

BILL ANALYSIS

S.B. 1281
By: Fraser
Insurance
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, rulemaking authority accorded to the Texas Department of Insurance (TDI) is subject to varying interpretations and the commissioner of insurance lacks the flexibility to amend or adopt rules as necessary to address changes in the insurance industry. Additionally, a rule adopted by the commissioner is void if the reasonable actual costs required for implementing the rule exceed estimated costs by at least 25 percent. As proposed, S.B. 1281 grants rulemaking to and modifies existing rulemaking authority of the commissioner of insurance to allow for the adoption of rules necessary to implement TDI's duties and powers and for adoption of rules outside of legislative mandates, under certain circumstances.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 3 (Section 36.005, Insurance Code) of this bill.

Rulemaking authority previously granted to the commissioner of insurance is modified in SECTION 1 (Section 36.001, Insurance Code) and SECTION 4 (Article 3.42(p), Insurance Code) of this bill.

ANALYSIS

SECTION 1. Amends Section 36.001, Insurance Code, as follows:

Sec. 36.001. New heading: GENERAL RULEMAKING AUTHORITY. (a) Authorizes the commissioner of insurance (commissioner) to adopt any rules necessary and appropriate to implement, rather than for the conduct and execution of, the powers and duties of the Department of Insurance (TDI) under this code and other laws of this state, rather than only as authorized by statute.

(b) No changes to this subsection.

(c) Deletes this subsection.

SECTION 2. Amends Section 36.004, Insurance Code, to include provisions of Section 36.005 as an exception to TDI prohibitions from requiring an insurer to comply with certain rules and regulations adopted by the National Association of Insurance Commissioners.

SECTION 3. Amends Subchapter A, Chapter 36, Insurance Code, by adding Section 36.005, as follows:

Sec. 36.005. INTERIM RULES TO COMPLY WITH FEDERAL REQUIREMENTS.

(a) Authorizes the commissioner to adopt rules to implement state responsibility in compliance with a federal law of regulation or action of a federal court relating to a person or activity under TDI's jurisdiction, under certain circumstances.

(b) Authorizes the commissioner to adopt rules under this section only within a certain timeframe. Requires a rule adopted under this section to remain in effect only until 30 days following the end of the next

legislative session, unless a law is enacted authorizing the rule's subject matter. Provides continuance of the rule's effectiveness if authorized by an enacted law.

SECTION 4. Amends Article 3.42(p), Insurance Code, to authorize the commissioner to adopt reasonable rules, rather than rules and regulations, as necessary to implement and accomplish the purposes of this Article, rather than specific Article provisions. Requires the commissioner to adopt rules under this Article in compliance with Chapter 2001 (Administrative Procedure), Government Code, rather than in compliance with the Administrative Procedure Act. Prohibits a rule adopted under this article from being repealed or amended until after, rather than on, the first anniversary of the rule's adoption, unless the commissioner finds that it is in the significant and material interests of the state's citizens or a legislative enactment requires amendment, repeal, or adoption of all or part of a rule. Deletes text referring to a compelling need for the amendment or repeal of the rule.

SECTION 5. Repealer: Section 36.002, Insurance Code (Fiscal Impact of Department Rules).

SECTION 6. Effective date: upon passage or September 1, 2003.

EFFECTIVE DATE

On passage or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2003.