

BILL ANALYSIS

C.S.H.B. 1239
By: Oliverson
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Some insurance companies are being pressured to refuse to insure the fossil fuel industry, and several energy companies report that it is becoming increasingly difficult to obtain insurance. Others report that they are being denied insurance coverage based on their political beliefs. Insurance companies are highly skilled in evaluating risk, and these external pressures on their ability to make business decisions may negatively affect both insurance companies and those seeking coverage. C.S.H.B. 1239 seeks to combat this issue by prohibiting any insurance company doing business in Texas from using environmental, social, or governance factors as a basis for ratemaking or in making a coverage decision.

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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1239 amends the Insurance Code to set out provisions regarding the consideration by insurers of certain prohibited criteria for ratemaking and coverage decisions and the use of disparate impact analysis regarding certain insurance practices.

Prohibited Rating and Coverage Criteria

C.S.H.B. 1239 sets out provisions for the purpose of regulating the use of environmental, social, or governance models, scores, or standards to define acts or practices that may be unfair discrimination in the business of insurance in Texas. The bill establishes legislative findings relating to the use of such models, scores or standards by numerous entities for evaluating financial risks for investments or encouraging or discouraging business dealings or investments and the potential adverse affects of the refusal to deal with certain businesses or risks based on the use of such models, scores, or standards without an ordinary insurance business purpose. Accordingly, the bill prohibits an insurer from doing the following with respect to an insurance policy issued and delivered by an insurer in Texas:

- using an environmental, social, or governance model, score, or standard to:
 - refuse to insure or provide insurance coverage to a business or risk in Texas; or
 - charge a rate different than the rate charged to another business or risk in the same class for essentially the same hazard; or

- refusing to deal with, terminating business activities with, or otherwise taking action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company or risk solely because the company or risk engages in:
 - exploration, production, use, transportation, sale, or manufacturing of fossil fuel-based energy;
 - mining;
 - agriculture;
 - timber; or
 - the firearm industry.

An insurer does not violate this prohibition if the insurer's actions are based on an ordinary insurance business purpose, including the use of sound actuarial underwriting principles, or financial solvency considerations reasonably related to loss experience for the different types of risk and coverages made available by a particular insurer. The bill defines "insurer" for purposes of its prohibited rating and coverage criteria provisions as an insurance company or other entity authorized to engage in the business of insurance in Texas, including those specifically mentioned in the bill. Those provisions do not apply to crop insurance or to fidelity, guaranty, and surety bonds.

C.S.H.B. 1239 expressly does not require the filing of rates for any line, type of insurer, or type of insurance business that is not specifically required by statute to file rates with the Texas Department of Insurance (TDI). The bill prohibits TDI from conducting or requiring an insurer to conduct a disparate impact analysis under the bill's prohibited rating and coverage criteria provisions regarding rating, underwriting, or another insurance practice unless specifically required by statute. The bill defines "disparate impact analysis" as an analysis of whether a neutral practice that is not unfairly discriminatory results in an unintentional impact on a legally protected group.

C.S.H.B. 1239 requires its prohibited rating and coverage criteria provisions to be construed and applied to promote the purposes provided in the bill and prohibits those provisions from being construed or applied to require an insurer to write any line or type of business that the insurer does not write or to require a material change in the insurer's current business plans. The bill establishes that nothing in those provisions is intended to do the following:

- create any type of private cause of action or independent basis in a civil or criminal proceeding;
- prohibit the use of information that is relevant and related to the risk being insured even if that information may also be used or considered in developing an environmental, social, or governance model, score, or standard; or
- authorize TDI to adopt any rule, model, or standard requiring an insurer to use any environmental, social, or governance model law, regulation, or other standard that has not been specifically authorized by statute, including:
 - a rule, model, or standard required under any federal law that does not preempt state law under the federal McCarran-Ferguson Act; or
 - a rule, model, or standard required by any national organization, including the National Association of Insurance Commissioners, that has not been specifically authorized by statute.

C.S.H.B. 1239 applies its prohibited rating and coverage criteria provisions only to an insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2024.

Disparate Impact Analysis Prohibited

C.S.H.B. 1239 prohibits TDI from requiring an insurer to engage in a disparate impact analysis regarding rating, underwriting, or an insurance practice prohibited by the Insurance Code, unless specifically required by statute.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 1239 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Both the introduced and substitute prohibit the use of environmental, social, and governance criteria by an insurer for certain purposes. However, whereas the introduced prohibited an insurer from considering, when establishing rates, a customer's environmental, social, and governance score that is based on measuring a customer's exposure to long-term environmental, social, and governance risks, the substitute prohibits an insurer from using an environmental, social, or governance standard to:

- refuse to insure or provide insurance coverage to a business or risk in Texas; or
- charge a rate different than the rate charged to another business or risk in the same class for essentially the same hazard.

The introduced included a provision that is not in the substitute prohibiting an insurer from considering, when establishing rates, a customer's consideration of diversity, equity, and inclusion factors.

The substitute includes a provision that was not in the introduced prohibiting an insurer from refusing to deal with, terminating business activities with, or otherwise taking action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company or risk solely because the company or risk engages in certain industries.

The substitute revises the list of entities specifically included in the bill's definition of "insurer" by omitting a nonprofit legal services corporation and a risk retention group, which were included in the introduced, and adding a stipulated premium company, which was not.

The substitute includes provisions absent from the introduced that provide for the following:

- the bill's purpose and related legislative findings;
- an exception for insurers whose actions are based on an ordinary insurance business purpose or certain financial solvency considerations;
- prohibitions against disparate impact analysis and the definition of that term;
- the bill's applicability, including an exemption for certain bonds and crop insurance and a specification that the bill does not require rate filing; and
- construction of the bill's provisions, including what the bill is not intended to do.