

## **BILL ANALYSIS**

C.S.H.B. 2036  
By: King, Phil  
Insurance  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties suggest that certain fees imposed under federal law on health insurers and health maintenance organizations are burdensome and are passed on to policyholders through increased premiums, which causes an increase in the total amount of premiums that Texas then subjects to state taxation. The parties note that premiums are further increased to cover the additional cost of this resultant tax liability. C.S.H.B. 2036 seeks to preclude the need for a further increase in premiums to cover the cost of tax liability by providing a credit for premium taxes due in a taxable year to offset the tax liability attributable to the recoupment of federal provider fees.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 2036 amends the Insurance Code to entitle an insurer and a health maintenance organization that receives gross premiums or revenues from life, health, and accident insurance subject to a premium tax to a credit on the amount of premium tax due in a taxable year in an amount equal to the product of the insurer's or health maintenance organization's provider fee amount multiplied by the percentage of the insurer's or health maintenance organization's nationwide health premium or revenue amount that the insurer or health maintenance organization allocates to the state multiplied by the rate of the life, health, or accident insurance premium tax. The bill requires the commissioner of insurance by rule to establish formulas to calculate the amount of such a credit and to identify the lines of business, other than the business of life insurance, included in the calculation of the nationwide health premium or revenue amount. The bill defines "nationwide health premium or revenue amount" as the amount of gross premium and revenue aggregated on a nationwide basis attributable to lines of business, other than the business of life insurance, so identified by the commissioner on which such taxes are imposed. The bill defines "provider fee amount" as the amount of health insurer provider fees, which may be recouped through adjustments to the insurer's premium rate or the health maintenance organization's formula or method for computing its schedule of charges, paid by an insurer or health maintenance organization under the federal Patient Protection and Affordable Care Act. The bill requires the comptroller of public accounts and the commissioner to adopt rules necessary to implement the bill's provisions. The bill's provisions apply only to a tax liability accruing on or after January 1, 2020.

## EFFECTIVE DATE

September 1, 2017.

## COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2036 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

### INTRODUCED

SECTION 1. Chapter 222, Insurance Code, is amended by adding Section 222.0071 to read as follows:

Sec. 222.0071. CREDIT FOR CERTAIN FEDERAL FEES PAID. (a) In this section: (1) "Affordable Care Act" means the Patient Protection and Affordable Care Act (Pub. L. No. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

(2) "Recoupment amount" means the amount of health insurer provider fees under Section 9010, Affordable Care Act, that the insurer or health maintenance organization recoups, including amounts recouped through adjustments to the insurer's premium rate or the health maintenance organization's formula or method for computing its schedule of charges, as applicable.

(b) An insurer or health maintenance organization is entitled to a credit on the amount of tax due under this chapter in a taxable year equal to the amount of the premium tax imposed in that year on the insurer's or organization's recoupment amount for that year.

(c) The commissioner by rule shall establish formulas to calculate the amount

### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 222, Insurance Code, is amended by adding Section 222.0071 to read as follows:

Sec. 222.0071. CREDIT FOR CERTAIN FEDERAL FEES PAID. (a) In this section: (1) "Affordable Care Act" means the Patient Protection and Affordable Care Act (Pub. L. No. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

(2) "Nationwide health premium or revenue amount" means the amount of gross premium and revenue aggregated on a nationwide basis attributable to lines of business, other than the business of life insurance, identified by the commissioner under Subsection (c) on which tax is imposed under this chapter.

(3) "Provider fee amount" means the amount of health insurer provider fees, which may be recouped through adjustments to the insurer's premium rate or the health maintenance organization's formula or method for computing its schedule of charges, paid by an insurer or health maintenance organization under Section 9010, Affordable Care Act.

(b) An insurer or health maintenance organization is entitled to a credit on the amount of tax due under this chapter in a taxable year in an amount equal to the product of the insurer's or health maintenance organization's provider fee amount multiplied by the percentage of the insurer's or health maintenance organization's nationwide health premium or revenue amount that the insurer or health maintenance organization allocates to this state multiplied by the rate of the tax imposed under this chapter.

(c) The commissioner by rule shall:

(1) establish formulas to calculate the

of the credit authorized by Subsection (b), including a formula to calculate:

- (1) an insurer's or health maintenance organization's recoupment amount; and
- (2) the recoupment amount attributable to an insurer or health maintenance organization if the fees are imposed on a controlled group, as defined by Section 9010(c)(3), Affordable Care Act.

SECTION 2. Chapter 257, Insurance Code, is amended by adding Section 257.005 to read as follows:

Sec. 257.005. CREDIT FOR CERTAIN FEDERAL FEES PAID. (a) In this section:

(1) "Affordable Care Act" means the Patient Protection and Affordable Care Act (Pub. L. No. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

(2) "Recoupment amount" means the amount of health insurer provider fees under Section 9010, Affordable Care Act, that the insurer recoups, including amounts recouped through adjustments to the insurer's premium rate.

(b) An insurer is entitled to a credit on the amount of tax due under this chapter in a taxable year equal to the amount of the premium tax imposed in that year on the insurer's recoupment amount for that year.

(c) The commissioner by rule shall establish formulas to calculate the amount of the credit authorized by Subsection (b), including a formula to calculate:

- (1) an insurer's recoupment amount; and
- (2) the recoupment amount attributable to an insurer if the fees are imposed on a controlled group, as defined by Section 9010(c)(3), Affordable Care Act.

SECTION 3. The changes in law made by this Act apply only to a tax liability accruing on or after January 1, 2014.

SECTION 4. The comptroller of public accounts and commissioner of insurance shall adopt rules necessary to implement the changes in law made by this Act.

amount of the credit authorized by Subsection (b), including a formula to calculate:

- (A) an insurer's or health maintenance organization's provider fee amount; and
- (B) the provider fee amount attributable to an insurer or health maintenance organization if the fees are imposed on a controlled group, as defined by Section 9010(c)(3), Affordable Care Act; and
- (2) identify the lines of business, other than the business of life insurance, included in the calculation of the nationwide health premium or revenue amount.

No equivalent provision.

SECTION 2. The changes in law made by this Act apply only to a tax liability accruing on or after January 1, 2020.

SECTION 3. Same as introduced version.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

SECTION 4. This Act takes effect September 1, 2017.