

By: Rose

H.B. No. 2822

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of personal automobile insurance and residential property insurance in this state.

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

ARTICLE 1. RATE REGULATION FOR PERSONAL AUTOMOBILE AND RESIDENTIAL PROPERTY INSURANCE

SECTION 1.01. Article 5.13-2, Insurance Code, is amended by adding Sections 17, 18, and 19 to read as follows:

Sec. 17. TRANSITIONAL RATE REGULATION FOR LINES OF PERSONAL INSURANCE. (a) The definitions under Section 18 of this article apply to this section.

(b) Notwithstanding any other law, from September 1, 2006, through August 31, 2007, this section governs rates for lines of personal insurance.

(c) An insurer may not use a rate for a line of personal insurance other than a rate filed and approved under Section 4, Article 5.14, of this code or issued under Section 5, Article 5.14, of this code unless the rate has been filed with the department and approved by the commissioner under Section 5A of this article.

(d) This section expires September 1, 2007. The expiration of this section does not affect an action or proceeding against an insurer subject to this article for failure to comply with this section before the expiration of this section, regardless of when the action or proceeding was commenced, and this section is

1 continued in effect only for that purpose.

2 Sec. 18. BENCHMARK RATE REGULATION FOR LINES OF PERSONAL
3 INSURANCE; OPERATION. (a) In this section:

4 (1) "Benchmark rate" means the rate promulgated
5 biennially by the commissioner under Subsection (c) of this section
6 by line for personal insurance, relative to which the flexibility
7 bands apply.

8 (2) "Flexibility band" means the range of rates below
9 and above the benchmark rates set by the commissioner by line,
10 within which an insurer, during the two-year period for which a
11 benchmark rate is in effect, may increase or decrease the rates used
12 by the insurer without prior approval by the commissioner.

13 (3) "Personal insurance" means personal automobile
14 insurance as defined by Article 5.145 of this code and residential
15 property insurance.

16 (b) Notwithstanding any other law, on and after September 1,
17 2007, rates used by an insurer in lines of personal insurance are
18 determined under this section through the application of
19 flexibility bands to benchmark rates and, except as provided by
20 this section, are implemented on a file and use basis.

21 (c) The commissioner, subject to Section 19 of this article,
22 shall promulgate by rule a benchmark rate and a flexibility band for
23 each line of personal insurance. A benchmark rate and the
24 flexibility band accompanying the benchmark rate promulgated under
25 this subsection are in effect from September 1 of the odd-numbered
26 year in which the benchmark rate and the flexibility band are
27 promulgated through August 31 of the next odd-numbered year. The

1 commissioner shall set a benchmark rate and a flexibility band to
2 produce a range that:

3 (1) promotes stability in a line of insurance; and

4 (2) produces rates that:

5 (A) comply with Section 4(d) of this article; and

6 (B) are not confiscatory.

7 (d) In promulgating a benchmark rate or flexibility band,
8 the commissioner shall consider the rate standards under Section
9 4(b) of this article that an insurer must consider in setting rates.

10 (e) An insurer that changes a rate used by the insurer that
11 is established within the flexibility band:

12 (1) shall file, in accordance with Section 5 of this
13 article, the changed rate and all other information required under
14 Section 5 of this article with the department in the manner
15 prescribed by rule by the commissioner; and

16 (2) may use the filed rate beginning on the date
17 specified by the insurer in the filing.

18 (f) An insurer that changes a rate used by the insurer that
19 is established outside the upper and lower limits of the
20 flexibility band shall file the changed rate and all other
21 information required under Section 5 of this article with the
22 department in the manner prescribed by rule by the commissioner and
23 may not use the filed rate without the prior approval of the
24 commissioner. Except as provided by this subsection and Subsection
25 (g) of this section, a filing made by an insurer under this
26 subsection is considered approved by the commissioner unless the
27 commissioner disapproves the filing not later than the 60th day

1 after the date of the filing. The commissioner shall disapprove a
2 filing under this subsection only if the filing does not produce
3 rates that are just, reasonable, adequate, and not excessive for
4 the risks to which the rates apply. If the commissioner requests
5 additional information regarding the filing, the commissioner
6 shall act not later than the 60th day after the date the response to
7 that request is received by the department.

8 (g) An insurer, the public insurance counsel, and any other
9 interested person may request, within 30 days of a filing under
10 Subsection (f) of this section, that the commissioner hold a
11 hearing on an insurer's prior approval filing. The commissioner
12 shall conduct a hearing requested under this subsection in
13 accordance with Chapter 2001, Government Code. After a hearing
14 under this subsection, the commissioner has 60 days to disapprove a
15 filing or the filing is deemed approved.

16 (h) In seeking approval of an insurer's filing for a rate
17 outside the flexibility band, the burden of proof is on the insurer
18 making the filing to show, by clear and convincing evidence, that,
19 if the rate proposed by the insurer:

20 (1) exceeds the upper limit of the flexibility band,
21 the rates available within the flexibility band are confiscatory or
22 will cause a lack of availability in the relevant market; or

23 (2) is less than the lower limit of the flexibility
24 band, approval of the filing will not adversely affect the
25 financial condition of the insurer.

26 (i) An approved rate outside the flexibility band takes
27 effect, after approval, on the date specified by the insurer, but

1 not later than the 60th day after the date of the approval.

2 (j) A person aggrieved by an order of the commissioner
3 setting benchmark rates or flexibility bands, not later than the
4 30th day after the date on which the commissioner issued the order,
5 may appeal the order. An appeal of an order under this subsection
6 must be made in accordance with Subchapter D, Chapter 36, of this
7 code.

8 (k) An insurer that writes insurance in a line of personal
9 insurance is subject to the rate standards described by Section 4 of
10 this article.

11 (l) Chapter 2001, Government Code, applies to all hearings
12 conducted under this section.

13 (m) Notwithstanding any other law, Sections 5(c) and (d) of
14 this article and any other provision of this article that conflicts
15 with this section do not apply to a hearing held under this section.

16 Sec. 19. BENCHMARK RATE REGULATION FOR LINES OF PERSONAL
17 INSURANCE; ESTABLISHMENT OF BENCHMARK RATE AND FLEXIBILITY BAND;
18 LEGISLATIVE OVERSIGHT. (a) On or before September 1 of each
19 even-numbered year, the commissioner shall hold hearings, conduct
20 studies, and adopt rules as necessary to formulate the benchmark
21 rates and flexibility bands to be presented to the legislature for
22 approval or modification under Subsection (c) of this section.

23 (b) On or before January 15 of each odd-numbered year, the
24 commissioner shall present a report to the governor, the lieutenant
25 governor, the speaker of the house, and each member of the
26 legislature:

27 (1) summarizing the commissioner's conclusions

1 following the hearings and studies under Subsection (a) of this
2 section; and

3 (2) proposing benchmark rates and flexibility bands to
4 be used for lines of personal insurance during the two years
5 beginning on the September 1 immediately following the regular
6 legislative session.

7 (c) After receiving the commissioner's report under
8 Subsection (b) of this section, the legislature may, through a
9 bill, approve or modify the proposed benchmark rates and
10 flexibility bands. If no bill approving or modifying the proposed
11 benchmark rates and flexibility bands takes effect, the proposed
12 benchmark rates and flexibility bands take effect on the September
13 1 immediately following the regular legislative session.

14 (d) On or before September 1 of each odd-numbered year, the
15 commissioner shall adopt rules as necessary to promulgate the
16 benchmark rates and flexibility bands that will be in effect from
17 September 1 of the odd-numbered year in which the benchmark rates
18 and flexibility bands are promulgated through August 31 of the next
19 odd-numbered year.

20 SECTION 1.02. The change in law made this article applies
21 only to a policy of personal insurance that is delivered, issued for
22 delivery, or renewed on or after September 1, 2006. An insurance
23 policy that is delivered, issued for delivery, or renewed before
24 September 1, 2006, is covered by the law in effect at the time the
25 policy was delivered, issued for delivery, or renewed, and that law
26 is continued in effect for that purpose.

27 SECTION 1.03. This article takes effect September 1, 2006.

ARTICLE 2. RATE FILING AND RATE ASSESSMENT

SECTION 2.01. Subchapter B, Chapter 5, Insurance Code, is amended by adding Article 5.14 to read as follows:

Article 5.14. FILING OF RESIDENTIAL PROPERTY AND PERSONAL AUTOMOBILE INSURANCE RATES FOR RATE ASSESSMENT

Sec. 1. APPLICABILITY; DEFINITIONS. (a) This article applies only to residential property and personal automobile insurance.

(b) The definitions under Article 5.13-2 of this code apply to this article.

Sec. 2. CONSTRUCTION WITH OTHER LAW. (a) Notwithstanding any other law, rates for residential property and personal automobile insurance are governed by this article from the effective date of this article until the completion of the rate assessment under this article and any resulting hearings or other proceedings under this article.

(b) When the rate assessment and any resulting hearings or other proceedings under this article are completed, rates for residential property and personal automobile insurance are governed by Sections 17, 18, and 19, Article 5.13-2, of this code.

Sec. 3. RATE STANDARDS. (a) A rate filed by an insurer under Section 4 of this article or a rate ordered by the commissioner following a rate hearing under Section 5 of this article may not be excessive, inadequate, unfairly discriminatory, or unreasonable.

(b) A rate ordered by the commissioner following a rate hearing under Section 5 of this article must comply with the rate

1 standards described by Subsection (a) of this section and may not be
2 confiscatory.

3 Sec. 4. RATE FILING; RATE ASSESSMENT. (a) Not later than
4 the 20th day after the effective date of this article, each insurer
5 writing residential property or personal automobile insurance that
6 is also subject to Article 5.13-2 of this code shall file with the
7 commissioner the insurer's rates, supporting information, and
8 supplementary rating information. If the insurer has made a rate
9 filing under Article 5.13-2 of this code not more than 30 days
10 before the effective date of this article, the insurer may:

11 (1) notify the department that the insurer is using
12 the rate filing submitted under Article 5.13-2 of this code to
13 comply with the requirements of this article; or

14 (2) file an update to the material filed under Article
15 5.13-2 of this code.

16 (b) If, after reviewing a filing under Subsection (a) of
17 this section, the commissioner determines that the filing does not
18 contain information sufficient to allow the commissioner to
19 determine if the filed rate meets all rate standards under Section 3
20 of this article, not later than the 10th day after the insurer makes
21 the filing, the commissioner may request in writing any specific
22 additional information from the insurer necessary to make the
23 determination.

24 (c) Not later than the 30th day after the date the
25 department receives an insurer's filing under Subsection (a) of
26 this section, the commissioner shall:

27 (1) if the filed rate meets all rate standards under

1 Section 3 of this article, approve the filed rate; or

2 (2) if the filed rate fails to meet any rate standard
3 under Section 3 of this article, disapprove the filed rate and issue
4 an order specifying in what respects the filed rate fails to comply
5 with the rate standards.

6 Sec. 5. HEARING. If the commissioner disapproves a rate
7 under Section 4(c)(2) of this article, the department shall hold a
8 rate hearing and the commissioner shall issue an order in
9 accordance with Chapter 40 of this code.

10 Sec. 6. JUDICIAL REVIEW. (a) Not later than the 10th day
11 after the date an insurer receives the commissioner's order issued
12 under Section 5 of this article, the insurer may file a petition for
13 judicial review in a district court of Travis County. The standard
14 of review of the commissioner's order is substantial evidence.

15 (b) During the pendency of an appeal under this section, the
16 insurer may charge either the insurer's existing rates or the rate
17 ordered by the commissioner under Section 5 of this article.

18 Sec. 7. REFUND. If on final appeal a court upholds the
19 commissioner's order issued under Section 5 of this article, the
20 insurer shall refund the difference in overcharged premium, if any,
21 plus interest to each policyholder. The interest rate is the prime
22 rate for the calendar year in which the refund is issued, plus six
23 percent.

24 Sec. 8. EXPIRATION. (a) This article expires September 1,
25 2006.

26 (b) The expiration of this article does not affect an action
27 or proceeding against an insurer subject to this article for a

1 failure to comply with this article before the expiration of this
2 article, regardless of when the action or proceeding was commenced,
3 and this article is continued in effect only for that purpose.

4 SECTION 2.02. (a) Article 5.14, Insurance Code, as added by
5 this article, applies to an insurer who is writing residential
6 property or personal automobile insurance in this state on the
7 effective date of this Act.

8 (b) This article applies to a residential property or
9 personal automobile insurance policy that is delivered, issued for
10 delivery, or renewed on or after the effective date of this Act and
11 to rates for such a policy. A residential property or personal
12 automobile insurance policy delivered, issued for delivery, or
13 renewed before the effective date of this Act and the rates for such
14 a policy are governed by the law as it existed immediately before
15 the effective date of this Act, and that law is continued in effect
16 for that purpose.

17 ARTICLE 3. CONFORMING AMENDMENTS

18 SECTION 3.01. Section 5A, Article 5.13-2, Insurance Code,
19 is amended by adding Subsection (a-1) to read as follows:

20 (a-1) The commissioner by order shall require an insurer to
21 file with the commissioner all rates, supplementary rate
22 information, and any supporting information as prescribed by this
23 section if an insurer subject to Section 17 of this article intends
24 to use a rate other than a rate filed and approved under Section 4,
25 Article 5.14, of this code or issued under Section 5, Article 5.14,
26 of this code. This subsection expires September 1, 2007.

27 SECTION 3.02. Section 7, Article 5.12-3, Insurance Code, is

1 amended by adding Subsection (d) to read as follows:

2 (d) Notwithstanding any other law, this section does not
3 apply to a rate regulated under Section 18 of this article.

4 SECTION 3.03. Section 13, Article 5.13-2, Insurance Code,
5 is repealed.

6 ARTICLE 4. EFFECTIVE DATE

7 SECTION 4.01. This Act takes effect September 1, 2005.