

## **BILL ANALYSIS**

C.S.H.B. 2752  
By: Schaefer  
Insurance  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

A recent push by the insurance industry to promote and include environmental, social, and governance ratings within their risk assessments have Texans and their businesses concerned. The ratings provide information to market participants about the relation between corporations and non-investor stakeholders' interests. The information may be used to make investment decisions, while corporations may use it to gain feedback on the quality of their sustainability initiatives. The rating providers have come under scrutiny over concerns of the reliability of their assessments. Insurance providers market their products to individual risks or corporate business risks. At present, these ratings are not done on an individual level, but insurers do make investments, and risk assessments play a role in the cost a business or individual pays for coverage. To ensure there is proper oversight of insurance in Texas, placing limitations on the Texas Department of Insurance (TDI) rulemaking authority regarding these ratings is necessary to avoid future risk. C.S.H.B. 2752 seeks to provide for these limitations by prohibiting the commissioner of insurance from adopting certain rules relating to environmental, social, and governance assessments and from requiring an insurer to comply with certain rules, regulations, directives, or standards that were developed using environmental, social, or governance ratings.

### **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. 2752 amends the Insurance Code to prohibit the commissioner of insurance from requiring an insurer to comply with a rule, regulation, directive, or standard, including an accounting standard, adopted by the National Association of Insurance Commissioners (NAIC) if it is developed using a model, rating, or standard that measures and considers environmental, social, and governance assessments unless application of the rule, regulation, directive, or standard is expressly authorized by statute.

C.S.H.B. 2752 prohibits the commissioner from adopting or enforcing a rule that meets the following criteria:

- the rule was developed by an entity that is not licensed or regulated by the Texas Department of Insurance, NAIC, or an entity of this state or the federal government other than those two entities, that regulates the practice of insurance;
- the rule may affect the authority of this state to regulate the practice of insurance in Texas; and

- the adoption or enforcement of the rule is not specifically authorized by statute.

The bill authorizes a person to file an action for declaratory judgment challenging the adoption of a rule on the basis that the rule was adopted in violation of the bill's prohibition. The bill establishes that such an action is governed by the Administrative Procedure Act and makes a rule that the court determines was adopted in violation of the bill's prohibition invalid. The bill's prohibition applies only to a rule that does the following:

- implements or is based on an interstate, national, or international model, rating, or standard, including an accounting standard, that measures and considers environmental, social, and governance assessments;
- is intended to protect the environment, evaluate the effect of a particular entity or industry on the environment, or encourage an entity to engage in specific activities or behaviors in response to environmental concerns; and
- may materially affect in an adverse manner the Texas economy or a sector of the Texas economy, the productivity and competitiveness of an entity doing business in Texas, the number of people employed in Texas, or the health and safety of Texas residents.

C.S.H.B. 2752 establishes that, for purposes of its provisions, a version of a rule, regulation, directive, or standard is expressly authorized by statute if the statute explicitly authorizes the commissioner to adopt rules consistent with the rule, regulation, directive, or standard or that version is the latest version of the rule, regulation, directive, or standard on the date that the statute was enacted. The bill defines the following terms:

- "environmental assessment" as an assessment of the response by or vulnerability of an entity to climate change, including the extent of the entity's exposure to harm from climate-related factors;
- "governance assessment" as an assessment of the ethical or moral principles that influence the corporate governance of an entity, including the structure and composition of the governing board, ownership structure, employee and officer pay policy, and accounting methodology of the entity; and
- "social assessment" as the following
  - the human capital management practices of an entity, including employment practices, employee training and development, employee safety, and the selection of suppliers and vendors based on preferred labor standards;
  - the potential for an entity's products to directly or indirectly cause physical or financial harm to persons or to identified groups of persons, including harm caused by quality control or safety failures and the unintentional or unauthorized release of personal identifying information held by the entity;
  - an entity's willingness to invest its earnings or reserves to improve the quality and safety of the entity's management practices and products and mitigate any negative effect those practices and products may have on consumers and the environment; or
  - any other factor relating to the social effect of the entity's practices or products, including opposition to those practices and products and their effect on the supply chain.

C.S.H.B. 2752 applies only to a proposed rule for which notice is filed with the secretary of state under the Administrative Procedure Act on or after the bill's effective date.

**EFFECTIVE DATE**

September 1, 2023.

**COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 2752 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.

Whereas the introduced required the commissioner of insurance to enter into the formal rulemaking process for the adoption of a rule to require compliance with a rule, regulation, directive, or standard adopted by NAIC if a rule relates to environmental, social, or governance matters, or is otherwise substantive in nature, the substitute does not contain that requirement and instead sets out the following provisions, none of which were present in the introduced:

- a prohibition against the commissioner requiring an insurer to comply with a rule, regulation, directive, or standard adopted by NAIC if it is developed using a model rating or standard that measures and considers environmental, social, and governance assessments unless application of it is expressly authorized by statute;
- a prohibition against the commissioner adopting or enforcing an applicable rule that, among other criteria, measures and considers environmental, social, and governance assessments, may affect the authority of this state to regulate insurance, and whose adoption or enforcement is not specifically authorized by statute;
- an authorization for a person to file an action for declaratory judgement challenging the adoption of a rule on the basis it was adoption in violation of that prohibition;
- provisions establishing the criteria of a rule to which the bill's provisions apply;
- definitions for "environmental assessment," "governance assessment," and "social assessment";
- a provision establishing that for the bill's purposes, a version of a rule, regulation, directive, or standard is expressly authorized by statute if the statute explicitly authorizes the commissioner to adopt rules consistent with the rule, regulation, directive, or standard or that version is the latest version of the rule, regulation, directive, or standard on the date that the statute was enacted; and
- a provision establishing that the bill's provisions apply only to a proposed rule for which notice is filed with the secretary of state on or after the bill's effective date.

Whereas the introduced provided for the bill's possible immediate effect, contingent on receiving the requisite constitutional vote, the substitute changes the bill's effective date to provide only for the bill to take effect September 1, 2023, with no possibility for immediate effect.