

By: Taylor

H.B. No. 3202

A BILL TO BE ENTITLED

AN ACT

relating to rates for professional liability insurance for defined
Physicians, Hospitals, 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. PROFESSIONAL LIABILITY INSURANCE RATES FOR
INSURANCE COVERING PHYSICIANS, HOSPITALS AND HEALTH CARE PROVIDERS

Sec. 1. FINDINGS. The Legislature finds that:

(1) the premium cost of professional liability
insurance for Physicians, Hospitals, and Health Care Providers has
been a significant factor in the reduced availability of health
care services in this state;

(2) legislation adopted by the regular session of the
78th Legislature places caps on damages for liability of
Physicians, Hospitals and Health Care Providers which caps are
projected to have the effect of significantly reducing the cost of
claims covered by professional liability insurance policies, thus
reducing the premiums for professional liability insurance;

(3) professional liability claims made under
professional liability insurance policies are claims for which
actual, quantifiable loss is not fully known for several years
after the claims arise, thus the actual, quantifiable savings
produced by caps on damages for liability of Physicians, Hospitals

1 and Health Care Providers cannot begin to be fully known for at
2 least two to three years after those caps are imposed;

3 (4) in order to provide immediate premium relief to
4 Physicians, Hospitals, and other Health Care Providers, rates for
5 professional liability insurance delivered, issued for delivery or
6 renewed on or after the effective date of caps on damages for
7 liability must immediately begin to take into consideration Cap
8 Savings, but due to lack of initial actual data reflecting the
9 effect of these caps on such rates, although actuarially
10 determined, may not produce rates for premiums that will, in all
11 cases, reflect the ultimate, actual quantifiable losses under
12 professional liability insurance policies in the future;

13 (5) in conjunction with placing the caps on damages
14 for liability recovery and adjusting premium rates, it is necessary
15 to put in place a mechanism to assure that, should initial rates of
16 premiums incorporating adjustments for Cap Savings exceed amounts
17 necessary to cover actual losses under professional liability
18 insurance, the policyholders will receive a refund of premium
19 reflecting any cost savings in an orderly manner;

20 (6) the benefits and savings from reducing insurance
21 costs for professional liability claims that may result from
22 legislation placing monetary caps on damages for professional
23 liability of Physicians, Hospitals and Health Care Providers will
24 have a significant impact on making health care services available
25 to Texas citizens, will assure that the health of Texas citizens is
26 protected, will protect public health interests of the state and
27 will assure that the providers of health care services can devote

1 their full time and efforts to healing the sick and injured; and

2 (7) legislative action in the public interest and
3 within the police power of the state is required to address the cost
4 savings resulting from the laws providing caps on damages adopted
5 by the regular session of the 78th Legislature in order to pass the
6 benefits of the Cap Savings on to insured Physicians, Hospitals,
7 and Health care providers of this state.

8 Sec. 2. In this Article, the following terms have the
9 following meanings:

10 (1) "Cap Savings" means the monetary savings realized
11 or projected to be realized in rates for premiums charged for
12 Professional Liability Insurance resulting from the imposition of
13 monetary caps on damages for liability of Physicians, Hospitals and
14 Health Care Providers by the regular session of the 78th
15 Legislature.

16 (2) "Escrow Account" means an account established by
17 an Insurer for the purpose of depositing and maintaining any
18 disputed percentage of Cap Savings plus investment income, as
19 provided in Section 7.

20 (3) "Health Care Provider" has the meaning assigned by
21 Article 5.15-1, Section 2(2) of this code.

22 (4) "Hospital" has the meaning assigned by Article
23 5.15-1, Section 2(3) of this code.

24 (5) "Insurer" means any person or entity authorized to
25 engage in the business of insurance in this state that delivers,
26 issues for delivery or renews professional liability insurance for
27 physicians, hospitals and/or health care providers in this state

1 including:

2 (a) a Lloyd's plan;

3 (b) a reciprocal or interinsurance exchange; and

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

6 (6) "Physician" has the meaning assigned by Article
7 5.15-1, Section 2(1) of this code.

8 (7) "Policyholder Premium Refund" means the amount of
9 premium refund and interest determined under Section 8 to be owed to
10 a Physician, Hospital or Health Care Provider under a Professional
11 Liability Insurance Policy.

12 (8) "Professional Liability Insurance" means
13 Professional Liability Insurance delivered, issued for delivery or
14 renewed by an Insurer to a Physician, Hospital or Health Care
15 Provider on or after January 1, 2004.

16 (9) "Department" means the Texas Department of
17 Insurance.

18 Sec. 3. APPLICATION OF ARTICLE. This article applies to
19 Professional Liability Insurance.

20 Sec. 4. ENTITLEMENT TO CAP SAVINGS. Each Physician,
21 Hospital and/or Health Care Provider who pays a premium for a
22 Professional Liability Insurance Policy which is ultimately
23 determined under Section 8 to exceed the premium that would be
24 charged by taking into consideration actual Cap Savings at the time
25 of distribution is entitled to a Policyholder Premium Refund from
26 the Insurer who wrote the policy in an amount equivalent to the
27 difference in the premium originally charged and the premium that

1 would have been charged if calculated on actual Cap Savings
2 determined under Section 8.

3 Sec. 5. RATE FILINGS. (a) Not later than the 30th day after
4 the date on which this article takes effect, each Insurer that plans
5 to deliver, issue for delivery or renew Professional Liability
6 Insurance in this state on or after January 1, 2004, shall file with
7 the Department new rate filings for that Professional Liability
8 Insurance which incorporates and clearly identifies the
9 actuarially determined Cap Savings that are projected to result in
10 the rates to be used to calculate premiums for Professional
11 Liability Insurance.

12 (b) Except as otherwise specifically provided in this
13 article, rate filing made under this section shall be made in
14 accordance with and subject to Article 5.15-1, Section 4 of this
15 code.

16 (c) In setting rates under this article, an Insurer, in
17 considering past and prospective loss experience, shall not
18 consider such experience in a manner that will diminish, minimize
19 or ignore the effect which Cap Savings will have on reducing rates
20 of premiums for Professional Liability Insurance.

21 (d) Any Professional Liability Insurance rate filings made
22 by an Insurer subsequent to the initial filing required by
23 Subsection (a) shall be made in accordance with this article.

24 Sec. 6. DEPARTMENT AUTHORITY AND REVIEW. (a) On receipt of
25 a rate filing from an Insurer, the Department shall review the
26 filing in accordance with this article.

27 (b) If the Department determines that the Insurer has

1 correctly projected the potential effect of the Cap Savings in its
2 rates, the Department shall notify the Insurer in writing that the
3 Insurer has met the requirements of this article as to Cap Savings
4 and the Insurer may proceed to write Professional Liability
5 Insurance in accordance with that filing.

6 (c) If after completing final review of a rate filing, the
7 Department believes that all or part of the Cap Savings reflected in
8 the rate filing do not reflect a correct percentage reduction, the
9 Department shall notify the Insurer in writing that the Department
10 believes that all or part of the rate filing does not accurately
11 reflect the reasonable projections of Cap Savings and state the
12 reasons for that position.

13 (d) If the Department sends notice to the Insurer under
14 Subsection (c), the Insurer may either make necessary adjustments
15 to its rate filing to bring the rates into the percentage range for
16 Cap Savings determined by the Department, may create an Escrow
17 Account as defined in Section 7 of this article and use the filed
18 rates or may appeal the Department's decision.

19 (e) An appeal of the Department's decision under Subsection
20 (d), on issuance of an order by the Commissioner denying the
21 disputed portion of the rate filing, is a contested case under
22 Chapter 2001, Government Code. Only that portion of a rate filing
23 that is in dispute under this article may be appealed under this
24 section. The State Office of Administrative Hearings shall take
25 all necessary steps to expedite a hearing and decision under this
26 subsection.

27 Sec. 7. ESCROW ACCOUNT. (a) An Insurer may satisfy the

1 Department's objections to Cap Savings in the letter under Section
2 6(c) and implement rates in its rate filing by establishing and
3 maintaining an Escrow Account separate from other funds of the
4 Insurer. The Insurer may not use any funds in the account for any
5 purpose other than for investment until such funds are distributed
6 in accordance with Section 8.

7 (b) The Insurer shall control and invest funds in the Escrow
8 Account in accordance with this article and in accordance with laws
9 governing the Insurer and company policies and procedures to the
10 extent that those laws, policies and procedures are not in conflict
11 with this article.

12 (c) An Insurer shall deposit in the Escrow Account the
13 percentage of premium on a Professional Liability Insurance policy
14 as earned which constitutes the difference between premium charged
15 by the Insurer under its rate filing for the Professional Liability
16 Insurance policy and the premium that would be charged by the
17 Insurer if using rates calculated using Cap Savings as projected by
18 the Department. All funds in the Escrow Account must be maintained
19 as unencumbered funds and used for no other purpose.

20 (d) In addition to reflecting the funds being maintained in
21 the Escrow Account on annual and quarterly financial statements and
22 other required filings with the Department, the Insurer shall file
23 with the Senior Associate Commissioner of the Property and Casualty
24 Program at the Department an annual report relating to the Escrow
25 Account, which sets out the amounts of premium collected and
26 amounts of earned premium, on policies covered by the Escrow
27 Account, amounts deposited in the Escrow Account, formulas used to

1 determine amounts of deposits, interest earned on amounts deposited
2 in the Escrow Account, claims and loss information under the
3 policies covered by the Escrow Account and any other information
4 that the Department, may require to be filed under this section.
5 The report shall be submitted in the form and in the format required
6 by the Department and shall be filed not later than January 31,
7 2004, and on January 31, in each succeeding year until all money in
8 the Escrow Account is distributed. If a rate filing takes effect on
9 a date different from January 1, the report under this subsection
10 shall be filed not later than the last day of the 13th month
11 following the date on which the rate filing took effect and on that
12 date for each subsequent year.

13 (e) An Escrow Account created by an Insurer under this
14 article shall be used only for deposit of funds relating to the
15 specific rate filing which necessitated the creation of such
16 account. If the Insurer makes a subsequent rate filing for
17 Professional Liability Insurance and the Insurer and the Department
18 do not agree to the Cap Savings percentage for that subsequent rate
19 filing and the Insurer decides to use an Escrow Account to resolve
20 issues with the Department regarding premium rates, a separate
21 Escrow Account must be established and maintained for the disputed
22 Cap Savings in accordance with this article.

23 Sec. 8. POLICYHOLDER PREMIUM REFUND. (a) On approval of
24 the Commissioner of Insurance, not earlier than two years after a
25 rate filing takes effect and not later than three years after such
26 date, the Insurer shall determine the actual Cap Savings based on
27 data available at that time and make Policyholder Premium Refunds

1 as indicated.

2 (b) A distribution of Cap Savings shall be based on an
3 actuarial calculation of the actual Cap Savings that have resulted
4 under the Professional Liability Insurance policies delivered,
5 issued for delivery or renewed under the rate filing.

6 (c) If the actuarial calculation of actual Cap Savings when
7 factored into the rates reflects that the rates used to calculate
8 the original premium for the Professional Liability Insurance
9 policies were in excess of the amount that would produce rates that
10 reflect the actual Cap Savings for those policies based on current
11 data, information and actual losses, the Insurer shall pay to each
12 Physician, Hospital or Health Care Provider who is entitled to a
13 refund, a Policyholder Premium Refund. Any Policyholder Premium
14 Refund under this subsection shall be made not later than 30 days
15 after the date on which the Commissioner approves the amount of
16 distribution or not later than 30 days after the 60-day period for
17 Department review and Commissioner approval expires under this
18 section, whichever shall first occur.

19 (c) If the amount to be distributed as a Policyholder
20 Premium Refund to Providers, Hospitals and/or Health Care Providers
21 is more than has been maintained in an Escrow Account less interest,
22 the Insurer shall pay any additional amount necessary to fully fund
23 the Policyholder Premium Refund. However, if the amount to be
24 distributed to Physicians, Hospitals and/or Health Care Providers
25 is less than the total amount in an Escrow Account, the remaining
26 amount in the Escrow Account is considered earned premium of the
27 Insurer and may be distributed from the Escrow Account to the

1 Insurer and used and expended as other earned premium of the
2 Insurer.

3 (d) In making distributions under this section, each
4 Physician, Hospital and/or Health Care Provider is entitled to
5 receive an amount equal to any interest earned on the amount of the
6 Policyholder Premium Refund.

7 (e) Subject to the time limitations stated in Subsection
8 (a), when an Insurer has sufficient experience data available to
9 make an actuarial determination of actual Cap Savings for
10 Professional Liability Insurance, the Insurer shall have an
11 actuarial determination of the Cap Savings made and shall file with
12 the Department its calculation of Cap Savings, its determination of
13 appropriate Policyholder Premium Refunds and supporting
14 information as may be required by the Department. If the
15 Commissioner approves this filing or if the Department fails to
16 take action on this filing within 60 days from the date the filing
17 is made with the Department, the Insurer may proceed to make
18 distributions in accordance with the distribution filing. If the
19 Department believes the distributions or part of the distributions
20 proposed in the distribution filing do not correctly reflect Cap
21 Savings for purposes of distribution, the Department shall notify
22 the Insurer in writing of the changes that the Department considers
23 necessary to establish the amount of distribution and shall provide
24 any supporting calculations or other information requested by the
25 Insurer in support of such position. If the Commissioner does not
26 act on a rate distribution filing within 60 days from the date of
27 the filing, the filing is deemed approved.

1 (f) If the Department issues a written notice to the Insurer
2 that the distribution filing does not correctly reflect the actual
3 Cap Savings for purposes of distribution, the Insurer may amend its
4 distribution filing to reflect the Department's determinations or
5 determination the parties agree to be correct. If the Insurer does
6 not amend the filing, the Commissioner may issue an order denying
7 the filing. If the Commissioner denies the filing, the Insurer may
8 appeal the Commissioner's determination.

9 (g) An appeal of the Commissioner's decision under
10 Subsection (f) is a contested case under Chapter 2001, Government
11 Code. Only that portion of a distribution filing that is in dispute
12 under this section may be appealed under this section. The State
13 office of Administrative Hearings shall take all necessary steps to
14 expedite a hearing and decision under this subsection.

15 (h) If the Department determines that only a part of the
16 distributions proposed by a distribution filing do not reflect in
17 the distribution filing actual Cap Savings, the Commissioner shall
18 approve the distributions that reflect actual Cap Savings and the
19 Insurer shall make those approved distributions in accordance with
20 the filing and this section.

21 Sec. 9. EFFECT OF ARTICLE ON OTHER LAW. (a) The provisions
22 of this article authorize the Commissioner of Insurance and the
23 Department to approve or disapprove rates and rate filings only to
24 the extent necessary to assure that proper recognition of Cap
25 Savings are incorporated in filed rates and does not otherwise give
26 the Commissioner or the Department the power to prescribe uniform
27 or absolute rates or to prevent filing of different rates for risks

1 in a given classification or modified rates for individual risks
2 made in accordance with rating plans so long as those different or
3 modified rates take into account reasonable projections of Cap
4 Savings.

5 Sec. 10. RULES AND FORMATS. (a) The Commissioner of
6 Insurance may adopt necessary rules to carry out the provisions of
7 this article.

8 (b) Except for financial information required to be
9 incorporated in regulatory annual and quarterly financial
10 statements, any information required to be filed with the
11 Department by an Insurer under this article other than the regular
12 rate filing is privileged and confidential and is excepted from
13 disclosure pursuant to Section 552.138, Government Code.

14 Sec. 11. REPORT TO LEGISLATURE. Not later than December 31,
15 of each year, the Department shall submit a report to each house of
16 the Legislature regarding the operation of the program under this
17 article.

18 SECTION 2. Subchapter C, Government Code, is amended by
19 adding Section 552.138 to read as follows:

20 Section 552.138. EXCEPTION: CERTAIN CAP SAVINGS
21 INFORMATION FILED WITH THE TEXAS DEPARTMENT OF INSURANCE. (a)
22 Information is excepted from the requirements of Section 552.021 if
23 it is information that is filed with the Texas Department of
24 Insurance under Article 5.134, Insurance Code other than
25 information specifically excepted in Article 5.134, Section 9(b),
26 Insurance Code.

27 SECTION 3. Article 5.134, Insurance Code and Section

1 552.138, Government Code, expire on January 1, 2008.

2 SECTION 4. This Act takes effect immediately if it receives
3 a vote of two-thirds of all the members elected to each house, as
4 provide by Section 39, Article III, Texas Constitution. If this Act
5 does not receive the vote necessary for immediate effect, this Act
6 takes effect September 1, 2003.