by transfer of
27 risks to county mutual insurance companies, a county mutual

1 insurance company may not write private passenger automobile
2 insurance for any insured at a rate including any applicable policy
3 fees that, after the application of any discount available to the
4 insured is lower than the highest rate permissible under the file
5 and use procedure established in Section 6(b) of this article.

6 (b) Nothing in this Act shall be construed to require an
7 insurer to accept a specific risk or to issue a specific individual
8 policy.

9 Sec. 8. Subsection (f), Article 5.01, Insurance Code, is
10 amended to read as follows: (f) Notwithstanding Subsections (a)
11 through (d) of this article, on and after June 1, 2003 [~~March 1,~~
12 ~~1992~~], rates for motor vehicle insurance in this state are
13 determined [~~as provided by the flexible rating program adopted~~
14 under Article 5.141 [~~Subchapter M~~] of this code [~~chapter~~].

15 Sec. 9. This Act takes effect September 1, 2003.

16 Sec. 10. The importance of this legislation and the crowded
17 condition of the calendars in both houses create an emergency and an
18 imperative public necessity that the constitutional rule requiring
19 bills to be read on three several days in each house be suspended,
20 and this rule is hereby suspended.