

By: Sheets, Lewis, et al.

H.B. No. 1833

Substitute the following for H.B. No. 1833:

By: Sheets

C.S.H.B. No. 1833

A BILL TO BE ENTITLED

AN ACT

relating to the residual market for workers' compensation insurance in this state and to the operation, governance, and organization of the Texas Mutual Insurance Company; authorizing administrative penalties; imposing fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. RESIDUAL MARKET FOR WORKERS' COMPENSATION INSURANCE

SECTION 1.01. WORKERS' 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

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

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

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

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

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

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

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

23           (d) The commissioner may provide for an insurer to meet the  
24 insurer's obligation under this section through direct policy  
25 assignment, participation in a reinsurance pooling mechanism, or  
26 otherwise.

27           Sec. 2056.003. RATES AND FUNDING. (a) The statistical

1 agent contracted to administer the assigned risk program under  
2 Section 2056.002 shall file rates for review following the  
3 procedures for insurers under Subchapter A, Chapter 2053.

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

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

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

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

13 (c) Rates for insurance procured through the assigned risk  
14 program must not be excessive, inadequate, or unfairly  
15 discriminatory and are subject to adjustment under Section  
16 2053.055.

17 SUBCHAPTER B. ACCIDENT PREVENTION

18 Sec. 2056.051. DEFINITIONS. In this subchapter:

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

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

24 Sec. 2056.052. REQUIREMENTS FOR PREVENTION OF INJURIES. An  
25 assigned carrier may make and enforce requirements for the  
26 prevention of injuries to an employee of a policyholder or  
27 applicant for insurance under this chapter. On reasonable notice,

1 a policyholder or applicant shall grant representatives of an  
2 assigned carrier or the department free access to the premises of  
3 the policyholder or applicant during regular working hours for  
4 purposes of this section.

5 Sec. 2056.053. GROUNDS FOR CANCELLATION OR DENIAL OF  
6 COVERAGE. A failure or refusal by a policyholder or applicant for  
7 insurance to comply with a requirement prescribed by an assigned  
8 carrier under Section 2056.052, or a failure or refusal to fully  
9 disclose all information pertinent to insuring or servicing the  
10 policyholder or applicant, constitutes sufficient grounds for the  
11 assigned carrier to cancel a policy or deny an application.

12 Sec. 2056.054. SAFETY CONSULTATION FOR CERTAIN INSURED.

13 (a) A policyholder who is insured under this chapter shall obtain a  
14 safety consultation:

15 (1) if the policyholder:

16 (A) has a Texas experience modifier greater than  
17 1.25;

18 (B) has a national experience modifier greater  
19 than 1.25 and estimated premium allocable to this state of \$2,500 or  
20 more; or

21 (C) does not have an experience modifier but has  
22 had a loss ratio greater than 0.70 in at least two of the three most  
23 recent policy years for which information is available; or

24 (2) as required by the plan of operation, if the  
25 policyholder:

26 (A) has been in business for less than three  
27 years; and

1                   (B) meets the criteria established by the plan of  
2 operation.

3           (b) The criteria under Subsection (a)(2)(B) may include:

4                   (1) the number and classification of employees;

5                   (2) the policyholder's industry; and

6                   (3) the policyholder's previous workers' compensation  
7 experience in this state or another jurisdiction.

8           Sec. 2056.055. SAFETY CONSULTATION PROCEDURES. Not later  
9 than the 30th day after the effective date of a policy, the  
10 policyholder shall obtain a safety consultation required under  
11 Section 2056.054 from a safety consultant. The safety consultant  
12 must be:

13                   (1) an assigned carrier;

14                   (2) the division; or

15                   (3) a professional source approved for that purpose by  
16 the division.

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

21           Sec. 2056.057. ACCIDENT PREVENTION PLAN. (a) If a safety  
22 consultant identifies a hazardous condition or practice, the  
23 policyholder and the safety consultant shall develop a specific  
24 accident prevention plan that addresses the condition or practice.

25                   (b) The safety consultant may approve an existing accident  
26 prevention plan.

27                   (c) The policyholder shall comply with the accident

1 prevention plan.

2 Sec. 2056.058. ACCIDENT INVESTIGATIONS; OTHER MONITORING.

3 The division may:

4 (1) investigate an accident that occurs at a work site  
5 of a policyholder for whom an accident prevention plan was  
6 developed under Section 2056.057; and

7 (2) otherwise monitor as the division determines  
8 necessary the implementation of the accident prevention plan.

9 Sec. 2056.059. FOLLOW-UP INSPECTION. (a) Not earlier than  
10 the 90th day after or later than the sixth month after the date an  
11 accident prevention plan is developed under Section 2056.057, the  
12 division shall conduct a follow-up inspection of the policyholder's  
13 premises in accordance with rules adopted by the commissioner of  
14 workers' compensation.

15 (b) The division may require the participation of the safety  
16 consultant who performed the initial consultation and developed the  
17 accident prevention plan.

18 (c) If the commissioner of workers' compensation determines  
19 that a policyholder has complied with the terms of the accident  
20 prevention plan or has implemented other accepted corrective  
21 measures, the commissioner of workers' compensation shall certify  
22 that determination.

23 (d) If the commissioner of workers' compensation determines  
24 that a policyholder has failed or refuses to implement the accident  
25 prevention plan or other suitable hazard abatement measures, the  
26 policyholder may elect to cancel coverage not later than the 30th  
27 day after the date of the determination.

1       Sec. 2056.060. CANCELLATION OF COVERAGE BY ASSIGNED  
2 CARRIER; IMPOSITION OF ADMINISTRATIVE PENALTY. (a) If a  
3 policyholder described by Section 2056.059(d) does not elect to  
4 cancel coverage as provided by that section:

5           (1) the assigned carrier may cancel the coverage; or

6           (2) the commissioner of workers' compensation may  
7 impose an administrative penalty on the policyholder.

8       (b) The amount of an administrative penalty under  
9 Subsection (a)(2) may not exceed \$5,000. Each day of noncompliance  
10 constitutes a separate violation.

11       (c) In imposing an administrative penalty, the commissioner  
12 of workers' compensation may consider any matter that justice may  
13 require and shall consider:

14           (1) the seriousness of the violation, including the  
15 nature, circumstances, consequences, extent, and gravity of the  
16 prohibited act;

17           (2) the history and extent of previous administrative  
18 violations;

19           (3) the demonstrated good faith of the violator,  
20 including actions taken to rectify the consequences of the  
21 prohibited act;

22           (4) any economic benefit resulting from the prohibited  
23 act; and

24           (5) the penalty necessary to deter future violations.

25       (d) A penalty collected under this section:

26           (1) must be deposited in the general revenue fund; and

27           (2) may be appropriated to the division to offset the

costs of implementing and administering this subchapter.

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).

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.

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. 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



1 directors.

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

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

9 (b) The board of directors established under Section  
10 2054.051, Insurance Code, is abolished effective January 1, 2015.

11 SECTION 2.03. CONTINUATION OF CORPORATE EXISTENCE. (a) The  
12 corporate existence of the Texas Mutual Insurance Company  
13 continues, and all assets, liabilities, earned surplus, rights,  
14 licenses, and permits of the company as it existed under Chapter  
15 2054, Insurance Code, before January 1, 2015, remain in full force  
16 and effect as the assets, liabilities, earned surplus, rights,  
17 licenses, and permits of the company.

18 (b) All policies of insurance and other contracts entered  
19 into or issued by the Texas Mutual Insurance Company before January  
20 1, 2015, remain in full force and effect in accordance with their  
21 respective terms.

22 (c) The certificate of authority issued to the Texas Mutual  
23 Insurance Company as the company existed under Chapter 2054,  
24 Insurance Code, before January 1, 2015, continues in effect.

25 (d) Effective January 1, 2015, the Texas Mutual Insurance  
26 Company operates under Chapter 883, Insurance Code, and is neither  
27 subject to obligations or limitations not imposed on, nor given

1 advantages not granted to, other mutual insurance companies  
2 operating under Chapter 883, Insurance Code.

3 ARTICLE 3. CONFORMING AMENDMENTS

4 SECTION 3.01. REPEALER. The following laws are repealed:

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

10 SECTION 3.02. CONFORMING AMENDMENT TO LABOR CODE. Section  
11 418.002(c), Labor Code, is amended to read as follows:

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

15 SECTION 3.03. CONFORMING AMENDMENTS TO INSURANCE CODE. (a)  
16 Section 2052.004(a), Insurance Code, is amended to read as follows:

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

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

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

- 26 (A) ~~[the Texas Mutual Insurance Company,~~  
27 ~~[(B)]~~ a Lloyd's plan under Chapter 941; and

1                    (B) [~~(C)~~] a reciprocal and interinsurance  
2 exchange under Chapter 942.

3            (c) Section 2053.154(a), Insurance Code, is amended to read  
4 as follows:

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

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

12                    ARTICLE 4. TRANSITION

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

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

26                    ARTICLE 5. EFFECTIVE DATE

27           SECTION 5.01. EFFECTIVE DATE OF ACT. Except as otherwise

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1 provided by this Act, this Act takes effect September 1, 2013.