

## **BILL ANALYSIS**

Senate Research Center

H.B. 2102  
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Business & Commerce  
5/10/2001  
Engrossed

### **DIGEST AND PURPOSE**

Current law requires the commissioner of insurance to conduct hearings to determine benchmark rates under a flexible rating program. The average time span between the initial notice of a hearing until a rate is set is more than one year and, since rates are based on data from years prior to the start of this process, the rates may not reflect current market conditions. Allowing the commissioner of insurance to exercise rulemaking authority in setting benchmark rates and to determine and prescribe Texas Automobile Insurance Plan Association (TAIPA) rates would reduce the number of steps involved in the rate-setting process. This would help reduce the gap between the effective date of new rates and the time period represented by the data used to set the rates. H.B. 2102 allows the commissioner of insurance to exercise rulemaking authority in setting benchmark rates and to prescribe TAIPA rates.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Commissioner of Insurance of the State of Texas in SECTION 1 (Section 3, Article 5.101, Insurance Code), SECTION 4 (Section 5, Article 21.81), SECTION 9 (Section 3, Article 5.131, Insurance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 3(b), (c), (d), and (o), Article 5.101, Insurance Code, as follows:

- (b) Requires the Commissioner of Insurance of the State of Texas (commissioner), by rule, to promulgate a benchmark rate for each line subject to this article after notice and hearing. Deletes a statutory reference.
- (c) Authorizes the commissioner, in setting the benchmark rate, to give due consideration to certain factors, including expenses of operation of all insurers, excluding only those expenses that are disallowed under Subsection (o) of this section. Makes a conforming change.
- (d) Provides that each flexibility band is based on a benchmark rate promulgated by rule by the commissioner.
  - Requires the commissioner to conduct hearings annually, rather than on or before September 1 of each year, to determine the benchmark rates by line.
  - Requires the commissioner, before each hearing conducted under this subsection, to request recommendations from insurers, trade associations, the public insurance counsel, and any other interested person or entity regarding changes to the benchmark rates. Requires the recommendations to include any supporting actuarial analyses. Requires notice of each hearing proposing changes to the benchmark rates to be published in the Texas Register. Requires the commissioner to receive public comment for at least 30 days after the notice is published.
  - Authorizes an insurer, the public insurance counsel, and any other interested person to

present views, analyses, and arguments in response to the commissioner's request for recommendations, either before or at the hearing, and to file information for consideration by the commissioner. Deletes a reference to testimony at the hearing.

- Authorizes the public insurance counsel and any insurer, trade association, or other interested person or entity that has submitted proposed changes or actuarial analyses to ask questions of any person testifying at the hearing. Deletes text regarding an advisory organization being prohibited from being a party to the hearing.
- Requires the commissioner to adopt a rule promulgating the benchmark rates after the hearing.

(o) Redefines "disallowed expenses" to include any unreasonably incurred expenses, as determined by the commissioner after notice and hearing in a proceeding separate from the benchmark hearing under this article.

SECTION 2. Amends Section 5, Article 5.101, Insurance Code, as follows:

Sec. 5. New heading: APPLICABILITY OF CERTAIN GOVERNMENT CODE REQUIREMENTS. (a) Provides that, subject to Chapter 40 of this code, Chapter 2001, Government Code, applies to all rate hearings conducted under this article, other than a benchmark rate hearing conducted under Section 3(d) of this article. Deletes statutory references.

(b) Provides that Chapter 2006A, Government Code, does not apply to a benchmark rate hearing conducted under Section 3(d) of the article. Deletes text regarding a hearing on benchmark rates.

(c) and (d) Delete text regarding a benchmark rate hearing and a proceeding to determine and make adjustments and amendments to the rules and statistical plans.

SECTION 3. Amends Article 5.101, Insurance Code, by adding Section 6, as follows:

Sec. 6 APPEAL. Authorizes a person aggrieved by an order of the commissioner setting benchmark rates, not later than the 30th day after the date on which the commissioner issued the order, to appeal the order. Requires an appeal of an order of the commissioner setting benchmark rates under this article to be made in accordance with Chapter 36D of this code.

SECTION 4. Amends Section 5, Article 21.81, Insurance Code, as follows:

Sec. 5. New heading: RATES FOR INSURANCE; HEARING. (a) Deletes text requiring the commissioner to annually conduct a hearing to determine appropriate rates. Requires the commissioner to determine and prescribe appropriate rates to be charged for insurance provided through the association that meet certain conditions. Deletes a reference to rates.

(c) Requires the Texas Automobile Insurance Plan Association (association) to file annually with the Texas Department of Insurance (department) for approval by the commissioner rates to be charged for insurance provided through the association. Prohibits the association from making such a filing more than once in any 12-month period. Sets forth situations to which Chapter 40B does not apply.

(d) Requires the commissioner, before approving, disapproving, or modifying a filing made under Subsection (c) of this section, to provide all interested persons a reasonable opportunity to perform certain actions.

(e) Requires the commissioner, not later than the 45th day after the date on which the department receives the filing required under Subsection (c) of this section, to schedule a hearing at which interested persons may present written or oral comments relating to the filing. Provides that a hearing under this subsection is not a contested case hearing under Chapter 2001, Government Code. Authorizes the association, the public insurance counsel, and any other interested person or entity that has submitted proposed changes or actuarial analyses to ask questions of any person testifying at the hearing.

(f) Requires the department to file with the Texas Register notice that a filing has been made under Subsection (c) of this section not later than the seventh day after the date the filing is received by the department. Requires the notice to include information relating to certain matters.

(g) Requires the commissioner, after the conclusion of the hearing, to approve, disapprove, or modify the filing in writing. Requires the commissioner, if the commissioner disapproves a filing, to state in writing the reasons for the disapproval and the criteria to be met by the association to obtain approval. Authorizes the association to file with the commissioner, not later than the 10th day after the date on which the association receives the commissioner's written disapproval, an amended filing to comply with the commissioner's comments.

(h) Requires the commissioner, before approving or disapproving an amended filing, to provide all interested persons a reasonable opportunity to review the amended filing, obtain copies of the amended filing on payment of any legally required copying cost, and submit to the commissioner written comments or information related to the amended filing in the manner provided by Subsection (d) of this section. Authorizes the commissioner to hold a hearing not later than the 20th day after the date on which the department receives the amended filing in the manner provided by Subsection (e) of this section. Requires the commissioner, not later than the 10th day after the date on which the hearing on the amended filing is concluded, to approve or disapprove the amended filing. Requires the commissioner, not later than the 30th day after the date on which the amended filing is received by the department, to disapprove the amended filing or provides that it is considered approved. Provides that the requirements adopted under Subsections (f) and (g) of this section apply to a hearing conducted under this subsection.

(i) Authorizes a person aggrieved by a decision of the commissioner under this section, not later than the 30th day after the date of the commissioner's decision, to appeal the decision. Requires an appeal of the commissioner's decision under this section to be made in accordance with Chapter 36D.

(j) Provides that, notwithstanding Subsections (a)-(h) of this section or any other provision of this article, an applicant is eligible for insurance through the association if the applicant and the servicing agent certify that the applicant is unable to find coverage at a rate that is within the benchmark flexibility band adopted under Article 5.101 and that the applicant is a good driver. Requires the applicant to be charged a rate for coverage that does not exceed a rate that is greater than the midway point between 115 percent of the benchmark rate adopted under Article 5.101 and the rate adopted under this section. Authorizes the commissioner to adopt rules as necessary to implement this subsection. Defines "good driver."

SECTION 5. Amends Chapter 40B, Insurance Code, by adding Section 40.061, as follows:

Sec. 40.061. FLEXIBLE RATING PROGRAM. Provides that, notwithstanding Sections

40.051-40.060, hearings for benchmark rates for all lines of insurance subject to Article 5.101 of this code are conducted as provided by Section 3(d) of that article.

SECTION 6. Amends the heading to Article 5.131, Insurance Code, to read as follows:

Art. 5.131. RATE ROLLBACK FOR CERTAIN LINES OF INSURANCE.

SECTION 7. Amends Section 1, Article 5.131, Insurance Code, to amend the legislative findings.

SECTION 8. Amends Section 2(c), Article 5.131, Insurance Code, to provide that this article applies only to policies or coverages in certain lines or sublines that are issued, issued for delivery, or renewed on and after January 1, 2002, rather than 1996.

SECTION 9. Amends Sections 3(a), (b), (d), and (e), Article 5.131, Insurance Code, as follows:

(a) Amends a statutory reference.

(b) Requires the commissioner, not later than October 1, 2001, rather than 1995, to issue rules mandating the appropriate rate reductions to certain rates. Makes a nonsubstantive change.

(d) Provides that the rate reductions adopted under this section are applicable to each policy or coverage issued, issued for delivery, or renewed on or after January 1, 2002, rather than 1996.

(e) Provides that, notwithstanding Subsection (d) of this section, if, on January 1, 2002, rather than 1996, the commissioner has not issued an order establishing rate reductions for a line or subline under this section, certain reductions, as measured from the base rates in effect on April 1, 2001, rather than 1995, apply to each insurer for each affected policy or coverage issued, issued for delivery, or renewed on or after January 1, 2002, rather than 1996.

SECTION 10. Amends Section 4(a), Article 5.131, Insurance Code, to require a rate filed as to a line or subline of insurance coverage affected by this article on and after January 1, 2002, rather than 1996, to reflect the rate reduction imposed by Section 3 of this article.

SECTION 11. Amends Section 6, Article 5.131, Insurance Code, as follows:

Sec. 6. New heading: CONTINUATION OF REDUCTION. Requires the commissioner, after the conclusion of each regular biennial legislative session, beginning with the 78th legislative session, to conduct a review of state and federal legislation and court decisions analogous to that conducted under Section 3 of this article to determine whether that legislation and those court decisions can reasonably be anticipated to reduce the cost of litigation or the amount of damages. Requires the commissioner, if the commissioner finds that those reductions are likely, to order an additional rate rollback, as provided by this article, to begin on January 1 of each even-numbered year. Deletes text regarding the commissioner granting relief.

SECTION 12. Amends Section 8, Article 5.131, Insurance Code, to amend a statutory reference and to delete a provision that Article 1.09-5 of this code does not apply to hearings under this article.

SECTION 13. Amends Section 9, Article 5.131, Insurance Code, to provide that a rate filed under a commissioner's order issued before May 1, 2001, rather than 1995, is not subject to the rate reductions required by this article before January 1, 2002, rather than 1996.

SECTION 14. Amends Section 37.052(d), Insurance Code, to delete the expiration date of this subsection.

SECTION 15. Makes application of this Act prospective to January 1, 2002.

SECTION 16. Effective date: September 1, 2001.