

**SUBJECT:** Prohibiting insurance rate increases during judicial review

**COMMITTEE:** Insurance — favorable, as amended

**VOTE:** 7 ayes — Smithee, Taylor, Eiland, Hancock, Martinez, Vo, Woolley  
0 nays  
2 absent — T. Smith, Thompson

**WITNESSES:** For — Pamela J. Bolton, Texas Watch  
Against — None  
On — Beaman Floyd, Allstate, American Insurance Association, Nationwide, State Farm, USAA; (*Registered, but did not testify:* Michael Rigby, Texas Department of Insurance)

**BACKGROUND:** In 2003, the 78th Legislature enacted SB 14 by Jackson, which overhauled homeowners and auto insurance regulation in Texas. The bill was enacted largely in response to a dramatic increase in homeowners insurance rates between 2000 and 2003. SB 14 made all personal auto and residential homeowners insurers, including those whose rates previously were unregulated, subject to “rate standards” requiring that all rates be just, fair, reasonable, adequate, not confiscatory, not excessive, and not unfairly discriminatory.

By July 1, 2003, residential property insurers were required to file their rates with the insurance commissioner, who had 60 days to approve, reject, or modify the rates and could order refunds or credits if rates were found to be excessive. In August 2003, the insurance commissioner ordered 37 companies to reduce rates by a total of \$510 million, which amounted to an overall reduction of 12 percent.

Two of the state’s largest property insurers — State Farm Lloyds and Farmers — were ordered to cut their rates by 12 percent and 17.5 percent respectively. These companies filed appeals in state district court claiming that the new statute and TDI’s method of determining the rate cuts violated the companies’ constitutional and statutory due process rights. In

2004, State District Judge Suzanne Covington of Austin found in favor of the companies and ordered TDI to conduct rate hearings. The agency appealed, and the case is currently pending before the Third Court of Appeals.

In 2005, the 79th Legislature enacted SB 14 by Jackson, which increased the interest penalty if an insurer unsuccessfully appeals a rate refund in court to the lesser of 18 percent or 6 percent plus the prime rate for the calendar year in which the commissioner's order was issued.

**DIGEST:** HB 3358, as amended, would prohibit an insurer that files in district court a petition for judicial review of a disapproved rate from raising rates for the same line of insurance before the matter under judicial review is finally resolved, unless the new rate is filed with the Texas Department of Insurance (TDI) and approved by the insurance commissioner.

The bill would take effect September 1, 2007, and would apply to an insurer that files a petition for judicial review on or after that date.

**SUPPORTERS SAY:** HB 3358 would prevent an insurer from raising rates while it was challenging a rate that had been disapproved by the insurance commissioner. This would prevent insurers from using the court system to their advantage if a rate increase is not approved.

Experts estimate that State Farm has made more than \$600 million in premium and interest charges while its court challenge to TDI's initial rate adjustment following enactment of SB 14 in 2003. If State Farm does not prevail in the state's appeal of a lower court decision, policyholders would be unlikely to get back all of this premium income. While HB 3358 would not affect the 2003 State Farm case, it would prevent such situations from occurring in the future.

The bill would provide an incentive for insurers to resolve court cases as quickly as possible rather than dragging them out over several more years. If insurers are prohibited from raising rates until a court case is resolved, they would be more likely to seek a more timely resolution.

**OPPONENTS SAY:** The Legislature enacted the file and use system in 2003 to allow insurers to adjust rates in response to changing market conditions. Any litigation involving past rate decisions should not have an effect on future rate filings, which affect current and future rates.

NOTES:                   The committee amendment would prohibit an insurer from filing and using any higher rate during judicial review for the *same line* of insurance.