

BILL ANALYSIS

H.B. 2017
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Insurance
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Regulations often thwart new business ideas and innovations by either prohibiting the innovations or imposing significant burdens that are difficult for smaller businesses to overcome. While affected businesses may seek legislative change, such efforts also impose burdens on those businesses. This regulatory burden is arguably greater in Texas than most states, as Texas has the fifth highest number of regulatory restrictions in the nation according to the Mercatus Center at George Mason University. The National Council of Insurance Legislators recently adopted a model law for states to consider that would create a system in which businesses may apply for and receive a temporary waiver of insurance regulations for innovative products and services. Other states, such as Utah and Florida, have enacted laws to provide for these innovation waivers, which temporarily relieve businesses of certain regulations to reduce barriers to market innovation. However, under such a waiver, the appropriate regulators oversee business operations to ensure the waiver terms are met and the public is protected. H.B. 2017 seeks to help Texas compete with other states in encouraging business innovation by creating a system for insurance innovation waivers in Texas similar to the model law.

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

H.B. 2017 amends the Insurance Code to create a regulatory sandbox that provides exemptions from compliance with certain insurance laws, regulations, and requirements through the use of innovation waivers.

Authority to Grant Waivers

H.B. 2017 authorizes the commissioner of insurance to grant a waiver, including a variance, with respect to any specific insurance law, regulation, or requirement if a person subject to that law, regulation, or requirement demonstrates the following to the commissioner's satisfaction:

- application of the provision would prohibit the introduction of an innovative or more efficient insurance product or service that the applicant intends to offer during the period for which the proposed waiver is granted;
- the public policy goals of the provision will be or have been achieved by other means;
- the waiver will not substantially or unreasonably increase any risk to consumers; and

- the waiver is in the public interest.

H.B. 2017 prohibits the commissioner from granting a waiver with respect to the following:

- any law, regulation, or requirement that is not subject to the commissioner's jurisdiction or that concerns the assets, deposits, investments, capital, surplus, or other solvency requirements applicable to insurers;
- any law, regulation, or requirement that is required for the Texas Department of Insurance (TDI) to maintain its accreditation by the National Association of Insurance Commissioners, unless the law or regulation permits variances or waivers;
- the required participation in any assigned risk plan, residual market, or guaranty fund;
- any applicable Insurance Code provisions related to insurer authorization requirements or insurance trade practices;
- the application of any taxes or fees; or
- any other law, regulation, or requirement determined ineligible by the commissioner.

The authority granted to the commissioner to grant a waiver may not be construed to allow the commissioner to grant or extend a waiver that would abridge a consumer's recovery rights or limit or otherwise affect the commissioner's authority to exercise discretion to waive or enforce requirements as permitted under any other law.

Application and Financial Requirements for Waiver

H.B. 2017 requires an application for a waiver to be in the form and manner prescribed by the commissioner and to include the following:

- the identities of the applicant and its directors and executive officers, any beneficial owners of 10 percent or more of the applicant's voting securities, and any individuals with authority to direct the applicant's management and policies;
- a description of the product or service to be offered if the waiver is granted, including how it functions and the manner and terms under which it will be offered, and its potential benefits to consumers;
- a description of the potential risks to consumers posed by the product or service or the approval of the proposed waiver and how the applicant proposes to mitigate such risks;
- an identification of each statutory or regulatory provision that prohibits the introduction, sale, or offering of the product or service;
- a filing fee in an amount determined by the commissioner; and
- any additional information required by the commissioner.

H.B. 2017 requires a person who receives a waiver to possess or obtain one or a combination of the following forms of security in an amount and subject to conditions and purposes determined by the commissioner to be necessary for the protection of consumers:

- a contractual liability insurance policy;
- a surety bond issued by an authorized surety;
- securities of the type eligible for deposit by authorized insurers in Texas;
- evidence that the person has established an account payable to the commissioner in a federally insured financial institution in Texas and has deposited U.S. currency in an amount equal to the amount required by the commissioner that is not available for withdrawal except by direct order of the commissioner;
- a letter of credit issued by a qualified U.S. financial institution; or
- another form of security authorized by the commissioner.

Waiver Terms and Limitations, Length, and Revocation

H.B. 2017 requires a waiver to include any terms and limitations determined appropriate by the commissioner, including limits on the amount of premium that may be written in relation to the underlying product or service and the number of consumers that may purchase or use the underlying product or service. A violation of those terms and conditions is considered a violation

of the bill for enforcement purposes. The bill caps the number of consumers to whom a waiver recipient may sell or provide a product or service subject to the waiver at 10,000 consumers.

H.B. 2017 limits the initial period for which the commissioner may grant a waiver to 12 months but provides for the commissioner's authority to grant a one-time extension, not to exceed an additional 12 months, before the end of the initial period if the waiver recipient submits an application that meets certain requirements. The bill exempts the commissioner's decision to grant or deny a waiver or extension from the contested case provisions of the Administrative Procedure Act. The bill authorizes the commissioner to revoke a waiver if the waiver is causing consumer harm or if the person who obtains the waiver fails to comply with the bill's provisions, a rule adopted under those provisions, or any terms or limitations for the waiver established by the commissioner. The bill requires the waiver recipient, on the waiver's expiration or revocation, to cease all activities that were permitted only as a result of the waiver and to comply with all applicable laws.

Notice and Disclosure Requirements

H.B. 2017 requires the commissioner to provide certain public notice of a proposed waiver, not later than the 30th day before the date the commissioner grants a waiver, and of the existence of a granted waiver, which may be satisfied by publication on TDI's website, by providing certain information about the waiver and any additional information considered appropriate by the commissioner. The bill requires a product or service offered under a granted waiver to include the following written disclosures to consumers in a clear and conspicuous form:

- the name and contact information of the person providing the product or service;
- that the product or service is authorized under an innovation waiver for a temporary period of time and may be discontinued at the end of the waiver period, the date of which must be specified;
- contact information for TDI, including the method for a consumer to file a complaint with TDI regarding the product or service; and
- any additional disclosures required by the commissioner.

Report

H.B. 2017 requires the commissioner, not later than January 1 of each year, to submit a report to the governor, lieutenant governor, speaker of the house of representatives, and chairs of the house and senate standing committees with primary jurisdiction over TDI providing the following information:

- the total number of waiver applications that have been received, granted, and denied by the commissioner;
- the information required to be included in the commissioner's public notice for each waiver granted;
- a list of any regulations or requirements that have been adopted or amended as a result of or in connection with a granted waiver;
- with respect to each law to which a waiver applies, the commissioner's recommendation as to whether that law should be continued, repealed, or amended to promote innovation and establish a uniform regulatory system for all regulated entities; and
- a list of any applicable waivers that have lapsed or been revoked, and, if revoked, a description of other regulatory or disciplinary actions, if any, that resulted in, accompanied, or resulted from that revocation.

Implementation Provisions

H.B. 2017 authorizes the commissioner to enter into agreements with other states that have enacted laws that are substantially similar to the bill's provisions to advance the bill's purposes and facilitate the consideration of waiver applications from persons who have satisfied the bill's requirements and received similar waivers in other states. The bill requires the commissioner to

adopt rules necessary to implement the bill's provisions, including rules adopting procedures for the submission, granting, denying, monitoring, and revocation of a waiver, and requires the rules to do the following:

- provide requirements for the ongoing monitoring, examination, and supervision of, and reporting by, each person granted a waiver;
- permit the commissioner to impose reasonable terms or limitations on the conduct permitted under a waiver;
- provide for an expedited application process for a product or service that is substantially similar to one for which a waiver has previously been granted by the commissioner; and
- include an opportunity for public comment on proposed waivers under consideration by the commissioner.

EFFECTIVE DATE

September 1, 2023.