

BILL ANALYSIS

C.S.H.B. 3315
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

C.S.H.B. 3315 provides guidance and clarification concerning the imposition and collection of insurance taxes and authorizes flexibility in the adoption of certain reciprocity and reciprocal or multi-state agreements relating to those taxes. The purpose of the bill is to clarify several issues that have led to litigation, such as the taxability of home warranty insurance premiums and whether premiums on certain risks are taxable in Texas. The bill is also designed to codify administrative practice, and to enable the comptroller, by administrative rule, to work cooperatively with other states on multi-state insurance premium tax issues that may be necessary because of federal legislation, and to protect the insurance tax base of this state. The bill would repeal one preempted tax statute and an outdated provision within another tax statute.

In addition, the C.S.H.B 3315 is designed to clarify the impact on insurance maintenance taxes resulting from regulatory changes made in SB 14, 78th Legislature, 2003 Regular Session. The bill codifies current Department of Insurance and comptroller practice interpreting the amendments from SB 14.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Comptroller in SECTION 4, SECTION 5, SECTION 6, SECTION 7, SECTION 8, and SECTION 13 of this bill.

ANALYSIS

The bill amends Section 221.002(b), Insurance Code, to clarify that the insurance gross premiums subject to tax include membership fees, assessments, dues, revenues, and any other consideration for insurance, to ensure consistency with definitions used elsewhere in the statutes. The amendment would also expressly provide that home warranty insurance premiums are subject to the premium tax, to clarify the law.

The bill amends Section 222.002(b), Insurance Code, to clarify that the life, accident and health premiums subject to taxation are those premiums for risks on individuals or groups located in the state of Texas. The current wording limits taxation to a person.

The bill amends Section 223.003(a), Insurance Code, to clarify that all title premiums are subject to premium taxes to ensure consistency with former Articles 9.46 and 9.59, Insurance Code of 1951. When Articles 9.46 and 9.59 were recodified into the Insurance Code in 2003 to Chapters 223 and 271, as a nonsubstantive codification, the recodified language was not as clear as the prior statutes with respect to applicability of the premium tax to the total title premium that would include the portion retained by title insurance agents as well as the title insurance company portion. The amendment seeks to clarify the applicability of the taxes.

The bill amends Section 225.004, Insurance Code, to authorize the comptroller to prescribe by rule that premiums on surplus lines insurance are deemed to be on Texas risks where an insured's home office, domicile or residence is located in Texas, or to accommodate changes in federal statutes or regulations that would otherwise limit the ability of the comptroller to collect the taxes. The amendment would enable the comptroller to make timely changes as necessary to meet the needs of multi-state agreements or compacts and provide flexibility for the state to make changes as necessary to protect the state's tax revenues when federal laws or regulations impact the state's ability to enforce tax statutes.

The bill amends Section 225.009, Insurance Code, to authorize the comptroller to change by rule the due date and prepayment threshold for the surplus lines insurance premium tax prepayments, to reduce confusion among taxpayers and facilitate more timely receipt of prepayments. The current statutory tax threshold requirement is outdated and was adopted from a repealed rule intended to protect collected taxes on deposit in tax trust accounts in commercial banks. The FDIC limits on insured accounts was \$100,000, and the prepayment threshold was set below \$100,000. Tax trust accounts are no longer used, therefore this change would allow for the setting of more appropriate prepayment dates and amounts.

The bill amends Section 226.003, Insurance Code, to authorize the comptroller to prescribe by rule that premiums on unauthorized insurance are deemed to be on Texas risks where an insured's home office, domicile or residence is located in Texas, or to accommodate changes in federal statutes or regulations that would otherwise limit the ability of the comptroller to collect the taxes. The amendment would enable the comptroller to make timely changes as necessary to meet the needs of multi-state agreements or to react to changes in federal law that impact the state's ability to enforce tax statutes.

The bill amends Section 226.053, Insurance Code, to authorize the comptroller to prescribe by rule that premiums on independently procured insurance are deemed to be on Texas risks where an insured's home office, domicile or residence is located in Texas, or to accommodate changes in federal statutes or regulations that would otherwise limit the ability of the comptroller to collect the taxes. The amendment would enable the comptroller to make timely changes as necessary to meet the needs of multi-state agreements, or to address changes in federal law to protect the state's tax revenues.

The bill amends Subtitle B, Title 3, Insurance Code, by adding a new Chapter 228, authorizing the comptroller to enter into cooperative agreements with other states concerning the collection of surplus lines premium taxes on multi-state surplus lines policies, to clarify premium allocation and taxation among the affected states. The bill defines "Agent" to include a surplus lines agent, as defined by Section 981.002; a person licensed as a surplus lines agent by another state; and any other person who performs the acts of an agent, whether through an oral, written, electronic, or other form of communication, by soliciting, negotiating, procuring, or collecting a premium on an insurance contract. The bill defines "Insurer" to include an insurer that does not hold a certificate of authority in the state an eligible surplus lines insurer, and an insurer that holds a certificate of authority in this state but performs acts outside the scope of its authority under the certificate. The bill defines "Premium" to include any consideration for insurance including: a premium; a membership fee; an assessment; and dues; or any other meaning of the term adopted in a cooperative agreement. The bill defines "Processing entity" means a processing center or clearinghouse established under a cooperative agreement. The bill defines "Stamping office" means the Surplus Lines Stamping Office of Texas or similar stamping office of other states. The bill authorizes the comptroller may enter into a cooperative agreement, reciprocal agreement, or compact with another state for the collection of insurance premium taxes imposed by Chapters 225 and 226 on a multistate basis. An agreement or amendment of an agreement takes effect according to its terms, except that an agreement or amendment may not take effect until the proposed agreement or amendment is published in the Texas Register. An agreement may provide for: determining a base state and multistate allocation of insurance premiums; tax reporting requirements; audit and refund claim procedures; exchange of information; requirements for reporting on a multistate basis; insurance and tax related terms and definitions; penalties, fees, administrative costs, and interest rates; audit assessment and refund claim limitation periods; procedures for collecting amounts due from agents, insurers, or other persons and for collecting and forwarding the amounts due to the jurisdiction to which the amount is owed; procedures for verifying refund claims by agents, insurers, or other persons and for collecting those amounts from the jurisdiction owing the refund amount; the temporary remittal of funds equal to the amounts due to another jurisdiction, subject to appropriation of funds for that purpose; and other provisions to facilitate the administration of the agreement.

The bill authorizes the comptroller, as required by the terms of an agreement, provide to an officer of another state any information that relates to the solicitation, negotiation, procurement, placement, issuance, receipt, or collection of premiums by an agent, insurer, or other person for an insurance contract or policy that may be subject to the premium taxes imposed by Chapter

225 or 226. An agreement may provide for each state to audit the records of an agent, insurer, or other person based in this state to determine if insurance premium taxes due each state that is a party to the agreement are properly reported and paid. An agreement may provide for each state to forward the findings of an audit performed on an agent, insurer, or other person based in this state to each other state in which the person has an allocation of taxable premiums.

For an agent, insurer, or other person who has an allocation of taxable premiums in this state, the comptroller may use an audit performed by another state that is a party to an agreement with this state to make an assessment of insurance premium taxes against the agent, insurer, or other person. An assessment made by the comptroller under this subsection is prima facie evidence that the amount shown as due is correct. An agreement entered into under this section does not affect the comptroller's authority to audit any person under any other law. An agreement entered into under this section prevails over an inconsistent rule of the comptroller. Except as otherwise provided by this section, a statute of this state prevails over an inconsistent provision of an agreement entered into under this section.

The comptroller may segregate in a separate fund or account the amount estimated to be due to other jurisdictions, amounts subject to refund during the fiscal year, fees, and other costs collected under the agreement. On a determination of an amount held that is due to be remitted to another jurisdiction, the comptroller may issue a warrant or make an electronic transfer of the amount as necessary to carry out the purposes of the agreement. An auditing cost, membership fee, or other cost associated with the agreement may be paid from interest earned on funds segregated under this subsection. Any interest earnings in excess of the costs associated with the agreement shall be credited to general revenue.

The legislature finds that it is in the public interest to enter into insurance tax and regulatory agreements with other jurisdictions that may provide for the temporary remittal of amounts due other jurisdictions that exceed the amounts collected and for cooperation with other jurisdictions for the collection of taxes imposed by this state under Chapters 225 and 226 and similar taxes imposed under statutes of other jurisdictions on insurance premiums. The comptroller shall ensure that reasonable measures are developed to recover insurance taxes and other amounts due this state during each biennium.

The comptroller may enter into a cooperative agreement, reciprocal agreement, or compact with another state to provide for the collection of taxes imposed by this state and the other states on insurance taxes that may be due the states and this state based on a standardized premium allocation adopted by the states under the agreement. The comptroller may also enter into other cooperative agreements with surplus lines stamping offices located in this state and other states in the reporting and capturing of related tax information. In addition, the comptroller may enter into cooperative agreements with processing entities located in this state or other states related to the capturing and processing of insurance premium and tax data. The comptroller may adopt rules as necessary to implement this chapter.

The bill amends Section 252.003, Insurance Code, to clarify the existing maintenance tax liability for inland marine insurance and insurance against loss or damage by hail on farm crops in response to regulatory changes made under SB 14 by the 78th Legislature, 2003 Regular Session. The proposed amendment codifies current Department of Insurance and comptroller practice interpreting the amendments from SB 14 as intended only for regulatory purposes and not affecting the imposition of existing maintenance taxes on these risks. The amendment also clarifies that home warranty insurance premiums are subject to taxation for maintenance tax purposes under Chapter 252.

The bill amends Section 254.003, Insurance Code, to clarify the existing maintenance tax liability for personal and commercial automobile insurance. The amendment would codify current Department of Insurance and comptroller practice in implementing Senate Bill 14 from the 2003 Regular Session, which made changes in regulatory oversight for these risks, clarifying that the regulatory changes do not affect the imposition of maintenance taxes on these risks.

The bill amends Section 257.001, Insurance Code, to add managed care organizations to the list of examples of insurers subject to the insurance maintenance tax. The amendment would ensure consistency with 2003 legislation that added managed care organizations to the list of insurers

subject to the insurance premium tax. The amendment also provides a definition of managed care organization, for clarity on applicability.

The bill amends Section 271.002(a), Insurance Code, to provide that a maintenance fee is imposed on all premiums subject to assessment under Section 271.006, Insurance Code, to clarify that title insurance agents collecting title insurance premiums are also subject to the maintenance fees, to ensure consistency with pre-codification practice. Under former articles 9.46 and 9.59, Insurance Code of 1951, both title companies and title insurance agents were subject to the maintenance tax. After the articles were recodified in 2003 into Chapters 223 and 271, questions have arisen as to the continued applicability of the maintenance taxes to title insurance agents. The amendment seeks to clarify that title insurance agents are still subject to the tax under Chapter 271.

The bill amends Chapter 281, Insurance Code, by adding new Section 281.008, Reciprocity Agreements. The new section authorizes the comptroller by rule to enter into reciprocity agreements with other states allowing the parties to mutually set aside retaliatory taxes in situations where retaliation is not the preferred approach to protect domestic insurers from excessive taxation in other states. Some Texas domestic insurers have faced retaliatory tax problems in other states. In addition, several foreign title insurers have filed suit in Texas on retaliation issues. This section provides a mechanism for states to resolve conflicts over retaliatory taxes which will help protect Texas domestic insurers that do business in other states.

The bill amends Section 401.151(e), Insurance Code, to delete an erroneous reference to Subchapter D when referring to taxes due. Premium taxes are not assessed under Subchapter D, Examination Expenses, but are assessed elsewhere in the Code; therefore the reference to Subchapter D is inappropriate.

The bill amends Section 401.154, Insurance Code, to clarify that the tax credit for examination fees only extends to premium taxes and does not extend to other taxes that may be owed by the insurer, making the wording consistent with the intent of Section 401.151.

The bill amends Section 1502.053, Insurance Code, by adding subsection (b) to clarify that the issuer of an approved children's health benefit plan is not subject to the retaliatory tax imposed under Chapter 281 with respect to money received for coverage provided under that plan. Under current law, the issuer is not subject to the premium tax or the tax on revenues imposed under Chapter 222. The amendment would clarify that the issuer is also not subject to the retaliatory tax.

The bill amends Section 2210.058(c), Insurance Code, to clarify that an insurer may claim a credit against the insurer's premium tax for certain Texas Windstorm Insurance Association excess loss assessments beginning the calendar year that the assessments are paid.

The bill repeals Art. 4.11A, Insurance Code, the Administrative Services Tax Act, which imposes a tax on insurance carriers who receive any form of administrative or service fee for performing administrative, clerical, management, advisory, or technical services. This tax has been held by federal courts to be preempted by federal law (ERISA), and as a result has not been enforced since the federal court decisions in the early 1990s.

The bill amends Section 281.006, Insurance Code, by repealing subsection (a), to remove qualifying investment tax credits allowed by a foreign insurer's state of domicile from the calculation of the insurance premium retaliatory tax for a foreign insurer. The current statutes allow credits for foreign state investment, but disallow Texas investment credits. This amendment would provide balanced treatment for Texas investment credits and foreign state investment credits.

The bill provides an immediate effective date if the Act receives a vote of two-thirds of all the members elected to each house. Otherwise, the Act takes effect on September 1, 2007.

EFFECTIVE DATE

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COMPARISON OF ORIGINAL TO SUBSTITUTE

In SECTION 1, the Substitute changes the words “received by the insurer” in the Filed version of Section 221.002(b), Insurance Code, back to “written by the insurer” as it has been in the statute since 1995. In 1995, the legislature passed SB 641 that changed the property and casualty definition of gross premiums under Article 4.10, Section 5, Insurance Code. The change in statute defined gross premium receipts to be the amount of gross premiums “written” by the insurer. The wording in C.S.H.B. 3315 changes the wording in the Filed version of the bill back to “written by the insurer” in Section 221.002(b), Insurance Code, to be consistent with current wording in Section 221.002(b) and to be consistent with regulatory practice since 1995.

In SECTION 8, the Substitute corrects the placement of the word “related” in proposed new Section 228.002(j), Insurance Code, contained in the phrase “reporting and capturing of tax information *related*.” The Substitute corrects the word arrangement so that the proposed new Section 228.002(j) says “*related* tax information.” (emphasis added).

The Substitute inserts a new SECTION 13, amending Chapter 281, Insurance Code, by adding new Section 281.008, Reciprocity Agreements. The new section authorizes the comptroller by rule to enter into reciprocity agreements with other states allowing the parties to mutually set aside retaliatory taxes in situations where retaliation is not the preferred approach to protect domestic insurers from excessive taxation in other states. This new provision authorizes a mechanism for states to resolve conflicts over retaliatory taxes which will help protect Texas domestic insurers that do business in other states.

The Substitute also renumbers the remaining sections after insertion of the new SECTION 13. The renumbered sections after SECTION 13 contain no changes from the filed version of the bill.