

By: Capelo

H.B. No. 3163

A BILL TO BE ENTITLED

AN ACT

relating to rates for professional liability insurance for physicians and health care providers; providing an administrative penalty.

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

ARTICLE 1. RATE FILING AND REPORT

SECTION 1.01. Chapter 5, Insurance Code, is amended by adding Subchapter R to read as follows:

SUBCHAPTER R. ANNUAL FILING OF RATES FOR PROFESSIONAL LIABILITY

INSURANCE FOR PHYSICIANS AND HEALTH CARE PROVIDERS;

REPORT TO LEGISLATURE

Art. 5.161. FILING OF RATE INFORMATION; REPORT

Sec. 1. PURPOSE. The purpose of this article is to require insurers writing professional liability insurance for physicians and health care providers in this state to annually file with the commissioner of insurance rates and supporting data, including current rates and estimated rates to be charged in the year following the filing date for the purpose of the preparation of a summary report for submission to each legislature. The report shall contain a review of the rates, presented in a manner that protects the identity of individual insurers:

(1) to inform the legislature as to whether the rates are just, adequate, and reasonable and not excessive or unfairly discriminatory; and

1           (2) to assist in the determination of the most  
2 effective and efficient regulatory system for professional  
3 liability insurance for physicians and health care providers in  
4 Texas.

5           Sec. 2. DEFINITIONS. In this article:

6           (1) "Insurer" means an insurance company, reciprocal  
7 or interinsurance exchange, mutual company, capital stock company,  
8 association, Lloyd's plan, joint underwriting association  
9 established under Article 21.49-3 of this code, self-insurance  
10 trust established under Article 21.49-4 of this code, or other  
11 entity writing professional liability insurance for physicians and  
12 health care providers in the state. The term includes an affiliate  
13 as described by Section 823.003(a) of this code if that affiliate is  
14 writing professional liability insurance for physicians and health  
15 care providers in the state.

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

25           (3) "Security" or "securities" has the meaning  
26 assigned by Section 4, The Securities Act (Article 581-4, Vernon's  
27 Texas Civil Statutes).

1       Sec. 3. RATE INFORMATION. (a) Insurers must file rates for  
2 professional liability insurance for physicians and health care  
3 providers and supporting information with the commissioner in  
4 accordance with the requirements determined by the commissioner  
5 under this article.

6       (b) Filings made by each insurer must be sufficient to  
7 respond to the commissioner's request for information under this  
8 article and must provide both current rates and estimated rates for  
9 the year following the required filing date of this article based on  
10 information reasonably known to the insurer at the time of filing.

11       (c) The insurer shall file, in a format specified by the  
12 commissioner, including an electronic format:

13               (1) all rates for professional liability insurance for  
14 physicians and health care providers, supplementary rating  
15 information, underwriting guidelines, reasonable and pertinent  
16 supporting information for risks written in the state, and all  
17 applicable rating manuals;

18               (2) actuarial support, including all statistics,  
19 data, or other information to support the rates, supplementary  
20 rating information, and underwriting guidelines used by the  
21 insurer;

22               (3) the policy fees, service fees, and other fees that  
23 are charged under Article 21.35B of this code;

24               (4) information on the insurer's losses from  
25 investments in securities, whether publicly or privately traded,  
26 including investments in the securities of companies required by  
27 any oversight agency to restate earnings within the 24 months

1 preceding the filing date, possessed and used by the insurer to  
2 determine premiums or underwriting for professional liability  
3 insurance for physicians and health care providers, as this  
4 information relates to the rates described by Section 1 of this  
5 article;

6 (5) information on the insurer's costs of reinsurance  
7 possessed and used by the insurer to determine premiums or  
8 underwriting for professional liability insurance for physicians  
9 and health care providers, as this information relates to the rates  
10 described by Section 1 of this article;

11 (6) a complete explanation, and an electronic copy, of  
12 all computer models used by the insurer not protected by a contract  
13 with a third party; and

14 (7) a complete explanation of any changes to  
15 underwriting guidelines, rates, and supplementary rating  
16 information since the last filing under this article.

17 (d) Each insurer that has a share of the market for  
18 professional liability insurance for physicians and health care  
19 providers in this state of five percent or more shall file the  
20 rating information required under this section. The commissioner  
21 shall determine which insurers that have a share of that market in  
22 this state of less than five percent are required to file the rating  
23 information under this section.

24 (e) The commissioner shall determine the date on which the  
25 filing is due.

26 (f) The commissioner may require additional information as  
27 provided by Section 4 of this article.

1        (g) The commissioner shall issue an order specifying the  
2 information that insurers must file to comply with this article and  
3 the date on which the filing is due.

4        (h) The commissioner is not required to hold a hearing  
5 before issuing the order required under Subsection (g) of this  
6 section.

7        (i) The commissioner shall notify an affected insurer of the  
8 order requiring the rate filing information under this section on  
9 the day the order is issued.

10       Sec. 4. ADDITIONAL INFORMATION. After the initial rate  
11 submission under Section 3 of this article, the commissioner may  
12 require an insurer to provide additional, reasonable information  
13 for purposes of the clarification or completeness of the initial  
14 rate submission.

15       Sec. 5. USE OF FILED RATE INFORMATION. (a) Information  
16 filed by an insurer with the department under this article that is  
17 confidential under a law that applied to the insurer before the  
18 effective date of this article remains confidential and is not  
19 subject to disclosure under Chapter 552, Government Code, except  
20 that the information may be disclosed as provided by Section  
21 552.008, Government Code, relating to information for legislative  
22 purposes. Information disclosed pursuant to Section 552.008,  
23 Government Code, shall be provided in a commonly used electronic  
24 format, including in spreadsheet or comma-delimited format, if so  
25 requested. The information may not be released to the public except  
26 in summary form in the report required under Section 6 of this  
27 article.

1        (b) Subsection (a) of this section does not preclude the use  
2 of information filed under this article as evidence in prosecuting  
3 a violation of this code. Confidential information described by  
4 Subsection (a) of this section that is used in prosecuting a  
5 violation is subject to a protective order until all appeals of the  
6 case have been exhausted. If an insurer is found, after the  
7 exhaustion of all appeals, to have violated this code, a copy of the  
8 confidential information used as evidence of the violation is no  
9 longer presumed to be confidential.

10       Sec. 6. REPORT. (a) Not later than the 30th day of each  
11 regular legislative session, the commissioner shall submit a report  
12 to the governor, the lieutenant governor, the speaker of the house  
13 of representatives, and the members of the legislature on the  
14 information collected from the filings required under this article.  
15 The report may be created based on a sample of the information  
16 provided under Section 3 of this article.

17       (b) The report required under this section shall provide a  
18 summary review of the rates currently charged and estimated to be  
19 charged over the year following the date of the report, presented in  
20 a manner that protects the identity of individual insurers:

21           (1) to inform the legislature as to whether the rates  
22 are just, adequate, and reasonable and not excessive or unfairly  
23 discriminatory; and

24           (2) to assist the legislature in the determination of  
25 the most effective and efficient regulatory system for professional  
26 liability insurance for physicians and health care providers in  
27 this state.

1       Sec. 7. NOTIFICATION; NONCOMPLIANCE. The commissioner  
2 shall notify the governor, the lieutenant governor, the speaker of  
3 the house of representatives, and the members of the legislature of  
4 the names of the insurers whom the commissioner requested to make  
5 the rate filings under this article and the names of the insurers  
6 who did not respond in whole or in part to the commissioner's  
7 request. This notification shall be made by separate letter on the  
8 fourth day following the date on which the commissioner determines  
9 the filing is due under Section 3(g) of this article.

10       Sec. 8. APPLICATION OF CERTAIN LAW. Chapter 40 of this code  
11 does not apply to an action of the commissioner under Section 3(g)  
12 of this article.

13       Sec. 9. FAILURE TO COMPLY. An insurer that fails to comply  
14 with any request for information issued by the commissioner under  
15 this article is subject, after notice and opportunity for hearing,  
16 to sanctions as provided by Chapters 82 and 84 of this code.

17       SECTION 1.02. (a) In addition to information required  
18 under Section 3(c), Article 5.161, Insurance Code, as added by this  
19 Act, the first filing under that article by an insurer that was  
20 writing professional liability insurance for physicians and health  
21 care providers on or before January 1, 2000, must include a complete  
22 explanation of any changes to underwriting guidelines, rates, and  
23 supplementary rating information since that date.

24       (b) The commissioner shall require the first filings under  
25 Article 5.161, Insurance Code, as added by this Act, to be made not  
26 later than the 30th day after the effective date of this Act and  
27 shall submit the first report to the legislature under that article

1 not later than the 45th day after the effective date of this Act.

2 ARTICLE 2. RATE ROLLBACK

3 SECTION 2.01. (a) Except as provided by Subsection (b) of  
4 this section, this section applies only to an insurer writing  
5 professional liability insurance for physicians and health care  
6 providers in this state on the effective date of this Act or a  
7 person classified as an affiliate of one of those insurers under  
8 Section 823.003, Insurance Code.

9 (b) A person that is classified as an affiliate of an  
10 insurer under Section 823.003, Insurance Code, and that begins  
11 writing professional liability insurance for physicians and health  
12 care providers on or after the effective date of this Act and before  
13 September 1, 2005, may not charge an amount for professional  
14 liability insurance for physicians and health care providers issued  
15 or renewed before September 1, 2005, that exceeds the amount that  
16 the company described by Subsection (a) of this section with which  
17 the person is affiliated may charge for the insurance under this  
18 section.

19 (c) Except as provided by Subsection (e) of this section, an  
20 insurer may not charge an insured an amount for professional  
21 liability insurance for physicians and health care providers issued  
22 or renewed on or after the effective date of this Act and before  
23 September 1, 2005, that exceeds 88 percent of the amount the insurer  
24 charged that insured for the same coverage immediately before that  
25 date or, if the insurer did not insure that insured immediately  
26 before that date, the amount that the insurer would have charged the  
27 insured at that time.



1           (d) An insurer that issues or renews a policy of  
2 professional liability insurance for health care providers on or  
3 after the effective date of this Act and before September 1, 2003,  
4 and charges and receives a premium for the policy that exceeds the  
5 amount allowed under Subsection (c) of this section is not subject  
6 to a penalty under the Insurance Code or any other law of this state  
7 if, on or before November 1, 2003, the insurer refunds to the  
8 insured the difference between the amount paid and the amount  
9 allowed under Subsection (c).

10           (e) The commissioner may, after notice and a hearing, allow  
11 an insurer to charge a premium for professional liability insurance  
12 for physicians and health care providers that exceeds the amount  
13 allowed under Subsection (c) of this section if the commissioner  
14 determines, based on clear and convincing evidence, that:

15                 (1) if the insurer were to implement a rate allowed  
16 under Subsection (c) of this section, the insurer would be  
17 financially unable to continue writing professional liability  
18 insurance for physicians or health care providers in this state; or

19                 (2) implementation of a rate allowed by Subsection (c)  
20 of this section would likely result in placing the insurer in a  
21 hazardous financial condition described by Section 2, Article 1.32,  
22 Insurance Code.

### 23                         ARTICLE 3. EFFECTIVE DATE

24           SECTION 3.01. This Act takes effect immediately if it  
25 receives a vote of two-thirds of all the members elected to each  
26 house, as provided by Section 39, Article III, Texas Constitution.  
27 If this Act does not receive the vote necessary for immediate

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1 effect, this Act takes effect September 1, 2003.