

BILL ANALYSIS

Senate Research Center

S.B. 1367
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Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Issue: Businesses are requesting insurance products that are responsive to ever-evolving risks, and market-oriented reforms will facilitate robust product offerings.

- Competition is maximized by a regulatory system that promotes an open private insurance market and focuses regulatory attention on protecting consumers and overseeing the financial solvency of insurers.
- In an era of quickly advancing technology and innovation, businesses are asking for a more robust range of insurance products at competitive prices that will allow them to keep pace with the ever-evolving environment and better address their individual risk needs.
- Unfortunately, regulatory filing and review requirements can limit the range of available product choices by discouraging new market entrants, making it harder for existing competitors to develop new products, and slowing the speed at which much-needed innovative products can reach the marketplace.

Solution: Under this proposal, specialty business insurance products and most transactions negotiated by larger businesses would be exempt from the policy form and rate filing and review requirements.

- The large risk exemption language is a recommendation included in the Texas Department of Insurance (TDI) biennial report.
- Thirty-four (34) states currently have similar exemptions for rate filings in force via statute or administrative action.
- Due to the policy premium amount and asset/revenue thresholds subject to the exemption, these policies largely involve two sophisticated parties engaging in arms-length product negotiations.
- The specialty lines exemption concept is in place to some extent or another in the majority of states and is based on the premise that specialty lines products are purchased by businesses in need of a specific product and by those involved in sophisticated negotiations with insurers through the use of brokers. "Bread and butter" insurance products purchased by small businesses—e.g., workers' compensation and non-fleet automobile insurance—would remain subject to TDI filing and review requirements.

S.B. 1367 exempts certain insurance products for large commercial risks from rate filing and review requirements, consistent with the currently existing exemption from form filing requirements for those same risks. It also exempts 17 specialty commercial insurance lines from rate and form filing requirements. Combined, these changes will ensure a more robust and competitive marketplace, giving businesses greater access to commercial insurance products, all while retaining ultimate TDI oversight.

(Original Author's / Sponsor's Statement of Intent)

S.B. 1367 amends current law relating to the regulation of commercial property and casualty insurance and insurance for certain large risks.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 3 (Section 2251.0031, Insurance Code) and SECTION 6 (Section 2301.0031, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 981.004, Insurance Code, by adding Subsection (g), as follows:

(g) Provides that, except with respect to a line of insurance for which the commissioner of insurance (commissioner) has temporarily reinstated the requirements for rate and form filings under Section 2251.0031(d) or 2301.0031(d), Subsections (a)(1) (relating to the authority of an eligible surplus lines insurer to provide surplus lines insurance only if the full amount of required insurance cannot be obtained from an authorized insurer) and (b) (relating to the authority of an eligible surplus lines insurer to provide surplus lines insurance only in the amount that exceeds the amount of insurance obtainable from authorized insurers) do not apply to an insurance policy issued by an eligible surplus lines insurer for any line of the kinds of insurance described by Sections 2251.0031(a) and 2301.0031(a) or exempted under Section 2251.0031(c) or 2301.0031(c).

SECTION 2. Amends Section 2251.003(b), Insurance Code, as follows:

(b) Creates an exception under Section 2251.0031 to the provision that certain subchapters apply to all lines of certain kinds of insurance written under an insurance policy or contract issued by an insurer authorized to engage in the business of insurance in this state. Makes a nonsubstantive change.

SECTION 3. Amends Subchapter A, Chapter 2251, Insurance Code, by adding Section 2251.0031, as follows:

Sec. 2251.0031. EXCEPTIONS FOR CERTAIN LINES. (a) Provides that, except as provided by Subsection (d), Subchapter C (Rate Filings) does not apply to any line of certain kinds of insurance written under a commercial insurance policy or contract issued by an insurer authorized to engage in the business of insurance in this state.

(b) Defines "highly protected commercial property."

(c) Authorizes the commissioner by rule to exempt a commercial line of insurance or commercial risk not listed in Subsection (a) from the rate filing requirements of Subchapter C to promote enhanced competition or more effectively use the resources of the Texas Department of Insurance (TDI) that might otherwise be used to review commercial lines filings.

(d) Authorizes the commissioner, notwithstanding Subsection (a), to temporarily require rate filings under Subchapter C for a specific kind of insurance listed in Subsection (a) for a period of not longer than one year if, after notice and hearing, the commissioner issues an order that includes a finding that a reasonable degree of competition does not exist for that specific kind of insurance and that specifies the relevant tests and test results used to determine the degree of competition for that kind of insurance.

(e) Provides that, in the absence of a finding described by Subsection (d) with respect to a specific kind of insurance, a competitive market is presumed to exist for that kind of insurance.

(f) Authorizes the commissioner to adopt reasonable and necessary rules to implement this section.

SECTION 4. Amends Section 2251.101, Insurance Code, by adding Subsection (c), as follows:

(c) Provides that Section 2251.101 (Rate Filings and Supporting Information) does not apply to rates for use with an insured that has total insured property values of \$5 million or more, has total annual gross revenues of \$10 million or more, or has a total premium of \$25,000 or more for property insurance, \$25,000 or more for general liability insurance, or \$50,000 or more for multi-peril insurance.

SECTION 5. Amends Section 2301.003(b), Insurance Code, as follows:

(b) Creates an exception under Section 2301.0031 to the provision that Subchapter A (Policy Forms Generally) applies to all lines of certain kinds of insurance written under an insurance policy or contract issued by an insurer authorized to engage in the business of insurance in this state. Makes a nonsubstantive change.

SECTION 6. Amends Subchapter A, Chapter 2301, Insurance Code, by adding Section 2301.0031, as follows:

Sec. 2301.0031. EXCEPTIONS FOR CERTAIN LINES. (a) Provides that, except as provided by Subsection (d), Sections 2301.006 (Filing and Approval of Forms), 2301.007(a) (relating to the authority of the commissioner to disapprove an insurance policy form or printed endorsement form that meet certain criteria) and (b) (relating to the authority of the commissioner, for good cause shown, to withdraw approval of a form after notice and hearing), and 2301.008 (Adoption and Use of Standard Forms) do not apply to any line of certain kinds of insurance written under a commercial insurance policy or contract issued by an insurer authorized to engage in the business of insurance in this state.

(b) Defines "highly protected commercial property."

(c) Authorizes the commissioner by rule to exempt a commercial line of insurance or commercial risk not listed in Subsection (a) from the form filing requirements of Subchapter A to promote enhanced competition or more effectively use the resources of TDI that might otherwise be used to review commercial lines filings.

(d) Authorizes the commissioner, notwithstanding Subsection (a), to temporarily impose the requirements of Sections 2301.006, 2301.007(a) and (b), and 2301.008 for a specific kind of insurance listed in Subsection (a) for a period of not longer than one year if, after notice and hearing, the commissioner issues an order that includes a finding that a reasonable degree of competition does not exist for that specific kind of insurance and that specifies the relevant tests and test results used to determine the degree of competition for that kind of insurance.

(e) Provides that, in the absence of a finding described by Subsection (d) with respect to a specific kind of insurance, a competitive market is presumed to exist for that kind of insurance.

(f) Authorizes the commissioner to adopt reasonable and necessary rules to implement this section.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 2021.