

BILL ANALYSIS

C.S.S.B. 14
By: Jackson
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, only 5% of the homeowners insurance market is regulated and the percentage of the unregulated automobile insurance market is increasing. Texas consumers pay the highest homeowners insurance premiums in the country and some consumers are being charged higher premiums for policies that provide reduced coverage. C.S.S.B. 14 provides for the regulation of residential property and commercial and personal automobile insurance.

Currently, the commissioner of insurance (commissioner) establishes benchmark rates for automobile and residential property insurance. However, most homeowners and many automobile owners are insured by companies that are not subject to benchmark rate regulation. C.S.S.B. 14 provides for the regulation of the rates of residential property and personal automobile insurers, including previously unregulated insurers.

Policy forms for automobile insurance are currently promulgated by the commissioner, and all insurers writing automobile insurance in the state are required to use the promulgated standard forms. Residential property insurers may use either promulgated standards forms or forms of national insurers or organizations that have been approved or adopted by the commissioner. C.S.S.B. 14 regulates policy forms and endorsements for residential property and personal automobile insurance under a prior approval system.

The use of credit scoring by automobile and residential property insurers is currently not regulated and many insurers use credit scoring to determine whether to write a risk or how to rate a risk. Insurers for all lines of insurance must file their underwriting guidelines with TDI upon request. C.S.S.B. 14 regulates the use of credit scoring and sets forth requirements for filing underwriting guidelines.

Currently, certain insurers are exempt from the filing of a withdrawal plan, including Lloyd's plans, reciprocals or interinsurance exchanges, and county mutuals. C.S.S.B. 14 applies withdrawal requirements to all insurers, including Lloyd's plans, reciprocals or interinsurance exchanges and county mutuals.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Commissioner of Insurance in SECTION 1.01 (Article 5.142, Insurance Code), SECTION 2.01 (Article 21.49-2U, Insurance Code), SECTION 3.07 (Article 5.13-2, Insurance Code), SECTION 3.09 (Article 5.13-2, Insurance Code), SECTION 3.11 (Article 5.13-2, Insurance Code), SECTION 8.01 (Article 21.49A-1, Insurance Code), SECTION 9.31 (Section 912.002 and Article 17.22, Insurance Code), SECTION 9.33 (Article 18.23, Insurance Code), and SECTION 9.34 (Article 19.12, Insurance Code).

ANALYSIS

ARTICLE 1: RATE REQUIREMENTS

Article 5.142 Rates for Personal Automobile and Residential Property Insurance Coverage

The bill requires an insurer to set rates in accordance with the rating criteria set forth. The bill requires annual rate filings and sets forth requirements relating to the information to be included in a filing. The bill specifies the conditions under which the Commissioner of Insurance (Commissioner) is authorized to

require additional rate filings. An insurer is not required to make subsequent annual rate filings, after an initial filing is approved, if the rate to be used is the same as the rate in effect.

The bill requires the Commissioner not later than the 30th date after the date a rate is filed to approve or disapprove the rate. A rate is considered approved and an insurer is authorized to use a rate, if it has not been disapproved within the 30-day period, unless the rate represents an increase of 12.5 percent or more from the insurer's prior filed and approved rate. The bill requires the Commissioner to approve a rate filing, if the proposed rate is adequate, not excessive, and not unfairly discriminatory. If an insurer is noncompliant with specific rate requirements, then a rate that has not been approved or disapproved within the 30-day period is considered denied. The bill sets forth provisions relating to a one time 30-day extension of the approval or disapproval period and requests for additional information. The bill authorizes an insurer, after approval of an initial rate filing, to use any rate subsequently filed without prior approval, if the filed rate does not exceed a previously approved rate by a certain percentage.

The bill authorizes the Commissioner to disapprove a rate that does not meet the requirements of this article and sets forth related procedures. The bill authorizes an insurer to request binding arbitration or a hearing after receiving notice of a disapproval and sets forth related procedures. The bill sets forth the factors that Commissioner is required to consider as the basis for approval of a rate.

The bill requires insurers to provide notice to a policyholder, upon renewal, of a rate increase that exceeds 10 percent of the amount paid before renewal. The bill provides that each rate filing and any supporting information filed under this article is public information and must be disclosed, and authorizes certain uses of filed rate information. Confidential information remains confidential. The bill describes the rights of the public insurance counsel and provides for appeals by an insurer or the public insurance counsel of orders issued by the Commissioner under this article. The bill requires the Commissioner to adopt rules as necessary to implement this article.

This article expires September 1, 2004.

Article 5.143 Exceptions to Rate Filing and Approval Requirements

The bill requires an insurer with a market share of five percent or more that acquires an interest in an insurer with a smaller market share or that splits into smaller entities, to be owned in whole or in part by the insurer with the larger market share, to continue to file rates for all affected entities, as required by the Commissioner. The bill authorizes the Commissioner to exempt an insurer from certain filing and rate approval requirements, depending on the market share of the insurer. The bill specifies the requirements with which an insurer must comply in order to be eligible for a reduction in rate filing or rate approval requirements. The bill also sets forth an exemption from rate filing and approval requirements for eligible surplus lines insurers. The bill provides standards for rates that are otherwise exempt from regulation.

This article expires September 1, 2004.

ARTICLE 2: UNDERWRITING GUIDELINES & REQUIREMENTS; USE OF CREDIT SCORING

Article 21.49-2U Use of Credit Scoring in Certain Personal Lines of Insurance

The article applies to an insurer that writes personal insurance coverage and uses credit information or credit reports for the underwriting or rating of that coverage. The bill prohibits certain uses of credit information by an insurer and specifies the factors that an insurer may not use as negative factors in any credit scoring methodology or in reviewing credit information for underwriting or rating. The bill requires an insurer upon request to provide reasonable exceptions to rates, rating classifications, or underwriting rules for a consumer whose credit information has been directly influenced by a catastrophic illness or injury, death of a spouse, child, or parent, or by temporary loss of employment or by identity theft. An insurer is authorized to grant an exception for an extraordinary event not listed.

The bill requires an insurer to re-underwrite and re-rate an insured and to credit an insured for any overpayment, if it is determined through the dispute resolution process that the credit information of an insured was inaccurate, incomplete, or could not be verified. The bill requires an insurer to disclose to an applicant that the applicant's credit report may be used for underwriting or rating and to provide notice within 30 days to an applicant or an insured of an action resulting in an adverse effect based in whole or in part on information contained in a credit report. The bill requires an insurer that uses credit scores to underwrite or rate risks to file scoring models or credit scoring processes with the department within 90 days of the effective date of this article. A filing related to credit information is a trade secret and is confidential. The bill sets forth provisions requiring the indemnification of agents and prohibiting the sale of policy term information by consumer reporting agencies.

An insurer that violates this article or a rule adopted under this article commits an unfair practice and is subject to sanctions. The bill requires the Commissioner to submit a report before January 1, 2005 regarding the use of credit information by insurers. The bill requires the Commissioner to adopt rules as necessary to implement this article.

Article 21.49-2V Requirements Regarding Underwriting Guidelines

This article applies only to an insurer that writes a personal automobile insurance, homeowners insurance, farm and ranch or farm and ranch owners insurance, or a residential fire and allied lines insurance policy. The bill provides that each insurer must submit underwriting guidelines to the Commissioner and the office of public insurance counsel. The bill authorizes the office of public counsel to file objections to the use of a submitted underwriting guideline and authorizes the Commissioner to approve, reject, or choose not to approve or reject a filed underwriting guideline. The bill provides that an insurer that proposes a change in an underwriting guideline that will result in the re-underwriting and non-renewal of more than 10 percent of policyholders must file the proposed change. The bill authorizes an insurer to request that information provided to the Commissioner or the office of public insurance counsel relating to underwriting guidelines be classified as proprietary information. If such a determination is not made, then the information remains public. The bill authorizes an insurer to use a filed underwriting guideline beginning on the 11th day after the filing date, if the guideline is not rejected on or before the 10th day after filing.

ARTICLE 3: COMMERCIAL AUTOMOBILE INSURANCE

Article 5.13-2 Rates for General Liability, Commercial Automobile, and Commercial Property Insurance Coverage

The bill applies Article 5.13-2 to commercial automobile insurance. The bill provides that Sections 4, 5, 6, and 7 of Article 5.13-2 apply to county mutual insurance companies with respect to commercial automobile insurance. The bill provides that an insurer that becomes authorized to write personal automobile or residential property insurance in this state on or after the effective date of this Act is subject to Sections 4, 5, 6, and 7 of Article 5.13-2 in relation to rates. Article 5.13-2 (Rates for General Liability, Commercial Automobile, and Commercial Property Insurance Coverage) expires September 1, 2004.

Article 5.13-2, Section 11 Application to Certain Insurers

The bill provides that an insurer that becomes authorized to write personal automobile or residential property insurance, on or after the effective date of this Act, is subject to Sections 4, 5, 6, and 7 of this article in relation to rates for personal automobile insurance or residential property insurance, notwithstanding Article 5.13 of the Insurance code, any other provision of this article, or any other provision of the Insurance Code.

Article 5.13-2, Section 12 Residential Property Insurance

The bill provides that rates for residential property insurance are determined under Section 12, Article 5.13-2. Section 12, Article 5.13-2 expires September 1, 2004. The bill requires the Commissioner to

adopt rating criteria for the review of initial rate filings, not later than the fifth day after the effective date of this Act. The bill requires each insurer authorized to write residential property insurance to file rates, supporting information, and supplementary rating information and any other information required by the Commissioner by rule.

The bill requires that a filed rate take effect on the 10th day after the date the filing is received. The bill authorizes an insurer to decrease a rate or to file a request to increase a rate that is in effect and authorizes the approval of an increase to an inadequate or confiscatory rate. The bill requires the department, not later than the 120th day after the filing date, to review a rate filing to ensure compliance with Article 5.13-2. The bill authorizes the Commissioner to disapprove or further reduce a filed rate if it is excessive.

The bill authorizes rate hearings following the issuance of a disapproval order and allows for appeals or binding arbitration upon completion of a rate hearing. The bill authorizes the Commissioner to order a refund to policyholders after a final determination is made, if an insurer is ordered to reduce its rate in effect to comply with a rating determination.

Article 5.13-2, Section 13 Standard Rate Index for Personal Automobile Insurance

The bill specifies that Article 5.13-2 governs rate regulation of personal automobile insurance issued by a county mutual, as prescribed by Section 13. The bill requires the Commissioner to annually compute and publish a statewide standard rate index for personal automobile insurance. The bill sets forth requirements for computing the rate index. The bill provides an exemption from the filing requirements of Article 5.13-2 or Article 5.142 for county mutuals with a certain market share that issue personal automobile insurance policies at nonstandard rates, as defined. The bill authorizes the Commissioner by rule to designate other types of insurers that have served or are serving the high-risk, nonstandard market to be governed by standard rate index provisions.

Article 5.13-2, Section 14 Review of Rates

The bill requires the Commissioner to consider any enacted state or federal legislation that may impact rates for liability coverage included in a policy subject to Article 5.13-2, in reviewing rates under Article 5.13-2.

Article 5.13-2, Section 15 Notice of Premium Charges

The bill requires notices of rate increases of a specific amount to be sent to residential property insurance policyholders and sets forth the time frame for sending such a notice. The bill authorizes an insurer to send the required notice to any residential property insurance policyholder, regardless of whether the policyholder's premium amount will increase as a result of the scheduled rate change. The bill authorizes the Commissioner by rule to exempt an insurer from the notice requirements for a short-term policy.

ARTICLE 4: RATE REGULATION EFFECTIVE SEPTEMBER 1, 2004

The bill provides for the regulation of rates for personal and commercial automobile, commercial inland marine, and residential property insurance under Article 5.13-2, as effective September 1, 2004. The bill excludes the FAIR Plan Association from the definition of insurer under Article 5.13-2. The bill applies the provisions of Sections 4, 5, 6, and 7 of Article 5.13-2 to Lloyd's plans, reciprocal and interinsurance exchanges, and county mutual insurance companies with respect to personal and commercial automobile and residential property insurance. For an insurer with less than five percent of the market, the Commissioner is required to consider insurer and market-specific attributes and to promulgate filing requirements accordingly.

ARTICLE 5: POLICY FORMS & ENDORSEMENTS

Article 5.145 Policy Forms for Personal Automobile and Residential Property Insurance Coverage

The bill provides that an insurer is governed by the provisions of Section 8, Article 5.13-2, of the Insurance Code relating to policy forms and endorsements for personal automobile and residential property insurance, notwithstanding any other provision in this code.

ARTICLE 6: WITHDRAWAL REQUIREMENTS

The bill defines affiliate and insurer under withdrawal and restriction plan provisions. The bill adds that an exemption from withdrawal and restriction plan provisions does not apply to a transfer of business from an insurer to a company, if the company is subject to rate regulation under Article 5.142. The bill applies withdrawal plan requirements to insurers, rather than authorized insurers. The bill applies provisions relating to a moratorium on withdrawal and restriction plans to lines of personal automobile insurance, rather than personal lines of motor vehicle comprehensive.

ARTICLE 7: INSURANCE DISCRIMINATION

The bill provides that a person commits an offense if with criminal negligence the person offers or collects a premium based on a rate that is because of race, color, religion, or national origin different from another premium rate offered or used by the person for the same coverage and the same risk. An offense is a state jail felony.

ARTICLE 8: REVENUE BOND PROGRAM

The bill requires the Texas Public Finance Authority to issue public securities, at the request of the Texas FAIR Plan Association (association), to fund the association and pay costs related to the public securities. The bill provides that the total amount of public securities issued is not to exceed \$75 million. The bill set forth provisions relating to the operation of the revenue bond program. The bill provides that the association shall retain any profits of the association and prohibits the profits of the association from being distributed to any insurers.

ARTICLE 9: CONFORMING AMENDMENTS; REPEALER

The bill makes conforming changes and repeals the following laws:

- (1) Articles 5.03-2, 5.03-3, 5.03-4, and 5.03-5, Insurance Code;
- (2) Articles 5.26 (h), 5.33A, 5.33C, 5.50, 5.101, and 40.061, Insurance Code;
- (3) Section 6, Article 17.25, Insurance Code;
- (4) Section 4C, Article 5.73, Insurance Code;
- (5) as effective June 1, 2003, Section 912.201, Insurance Code;
- (6) as effective June 1, 2003, Sections 941.003(c) and 942.003(c), Insurance Code; and
- (7) Article 5.33B, Insurance Code, as added by Chapter 337, Acts of the 74th Legislature, Regular Session, 1995.

ARTICLE 10: GENERAL TRANSITION; EFFECTIVE DATE

The bill sets forth a prospective clause. Except as provided otherwise, the Act takes effect on passage or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2003. Provisions of the Act that specify an effective date take effect on the date specified in those provisions. Section 5(j), Article 5.142, Insurance Code takes effect on the first anniversary of the effective date of the Act and expires on September 1, 2004 in accordance with Article 1 of the Act.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute specifies the conditions under which the Commissioner is authorized to require additional rate filings. The substitute adds requirements for filing a certificate with each rate filing. The substitute specifies that rate filings are to be made annually. The substitute removes provisions authorizing the Commissioner

to simplify rate filing requirements for small insurers. The substitute removes provisions prohibiting a territory in a rating manual from being smaller than the boundary of a county. The substitute provides that Article 5.142 expires September 1, 2004.

The substitute specifies that an insurer is not authorized to use a rate that represents an increase of 12.5 percent or more from a prior filed and approved rate without the rate being approved by the Commissioner. The substitute specifies a time frame for requests for additional information regarding rate filings by the department. The bill specifies that the Commissioner is required to approve a rate filing that is adequate, not excessive, and not unfairly discriminatory. The substitute specifies the conditions under which an insurer may use a subsequently filed rate without prior approval, after an initial rate filing has been approved. The substitute authorizes an insurer to request binding arbitration after receiving a disapproval notice and specifies procedures relating to a SOA hearing. The substitute adds provisions relating to the basis for rate approval, use of underwriting guidelines and rating manuals, effect of insurer noncompliance, certain uses of filed rate information, burden of proof, notice to policyholders, and advisory organizations. The substitute removes withdrawal of approval provisions for rates. The substitute removes provisions requiring the Commissioner to issue a report under rate filing requirements.

The substitute provides for exceptions to rate filing and approval requirements. The substitute removes provisions relating to a rate reduction for residential property insurance.

The substitute adds provisions relating to the examination of underwriting guidelines by the Commissioner and allows insurers to make a request to classify underwriting guidelines as confidential. The substitute modifies the role of the office of the public insurance counsel regarding underwriting guidelines. The substitute removes farm mutual insurance companies from the definition of insurer under underwriting guidelines. The substitute specifies the time frame in which changed underwriting guidelines must be filed.

The substitute adds provisions relating to the regulation of policy forms and endorsements for personal automobile and residential property insurance under Section 8, Article 5.13-2. The substitute adds provisions regulating rates for personal and commercial automobile, commercial inland marine, and residential property insurance under Article 5.13-2, as effective September 1, 2004. The substitute adds provisions relating to the regulation of residential property insurance rates under Article 5.13-2 until September 1, 2004.

The substitute modifies the uses for which credit information is prohibited. The substitute adds provisions relating to the consideration of multiple lender inquiries as negative factors. The substitute requires an insurer to make exceptions for consumers whose credit information has been affected by an extraordinary event, rather than authorizing appeals of actions that result in adverse effects based on extraordinary events. The substitute sets forth requirements relating to the correction of errors that are determined through dispute resolution. The substitute requires insurers to provide notice of actions resulting in an adverse effect based in whole or in part on information contained in a credit report. The substitute defines a violation of credit scoring provisions as unfair practice and removes administrative penalties for violations. The substitute requires the commissioner to issue a report regarding the use of credit information and specifies duties of the department regarding information on the department's website.

The substitute specifies the requirements for computing the standard rate index using the benchmark rate. The substitute removes the prior approval requirements for a county mutual insurance company that increases its aggregate rate by 10% or more and provides that such an insurer must file its rates. The substitute specifies that the provisions relating to standard rate indexes apply to county mutual insurance companies, rather than to nonstandard markets.

The substitute establishes a revenue bond program for the FAIR Plan Association. The substitute removes provisions relating to department review from the original. The substitute removes provisions relating to a property, casualty, and legislative oversight committee.