

## **BILL ANALYSIS**

C.S.H.B. 998  
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Insurance  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

CSHB 998 would codify how TDI performs its market conduct oversight function. It requires this function focus on "general business practices," rather than "infrequent or unintentional random errors that do not cause significant consumer harm." It also encourages TDI to perform "desk examinations," where possible, rather than on-site examinations. It authorizes TDI to contract with personnel to perform various activities, including examinations and market conduct surveillance. Procedures for contacting carriers, billing them for expenses, developing reports and obtaining insurer comments on those reports, etc., are addressed. Various NAIC handbooks and procedures are invoked as guides for performing these activities, and TDI would be required to deliver data to be included in certain NAIC regulatory databases. Coordination with other states, qualified immunity for those providing information in the course of an examination, and confidentiality of documents obtained during examination are all addressed. Examination reports would ultimately become open to the public.

The Commissioner would be required to send insurers, at least annually, an update regarding new laws, rules, enforcement actions, etc. However, this requirement would not serve to provide a defense to an insurer failing to receive such notification. The Commissioner would also be required to designate a staff person as the point of contact for employees of regulated entities to report violations by their employers.

The bill authorizes the Commissioner to impose sanctions for violations detected through market conduct oversight. However, the bill requires the Commissioner, in determining an appropriate sanction, to consider whether the insurer is a member of and complies with the standards of a best-practice organization and the extent to which the insurer maintains an internal regulatory compliance program.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Commissioner of the Texas Department of Insurance in SECTION 1 (Title 5, Subtitle G, Section 751.201 and Section 751.208 of the Insurance Code) of this bill.

### **ANALYSIS**

SECTION 1: Title 5 of the Insurance code is amended by adding Subtitle G, The Insurance Market Conduct Surveillance Act.

Sec. 751.001 sets out the short title of the Act.

Sec. 751.002 sets out the purpose of the legislation, providing a framework for department market conduct actions.

Sec. 751.003 sets forth a series of definitions

Sec. 751.004 sets forth immunity provisions.

Section 751.051 mandates that the Commissioner shall collect and report data to the National Association of Insurance Commissioner's market information system.

Section 751.052 states that the Commissioner shall coordinate with other states through National Association of Insurance Commissioners.

Section 751.053 mandates that the Commissioner provide insurers and others subject to the code information regarding new laws and rules and other information relevant to ensuring compliance. Failure to do so does not give the insurer a defense for non-compliance.

Section 751.054 designates a position within the department whose responsibility is to receive information regarding violations of laws and rules by their employers. This information received is not subject to open records.

Section 751.101 establishes the commissioner's authority and interactions with other states.

Section 751.151 establishes provisions for collecting and analyzing market information.

Section 751.152 establishes that the commissioner may make further inquiries into an insurer if he determines it necessary as a result of market analysis. The commissioner may consider a series of actions.

Section 751.153 establishes protocols for market conduct actions. Actions taken as a result of market analysis must focus on general business practices, not random errors. The commissioner will determine the timing and frequency of the actions. The commissioner may schedule and coordinate multiple examinations simultaneously if more than one insurer is engaged in activity that may violate statutes or rules. The commissioner may allow an insurer an opportunity to resolve a matter before additional action is taken. An application by the department of a work product of the National Association of Insurance Commissioners referenced in this chapter that changes the way in which actions are conducted are subject to notification and public hearing provisions. Establishes that an insurer or person with information must share certain information and cooperate in the market conduct action.

Section 751.201 sets forth guidelines for conducting an examination;

Section 751.202 sets forth requirements for a market conduct exam work plan which include contact information of the insurer and the examiner, a statement of the reason for examination, a description of the scope of, the start date of the examination, notice of non-insurance personnel who will assist in the examination, a timeline for the exam, and if the cost is billed to the insurer. It must also include a budget and identification factors included in the billing ;

Section 751.203 Notification to the insurer and to the NAIC examination tracking system that a market conduct exam has been scheduled

Section 751.204 requires that a pre-examination conference occur. Sets a time frame.

Section 751.205 establishes the time frame for exit conferences.

Section 751.206 establishes the time line and report preparation and delivery procedures.

Section 751.207 sets forth confidentiality provisions of the examination report.

Section 751.208 establishes that guidelines for assessment of cost for examinations. If the cost of the examination is to be assessed against the insurer it must be reasonable and consistent. The commissioner can oversee and manage costs. The commissioner shall adopt rules when retaining outside assistance that clearly identify the types of functions to be outsourced, provide timelines, require disclosure of recommendations, establish and use a dispute resolution mechanism to resolve conflicts, and require disclosure of the terms and contracts entered into with outside consultants. The commissioner must review and endorse billings made by a contract examiner before billing is sent to the insurer.

Section 751.251 states that disclosure of information to the commissioner does not constitute a waiver of confidentiality.

Section 751.252 establishes the commissioner's authority to share and receive information with other state, federal, or international regulatory or law enforcement agencies and the National Association of Insurance Commissioners and affiliates.

Section 751.301 establishes qualifications for market conduct surveillance personnel.

Section 751.302 sets out conflict-of-interest provisions for the market conduct surveillance personnel.

Section 751.303 establishes that surveillance personnel shall have free and full access to all books and records, staff, officers, and directors of the insurer during regular business hours.

Section 751.304 grants market conduct surveillance personnel the authority to issue subpoenas and examine insurance companies under oath if the action is ordered by the commissioner.

Section 751.351 grants the commissioner the authority to impose sanctions under Chapter 82 against an insurer determined to have violated under this code.

SECTION 2: Effective Date

### **EFFECTIVE DATE**

September 1, 2005

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute makes technical changes to definitions and makes minor drafting corrections.  
Adds a new Sub-chapter C pertaining to domestic responsibility and deference to other states.  
Sub-chapter D has minor corrections and expands the definition of duplicate inquiries.  
The substitute removes Section 751.152 as it is dealt with elsewhere in the legislation.  
The substitute removes Section 751.201 under Sub-Chapter E.