

BILL ANALYSIS

Senate Research Center

S.B. 400
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DIGEST AND PURPOSE

Currently, the Texas Department of Insurance (TDI) sets rates for certain insurance companies for personal lines of insurance: both private passenger automobile insurance and homeowners insurance. Current insurance laws require the commissioner of insurance (commissioner) to regulate the rates of private passenger automobile insurance and homeowners insurance by setting a benchmark rate for each applicable line of insurance. Current Texas law also provides for a flexibility band (flex band) that allows insurers to file and use rates within a 30 percent range, either above or below, of the benchmark rate. Under this benchmark and flex-band system, rates that do not fall within the flex band are subject to prior approval by the commissioner. However, certain types of insurers in the area of personal lines of insurance, including Lloyd's plan companies, reciprocal or interinsurance exchanges, county mutual insurers, and farm mutual insurers, are exempt from the benchmark and flex-band system. In addition, insurers are currently allowed to determine premium costs and to decline insurance coverage based in part or in whole on credit scoring or insurance scoring.

As proposed, S.B. 400 would eliminate the benchmark and flex-band system and establish a prior-approval system to regulate insurance companies, including those previously exempted from TDI oversight of rate setting and underwriting. S.B. 400 would require insurance companies either to comply with underwriting guidelines that meet certain criteria outlined in this bill or to obtain the commissioner's approval before using a guideline that does not meet these criteria. S.B. 400 would require insurers to roll back rates to those that were in effect on January 1, 2001. S.B. 400 would prohibit the use of credit scoring for both underwriting and rating and require both TDI and the office of public insurance counsel to make underwriting guidelines available to the public.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the commissioner of insurance is modified in SECTION 7 (Section 827.010 (f), Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. SHORT TITLE. Provides that this Act may be cited as The Insurance Reform and Consumer Protection Act.

SECTION 2. Repealer: Article 5.26, Section (h) (relating to the maximum rate of fire insurance premiums to be charged or collected and deviations from such charges), Insurance Code.

Repealer: Article 5.50 (Exceptions), Insurance Code.

Repealer: Section 911.001 (Limited Exemption from Insurance Laws; Applicability of Certain Laws), Insurance Code.

Repealer: Section 912.002 (Limited Exemption from Insurance Laws; Applicability of Certain Laws), Insurance Code.

Repealer: Section 912.201 (Schedule of Charges), Insurance Code.

Repealer: Section 941.003 (a) - (c) (relating to both the limited exemption from insurance laws and the applicability of certain laws for a Lloyd's plan), Insurance Code.

Repealer: Section 942.003 (a) - (c) (relating to the limited exemption from insurance laws and the applicability of certain laws), Insurance Code.

SECTION 3. Repealer: Article 5.01, Section (f) (relating to the insurance rating program for motor vehicles), Insurance Code.

Repealer: Article 5.01-2, Section (b) (relating to the rates for motor vehicle insurance written by Lloyd's plan insurer or a reciprocal or interinsurance exchange), Insurance Code. [Note: this article was previously repealed, effective June 1, 2003, and was recodified as Section 942.003, Insurance Code, effective June 1, 2003.]

Repealers: repeals the clause: "Notwithstanding [one or more certain subsections] of this article, on or after March 1, rates for motor vehicles are determined as provided by Subchapter M of this chapter;" from the following sections of the Insurance Code: Article 5.03, Section (g); Article 5.04, Section (c); Article 5.09, Section (c); and Article 5.11, Section (c).

Repealer: Article 5.25, Section (b) (relating to a change in the rating program for certain types of insurance from a fixed program to a flexible one), Insurance Code.

Repealers: repeals the clause: "Notwithstanding [one or more certain subsections] of this article, on and after March 1, 1992, rates for homeowners and residential fire and residential allied lines insurance coverage under this subchapter are determined as provided by Subchapter M of this chapter, and rates for other lines of insurance subject to this subchapter are determined as provided by Article 5.13-2 of this code. This subsection does not affect the requirement for the commissioner to conduct inspections of commercial property and prescribe a manual of rules and rating schedules for commercial property under this subchapter;" from the following articles of the Insurance Code: Article 5.25A, Section (b); Article 5.26, Section (i); Article 5.28, Section (d); Article 5.29, Section (b); Article 5.30, Section (b); Article 5.31, Section (b); Article 5.32, Section (b); Article 5.34, Section (b); Article 5.39, Section (b); Article 5.40, Section (d); and Section 5.41, Section (b).

Repealer: Article 5.96, Section (a-1) (relating to the inapplicability of benchmark rates for certain motor vehicle insurance as well as certain fire and allied lines insurance), Insurance Code.

Repealer: Article 5.101 (Flexible Rating Program for Certain Insurance Lines Purpose; Applicability), Insurance Code.

Repealer: Section 40.061 (Flexible Rating Program), Insurance Code.

SECTION 4. Amends Chapter 5C, Insurance Code, by adding Article 5.26-1, as follows:

Article 5.26-1. RATE ROLLBACK. Requires every insurer, notwithstanding Article 5.26 of this chapter, to reduce its rates to levels that do not exceed the insurer's rates for the same coverage in effect on January 1, 2001, for any form of insurance subject to this chapter issued or renewed on or after June 1, 2003. Requires the insurer to use those rates until the commissioner of insurance (commissioner) approves new rates under Article 5.26.

SECTION 5. Amends Chapter 21B, Insurance Code, by adding Article 21.21-12, as follows:

Article 21.21-12. REGULATION OF UNDERWRITING GUIDELINES.

Sec. 1. DEFINITIONS. Defines “actuarially sound,” “credit scoring,” “insurance scoring,” “person,” “personal automobile insurance,” “residential property insurance,” and “underwriting guideline.”

Sec. 2. PROHIBITION. Prohibits a person from using an underwriting guideline for personal automobile insurance or residential property insurance, other than specified underwriting guidelines, without the prior approval of the commissioner.

Sec. 3. PERMISSIBLE UNDERWRITING GUIDELINES. Provides that an insurer is not required to obtain the commissioner’s prior approval to use an underwriting guideline for personal automobile insurance or residential property insurance that complies with certain specified requirements.

Sec. 4. PRIOR APPROVAL STANDARDS. Prohibits the commissioner from approving the use of an underwriting guideline that does not meet certain specified conditions.

Sec. 5. CREDIT SCORING AND INSURANCE SCORING. Prohibits the commissioner from approving an underwriting guideline or rating factor based in part or in whole on credit scoring or insurance scoring. Prohibits a person from using an underwriting guideline or rating factor based in part or in whole on credit scoring or insurance scoring.

SECTION 6. Amends Chapter 38, Insurance Code, by amending Section 38.002, to require, rather than authorize, the Texas Department of Insurance (TDI) or the office of public insurance counsel to obtain a copy of an insurer’s underwriting guidelines. Provides that underwriting guidelines are not confidential and requires both TDI and the office of public insurance counsel to make the guidelines available to the public, rather than provides that the guidelines are confidential and prohibits either TDI or the office of public insurance counsel from making the guidelines available to the public. Eliminates Subsections (c) - (f) regarding access to guidelines.

SECTION 7. Amends Chapter 827, Insurance Code, by amending Sections 827.001, 827.002, 827.003, 827.006, 827.007, 827.008, and 827.010, as follows:

Sec. 827.001. New heading: DEFINITIONS. Defines “affiliate” and “insurer.” Makes a nonsubstantive change.

Sec. 827.002. EXEMPTION. Provides that this chapter does not apply to certain types of insurer-to-company business transfers, including such a business transfer to a company that is not a reciprocal exchange, interinsurer, Lloyd’s insurer, fraternal benefit society, county mutual, or farm mutual insurer. Makes nonsubstantive changes.

Sec. 827.003. WITHDRAWAL PLAN REQUIRED. Requires an insurer, rather than an authorized insurer, to file with the commissioner a plan for orderly withdrawal if the insurer proposes to do one of two things, including proposing to reduce the insurer’s total annual premium volume by 50 percent or more, rather than 75 percent or more.

Sec. 827.006. New heading: WRITING INSURANCE AFTER WITHDRAWAL. Prohibits an insurer that withdraws from writing either private passenger automobile insurance or residential property insurance, rather than withdraws from all lines of insurance, in this state, from writing any line of insurance in this state before the fifth anniversary of the date of

withdrawal without the approval of the commissioner. Makes conforming and nonsubstantive changes.

Sec. 827.007. PENALTIES. Authorizes the commissioner to impose the civil penalties under Chapter 82 (Sanctions) on an insurer that fails to comply with any requirement of this chapter, rather than to impose those penalties on an insurer that fails to obtain the commissioner's approval before the insurer performs certain functions.

Sec. 827.008. RESTRICTION PLAN. (a) Provides that before an insurer restricts writing new private passenger automobile insurance or residential property insurance business, rather than new business, in the state or in a rating territory, rather than in a rating territory, the insurer must file a proposed restriction plan with the commissioner for the commissioner's approval, rather than for the commissioner's review and comment. Prohibits a residential property insurer from restricting its writing of residential property insurance Homeowners "B" policy forms, as promulgated by the commissioner. Provides that the insurer must also offer the consumer a Homeowners "B" policy if the insurer offers an Homeowners "A" policy form, or a policy form approved under Article 5.35(b) or (c) (relating to policy forms), Insurance Code. Deletes existing text.

(b) Provides that the commissioner's approval of a restriction plan filed under Subsection (a) is required, rather than is not required. Prohibits an insurer that files a restriction plan from instituting the plan until on or after the 15th day after the commissioner approves the plan. Prohibits the commissioner from approving a restriction plan unless the commissioner determines the plan will not have an adverse impact on the affordability and availability of insurance in this state. Eliminates Subsection (c) (relating to exceptions to Subsection (b)).

Sec. 827.010. MORATORIUM. (a) Authorizes the commissioner to impose a moratorium of not longer than two years if certain action is taken, including the approval, rather than implementation, of plans to restrict the writing of new business described by Section 827.008.

(b) and (c) No changes to these subsections.

(d) Provides that the commissioner, in order to impose or renew a moratorium under this section, must determine, after notice and hearing, that a particular line of insurance is not reasonably expected to be available and affordable, rather than only available, to a substantial number of policy holders or potential policy holders in this state, or in certain other cases, in a rating territory. Deletes existing text requiring the occurrence of a catastrophic event for the commissioner to make that imposition or renewal.

(e) No change to this subsection.

(f) No change to this subsection, which requires the commissioner by rule to establish reasonable criteria for applying the standards for determining whether to impose a moratorium under this section.

(g) No change to this subsection.

SECTION 8. Amends Chapter 5A, Insurance Code, by amending Article 5.03(b) (relating to promulgated automobile insurance rates), to authorize an insurer, if the commissioner has not issued an order approving the filing within 60 days after the filing of the application, to request a hearing on the application, to be held at the State Office of Administrative Hearings under Chapter 2001 (Administrative Procedure), Government Code. Requires the burden of proof in any such hearing to be on the insurer. Provides that the hearings examiner must issue a proposal for decision within 60 days after the filing of the request for a hearing. Requires the hearing examiner's proposed order to be final

unless the commissioner issues a different order within 30 days after the commissioner receives the proposed order.

SECTION 9. Amends Chapter 5C, Insurance Code, by amending Article 5.26(d) (relating to promulgated fire insurance rates), to require an application provided for in Article 5.26(b) or (c) to be approved in whole or in part by the State Board of Insurance of the State of Texas (board), provided that the board finds that the resulting premiums will be just, adequate, reasonable, not excessive, and not unfairly discriminatory. Authorizes an insurer, if the commissioner has not issued an order approving the filing within 60 days after the filing of the application, to request a hearing on the application, to be held at the State Office of Administrative Hearings under Chapter 2001 (Administrative Procedure), Government Code. Requires the burden of proof in any such hearing to be on the insurer. Provides that the hearings examiner must issue a proposal for decision within 60 days after the filing of the request for a hearing. Requires the hearing examiner's proposed order to be final unless the commissioner issues a different order within 30 days after the commissioner receives the proposed order. Deletes existing text and makes conforming changes.

SECTION 10. Effective date: June 1, 2003, or September 1, 2003.