

BILL ANALYSIS

C.S.H.B. 1833
By: Sheets
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that state oversight of the state-established Texas Mutual Insurance Company, which currently serves as the sole insurer of last resort in the workers' compensation insurance market, has been reduced greatly over the past decade. C.S.H.B. 1833 seeks to continue the corporate existence of Texas Mutual as a fully independent mutual insurance company subject to state laws governing mutual insurance companies, with all members of its board of directors elected by Texas Mutual's policyholders, and to eliminate the requirement for Texas Mutual to be the sole insurer of last resort in the workers' compensation insurance market.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTIONS 1.01 and 4.01 and to the commissioner of workers' compensation in SECTION 1.01 of this bill.

ANALYSIS

C.S.H.B. 1833 amends the Insurance Code to require the commissioner of insurance by rule to establish an assigned risk program through which residual market employers may obtain workers' compensation insurance in Texas and to approve a plan of operation that meets specified criteria. The bill requires the commissioner to contract with a statistical agent for workers' compensation in Texas to administer the program. The bill requires the statistical agent to file rates for review following the procedures for insurers under statutory provisions governing rate filings for workers' compensation insurance, sets out prescribed standards for the rates, and subjects those rates to adjustment if the commissioner determines that the rates do not meet prescribed standards.

C.S.H.B. 1833 requires the commissioner to require each insurer authorized to engage in the business of workers' compensation insurance in Texas, as a condition of the insurer's authority to engage in the business of insurance in Texas, to participate in the assigned risk program in proportion to the insurer's workers' compensation voluntary premium market share in Texas. The bill authorizes the commissioner to provide for an insurer to meet that obligation through direct policy assignment, participation in a reinsurance pooling mechanism, or otherwise.

C.S.H.B. 1833 authorizes an assigned carrier, defined in the bill as an insurer that provides workers' compensation insurance to a residual market employer under the assigned risk program, to make and enforce requirements for the prevention of injuries to an employee of a policyholder or applicant for insurance under the program. The bill requires a policyholder or applicant, on reasonable notice, to grant representatives of such an assigned carrier, or the Texas Department of Insurance (TDI) free access to the premises of the policyholder or applicant during regular working hours for the purpose of making and enforcing those requirements. The bill establishes that a failure or refusal by a policyholder or applicant for insurance to comply with a requirement prescribed by such an assigned carrier or a failure or refusal to fully disclose all information pertinent to insuring or servicing the policyholder or applicant constitutes sufficient grounds for

the carrier to cancel a policy or deny an application.

C.S.H.B. 1833 requires a policyholder insured under the workers' compensation assigned risk program to obtain a safety consultation if the policyholder meets certain experience modifier or loss ratio criteria. The bill also requires a safety consultation, as required by a plan of operation, if the policyholder has been in business for less than three years and meets the criteria established in the plan of operation. The bill requires the policyholder to obtain a safety consultation from an approved safety consultant within a certain timeframe. The bill provides that such a consultant must be an assigned carrier, the workers' compensation division of TDI, or a professional source approved for that purpose by the division. The bill requires a safety consultant acting under the bill's provisions governing accident prevention to file a written report with the division and the policyholder specifying any hazardous condition or practice identified in the safety consultation. The bill requires the policyholder and the safety consultant, if the safety consultant identifies a hazardous condition or practice, to develop a specific accident prevention plan that addresses the condition or practice. The bill authorizes the safety consultant to approve an existing accident prevention plan and requires the policyholder to comply with the accident prevention plan.

C.S.H.B. 1833 authorizes the workers' compensation division to investigate an accident that occurs at a work site of a policyholder for whom an accident prevention plan was developed and to otherwise monitor, as the division determines necessary, the implementation of the accident prevention plan. The bill requires the division to conduct a follow-up inspection of the policyholder's premises in accordance with rules adopted by the commissioner of workers' compensation within a certain timeframe and authorizes the division to require the participation of the safety consultant who performed the initial consultation and developed the accident prevention plan. The bill requires the commissioner, on determining that a policyholder has complied with the terms of the accident prevention plan or has implemented other accepted corrective measures, to certify that determination and, if the commissioner determines that the policyholder has failed or refuses to implement the accident prevention plan or other suitable hazard abatement measures, authorizes a policyholder to elect to cancel coverage not later than the 30th day after the date of the determination.

C.S.H.B. 1833, in the event a policyholder does not elect to cancel coverage, authorizes the assigned carrier to cancel the coverage or authorizes the commissioner of workers' compensation to impose an administrative penalty on the policyholder in an amount not to exceed \$5,000, with each day of noncompliance constituting a separate violation. The bill authorizes the commissioner, in imposing an administrative penalty, to consider any matter that justice may require and requires the commissioner to consider certain factors specified by the bill. The bill requires such an administrative penalty collected to be deposited in the general revenue fund and authorizes the penalty to be appropriated to the division to offset the costs of implementing and administering the bill's provisions regarding accident prevention.

C.S.H.B. 1833 requires the procedures established under its provisions regarding accident prevention to be followed each year the policyholder meets the experience modifier or loss ratio criteria for which a safety consultation is required. The bill requires the workers' compensation division to charge a policyholder for the reasonable cost of certain specified services provided to the policyholder and requires those service fees to be set at a cost-reimbursement level, including a reasonable allocation of the division's administrative costs. The bill requires the division to enforce compliance with the bill's provisions on accident prevention through the administrative violation proceedings prescribed by the Labor Code.

Effective January 1, 2015, C.S.H.B. 1833 makes the Texas Mutual Insurance Company operable under statutory provisions regulating mutual insurance companies other than mutual life insurance companies and establishes that the company is not subject to obligations or limitations not imposed on, or given advantages not granted to, other mutual insurance companies operating under those provisions. Effective January 1, 2015, the bill repeals the provisions that regulated

the Texas Mutual Insurance Company specifically and separately from other mutual insurance companies with respect to workers' compensation insurance.

C.S.H.B. 1833 requires the Texas Mutual Insurance Company, not later than December 31, 2014, to hold a meeting of its policyholders to elect a board of directors to govern the company beginning January 1, 2015, and provides for the abolition of the company's current board of directors effective on January 1, 2015. The bill requires the Texas Mutual Insurance Company, not later than January 1, 2015, to file articles of incorporation with the commissioner of insurance containing certain specified information and requires those articles of incorporation to be considered restated articles of incorporation. The bill establishes that the corporate existence of the Texas Mutual Insurance Company continues, and all assets, liabilities, earned surplus, rights, licenses, and permits of the company as it existed before January 1, 2015, remain in full force and effect. The bill establishes that all policies of insurance and other contracts entered into or issued by the Texas Mutual Insurance Company before January 1, 2015, remain in full force and effect in accordance with their respective terms and that the certificate of authority issued to the company as it existed before that date also continues in effect.

C.S.H.B. 1833 requires the commissioner of insurance, as soon as practicable after the bill's effective date but not later than January 1, 2015, to adopt rules necessary to implement the assigned risk program as added by the bill. The bill requires the commissioner, as soon as practicable after the Texas Mutual Insurance Company files articles of incorporation with the commissioner and elects a board of directors, to take any action necessary to reflect the fact that the Texas Mutual Insurance Company is a mutual insurance company organized under and governed by statutes applicable to mutual insurance companies other than mutual life insurance companies and under other laws applicable to mutual insurance companies in Texas.

Effective January 1, 2015, C.S.H.B. 1833 makes conforming changes to the Labor Code and Insurance Code and repeals the following provisions:

- Section 552.0225(c), Government Code
- Section 552.143(f), Government Code
- Section 462.008, Insurance Code
- Section 2051.153(b), Insurance Code
- Chapter 2054, Insurance Code

EFFECTIVE DATE

Except as otherwise provided, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1833 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

| INTRODUCED | | | | HOUSE COMMITTEE SUBSTITUTE | | | |
|--|----------|----------|--|--|----------|----------|--|
| ARTICLE 1. RESIDUAL MARKET FOR WORKERS' COMPENSATION INSURANCE | | | | ARTICLE 1. RESIDUAL MARKET FOR WORKERS' COMPENSATION INSURANCE | | | |
| SECTION | 1.01. | WORKERS' | | SECTION | 1.01. | WORKERS' | |
| COMPENSATION | ASSIGNED | RISK | | COMPENSATION | ASSIGNED | RISK | |

PROGRAM. Subtitle E, Title 10, Insurance Code, is amended by adding Chapter 2056 to read as follows:

CHAPTER 2056. WORKERS' COMPENSATION ASSIGNED RISK PROGRAM

Sec. 2056.001. DEFINITIONS. In this chapter:

(1) "Assigned risk program" means the program established under Section 2056.002 by which insurers provide workers' compensation insurance to residual market employers.

(2) "Insurer" means an insurance company as defined by Section 2053.001.

(3) "Residual market employer" means an employer that is unable to obtain workers' compensation insurance through the voluntary insurance market in this state.

Sec. 2056.002. ASSIGNED RISK PROGRAM; PLAN OF OPERATION. (a) The commissioner by rule shall:

(1) establish an assigned risk program through which residual market employers may obtain workers' compensation insurance in this state; and

(2) approve a plan of operation for the assigned risk program established under this section, which must:

(A) specify the eligibility criteria and procedures for obtaining insurance through the assigned risk program; and

(B) provide for the implementation and administration of the assigned risk program, including reasonable service standards, policies, forms, and contracts.

(b) The commissioner may contract with a licensed statistical agent for workers' compensation in this state to administer the assigned risk program.

(c) The commissioner shall require each insurer to participate in the assigned risk program in proportion to the insurer's voluntary market share in this state as a condition of the insurer's authority to engage in the business of insurance in this state.

(d) The commissioner may provide for an insurer to meet the insurer's obligation under

PROGRAM. Subtitle E, Title 10, Insurance Code, is amended by adding Chapter 2056 to read as follows:

CHAPTER 2056. WORKERS' COMPENSATION ASSIGNED RISK PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2056.001. DEFINITIONS. In this chapter:

(1) "Assigned risk program" means the program established under Section 2056.002 by which insurers provide workers' compensation insurance to residual market employers.

(2) "Insurer" means an insurance company as defined by Section 2053.001.

(3) "Residual market employer" means an eligible employer that is unable to obtain workers' compensation insurance in the usual manner through the voluntary insurance market in this state.

Sec. 2056.002. ASSIGNED RISK PROGRAM; PLAN OF OPERATION. (a) The commissioner by rule shall:

(1) establish an assigned risk program through which residual market employers may obtain workers' compensation insurance in this state; and

(2) approve a plan of operation for the assigned risk program established under this section, which must:

(A) specify the eligibility criteria and procedures for obtaining insurance through the assigned risk program;

(B) provide for the implementation and administration of the assigned risk program, including reasonable service standards, policies, forms, and contracts; and

(C) provide for the equitable apportionment of risk among the insurers required to participate in the assigned risk program.

(b) The commissioner shall contract with a statistical agent for workers' compensation in this state to administer the assigned risk program.

(c) The commissioner shall require each insurer to participate in the assigned risk program in proportion to the insurer's workers' compensation voluntary premium market share in this state as a condition of the insurer's authority to engage in the business of insurance in this state.

(d) The commissioner may provide for an insurer to meet the insurer's obligation under

this section through direct policy assignment, reinsurance, pooling, or otherwise.

Sec. 2056.003. RATES AND FUNDING.

(a) The statistical agent, if any, contracted to administer the assigned risk program under Section 2056.002 shall file rates for review under Subchapter B, Chapter 2053.

(b) Rates for insurance procured through the assigned risk program must be actuarially sufficient to cover all incurred losses and administrative expenses of the program.

No equivalent provision.

No equivalent provision.

No equivalent provision.

this section through direct policy assignment, participation in a reinsurance pooling mechanism, or otherwise.

Sec. 2056.003. RATES AND FUNDING.

(a) The statistical agent contracted to administer the assigned risk program under Section 2056.002 shall file rates for review following the procedures for insurers under Subchapter A, Chapter 2053.

(b) Rates for insurance procured through the assigned risk program must be:

(1) actuarially sufficient to cover all incurred losses, operating expenses, and administrative expenses of the program;

(2) consistent with classification and ratemaking methodologies generally accepted in the insurance industry; and

(3) calculated to enable the program to be self-sustaining.

(c) Rates for insurance procured through the assigned risk program must not be excessive, inadequate, or unfairly discriminatory and are subject to adjustment under Section 2053.055.

SUBCHAPTER B. ACCIDENT PREVENTION

Sec. 2056.051. DEFINITIONS. In this subchapter:

(1) "Assigned carrier" means an insurer that provides workers' compensation insurance to a residual market employer under the assigned risk program.

(2) "Division" means the division of workers' compensation of the department.

Sec. 2056.052. REQUIREMENTS FOR PREVENTION OF INJURIES. An assigned carrier may make and enforce requirements for the prevention of injuries to an employee of a policyholder or applicant for insurance under this chapter. On reasonable notice, a policyholder or applicant shall grant representatives of an assigned carrier or the department free access to the premises of the policyholder or applicant during regular working hours for purposes of this section.

Sec. 2056.053. GROUNDS FOR CANCELLATION OR DENIAL OF COVERAGE. A failure or refusal by a policyholder or applicant for insurance to comply with a requirement prescribed by an assigned carrier under Section 2056.052, or

a failure or refusal to fully disclose all information pertinent to insuring or servicing the policyholder or applicant, constitutes sufficient grounds for the assigned carrier to cancel a policy or deny an application.

No equivalent provision.

Sec. 2056.054. SAFETY CONSULTATION FOR CERTAIN INSUREDS. (a) A policyholder who is insured under this chapter shall obtain a safety consultation:
(1) if the policyholder:
(A) has a Texas experience modifier greater than 1.25;
(B) has a national experience modifier greater than 1.25 and estimated premium allocable to this state of \$2,500 or more; or
(C) does not have an experience modifier but has had a loss ratio greater than 0.70 in at least two of the three most recent policy years for which information is available; or
(2) as required by the plan of operation, if the policyholder:
(A) has been in business for less than three years; and
(B) meets the criteria established by the plan of operation.
(b) The criteria under Subsection (a)(2)(B) may include:
(1) the number and classification of employees;
(2) the policyholder's industry; and
(3) the policyholder's previous workers' compensation experience in this state or another jurisdiction.

No equivalent provision.

Sec. 2056.055. SAFETY CONSULTATION PROCEDURES. Not later than the 30th day after the effective date of a policy, the policyholder shall obtain a safety consultation required under Section 2056.054 from a safety consultant. The safety consultant must be:
(1) an assigned carrier;
(2) the division; or
(3) a professional source approved for that purpose by the division.

No equivalent provision.

Sec. 2056.056. SAFETY CONSULTANT REPORT. A safety consultant acting under this subchapter shall file a written report with the division and the policyholder specifying any hazardous condition or practice identified in the safety consultation.

No equivalent provision.

Sec. 2056.057. ACCIDENT PREVENTION PLAN. (a) If a safety consultant identifies a hazardous condition or practice, the policyholder and the safety consultant shall develop a specific accident prevention plan that addresses the condition or practice.
(b) The safety consultant may approve an existing accident prevention plan.
(c) The policyholder shall comply with the accident prevention plan.

No equivalent provision.

Sec. 2056.058. ACCIDENT INVESTIGATIONS; OTHER MONITORING. The division may:
(1) investigate an accident that occurs at a work site of a policyholder for whom an accident prevention plan was developed under Section 2056.057; and
(2) otherwise monitor as the division determines necessary the implementation of the accident prevention plan.

No equivalent provision.

Sec. 2056.059. FOLLOW-UP INSPECTION. (a) Not earlier than the 90th day after or later than the sixth month after the date an accident prevention plan is developed under Section 2056.057, the division shall conduct a follow-up inspection of the policyholder's premises in accordance with rules adopted by the commissioner of workers' compensation.
(b) The division may require the participation of the safety consultant who performed the initial consultation and developed the accident prevention plan.
(c) If the commissioner of workers' compensation determines that a policyholder has complied with the terms of the accident prevention plan or has implemented other accepted corrective measures, the commissioner of workers' compensation shall certify that determination.
(d) If the commissioner of workers' compensation determines that a policyholder has failed or refuses to implement the accident prevention plan or other suitable hazard abatement measures, the policyholder may elect to cancel coverage not later than the 30th day after the date of the determination.

No equivalent provision.

Sec. 2056.060. CANCELLATION OF COVERAGE BY ASSIGNED CARRIER;

IMPOSITION OF ADMINISTRATIVE PENALTY. (a) If a policyholder described by Section 2056.059(d) does not elect to cancel coverage as provided by that section:
(1) the assigned carrier may cancel the coverage; or
(2) the commissioner of workers' compensation may impose an administrative penalty on the policyholder.
(b) The amount of an administrative penalty under Subsection (a)(2) may not exceed \$5,000. Each day of noncompliance constitutes a separate violation.
(c) In imposing an administrative penalty, the commissioner of workers' compensation may consider any matter that justice may require and shall consider:
(1) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
(2) the history and extent of previous administrative violations;
(3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
(4) any economic benefit resulting from the prohibited act; and
(5) the penalty necessary to deter future violations.
(d) A penalty collected under this section:
(1) must be deposited in the general revenue fund; and
(2) may be appropriated to the division to offset the costs of implementing and administering this subchapter.

No equivalent provision.

Sec. 2056.061. CONTINUING COMPLIANCE WITH SUBCHAPTER.
The procedures established under this subchapter must be followed each year the policyholder meets the criteria established by Section 2056.054(a)(1).

No equivalent provision.

Sec. 2056.062. FEES FOR SERVICES.
The division shall:
(1) charge a policyholder for the reasonable cost of services provided to the policyholder under Sections 2056.055, 2056.056, 2056.057, 2056.059, and 2056.060(a); and
(2) set the fees for the services at a cost-reimbursement level, including a reasonable allocation of the division's administrative costs.

No equivalent provision.

ARTICLE 2. OPERATION AND ORGANIZATION OF TEXAS MUTUAL INSURANCE COMPANY

SECTION 2.01. ARTICLES OF INCORPORATION. (a) Not later than January 1, 2015, the board of directors of the Texas Mutual Insurance Company shall file with the commissioner of insurance articles of incorporation, which must state:

- (1) the name of the company;
- (2) the purpose of the company;
- (3) the location of the company's principal or home office; and
- (4) the name and address of each member of the board of directors.

(b) Notwithstanding any other law, the articles of incorporation filed under this Act shall be considered restated articles of incorporation.

SECTION 2.02. BOARD OF DIRECTORS. (a) Not later than December 31, 2014, the Texas Mutual Insurance Company shall hold a meeting of its policyholders to elect a board of directors to govern the company beginning January 1, 2015.

(b) The board of directors established under Section 2054.051, Insurance Code, is abolished effective January 1, 2015.

SECTION 2.03. CONTINUATION OF CORPORATE EXISTENCE. (a) The corporate existence of the Texas Mutual Insurance Company continues, and all assets, liabilities, earned surplus, rights, licenses, and permits of the company as it existed under Chapter 2054, Insurance Code, before January 1, 2015, remain in full force and effect as the assets, liabilities, earned surplus, rights, licenses, and permits of the company.

(b) All policies of insurance and other contracts entered into or issued by the Texas Mutual Insurance Company before January 1, 2015, remain in full force and effect in accordance with their respective terms.

(c) The certificate of authority issued to the

Sec. 2056.063. ENFORCEMENT OF SUBCHAPTER. The division shall enforce compliance with this subchapter through the administrative violation proceedings under Chapter 415, Labor Code.

ARTICLE 2. OPERATION AND ORGANIZATION OF TEXAS MUTUAL INSURANCE COMPANY

SECTION 2.01. Same as introduced version.

SECTION 2.02. Same as introduced version.

SECTION 2.03. Same as introduced version.

Texas Mutual Insurance Company as the company existed under Chapter 2054, Insurance Code, before January 1, 2015, continues in effect.

(d) Effective January 1, 2015, the Texas Mutual Insurance Company operates under Chapter 883, Insurance Code, and is neither subject to obligations or limitations not imposed on, nor given advantages not granted to, other mutual insurance companies operating under Chapter 883, Insurance Code.

ARTICLE 3. CONFORMING AMENDMENTS

SECTION 3.01. REPEALER. The following laws are repealed:

- (1) Section 552.0225(c), Government Code;
- (2) Section 552.143(f), Government Code;
- (3) Section 462.008, Insurance Code;
- (4) Section 2051.153(b), Insurance Code; and
- (5) Chapter 2054, Insurance Code.

SECTION 3.02. CONFORMING AMENDMENT TO LABOR CODE. Section 418.002(c), Labor Code, is amended to read as follows:

(c) The court may order a person to pay restitution to an insurance company[; ~~including the Texas Mutual Insurance Company,~~] if the person commits an offense under this section.

SECTION 3.03. CONFORMING AMENDMENTS TO INSURANCE CODE.

(a) Section 2052.004(a), Insurance Code, is amended to read as follows:

(a) Subject to Subsections (b) and (c), this subtitle may not be construed to prohibit an insurance company[, ~~including the Texas Mutual Insurance Company,~~] from issuing participating policies.

(b) Section 2053.001(2), Insurance Code, is amended to read as follows:

(2) "Insurance company" means a person authorized to engage in the business of workers' compensation insurance in this state. The term includes:

(A) ~~[the Texas Mutual Insurance Company;~~ (B) a Lloyd's plan under Chapter 941; and (B) ~~(C)~~ a reciprocal and interinsurance exchange under Chapter 942.

(c) Section 2053.154(a), Insurance Code, is

ARTICLE 3. CONFORMING AMENDMENTS

SECTION 3.01. Same as introduced version.

SECTION 3.02. Same as introduced version.

SECTION 3.03. Same as introduced version.

amended to read as follows:

(a) For purposes of this section, "insurance company" means a stock company, mutual insurance company, reciprocal or interinsurance exchange, or Lloyd's plan authorized to engage in the business of workers' compensation insurance in this state. ~~[The term includes the Texas Mutual Insurance Company.]~~

SECTION 3.04. EFFECTIVE DATE OF ARTICLE. This article takes effect January 1, 2015.

ARTICLE 4. TRANSITION

SECTION 4.01. TRANSITION. (a) As soon as practicable after the effective date of this Act, but not later than January 1, 2015, the commissioner of insurance shall adopt rules necessary to implement the assigned risk program required by Chapter 2056, Insurance Code, as added by this Act.

(b) As soon as practicable after the Texas Mutual Insurance Company files articles of incorporation with the commissioner of insurance and elects a board of directors as required by Article 2 of this Act, the commissioner shall **adopt any rules** necessary to reflect the fact that the Texas Mutual Insurance Company is a mutual insurance company organized under and governed by Chapter 883, Insurance Code, and other laws applicable to mutual insurance companies in this state.

ARTICLE 5. EFFECTIVE DATE

SECTION 5.01. EFFECTIVE DATE OF ACT. Except as otherwise provided by this Act, this Act takes effect September 1, 2013.

SECTION 3.04. Same as introduced version.

ARTICLE 4. TRANSITION

SECTION 4.01. TRANSITION. (a) As soon as practicable after the effective date of this Act, but not later than January 1, 2015, the commissioner of insurance shall adopt rules necessary to implement the assigned risk program required by Chapter 2056, Insurance Code, as added by this Act.

(b) As soon as practicable after the Texas Mutual Insurance Company files articles of incorporation with the commissioner of insurance and elects a board of directors as required by Article 2 of this Act, the commissioner shall **take any action** necessary to reflect the fact that the Texas Mutual Insurance Company is a mutual insurance company organized under and governed by Chapter 883, Insurance Code, and other laws applicable to mutual insurance companies in this state.

ARTICLE 5. EFFECTIVE DATE

SECTION 5.01. Same as introduced version.