

By: Wohlgemuth

H.B. No. 3346

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of insurance written on personal risks.

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. INSURANCE RATES FOR PERSONAL RISKS

Art. 5.141. REGULATION OF RATES FOR INSURANCE WRITTEN ON PERSONAL RISKS.

Sec. 1. SCOPE AND PURPOSE. (a) This article applies to personal auto and residential property insurance written on personal risks in this state by any insurer authorized to do business in this state.

(b) The purposes of this article are to:

(1) recognize and enhance the role well-informed consumers play in the competitive marketplace;

(2) promote competition among insurers;

(3) protect policyholders and the public against adverse effects of excessive, inadequate or unfairly discriminatory rates;

(4) prohibit unlawful price fixing agreements by or among insurers;

(5) authorize essential cooperative activities among insurers in the ratemaking process and to regulate such activities to prohibit practices that tend to substantially lessen competition

1 or create monopolies; and

2 (6) provide necessary regulatory authority in the
3 absence of a competitive marketplace.

4 Sec. 2. DEFINITIONS

5 (1) "Classification system" or "classification" means
6 the process of grouping risks with similar risk characteristics so
7 that differences in costs may be recognized.

8 (2) "Commissioner" means the Commissioner of
9 Insurance.

10 (3) "Competitive market" means any market except those
11 which have been found to be non-competitive pursuant to Section 5.

12 (4) "Developed losses" means losses (including loss
13 adjustment expenses) adjusted, using standard actuarial
14 techniques, to eliminate the effect of differences between current
15 payment or reserve estimates and those which are anticipated to
16 provide actual ultimate loss (including loss adjustment expense)
17 payments.

18 (5) "Expenses" means that portion of a rate
19 attributable to acquisition, field supervision, collection
20 expenses, general expenses, taxes, licenses and fees.

21 (6) "Insurer" means an insurance company, reciprocal
22 or interinsurance exchange, mutual, capital stock company,
23 fraternal benefit society, local mutual aid association, county
24 mutual insurance company, association, Lloyd's plan company, or
25 other entity writing personal risk insurance in the state. The term
26 includes an affiliate, as described by Section 823.003(a) of this
27 code if that affiliate is writing personal risk insurance in the

1 state. The term does not include the Texas Windstorm Insurance
2 Association created and operated under Article 21.49 of this code
3 or the FAIR Plan created and operated under article 21.49A of this
4 code.

5 (7) "Loss adjustment expense" means the expenses
6 incurred by the insurer in the course of settling claims.

7 (8) "Market" is the statewide interaction between
8 buyers and sellers in the procurement of a line of insurance
9 coverage pursuant to the provisions of this Act.

10 (9) "Non-competitive market" means a market, which is
11 subject to a ruling pursuant to Section 5 that a market is not
12 competitive for a line of insurance, and, for the purposes of this
13 Act, residual markets, and pools are non-competitive markets.

14 (10) "Personal risk" means homeowners, tenants,
15 non-fleet private passenger automobiles, mobile homes and other
16 property and casualty insurance for person, family or household
17 needs. This includes any property and casualty insurance that is
18 otherwise intended for non-commercial coverage.

19 (11) "Prospective loss cost" means that portion of a
20 rate that does not include provisions for expenses (other than loss
21 adjustment expenses) or profit, and are based on historical
22 aggregate losses and loss adjustment expenses adjusted through
23 development to their ultimate value and projected through trending
24 to a future point in time.

25 (12) "Rate" means that cost of insurance per exposure
26 unit whether expressed as a single number or as a prospective loss
27 cost with an adjustment to account for the treatment of expenses,

1 profit, and individual insurer variation in loss experience, prior
2 to any application of individual risk variations based on loss or
3 expense considerations, and does not include minimum premiums.

4 (13) "Supplementary rate information" means any
5 manual or plan of rates, classification, rating schedule, minimum
6 premium, policy fee, rating rule and any other similar information
7 needed to determine an applicable rate in effect or to be in effect.

8 (14) "Supporting information" means (a) the
9 experience and judgment of the filer and the experience or data of
10 other insurers or organizations relied upon by the filer, (b) the
11 interpretation of any statistical data relied upon by the filer,
12 (c) a description of methods used in making the rates and (d) other
13 similar information relied upon by the filer.

14 (15) "Trending" means any procedure for projecting
15 losses to the average date of loss, or premiums or exposures to the
16 average day of writing, for the period during which the policies are
17 to be effective.

18 Sec. 3. COMPETITIVE MARKET

19 A. A competitive market for a line of personal risk
20 insurance is presumed to exist unless the commissioner, after
21 notice and hearing, determines that a market is not competitive for
22 a particular line of insurance and issues a ruling to that effect.
23 The burden of proof in any hearing shall be placed on the party or
24 parties advocating the position that competition does not exist.

25 B 1. If the commissioner determines after hearing that a
26 market is not competitive for a particular line of personal risk
27 insurance, the commissioner shall issue a ruling within 30 days of

1 the administrative hearing. Any ruling that a market is not
2 competitive shall include action the state, including the
3 commissioner, shall undertake to return the market to a competitive
4 market. The ruling shall identify which factors listed below are
5 causing the market not to be competitive and what action the state
6 shall take to address that factor.

7 2. Such ruling shall expire one year after issue
8 unless rescinded earlier by the commissioner or unless the
9 commissioner renews the ruling after a hearing and a finding as to
10 continued lack of competition. Any ruling that renews the finding
11 that competition does not exist within a market for a line of
12 insurance shall include findings regarding:

13 a) the action the state and the commissioner have
14 taken to return the market to a competitive market and b) an
15 explanation regarding why those actions have failed to return the
16 market to a competitive market.

17 3. The commissioner's ruling, or any renewal of that
18 ruling in the form of findings and conclusion of law shall become
19 the formal basis for the commissioner's determination and once
20 issued will be subject to challenge in a state court of competent
21 jurisdiction pursuant to Subchapter D, Chapter 36, of this code.

22 C. The following factors shall be considered by the
23 commissioner for purposes of determining if a market for a
24 particular line of insurance is not competitive. A determination
25 that a line of insurance is not competitive shall not be based
26 solely on any one factor. The factors are:

27 1. The number of insurers or groups of affiliated

1 insurers actively engaged in providing coverage taking into account
2 the specialization traditionally required for the line of
3 insurance;

4 2. Measures of market concentration and changes of
5 market concentration over time including but not limited to the use
6 of the Herfindahl-Hirschman Index (HHI) and the United States
7 Department of Justice merger guidelines for an unconcentrated
8 market;

9 3. Ease of entry and the existence of financial or
10 economic barriers that could prevent new firms from entering the
11 market;

12 4. The extent to which any insurer or group of
13 affiliated insurers controls all or a dominant portion of the
14 market and has actively sought to prevent competition;

15 5. Whether the total number of companies writing the
16 line of insurance in this state is sufficient to provide multiple
17 options;

18 6. The availability of insurance coverage to
19 consumers;

20 7. The opportunities available to consumers in the
21 market to acquire pricing and other consumer information.

22 D. If, in considering the factors in section 3(C) the
23 Commissioner determines that a market is not competitive for a line
24 of insurance due solely to legislative and or regulatory
25 impediments, the commissioner may not regulate rates as if the
26 market was noncompetitive as provided in Sections 4, 5 and 6.

27 E. The commissioner shall monitor the degree and continued

1 existence of competition in this State on an on-going basis. In
2 doing so, the commissioner may utilize existing relevant
3 information, analytical systems and other sources; or rely on some
4 combination thereof. Such activities may be conducted internally
5 within the insurance department, or in cooperation with other state
6 insurance departments.

7 F. The commissioner is required, at all times, to take any
8 and all actions within the scope of the commissioner's power to
9 preserve and protect competitive markets.

10 SECTION 4. RATING STANDARDS AND METHODS

11 A. Rates shall not be excessive, inadequate or
12 unfairly discriminatory. 1. For the purpose of this article,
13 "Excessive" means a rate that is likely to produce a long-term
14 profit that is unreasonably high for the personal risk insurance
15 provided. No rate in a competitive market shall be considered
16 excessive.

17 2. For the purpose of this article, "Inadequate" means
18 a rate which is unreasonably low for the personal risk insurance
19 provided and

20 a. the continued use of which endangers the
21 solvency of the insurers using it or

22 b. will have the effect of substantially
23 lessening competition or creating a monopoly in any market.

24 3. For the purpose of this article, "Unfairly
25 discriminatory" refers to rates that cannot be actuarially
26 justified. It does not refer to rates that produce differences in
27 premiums for policyholders with like loss exposures, so long as the

1 rate reflects such differences with reasonable accuracy. A rate is
2 not unfairly discriminatory if it averages broadly among persons
3 insured under a group, franchise or blanket policy, or a mass
4 marketing plan. No rate in a competitive market shall be considered
5 unfairly discriminatory based on actuarial soundness.

6 B. In determining whether rates in a non-competitive market
7 are excessive, inadequate or unfairly discriminatory,
8 consideration may be given to the following elements:

9 1. Basic Rate Factors. Due consideration shall be
10 given to past and prospective loss and expense experience within
11 and outside of this state, to catastrophe hazards and
12 contingencies, to events or trends within and outside of this
13 state, to dividends or savings to policy-holders, members or
14 subscribers, and to all other factors and judgments deemed relevant
15 by the insurer.

16 2. Classification. Risks may be grouped by
17 classifications for the establishment of rates and minimum
18 premiums. Classification rates may be modified for individual
19 risks in accordance with rating plans or schedules which establish
20 standards for measuring probable variations in hazards or expenses,
21 or both.

22 3. Expenses. The expense provision shall reflect the
23 operating methods of the insurer and its own past expense
24 experience and anticipated future expenses.

25 4. Contingencies and Profits. The rates may contain a
26 provision for contingencies and a provision for a reasonable
27 underwriting profit, and may reflect investment income directly

1 attributable to unearned premium and loss reserves.

2 5. Other relevant factors. Any other factors
3 available at the time of hearing.

4 Sec. 5. RATE REGULATION IN A MARKET DETERMINED TO BE
5 NON-COMPETITIVE

6 A. If the commissioner determines that competition does not
7 exist in a market and issues a ruling to that effect pursuant to
8 Section 3, the rates applicable to insurance sold in that market
9 shall be regulated in accordance with the provisions of Section 4
10 through 7 applicable to non-competitive markets.

11 B. Any rate filing in effect at the time the commissioner
12 determines that competition does not exist pursuant to Section 3
13 shall be deemed to be in compliance with the laws of this state
14 unless disapproved pursuant to the procedures and rating standards
15 contained in Section 4 through 7 applicable to non-competitive
16 markets.

17 C. Any insurer having a rate filing in effect at the time the
18 commissioner determines that competition does not exist pursuant to
19 Section 3 may be required to furnish supporting information within
20 30 days of a written request by the commissioner.

21 Sec. 6. FILING OF RATES, SUPPLEMENTARY RATE INFORMATION AND
22 SUPPORTING INFORMATION

23 A. Filings in Competitive Markets. For personal lines,
24 every insurer shall file with the commissioner all rates and
25 supplementary rate information to be used in this state no later
26 than 30 days after the effective date; provided, that such rates and
27 supplementary rate information need not be filed for inland marine

1 risks which by general custom are not written according to manual
2 rules or rating plans. Risks may be classified in any way except
3 that no risk may be based in whole or in part on race, color, creed
4 or national origin.

5 B. Filings In Non-Competitive Markets.

6 1. Every insurer shall file with the commissioner all
7 rates, supplementary rate information and supporting information
8 for non-competitive markets at least 30 days before the proposed
9 effective date. The commissioner may give written notice, within
10 30 days of the receipt of the filing, that the commissioner needs
11 additional time, not to exceed 30 days from the date of such notice
12 to consider the filing. Upon written application of the insurer,
13 the commissioner may authorize rates to be effective before the
14 expiration of the waiting period or an extension thereof. A filing
15 shall be deemed to meet the requirements of this article and to
16 become effective unless disapproved pursuant to Section 7 by the
17 commissioner before the expiration of the waiting period or an
18 extension thereof.

19 2. The filing shall be deemed in compliance with the
20 filing provisions of this section unless the commissioner informs
21 the insurer within 10 days after receipt of the filing as to what
22 supplementary rate information or supporting information is
23 required to complete the filing. Risks may be classified in any way
24 except that no risk may be based in whole or in part on race, color,
25 creed or national origin.

26 C. Every insurer shall maintain all rates, supplementary
27 rate information and other information upon which the insurer based

1 its rates. Such information shall be available to the commissioner
2 for examination or inspection, upon reasonable notice, in order for
3 the commissioner to determine compliance with the rate standards of
4 Section 4.

5 D. Reference Filings. An insurer may file its rates by
6 either filing its final rates or by filing a multiplier and, if
7 applicable, an expense constant adjustment to be applied to
8 prospective loss costs that have been filed by an advisory
9 organization on behalf of the insurer.

10 E. Filings Open To Inspection. All rates, supplementary
11 rate information and any supporting information filed under this
12 article shall be open to public inspection, upon request, at the
13 Department of Insurance once they have been filed except for filed
14 material deemed confidential, trade secret or proprietary. The
15 right to inspect filed material shall not affect or reduce federal
16 copyright or other federal or state right in such material
17 otherwise held by the filer.

18 Sec. 7. DISAPPROVAL OF RATES

19 A. Bases for Disapproval

20 1. The commissioner shall disapprove a rate in a
21 competitive market only if the commissioner finds pursuant to
22 subsection (B) of this section that the rate is inadequate under
23 Section 4(A)(2) or unfairly discriminatory under Section
24 4(A)(3)(b).

25 2. The commissioner may disapprove a rate for use in a
26 non-competitive market only if the commissioner finds pursuant to
27 subsection (B) of this section that the rate is excessive,

1 inadequate or unfairly discriminatory under Section 4(A).

2 B. Procedures For Disapproval

3 1. Prior to the expiration of the waiting period or an
4 extension thereof of a filing made pursuant to Section 8,
5 subsection (B), the commissioner may disapprove by written order
6 rates filed pursuant to Section 6(B) without hearing. The order
7 shall specify in what respects such filing fails to meet the
8 requirements of this Act. Any insurer whose rates are disapproved
9 under this section shall be given a hearing upon written request
10 made within 30 days of disapproval.

11 2. If, at any time, the commissioner finds that a rate
12 applicable to insurance sold in a non-competitive market does not
13 comply with the standards set forth in Section 6, the commissioner
14 may, after a hearing held upon not less than 20 days written notice,
15 issue an order pursuant to subsection 7(C) disapproving such rate.
16 The Hearing notice shall be sent to every insurer and advisory
17 organization, which adopted the rate and shall specify the matters
18 to be considered at the hearing. The disapproval order shall not
19 affect any contract or policy made or issued prior to the expiration
20 of the period set forth in said order.

21 3. If, at any time, the commissioner finds that a rate
22 applicable to insurance sold in a competitive market is inadequate
23 under 4(A)(3)(a) or unfairly discriminatory under 4(A)(3)(b), the
24 commissioner may issue an order pursuant to subsection 7(C)
25 disapproving the rate. Said order shall not affect any contract or
26 policy made or issued prior to the expiration period set forth in
27 said order.

1 C. Order Of Disapproval. If the commissioner disapproves a\
2 rate pursuant to subsection (B) of this section, the commissioner
3 shall issue an order within 30 days of the close of the hearing
4 specifying in what respects such rate fails to meet the
5 requirements of this Act. The order shall state an effective date
6 no sooner than 30 business days after the date of the order when the
7 use of such rate shall be discontinued. This order shall not affect
8 any policy made before the effective date of the order.

9 D. Appeal Of Orders; Establishment Of Reserves. If an order
10 of disapproval is appealed pursuant to section 16, the insurer may
11 implement the disapproved rate upon notification to the court, in
12 which case any excess of the disapproved rate over a rate previously
13 in effect shall be placed in a reserve established by the insurer.
14 The court shall have control over the disbursement of funds from
15 such reserve. Such funds shall be distributed as determined by the
16 court in its final order except that de minimus refunds to
17 policyholders shall not be required.

18 Sec. 8. RECORDS AND REPORTS; EXCHANGE OF INFORMATION

19 A. In only those markets found to be noncompetitive pursuant
20 to Section 3, insurers shall file with the commissioner, and the
21 commissioner shall review, reasonable rules and plans for recording
22 and reporting of loss and expense experience. The commissioner may
23 designate one or more advisory organizations to assist in gathering
24 such experience and making compilations thereof. No insurer shall
25 be required to record or report its experience in a manner
26 inconsistent with its own rating system.

27 B. The commissioner and every insurer and advisory

1 organization may exchange information and experience data with
2 insurance regulatory officials, insurers, and advisory
3 organizations in this and other states and may consult with them
4 with respect to the collection of statistical data and the
5 application of rating systems.

6 C. All information provided pursuant to this section shall
7 remain confidential. The information shall not be shared outside
8 the department unless the recipient agrees to maintain
9 confidentiality and has the legal authority to do so.

10 Sec. 9. EXAMINATIONS

11 A. Pursuant to Article 1.15 of this code, the commissioner
12 may examine any insurer to ascertain compliance with this article.

13 B. Every insurer shall maintain adequate records from which
14 commissioner may determine compliance with the provisions of this
15 article. Such records shall contain the experience, data,
16 statistics and other information collected or used and shall be
17 available to the commissioner for examination or inspection upon
18 reasonable notice.

19 (1) The reasonable cost of an examination made
20 pursuant to this section shall be paid by the examined party upon
21 presentation to it of a detailed account of such costs.

22 (2) The commissioner may accept the report of an
23 examination made by the insurance supervisory official of another
24 state in lieu of an examination under this section.

25 Sec. 10. LEGISLATIVE OVERSIGHT.

26 (a) QUARTERLY LEGISLATIVE REPORT. Each insurer subject to
27 this article shall file with the commissioner on a quarterly basis

1 information relating to changes in losses, premiums, and market
2 share. The first filing under this article must include the
3 information beginning with January 1, 2003. The commissioner shall
4 report on a quarterly basis to the governor, lieutenant governor,
5 and speaker of the house of representatives on the information
6 provided by the insurers' reports, information obtained from market
7 conduct examinations and analyses, and consumer complaints
8 received by the department.

9 (b) BIENNIAL REPORT ON SCOPE OF COMPETITION. Before
10 November 15 of each even-numbered year, the commissioner shall
11 report to the legislature on the scope of competition in the
12 personal automobile and residential property insurance market in
13 this state and the effect of competition and regulation on
14 consumers. The report under this section must include:

15 1. an assessment of the effect of competition on the
16 rates and availability of personal automobile and residential
17 property insurance coverage;

18 2. a summary of the commissioner's actions over the
19 preceding two years that reflects changes in the scope of
20 competition in regulated insurance markets;

21 3. an evaluation of the personal automobile and
22 residential property insurance market entry and exit data; and

23 4. recommendations to the legislature for legislation
24 that the commissioner finds appropriate to promote the public
25 interest in the context of personal automobile and residential
26 property in this state.

27 Sec. 11. EXEMPTIONS

1 The commissioner may, after public notice and hearing, exempt any
2 line of personal risk insurance from any or all of the provisions of
3 this article for the purpose of relieving such line of insurance
4 from filing or any otherwise applicable provisions of this article.

5 Sec. 12. CONSUMER INFORMATION

6 The commissioner may utilize, develop or cause to be developed a
7 consumer information system(s) which will provide and disseminate
8 price and other relevant information on a readily available basis
9 to purchasers of personal risk insurance. Such activity may be
10 conducted internally within the insurance department, or in
11 cooperation with other state insurance departments. To the extent
12 deemed necessary and appropriate by the commissioner, insurers,
13 advisory organizations, statistical agents and other persons or
14 organizations involved in conducting the business of insurance in
15 this State, to which this section applies, shall cooperate in the
16 development and utilization of a consumer information system(s).

17 Sec. 13. DIVIDENDS

18 (a) Nothing in this article shall be construed to prohibit
19 or regulate the payment of dividends, savings or unabsorbed premium
20 deposits allowed or returned by insurers to their policyholders,
21 members or subscribers. A plan for the payment of dividends,
22 savings or unabsorbed premium deposits allowed or returned by
23 insurers to their policyholders, members or subscribers shall not
24 be deemed a rating plan or system.

25 Sec. 14. EXEMPTION FROM ACTIONS OTHER LAWS

26 No action done, action taken or agreement made pursuant to the
27 authority conferred by this Article shall constitute a violation of

1 or grounds for prosecution or civil proceedings under any other law
2 of this state heretofore or hereafter enacted which does not
3 specifically refer to insurance.

4 Sec. 15. EXCLUSIVE GOVERNANCE OF THIS ACT

5 The administration and enforcement of this Article shall be
6 governed solely by the provision of this Article except as provided
7 in this Act. No other law relating to insurance and no other
8 provisions in this Code heretofore or hereafter enacted shall apply
9 to or be construed as supplementing or modifying the provisions of
10 this Article unless such other law or provision expressly so
11 provides and specifically refers to the sections of this Article
12 which it intends to supplement or modify.

13 Sec. 16. PENALTIES

14 A. The commissioner may impose after notice and hearing a
15 penalty determined in accordance with Chapter 82, Insurance Code.

16 B. Technical violations arising from systems or computer
17 errors of the same type shall be treated as a single violation. In
18 the event of an overcharge, if the insurer makes restitution,
19 including payment of interest, no penalty shall be imposed.

20 C. The commissioner may suspend or revoke the license of any
21 insurer, advisory organization, or statistical agent which fails to
22 comply with an order of the commissioner within the time prescribed
23 by such order, or any extension thereof which the commissioner may
24 grant.

25 D. The commissioner may determine when a suspension of
26 license shall become effective and the period of such suspension,
27 which the commissioner may modify or rescind in any reasonable

1 manner.

2 E. No penalty shall be imposed and no license shall be
3 suspended or revoked except upon a written order of the
4 commissioner, stating his or her findings, made after notice and
5 hearing.

6 Sec. 17. NOTICE AND HEARING

7 A. Notice Requirements. All notices rendered pursuant to
8 the provisions of this Article shall be in writing and shall state
9 clearly the nature and purpose of the hearing. All relevant facts,
10 statutes and rules shall be specified so that respondent(s) are
11 fully informed of the scope of the hearing, including specific
12 allegations, if any. If a hearing is required, all notices shall
13 designate a hearing date at least 14 days from the date of the
14 notice, unless such minimum notice period is waived by respondents.

15 B. Hearings. Subject to Chapter 40 of the insurance code,
16 Chapter 2001, Government Code, applies to all hearings on rates
17 conducted under this article. To the extent of any conflict between
18 this article and Chapter 2001, Government Code, the provisions of
19 this article prevail.

20 Sec. 18. JUDICIAL REVIEW

21 Any order, ruling, finding, decision or other act of the
22 commissioner made pursuant to this Article shall be subject to
23 judicial review in accordance with Subchapter D, Chapter 36,
24 Insurance Code.

25 SECTION 2. Article 5.35(c), Insurance Code, is amended to
26 read as follows:

27 (c) An insurer may use [~~The commissioner may approve the use~~

1 ~~of~~] policy forms and endorsements other than those adopted under
2 Subsection (a) or (b) of this article ~~[adopted by a national~~
3 ~~organization of insurance companies or a similar organization,~~] if
4 the ~~[such]~~ forms or endorsements are filed with ~~and are approved by~~
5 the commissioner no later than 30 days after the effective date of
6 such forms or endorsements. ~~[in accordance with this article.]~~

7 SECTION 3. Article 5.06(4), Insurance Code, is amended to
8 read as follows:

9 (4) An insurer may use a policy form or ~~[an]~~
10 endorsement ~~[to the policy form adopted or approved by the Board]~~
11 under this article if the endorsement is filed with the
12 commissioner no later than 30 days after the effective date of the
13 form or endorsement. ~~[approved by the Board.]~~

14 SECTION 4. The following provisions of the Insurance Code
15 are repealed:

- 16 (1) Section (a-1), Article 5.96;
17 (2) Article 5.101; and
18 (3) Section 40.061

19 SECTION 5. This Act takes effect September 1, 2003, and
20 applies only to rates for an insurance policy delivered, issued for
21 delivery, or renewed on or after January 1, 2004. Rates for a
22 policy delivered, issued for delivery, or renewed before January 1
23 2004, are governed by the law as it existed immediately before the
24 effective date of this Act, and that law is continued in effect for
25 that purpose.