SUBJECT: Allowing insurers to assess a premium surcharge for traffic violations

COMMITTEE: Insurance — favorable without amendment

VOTE: 7 ayes — Smithee, Seaman, Isett, Eiland, Keffer, Taylor, Van Arsdale

0 nays

2 absent — Oliveira, Thompson

WITNESSES: None

BACKGROUND: Insurance Code, art. 5.01-1 states that a rating plan for motor vehicle insurance, other than such insurance written in the assigned risk pool, may not cause premiums to increase because of a charge or conviction for a moving traffic violation. This law applies only to auto insurance written in the standard market. County mutual insurance companies, which traditionally have served the high-risk or non-standard market, never have been subject to this provision and can add rate surcharges for traffic violations.

T.A.C., title 37, part 1, sec. 15.89(b) lists 206 different moving traffic violations. These violations range from driving on a sidewalk and improper use of a turn indicator to leaving the scene of an accident and murder with a motor vehicle.

According to the Texas Department of Insurance (TDI), insurers writing auto insurance in the standard market can charge seven surcharges in their rates:

- one accident (at-fault) in 36 months — 15 percent;
- two accidents in 36 months — 35 percent;
- no license or license suspended — 35 percent;
- three accidents in 36 months — 60 percent;
- involuntary manslaughter — 60 percent;
- driving under the influence — 60 percent; or
- criminally negligent driving — 60 percent.

The Texas Automobile Insurance Plan Association (TAIPA) for high-risk drivers can add a surcharge of 15 percent for each moving violation, in addition to surcharges in the other seven categories.

In 2003, the Legislature enacted SB 14 by Jackson. Among its provisions, it requires county mutual insurance companies, effective December 1, 2004, to file their rating plans with TDI. Insurance companies need not receive prior approval before putting their rates into effect, but their rates are subject to TDI's review. The commissioner may disapprove a rate within 60 days if it is found to be excessive, inadequate, unfairly discriminatory, or unreasonable.

DIGEST:

HB 2286 would repeal Insurance Code, art. 5.01-1, allowing automobile insurers in the standard market to assess rate surcharges to premiums due to traffic violations.

The bill would take effect September 1, 2005, and would apply only to a rating plan for an automobile insurance policy effective on or after that date.

SUPPORTERS SAY:

HB 2286 would allow automobile insurers in the standard market to assess rate surcharges to premiums due to traffic violations. Under current law, insurers in the standard market are bound by a requirement that county mutual insurance companies writing personal auto insurance need not follow, which unfairly places standard market insurers at a disadvantage. One of the goals of SB 14, enacted last session, was to increase competition in the insurance market by requiring county mutual insurance companies to file their rates with TDI, alongside rates set by insurers in the standard market. The logical next step would be to give insurers in the standard market the same flexibility to set rates enjoyed by the county mutuals.

Factoring traffic violations into automobile insurance rating plans has an actuarial basis. A person's recklessness as a driver is directly related to an auto insurer's risk. Permitting surcharges for traffic tickets would not be unreasonable because driving habits are within the control of the insured driver. Besides, any surcharge imposed by an insurance company would have to be actuarially sound and subject to review by TDI as part of the insurer's rate filing.

People with good driving records would not have to pay more. In fact, the bill could create incentives for auto insurers to establish better prices for good drivers while stimulating competition in the market for high-risk coverage.

HB 2286 stems from a recommendation made by TDI to the 79th Legislature and would level the playing field in the Texas insurance market. County mutuals no longer should receive special treatment.

OPPONENTS SAY:

HB 2286 would remove a significant consumer protection afforded to Texas drivers for 26 years, weakening consumer protection in the name of a healthier insurance market. Under the guise of leveling the playing field, HB 2286 would impose more auto insurance rate increases on consumers.

SB 14 gave insurers more flexibility and freedom from oversight than ever before in Texas. Much of the promise of that legislation was that it would stimulate competition and result in lower rates. Drivers still are waiting for their auto premiums to decrease, however, and one study estimates that in 2004 insurers overcharged Texas drivers 19 percent, an average of $200 per vehicle. Allowing standard market insurers to tack surcharges on to premiums due to moving violations only would increase further the auto insurance rates paid by consumers.

Because the assigned risk pool can levy a 15 percent surcharge for each moving violation, it would not be unreasonable to conclude that this bill, by repealing the surcharge prohibition for traffic violations, could embolden insurers to impose such surcharges on all drivers, not just high-risk ones. With more than 200 moving violations on the books in Texas, otherwise good drivers soon might be paying significantly higher rates because of an infraction as minor as backing up improperly or using an incorrect turn signal.

OTHER OPPONENTS SAY:

Rather than repealing this surcharge provision, a better approach would be to remove county mutual insurance companies from rating requirements in Insurance Code, art. 5.13-2. County mutuals and TAIPA fill a legitimate need to insure high-risk drivers. Accordingly, the law should grant both the flexibility necessary to service that niche market.

NOTES:

A related bill, HB 1439 by Talton, which contains a provision that would repeal Insurance Code, art. 5.01-1, was heard on April 20 by the Subcommittee on Auto Insurance of the House Insurance Committee,

where it is pending. SB 398 by Averitt, the companion to HB 1439, was heard by the Senate Business and Commerce Committee on April 19 and left pending.