

**SUBJECT:** Extending the tort reform insurance rate rollback period for two years

**COMMITTEE:** Insurance — favorable, without amendment

**VOTE:** 9 ayes — Smithee, Eiland, Burnam, G. Lewis, J. Moreno, Olivo, Seaman,  
Thompson, Wise

0 nays

**WITNESSES:** For — None

Against — Richard Geiger, Texas Association of Fire and Casualty  
Companies in Texas; Bob Huxel, Farmers Insurance Group of Companies

On — Birny Birnbaum

**BACKGROUND:** A floor amendment by Rep. Stiles to HB 1988, enacted by the 74th  
Legislature, created Art. 5.131 of the Texas Insurance Code, which mandates  
a temporary rate rollback period for liability insurance policies to pass on to  
consumers the savings from tort reform legislation. The article requires the  
commissioner of insurance either to set the percentage of rate reduction or to  
use the schedule of rate reductions provided by the statute. Section 6 of the  
Article provides that the rollback will remain in effect until January 1, 2001.

For 1999, the projected reduction rates for liability lines range from 1.6  
percent to 22 percent. There would be a 21.1 percent reduction for medical  
malpractice insurance, a 13.7 percent reduction for commercial auto  
insurance, and a 9.2 percent reduction for private passenger auto insurance.

These reduction rates apply to all liability insurance rates, including auto  
insurance rates set through the benchmark system. The benchmark rate is set  
by the commissioner, and standard insurance companies are allowed to charge  
30 percent above or below the benchmark.

**DIGEST:** HB 499 would continue the rate rollback period until January 1, 2003.

The bill would take effect September 1, 1999.

SUPPORTERS  
SAY:

Insurance companies have benefitted greatly from tort reform measures approved by the Texas Legislature, including limitations on joint and several liability, venue shopping and punitive damages, changes to the deceptive trade practices act, and prevention of frivolous law suits. The savings to insurance companies are clear and should be shared with consumers.

When insurance companies argued in favor of tort reform, they said consumers would wind up paying lower insurance rates. The rate rollback period makes sure that insurance companies follow through on to their promises of lower insurance rates. The suggested reductions for rates in the statute came from figures provided by the insurance companies themselves.

The rate reduction system currently in force is the best way to determine whether tort reform has been successful in delivering promised savings to consumers. If the rate rollback period ends, there would be no way to know the effect of tort reform on insurance rates. No independent study on tort reform would be nearly as comprehensive as the current rate reduction system as it applies to all liability insurers.

Current law requires the insurance commissioner to base the tort reform rate reduction on the information presented at a rulemaking hearing at which insurance companies are fully represented and may lay out evidence justifying the rates they seek. The law explicitly limits the tort reform rate reduction to a percentage that is not unfairly discriminatory, confiscatory, or excessive, but reasonable and adequate.

If there are little or no savings resulting from reform of the tort laws at this point, then the commissioner may impose a very small rate reduction or no reduction at all. The commissioner should be capable of reviewing all the evidence and deciding whether there are still tort reform savings in effect for insurance companies.

If tort reform laws are no longer serving to lower insurance costs and discourage frivolous lawsuits in the way the Texas Legislature intended when they were passed, perhaps they should be revised. If these laws are working with continued success in discouraging expensive legal actions, then those benefits should continue to be passed along to consumers.

OPPONENTS  
SAY:

It has been four years since the rate rollback law was enacted. Over this period, the actual savings attributable to the reform of the tort laws have dropped steadily, at the same time that statutorily-mandated tort reform rate reductions have increased. This is unfair to insurance companies.

The benchmark rate for the coming year will be determined using actuarial data and reports filed by insurance companies from the years after tort reform legislation was approved. Therefore, the benchmark rate will be based on calculations that already have taken in account whatever savings there may be from tort reform, before the rate reduction itself is calculated by the commissioner. This means, in effect, the benefits of tort reform will be counted twice.

The law referred to a “temporary” rate rollback period because it was only meant to last until the savings from tort reform were absorbed into the benchmark rate. The law should not be extended beyond the statutory deadline. Insurance rates should be based on actual costs of companies, rather than an artificial mechanism that would be continued by HB 499.

There are many factors that determine the costs of insurance, and many factors resulting in savings from sources other than tort reform. Safer roads, better drivers, an older driving population, safer cars, better DWI laws, and other factors have all played a part in lowering costs of auto insurance. They should not be calculated into the tort reform rate reduction.

Tort reform has had a major impact only on private passenger auto insurance. Even in auto insurance, studies have shown that tort reform has resulted in a savings of only 11.4 percent. Ten percent of that savings comes from the change of behavior resulting from the realization that car crash lawsuits no longer represent easy money. The actual tort reform laws are only responsible for 1.4 percent of the savings.

NOTES:

The companion bill, SB 1696 by Ellis, has been referred to the Senate Economic Development Committee.