

- SUBJECT:** Reserves and rate-making procedures for credit life and health insurance
- COMMITTEE:** Insurance— committee substitute recommended
- VOTE:** 5 ayes — G. Lewis, Moreno, Olivo, Seaman, Thompson
- 1 nay — Burnam
- 2 present not voting — Smithee, Eiland
- 1 absent — Averitt
- WITNESSES:** For — Will Davis, Jay Thompson, Texas Association of Life and Health Insurers; Hector DeLeon, Service Life and Casualty Insurance Co.
- Against — Rob Schneider, Consumers Union - Southwest Regional Office
- On — Rod Bordelon, OPIC
- BACKGROUND:** Insurance Code, art. 3.53, sec. 8 allows the insurance commissioner, after notice and a hearing, to set presumptive rates for insurance that would pay an insured's consumer debt upon their death (credit life) or would make the monthly payments on an insured's consumer debt if the insured was ill or disabled and unable to work (credit health). The commissioner must consider, among other things, reasonable administrative expenses, commissions to agents, and reserve requirements in setting the presumptive rates. The commissioner's rates are presumed to be reasonable, and the insurer is required to charge the presumptive rate unless the insurer rebuts the presumption of reasonableness. Sec. 8 also provides the method for appealing a presumptive rate under Insurance Code, art. 1.04.
- DIGEST:** CSHB 2159 would establish new procedures for opposing the presumptive rate set by the Texas Department of Insurance (TDI) for credit life or credit health insurance. The bill would make TDI's setting of a presumptive rate a matter of rulemaking, not a contested case. Once the presumptive rate was set, the insurer would have several options.

First, the bill would permit the insurer to file a lawsuit seeking judicial review, but would set a time limit for filing such a suit of no later than 30 days after the commissioner adopted the presumptive rate order.

Second, within 30 days of the date that the presumptive rate was made, the bill would allow the insurer to file a proposed rate. If that proposed rate was within 30 percent of the presumptive rate, the insurer would be allowed to charge it, unless the commissioner held a hearing to determine that the proposed rate met the requirements of the Insurance Code. The bill would define such a hearing as a contested case. If the commissioner found that the proposed rates did not meet the requirements, then the commissioner could enter an order suspending the rate, stating the reasons for the suspension and setting a date after which the insurer would have to charge the presumptive rate. The bill would preserve the insurer's right to file a new rate if the commissioner suspended the insurer's proposed rate.

If the proposed rate differed from the presumptive rate by more than 30 percent, the commissioner could disapprove the proposal within 60 days. If the commissioner did not disapprove the proposed rate, then it would be presumed acceptable.

The bill would allow the insurer to seek judicial review of the commissioner's disapproval of a proposed rate. The appeal would be governed by Insurance Code, ch. 36, subchapter D, which provides rules for seeking judicial review.

CSHB 2159 also would set guidelines for when a proposed rate was acceptable. Specifically, a rate would not be excessive unless it was both unreasonably high for the coverage provided and there was a lack of competition for writing that type of policy. A rate would not be too low unless it was either insufficient to cover the insurer's projected claims and expenses or the rate would be likely to substantially impair competition for that form of insurance.

Finally, the bill would modify the amount of minimum reserves that an insurer must have to issue credit life insurance by reducing the required reserves that an insurer must maintain to an amount equal to the insurers' expenses and their expected losses according to the commissioner's

mortality tables, plus no more than 5.5 percent interest. The bill would preserve the commissioner's right to adopt new mortality tables by rule.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

**SUPPORTERS  
SAY:**

CSHB 2159 would provide needed procedures for insurers to propose rates that vary from the rates set by the insurance commissioner. Companies that write other forms of rate-regulated insurance, such as auto and home owner's insurance, currently are permitted to propose rates that are more or less than the commissioner's benchmark, and procedures exist for the commissioner to disapprove those rates. The procedures established by this bill would mirror those for auto and home owner's insurance rate-setting, the only other rate-regulated lines of insurance.

Further, CSHB 2159 properly would reduce the reserve requirement for credit life insurers. TDI has reduced premiums on these insurance products a great deal in recent years, but has not reduced the reserve requirements, which currently are set at 150 percent of expected losses and expenses. These high reserve requirements deter small insurers from entering and remaining in the market, which makes these products more expensive due to a lack of competition.

By making the commissioner's setting of presumptive rates a rulemaking proceeding instead of a contested case, the bill properly would open the process to public input. Rulemaking requires public notice and comment, and the hearings are not subject to evidentiary rules, while contested case proceedings are more like court proceedings. The only people who receive notice and may present testimony and arguments at contested case hearings are those who are parties to the case.

The bill would not impose any significant new costs on the state because TDI would increase its fees to cover any additional costs resulting from the bill.

**OPPONENTS  
SAY:**

CSHB 2159 erroneously assumes that market competition would pressure credit life and credit health insurers to keep rates low, when in fact the bill's

procedures would result in excessive rates. Unlike auto and home owner's insurance, for which consumers shop, credit life and credit health insurance is offered to consumers through retailers who sell merchandise on credit and offer the insurance to consumers on a "take it or leave it" basis. Thus, retailers have no incentive to offer consumers the policy with the lowest rate. Instead, the retailer's incentive is to offer the policy for which the retailer will receive the highest commission. Thus, giving these insurers the ability to charge more than the presumptive rate simply would allow insurers to compete to have the retailers offer their insurance through higher commissions that would result in higher premiums. Some estimate that the cost of the bill to consumers would be \$91 million per year.

Moreover, the bill's definition of reasonableness is so loose that commissioner effectively would be denied the ability to disapprove high rates. The insurance commissioner recently held hearings, considered all the factors that Insurance Code, art. 3.52, sec.8 requires, and determined that a 30 percent reduction in the rate for credit life and credit health was in order. This bill would overturn that rate-making by the commissioner. Insurance rates are set by the commissioner instead of the Legislature because the commissioner's process results in a fairer result that considers the position of all interested parties, including consumers. This bill would circumvent that process.

The bill's new procedures also would result in significant new duties for TDI and new financial costs to the state. The LBB estimates that the 7.5 new full-time equivalent employees that TDI indicates it would need to conduct the required hearings under the bill when rates were disapproved would cost between \$450,000 and \$500,000 per year.

NOTES:

The committee substitute increased the reserve requirements from the original bill's 75 percent to 100 percent and added the provision that the commissioner could adopt a new mortality table by rule.

The substitute also would require the commissioner to specify his findings and conclusions supporting the setting of a presumptive rate and would permit judicial review of the commissioner's decision instead maintaining the current law's appeal under the Insurance Code.

The substitute added provisions that the commissioner's hearings on a proposed rate be a contested case that would make judicial review of the determinations of such hearings governed by Insurance Code, sec. 36, subsection D.