

SUBJECT: Allowing file-and-use rating for certain property and casualty insurance

COMMITTEE: Insurance — committee substitute recommended

VOTE: 6 ayes — Smithee, Seaman, Bonnen, B. Keffer, Taylor, Van Arsdale

0 nays

3 absent — Eiland, Gallego, Thompson

WITNESSES: None

BACKGROUND: Rates for various commercial property and casualty lines of insurance, including fidelity and surety bonds, personal umbrella, personal liability, and financial guaranty insurance, are subject to Insurance Code, art. 5.15. This statute requires insurers to file rates with the Texas Department of Insurance (TDI) for approval before putting them in effect (prior approval). Rate filings submitted to TDI are deemed approved if not disapproved within 60 days of the filing date. The commissioner may grant a 60-day extension to review filed rates.

Art. 5.53 governs inland marine insurance and requires insurers to file their rates with TDI for prior approval. Rate filings are deemed approved if not disapproved within 30 days of the date of filing. The commissioner may grant a 30-day extension to complete review of the filing.

Regulation of most other commercial property and casualty lines falls within Insurance Code, art. 5.13-2, which provides for a file-and-use rating system. Under this system, rates simply must be filed before an insurer may use them. Personal lines of automobile and homeowners insurance are subject to flex-rating standards, with approval through a rate hearing, except for those written through Lloyd's plans, reciprocals, or county mutuals, which are not regulated as to rates.

DIGEST: CSHB 3031 would include the following lines of insurance in a file-and-use rating system: fidelity and surety bonds, personal umbrella insurance, personal liability insurance, guaranteed auto protection (GAP) insurance, involuntary

unemployment insurance, financial guaranty insurance, inland marine insurance, rain insurance, and hail insurance on farm crops. The bill would specify that art. 5.13-2 would not apply to a line of insurance regulated under provisions relating to automobile insurance in subchapter A or to fire insurance and allied lines in subchapter C. The commissioner would have to adopt rules governing the manner in which forms and rates for various classifications of risks under inland marine insurance were regulated.

The bill would exclude the Texas Fair Plan Association from the definition of insurer under art. 5.13-2. It would retain an exception for Lloyd's and reciprocals with respect to commercial property insurance relating to rate standards, rate filings, public information, and disapproval. It also would specify that with respect to inland marine insurance, rain insurance, or hail insurance on farm crops, Lloyd's or reciprocals would not be subject to rate standards, rate filings, public information, disapproval, and forms.

On the lines of insurance subject to this bill, any interested person could request a hearing before the commissioner acted on a pending petition. The commissioner would have discretion on whether or not to hold such a hearing. The commissioner could hold a hearing to consider the proposal or could enter an order implementing or denying the proposal. Current law requires a hearing on an order specifically implementing or denying a proposal.

CSHB 3031 would repeal art. 5.14, relating to rate making; art. 5.15, outlining provisions for rate filings and rating information; art. 5.15B, relating to supplying regulators with public information, including rating manuals; art. 5.97(e), creating a conforming change; and art. 21.49-3, sec. 4(b)(2), making a conforming change.

The bill would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

CSHB 3031 would create a common system of regulation for various property and casualty lines of insurance — excluding personal auto and homeowners insurance — and would streamline procedures for insurers in developing and submitting filings to TDI. The file-and-use rating system would provide flexibility for insurers to respond to market conditions while preserving TDI's and the commissioner's authority to ensure that rates are just, reasonable, adequate, and not excessive or unfairly discriminatory. Moving commercial

lines to a single system for rate regulation, rather than using the three rating procedures now in place, would ease the administrative burden presented by differing regulatory procedures. CSHB 3031, for the most part, would retain the status quo with regard to Lloyd's and reciprocals on most of the affected lines of commercial insurance.

In its report to the 78th Legislature in December 2002, TDI stated that “the most effective and efficient form of regulation is the file and use system for rates and the prior approval system for policy forms.” CSHB 3031 would improve insurers' ability to adapt to changes in the marketplace, while still subjecting companies to rate standards.

**OPPONENTS  
SAY:**

CSHB 3031 would grant Lloyd's plans or reciprocals an additional loophole in state law that could encourage similar or worse problems in commercial lines of insurance than the state has experienced with homeowners insurance during the past two years. The bill would remove all rate standards for Lloyd's and reciprocals on more lines of commercial insurance. Buyers of policies through Lloyd's or reciprocals could encounter rates that were excessive, inadequate, or unfairly discriminatory, even unreasonable — and have zero protection.

The bill also would present problems related to personal lines of insurance. GAP insurance and involuntary unemployment insurance are personal lines of insurance usually required by creditors. These types of insurance generate almost no competition, making it even more important for consumers to have protection with these products. Inland marine insurance spans a broad range of insurance, including some personal property coverage — everything from personal items in storage or transport to supplemental insurance for jewels and furs. People need rate protection on their personal property, which CSHB 3031 could bring into question.

Issues relating to commercial property insurance can be complex, and small business owners often have difficulty understanding their coverage options. The Legislature should protect small businesses from being subjected to rate shocks. The state has witnessed exploitation in the homeowners insurance market by unregulated Lloyd's firms and should not perpetuate such a system with commercial lines.

CSHB 3031 would jump-start deregulation by doing away with approving rates before policies are sold. The premise behind deregulation — less front-end regulation and more back-end regulation — is deeply flawed. The Legislature should need no additional proof that deregulation has failed in Texas. The state should offer its consumers better and smarter regulation, not less regulation.

**NOTES:**

The committee substitute modified the filed version of HB 3031 to conform with the Texas Legislative Council format.

SB 14 by Fraser, reported favorably, as substituted, by the House Insurance Committee on May 9, would bring commercial and personal lines of automobile, homeowners, and commercial inland marine insurance under Insurance Code, sec. 5.13-2 and would switch the rating method from prior approval to file-and-use.