

BILL ANALYSIS

Senate Research Center

S.B. 14
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Enrolled

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

S.B. 14, 78th Legislature, Regular Session, 2003, created an entirely new insurance regulatory system in Texas. As a result of many successful provisions in the bill, insurance rates have decreased and companies are returning to the market and competing again.

Despite the overall success of last session's S.B. 14, two insurance companies have effectively used Texas's court system to their advantage. One company is still in the court system disputing the Texas Department of Insurance's (TDI) initial rate adjustment and their customers (who represent thousands of Texas consumers) have yet to see the rate reductions they were promised last session.

S.B. 14, 79th Legislature, Regular Session, 2005, addresses this issue by amending the Insurance Code to provide that if the commissioner of insurance (commissioner) disapproves a rate filing and the insurance company appeals, any subsequent rate filings by the insurer are subject to prior approval by the commissioner. In addition, the commissioner can order refunds, issue a cease-and-desist order, and assess an administrative penalty against an insurer.

S.B. 14 also amends Article 5.144, Insurance Code, to refund excessive or unfairly discriminatory premium at a rate of prime plus six percent on amounts that are more than 7.5 percent of the total premium charged for the coverage. If the excessive or unfairly discriminatory premium is less than 7.5 percent, the insurer is required to provide each affected policyholder a future premium discount in the amount of the overcharge at the prime rate plus six percent.

S.B. 14 sets interest rates on unfair or discriminatory premiums in such a way to discourage companies from using the court system to gain a financial incentive. The goal of this legislation is to give the commissioner additional tools to return excessive and unfair premium payments to the policy holders as quickly as possible.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the commissioner of insurance is modified in SECTION 2 (Article 5.171, Insurance Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 3 (Sections 751.201 and 751.208, Insurance Code) and SECTION 5 (Section 551.107, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 5.144, Insurance Code, by amending Subsection (b) and adding Subsections (b-1) and (b-2), as follows:

(b) Authorizes the commissioner of insurance (commissioner) to order the insurer to issue a refund of the excessive or unfairly discriminatory portion of the premium, plus interest on that amount. Makes a conforming change. Deletes existing reference to Article 5.101 (Flexible Rating Program for Personal Automobile Insurance).

(b-1) Sets forth the rate for interest assessed under Subsection (b) of this article. Provides that for purposes of this subsection, the prime rate is the prime rate as published

in The Wall Street Journal for the first day of the calendar year that is not a Saturday, Sunday, or legal holiday. Sets forth the period for the refund and interest. Prohibits an insurer from being required to pay any interest penalty if the insurer prevails in an appeal of the commissioner's order under Subchapter D (Judicial Review), Chapter 36, of this code.

(b-2) Prohibits an insurer from claiming a premium tax credit to which the insurer is otherwise entitled unless the insurer complies with Subsection (b) of this article.

SECTION 2. Amends Article 5.171, Insurance Code, to prohibit an insurer, in writing residential property or personal automobile insurance, notwithstanding any other provision of this code, from using rating territories that subdivide a county unless certain conditions apply.

SECTION 3. Amends Title 5, Insurance Code, by adding Subtitle G, as follows:

SUBTITLE G. REGULATION OF INSURER MARKET CONDUCT

CHAPTER 751. MARKET CONDUCT SURVEILLANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 751.001. SHORT TITLE. Authorizes this chapter to be cited as the Insurance Market Conduct Surveillance Act.

Sec. 751.002. PURPOSE AND SCOPE. Sets forth the purpose of this chapter regarding the establishment of a framework for Texas Department of Insurance (TDI) market conduct actions. Authorizes TDI or the commissioner, as applicable, notwithstanding any other law of this state, to undertake market analysis or market conduct action only as provided by this chapter.

Sec. 751.003. DEFINITIONS. Defines "complaint," "desk examination," "market analysis," "market analysis handbook," "market conduct action," "market conduct examination," "market conduct examiners handbook," "market conduct surveillance personnel," "market conduct uniform examination procedures," "on-site examination," "qualified contract examiner," "standard data request," "targeted examination," "third-party model or product," "affiliate," and "subsidiary."

Sec. 751.004. IMMUNITY. (a) Provides that a cause of action does not arise, and prohibits a liability from being imposed, for any statements made or conduct performed in good faith while implementing this chapter, against certain individuals.

(b) Provides that a cause of action does not arise, and prohibits a liability from being imposed, against any person for the for certain acts related to communicating or delivering information or data.

(c) Provides that a person identified in Subsection (a) is entitled to attorney's fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities conducted in implementing this chapter, and the party bringing the action was not substantially justified in doing so. Defines "substantially justified."

(d) Provides that this section does not abrogate or modify any common law or statutory privilege or immunity.

[Reserves Sections 751.005-751.050 for expansion.]

SUBCHAPTER B. GENERAL POWERS AND DUTIES OF COMMISSIONER

Sec. 751.051. PARTICIPATION IN NATIONAL MARKET CONDUCT DATABASES. Requires the commissioner to collect and report market data to certain systems, as determined by the commissioner. Requires information collected and

maintained by TDI to be compiled in a manner that meets the requirements of the National Association of Insurance Commissioners (NAIC).

Sec. 751.052. COORDINATION WITH OTHER STATES. Requires the commissioner to coordinate TDI's market analysis and examination efforts with other states through NAIC.

Sec. 751.053. INFORMATION FROM COMMISSIONER. (a) Requires the commissioner, at least once annually or more frequently if determined necessary, to provide certain information in an appropriate manner to insurers and other entities subject to this code.

(b) Authorizes the commissioner to provide the notice required under Subsection (a) in an electronic format that is designed to give insurers and other entities adequate notice.

(c) Provides that failure by the commissioner to provide the information described by Subsection (a) does not constitute a defense for an insurer who fails to comply with an insurance law of this state.

Sec. 751.054. REPORT OF VIOLATIONS. (a) Requires the commissioner to designate an individual within TDI whose responsibilities are required to include the receipt of information from employees of insurers and other entities regulated by TDI regarding violations of laws or rules by their employers. Requires the commissioner's designee to be properly trained in the handling of that information.

(b) Provides that information received under this section is a confidential communication and is not public information.

Sec. 751.055. EXERCISE OF SUBPOENA AUTHORITY. Provides that the commissioner has the subpoena power authorized by Subchapter C (General Subpoena Powers; Witnesses and Production of Records), Chapter 36, for the production of documents under this chapter and enforcement of this subtitle.

[Reserves Sections 751.056-751.100 for expansion.]

SUBCHAPTER C. RELATIONS WITH OTHER STATES

Sec. 751.101. COMMISSIONER AUTHORITY; INTERACTIONS WITH OTHER INSURANCE COMMISSIONERS OF OTHER STATES. (a) Sets forth commissioner responsibilities regarding market conduct examinations.

(b) Authorizes the commissioner, if the insurer to be examined is part of an insurance holding company system, to also seek to simultaneously examine any affiliate of the insurer that is authorized to write the same types of insurance in this state as the insurer if the insurance commissioner of the state in which the affiliate is organized consents and delegates responsibility for that examination.

(c) Requires the commissioner, in lieu of conducting a targeted examination of an insurer that holds a certificate of authority in this state but is not a domestic insurer, to accept a report of a market conduct examination regarding that insurer prepared by the insurance commissioner of the state in which the insurer is organized or by another state if certain criteria applies.

(d) Provides that the commissioner's determination under Subsection (c)(2) is discretionary with the commissioner and is not subject to appeal.

(e) Requires the commissioner, subject to a determination under Subsection (c), if a market conduct examination conducted by another state results in a finding that an insurer should modify a specific practice or procedure, to accept documentation that the insurer has made a similar modification in this state in lieu

of initiating a market conduct action or examination related to that practice or procedure. Authorizes the commissioner to require other or additional practice or procedure modifications.

[Reserves Sections 751.102-751.150 for expansion.]

SUBCHAPTER D. MARKET ANALYSIS PROCEDURES

Sec. 751.151. COLLECTION OF INFORMATION; COMMISSIONER ANALYSIS.

(a) Requires the commissioner, subject to Subsection (d), to gather insurance market information from specific sources.

(b) Requires the commissioner to analyze the information compiled under Subsection (a) as necessary to perform certain functions.

(c) Requires the commissioner to use the market analysis handbook as a resource in performing the analysis required under this section.

(d) Prohibits TDI or the commissioner, as applicable, except as otherwise specifically provided, from requiring an insurer to report information in a manner that is inconsistent with the records the insurer maintains in the ordinary course of business or can create at a reasonable expense or effort.

Sec. 751.152. ADDITIONAL ANALYSIS OF MARKET ACTIONS. (a) Requires the commissioner, if, as a result of the market analysis, the commissioner determines that further inquiry into a particular insurer or insurance practice is needed, to consider taking one or more of the market conduct actions described by Subsection (b) before conducting a targeted examination. Requires the commissioner to notify the insurer of the action selected in writing, if a market conduct action selected by the commissioner requires the participation of or a response by the affected insurer.

(b) Authorizes market conduct actions described by Subsection (a) to include certain information.

(c) Requires the commissioner to select market conduct actions that are efficient and cost-effective for TDI and the insurer while protecting the interests of the insurance consumer.

(d) Requires the commissioner to take steps reasonably necessary to eliminate certain requests for information and coordinate the market conduct actions and findings of this state with those of other states.

Sec. 751.153. PROTOCOLS FOR MARKET CONDUCT ACTIONS. (a) Requires each market conduct action taken as a result of a market analysis to follow certain guidelines.

(b) Authorizes the commissioner to determine the frequency and timing of the market conduct actions. Provides that the timing of an action depends on the specific market conduct action to be initiated unless extraordinary circumstances indicating a risk to consumers require immediate action.

(c) Authorizes the commissioner to schedule and coordinate multiple examinations simultaneously upon having information that more than one insurer is engaged in practices that may violate statutes or rules.

(d) Requires the commissioner to provide an insurer with an opportunity to resolve to the satisfaction of the commissioner any matter that arises as a result of a market analysis before any additional market conduct actions are taken against the insurer. Authorizes the commissioner to accept the modified practice or procedure and to require other or additional practice or procedure modifications, if the insurer has modified a practice or procedure as a result of a market conduct

action taken or examination conducted by the insurance commissioner of another state, and the commissioner deems that state's market conduct surveillance system comparable to the system required under this chapter.

(e) Requires the commissioner, for an application by TDI of a handbook, guideline, or other product referenced in this chapter that is the work product of the National Association of Insurance Commissioners that changes the way in which market conduct actions are conducted, to give notice and provide interested parties with an opportunity for a public hearing as provided by Chapter 2001 (Administrative Procedure), Government Code, if certain changes are made.

(f) Requires each insurer or person from whom information is sought, and each officer, director, or agent of that insurer or person, except as otherwise provided by law, to provide the commissioner with convenient and free access to all relevant materials relating to the property, assets, business, and affairs of the insurer or person.

(g) Requires each officer, director, employee, insurance producer, and agent of an insurer or person described by Subsection (f), to the extent of that individual's ability, to facilitate and aid in a department market conduct action.

[Reserves Sections 751.154-751.200 for expansion.]

SUBCHAPTER E. EXAMINATIONS

Sec. 751.201. EXAMINATION. (a) Authorizes the commissioner to conduct a targeted examination in accordance with the market conduct uniform examination procedures and the market conduct examiners handbook, upon determining that a market conduct action described by Section 751.152(b) is not appropriate.

(b) Authorizes a targeted examination to be conducted through a desk examination or an on-site examination. Requires TDI, to the extent feasible, to conduct a market conduct examination through desk examinations and data requests before conducting an on-site examination.

(c) Requires TDI to conduct an examination in accordance with the market conduct examiners handbook and the market conduct uniform examinations procedures.

(d) Requires TDI to use the standard data request or a successor product that is substantially similar to the standard data request as adopted by the commissioner by rule.

(e) Requires the commissioner to coordinate the examination with the insurance commissioner of the state in which the insurer is organized, if the insurer to be examined is not a domestic insurer.

Sec. 751.202. WORK PLAN. Requires market conduct surveillance personnel to prepare a work plan that includes specific information, before beginning an examination.

Sec. 751.203. NOTICE OF EXAMINATION. (a) Requires TDI to notify an affected insurer of an examination not later than the 60th day before the scheduled date of the beginning of the examination, unless the examination is conducted in response to extraordinary circumstances as described by Section 751.153(b). Requires the notice to include the examination work plan and a request that the insurer name an examination coordinator for the insurer.

(b) Requires the commissioner, in addition to the notice required under Subsection (a), to post notice that a market conduct examination has been scheduled on the National Association of Insurance Commissioners examination tracking system.

(c) Requires the commissioner, if a targeted examination is expanded beyond the reasons provided to the insurer in the notice of the examination required under Subsection (a), to provide written notice to the insurer, explaining the extent of the expansion and the reasons for the expansion. Requires TDI to provide a revised work plan to the insurer before the beginning of any significantly expanded examination.

Sec. 751.204. PRE-EXAMINATION CONFERENCE. Requires the commissioner to conduct a pre-examination conference with the insurer's examination coordinator and key personnel to clarify expectations, not later than the 30th day before the scheduled date of the examination.

Sec. 751.205. EXIT CONFERENCE. Requires the member of the market conduct surveillance personnel who is designated as the examiner-in-charge, before the conclusion of an examination, to schedule an exit conference with the insurer.

Sec. 751.206. EXAMINATION REPORT. (a) Requires the commissioner to follow the time line established under this section, unless the commissioner and the insurer agree to a different schedule.

(b) Requires the commissioner to deliver the draft examination report to the insurer not later than the 60th day after the date the examination is completed. Provides that for purposes of this section, the date the examination is completed is the date on which the exit conference is conducted.

(c) Requires the insurer to provide any written comments regarding the report to TDI, not later than the 30th day after the date on which the insurer receives the draft examination report.

(d) Requires TDI to make a good faith effort to resolve issues with the insurer informally and to prepare a final examination report not later than the 30th day after the date of receipt of the insurer's written comments on the draft report unless a mutual agreement is reached to extend the deadline.

(e) Requires TDI to include the insurer's responses in the final examination report. Authorizes the responses to be included as an appendix or in the text of the examination report. Provides that an insurer is not obligated to submit a response. Prohibits an individual involved in the examination from being named in either the report or the insurer response except to acknowledge the individual's involvement.

(f) Authorizes the commissioner to make corrections and other changes to the final examination report as appropriate, and requires the commissioner to issue the report to the insurer. Requires the insurer to accept the report, accept the findings of the report, or request a hearing, not later than the 30th day after receipt of the final examination report under this subsection. Authorizes the commissioner and the insurer, by mutual agreement, to extend the period for an additional 30 days. Requires a request for a hearing to be made in writing and to follow the requirements of Chapter 2001, Government Code.

Sec. 751.207. CONFIDENTIALITY OF EXAMINATION REPORT INFORMATION.

(a) Provides that a final or preliminary market conduct examination report, and any information obtained during the course of an examination, is confidential and is not subject to disclosure under Chapter 552 (Public Information), Government Code. Prohibits this section from being construed to limit the commissioner's authority to use any final or preliminary market conduct examination report, any examiner or company work papers or other documents, or any other information discovered or developed during the course of an examination in the furtherance of any legal or regulatory action that the commissioner, in the commissioner's sole discretion, may deem appropriate.

(b) Provides that this chapter does not prevent the commissioner from disclosing at any time the contents of a final market conduct examination report to TDI, the insurance department of any other state, or an agency of the federal government, if TDI or the agency receiving the report agrees in writing to maintain the information as confidential and in a manner consistent with this chapter.

(c) Requires the commissioner to provide to an insurer subject to a final market conduct examination a written agreement described by Subsection (b) not later than the fifth day after the date the final market conduct examination is released under Subsection (b).

Sec. 751.208. ASSESSMENT OF COSTS OF EXAMINATION. (a) Requires fees for that cost to be consistent with those otherwise authorized by law, subject to Subsection (d), if the reasonable and necessary cost of a market conduct examination is to be assessed against the affected insurer. Requires the fees to be itemized and bills for the fees to be provided to the insurer on a monthly basis for review prior to submission for payment.

(b) Requires the commissioner to actively manage and oversee examination costs, including costs associated with the use of department examiners and with retaining qualified contract examiners necessary to perform an on-site examination. Requires the commissioner to adopt, by rule, specific written protocols, to the extent the commissioner retains outside assistance.

(c) Requires the commissioner to review and affirmatively endorse detailed billings made by a qualified contract examiner before the detailed billings are sent to the insurer.

(d) Prohibits an insurer from being required to provide reimbursement for examiner fees under Subsection (a), whether those fees are incurred by market conduct surveillance personnel or qualified contract examiners, to the extent that those fees exceed the fees prescribed in the market conduct examiners handbook and any successor documents to that handbook, unless the commissioner demonstrates that the fees prescribed in the handbook are inadequate under the circumstances of the examination.

Sec. 751.209. LIMIT ON CERTAIN EXAMINATIONS. Prohibits the commissioner from conducting a market conduct examination more frequently than once every three years. Authorizes the commissioner to defer conducting a market conduct examination for longer than once every three years.

[Reserves Sections 751.210-751.250 for expansion.]

SUBCHAPTER F. CONFIDENTIALITY REQUIREMENTS

Sec. 751.251. NO WAIVER. (a) Provides that the disclosure to the commissioner under this subchapter of a document, material, or information does not constitute the waiver of any applicable privilege or claim of confidentiality regarding the document, material, or information.

(b) Prohibits an insurer, notwithstanding Subsection (a), from being compelled to disclose a self-audit document or waive any statutory or common law privilege. Authorizes an insurer to, however, voluntarily disclose a document described by this subsection to the commissioner in response to any market conduct action or examination.

(c) Defines "self-audit document."

Sec. 751.252. AUTHORITY OF COMMISSIONER. (a) Authorizes the commissioner to share documents, materials, or other information obtained by or disclosed to the commissioner under this chapter with other state, federal, and international regulatory

agencies and law enforcement authorities if the recipient agrees to and has the legal authority to maintain the confidentiality and privileged status of the document, material, or other information.

(b) Authorizes the commissioner to receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners and that association's affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions. Requires the commissioner to maintain as confidential or privileged any document, material, or information received with notice or the understanding that the document, material, or information is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(c) Authorizes the commissioner, consistent with this section, to enter into agreements governing the sharing and use of information.

[Reserves Sections 751.253-751.300 for expansion.]

SUBCHAPTER G. MARKET CONDUCT SURVEILLANCE PERSONNEL

Sec. 751.301. PERSONNEL; QUALIFICATIONS. Authorizes the commissioner, to conduct market conduct surveillance under this chapter, to designate TDI staff to perform duties under this chapter, and to supplement that staff with qualified outside professional assistance, upon determining that that assistance is necessary. Requires market conduct surveillance personnel to be qualified by education and experience and, if applicable, to hold appropriate professional designations.

Sec. 751.302. CONFLICT OF INTEREST. Provides that an individual who is a member of the market conduct surveillance personnel has a conflict of interest, either directly or indirectly, if the individual is affiliated with the management of, has been employed by, or owns a pecuniary interest in an insurer subject to an examination conducted under this chapter. Prohibits this section from being construed to automatically preclude the individual from holding certain private interests.

Sec. 751.303. ACCESS TO INFORMATION. Requires market conduct surveillance personnel, except as otherwise provided by law, as practicable, to have free and full access to all books and records, and all employees, officers, and directors, of the insurer during regular business hours. Requires an insurer that uses a third-party model or product for any of the activities under examination, on the request of market conduct surveillance personnel, to make the details of those models or products available to that personnel.

Sec. 751.304. AUTHORITY OF MARKET CONDUCT SURVEILLANCE PERSONNEL. Authorizes market conduct surveillance personnel to examine insurance company personnel under oath if that action is ordered by the commissioner under Subchapter C (General Subpoena Powers; Witnesses and Production of Records), Chapter 36.

[Reserves Sections 751.305-751.350 for expansion.]

SUBCHAPTER H. SANCTIONS

Sec. 751.351. SANCTIONS. (a) Authorizes the commissioner to impose sanctions under Chapter 82 (Sanctions) against an insurer determined, as a result of a market conduct action or other action under this chapter, to have violated this code, a rule adopted under this code, or another insurance law of this state.

(b) Sets forth issues for the commissioner to consider in determining an appropriate sanction under Subsection (a).

SECTION 4. Amends Article 5.43, Insurance Code, by adding Subsections (a-1) and (f) to read as follows:

(a-1) Sets forth claims for which a residential property insurance claim under this article is not included.

(f) Requires any change in the amount of a discount provided under this article to comply with the requirements of Section 551.107 (Renewal of Certain Policies; Premium Surcharge Authorized; Notice) of this code.

SECTION 5. Amends Section 551.107, Insurance Code, by amending Subsections (b), (c), (e), and (f), and adding Subsection (g), as follows:

(b) Provides that a claim under this section does not include certain claims including that an insurer is prohibited from using under Section 3, Article 5.35-4.

(c) Authorizes an insurer to assess a premium surcharge at the time an insurance policy is renewed, if the insured has filed one, rather than two, or more claims in the preceding three policy years. Requires the amount of the surcharge to be based on sound actuarial principles, rather than a pre-determined formula. Deletes existing text authorizing an insurer to assess an additional premium for an additional claim and requiring TDI to set the amount of such surcharge.

(e) Prohibits the insurer from refusing to renew the policy because of claims, rather than losses. Sets forth revised requirements for the notice.

(f) Defines "premium surcharge." Deletes existing text relating the renewal of an insurance policy.

(g) Requires the commissioner to adopt rules as necessary to implement this section.

SECTION 6. Amends Article 5.43(d), Insurance Code, to provide that this article applies to an insurer that uses a tier classification or discount program that has a premium consequence based in whole or in part on claims experience without regard to whether any of the policies continuously covered the policyholder, as described by Subsections (b)(1) and (2) of this article, was a different type of residential property insurance policy from the policy eligible for the discount.

SECTION 7. Makes application of Section 551.107 and Articles 5.43 and 5.171, Insurance Code, as amended by this Act, prospective to January 1, 2006.

SECTION 8. Effective date: September 1, 2005.