

By: Oliverson

H.B. No. 2547

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the modernization of regulation of commercial property
3 and casualty insurance.

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

5 SECTION 1. Section 2251.002, Insurance Code, is amended to
6 read as follows:

7 Section 2251.002. DEFINITIONS. In this chapter:

8 (1) "Commercial property insurance" means insurance
9 coverage against loss caused by or resulting from loss, damage, or
10 destruction of real or personal property provided through a
11 commercial property insurance policy. The term includes any
12 combination of:

- 13 (A) commercial fire or allied lines;
14 (B) commercial inland marine insurance;
15 (C) commercial crime coverage;
16 (D) boiler and machinery insurance other than explosion;
17 (E) glass insurance provided as part of other coverage; and
18 (F) as authorized by commissioner rule, insurance covering
19 other perils or providing other coverages or other lines of first
20 party property insurance.

21 (1-a) "Disallowed expenses" includes:

- 22 (A) administrative expenses, other than acquisition, loss
23 control, and safety engineering expenses, that exceed 110 percent
24 of the industry median for those expenses;

1 (B) lobbying expenses;

2 (C) advertising expenses, other than for advertising:

3 (i) directly related to the services or products provided by
4 the insurer; or

5 (ii) designed and directed at loss prevention;

6 (D) amounts paid by an insurer:

7 (i) as damages in an action brought against the insurer for
8 bad faith, fraud, or any matters other than payment under the
9 insurance contract; or

10 (ii) as fees, fines, penalties, or exemplary damages for a
11 civil or criminal violation of law;

12 (E) contributions to:

13 (i) social, religious, political, or fraternal
14 organizations; or

15 (ii) organizations engaged in legislative advocacy;

16 (F) except as authorized by commissioner rule, fees and
17 assessments paid to advisory organizations;

18 (G) any amount determined by the commissioner to be excess
19 premiums charged by the insurer; and

20 (H) any unreasonably incurred expenses, as determined by
21 the commissioner after notice and hearing.

22 (2) "Filer" means an insurer that files rates, prospective
23 loss costs, or supplementary rating information under this chapter.

24 (2-a) "Highly protected commercial property" is defined as
25 property that is judged to be subject to a much lower than normal
26 probability of loss by virtue of low hazard occupancy or property
27 type, superior construction, special fire protection equipment and

1 procedures, and management commitment to loss prevention.

2 (3) "Prospective loss cost" means that portion of a rate
3 that:

4 (A) does not include a provision for expenses or profit,
5 other than loss adjustment expenses; and

6 (B) is based on historical aggregate losses and loss
7 adjustment expenses projected by development to the ultimate value
8 of those losses and expenses and projected through trending to a
9 future point in time.

10 (4) "Rate" means the cost of insurance per exposure unit,
11 whether expressed as a single number or as a prospective loss cost,
12 adjusted to account for the treatment of expenses, profit, and
13 individual insurer variation in loss experience, before applying
14 individual risk variations based on loss or expense considerations.

15 (5) "Rating manual" means a publication or schedule that
16 lists rules, classifications, territory codes and descriptions,
17 rates, premiums, and other similar information used by an insurer
18 to determine the applicable premium charged an insured.

19 (6) "Residential property insurance" means insurance
20 coverage against loss to real or tangible personal property at a
21 fixed location that is provided through a homeowners insurance
22 policy, including a tenants insurance policy, a condominium owners
23 insurance policy, or a residential fire and allied lines insurance
24 policy.

25 (7) "Supplementary rating information" means any manual,
26 rating schedule, plan of rules, rating rules, classification
27 systems, territory codes and descriptions, rating plans, and other

1 similar information used by the insurer to determine the applicable
2 premium for an insured. The term includes factors and
3 relativities, including increased limits factors, classification
4 relativities, deductible relativities, premium discount, and other
5 similar factors and rating plans such as experience, schedule, and
6 retrospective rating.

7 (8) "Supporting information" means:

8 (A) the experience and judgment of the filer and the
9 experience or information of other insurers or advisory
10 organizations on which the filer relied;

11 (B) the interpretation of any other information on which the
12 filer relied;

13 (C) a description of methods used in making a rate; and

14 (D) any other information the department receives from a
15 filer as a response to a request under Section 38.001.

16 SECTION 2. Section 2251.003, Insurance Code, is amended to
17 read as follows:

18 Sec. 2251.003. APPLICABILITY OF CERTAIN SUBCHAPTERS. (a)
19 This subchapter and Subchapters B, C, and D apply to:

20 (1) an insurer to which Article 5.13 applies, other than the
21 Texas Windstorm Insurance Association, the FAIR Plan Association,
22 and the Texas Automobile Insurance Plan Association; and

23 (2) except as provided by Subsection (c), a Lloyd's plan,
24 reciprocal or interinsurance exchange, and county mutual insurance
25 company with respect to the lines of insurance described by
26 Subsection (b).

27 (b) Except as provided by Subsection (d), this~~[This]~~

1 subchapter and Subchapters B, C, and D apply to all lines of the
2 following kinds of insurance written under an insurance policy or
3 contract issued by an insurer authorized to engage in the business
4 of insurance in this state:

5 (1) general liability insurance;

6 (2) residential and commercial property insurance,
7 including farm and ranch insurance and farm and ranch owners
8 insurance;

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

11 (4) medical professional liability insurance;

12 (5) fidelity, guaranty, and surety bonds other than
13 criminal court appearance bonds;

14 (6) personal umbrella insurance;

15 (7) personal liability insurance;

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

17 (9) involuntary unemployment insurance;

18 (10) financial guaranty insurance;

19 (11) inland marine insurance;

20 (12) rain insurance;

21 (13) hail insurance on farm crops;

22 (14) personal and commercial automobile insurance;

23 (15) multi-peril insurance; and

24 (16) identity theft insurance issued under Chapter 706.

25 (c) Sections 2251.008, 2251.052, 2251.101, 2251.102,
26 2251.103, 2251.104, 2251.105, and 2251.107 do not apply to a
27 Lloyd's plan or a reciprocal or interinsurance exchange with

1 respect to commercial property insurance, inland marine insurance,
2 rain insurance, or hail insurance on farm crops.

3 (d) Except as provided by Subsection (e), Subchapter C does
4 not apply to all lines of the following kinds of insurance written
5 under a commercial insurance policy or contract issued by an
6 insurer authorized to engage in the business of insurance in this
7 state:

8 (1) surety bonds;

9 (2) fidelity bonds;

10 (3) commercial inland marine;

11 (4) boiler and machinery;

12 (5) environmental impairment or pollution liability;

13 (6) kidnap and ransom;

14 (7) political risk or expropriation;

15 (8) commercial excess liability or umbrella liability;

16 (9) directors' and officers' liability;

17 (10) fiduciary liability;

18 (11) employment practices liability;

19 (12) errors and omission and professional liability (other
20 than medical professional liability);

21 (13) media liability;

22 (14) product liability, product recall, or completed
23 operations;

24 (15) commercial cybersecurity, including first and third
25 party commercial lines coverage for losses arising out of or
26 relating to data privacy breaches, network security, computer
27 viruses, and similar exposures;

1 (16) highly protected commercial property;

2 (17) commercial flood insurance (other than National Flood
3 Insurance Program);

4 (18) any other commercial lines insurance coverage or risk
5 that the commissioner shall, by rule, exempt from rate filing
6 requirements under Subchapter C in order to promote enhanced
7 competition or to more effectively use the resources of the
8 department that might otherwise be used to review commercial lines
9 filings; and

10 (19) any combination of only the kinds of insurance in this
11 subsection.

12 (e) The commissioner may temporarily reinstate, for a
13 period of no longer than one year, the requirements for rate filings
14 under Subchapter C for a specific insurance coverage specified
15 under Subsection (d) if, after a hearing, the commissioner makes a
16 finding of fact that a reasonable degree of competition does not
17 exist for that specific type of insurance coverage. Such a finding
18 of fact by the commissioner must specify the relevant tests used to
19 determine whether a lack of a reasonable degree of competition
20 exists and the results thereof. In the absence of such specific
21 findings of fact by the commissioner, a competitive market is
22 presumed to exist.

23 (f) The commissioner may adopt reasonable and necessary
24 rules to implement this section.

25 (g) Section 2251.101 does not apply to rates for use with an
26 insured that has:

27 (1) total insured property values of \$5 million or

1 more;

2 (2) total annual gross revenues of \$10 million or
3 more; or

4 (3) a total premium of \$25,000 or more for property
5 insurance, \$25,000 or more for general liability insurance, or
6 \$50,000 or more for multiperil insurance.

7 SECTION 3. Section 2251.003(d), Insurance Code, as added by
8 this Act, applies only to an insurance policy delivered, issued for
9 delivery, or renewed on or after September 1, 2021. A policy
10 delivered, issued for delivery, or renewed before September 1,
11 2021, is governed by the law as it existed immediately before the
12 effective date of this Act, and that law is continued in effect for
13 that purpose.

14 SECTION 4. Section 2301.002, Insurance Code, is amended to
15 read as follows:

16 Sec. 2301.002. DEFINITIONS. In this subchapter:

17 (1) "Commercial property insurance" means insurance
18 coverage against loss caused by or resulting from loss, damage, or
19 destruction of real or personal property provided through a
20 commercial property insurance policy. The term includes any
21 combination of:

22 (A) commercial fire or allied lines;

23 (B) commercial inland marine insurance;

24 (C) commercial crime coverage;

25 (D) boiler and machinery insurance other than explosion;

26 (E) glass insurance provided as part of other coverage; and

27 (F) as authorized by commissioner rule, insurance covering

1 other perils or providing other coverages or other lines of first
2 party property insurance.

3 (1-a) "Form" means an insurance policy form or a printed
4 endorsement form.

5 (1-b) "Highly protected commercial property" is defined as
6 property that is judged to be subject to a much lower than normal
7 probability of loss by virtue of low hazard occupancy or property
8 type, superior construction, special fire protection equipment and
9 procedures, and management commitment to loss prevention.

10 (2) "Residential property insurance" means insurance
11 coverage against loss to real or tangible personal property at a
12 fixed location that is provided through a homeowners insurance
13 policy, including a tenants insurance policy, a condominium owners
14 insurance policy, or a residential fire and allied lines insurance
15 policy.

16 (3) "Supporting information" means any information required
17 by the department to be filed.

18 SECTION 5. Section [2301.003](#), Insurance Code, is amended to
19 read as follows:

20 Sec. 2301.003. APPLICABILITY OF SUBCHAPTER. (a) This
21 subchapter applies to:

22 (1) an insurer to which Article 5.13 applies, other than the
23 Texas Windstorm Insurance Association, the FAIR Plan Association,
24 and the Texas Automobile Insurance Plan Association; and

25 (2) except as provided by Subsections (c) and (d), a Lloyd's
26 plan, reciprocal or interinsurance exchange, and county mutual
27 insurance company with respect to the lines of insurance described

1 by Subsection (b).

2 (b) Except as provided in Subsection (e), this~~[This]~~
3 subchapter applies to all lines of the following kinds of insurance
4 written under an insurance policy or contract issued by an insurer
5 authorized to engage in the business of insurance in this state:

6 (1) general liability insurance;

7 (2) residential and commercial property insurance,
8 including farm and ranch insurance and farm and ranch owners
9 insurance;

10 (3) personal and commercial casualty insurance, except as
11 provided by Section 2301.005;

12 (4) medical professional liability insurance;

13 (5) fidelity, guaranty, and surety bonds other than
14 criminal court appearance bonds;

15 (6) personal umbrella insurance;

16 (7) personal liability insurance;

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

18 (9) involuntary unemployment insurance;

19 (10) financial guaranty insurance;

20 (11) inland marine insurance;

21 (12) rain insurance;

22 (13) hail insurance on farm crops;

23 (14) personal and commercial automobile insurance;

24 (15) multi-peril insurance; and

25 (16) identity theft insurance issued under Chapter 706.

26 (c) Section 2301.009 does not apply to a Lloyd's plan or a
27 reciprocal or interinsurance exchange with respect to commercial

1 property insurance.

2 (d) This subchapter does not apply to a Lloyd's plan or
3 reciprocal or interinsurance exchange with respect to inland marine
4 insurance, rain insurance, or hail insurance on farm crops.

5 (e) Except as provided by Subsection (f), Sections
6 2301.006, 2301.007(a) and (b), and 2301.008 do not apply to all
7 lines of the following kinds of insurance written under a
8 commercial insurance policy or contract issued by an insurer
9 authorized to engage in the business of insurance in this state:

- 10 (1) surety bonds;
- 11 (2) fidelity bonds;
- 12 (3) commercial inland marine;
- 13 (4) boiler and machinery;
- 14 (5) environmental impairment or pollution liability;
- 15 (6) kidnap and ransom;
- 16 (7) political risk or expropriation;
- 17 (8) commercial excess liability or umbrella liability;
- 18 (9) directors' and officers' liability;
- 19 (10) fiduciary liability;
- 20 (11) employment practices liability;
- 21 (12) errors and omission and professional liability (other
22 than medical professional liability);
- 23 (13) media liability;
- 24 (14) product liability, product recall, or completed
25 operations;
- 26 (15) cybersecurity, including first and third party
27 commercial lines coverage for losses arising out of or relating to

1 data privacy breaches, network security, computer viruses, and
2 similar exposures;

3 (16) highly protected commercial property;

4 (17) commercial flood insurance (other than National Flood
5 Insurance Program);

6 (18) any other commercial lines insurance coverage or risk
7 that the commissioner shall, by rule, exempt from policy form
8 filing requirements under this subchapter in order to promote
9 enhanced competition or to more effectively use the resources of
10 the department that might otherwise be used to review commercial
11 lines filings; and

12 (19) any combination of only the kinds of insurance in this
13 subsection.

14 (f) The commissioner may temporarily reinstate, for a
15 period of no longer than one year, the requirements of sections
16 2301.006, 2301.007(a) and (b), and 2301.008 for a specific
17 insurance coverage specified under Subsection (e) if, after a
18 hearing, the commissioner makes a finding of fact that a reasonable
19 degree of competition does not exist for that specific type of
20 insurance coverage. Such a finding of fact by the commissioner must
21 specify the relevant tests used to determine whether a lack of a
22 reasonable degree of competition exists and the results thereof.
23 In the absence of such specific findings of fact by the
24 commissioner, a competitive market is presumed to exist.

25 (g) The commissioner may adopt reasonable and necessary
26 rules to implement this section.

27 SECTION 6. Section 981.004, Insurance Code, is amended to

1 read as follows:

2 Sec. 981.004. SURPLUS LINES INSURANCE AUTHORIZED. (a) An
3 eligible surplus lines insurer may provide surplus lines insurance
4 only if:

5 (1) the full amount of required insurance cannot be
6 obtained, after a diligent effort, from an insurer authorized to
7 write and actually writing that kind and class of insurance in this
8 state;

9 (2) the insurance is placed through a surplus lines
10 agent; and

11 (3) the insurer meets the eligibility requirements of
12 Subchapter B or B-1 as of the inception date and annual anniversary
13 date of each insurance contract, cover note, or other confirmation
14 of insurance.

15 (b) An eligible surplus lines insurer may provide surplus
16 lines insurance only in the amount that exceeds the amount of
17 insurance obtainable from authorized insurers.

18 (c) Subsection (a)(1) does not apply to insurance procured
19 for an exempt commercial purchaser if:

20 (1) the agent procuring or placing the insurance
21 discloses to the exempt commercial purchaser that:

22 (A) comparable insurance may be available from
23 the admitted market that is subject to more regulatory oversight
24 than the surplus lines market; and

25 (B) a policy purchased in the admitted market may
26 provide greater protection than the surplus lines insurance policy;
27 and

1 (2) after receiving the notice described by
2 Subdivision (1), the exempt commercial purchaser requests in
3 writing that the agent procure the insurance from or place the
4 insurance with an eligible surplus lines insurer.

5 (d) Subsection (a)(1) does not apply to insurance procured
6 for an industrial insured if:

7 (1) the agent procuring or placing the insurance
8 discloses to the industrial insured that:

9 (A) comparable insurance may be available from
10 the admitted market that is subject to more regulatory oversight
11 than the surplus lines market; and

12 (B) a policy purchased in the admitted market may
13 provide greater protection than the surplus lines insurance policy;

14 (2) the surplus lines company offering the coverage
15 has a financial strength rating of A- or better from the A. M. Best
16 Company; and

17 (3) after receiving the notice described by
18 Subdivision (1), the industrial insured requests in writing that
19 the agent procure the insurance from or place the insurance with an
20 eligible surplus lines insurer.

21 (e) Notwithstanding Subsection (a)(1), the availability of
22 windstorm and hail insurance from the Texas Windstorm Insurance
23 Association does not preclude an eligible surplus lines insurer
24 from providing windstorm and hail insurance under Subsection (a) or
25 limiting the amount of insurance that may be provided under
26 Subsection (b).

27 (f) Except with respect to any line of insurance and during

1 any period of time for which the commissioner has temporarily
2 reinstated the requirements for rate and form filings under Sec.
3 2251.003(e) and Sec. 2301.003(f), Subsection (a)(1) and Subsection
4 (b) do not apply to insurance procured in all lines of the kinds of
5 insurance described in Section 2251.003(d) and 2301.003(e) and
6 provided by an eligible surplus lines insurer.

7 SECTION 7. This Act takes effect September 1, 2021.