

By: Gallegos

S.B. No. 1681

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 R to read as follows:

SUBCHAPTER R. ANNUAL FILING OF RATES FOR PROFESSIONAL LIABILITY

INSURANCE FOR PHYSICIANS AND HEALTH CARE PROVIDERS;

REPORT TO LEGISLATURE

Art. 5.161. FILING OF RATE INFORMATION; REPORT

Sec. 1. PURPOSE. The purpose of this article is to require insurers writing professional liability insurance for physicians and health care providers in this state to annually file with the commissioner of insurance rates and supporting data, including current rates and estimated rates to be charged in the year following the filing date for the purpose of the preparation of a summary report for submission to each 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 discriminatory; and

(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.