

By: Coleman

H.B. No. 3407

A BILL TO BE ENTITLED

AN ACT

relating to rate information to be filed by insurers writing professional liability insurance for physicians and health care providers; providing an administrative penalty.

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

SECTION 1. Chapter 5, Insurance Code, is amended by adding Subchapter Q to read as follows:

SUBCHAPTER Q. FILING OF RATES FOR PROFESSIONAL LIABILITY

INSURANCE FOR PHYSICIANS AND HEALTH CARE PROVIDERS;

REPORT TO LEGISLATURE

Art. 5.151. FILING OF RATE INFORMATION; REPORT

Sec. 1. PURPOSE. The purpose of this article is to require on a one-time basis that insurers writing professional liability insurance for physicians and health care providers in this state, immediately after the effective date of this article, file rates and supporting data, including current rates and estimated rates to be charged in the six-month period following the effective date of this article, with the commissioner of insurance for the purpose of the preparation of a summary report for submission to the 78th 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

1 discriminatory; and

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

6 Sec. 2. DEFINITIONS. In this article:

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

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

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

1 Texas Civil Statutes).

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

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

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

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

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

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

26 (4) information on the insurer's losses from  
27 investments in securities, whether publicly or privately traded,

1 including investments in the securities of companies required by  
2 any oversight agency to restate earnings within the 24 months  
3 preceding the effective date of this article, possessed and used by  
4 the insurer to determine premiums or underwriting for professional  
5 liability insurance for physicians and health care providers, as  
6 this information relates to the rates described by Section 1 of this  
7 article;

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

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

16 (7) a complete explanation of all changes to  
17 underwriting guidelines, rates, and supplementary rating  
18 information since January 1, 2000.

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

26 (e) The commissioner shall determine the date on which the  
27 filing is due.

1       (f) The commissioner may require only one filing of rates  
2 and supporting information by an insurer under this section and may  
3 require additional information as provided by Section 4 of this  
4 article. The commissioner shall require the one filing of rates as  
5 provided by this section to be made not later than the 30th day  
6 after the effective date of this article.

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

10       (h) The commissioner is not required to hold a hearing  
11 before issuing the order required under Subsection (g) of this  
12 section.

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

16       Sec. 4. ADDITIONAL INFORMATION. After the initial rate  
17 submission under Section 3 of this article, the commissioner may  
18 require an insurer to provide additional, reasonable information  
19 for purposes of the clarification or completeness of the initial  
20 rate submission.

21       Sec. 5. USE OF FILED RATE INFORMATION. (a) Information  
22 filed by an insurer with the department under this article that is  
23 confidential under a law that applied to the insurer before the  
24 effective date of this article remains confidential and is not  
25 subject to disclosure under Chapter 552, Government Code, except  
26 that the information may be disclosed as provided by Section  
27 552.008, Government Code, relating to information for legislative

1 purposes. Information disclosed pursuant to Section 552.008,  
2 Government Code, shall be provided in a commonly used electronic  
3 format, including in spreadsheet or comma-delimited format, if so  
4 requested. The information may not be released to the public except  
5 in summary form in the report required under Section 6 of this  
6 article.

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

16 Sec. 6. REPORT. (a) The commissioner shall submit a  
17 report to the governor, the lieutenant governor, the speaker of the  
18 house of representatives, and the members of the legislature on the  
19 information collected from the filings required under this article.  
20 The report shall be submitted not later than the 30th day after the  
21 effective date of this article. The report may be created based on  
22 a sample of the information provided under Section 3 of this  
23 article.

24 (b) The report required under this section shall provide a  
25 summary review of the rates currently charged and estimated to be  
26 charged over the six months following the effective date of this  
27 article, presented in a manner that protects the identity of

1 individual insurers:

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

5 (2) to assist the legislature in the determination of  
6 the most effective and efficient regulatory system for professional  
7 liability insurance for physicians and health care providers in  
8 this state.

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

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

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

25 Sec. 10. EXPIRATION. This article expires December 31,  
26 2003.

27 SECTION 2. The expiration of Article 5.151, Insurance Code,

1 as added by this Act, does not affect an action or proceeding  
2 against an insurer subject to that law for a failure to comply with  
3 that law before its expiration, regardless of when the action or  
4 proceeding was commenced, and that law is continued in effect for  
5 this purpose.

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.