

BILL ANALYSIS

Senate Research Center
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H.B. 4291
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law requires the Texas Department of Insurance (TDI) to hold a hearing before denying an application for a certificate of authority for a company that desires to enter the Texas market as an insurer. In contrast, the current process allows the commissioner of insurance to deny an application for the acquisition of control of an existing insurer (Form A) without first holding a hearing and entitles the applicant to a hearing if the commissioner of insurance (commissioner) denies the application.

The statutory hearing requirements prolong the review process and divert valuable resources from other applications and regulatory functions of TDI. Providing an applicant with a hearing after denial of an application maintains the applicant's due process rights, allows TDI to require strict adherence to the standards for the issuance of a certificate of authority, and minimizes the time spent on unqualified applications.

H.B. 4291 grants TDI the authority to approve, deny, or disapprove an application for a certificate of authority without being required to first hold a hearing, and provides an applicant the right to request a hearing after a denial to provide the applicant an opportunity to demonstrate whether it meets all requirements for issuance of a certificate of authority.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 801.001(2), Insurance Code, to define "insurer."

SECTION 2. Amends Section 801.501, Insurance Code, as follows:

Sec. 801.051. New heading: APPROVAL, DENIAL, OR DISAPPROVAL OF APPLICATION FOR CERTIFICATE; ELIGIBILITY; HEARING. (a) Requires the Texas Department of Insurance (TDI) to approve, deny, or disapprove an application for a certificate of authority to act as an insurer.

(b) Requires TDI, if TDI determines that the applicant has complied with the law, to approve the application and issue under TDI's seal a certificate of authority to act as an insurer. Makes a nonsubstantive change.

(c) Require the commissioner of insurance (commissioner), on the applicant's request, to hold a hearing on a denial. Requires the commissioner, not later than the 30th day after the date of the applicant's request for a hearing, to request a hearing date.

SECTION 3. Amends Section 801.102, Insurance Code, as follows:

Sec. 801.102. DENIAL OF APPLICATION OR REVOCATION OF CERTIFICATE. (a) Requires TDI, if after conducting an inquiry under Section 801.101 (Department Inquiry) TDI determines that, rather than determines that based on substantial evidence, the person who is subject of the inquiry is not worthy of the public confidence to deny the

application for a certificate of authority, or revoke the insurer's certificate of authority, rather than after written notice and hearing deny the application for a certificate of authority or revoke the insurer's certificate of authority.

(b) Requires the commission, on the applicant's request, to hold a hearing on a denial or revocation. Requires the commissioner, not later than the 30th day after the date of the applicant's request for a hearing, to request a hearing date.

SECTION 4. Amends Section 822.057(b), to authorize the commissioner, if the commissioner is not satisfied with the affidavit filed under Subsection (a)(3) (relating to an affidavit made by the incorporators or officers of the company that states certain information), to require that the incorporators provide at their expense additional evidence of a matter required in the affidavit before the commissioner receives the proposed articles of incorporation or the application for charter, or issues a certificate of authority to the company. Deletes existing text relating to providing notice of a hearing on the application for charter or holding a hearing.

SECTION 5. Amends Section 822.058(b), Insurance Code, to require the commissioner, after the items required for a charter under Sections 822.057(a)(1) (relating to requiring the incorporators, to obtain a charter for an insurance company, to pay and file certain fees with TDI) and (2) (relating to the company's proposed articles of incorporation) are filed with TDI and the proposed insurance company has complied with all legal requirements, to conduct an examination of the company to determine whether the minimum capital stock and surplus requirements of Section 822.054 are satisfied, the capital stock and surplus is the bona fide property of the company, and the insurance company has fully complied with insurance laws.

SECTION 6. Amends Section 822.060, Insurance Code, as follows:

822.060. ACTION ON APPLICATION. (a) Requires the commissioner, in considering the application, rather than requires the commissioner, in considering the application, not later than the 30th day after the date on which a hearing under Section 822.057 is completed, to determine if:

(1) the proposed capital structure of the company meets the requirements of this code;

(2) the proposed officers, directors, attorney in fact, or managing head of the company have sufficient insurance experience, ability, standing, and good record to make success of the proposed company probable; and

(3) the applicants are acting in good faith.

(b) Requires the commissioner, if the commissioner determines that the applicant has not met the standards set out by Subsection (a), rather than determines by an affirmative finding any of the issues under Subsection (a) adversely to the applicants, to deny, rather than reject, the application in writing, giving the reason for the denial, rather than rejection.

(c) Requires the commissioner, if the commissioner does not deny the application under Subsection (b), to approve the application. Makes a conforming change.

(d) Requires the commissioner, on the applicant's request, to hold a hearing on a denial. Requires the commissioner, not later than the 30th day after the date of the applicant's request for a hearing, to request a hearing date.

SECTION 7. Amends Sections 822.158(b) and (c), Insurance Code, as follows:

(b) Requires the commissioner, if the commissioner determines that the applicant has not met the requirements set out by Subsection (a), to deny the application. Requires the commissioner, on the applicant's request, to hold a hearing on a denial. Requires the commissioner, not later than the 30th day after the date of the applicant's request for a hearing, to request a hearing date. Makes conforming changes.

(c) Requires the commissioner, if the commissioner does not deny, rather than reject, the application under Subsection (b), to approve the application and requires the amendment to be filed with TDI. Makes a conforming change.

SECTION 8. Amends Section 841.059(a), Insurance Code, to require TDI to make or cause to be made a full and thorough examination of the domestic insurance company. Deletes existing text authorizing the commissioner to set a date for a hearing on the application.

SECTION 9. Amends Section 841.061, Insurance Code, by amending Subsections (a) and (b) and adding Subsections (b-1) and (b-2), as follows:

(a) Requires the commissioner, in considering the application, to determine if certain criteria are met. Makes a conforming change.

(b) Requires the commissioner, if the commissioner determines that the applicant has not met the standards set out by Subsection (a), to deny the application in writing, giving the reason for the denial. Makes conforming changes.

(b-1) Requires the commissioner, on the applicant's request, to hold a hearing on a denial. Requires the commissioner to request a hearing date, not later than the 30th day after the date of the applicant's request for a hearing date.

(b-2) Authorizes an interested party to participate fully and in all respects in any proceeding related to the application. Provide that an intervenor has the rights and privileges of a proper or necessary party in a civil suit in the courts of this state, including the right to be represented by counsel.

SECTION 10. Amends Section 841.061(c), Insurance Code, effective April 1, 2009, to require the commissioner, if the commissioner does not deny, rather than reject, the application under Subsection (b), to approve the application.

SECTION 11. Amends Section 846.054, Insurance Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires the commissioner to approve, deny, or disapprove an application for an initial certificate of authority, rather than issue an initial certificate of authority to a multiple employer welfare arrangement, that meets the requirements of Section 846.053 not later than the 60th day after the date on which the application is filed.

(a-1) Requires the commissioner, on the applicant's request, to hold a hearing on a denial. Requires the commissioner, not later than the 30th day after the date of the applicant's request for a hearing, to request a hearing date.

SECTION 12. Amends Section 882.057, Insurance Code, as follows:

Sec. 882.057. APPLICATION PROCESS. (a) Requires the commissioner, rather than authorizes the commissioner, after the charter fee is paid and all items required for a charter under Section 882.056 are filed with TDI, to approve, deny, or disapprove, rather than set a date for a hearing on, the application.

(b) Requires the commissioner, on the applicant's request, to hold a hearing on a denial. Requires the commissioner, not later than the 30th day after the date of the applicant's request for a hearing, to request a hearing date. Deletes existing text prohibiting the date for a hearing on an application from being before the 11th or later than the 60th day after the date notice is provided under Subsection (c).

(c) Authorizes an interested party to participate fully in all respects in any proceeding related to the application. Deletes existing text requiring the commissioner to provide written notice of the date of the hearing to certain

parties, and publish, at the expense of the incorporators, a copy of the notice in a newspaper of general circulation in the county in which the mutual life insurance company's home office is proposed to be located. Deletes existing Subsection (d) requiring TDI to make a record of the proceedings of a hearing under this section. Deletes existing Subsection (e) providing that an interested party is entitled to oppose or support the granting or denial of the application and is authorized to intervene and participate fully in all respects in any hearing or other proceeding on the application.

SECTION 13. Amends Sections 882.058(a) and (b), Insurance Code, as follows:

(a) Requires the commissioner, in considering the application, to determine if certain criteria are met. Deletes existing text requiring the commissioner, in considering the application, not later than the 30th day after the date a hearing under Section 882.057 is completed, to determine if certain criteria are met.

(b) Requires the commissioner, if the commissioner determines that the applicant has not met the standards set by Subsection (a), to deny the application in writing, giving the reason for the denial. Deletes existing text requiring the commissioner, if the commissioner determines by an affirmative finding any of the issues under Subsection (a) adversely to the applicants, to reject the application in writing, giving the reason for the rejection.

SECTION 14. Amends Section 884.057, Insurance Code, as follows:

Sec. 884.057. ACTION BY COMMISSIONER AND DEPARTMENT AFTER FILING. (a) Requires the commissioner, after the charter is paid and all items required for a charter under Section 884.056 are filed with TDI, to approve or deny the charter application. Deletes existing text authorizing the commissioner to set a date for a hearing on the application and requiring TDI to make or cause to be made a full and thorough examination of the company before a hearing.

(b) Requires the commissioner, on the applicant's request, to hold a hearing on a denial. Requires the commissioner, not later than the 30th day after the date of the applicant's request for a hearing, to request a hearing date. Deletes existing text requiring the stipulated premium company to pay for the examination required under Subsection (a)(2) (relating to authorizing TDI to make or cause to be made a full and thorough examination of the company before a hearing).

(c) Authorizes an interested party to participate fully and in all respects in any proceeding related to the application. Provides that an intervenor has the rights and privileges of a proper or necessary party in a civil suit in the courts of this state, including the right to be represented by counsel.

SECTION 15. Amends Section 884.058, Insurance Code, as follows:

Sec. 884.058. New heading: EXAMINATION AFTER DETERMINATION. Requires the commissioner, after making a determination on an application under Section 884.057, to immediately make or cause to be made a full and thorough examination of the company. Requires the company to pay for the examination. Deletes existing Subsection (b) requiring the commissioner to provide written notice of the date of a hearing to certain parties, and publish, at the expense of the incorporators, a copy of the notice in a newspaper of general circulation in the county in which the stipulated premium company's home office is proposed to be located. Deletes existing Subsection (c) requiring TDI to make a record of the proceedings of a hearing under this section. Deletes existing Subsection (d) providing that an interested party is entitled to oppose or support the granting or denial of the application and is authorized to intervene and participate fully and in all respects in any hearing or other proceeding on the application; and providing the intervenor has the rights and privileges of a proper or necessary party in a civil suit in the courts of this state, including the right to be represented by counsel.

SECTION 16. Amends Section 911.056, Insurance Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires TDI to approve or deny an application for a permit to solicit insurance under Section 911.055 (Application for Permit to Solicit Insurance), rather than requiring TDI, on receipt of an application for a permit to solicit insurance under Section 911.055, to examine the application.

(a-1) Requires TDI, if TDI finds that the application does not comply with this chapter, to deny the application. Requires the commissioner, on the applicant's request, to hold a hearing on a denial. Requires the commissioner, not later than the 30th day after the date of the applicant's request for a hearing, to request a hearing date.

SECTION 17. Amends Section 982.102, Insurance Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Requiring the commissioner, before approving or denying the application of a foreign or alien insurance company for a certificate of authority to engage in the business of insurance in this state, to take certain actions. Deletes existing text requiring the commissioner, before issuing a certificate of authority to engage in the business of insurance in this state to a foreign or alien insurance company, to take certain actions.

(d) Requires the commissioner, on the applicant's request, to hold a hearing on a denial. Requires the commissioner, not later than the 30th day after the date of the applicant's request for a hearing, to request a hearing date.

SECTION 18. Amends Section 982.113, Insurance Code, as follows:

Sec. 982.113. ISSUANCE OF CERTIFICATE OF AUTHORITY TO LIFE, HEALTH, OR ACCIDENT INSURANCE COMPANY. (a) Requires the commissioner to file in the commissioner's office the documents delivered to TDI under this subchapter and to approve or deny an application for a certificate of authority.

(b) Requires the commissioner to issue to a foreign or alien life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company a certificate of authority to engage in this state in the kind of business specified in the documents if certain conditions are met.

(c) Redesignates Subsection (b) as Subsection (c). Requires the operational history of a life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company under Subsection (b)(2) (relating to certain information concerning the company's operational history), rather than (a)(2), be reviewed in conjunction with certain criteria.

(d) Requires the commissioner, on the applicant's request, to hold a hearing on a denial. Requires the commissioner, not later than the 30th day after the date of the applicant's request for a hearing, to request a hearing date.

SECTION 19. Repealer: Section 822.057(c) (relating to prohibiting the commissioner from delaying providing notice of a hearing on the application for charter for more than 10 days), Insurance Code.

Repealer: Section 822.058(a) (relating to authorizing the commissioner, on receipt of an application for the charter of an insurance company, to set the date for a hearing on the application), Insurance Code.

Repealer: Section 822.059 (Action on Application For Charter), Insurance Code.

Repealer: Section 841.060 (Application Process), Insurance Code.

Repealer: Section 843.081 (Deadline for Action On Application), Insurance Code.

Repealer: Section 882.058(c) (relating to requiring the commissioner, if the commissioner does not reject the application, to approve the application), Insurance Code.

SECTION 20. Effective date: upon passage or September 1, 2009.