

By: Creighton

S.B. No. 1367

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
17 explosion;

18 (E) glass insurance provided as part of other
19 coverage;

20 (F) as authorized by commissioner rule, insurance
21 covering other perils or providing other coverages or other lines
22 of first party property insurance.

23 (1-a) "Disallowed expenses" includes:

24 (A) administrative expenses, other than

1 acquisition, loss control, and safety engineering expenses, that
2 exceed 110 percent of the industry median for those expenses;

3 (B) lobbying expenses;

4 (C) advertising expenses, other than for
5 advertising:

6 (i) directly related to the services or
7 products provided by the insurer; or

8 (ii) designed and directed at loss
9 prevention;

10 (D) amounts paid by an insurer:

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

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

16 (E) contributions to:

17 (i) social, religious, political, or
18 fraternal organizations; or

19 (ii) organizations engaged in legislative
20 advocacy;

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

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

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

27 (2) "Filer" means an insurer that files rates,

1 prospective loss costs, or supplementary rating of information
2 under this chapter.

3 (2-a) "Highly protected commercial property" is defined as
4 property that is judged to be subject to a much lower than normal
5 probability of loss by virtue of low hazard occupancy or property
6 type, superior construction, special fire protection equipment and
7 procedures, and management commitment to loss prevention.

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

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

12 (B) is based on historical aggregate losses and
13 loss adjustment expenses projected by development to the ultimate
14 value of those losses and expenses and projected through trending
15 to a future point in time.

16 (4) "Rate" means the cost of insurance per exposure
17 unit, whether expressed as a single number or as a prospective loss
18 cost, adjusted to account for the treatment of expenses, profit, an
19 individual insurer variation in loss experience, before applying
20 individual risk variations based on loss or expense considerations.

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

26 (6) "Residential property insurance" means insurance
27 coverage against loss to real or tangible personal property at a

1 fixed location that is provided through a homeowners insurance
2 policy, including a tenants insurance policy, a condominium owners
3 insurance policy, or a residential fire and allied lines insurance
4 policy.

5 (7) "Supplementary rating information" means any
6 manual, rating schedule, plan of rules, rating rules,
7 classification systems, territory codes and descriptions, rating
8 plans, and other similar information used by the insurer to
9 determine the applicable premium for an insured. The term includes
10 factors and relativities, including increased limits factors,
11 classification relativities, deductible relativities, premium
12 discount, and other similar factors and rating plans such as
13 experience, schedule, and retrospective rating.

14 (8) "Supporting information" means:

15 (A) the experience and judgment of the filer and
16 the experience or information of other insurers or advisory
17 organizations on which the filer relied;

18 (B) the interpretation of any other information on
19 which the filer relied;

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

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

24 SECTION 2. Section 2251.003, Insurance Code, is amended to
25 read as follows:

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

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

5 (2) except as provided by Subsection (c), 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) Except as provided by Subsection (d), ~~this~~[This]
10 subchapter and Subchapters B, C, and D apply to all lines of the
11 following kinds of insurance written under an insurance policy or
12 contract issued by an insurer authorized to engage in the business
13 of insurance in this state:

14 (1) general liability insurance;

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

18 (3) personal and commercial casualty insurance, except
19 as provided by Section [2251.004](#);

20 (4) medical professional liability insurance;

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

23 (6) personal umbrella insurance;

24 (7) personal liability insurance;

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

26 (9) involuntary unemployment insurance;

27 (10) financial guaranty insurance;

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

7 (c) Sections 2251.008, 2251.052, 2251.101, 2251.102,
8 2251.103, 2251.104, 2251.105, and 2251.107 do not apply to a
9 Lloyd's plan or a reciprocal or interinsurance exchange with
10 respect to commercial property insurance, inland marine insurance,
11 rain insurance, or hail insurance on farm crops.

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

- 17 (1) surety bonds;
- 18 (2) fidelity bonds;
- 19 (3) commercial inland marine;
- 20 (4) boiler and machinery;
- 21 (5) environmental impairment or pollution liability;
- 22 (6) kidnap and ransom;
- 23 (7) political risk or expropriation;
- 24 (8) commercial excess liability or umbrella liability;
- 25 (9) directors' and officers' liability;
- 26 (10) fiduciary liability;
- 27 (11) employment practices liability;

1 (12) errors and omission and professional liability
2 (other than medical professional liability);

3 (13) media liability;

4 (14) product liability, product recall, or completed
5 operations;

6 (15) commercial cybersecurity, including first and
7 third party commercial lines coverage for losses arising out of or
8 relating to data privacy breaches, network security, computer
9 viruses, and similar exposures;

10 (16) highly protected commercial property;

11 (17) commercial flood insurance (other than National
12 Flood Insurance Program);

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

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

21 (e) The commissioner may temporarily reinstate, for a period
22 of no longer than one year, the requirements for rate filings under
23 Subchapter C for a specific insurance coverage specified under
24 Subsection (d) if, after a hearing, the commissioner makes a
25 finding of fact that a reasonable degree of competition does not
26 exist for that specific type of insurance coverage. Such a finding
27 of fact by the commissioner must specify the relevant tests used to

1 determine whether a lack of a reasonable degree of competition
2 exists and the results thereof. In the absence of such specific
3 findings of fact by the commissioner, a competitive market is
4 presumed to exist.

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

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

9 (1) total insured property values of \$5 million or more;

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

11 or

12 (3) a total premium of \$25,000 or more for property
13 insurance, \$25,000 or more for general liability insurance, or
14 \$50,000 or more for multiperil insurance.

15 SECTION 3. Section 2251.003(d), Insurance Code, as added by
16 this Act, applies only to an insurance policy delivered, issued for
17 delivery, or renewed on or after September 1, 2021. A policy
18 delivered, issued for delivery, or renewed before September 1,
19 2021, is governed by the law as it existed immediately before the
20 effective date of this Act, and that law is continued in effect for
21 that purpose.

22 SECTION 4. Section 2301.002, Insurance Code, is amended to
23 read as follows:

24 Sec. 2301.002. DEFINITIONS. In this subchapter:

25 (1) "Commercial property insurance" means insurance
26 coverage against loss caused by or resulting from loss, damage, or
27 destruction of real or personal property provided through a

1 commercial property insurance policy. The term includes any
2 combination of:

- 3 (A) commercial fire or allied lines;
- 4 (B) commercial inland marine insurance;
- 5 (C) commercial crime coverage;
- 6 (D) boiler and machinery insurance other than
7 explosion;
- 8 (E) glass insurance provided as part of other
9 coverage; and
- 10 (F) as authorized by commissioner rule, insurance
11 covering other perils or providing other coverages or other lines
12 of first party property insurance.

13 (1-a) "Form" means an insurance policy form or a printed
14 endorsement form.

15 (1-b) "Highly protected commercial property" is defined as
16 property that is judged to be subject to a much lower than normal
17 probability of loss by virtue of low hazard occupancy or property
18 type, superior construction, special fire protection equipment and
19 procedures, and management commitment to loss prevention.

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

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

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

3 Sec. 2301.003. APPLICABILITY OF SUBCHAPTER. (a) This
4 subchapter applies to:

5 (1) an insurer to which Article 5.13 applies, other than
6 the Texas Windstorm Insurance Association, the FAIR Plan
7 Association, and the Texas Automobile Insurance Plan Association;
8 and

9 (2) except as provided by Subsections (c) and (d), a
10 Lloyd's plan, reciprocal or interinsurance exchange, and county
11 mutual insurance company with respect to the lines of insurance
12 described by Subsection (b).

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

17 (1) general liability insurance;

18 (2) residential and commercial property insurance,
19 including farm and ranch insurance and farm and ranch owners
20 insurance;

21 (3) personal and commercial casualty insurance, except
22 as provided by Section [2301.005](#);

23 (4) medical professional liability insurance;

24 (5) fidelity, guaranty, and surety bonds other than
25 criminal court appearance bonds;

26 (6) personal umbrella insurance;

27 (7) personal liability insurance;

- 1 (8) guaranteed auto protection (GAP) insurance;
- 2 (9) involuntary unemployment insurance;
- 3 (10) financial guaranty insurance;
- 4 (11) inland marine insurance;
- 5 (12) rain insurance;
- 6 (13) hail insurance on farm crops;
- 7 (14) personal and commercial automobile insurance;
- 8 (15) multi-peril insurance; and
- 9 (16) identity theft insurance issued under Chapter [706](#).

10 (c) Section [2301.009](#) does not apply to a Lloyd's plan or a
11 reciprocal or interinsurance exchange with respect to commercial
12 property insurance.

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

16 (e) Except as provided by Subsection (f), Sections [2301.006](#),
17 [2301.007](#)(a) and (b), and [2301.008](#) do not apply to all lines of the
18 following kinds of insurance written under a commercial insurance
19 policy or contract issued by an insurer authorized to engage in the
20 business of insurance in this state:

- 21 (1) surety bonds;
- 22 (2) fidelity bonds;
- 23 (3) commercial inland marine;
- 24 (4) boiler and machinery;
- 25 (5) environmental impairment or pollution liability;
- 26 (6) kidnap and ransom;
- 27 (7) political risk or expropriation;

- 1 (8) commercial excess liability or umbrella liability;
2 (9) directors' and officers' liability;
3 (10) fiduciary liability;
4 (11) employment practices liability;
5 (12) errors and omission and professional liability
6 (other than medical professional liability);
7 (13) media liability;
8 (14) product liability, product recall, or completed
9 operations;
10 (15) cybersecurity, including first and third party
11 commercial lines coverage for losses arising out of or relating to
12 data privacy breaches, network security, computer viruses, and
13 similar exposures;
14 (16) highly protected commercial property;
15 (17) commercial flood insurance (other than National
16 Flood Insurance Program);
17 (18) any other commercial lines insurance coverage or
18 risk that the commissioner shall, by rule, exempt from policy form
19 filing requirements under this subchapter in order to promote
20 enhanced competition or to more effectively use the resources of
21 the department that might otherwise be used to review commercial
22 lines filings; and
23 (19) any combination of only the kinds of insurance in
24 this subsection.
25 (f) The commissioner may temporarily reinstate, for a period
26 of no longer than one year, the requirements of sections 2301.006,
27 2301.007(a) and (b), and 2301.008 for a specific insurance coverage

1 specified under Subsection (e) if, after a hearing, the
2 commissioner makes a finding of fact that a reasonable degree of
3 competition does not exist for that specific type of insurance
4 coverage. Such a finding of fact by the commissioner must specify
5 the relevant tests used to determine whether a lack of a reasonable
6 degree of competition exists and the results thereof. In the
7 absence of such specific findings of fact by the commissioner, a
8 competitive market is presumed to exist.

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

11 SECTION 6. Section 981.004, Insurance Code, is amended to
12 read as follows:

13 Sec. 981.004. SURPLUS LINES INSURANCE AUTHORIZED. (a) An
14 eligible surplus lines insurer may provide surplus lines insurance
15 only if:

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

20 (2) the insurance is placed through a surplus lines
21 agent; and

22 (3) the insurer meets the eligibility requirements of
23 Subchapter B or B-1 as of the inception date and annual anniversary
24 date of each insurance contract, cover note, or other confirmation
25 of insurance.

26 (b) An eligible surplus lines insurer may provide surplus
27 lines insurance only in the amount that exceeds the amount of

1 insurance obtainable from authorized insurers.

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

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

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

9 (B) a policy purchase in the admitted market may
10 provide greater protection than the surplus lines insurance policy;
11 and

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

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

18 (1) the agent procuring or placing the insurance
19 discloses to the industrial insured that:

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

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

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

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

5 (e) Notwithstanding Subsection (a)(1), the availability of
6 windstorm and hail insurance from the Texas Windstorm Insurance
7 Association does not preclude an eligible surplus lines insurer
8 from providing windstorm and hail insurance under Subsection (a) or
9 limiting the amount of insurance that may be provided under
10 Subsection (b).

11 (f) Except with respect to any line of insurance and during
12 any period of time for which the commissioner has temporarily
13 reinstated the requirements for rate and form filings under Sec.
14 2251.003(e) and Sec. 2301.003(f), Subsection (a)(1) and Subsection
15 (b) do not apply to insurance procured in all lines of the kinds of
16 insurance described in Section 2251.003(d) and 2301.003(e) and
17 provided by an eligible surplus lines insurer.

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