

By: Herrero

H.B. No. 3858

A BILL TO BE ENTITLED

AN ACT

relating to the writing of and rate regulation for residential property insurance in this state.

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

ARTICLE 1. RATE FILING AND RATE ASSESSMENT FOR RESIDENTIAL

PROPERTY INSURANCE

SECTION 1.01. Subtitle H, Title 10, Insurance Code, is amended by adding Chapter 2255 to read as follows:

CHAPTER 2255. FILING OF RESIDENTIAL PROPERTY INSURANCE RATES FOR RATE ASSESSMENT

Sec. 2255.001. APPLICABILITY; DEFINITIONS. (a) This chapter applies only to residential property insurance.

(b) The definitions under Chapter 2251 apply to this chapter.

Sec. 2255.002. CONSTRUCTION WITH OTHER LAW. (a) Notwithstanding any other law, rates for residential property insurance are governed by this chapter from the effective date of this chapter until the completion of the rate assessment under this chapter and any resulting hearings or other proceedings under this chapter.

(b) When the rate assessment and any resulting hearings or other proceedings under this chapter are completed, rates for residential property insurance are regulated as provided by Section 2251.1511.

1 Sec. 2255.003. RATE STANDARDS. (a) A rate filed by an
2 insurer under Section 2255.004 or a rate ordered by the
3 commissioner following a rate hearing under Section 2255.005 may
4 not be excessive, inadequate, unfairly discriminatory, or
5 unreasonable.

6 (b) A rate ordered by the commissioner following a rate
7 hearing under Section 2255.005 must comply with the rate standards
8 described by Subsection (a) and may not be confiscatory.

9 Sec. 2255.004. RATE FILING; RATE ASSESSMENT. (a) Not later
10 than the 20th day after the effective date of this chapter, each
11 insurer writing residential property insurance shall file with the
12 commissioner the insurer's rates, supporting information, and
13 supplementary rating information. If the insurer has made a rate
14 filing under Chapter 2251 not more than 30 days before the effective
15 date of this chapter, the insurer may:

16 (1) notify the department that the insurer is using
17 the rate filing submitted under Chapter 2251 to comply with the
18 requirements of this chapter; or

19 (2) file an update to the material filed under Chapter
20 2251.

21 (b) If, after reviewing a filing under Subsection (a), the
22 commissioner determines that the filing does not contain
23 information sufficient to allow the commissioner to determine if
24 the filed rate meets all rate standards under Section 2255.003, not
25 later than the 10th day after the insurer makes the filing, the
26 commissioner may request in writing any specific additional
27 information from the insurer necessary to make the determination.

1 (c) Not later than the 30th day after the date the
2 department receives an insurer's filing under Subsection (a), the
3 commissioner shall:

4 (1) if the filed rate meets all rate standards under
5 Section 2255.003, approve the filed rate; or

6 (2) if the filed rate fails to meet any rate standard
7 under Section 2255.003, disapprove the filed rate and issue an
8 order specifying in what respects the filed rate fails to comply
9 with the rate standards.

10 Sec. 2255.005. HEARING. If the commissioner disapproves a
11 rate under Section 2255.004(c)(2), the department shall hold a rate
12 hearing and the commissioner shall issue an order in accordance
13 with Chapter 40.

14 Sec. 2255.006. JUDICIAL REVIEW. (a) Not later than the
15 10th day after the date an insurer receives the commissioner's
16 order issued under Section 2255.005, the insurer may file a
17 petition for judicial review in a district court of Travis County.
18 The standard of review of the commissioner's order is substantial
19 evidence.

20 (b) During the pendency of an appeal under this section, the
21 insurer may charge either the insurer's existing rates or the rate
22 ordered by the commissioner under Section 2255.005.

23 Sec. 2255.007. REFUND. If on final appeal a court upholds
24 the commissioner's order issued under Section 2255.005, the insurer
25 shall refund the difference in overcharged premium, if any, plus
26 interest to each policyholder. The interest rate is the prime rate
27 for the calendar year in which the refund is issued, plus six

1 percent.

2 Sec. 2255.008. CERTAIN SETTLEMENTS PROHIBITED. If an
3 insurer files a petition for judicial review under Section
4 2255.006, the department may not agree to a settlement of the
5 lawsuit in any amount that is less than the amount of the refund,
6 including interest, that the insurer would be obligated to pay
7 under Section 2255.007.

8 Sec. 2255.009. EXPIRATION. (a) This chapter expires
9 September 1, 2010.

10 (b) The expiration of this chapter does not affect an action
11 or proceeding against an insurer subject to this chapter for a
12 failure to comply with this chapter before the expiration of this
13 chapter, regardless of when the action or proceeding was commenced,
14 and this chapter is continued in effect only for that purpose.

15 SECTION 1.02. This article applies to a residential
16 property insurance policy that is delivered, issued for delivery,
17 or renewed on or after the effective date of this Act and to rates
18 for such a policy. A residential property insurance policy
19 delivered, issued for delivery, or renewed before the effective
20 date of this Act and the rates for such a policy are governed by the
21 law as it existed immediately before the effective date of this Act,
22 and that law is continued in effect for that purpose.

23 ARTICLE 2. RATE REGULATION FOR RESIDENTIAL PROPERTY INSURANCE

24 SECTION 2.01. Subchapter D, Chapter 2251, Insurance Code,
25 is amended by adding Section 2251.1511 to read as follows:

26 Sec. 2251.1511. PRIOR APPROVAL FOR CERTAIN RESIDENTIAL
27 PROPERTY INSURANCE RATES. (a) An insurer may not use a rate for

1 residential property insurance until the rate and all other
2 information required by Section 2251.101 have been filed with the
3 department and the rate has been approved by the commissioner.

4 (b) Sections 2251.151(b) and (d) apply to rates filed under
5 this section.

6 (c) Section 2251.152 does not apply to rates for which prior
7 approval is required by this section.

8 SECTION 2.02. Section 2251.156(a), Insurance Code, is
9 amended to read as follows:

10 (a) If the commissioner disapproves a rate filing under
11 Section 2251.153(a)(2) or Section 2251.1511, the commissioner
12 shall issue an order disapproving the filing in accordance with
13 Section 2251.103(b).

14 SECTION 2.03. The change in law made by this article applies
15 only to rates for residential property insurance that is delivered,
16 issued for delivery, or renewed on or after January 1, 2010. Rates
17 for residential property insurance delivered, issued for delivery,
18 or renewed before January 1, 2010, are governed by the law as it
19 existed immediately before the effective date of this Act, and that
20 law is continued in effect for that purpose.

21 ARTICLE 3. WITHDRAWAL PLANS; RESUMPTION OF WRITING INSURANCE

22 SECTION 3.01. Section 827.001, Insurance Code, is amended
23 by adding Subdivision (3) to read as follows:

24 (3) "Residential property insurance" has the meaning
25 assigned by Section 2254.001.

26 SECTION 3.02. Section 827.003, Insurance Code, is amended
27 to read as follows:

1 Sec. 827.003. WITHDRAWAL PLAN REQUIRED; NOTICE. (a) An
2 insurer shall file with the commissioner a plan for orderly
3 withdrawal if the insurer proposes to:

4 (1) reduce the insurer's total annual premium volume
5 by 50 percent or more;

6 (2) reduce the insurer's annual premium by 75 percent
7 or more in a line of insurance in this state; or

8 (3) reduce in this state, or in any applicable rating
9 territory, the insurer's total annual premium volume in a line of
10 personal automobile or residential property insurance by 50 percent
11 or more.

12 (b) An insurer that files a withdrawal plan under Subsection
13 (a) must provide notice to each of the insurer's policyholders of
14 the intention to reduce the insurer's total annual premium volume
15 in this state or in any applicable rating territory in this state.
16 The insurer must provide the notice required by this subsection, in
17 the manner prescribed by the commissioner by rule, not later than
18 the 90th day before the date the withdrawal plan is scheduled to be
19 implemented by the insurer.

20 SECTION 3.03. Section 827.006, Insurance Code, is amended
21 to read as follows:

22 Sec. 827.006. [~~RESUMPTION OF~~] WRITING INSURANCE AFTER
23 COMPLETE WITHDRAWAL. An insurer that withdraws from writing
24 residential property [~~all lines of~~] insurance in this state may not
25 write any line of [~~without the approval of the commissioner,~~
26 ~~resume writing~~] insurance in this state before the third [~~fifth~~]
27 anniversary of the date of withdrawal unless the commissioner

1 approves the insurer to write a particular line of insurance after
2 determining that the line of insurance is not available to a
3 substantial number of policyholders or potential policyholders in a
4 rating territory in this state at an affordable rate.

5 SECTION 3.04. The change in law made by this article applies
6 only to a withdrawal plan filed with the Texas Department of
7 Insurance on or after the effective date of this Act. A withdrawal
8 plan filed with the Texas Department of Insurance before the
9 effective date of this Act is covered by the law in effect at the
10 time the withdrawal plan was filed, and that law is continued in
11 effect for that purpose.

12 ARTICLE 4. CREDIT SCORING

13 SECTION 4.01. Subchapter B, Chapter 559, Insurance Code, is
14 amended by adding Section 559.0511 to read as follows:

15 Sec. 559.0511. USE OF CREDIT INFORMATION IN WRITING CERTAIN
16 POLICIES PROHIBITED. (a) Notwithstanding any other provision of
17 this subchapter, in writing a residential property insurance
18 policy, an insurer may not:

19 (1) use an underwriting guideline that is based,
20 wholly or partly, on the credit information, credit report, or
21 credit score of an applicant for insurance coverage or any other
22 person other than the applicant who would be insured under a policy
23 of personal insurance;

24 (2) refuse to underwrite, cancel, or nonrenew the
25 policy based, wholly or partly, on the credit information, credit
26 report, or credit score of an applicant for insurance coverage or
27 any other person other than the applicant who would be insured under

1 the policy;

2 (3) take an action that results in an adverse effect
3 against a consumer because the consumer does not have a credit card
4 account;

5 (4) charge an applicant for the policy a higher
6 premium than otherwise would be charged based, wholly or partly, on
7 the credit information, credit report, or credit score of the
8 applicant or any other person other than the applicant who would be
9 insured under the policy;

10 (5) rate a risk based, wholly or partly, on the credit
11 information, credit report, or credit score of the applicant or any
12 other person other than the applicant who would be insured under the
13 policy, including:

- 14 (A) providing or removing a discount;
15 (B) assigning the applicant to a rating tier; or
16 (C) placing the applicant with an affiliated
17 company; or

18 (6) require a particular payment plan based, wholly or
19 partly, on the credit information, credit report, or credit score
20 of the applicant or any other person other than the applicant who
21 would be insured under the policy.

22 (b) An insurer may not consider an absence of credit
23 information or an inability to determine credit information for an
24 applicant for an insurance policy described by Subsection (a) or
25 insured as a factor in underwriting or rating the policy.

26 SECTION 4.02. (a) The changes in law made by this article
27 in adding Section 559.0511, Insurance Code, apply only to a

1 residential property insurance policy:

2 (1) that is delivered, issued for delivery, or renewed
3 on or after January 1, 2010;

4 (2) the application for which is submitted on or after
5 January 1, 2010; or

6 (3) that is subject to determination of denial,
7 cancellation, or nonrenewal on or after January 1, 2010.

8 (b) A residential property insurance policy delivered,
9 issued for delivery, or renewed before January 1, 2010, or the
10 application for which is submitted before January 1, 2010, is
11 governed by the law as it existed immediately before January 1,
12 2010, and that law is continued in effect for that purpose.

13 ARTICLE 5. EFFECTIVE DATE

14 SECTION 5.01. This Act takes effect September 1, 2009.