

By: Oliverson, Paul, Harris of Anderson,
et al.

H.B. No. 1239

Substitute the following for H.B. No. 1239:

By: Oliverson

C.S.H.B. No. 1239

A BILL TO BE ENTITLED

AN ACT

relating to consideration by insurers of certain prohibited
criteria for ratemaking and coverage decisions and the use of
disparate impact analysis regarding certain insurance practices.

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

SECTION 1. Subchapter B, Chapter 36, Insurance Code, is
amended by adding Section 36.111 to read as follows:

Sec. 36.111. DISPARATE IMPACT ANALYSIS PROHIBITED. (a) In
this section, "disparate impact analysis" means an analysis of
whether a neutral practice that is not unfairly discriminatory
results in an unintentional impact on a legally protected group.

(b) The department may not require an insurer to engage in a
disparate impact analysis regarding rating, underwriting, or an
insurance practice prohibited by this code, unless specifically
required by statute.

SECTION 2. Subtitle C, Title 5, Insurance Code, is amended
by adding Chapter 565 to read as follows:

CHAPTER 565. PROHIBITED RATING AND COVERAGE CRITERIA

Sec. 565.001. PURPOSE. (a) The purpose of this chapter is
to regulate the use of environmental, social, or governance models,
scores, or standards to define acts or practices that may be unfair
discrimination in the business of insurance in this state.

(b) The legislature finds that there are numerous entities
that have developed different environmental, social, or governance

models, scores, or standards that are used to:

(1) evaluate financial risks for investments in certain businesses or industries; or

(2) encourage or discourage business dealings or investments with certain types of businesses or industries.

(c) To the extent that the use of such models, scores, or standards are not based on sound actuarial principles, or do not bear a reasonable relationship to the expected loss and expense experience related to insurance risks, the refusal to deal with certain businesses or risks in this state without an ordinary insurance business purpose may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of this state or a portion of this state.

Sec. 565.002. DEFINITIONS. In this chapter:

(1) "Disparate impact analysis" means an analysis of whether a neutral practice that is not unfairly discriminatory results in an unintentional impact on a legally protected group.

(2) "Insurer" means an insurance company or other entity authorized to engage in the business of insurance in this state. The term includes:

(A) a stock or mutual property and casualty insurance company;

(B) a Lloyd's plan;

(C) a reciprocal or interinsurance exchange;

(D) a county mutual insurance company;

(E) a farm mutual insurance company;

1 (F) any insurer writing a line of insurance
2 regulated by Title 10;

3 (G) all life, health, and accident insurance
4 companies regulated by the department, including:

5 (i) a stock or mutual life, health, or
6 accident insurance company;

7 (ii) a fraternal benefit society;

8 (iii) a nonprofit hospital, medical, or
9 dental service corporation, including a group hospital service
10 corporation operating under Chapter 842; and

11 (iv) a stipulated premium company; and

12 (H) a health maintenance organization operating
13 under Chapter 843.

14 Sec. 565.003. APPLICABILITY OF CHAPTER. (a) Except as
15 provided by this section, this chapter applies only to insurance
16 policies issued and delivered by an insurer in this state.

17 (b) This chapter does not require the filing of rates for
18 any line, type of insurer, or type of insurance business that is not
19 specifically required by statute to file rates with the department.

20 (c) This chapter does not apply to:

21 (1) fidelity, guaranty, and surety bonds; or

22 (2) crop insurance.

23 Sec. 565.004. CONSTRUCTION OF CHAPTER. (a) This chapter
24 shall be construed and applied to promote the underlying purposes
25 as provided by Section 565.001.

26 (b) This chapter may not be construed or applied to require:

27 (1) an insurer to write any line or type of business

1 that the insurer does not write; or

2 (2) a material change in the insurer's current
3 business plans.

4 (c) Nothing in this chapter is intended to create any type
5 of private cause of action or independent basis in a civil or
6 criminal proceeding, including any type of cause of action based on
7 disparate impact in the field of insurance or in this chapter.

8 (d) Nothing in this chapter is intended to prohibit the use
9 of information that is relevant and related to the risk being
10 insured even if that information may also be used or considered in
11 developing an environmental, social, or governance model, score, or
12 standard.

13 Sec. 565.005. PROHIBITED CRITERIA. Except as provided by
14 Section 565.006, an insurer may not:

15 (1) use an environmental, social, or governance model,
16 score, or standard to:

17 (A) refuse to insure or provide insurance
18 coverage to a business or risk in this state; or

19 (B) charge a rate different than the rate charged
20 to another business or risk in the same class for essentially the
21 same hazard; or

22 (2) refuse to deal with, terminate business activities
23 with, or otherwise take action that is intended to penalize,
24 inflict economic harm on, or limit commercial relations with a
25 company or risk solely because the company or risk engages in:

26 (A) exploration, production, use,
27 transportation, sale, or manufacturing of fossil fuel-based

energy;

(B) mining;

(C) agriculture;

(D) timber; or

(E) the firearm industry.

Sec. 565.006. EXCEPTION. An insurer does not violate Section 565.005 if the insurer's actions are based on an ordinary insurance business purpose, including the use of sound actuarial underwriting principles, or financial solvency considerations reasonably related to loss experience for the different types of risk and coverages made available by a particular insurer.

Sec. 565.007. DISPARATE IMPACT ANALYSIS PROHIBITED. The department may not conduct or require an insurer to conduct a disparate impact analysis under this chapter regarding rating, underwriting, or another insurance practice unless specifically required by statute.

Sec. 565.008. REGULATORY ACTION. Nothing in this chapter is intended to authorize the department to adopt any rule, model, or standard requiring an insurer to use any environmental, social, or governance model law, regulation, or other standard that has not been specifically authorized by statute, including:

(1) a rule, model, or standard required under any federal law that does not preempt state law under the McCarran-Ferguson Act (15 U.S.C. Section 1012(b)); or

(2) a rule, model, or standard required by any national organization, including the National Association of Insurance Commissioners, that has not been specifically authorized

1 by statute.

2 SECTION 3. Chapter 565, Insurance Code, as added by this
3 Act, applies only to an insurance policy that is delivered, issued
4 for delivery, or renewed in this state on or after January 1, 2024.

5 SECTION 4. This Act takes effect September 1, 2023.