

By: Martinez Fischer

H.B. No. 4658

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to regulation of property and casualty insurance rates,  
3 required use by insurers of certain standard insurance policy forms  
4 for residential property insurance, and the election of the  
5 commissioner of insurance.

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

7 SECTION 1. ARTICLE 1. LEGISLATIVE FINDINGS

8 SECTION 1. PURPOSE AND FINDINGS. The Legislature finds  
9 that the purchase of insurance coverage is one of the most important  
10 purchases that Texas consumers make. The Legislature finds it is in  
11 the public interest to promote fair competition among insurers by  
12 requiring minimum standards of coverage, while allowing insurers to  
13 offer enhanced and reduced coverage choices; and by requiring that  
14 consumers be fully informed of their coverage choices. The  
15 Legislature further finds that effective regulation to provide fair  
16 rates that balance affordable coverage for consumers with a  
17 reasonable rate of return to maintain insurer solvency is vital to  
18 the financial health of the State. In addition, the Legislature  
19 finds that direct accountability of the Commissioner of Insurance  
20 to the voters of Texas will promote the goals of fair coverage at  
21 fair rates.

22 ARTICLE 2. STANDARD FORMS

23 SECTION 2.01. Section 2301.008, Insurance Code, is amended  
24 to read as follows:

1           Sec. 2301.008. ADOPTION AND USE OF STANDARD FORMS. (a)  
2 The commissioner shall [~~may~~] adopt standard insurance policy forms,  
3 printed endorsement forms, and related forms other than insurance  
4 policy forms and printed endorsement forms, that an insurer shall  
5 [~~may~~] use in addition to [~~instead of~~] the insurer's own forms in  
6 writing insurance subject to this subchapter.

7           SECTION 2.02. Section 2301.052(b), Insurance Code, is  
8 amended to read as follows:

9           (b) Subject to Section 2301.0525, an [~~An~~] insurer may  
10 continue to use an insurance policy form or endorsement  
11 promulgated, approved, or adopted under Article 5.06 or 5.35 before  
12 June 11, 2003, on written notification to the commissioner that the  
13 insurer will continue to use the form or endorsement.

14           SECTION 2.03. Subchapter B, Chapter 2301, Insurance Code,  
15 is amended by adding Section 2301.0525 to read as follows:

16           Sec. 2301.0525. USE OF MINIMUM STANDARD INSURANCE POLICY  
17 FORMS REQUIRED. (a) Each insurer that writes residential property  
18 insurance in this state shall use the standard insurance policy  
19 forms adopted by the commissioner under Section 2301.008 for  
20 residential property insurance and, subject to Subsection (b), may  
21 also use alternative policy forms approved by the commissioner  
22 under Section 2301.006.

23           (b) An insurer may not deliver or issue for delivery in this  
24 state a residential property insurance policy unless the insurer  
25 informs each applicant for that insurance coverage, in the manner  
26 prescribed by commissioner rule, that an applicant otherwise  
27 qualified for that insurance coverage under this code may elect to

1 obtain residential property insurance coverage under a standard  
2 insurance policy adopted by the commissioner under Section  
3 2301.008.

4 (c) An insurer that offers coverage under the standard  
5 policy forms shall disclose to the applicant or insured, at the time  
6 of the initial application and each renewal, each policy limit and  
7 type of coverage available to the insured and the respective costs  
8 for each coverage. The form of the disclosure shall be specified by  
9 the commissioner, subject to the provisions of Section 2301.053(c).

10 (d) An insurer that offers coverages under approved forms  
11 other than the standard policy forms shall disclose to the  
12 applicant or insured, at the time of the initial application and  
13 each renewal, in comparison to the standard policy forms each  
14 additional coverage that is provided and the additional cost, each  
15 reduction in coverage or exclusion of coverage and the reduced  
16 cost, and each policy limit and type of coverage available to the  
17 insured and the respective costs for each coverage. The form of the  
18 disclosure shall be specified by the commissioner, subject to the  
19 provisions of Section 2301.053(c).

20 SECTION 2.04. Subchapter B, Chapter 2301, Insurance Code,  
21 is amended by adding Section 2301.056 to read as follows:

22 Sec. 2301.056. REQUIRED COVERAGES. The standard insurance  
23 policy forms adopted by the commissioner under Section 2301.008  
24 for residential property insurance shall provide, in addition to  
25 other coverages determined by the commissioner, the following:

26 (a) Wind-driven rain. Damage caused or contributed to by  
27 wind-driven rain shall be covered.

1       (b) Concurrent causation. An insurer shall be liable for  
2 damage that is caused in whole or in part by a covered cause,  
3 whether by concurrent or sequential causation or otherwise, except  
4 to the extent that the insurer establishes the portion of the loss,  
5 if any, solely caused by an excluded cause.

6       (c) Animal injuries. Injuries to third parties caused by  
7 pets shall be covered.

8       (d) Appraisal. Any right to invoke appraisal shall be  
9 invoked within sixty (60) days after a dispute arises and not later  
10 than sixty (60) days after suit is filed relating to the claim.

11       (e) Additional living expenses. Coverage for additional  
12 living expenses shall be provided whenever the property becomes  
13 uninhabitable, including a mandatory evacuation.

14                   ARTICLE 3. PRIOR APPROVAL OF RATES

15       SECTION 3.01. Section 706.004, Insurance Code, as effective  
16 April 1, 2009, is amended to read as follows:

17       Sec. 706.004. RATES AND FORMS. Notwithstanding any other  
18 law, rates and forms for insurance coverage issued under this  
19 chapter are governed by:

- 20           (1) Subchapters A-D [~~A-E~~], Chapter 2251;  
21           (2) Subchapter A, Chapter 2301; and  
22           (3) Article 5.13-2.

23       SECTION 3.02. Section 912.002(c), Insurance Code, as  
24 effective April 1, 2009, is amended to read as follows:

25       (c) Rate regulation for a residential fire and allied lines  
26 insurance policy written by a county mutual insurance company is  
27 subject to Chapters 2251 and [~~Chapter~~] 2253. Rate [~~On and after~~

1 ~~December 1, 2004, rate]~~ regulation for a personal automobile  
2 insurance policy and a residential fire and allied lines insurance  
3 policy written by a county mutual insurance company is subject to  
4 Article 5.13-2 and Chapter 2251. A county mutual insurance company  
5 is subject to Chapter 2253. The commissioner may adopt rules as  
6 necessary to implement this subsection.

7 SECTION 3.03. Section 1806.052, Insurance Code, is amended  
8 to read as follows:

9 Sec. 1806.052. CONSTRUCTION OF SUBCHAPTER. This subchapter  
10 may not be construed to prohibit the modification of rates by a  
11 rating plan that complies [~~is filed in accordance~~] with the  
12 requirements of Chapter 2251 or Article 5.13-2, as applicable,  
13 [~~that has not been disapproved by the commissioner,~~] and that is  
14 designed to encourage the prevention of accidents, and to account  
15 for all relevant factors inside and outside this state, including  
16 the peculiar hazards and experience of past and prospective  
17 individual risks.

18 SECTION 3.04. Section 2151.001(2), Insurance Code, is  
19 amended to read as follows:

20 (2) "Authorized insurer" means an insurer authorized  
21 by the department to write automobile liability coverage under this  
22 title. [~~Except as provided by Section 2251.204, the term does not~~  
23 ~~include a county mutual insurance company organized under Chapter~~  
24 ~~912.~~]

25 SECTION 3.05. Section 2251.003, Insurance Code, is amended  
26 to read as follows:

27 Sec. 2251.003. APPLICABILITY OF CERTAIN SUBCHAPTERS.

1 (a) This subchapter and Subchapters B, C, D, and E apply to:

2 (1) an insurer to which Article 5.13 applies, other than the  
3 Texas Windstorm Insurance Association, the FAIR Plan Association,  
4 and the Texas Automobile Insurance Plan Association; and

5 (2) [~~except as provided by Subsection (c), a~~] A Lloyd's  
6 plan, reciprocal or interinsurance exchange, and county mutual  
7 insurance company with respect to the lines of insurance described  
8 by Subsection (b).

9 (b) This subchapter and Subchapters B, C, D, and E apply to  
10 all lines of the following kinds of insurance written under an  
11 insurance policy or contract issued by an insurer authorized to  
12 engage in the business of insurance in this state:

13 (1) general liability insurance;

14 (2) residential and commercial property insurance,  
15 including farm and ranch insurance and farm and ranch owners  
16 insurance;

17 (3) personal and commercial casualty insurance, except as  
18 provided by Section 2251.004;

19 (4) medical professional liability insurance;

20 (5) fidelity, guaranty, and surety bonds other than  
21 criminal court appearance bonds;

22 (6) personal umbrella insurance;

23 (7) personal liability insurance;

24 (8) guaranteed auto protection (GAP) insurance;

25 (9) involuntary unemployment insurance;

26 (10) financial guaranty insurance;

27 (11) inland marine insurance;

- 1 (12) rain insurance;
- 2 (13) hail insurance on farm crops;
- 3 (14) personal and commercial automobile insurance;
- 4 (15) multi-peril insurance; and
- 5 (16) identity theft insurance issued under Chapter 706.

6 ~~[(c) Sections 2251.008, 2251.052, 2251.101, 2251.102,~~  
7 ~~2251.103, 2251.104, 2251.105, and 2451.107 do not apply to a~~  
8 ~~Lloyd's plan or a reciprocal or interinsurance exchange with~~  
9 ~~respect to commercial property insurance, inland marine insurance,~~  
10 ~~rain insurance, or hail insurance on farm crops.]~~

11 SECTION 3.06. Section 2251.101(a), Insurance Code, is  
12 amended to read as follows:

13 (a) For ~~[Except as provided by Subchapter D, for]~~ risks  
14 written in this state, each insurer shall file with the  
15 commissioner all rates, applicable rating manuals, supplementary  
16 rating information, and additional information as required by the  
17 commissioner.

18 SECTION 3.07. The heading of Subchapter D, Chapter 2251,  
19 Insurance Code, is amended to read as follows:

20 SUBCHAPTER D. PRIOR APPROVAL OF RATES ~~[UNDER CERTAIN CIRCUMSTANCES]~~

21 SECTION 3.08. Section 2251.151, Insurance Code, is amended  
22 to read as follows:

23 Sec. 2251.151. FILING OF ~~[REQUIREMENT TO FILE]~~ RATES FOR  
24 PRIOR APPROVAL ~~[UNDER CERTAIN CIRCUMSTANCES]~~. (a) An insurer may  
25 not use a rate until the rate has been filed with the department in  
26 accordance with Subchapter C and approved by the commissioner in  
27 accordance with this subchapter.

1           ~~[The commissioner by order may require an insurer to file~~  
2 ~~with the department for the commissioner's approval all rates,~~  
3 ~~supplementary rating information, and any supporting information~~  
4 ~~in accordance with this subchapter if the commissioner determines~~  
5 ~~that:~~

6                   ~~[(1) the insurer's rates require supervision because~~  
7 ~~of the insurer's financial condition or rating practices; or~~

8                   ~~[(2) a statewide insurance emergency exists.]~~

9           (b) ~~[(a 1)]~~ If an insurer files a petition under Subchapter  
10 D, Chapter 36, for judicial review of an order disapproving a rate  
11 under this chapter, the insurer must use the rates in effect for the  
12 insurer at the time the petition is filed and may not file and use  
13 any higher rate for the same line of insurance subject to this  
14 chapter before the matter subject to judicial review is finally  
15 resolved unless the insurer, in accordance with this subchapter,  
16 files the new rate with the department, along with any applicable  
17 supplementary rating information and supporting information, and  
18 obtains the commissioner's approval of the rate.

19           (c) ~~[(b)]~~ From the date a ~~[of the filing of the]~~ rate is  
20 filed with the department under this section to the effective date  
21 of the new rate, the insurer's previously approved ~~[filed]~~ rate  
22 that is in effect on the date of the filing remains in effect.

23           ~~[(c) The commissioner may require an insurer to file the~~  
24 ~~insurer's rates under this section until the commissioner~~  
25 ~~determines that the conditions described by Subsection (a) no~~  
26 ~~longer exist.]~~

27           (d) For purposes of this section, a rate is filed with the



1 department on the date the department receives the rate filing.

2 ~~[(c) If the commissioner requires an insurer to file the~~  
3 ~~insurer's rates under this section, the commissioner shall issue an~~  
4 ~~order specifying the commissioner's reasons for requiring the rate~~  
5 ~~filing. An affected insurer is entitled to a hearing on written~~  
6 ~~request made to the commissioner not later than the 30th day after~~  
7 ~~the date the order is issued.]~~

8 SECTION 3.09. Section 2251.152, Insurance Code, is  
9 repealed.

10 SECTION 3.10. Section 2251.156, Insurance Code, is amended  
11 to read as follows:

12 Sec. 2251.156. RATE FILING DISAPPROVAL BY COMMISSIONER;  
13 HEARING. (a) If the commissioner disapproves a rate filing under  
14 this chapter ~~[Section 2251.153(a)(2)]~~, the commissioner shall  
15 issue an order specifying in what respects the filing fails to meet  
16 the requirements of this chapter ~~[disapproving the filing in~~  
17 ~~accordance with Section 2251.103(b)]~~.

18 (b) An insurer whose rate filing is disapproved is entitled  
19 to a hearing on written request made to the commissioner not later  
20 than the 30th day after the date the order disapproving the rate  
21 filing takes effect ~~[in accordance with Section 2251.103(c)]~~.

22 ARTICLE 4. ELECTION OF INSURANCE COMMISSIONER.

23 SECTION 4.01. Section 31.022, Insurance Code, is amended to  
24 read as follows:

25 Sec. 31.022. ELECTION ~~[APPOINTMENT, TERM]~~. The  
26 commissioner is elected by the qualified voters at the general  
27 election for state and county officers for a term of four years.

1 ~~[(a) The governor, with the advice and consent of the senate, shall~~  
2 ~~appoint the commissioner. The commissioner serves a two-year term~~  
3 ~~that expires on February 1 of each odd-numbered year.]~~

4 ~~[(b) The governor shall appoint the commissioner without~~  
5 ~~regard to the race, color, disability, sex, religion, age, or~~  
6 ~~national origin of the appointee.]~~

7 SECTION 4.02. Section 31.024, Insurance Code, is amended to  
8 read as follows:

9 Sec. 31.024. INELIGIBILITY FOR PUBLIC OFFICE. The  
10 commissioner is ineligible to be a candidate for another [a] public  
11 elective office in this state, unless the commissioner has resigned  
12 and the governor has accepted the resignation.

13 SECTION 4.03. Section 31.027(a), Insurance Code, is amended  
14 to read as follows:

15 (a) It is a ground for removal from office if the  
16 commissioner:

17 (1) ~~[does not have at the time of appointment the~~  
18 ~~qualifications required by Section 31.023,~~

19 ~~[(2) does not maintain during service as commissioner~~  
20 ~~the qualifications required by Section 31.023,~~

21 ~~[(3)]~~ violates a prohibition established by Section  
22 33.001, 33.003, 33.004, or 33.005; or

23 (2) ~~[(4)]~~ cannot, because of illness or disability,  
24 discharge the commissioner's duties for a substantial part of the  
25 commissioner's term.

26 SECTION 4.04. Section 52.092(c), Election Code, is amended  
27 to read as follows:

1 (c) Statewide offices of the state government shall be  
2 listed in the following order:

- 3 (1) governor;
- 4 (2) lieutenant governor;
- 5 (3) attorney general;
- 6 (4) comptroller of public accounts;
- 7 (5) commissioner of the General Land Office;
- 8 (6) commissioner of agriculture;
- 9 (7) commissioner of insurance;
- 10 (8) railroad commissioner;
- 11 (9) [~~(8)~~] chief justice, supreme court;
- 12 (10) [~~(9)~~] justice, supreme court;
- 13 (11) [~~(10)~~] presiding judge, court of criminal  
14 appeals;
- 15 (12) [~~(11)~~] judge, court of criminal appeals.

16 SECTION 4.05. Section 504.401(d), Transportation Code, is  
17 amended to read as follows:

18 (d) In this section, "state official" means:

- 19 (1) a member of the legislature;
- 20 (2) the governor;
- 21 (3) the lieutenant governor;
- 22 (4) a justice of the supreme court;
- 23 (5) a judge of the court of criminal appeals;
- 24 (6) the attorney general;
- 25 (7) the commissioner of the General Land Office;
- 26 (8) the comptroller;
- 27 (9) a member of the Railroad Commission of Texas;

1 (10) the commissioner of agriculture;

2 (11) the commissioner of insurance;

3 (12) the secretary of state; or

4 (13) [~~(12)~~] a member of the State Board of Education.

5 SECTION 4.07. Sections 31.023 and 33.002, Insurance Code,  
6 are repealed.

7 ARTICLE 5. ELECTION DATE; EFFECTIVE DATE.

8 SECTION 5.01. (a) The first general election for  
9 commissioner of insurance shall be held November 2, 2010, for a  
10 two-year term beginning on January 1, 2011. Thereafter, the  
11 commissioner of insurance shall be elected to serve a four-year  
12 term.

13 (b) Until the first commissioner of insurance elected under  
14 this Act takes office, the commissioner serving on the effective  
15 date of this Act shall, unless otherwise removed as provided by law,  
16 continue in office under the prior law that governed the office, and  
17 that prior law is continued in effect for that purpose. If on  
18 January 1, 2011, there is a vacancy in the office of commissioner of  
19 insurance created under this Act because the first  
20 commissioner-elect has died or refuses or is permanently unable to  
21 serve, the commissioner serving on that date shall, unless  
22 otherwise removed as provided by law, continue in office under the  
23 prior law that governed the office until the governor fills the  
24 vacancy by appointment in the manner provided by law. The prior law  
25 that governed the office of the commissioner of insurance is  
26 continued in effect for that purpose.

27 SECTION 5.02. This Act takes effect September 1, 2009,

1 except as otherwise provided.

2 SECTION 5.03. The commissioner of insurance shall adopt all  
3 rules necessary to implement this Act on or before December 1, 2009.

4 SECTION 5.04. The change in law made by this Act applies to  
5 insurance policies delivered, issued for delivery, or renewed on or  
6 after January 1, 2010, and to rates for those policies. An insurance  
7 policy delivered, issued for delivery, or renewed before January 1,  
8 2010, and rates for the policy are governed by the law as it existed  
9 immediately before the effective date of this Act, and that law is  
10 continued in effect for that purpose.