

By: Van de Putte, et al.

S.B. No. 400

A BILL TO BE ENTITLED

1 AN ACT

2 Relating to the regulation and reform of certain lines of  
3 insurance; providing a penalty.

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

5 SECTION 1. SHORT TITLE. This Act may be cited as The  
6 Insurance Reform and Consumer Protection Act.

7 SECTION 2. The following provisions of the Insurance Code  
8 are repealed:

- 9 (1) Article 5.26, Section (h);  
10 (2) Article 5.50;  
11 (3) Section 911.001;  
12 (4) Section 912.002;  
13 (5) Section 912.201;  
14 (6) Section 941.003(a);  
15 (7) Section 941.003(b);  
16 (8) Section 941.003(c);  
17 (9) Section 942.003(a);  
18 (10) Section 942.003(b); and  
19 (11) Section 942.003(c).

20 SECTION 3. The following provisions of the Insurance Code  
21 are repealed:

- 22 (1) Article 5.01, Section (f);  
23 (2) Article 5.01-2, Section (b);  
24 (3) Article 5.03, Section (g);

- 1 (4) Article 5.04, Section (c);
- 2 (5) Article 5.09, Section (c);
- 3 (6) Article 5.11, Section (c);
- 4 (7) Article 5.25, Section (b);
- 5 (8) Article 5.25A, Section (b);
- 6 (9) Article 5.26, Section (i);
- 7 (10) Article 5.28, Section (d);
- 8 (11) Article 5.29, Section (b);
- 9 (12) Article 5.30, Section (b);
- 10 (13) Article 5.31, Section (b);
- 11 (14) Article 5.32, Section (b);
- 12 (15) Article 5.34, Section (b);
- 13 (16) Article 5.39, Section (b);
- 14 (17) Article 5.40, Section (d);
- 15 (18) Article 5.41, Section (b);
- 16 (19) Article 5.96, Section (a-1);
- 17 (20) Article 5.101; and
- 18 (21) Section 40.061.

19 SECTION 4. Subchapter C, Chapter 5, Insurance Code, is  
20 amended by adding Article 5.26-1 to read as follows:

21 Article 5.26-1. RATE ROLLBACK.

22 Notwithstanding Article 5.26 of this Chapter, for any form of  
23 insurance subject to this chapter issued or renewed on or after June  
24 1, 2003, every insurer shall reduce its rates to levels which are no  
25 greater than the insurer's rates for the same coverage that were in  
26 effect on January 1, 2001. The insurer shall use those rates until  
27 the commissioner approves new rates under Article 5.26.

1 SECTION 5. Subchapter B, Chapter 21, Insurance Code, is  
2 amended by adding Article 21.21-12 to read as follows:

3 Article 21.21-12. REGULATION OF UNDERWRITING GUIDELINES.

4 Sec. 1. DEFINITIONS. In this article:

5 (1) "Actuarially sound" means the underwriting  
6 guideline is shown to differentiate among consumers who have  
7 different expected costs associated with the transfer of risk, all  
8 other relevant factors being the same. The burden of proof in any  
9 proceeding regarding whether an underwriting guideline is  
10 actuarially sound shall be on the party that used or intends to use  
11 the underwriting guideline to show that the underwriting guideline  
12 is actuarially sound.

13 (2) "Credit scoring" and "insurance scoring" mean an  
14 underwriting guideline based in whole or in part on information  
15 related to an individual's credit, credit worthiness, credit  
16 standing, credit capacity, credit history, payment habits, or  
17 financial responsibility.

18 (3) "Person" means any individual, insurance company,  
19 reciprocal or interinsurance exchange, mutual, farm mutual  
20 insurance company, capital stock company, fraternal benefit  
21 society, local mutual aid association, county mutual insurance  
22 company, association, Lloyd's plan company, farm mutual company,  
23 and any other legal entity engaged in the business of insurance,  
24 including agents.

25 (4) "Personal automobile insurance" means an  
26 automobile insurance policy providing insurance coverages for the  
27 ownership, maintenance, or use of private passenger, utility, and

1 miscellaneous type motor vehicles and trailers including mobile  
2 homes and recreational trailers, and not primarily used for the  
3 delivery of goods, materials, or services, unless such use is in  
4 farm or ranch operations and provided that such vehicles are owned  
5 or leased by an individual or individuals.

6 (5) "Residential property insurance" means insurance  
7 against loss to real or tangible personal property at a fixed  
8 location provided in a homeowners policy, a tenant policy, a  
9 condominium owners policy, or a residential fire and allied lines  
10 policy.

11 (6) "Underwriting guideline" means a rule, standard,  
12 marketing decision, guideline, or practice, whether written, oral  
13 or electronic, used by an insurer or its agent to examine, bind,  
14 accept, reject, renew, nonrenew, cancel, or limit coverages made  
15 available to classes of consumers or individual consumers.

16 Sec. 2. PROHIBITION. No person shall use an underwriting  
17 guideline for personal automobile insurance or residential  
18 property insurance, other than underwriting guidelines covered in  
19 section 3 of this article, without the prior approval of the  
20 commissioner.

21 Sec. 3. PERMISSIBLE UNDERWRITING GUIDELINES. An insurer is  
22 not required to obtain the commissioner's approval to use an  
23 underwriting guideline that complies with paragraph (1), (2), or  
24 (3) of this section:

25 (1) Underwriting guidelines for personal automobile  
26 insurance that are based on the following characteristics:

27 (A) average miles driven in a year or other

1 specified time period;

2 (B) accidents in which a person to be insured  
3 under the policy can reasonably be considered to have been at fault  
4 and which resulted in bodily injury or property damage;

5 (C) a final conviction in any court in the United  
6 States, forfeiture of bond, or payment of a fine or an amount  
7 accepted by the court if the conviction, forfeiture or payment was a  
8 result of an allegation that a violation of a law regulating the  
9 operation of motor vehicles was committed;

10 (D) the making of a fraudulent insurance claim;  
11 or

12 (E) number of years of driving experience or  
13 number of years licensed to drive.

14 (2) Underwriting guidelines for residential property  
15 insurance that are based on the following characteristics:

16 (A) the physical condition of the property to be  
17 insured, provided the underwriting guideline has specific and  
18 objective measures to evaluate the hazard;

19 (B) claim experience on a residential property  
20 policy arising out of the owner's negligence;

21 (C) if a structure to be insured is vacant or  
22 unoccupied for more than 60 days;

23 (D) the making of a fraudulent insurance claim;  
24 or

25 (E) an act of arson.

26 (3) underwriting guidelines promulgated by the  
27 commissioner by rule, if the commissioner determines after a

1 hearing that the underwriting guideline:

2 (A) is actuarially sound;

3 (B) promotes the mitigation of losses; and

4 (C) does not have an adverse impact based on  
5 income level.

6 Sec. 4. PRIOR APPROVAL STANDARDS. The commissioner shall  
7 not approve the use of an underwriting guideline unless the  
8 underwriting guideline:

9 (A) is actuarially sound;

10 (B) promotes the mitigation of losses; and

11 (C) does not have an adverse impact based on  
12 income level.

13 Sec. 5. CREDIT SCORING AND INSURANCE SCORING. The  
14 commissioner shall not approve, nor shall any person use, an  
15 underwriting guideline or rating factor based in whole or in part on  
16 credit scoring or insurance scoring.

17 SECTION 6. Chapter 38, Insurance Code, is amended by  
18 amending Section 38.002 to read as follows:

19 (a) The department or the office of public insurance counsel  
20 ~~[may]~~ shall obtain a copy of an insurer's underwriting guidelines.

21 (b) Underwriting guidelines are not confidential, and the  
22 department ~~[or]~~ and the office of public insurance counsel ~~[may~~  
23 ~~not]~~ shall make the guidelines available to the public.

24 ~~[(c) The department or the office of public insurance~~  
25 ~~counsel may disclose to the public a summary of an insurer's~~  
26 ~~underwriting guidelines in a manner that does not directly or~~  
27 ~~indirectly identify the insurer.~~

1       ~~[(d) When underwriting guidelines are furnished to the~~  
2 ~~department or the office of public insurance counsel, only a person~~  
3 ~~within the department or the office of public insurance counsel~~  
4 ~~with a need to know may have access to the guidelines. The~~  
5 ~~department and the office of public insurance counsel shall~~  
6 ~~establish internal control systems to limit access to the~~  
7 ~~guidelines and shall keep records of the access provided.~~

8       ~~[(e) This section does not preclude the use of underwriting~~  
9 ~~guidelines as evidence in prosecuting a violation of this code.~~  
10 ~~Each copy of an insurer's underwriting guidelines that is used in~~  
11 ~~prosecuting a violation is presumed to be confidential and is~~  
12 ~~subject to a protective order until all appeals of the case have~~  
13 ~~been exhausted. If an insurer is found, after the exhaustion of all~~  
14 ~~appeals, to have violated this code, a copy of the underwriting~~  
15 ~~guidelines used as evidence of the violation is no longer presumed~~  
16 ~~to be confidential.~~

17       ~~[(f) A violation of this section is a violation of Chapter~~  
18 ~~552, Government Code.]~~

19       SECTION 7. Chapter 827, Insurance Code, is amended by  
20 amending Sections 827.001, 827.002, 827.003, 827.006, 827.007,  
21 827.008, and 827.010 to read as follows:

22       Sec. 827.001. DEFINITIONS ~~[DEFINITION]~~. In this chapter:

23       (1) "Affiliate" means an insurer that directly, or  
24 indirectly through one or more intermediaries, controls, or is  
25 controlled by, or is under common control with, another insurer.

26       (2) "Insurer" means any licensed insurer or other  
27 entity writing insurance in this state, including a reciprocal

1 exchange, interinsurer, Lloyds insurer, fraternal benefit society,  
2 county mutual, farm mutual, and any other legal entity engaged in  
3 the business of insurance.

4 (3) "Rating~~[,—"rating]~~ territory" means a rating  
5 territory established by the department.

6 Sec. 827.002. EXEMPTION. This chapter does not apply to a  
7 transfer of business from an insurer to a company that:

8 (1) is under common ownership with the insurer; ~~and]~~

9 (2) is authorized to engage in the business of  
10 insurance in this state; and~~[,]~~

11 (3) is not a reciprocal exchange, interinsurer, Lloyds  
12 insurer, fraternal benefit society, county mutual, or farm mutual  
13 insurer.

14 Sec. 827.003. WITHDRAWAL PLAN REQUIRED. An ~~[authorized]~~  
15 insurer shall file with the commissioner a plan for orderly  
16 withdrawal if the insurer proposes to:

17 (1) withdraw from writing a line of insurance in this  
18 state or reduce the insurer's total annual premium volume by ~~[75]~~ 50  
19 percent or more; or

20 (2) reduce, in a rating territory, the insurer's total  
21 annual premium volume in a personal line of motor vehicle  
22 comprehensive or residential property insurance by 50 percent or  
23 more.

24 Sec. 827.006. ~~[RESUMPTION OF]~~ WRITING INSURANCE AFTER  
25 ~~[COMPLETE]~~ WITHDRAWAL. ~~[An]~~ When an insurer ~~[that]~~ withdraws from  
26 writing ~~[all lines of insurance]~~ either private passenger  
27 automobile insurance or residential property insurance in this



1 state, the insurer and its affiliates may not, without the approval  
2 of the commissioner, [~~resume writing~~] write any line of insurance  
3 in this state before the fifth anniversary of the date of  
4 withdrawal.

5 Sec. 827.007. PENALTIES. The commissioner may impose the  
6 civil penalties under Chapter 82 on an insurer that fails to comply  
7 with any requirement of this Chapter. [~~obtain the commissioner's~~  
8 ~~approval before the insurer:~~

9 [(1) ~~withdraws from writing a line of insurance in~~  
10 ~~this state; or~~

11 [(2) ~~reduces the insurer's total annual premium volume~~  
12 ~~by 75 percent or more in any year.]~~

13 Sec. 827.008. RESTRICTION PLAN. (a) Before an insurer [~~7~~  
14 ~~in response to a catastrophic natural event that occurred during~~  
15 ~~the preceding six months,~~] may restrict writing new private  
16 passenger automobile insurance or residential property insurance  
17 business in the state or a rating territory [~~in a personal line of~~  
18 ~~comprehensive motor vehicle or residential property insurance~~],  
19 the insurer must file a proposed restriction plan with the  
20 commissioner for the commissioner's approval [~~review and comment~~].  
21 A residential property insurer may not restrict its writing of  
22 residential property insurance Homeowners "B" policy forms, as  
23 promulgated by the commissioner. If the insurer offers a  
24 Homeowners "A" policy form, or a policy form approved under  
25 Insurance Code Article 5.35(b) or (c), the insurer must also offer  
26 the consumer a Homeowners "B" policy.

27 (b) The commissioner's approval of a restriction plan filed

1 under Subsection (a) is [~~not~~] required. An insurer that files a  
2 restriction plan may not institute the plan until on or after the  
3 15th day after the date the plan is approved by the commissioner  
4 [~~filed~~]. The commissioner shall not approve a restriction plan  
5 unless the commissioner determines that the plan will not have an  
6 adverse impact on the affordability and availability of insurance  
7 in this state.

8 [~~(c) Notwithstanding Subsection (b), a withdrawal plan must~~  
9 ~~be filed and approved under Sections 827.003 and 827.004 if an~~  
10 ~~insurer's decision not to accept new business in a personal line of~~  
11 ~~comprehensive motor vehicle or residential property insurance~~  
12 ~~results in a reduction of the insurer's total annual premium volume~~  
13 ~~by 50 percent or more.]~~

14 Sec. 827.010. MORATORIUM. (a) The commissioner may impose  
15 a moratorium of not longer than two years on:

16 (1) the approval of withdrawal plans; or

17 (2) the [~~implementation~~] approval of plans to restrict  
18 the writing of new business described by Section 827.008.

19 (b) A moratorium under this section may be imposed on plans  
20 implemented after the commissioner has published notice of  
21 intention to impose a moratorium on plans under Subsection (a)(2).

22 (c) The commissioner may annually renew a moratorium  
23 imposed under this section.

24 (d) To impose or renew a moratorium under this section, the  
25 commissioner must determine, after notice and hearing, that [~~a~~  
26 ~~catastrophic event has occurred and that as a result of that event~~]  
27 a particular line of insurance is not reasonably expected to be

1 available and affordable to a substantial number of policy holders  
2 or potential policy holders in this state or, in the case of  
3 personal lines of motor vehicle comprehensive or residential  
4 property insurance, in a rating territory.

5 (e) The provisions of Chapter 2001, Government Code,  
6 relating to contested cases apply to the notice and hearing.

7 (f) The commissioner by rule shall establish reasonable  
8 criteria for applying the standards for determining whether to  
9 impose a moratorium under this section.

10 (g) The commissioner may limit a moratorium on withdrawal  
11 from or restriction of writing business in personal lines insurance  
12 to certain geographical areas of the state.

13 SECTION 8. Subchapter A, Chapter 5, Insurance Code, is  
14 amended by amending Article 5.03(b) to read as follows:

15 (b) The Board shall issue its order in writing setting forth  
16 the terms of approval or reasons for denial of each application  
17 filed for deviation. If the commissioner has not issued an order  
18 approving the filing within 60 days after the filing of the  
19 application, the insurer may request a hearing on the application,  
20 to be held at the State Office of Administrative Hearings under  
21 Government Code Chapter 2001. The burden of proof in any such  
22 hearing shall be on the insurer. The hearings examiner must issue a  
23 proposal for decision within 60 days after the filing of the request  
24 for a hearing. The hearings examiner's proposed order shall be  
25 final unless the commissioner issues a different order within 30  
26 days after the commissioner receives the proposed order. [~~On~~  
27 ~~January 1, 1974 and thereafter if the Board has not issued its order~~

1 ~~within 30 days after the filing of an application, the application~~  
2 ~~shall be "deemed approved" by the Board. Provided, however, that~~  
3 ~~the Board may thereafter require the applicant insurer to furnish~~  
4 ~~proof to the Board that the matters set out in the application are~~  
5 ~~true and correct and that such application meets the requirements~~  
6 ~~of this Article. If after notice and hearing the Board determines~~  
7 ~~that any application "deemed to have been approved" by the Board~~  
8 ~~contains false or erroneous information or the Board determines~~  
9 ~~that the application does not meet the requirements of this Article~~  
10 ~~the Board may suspend or revoke the approval "deemed to have been~~  
11 ~~granted."]~~ An insurer that has received approval[, or is "deemed to  
12 ~~have received approval"] for the use of a deviation may apply for an  
13 amendment to such deviation or by notice to the Board withdraw the  
14 deviation.~~

15 SECTION 9. Subchapter C, Chapter 5, Insurance Code, is  
16 amended by amending Article 5.26(d) to read as follows:

17 (d) In considering any application provided for in (b) or  
18 (c) above, the Board shall give consideration to the factors  
19 applied by insurers in determining the bases for rates; the  
20 financial condition of the insurer; the method of operation and  
21 expenses of such insurer; the loss experience of the insurer, past  
22 and prospective, including where pertinent the conflagration and  
23 catastrophe hazards, if any, both within and without this state; to  
24 all factors reasonably related to the kind of insurance involved;  
25 to a reasonable margin for an underwriting profit for the insurer,  
26 and, in the case of participating insurers, to policyholders'  
27 dividends. Such application shall be approved in whole or in part

1 by the Board, provided the Board finds that the resulting premiums  
2 will be just, adequate, reasonable, not excessive and not unfairly  
3 discriminatory. [~~The Board shall issue an order permitting the~~  
4 ~~deviation for such insurer to be filed if it is found to be~~  
5 ~~justified upon the applicant's showing that the resulting premiums~~  
6 ~~would be adequate and not unfairly discriminatory. The Board shall~~  
7 ~~issue an order denying such application if it finds that the~~  
8 ~~resulting premiums would be inadequate or unfairly~~  
9 ~~discriminatory.] As soon as reasonably possible after such  
10 application has been made the Board shall in writing permit or deny  
11 the same[; ~~provided, that any such application shall be deemed~~  
12 ~~permitted unless denied within thirty (30) days; provided, that the~~  
13 ~~Board may by official order postpone action for one additional~~  
14 ~~period not exceeding thirty (30) days if deemed necessary for~~  
15 ~~proper consideration; except that deviations in effect at the time~~  
16 ~~this Act becomes effective shall be controlled by subdivision (f)~~  
17 ~~hereof]. If the commissioner has not issued an order approving the  
18 filing within 60 days after the filing of the application, the  
19 insurer may request a hearing on the application, to be held at the  
20 State Office of Administrative Hearings under Government Code  
21 Chapter 2001. The burden of proof in any such hearing shall be on  
22 the insurer. The hearings examiner must issue a proposal for  
23 decision within 60 days after the filing of the request for a  
24 hearing. The hearings examiner's proposed order shall be final  
25 unless the commissioner issues a different order within 30 days  
26 after the commissioner receives the proposed order. Each deviation  
27 permitted to be filed shall be effective for a period of one (1)~~~~

1 year from the date of final granting of such permission whether by  
2 the Board in the first instance or upon direction of the court.  
3 However, a deviation may be withdrawn at any time with the approval  
4 of the Board or terminated by order of the Board, which order must  
5 specify the reasons for such termination. All deviations from  
6 maximum rates shall be governed by this Article.

7 SECTION 10. This Act takes effect June 1, 2003, if it  
8 receives a vote of two-thirds of all the members elected to each  
9 house, as provided by Section 39, Article III, Texas Constitution.  
10 If this Act does not receive the vote necessary to take effect on  
11 that date, this Act takes effect September 1, 2003.