LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

April 22, 2003

TO: Honorable John T. Smithee, Chair, House Committee on Insurance

FROM: John Keel, Director, Legislative Budget Board

IN RE: **SB14** by Jackson (Relating to certain insurance rates, forms, and practices; providing penalties.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for SB14, As Engrossed: an impact of $0 through the biennium ending August 31, 2005.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

According to the Comptroller of Public Accounts, the bill would not significantly change the amount of insurance premium taxes. To the extent that the provisions of this bill are effective in restraining unfair or unwarranted premium increases, it would exert some downward pressure on premium tax collections. However, to the extent that its provisions are equally effective in promoting insurance availability, it would encourage premium and premium tax growth.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2004	$0
2005	$0
2006	$0
2007	$0
2008	$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *DEPT INS OPERATING ACCT* 36	Probable Savings/(Cost) from *DEPT INS OPERATING ACCT* 36	Change in Number of State Employees from FY 2003
2004	$4,143,834	($4,143,834)	51.3
2005	$3,891,980	($3,891,980)	51.3
2006	$3,891,980	($3,891,980)	50.3
2007	$3,847,589	($3,847,589)	50.3
2008	$3,847,589	($3,847,589)	50.3

Fiscal Analysis

The bill would replace the flex system (Article 5.101) as the rate filing system for all residential property and personal automobile insurance and define insurers as all authorized entities including Lloyds, county mutuals, etc. and authorized affiliates described under Section 823.003 (a) of the

Insurance Code, but would not include a farm mutual insurance company. The bill would also specify that the term insurer does not include, Texas Windstorm Insurance Association, FAIR Plan Association or Texas Automobile Insurance Plan Association.

The bill would require insurers to file rates and related information with the Department of Insurance. The Commissioner would be required to approve the rate if acceptable or deny if unacceptable not later than the 30th day after the date the rate is filed with the Department or the rate will be deemed approved. The Commissioner may extend the period another 30 days if necessary. If the Department requests additional information from the insurer, the time between the request for additional information and the response from the insurer does not count toward the 30-day time periods. Rates may not be "excessive, inadequate, unreasonable or unfairly discriminatory for the risks to which they apply." Audit of submitted rate data can be required by the Commissioner.

Filings are subject to disclosure under Chapter 552 of the Government Code and insureds, the Office of Public Insurance Counsel or any other interested person may make a written application for a hearing. If the Commissioner finds the application was made in good faith and is justified, a hearing is required to be held. After the hearing the Commissioner has 30 days to disapprove the rate or it is deemed approved.

The Commissioner may disapprove filings, but must specify the reasons it fails to comply, and hold a hearing within 30 days of the effective date of the order if requested by the insurer in writing. The Commissioner may withdraw the approval of a rate after notifying the insurer and a hearing.

The bill would limit or restrict the use of credit scores used in whole or in part by insurers to determine whether to issue, cancel or renew a policy, the amount, duration or terms of coverage, or rates or fees. The bill would provide for consumer disclosures and rights relating to the use of credit scores and would require insurers to file with the Commissioner insurance credit score models or methodologies for residential property and personal automobile insurance. If the Commissioner determines that an insurer has violated any provision of the new article, the insurer would be subject, after notice and opportunity for hearing, to sanctions.

The bill would require annual market conduct examinations for insurers writing 5 percent or more of the Texas homeowners or personal auto insurance market and bi-annual examinations for insurers writing less than 5 percent.

The Commissioner would be required to submit a "Quarterly Legislative Report" to the legislature on insurer's submissions of loss, premium and market share.

The Commissioner would also be required to adopt rules necessary for implementation of the bill within 120 days of the effective date.

The bill would take effect immediately if it receives two-thirds vote from both houses. If it does not receive the necessary votes then it would take effect on September 1, 2003.

Methodology

The Department of Insurance (TDI) estimates that 2.5 additional FTEs (Actuary IV) would be needed to review additional auto and property policy filings and additional auto and property company rating manuals. A move to a prior approval system would eliminate the need for benchmark rate hearings. TDI estimates that a savings of 0.5 FTE (Actuary IV) would result from the elimination of these hearings. The overall result of moving to a prior approval system would result in an increase of 2 FTEs(Actuary IV) at an annual salary of $112,872.

TDI estimates the need for 3 additional FTEs (Insurance Specialist III), at an annual salary of $96,946, to handle additional filings by auto and residential insurers that would file their own policy forms. As the need for maintaining existing manuals and promulgated forms declines, existing staff would be able to absorb some of this work. Consequently, the additional staff requirement would fall from 3 FTEs to 2 FTEs in fiscal year 2007.

TDI would require 0.75 actuarial FTE (Actuary IV), with a total annual salary of $42,327, to ensure compliance with underwriting standards set by the commissioner for credit models.

TDI currently does not have the information needed to maintain a list of fire and lightning losses in excess of $100. TDI would either amend the existing statistical plan to gather this information or establish a special data call to collect the data. This work could be handled by existing staff.

Implementation of the bill would require 1.5 FTEs (Attorney IV), with a total annual salary of $74,610, in the Regulated Lines Counsel. The attorneys would be necessary in order to meet the numerous deadlines specified in this bill, given the highly technical nature of the bill and the amount of existing regulations that will need to be concurrently repealed, amended and have new rules adopted. The attorneys would also assist with rate filings required by this bill, required hearings, detailed orders if rate filings are disapproved, and drafting of reports required by the bill.

TDI also estimates the need for 2.25 FTEs (Attorney III) with a total annual salary of $98,793, to handle six additional major form filings cases per year, 40 additional cases related to the use of credit scoring for underwriting purposes per year, and an increased volume of open records and referrals to the Office of the Attorney General (OAG).

TDI would need 2 additional FTEs (one Investigator VI and one Legal Secretary II), with a total annual salary of $65,556, to provide assistance to attorneys for additional cases related to Commissioner disapproval of filings.

TDI would spend $103,413 in fiscal year 2004, $37,151 in fiscal years 2005 and 2006, and $34,273 in fiscal years 2007 and 2008 for travel, telephones, supplies, equipment, and other expenses related to the additional FTEs.

For insurers writing greater than 5 percent market share or greater than $5 million in annual premium of either homeowners or personal auto market, TDI estimates it would take on average approximately 560 hours to complete each examination. These exams are to be performed on an annual basis on 9 insurers and on a bi-annual basis on 131 insurers. For insurers writing less than $5 million but greater than $1 million in annual premium of either homeowners or personal auto, TDI estimates it would take on average approximately 420 hours to complete each examination which is to be performed on a bi-annual basis on 69 companies. For insurers writing less than $1 million in annual premiums of either homeowners or personal auto, TDI indicates it could perform a desk audit rather than an on-site visit and that it would take on average approximately 24 hours to complete each desk examination which are to be performed on a bi-annual basis on 123 companies. Assuming an average of 61.5 desk audits per year, 0.75 FTE would be needed to perform the desk audits. Based on the above assumptions for those examinations requiring on-site exams, and assuming that bi-annual exams would be staggered, workload would average approximately 110 exams per year at approximately 500 hours each. Each examiner would be able to complete 4 examinations per year (2080/500). In order to complete the average of 110 examinations, TDI would require 27.5 examiner FTEs.

In addition, TDI estimates it will need 3 supervising examiners to review the work being performed by the examiners and technical assistance to be provided by 3 underwriters, 3 actuaries and 2 administrative personnel on the 110 on-site examinations per year and 61.5 desk audits.

TDI has typically referred approximately 20 percent of companies for violations noted in market conduct examinations. The agency estimates it will conduct approximately 150 market conduct examinations, resulting in an additional 30 cases looked at for enforcement. 1.75 Attorney IV FTEs would be needed to handle these cases. In addition, 1 Investigator VI FTE and 1 Legal Secretary II FTE would be needed to provide assistance to the attorneys on all of these cases.

The bill would amend the withdrawal statute in part by broadening its applicability to include additional types of insurers not currently subject to the statute. A broadening of the applicability of the withdrawal statute will increase the number of withdrawal plan filings and require an increase in legal services provided.

The bill would require additional comprehensive market conduct related exams. The new exams would occur more frequently than currently required exams and appear to be subject to the current exam appeal process. Historically, the agency has conducted approximately 20 market conduct examinations per year and of those approximately 12 percent were appealed. The bill would require an estimated additional 150 exams and could generate an estimated additional 18 exams. One Attorney III FTE would be needed to provide legal support when exam related issues arise, when a company appeals an exam report and when withdrawal plans are filed or a related issue or dispute arises; and provide support to the OAG in the event an exam is appealed to state district court.

It is assumed the OAG could handle the increased volume within existing resources.

Technology

The Texas Department of Insurance indicates it would require an additional $158,544 in fiscal year 2004 for the purchase of computers and related equipment for new staff.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance
LBB Staff: JK, RT, JO, JRO, RB