

SUBJECT: Allowing insurers to keep some books and records out of state

COMMITTEE: Insurance — committee substitute recommended

VOTE: 7 ayes — Smithee, Eiland, Burnam, J. Moreno, Olivo, Thompson, Wise
0 nays
2 absent — G. Lewis, Seaman

WITNESSES: (*On committee substitute:*)
For — Burnie Burner, Long, Burner, Parks & Sealy, PC; Will Davis, Texas Association of Life and Health Insurers
Against — None
On — Kevin Brady, Texas Department of Insurance

BACKGROUND: The Insurance Code, Art. 1.28 establishes rules for Texas-based insurance companies that want to locate their books, records, accounts, or principal office in another state. These companies now have to give written notice of intent to the commissioner of insurance, who has 30 days to disapprove of the action.

Current law limits this article to insurance companies that are affiliated members of an insurance holding company system. This means that health maintenance organizations (HMOs) are prohibited from locating their books, records, accounts, and principal office in another state.

There is an exception in current law that allows Texas-based insurance companies to locate out-of-state their normal books, records, and accounts related to local branch and agency offices.

Under the Insurance Code, Art. 21.49-1, insurers may enter into agreements with each other to share functions as affiliates. These agreements have to be approved by the commissioner of insurance. These affiliated companies are not excluded from the notice requirement for locating their documents or principal office out of state. Therefore, affiliated insurers must notify the

department if they plan to move their documents or office out of state as part of an affiliation agreement.

All licensed insurance companies in Texas must comply with information requests from the department of insurance. Insurers must reimburse the state for travel costs incurred by the department when it sends employees to inspect insurance company records. This reimbursement goes to the general fund rather than the department's operating fund.

DIGEST:

The author's proposed floor substitute for CSHB 3304 would add HMOs affiliated with other HMOs or health care providers to the companies that can ask the commissioner of insurance for permission to move their books, records, accounts, and principal office to another state.

The bill would clarify the exception for branch and agency records. The exemption would clearly apply to policyholder and claim files and would not be limited to the records of agencies that were affiliated with the insurer in an approved affiliation agreement.

A separate notice would not be required for insurers who entered into an approved affiliation agreement that contained substantially all of the information required for notice to move documents and their principal office out of state.

The commissioner would adopt rules to implement the changes in the bill regarding Texas-based HMOs and the maintenance of insurer records with non-affiliated entities other than agencies.

CSHB 3304 would take effect September 1, 1999, and could not be used to imply that current law is inconsistent with this bill.

**SUPPORTERS
SAY:**

Mergers, consolidations, and technological advances in the insurance industry have made it cost effective for insurers to keep many of their records out of state. Current law excludes HMOs from this practice and is unclear concerning the exception for branch and agency documents. Affiliated insurers now have to get approval for moving their documents out of state even through their

affiliation agreements containing this information already have been approved by the commissioner. The author's proposed floor substitute would streamline the system and allow insurers to use technology to its fullest benefit.

All insurers licensed in Texas are accountable to the department and must provide all documents at their request. This bill would not make insurance regulation and enforcement more difficult.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The author's proposed floor substitute would add the provisions regarding HMOs, notice for affiliated insurers, adoption of rules by the commissioner, and the limitations on the effective date of the bill.

The committee substitute contained the clarifications of the exemption for agency and branch documents in addition to a requirement that insurers must make documents available to the department physically or by electronic means within three days of request.

The original bill no longer would have required the commissioner to approve the movement of documents and the principal office out of state. It also contained provisions that would have allowed travel reimbursements by insurers to go directly to the department's operating fund.