

SUBJECT: Changes to the residual market for workers' compensation insurance

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Smithee, Eiland, G. Bonnen, Creighton, Morrison, Muñoz, Sheets, Taylor, C. Turner

0 nays

WITNESSES: For — Bob Barnes, Texas Mutual Insurance Company; Ron Cobb, American Insurance Association; Richie Jackson, Texas Restaurant Association; Don Medlin; (*Registered, but did not testify*: Lee Ann Alexander, Liberty Mutual Insurance; Kathy Barber, National Federation of Independent Businesses/Texas; Mike Barron, Terry Frakes, and Richard Gergasko, Texas Mutual Insurance Company; Gloria Leal, Texas Alliance of Energy Producers; Lee Loftis, Independent insurance Agents of Texas; John Marlow, ACE Group; Mari Ruckel, Texas Oil and Gas Association; Kandice Sanaie, Texas Association of Business; Michael White, Texas Construction Association)

Against — Joe Woods, Property Casualty Insurers Association of America

On — Jay Thompson, Association of Fire and Casualty Companies in Texas; (*Registered, but did not testify*: Rod Bordelon, Texas Department of Insurance-Division of Workers' Compensation; Nancy Moore, Texas Department of Insurance)

BACKGROUND: In 1991 the 72nd Legislature created the Texas Workers' Compensation Insurance Fund to stimulate competition in the workers' compensation insurance market, to guarantee the availability of workers' compensation insurance, and to serve as the state's insurer of last resort for businesses that were unable to find coverage elsewhere.

In 2001, the 77th Legislature changed the company's name to the Texas Mutual Insurance Company and authorized it to operate as a domestic mutual insurance company owned by its employer policyholders. Among other provisions, it reduced the number of gubernatorial appointees on the nine-member board of directors from nine to five, removed the company from Sunset Review, and eliminated the attorney general's oversight. In

2003, the 78th Legislature removed the state auditor's oversight of Texas Mutual, and in 2007, the 80th Legislature made the company exempt from open meetings and open records requirements.

DIGEST:

CSHB 1833 would modify the workers' compensation system by converting the Texas Mutual Insurance Company to a private mutual insurance company, establishing an assigned risk program, and creating accident prevention provisions within the program.

**Texas Mutual Insurance Company.** CSHB 1833 would require the Texas Mutual Insurance Company to hold a meeting of its employer policyholders by December 31, 2014 to elect a new board of directors to govern the company. The new board would replace the existing board beginning January 1, 2015.

By January 1, 2015, the board of directors would be required to file with the commissioner of insurance restated articles of incorporation. The corporate existence of the Texas Mutual Insurance Company would continue, and its assets, liabilities, licenses, contracts, and its certificate of authority existing before January 1, 2015 would remain in full force and effect.

The bill would repeal ch. 2054 of the Insurance Code, which specifically governs Texas Mutual, and would transfer its operations to Insurance Code, ch. 883, which governs mutual insurance companies that do not issue life insurance. Texas Mutual would be not be subject to any obligations that do not apply to, nor given any advantages over, other mutual insurance companies.

**Assigned risk program.** CSHB 1883 would require the commissioner of insurance to establish by rule an assigned risk program through which residual market employers who otherwise would be unable to obtain workers' compensation insurance could obtain it.

The commissioner would require each workers' compensation insurer to participate in the residual market in proportion to its share of the state's workers' compensation market. The commissioner could provide for an insurer's participation by directly assigning residual policies, requiring contributions to a reinsurance pool, or through another risk distribution mechanism.

The commissioner would approve the assigned risk program's plan of operation, which would specify criteria and procedures for obtaining insurance through the program, provide for its implementation, and equitably distribute risk among insurers.

CSHB 1833 would require the commissioner to contract with a statistical agent to administer the assigned risk program. The statistical agent would file rates for insurance obtained through the program, along with any supporting information, with the Texas Department of Insurance (TDI). Rates in the program would be required to be actuarially sound, to enable the program to be self-sustaining, and would be prohibited from being excessive, inadequate, or unfairly discriminatory.

**Accident prevention.** CSHB 1833 would allow an insurer within the assigned risk program to enforce requirements for the prevention of injuries to an employee of a policyholder. After giving appropriate notice, insurers would be allowed free access to the policyholder's workplace during working hours. Refusal to grant access would constitute grounds for canceling a policy or application.

The bill would establish criteria for classifying an employer as a higher risk policyholder and would require that such a policyholder obtain a safety consultation within 30 days of the policy's effective date. The safety consultant would either be an insurance carrier, the TDI-Division of Workers' Compensation (TDI-DWC), or a professional source approved by the division.

The safety consultant would be required to file a written report with TDI-DWC specifying any hazardous condition identified. A policyholder would then be required to develop with the safety consultant a specific accident prevention plan or have an existing plan approved by the consultant.

CSHB 1833 would permit TDI-DWC to monitor the implementation of the accident prevention plan and to investigate an accident at a work site in which an accident prevention plan had been developed. Between 90 days and six months after a plan's development, the division would be required to conduct a follow-up inspection of a policyholder's premises. Employers complying with the terms of the plan would be certified as in compliance. Those determined not to be implementing the plan could cancel their workers' compensation coverage, or they would have their coverage

cancelled by their insurer or receive an administrative penalty of up to \$5,000 per day.

The bill would allow TDI-DWC to charge a policyholder for the reasonable costs of a safety consultation, follow-up inspection, and administration of penalties.

**Effective date.** CSHB 1833 would take effect September 1, 2013. As soon as practicable afterwards, but no later than January 1, 2015, the commissioner of insurance would be required to adopt rules to implement the assigned risk program. As soon as practicable after Texas Mutual elected a new board of directors and filed articles of incorporation, the commissioner would be required to take any action necessary to reflect the fact that Texas Mutual was a mutual insurance company under Insurance Code, ch. 883.

SUPPORTERS  
SAY:

CSHB 1833 would provide needed independence for the Texas Mutual Insurance Company and further stabilize the workers' compensation system.

Texas Mutual was created in response to a crisis in the workers' compensation system and was never intended to be an ongoing state responsibility. Complete separation from the state through a new board of directors and reincorporation as a true mutual insurance company would allow the company's 54,000 policyholders to have complete control of board elections and would insulate it from the changing dynamics of the state's political system. The bill would be an extension of previous steps toward company independence that have proven successful.

The bill's assigned risk program would make the residual market more stable and sustainable because it would spread risk throughout all workers' compensation carriers. This would provide the system with a much needed safety net should the current business climate deteriorate at any point.

CSHB 1833's accident prevention measures would improve the insurance market's efficiency by establishing clear risk-signaling procedures applicable to all of the state's workers' compensation insurers and policyholders. It also would provide employers with needed support to reduce the risk of workplace injuries, which would be an added protection for employees and would lower employers' insurance costs in the long-term.

OPPONENTS  
SAY:

CShB 1833 would be an unnecessary and destabilizing revision to Texas' workers' compensation system.

Texas Mutual is effective in ensuring employer access to insurance while containing employer medical costs. TDI recently reported that injury rates in Texas continue to decline below the national average while the state's return-to-work rates are at an eight-year high. There is no reason to risk this record of success by modifying Texas Mutual's governance structure.

For example, if the state were to relinquish its ties to the company, there is no guarantee it would remain a mutual insurance company. The board of directors could convert it to a stock company, in which case it would have more latitude to divest assets as it pleased, possibly reducing money for losses and potentially resulting in less coverage in the Texas workers' compensation market.

The assigned risk program also would introduce a destabilizing risk to the system by requiring that all insurers participate in the residual market. This could increase costs for carriers and employers and upset the workers' compensation insurance market.

CShB 1833's accident prevention program would be a burdensome government mandate on employers. It would be more efficient to allow the free market to determine risk levels of individual policyholders without pre-determining the mechanisms for it to do so.