

By: West

S.B. No. 1468

A BILL TO BE ENTITLED

AN ACT

relating to rates charged for professional liability insurance coverage for physicians and health care providers.

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

SECTION 1. Section 3, Article 5.15-1, Insurance Code, is amended by amending Subsection (d) and adding Subsections (e)-(g) to read as follows:

(d) Rates shall be reasonable and promote the continued availability of professional liability coverage for physicians and health care providers through stability from year to year. Rates may ~~[and shall]~~ not be excessive or inadequate, as defined in this subsection, or ~~[nor shall they be]~~ unfairly discriminatory. No rate shall be held to be excessive unless the rate is unreasonably high for the insurance coverage provided ~~[and a reasonable degree of competition does not exist in the area with respect to the classification to which the rate is applicable]~~. No rate shall be held to be inadequate unless the rate is unreasonably low for the insurance coverage provided and is insufficient to sustain projected losses and expenses; or unless the rate is unreasonably low for the insurance coverage provided and the use of the rate has or, if continued, will have the effect of destroying competition or creating a monopoly.

(e) After notice and hearing, the commissioner shall establish a system of rate classification for professional

1 liability insurance for physicians and health care providers, based
2 on risk factors, and require an insurer, a self-insurance trust
3 authorized under Article 21.49-4 of this code, and the joint
4 underwriting association established under Article 21.49-3 of this
5 code to use those classifications. The commissioner shall classify
6 rates based on the following factors and prescribe the respective
7 weight to be given each factor:

8 (1) the impact of risk management courses taken by
9 physicians and health care providers in this state;

10 (2) the insured's medical or health care
11 specialization;

12 (3) the insured's medical or health care practice
13 safety record;

14 (4) the insured's certification by any certification
15 entity approved by the American Board of Medical Specialties;

16 (5) the number of patients to whom the insured
17 provides medical or health care services annually;

18 (6) the number of surgical procedures the insured
19 performs annually;

20 (7) the number of years of medical experience the
21 insured has had after graduating from an approved medical school or
22 residency program, if applicable;

23 (8) the frequency and amount of indemnity payments
24 made by or on behalf of the insured for any death, injury, or
25 medical or health care incident in which the insured was determined
26 to be primarily at fault;

27 (9) the medical disciplinary history of the insured as

1 recorded by the Texas State Board of Medical Examiners, a similar
2 licensing body in another state, or the National Practitioner Data
3 Bank, if applicable; and

4 (10) any other factor substantially related to the
5 risk of loss adopted by the commissioner by rule.

6 (f) The commissioner by rule shall establish a good doctor
7 discount program for physicians who have few indemnity payments
8 relative to others in their specialty and not more than one
9 indemnity payment in any three-year period. The commissioner may
10 establish other eligibility factors directly related to the risk of
11 loss and quality of patient care.

12 (g) The rate charged for a good doctor discount policy must:

13 (1) comply with Subsection (e) of this section; and

14 (2) be at least 25 percent below the rate the insured
15 would otherwise have been charged for the same coverage.

16 SECTION 2. Section 4, Article 5.15-1, Insurance Code, is
17 amended by adding Subsections (d)-(i) to read as follows:

18 (d) An insurer that writes professional liability insurance
19 for physicians or health care providers in this state shall file
20 with the commissioner at least annually all rates, supplementary
21 rating information, and reasonable and pertinent supporting
22 information for risks written in this state.

23 (e) An insurer may not use or change a rate charged for
24 professional liability insurance for physicians or health care
25 providers without prior approval of the commissioner. To obtain
26 approval under this section, the insurer must file with the
27 commissioner a rate application that includes:

- 1 (1) premiums written;
- 2 (2) premiums earned;
- 3 (3) unearned premiums;
- 4 (4) the number and dollar amount of claims paid;
- 5 (5) the number of outstanding claims;
- 6 (6) net loss reserves for outstanding claims,
7 excluding claims incurred but not reported;
- 8 (7) net loss reserves for claims incurred but not
9 reported;
- 10 (8) total losses incurred;
- 11 (9) losses incurred as a percentage of premiums
12 earned;
- 13 (10) net investment gain or loss and other income or
14 gain or loss allocated to product liability lines;
- 15 (11) net income before federal and foreign income
16 taxes;
- 17 (12) expenses incurred, including loss adjustment
18 expenses, commission and brokerage expenses, other acquisition
19 expenses, and general expenses;
- 20 (13) all consumer complaints made to the insurer;
- 21 (14) all rate complaints made to the insurer;
- 22 (15) the total number of policies in force on the date
23 of the rate application;
- 24 (16) an itemized list of the following information for
25 the 24 months preceding the date of the rate application:
- 26 (A) the total number of policies canceled;
- 27 (B) the total number of policies nonrenewed;

1 (C) net underwriting gain or loss;
2 (D) expenses for commissions and other
3 acquisition costs;
4 (E) general office expenses;
5 (F) taxes;
6 (G) licenses and fees; and
7 (H) any other itemized expenses; and
8 (17) any other information the commissioner requires
9 by rule.

10 (f) If the commissioner does not approve or deny an
11 application under this section on or before the 60th day after the
12 date the commissioner provides public notice under Section 4C of
13 this article, the application is considered approved on the 61st
14 day after that date unless:

15 (1) on or before the 60th day after the date the
16 commissioner provides public notice under Section 4C of this
17 article, a consumer or a consumer's representative requests a
18 hearing on the application under Section 4A of this article and the
19 commissioner grants the hearing;

20 (2) the commissioner on the commissioner's own motion
21 orders a hearing on the application under Section 4A of this
22 article; or

23 (3) the proposed rate adjustment exceeds seven percent
24 of the then applicable rate for professional liability lines, in
25 which case the commissioner shall hold a hearing under Section 4A of
26 this article on a timely request from any person.

27 (g) If the commissioner does not grant a request for a

1 hearing made under Subsection (f) of this section, the commissioner
2 shall issue written findings in support of that decision.

3 (h) The commissioner may not approve or allow to remain in
4 effect a rate for professional liability insurance for physicians
5 or health care providers that is excessive, inadequate, or unfairly
6 discriminatory or otherwise violates this article. In determining
7 whether a rate is excessive, inadequate, or unfairly
8 discriminatory, the commissioner may not consider the degree of
9 competition in the market for medical professional liability
10 insurance but shall consider whether the rate mathematically
11 reflects the insurer's investment income.

12 (i) Notwithstanding any other law, the commissioner shall
13 establish a schedule of filing fees to be paid by insurers writing
14 professional liability insurance for physicians and health care
15 providers in this state to cover all administrative and operational
16 costs arising from this article.

17 SECTION 3. Article 5.15-1, Insurance Code, is amended by
18 adding Sections 4A, 4C, 4D, 7A, 11, 12, and 13 to read as follows:

19 Sec. 4A. RATE HEARINGS. (a) If the commissioner
20 disapproves a rate application under Section 4 of this article or
21 withdraws approval for a rate approved under that section, the
22 insurer may request a hearing under this section.

23 (b) At a hearing under this section, the applicant has the
24 burden of proving by clear and convincing evidence that the rate is
25 justified and meets the requirements of this article.

26 (c) The commissioner shall adopt rules governing hearings
27 under this section that include deadlines for scheduling and

1 commencing hearings and procedures to prevent delays in commencing
2 or continuing hearings without good cause. The sole remedy for the
3 failure of the commissioner to abide by rules adopted under this
4 subsection is a writ of mandamus by any aggrieved party in a court
5 of competent jurisdiction to compel the commissioner to commence or
6 resume hearings under this section.

7 (d) A hearing under this section shall be conducted in
8 accordance with Chapter 2001, Government Code, to the extent that
9 chapter is not inconsistent with this section, except that:

10 (1) a hearing may be conducted by an administrative
11 law judge of the State Office of Administrative Hearings pursuant
12 to an order of the commissioner;

13 (2) the commissioner shall adopt, amend, or reject
14 each decision of an administrative law judge under this section
15 solely on the basis of the record perfected at the hearing;

16 (3) the rules of discovery shall be liberally
17 construed, and discovery disputes shall be decided by the
18 administrative law judge; and

19 (4) for the purposes of judicial review:

20 (A) a decision to hold a hearing under this
21 article is not a final order or decision; and

22 (B) a decision not to hold a hearing under this
23 article is a final order or decision.

24 (e) An administrative law judge who holds a hearing under
25 this section shall issue a proposal for decision on or before the
26 30th day after the date the record in the proceeding is closed. The
27 decision proposed is adopted by the commissioner and final unless

1 the commissioner rejects the order or adopts an amended order on or
2 before the 30th day after the date the commissioner receives the
3 proposed order.

4 (f) Any person may initiate or intervene in any proceeding
5 under this section, challenge any action of the commissioner under
6 this article, and sue to enforce any provision of this article.

7 (g) The commissioner or a court shall award reasonable
8 advocacy and witness fees and expenses to any person who
9 demonstrates that the person represents the interests of consumers
10 and has made a substantial contribution to the adoption of any
11 order, rule, or decision by the commissioner or a court under this
12 section. Advocacy fees awarded in connection with a rate
13 application shall be paid by the applicant.

14 Sec. 4C. PUBLIC NOTICE AND INFORMATION. (a) The
15 commissioner shall notify the public of any rate application filed
16 by an insurer.

17 (b) Public notice required under this section must be made:
18 (1) through distribution to the news media;
19 (2) by conspicuous posting on the department website;
20 and
21 (3) in writing to any person who requests placement on
22 a mailing list for that purpose.

23 (c) Written notice of a hearing under Section 4A of this
24 article shall be provided to any person who requests notice of those
25 hearings on or before the 30th day before the date of the hearing.

26 (d) The department shall make all information provided to
27 the department under Section 4 or 4A of this article available for

1 public inspection at the department and on the department website.

2 Sec. 4D. RATE COMPARISON INFORMATION. On request, and for a
3 reasonable fee to cover the cost of providing the information, the
4 department shall provide a written comparison of the rates in
5 effect for each insurer writing professional liability insurance
6 for physicians and health care providers in this state.

7 Sec. 7A. BASIS FOR CANCELLATION OR NONRENEWAL.
8 Notwithstanding any other law, a notice of cancellation or
9 nonrenewal of a policy of professional liability insurance for
10 physicians or health care providers is effective only if based on
11 one or more of the following reasons:

12 (1) nonpayment of premium;
13 (2) fraud or material misrepresentation affecting the
14 policy or insured; or
15 (3) a substantial increase in the hazard insured
16 against.

17 Sec. 11. WITHDRAWAL FROM MARKET. An insurer authorized to
18 write professional liability coverage for physicians or health care
19 providers in this state that withdraws from the market for that
20 insurance in this state may not write that insurance in this state
21 before the 10th anniversary of the date on which the insurer
22 withdraws from the market.

23 Sec. 12. APPLICABILITY OF INSURANCE LAWS. (a) Except as
24 provided by Subsection (b) of this section, and notwithstanding any
25 other law, an insurer that writes professional liability insurance
26 for physicians or other health care providers, including a medical
27 liability self-insurance trust authorized under Article 21.49-4 of

1 this code, a Lloyd's plan operating under Chapter 941 of this code,
2 and an exchange operating under Chapter 942 of this code, is subject
3 to the insurance laws of this state applicable to an insurer writing
4 that type of coverage.

5 (b) This section does not prohibit:

6 (1) any agreement to collect, compile, and disseminate
7 historical data on paid claims or reserves for reported claims,
8 provided the data is simultaneously transmitted to the
9 commissioner;

10 (2) participation in any joint arrangement
11 established by statute or the commissioner to assure availability
12 of insurance;

13 (3) any agent or broker, representing one or more
14 insurers, from obtaining from any insurer it represents information
15 relative to the premium for any policy or risk to be underwritten by
16 that insurer;

17 (4) any agent or broker from disclosing to an insurer
18 that the agent or broker represents any quoted rate or charge
19 offered by another insurer represented by that agent or broker to
20 negotiate a lower rate or charge or different term from the insurer
21 to whom the disclosure is made; or

22 (5) any agent, broker, or insurer from using or
23 participating with multiple insurers or reinsurers for
24 underwriting a single risk or group of risks.

25 Sec. 13. PENALTIES AND SANCTIONS. A violation of Section 4,
26 4A, 7A, or 11 of this article is subject to penalties and sanctions
27 under Chapters 82 and 84 of this code, the antitrust and unfair

1 business practices laws of this state, and Subchapter E, Chapter
2 17, Business & Commerce Code. In addition to penalties provided by
3 this section, the commissioner may suspend or revoke the
4 certificate of authority of an insurer that violates this article.

5 SECTION 4. Section 3(a), Article 21.49-3, Insurance Code,
6 is amended to read as follows:

7 (a) A joint underwriting association is hereby created,
8 consisting of medical liability self-insurance trusts authorized
9 under Article 21.49-4 of this code and all insurers authorized to
10 write and engaged in writing, within this state, on a direct basis,
11 automobile liability and liability other than auto insurance on or
12 after January 1, 1975, as provided by this code [~~in the Insurance~~
13 ~~Code~~], specifically including and applicable to Lloyds and
14 reciprocal or interinsurance exchanges, but excluding farm mutual
15 insurance companies operating under Chapter 911 [~~as authorized by~~
16 ~~Chapter 16~~] of this code, and county mutual insurance companies
17 operating under Chapter 912 [~~as authorized by Chapter 17~~] of this
18 code. Every such insurer shall be a member of the association and
19 shall remain a member as a condition of its authority to continue to
20 transact such kind of insurance in this state. The purpose of the
21 association shall be to provide medical liability insurance on a
22 self-supporting basis. [~~The association shall not be a licensed~~
23 ~~insurer within the meaning of Article 1.14-2, Insurance Code,~~
24 ~~relating to medical liability insurance for physicians as defined~~
25 ~~in this article.~~]

26 SECTION 5. Article 21.49-4(h), Insurance Code, is amended
27 to read as follows:

1 (h) The trust shall file with the department [~~State Board of~~
2 ~~Insurance~~] all liability claims reports which are required pursuant
3 to Subchapter D, Chapter 38, of this code [~~Articles 1.24A and 1.24B,~~
4 ~~Insurance Code~~].

5 SECTION 6. Section 981.004(a), Insurance Code, is amended
6 to read as follows:

7 (a) An eligible surplus lines insurer may provide surplus
8 lines insurance only if:

9 (1) the full amount of required insurance cannot be
10 obtained, after a diligent effort, from an insurer authorized to
11 write and actually writing that kind and class of insurance in this
12 state, including the joint underwriting association established
13 under Article 21.49-3 of this code and a self-insurance trust
14 authorized under Article 21.49-4 of this code;

15 (2) the insurance is placed through a surplus lines
16 agent; and

17 (3) the insurer meets the eligibility requirements of
18 Subchapter B as of the inception date and annual anniversary date of
19 each insurance contract, cover note, or other confirmation of
20 insurance.

21 SECTION 7. Sections 3(b) and (c) and Section 4(a), Article
22 5.15-1, Insurance Code, and Articles 21.49-4(e) and (g), Insurance
23 Code, are repealed.

24 SECTION 8. (a) An insurer that issues or renews a
25 professional liability insurance policy for a physician or health
26 care provider in this state on or after September 1, 2003, including
27 a medical liability self-insurance trust authorized under Article

1 21.49-4, Insurance Code, or the joint underwriting association
2 established under Article 21.49-3, Insurance Code, may not charge a
3 premium for that coverage that is more than 75 percent of the amount
4 that would have been charged by the insurer for the same coverage on
5 September 1, 2001.

6 (b) An entity that is established after September 1, 2003,
7 and that is classified under Section 823.003, Insurance Code, as an
8 affiliate of an insurer that wrote professional liability insurance
9 for a physician or a health care provider in this state on September
10 1, 2001, may not charge a rate for professional liability insurance
11 for a physician or health care provider that is more than 75 percent
12 of the rate charged by the insurer with which the entity is
13 affiliated for the same coverage on September 1, 2001. If the
14 entity is an affiliate of more than one insurer, the rate under this
15 subsection is determined using the rate of the insurer with which
16 the entity is affiliated that had the lowest applicable rate on
17 September 1, 2001.

18 (c) Notwithstanding Section 4, Article 5.15-1, Insurance
19 Code, as amended by the Act, on or after September 1, 2003, and
20 before September 1, 2004, an insurer may not increase rates reduced
21 under Subsection (a) of this section or established under
22 Subsection (b) of this section unless the insurer files a rate
23 application that complies with Section 4, Article 5.15-1, Insurance
24 Code, as amended by this Act, and the commissioner of insurance
25 determines after a hearing under Section 4A of that article, as
26 added by this Act, that the insurer is substantially threatened
27 with insolvency.

1 (d) The change in law made by this Act to Article 5.15-1,
2 Insurance Code, applies only to a professional liability insurance
3 policy issued for delivery, delivered, or renewed on or after
4 September 1, 2003. A professional liability insurance policy
5 issued for delivery, delivered, or renewed before September 1,
6 2003, is governed by the law in effect immediately before the
7 effective date of this Act, and that law is continued in effect for
8 that purpose.

9 SECTION 9. On or before the 120th day after the effective
10 date of this Act, the commissioner of insurance shall adopt rules
11 under Section 4A, Article 5.15-1, Insurance Code, as added by this
12 Act. The sole remedy for failure by the commissioner to adopt rules
13 under that section within the period prescribed by this subsection
14 is a writ of mandamus by an aggrieved party in a court of competent
15 jurisdiction to compel the commissioner to adopt those rules. This
16 section does not preclude the commissioner from commencing hearings
17 under Section 4A, Article 5.15-1, Insurance Code, before adopting
18 rules under that section.

19 SECTION 10. This Act takes effect immediately if it
20 receives a vote of two-thirds of all the members elected to each
21 house, as provided by Section 39, Article III, Texas Constitution.
22 If this Act does not receive the vote necessary for immediate
23 effect, this Act takes effect September 1, 2003.