

By: Coleman

H.B. No. 3408

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to rate information to be filed by insurers writing  
3 professional liability insurance for physicians and health care  
4 providers; providing an administrative penalty.

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

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

8 SUBCHAPTER R. ANNUAL FILING OF RATES FOR PROFESSIONAL LIABILITY

9 INSURANCE FOR PHYSICIANS AND HEALTH CARE PROVIDERS;

10 REPORT TO LEGISLATURE

11 Art. 5.161. FILING OF RATE INFORMATION; REPORT

12 Sec. 1. PURPOSE. The purpose of this article is to require  
13 insurers writing professional liability insurance for physicians  
14 and health care providers in this state to annually file with the  
15 commissioner of insurance rates and supporting data, including  
16 current rates and estimated rates to be charged in the year  
17 following the filing date for the purpose of the preparation of a  
18 summary report for submission to each legislature. The report  
19 shall contain a review of the rates, presented in a manner that  
20 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 in the determination of the most

1 effective and efficient regulatory system for professional  
2 liability insurance for physicians and health care providers in  
3 Texas.

4 Sec. 2. DEFINITIONS. In this article:

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

15 (2) "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.

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

27 Sec. 3. RATE INFORMATION. (a) Insurers must file rates for

1 professional liability insurance for physicians and health care  
2 providers and supporting information with the commissioner in  
3 accordance with the requirements determined by the commissioner  
4 under this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (g) The commissioner shall issue an order specifying the

1 information that insurers must file to comply with this article and  
2 the date on which the filing is due.

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

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

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

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

27 (b) Subsection (a) of this section does not preclude the use

1 of information filed under this article as evidence in prosecuting  
2 a violation of this code. Confidential information described by  
3 Subsection (a) of this section that is used in prosecuting a  
4 violation is subject to a protective order until all appeals of the  
5 case have been exhausted. If an insurer is found, after the  
6 exhaustion of all appeals, to have violated this code, a copy of the  
7 confidential information used as evidence of the violation is no  
8 longer presumed to be confidential.

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

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

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

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

27 Sec. 7. NOTIFICATION; NONCOMPLIANCE. The commissioner

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

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

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

16 SECTION 2. (a) In addition to information required under  
17 Section 3(c), Article 5.161, Insurance Code, as added by this Act,  
18 the first filing under that article by an insurer that was writing  
19 professional liability insurance for physicians and health care  
20 providers on or before January 1, 2000, must include a complete  
21 explanation of any changes to underwriting guidelines, rates, and  
22 supplementary rating information since that date.

23 (b) The commissioner shall require the first filings under  
24 Article 5.161, Insurance Code, as added by this Act, to be made not  
25 later than the 30th day after the effective date of this Act and  
26 shall submit the first report to the legislature under that article  
27 not later than the 45th day after the effective date of this Act.

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