

## **BILL ANALYSIS**

C.S.S.B. 1007  
By: Hegar  
Insurance  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Texas first began regulating insurance in 1876, when the Legislature created the Department of Insurance, Statistics, and History, later changing the name of the agency several times and expanding its duties. Today, the Texas Department of Insurance (TDI) regulates insurance companies' solvency, rates, forms, and market conduct; licenses individuals and entities involved in selling insurance policies; provides consumer education and resolves consumer complaints; takes enforcement action against those who violate insurance laws; and provides fire prevention services across the state. The Department also regulates workers' compensation insurance; however, since the Sunset review of the Division of Workers' Compensation was postponed until 2011, this legislation does not address this Division of TDI.

The Department is subject to the Sunset Act and will be abolished on September 1, 2009, unless continued by the Legislature. The Sunset Commission found that Texas has a clear and ongoing need to regulate insurance, but that changes are needed to improve the transparency and accountability of TDI's current statutory responsibilities. This legislation continues the agency for 12 years and contains several additional statutory modifications.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Commissioner of Insurance in SECTION 2.001, SECTION 3.001, SECTION 3.002, SECTION 4.001, SECTION 4.006, SECTION 5.001, SECTION 5.002, SECTION 5.003, SECTION 5.004, SECTION 6.002, SECTION 7.002, SECTION 8.001, and SECTION 9.001 of this bill and to the Texas Facilities Commission and the State Office of Risk Management Board in SECTION 5.003 of this bill.

### **ANALYSIS**

#### ***Defines TDI's use of property and casualty insurance regulatory tools***

C.S.S.B. 1007 sets a 30-day time limit for the Commissioner to review and administratively disapprove a rate under the file-and-use regulatory system. The bill provides that the Commissioner of Insurance would be able to extend the review period by another 30 days, for good cause. C.S.S.B. 1007 provides that if the rate has not been disapproved by the time limits described in the bill, then the rate is not considered to be disapproved under the section. The bill repeals Section 2251.154, Insurance Code, which outlines the process for requesting additional information in the review process, and rolls the applicable provisions into new Section 2251.1031. The bill clarifies that rates filed under the file-and-use system may be used on and after the date the rate is filed, and hones the mechanism that stops the computation of the 30-day time frame, or the additional 30-day time limit, for rate review, if TDI requests additional information for a rate filing. The bill also requires the Department to track, compile, and routinely analyze factors that contribute to the disapproval of rates.

C.S.S.B. 1007 requires the Department to define the process it uses to request additional information about rate filings from insurers, including the types of information the Department can request, and the number of times the Department may make requests. The bill also requires the Department to track, compile, and analyze the volume and content of requests for additional information, to ensure that all requests are fair and reasonable. The bill amends language relating to the time limit for requesting additional information and specifies what type of

information TDI will publicly release about its rate review process and factors that contribute to rate disapproval. The bill requires that the Department make available to the public information about the Department's general processes and methodology for rate review every year. C.S.S.B. 1007 also requires the Department to track precedents related to the disapproval of rates to ensure uniform application of rate standards by the Department.

The bill requires the Department to define, in rule, the ratings practices, financial conditions, or statewide insurance emergencies that could result in an insurance company being placed under prior-approval regulation. C.S.S.B. 1007 also requires the Commissioner to periodically evaluate the need for insurers to remain under prior-approval regulation, and if the conditions no longer exist, excuse the insurer from prior-approval regulation. C.S.S.B. 1007 also requires the Commissioner to notify insurers, in writing, of the actions that need to be taken in order to return to file-and-use rate regulation.

#### ***Personal automobile and residential property insurance claims information reporting***

The bill requires the Department to develop and implement a plan to collect quarterly information relating to the processing of personal automobile and residential property claims from insurance companies on an annual basis. C.S.S.B. 1007 also requires the Department to make that information public by publishing it on the Department's website. The bill clarifies that TDI should collect aggregate and not specific personal claims data, and clarifies that any information provided to the public should be aggregate and not reveal any proprietary information. The bill authorizes the Commissioner to adopt rules to implement these provisions.

#### ***Replaces the appointment process for windstorm engineer inspectors with a contracting process***

C.S.S.B. 1007 preserves the responsibility for windstorm inspections at TDI, but replaces the appointment process with a contracting process, and removes TDI's authority to employ inspectors. The bill authorizes the Department to enter into a contract with engineers to perform windstorm inspections and to charge a reasonable fee for determining the qualifications of a person eligible to contract with the Department; and requires the Department to develop procedures for contracting with and overseeing inspectors, including procedures relating to the suspension, modification, or revocation of a contract. C.S.S.B. 1007 requires the Department to develop procedures for overseeing inspectors that include regular reinspections to ensure that contracted inspectors perform appropriately, and requires the Department to report possible licensing violations to the Texas Board of Professional Engineers. The bill requires the Department to compile a list of qualified inspectors who contract with the Department. C.S.S.B. 1007 repeals Section 2210.256, Insurance Code, which outlines disciplinary proceedings for appointed inspectors.

#### ***Requires Preferred Provider Organizations to obtain a certificate of authority from TDI to operate in Texas***

C.S.S.B. 1007 prohibits a preferred provider organization (PPO) from operating in Texas without first holding a certificate of authority issued by the Department. The bill exempts self-funded plans and insurers with proprietary PPOs from holding certificates of authority. The bill defines preferred provider organizations. C.S.S.B. 1007 provides for application requirements, requirements for approval and denial of applications, and application fees, and requires the Commissioner of Insurance to adopt rules to implement the program, including rules relating to requirements to update application information. A certificate of authority is not subject to renewal, but the bill provides for a process to deny, suspend, or revoke certificates of authority. The bill also requires the Department to track and analyze complaints against PPOs. C.S.S.B. 1007 requires the Commissioner of Insurance to adopt rules for the program by November 1, 2009 and requires PPOs, subject to the new requirements and operating before the effective date of the Act, to apply for a certificate of authority not later than the 60th day after the effective date of the Act.

#### ***Gives TDI additional tools to oversee title insurance in Texas***

C.S.S.B. 1007 requires TDI to examine title insurance agents and licensed direct operations at least every three years. The bill provides that the exams include a review of the agent's financial condition and accounts, ability to meet liabilities, as well as verifying the expense data submitted to the Department for title insurance rate promulgation. C.S.S.B. 1007 provides for standard requirements relating to financial examinations. The bill allows TDI to access the principal office and other offices or business locations of title agents or direct operations when conducting examinations, and to work with other states' insurance supervising departments. The bill specifies the powers of the examiner, including access to all materials and the authority to summon and examine under oath. The bill provides that TDI may release a preliminary or final examination report to another regulatory or law enforcement agency for enforcement purposes, and provides that preliminary or final examination reports are not subject to the Public Information Act. The bill provides that a title agent or direct operation is subject to disciplinary procedures for failure to comply with the subchapter. The bill also requires the Title Insurance Guaranty Association to pay the necessary expenses that the Department incurs in performing title examinations. The bill repeals section 2602.103(b), (c), and (d), Insurance Code, which currently charges the Title Insurance Guaranty Association with examining title agents.

C.S.S.B. 1007 also requires the Commissioner of Insurance to evaluate what information is needed to promulgate title insurance rates not less frequently than once every five years, to determine whether the Department needs additional or different information.

***Eliminates 12 advisory committees from statute***

C.S.S.B. 1007 repeals 12 TDI advisory committees from statute, including the Agents Study Proposal/Vendor Committee, Fire Alarm Advisory Committee, Fire Extinguisher Advisory Council, Fire Sprinkler Advisory Council, Fireworks Advisory Council, Health Maintenance Organization Solvency Surveillance Committee, Public Insurance Adjusters Examination Advisory Committee, Technical Advisory Committee on Claims Processing, Technical Advisory Committee on Electronic Data Exchange, Texas Health Coverage Public Awareness and Education Program Task Force, Texas Residential Property Insurance Market Assistance Program Executive Committee, and Windstorm Building Code Advisory Committee. The bill repeals the enabling chapter for the obsolete Market Assistance Program, which has been superseded by the Texas FAIR Plan. The bill makes conforming changes to ensure that all references to advisory committees that are no longer needed are removed from law, and that any necessary tools provided for in the law are retained, even if the advisory committee is abolished. The bill also requires the Commissioner of Insurance to adopt rules for the creation and use of advisory committees, ensuring the committees meet standard structure and operating criteria as outlined in the bill. C.S.S.B. 1007 requires the Commissioner of Insurance to periodically evaluate the need for the Department's advisory committees.

***Gives the State Fire Marshal's Office tools to target its fire safety inspections and enforce against non-compliant licensees***

The bill requires the State Fire Marshal's Office (SFMO) to periodically inspect state-leased buildings. The bill requires the SFMO, the Texas Facilities Commission, and the State Office of Risk Management to share information on inspections of state-owned and state-leased buildings. C.S.S.B. 1007 also requires the Commissioner of Insurance to adopt guidelines, in rule, for a risk-based approach to conducting SFMO routine inspections of state-owned and state-leased buildings. The bill requires the SFMO to report its findings in conducting state inspections to the governor, lieutenant governor, speaker of the house of representatives, and the standing committees of the legislature each year. C.S.S.B. 1007 also requires the Commissioner of Insurance to prescribe a fee for inspections of privately owned buildings, whose owners or occupants request an inspection from the Office.

C.S.S.B. 1007 requires the Commissioner of Insurance to delegate, by rule, to the SFMO the authority to take enforcement action against SFMO licensees, including persons engaged in planning, installing, and servicing fire sprinkler systems, fire extinguishers, and fire alarm systems, and who sell fireworks. The bill also requires the Commissioner to establish a penalty schedule for violations by SFMO licensees and provides for a process for referral to the Department upon non-payment of the fine.

***Clarifies provisions in the Insurance Code to permit the use of electronic commerce transactions***

The bill authorizes entities regulated by TDI to conduct business electronically, if both parties to the transaction agree to conduct business electronically. C.S.S.B. 1007 also requires the Commissioner of Insurance to adopt standards, in rule, for electronically delivering documents.

***Changes the threshold for reduced rate filing requirements for insurers that write residential property insurance in underserved areas***

C.S.S.B. 1007 changes the threshold for the reduced rate filing requirements, for rate increases of less than 10 percent involving insurers writing more than 50 percent of their coverage for properties which are valued at less than \$100,000 and located in areas designated as underserved for residential property insurance, by increasing the insurer's allowed percentage of total statewide collected premiums for residential policies from less than 2 percent to less than 4 percent.

***Applies standard Sunset across-the-board recommendations***

C.S.S.B. 1007 updates standard Sunset language prohibiting the Commissioner, high-level employees, and spouses from serving as an officer or employee of a related Texas trade association. The bill repeals Section 33.005, Insurance Code, which contains obsolete Sunset language on conflicts of interest. The bill also adds language requiring the Department to maintain information on all complaints and notify the parties about policies for and status of complaints. C.S.S.B. 1007 repeals Section 521.004, Insurance Code, which contains obsolete Sunset language on complaint information. The bill adds standard Sunset language requiring the Department to make effective use of technology in its delivery of services and provision of information to the public, and requiring the Commissioner to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution.

***Updates the Department's statutory duties***

The bill updates the Department's duties by charging the agency with protecting and ensuring the fair treatment of consumers, and ensuring fair competition in the insurance industry in order to foster a competitive market.

***Continuation of the Department***

C.S.S.B. 1007 changes the Department's Sunset review date to 2021 to continue the agency for 12 years.

***The bill repeals the following statutory provisions.***

Insurance Code, §33.005  
Insurance Code, §521.004  
Insurance Code, Chapter 523  
Insurance Code, §524.004  
Insurance Code, §1660.002(2)  
Insurance Code, §1660.101 (c)  
Insurance Code, §4002.004  
Insurance Code, §4004.002  
Insurance Code, §4101.006  
Insurance Code, §4102.059  
Insurance Code, §4201.003(c) and (d)  
Insurance Code, §843.435  
Insurance Code, §843.436  
Insurance Code, §843.437  
Insurance Code, §843.438  
Insurance Code, §843.439  
Insurance Code, §843.440  
Insurance Code, Subchapter B, Chapter 1660

C.S.S.B. 1007 81(R)

Insurance Code, Subchapter G, Chapter 2210  
Insurance Code, Subchapter C, Chapter 6001  
Insurance Code, Subchapter C, Chapter 6002  
Insurance Code, Subchapter C, Chapter 6003  
Insurance Code, Chapter 1212  
Insurance Code, the heading to Subchapter M, Chapter 843  
Occupations Code, §2154.054  
Occupations Code, §2154.055(c)  
Insurance Code, §2251.154  
Insurance Code, §2602.103(b), (c), and (d)  
Insurance Code, §2210.256

### **EFFECTIVE DATE**

September 1, 2009

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

C.S.S.B. 1007 modifies the engrossed version of the bill by changing the sunset date from 2015 to 2021, continuing the agency for 12 years, instead of six years, as provided for in the engrossed bill.

C.S.S.B. 1007 removes provisions in the engrossed version that provided that if a personal property and casualty insurer files a rate that TDI finds to be excessive or unfairly discriminatory, that the insurer may file a new rate with TDI or take other corrective action, but must respond within 60 days. The engrossed bill required the insurer to refund policyholders the excessive premium and interest of prime plus 6 percent, if that new rate is accepted, and premium plus 18 percent, if the insurer does not file or TDI does not accept a new rate, and the rate is ultimately found to be excessive or unfairly discriminatory. The engrossed bill provided that the refund period starts on the day TDI first provides written notice that a rate is excessive or unfairly discriminatory and continues to accrue until the refund is paid. The substitute contains none of these provisions.

The substitute removes the provision in the engrossed version that required title agents to annually submit audited financial statements of operating accounts to TDI, authorized the Commissioner of Insurance to exempt a title insurance agent or direct operation with a premium volume of less than \$100,000 from this audit requirement, and required the Commissioner to adopt rules relating to the process for the exemption.

The substitute removes the provision in the engrossed version related to the Texas Windstorm Insurance Association (TWIA) that changed the size and structure of the Texas Windstorm Insurance Association Board of Directors by adding two public representatives to TWIA Board and requiring the Commissioner of Insurance to appoint all Board members, but allowing the Board to select their own presiding officer. The substitute also removes the provision that required that insurers who are members of the Association to nominate, for appointment by the Commissioner of Insurance, persons to fill any vacancies in the five seats reserved for insurer representatives. The engrossed bill contained language that provided that the primary duty of each member of the Board is to the Association, as provided for in the Plan of Operations; specified that the nomination slate submitted to the Commissioner of Insurance for appointment to the insurance company positions on the Board include at least four more names than the number of vacancies; and provided that members of the TWIA Board of Directors serve at the pleasure of the Commissioner and included replacement provisions. In addition, the engrossed bill contained provisions that made changes to certain definitions for accounting processes. The substitute contains none of these provisions.

C.S.S.B. 1007 removes language that transferred the windstorm inspection program to the Texas Windstorm Insurance Association from the Department. The engrossed bill required the Association to develop an inspection program that included a procedure to contract with engineers to perform inspections for insurability through TWIA, training and education requirements, guidelines for inspection fees, procedures for handling complaints, procedures for reinspections, and procedures for TWIA to report violations to the Texas Board of Professional

Engineers. The engrossed bill required the Department to provide oversight of the Association's inspection program, and required TWIA to report quarterly to the Department on information related to inspections performed that month. C.S.S.B. 1007 contains none of these provisions. Instead, the substitute preserves the responsibility for windstorm inspections at TDI, but adds new language that replaces the appointment process with a contracting process, and removes TDI's authority to employ inspectors. The substitute authorizes the Department to enter into a contract with engineers to perform windstorm inspections and to charge a reasonable fee for determining the qualifications of a person eligible to contract with the Department; and requires the Department to develop procedures for contracting with and overseeing inspectors, including procedures relating to the suspension, modification, or revocation of a contract, and procedures for reinspections and reporting violations to the Texas Board of Professional Engineers.

C.S.S.B. 1007 removes the provision in the engrossed version that required TWIA to make insurance available to applicants in the catastrophe areas that are unable to obtain property insurance covering damages from wind and hail through the voluntary market, as evidenced by two declinations from insurers. The substitute removes language that delegated the definition of declination to TWIA's Plan of Operations, but provided that the definition may include a refusal to offer coverage and the inability to obtain coverage. The substitute also removes language from the engrossed version that provided that the declination requirement applies to new policies and renewals.

The substitute removes provisions in the engrossed version that required the Commissioner of Insurance to study and report on areas of the state designated as underserved for the purposes of obtaining residential property insurance. The engrossed bill expanded the factors that the Commissioner must consider when designating areas of the state as underserved to include reasonable access to the full range of coverages and policy forms. The engrossed bill required the Commissioner of Insurance to study areas of the state designated as underserved and to determine which areas to designate as underserved not less than once every six years. The engrossed bill required the Commissioner to study the impact of increasing the percentage of the total amount of premiums collected to qualify for reduced rate filing requirements under 2251.252 of the Insurance Code, and to include the study results in the Department's biennial report. The substitute does not contain any of these provisions, but instead changes the threshold for the reduced rate filing requirements, for rate increases of less than 10 percent involving insurers writing more than 50 percent of their coverage for properties which are valued at less than \$100,000 and located in areas designated as underserved for residential property insurance, by increasing the insurer's allowed percentage of total statewide collected premiums for residential policies from less than 2 percent to less than 4 percent.

The substitute removes a provision in the engrossed version that required the Commissioner, by rule, to require insurers to report to TDI data mining and pattern recognition practices and required TDI to report the study results to the Legislature in its biennial report.

C.S.S.B. 1007 removes a provision in the engrossed version that prohibited health benefit plans from cancelling or rescinding a plan based on misrepresentation or a preexisting condition without 60-day notification and provided for requirements for notification. The engrossed bill provided that bad faith cancellations or rescissions are an unfair method of competition or an unfair or deceptive practice, and provided parameters for bad faith cancellations, which include: setting goals, quotas, or a number of cancellations or rescissions to be achieved; paying compensation for the number of cancellations or rescissions; setting a number of cancellations or rescissions to be achieved as a condition of employment; or setting a performance standard based on the number of cancellations or rescissions. The substitute contains none of these provisions.