

BILL ANALYSIS

Senate Research Center

H.B. 3458
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Business & Commerce
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Engrossed

DIGEST AND PURPOSE

In 1991, the legislature created the Texas Workers' Compensation Insurance Fund (fund) to serve as a competitive force in the marketplace, guarantee the availability of workers' compensation insurance in Texas, and serve as the insurer of last resort. In 1999, the fund's statute was amended to make the fund a member of the Texas Property and Casualty Insurance Guaranty Fund. The assets of the fund could be better protected by converting the fund to a mutual company where the assets are owned by the policyholders. H.B. 3458 converts the fund to the Texas Mutual Insurance Company to be operated as a domestic mutual insurance company.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

ARTICLE 1. OPERATION OF FUND AS MUTUAL INSURANCE COMPANY

SECTION 1.01. Amends Article 5.76-3, Insurance Code, as follows:

Art. 5.76-3. New heading: TEXAS MUTUAL INSURANCE COMPANY.

Sec. 1. DEFINITIONS. Defines "company" and redefines "workers' compensation insurance."

Sec. 2. CREATION; OPERATION. (a) Requires that effective September 1, 2001, the Texas Workers' Compensation Insurance Fund operate as, and exercise the powers of, a domestic mutual insurance company in accordance with Chapter 15 of this code, and to be called the Texas Mutual Insurance Company. Provides that a reference in the laws of this state to the Texas Workers' Compensation Insurance Fund means the Texas Mutual Insurance Company. Requires the Commissioner of Insurance (commissioner) to issue a certificate of authority to the company as provided by Chapter 15 of this code to write workers' compensation insurance, not later than September 1, 2001.

(b) Provides that the company is subject to Chapter 15 of this code, other than Article 15.22 of this code. Provides that in the event of a conflict between this article and Chapter 15 of this code or another law of this state applicable to a nonlife mutual insurance company, this article controls.

(c) Requires the company to serve as a competitive force in the marketplace; guarantee the availability of workers' compensation insurance in this state and serve as an insurer of last resort as provided under Article 5.76-4 of this code.

(d) Makes a conforming change.

(e) Requires the company, rather than the board, to hear the appeal not later than the 30th day after the date on which the request for hearing is made and to notify the appellant in writing of the time and place of the hearing not later than the 10th day before the date of the hearing. Requires that, later than the 30th day after the last day of the hearing, the board to affirm, reverse, or modify the act appealed to the board. Makes conforming changes.

(f) Makes conforming and nonsubstantive changes.

(h) Provides that, in addition to other rights of the company under this article, the company has the legal rights of a mutual insurance company operating under Chapter 15 of this code, and of a private person in this state, and has the power to sue in its own name. Deletes language regarding the Texas Sunset Act.

(i) Makes a conforming change.

(j) Prohibits the company from being dissolved.

Sec. 3. BOARD OF DIRECTORS. (a) Requires that five members to be appointed by the governor with the advice and consent of the senate. Requires the remaining members to be elected by the company's policyholders.

(b) Makes a conforming change.

(c) Requires the governor to fill a vacancy in the appointed directors by appointment with the advice and consent of the senate. Requires a vacancy in the elected directors to be filled as provided by the company's bylaws. Requires that, if a vacancy occurs before the date on which the vacating member's term is set to expire, the successor member be elected or appointed for a term to expire on the same date as the vacating member's term.

(d) Prohibits a person from serving as a member of the board if the person, an individual related to the person within the second degree by consanguinity or affinity, or an individual residing in the same household with the person is registered or licensed under this code or is required to be registered or licensed under this code; is employed by or acts as a consultant to a person registered or licensed under this code or required to be registered or licensed under this code; owns, controls, has a financial interest in, or participates in the management of an organization registered or licensed under this code or required to be registered or licensed under this code; receives a substantial tangible benefit from the company or the Texas Department of Insurance.

(g) Requires the chairman, if the potential ground for removal involves an appointed board member, to then notify the governor and the attorney general that a potential ground for removal exists. Requires the board, if the potential ground for removal involves a board member elected by the policyholders, to act on the potential ground for removal as provided by the company's bylaws.

(h) Provides that subsection (d) of this section does not prohibit a person who is only a policyholder or a consumer of insurance or insurance products from serving as a member of the board.

(j) Requires each member to receive fees for service on the board commensurate with industry standards and actual and necessary travel expenses and expenses incurred in the performance of the member's duties as a member.

(k) Requires the members of the board to elect annually any other officers the board considers necessary for the performance of its duties. Authorizes the board to create committees and subcommittees.

(l) Requires the board to hold meetings at least once each calendar quarter and at other times at the call of the chairman and at times established in the company's bylaws.

(m) Provides that five board members constitutes a quorum.

(n) Requires the board to maintain the principal office of the company in Travis County, Texas. Deletes language regarding serving on the board and implementing policies and training for board members.

Sec. 4. New heading: POWERS AND DUTIES OF BOARD OF DIRECTORS. (a)

Provides that the board has full power, authority, and jurisdiction over the company.

Authorizes the board to perform all acts necessary or convenient in the administration of the company or in connection with the insurance business to be carried on by the company.

Provides that, in this regard, the board is empowered to function in all aspects as a governing body of a domestic mutual insurance company. Requires the board to provide for the delivery in this state of workers' compensation insurance and for the transaction of workers' compensation insurance business to the same extent as any other insurance carrier transacting workers' compensation insurance business in this state; propose rates for workers' compensation insurance issued by the company and exercise any other authority necessary to conduct a workers' compensation insurance business.

(b) Makes a conforming change.

(c) Deletes language regarding Chapter 2102, Government Code.

(d) Requires the board to appoint a president who shall serve at the pleasure of the board. Requires the president to have proven successful experience as an executive at the general management level in the business of insurance. Requires the president to receive compensation as set by the board.

(e) Makes a conforming change.

Sec. 5. APPLICATIONS. (a) Requires that applications to the company for workers' compensation insurance coverage to be submitted on forms prescribed by the company and to be made directly by the applicant or on behalf of the applicant by a local recording agent.

(b) Makes a conforming change.

(c) Makes a conforming change.

(d) Provides that an agent transacting business with the company does so as an agent for the applicant and not as an agent for the company, unless there is an express written agreement between the company and the agent that the agent acts on behalf of the company.

(e) Makes a conforming change.

Sec. 6. Deletes existing text regarding a plan of operation and a president and chief executive officer. Makes a conforming change.

Sec. 7. (a) Makes a conforming change.

(b) Makes a conforming change.

(c) Makes a conforming change.

Sec. 8. ACCIDENT PREVENTION. (a) Authorizes the company to make and enforce requirements, rather than rules, for the prevention of injuries to employees of its policyholders or applicants for insurance under this article. Requires that, for this purpose, representatives of the company, representatives of the commission, or representatives of the department, rather than the Texas Department of Insurance, on reasonable notice be granted free access to the premises of each policyholder or applicant during regular working hours.

(b) Makes a conforming change.

(c) Makes a conforming change.

(d) Makes a conforming change.

(e) Requires the policyholder to obtain the safety consultation not later than the 30th day after the effective date of the policy and to obtain the safety consultation from the division of workers' health and safety of the commission, the company, or another professional source approved for that purpose by the division of workers' health and safety.

(g) Makes a conforming change.

(h) Makes a conforming change.

Sec. 9. (a) Makes conforming and nonsubstantive changes.

(b) Makes conforming and nonsubstantive changes.

(c) Makes conforming and nonsubstantive changes.

(d) Requires that restitution collected under Subsection (b) of this section to be paid to the company.

(f) Makes a conforming change.

Sec. 10. (a) Makes a conforming change.

(b) Makes a conforming change.

(d) Makes a conforming change.

Sec. 11. (a) Makes conforming and nonsubstantive changes.

(b) Makes a conforming change.

(c) Makes a conforming change.

(d) Provides that, notwithstanding any other provision of this section, the company is only liable for assessments by the Texas Property and Casualty Insurance Guaranty Association regarding, and that association, with respect to an insolvency of the company, is only liable for, a claim with a date of injury that occurs on or after January 1, 2000.

Sec. 12. New heading: FINANCIAL ADMINISTRATION; NO STATE LIABILITY. (a) Provides that all revenues, monies, and assets of the company belong solely to the company and are governed by the laws applicable to domestic mutual insurance companies. Provides that the State of Texas covenants with the policyholders of the company, persons receiving workers' compensation benefits, and the company's creditors that the state will not borrow, appropriate, or direct payments from those revenues, monies, and/or assets for any purpose. Provides that the state has no liability to or responsibility to the policyholders, persons receiving workers' compensation benefits, or the creditors of the company if the company is placed in conservatorship or receivership, or becomes insolvent. Makes a conforming change.

(c) Makes a conforming change. Deletes language regarding using the surplus of bonds.

(d) Authorizes the company to pay cash dividends or allow a credit on renewal premium for policyholders insured with the company other than a policyholder insured under Article 5.76-4 of this code, in accordance with criteria approved by the board, which may consider the policyholder's safety record and performance. Provides that a dividend or credit requires prior approval of the department.

(e) Makes a conforming change.

(f) Provides that funding for a grant under this subsection may come only from the company's surplus. Prohibits the amount of the grants from exceeding \$2.2 million for the four-year period of September 1, 1999, through September 1, 2003.

Sec. 13. Makes a conforming change.

Sec. 14. Makes a conforming change.

Sec. 15. Makes a conforming change.

Sec. 16. Makes a conforming change.

(b) Makes a conforming change.

Sec. 17. (a) Makes a conforming change. Deletes language regarding the auditor.

(b) Makes a conforming change.

Sec. 18.(a) New heading: EXAMINATION OF COMPANY. Makes a conforming change.

(b) Makes a conforming change.

(c) Makes a conforming change.

Sec. 19. Deletes existing text relating to assistance from the Texas Department of Insurance and redesignates Section 19A as Section 19. (a) Makes a conforming change.

(b) Makes a conforming change.

(c) Makes a conforming change.

(d) Makes a conforming change.

Sec. 20. (a) Makes a conforming change.

(b) Makes a conforming change. Deletes text relating to fund solvency.

Sec. 21. New heading: APPLICABILITY OF OTHER STATUTES; COMPANY NOT STATE AGENCY. (a) Makes a conforming change.

(b) Makes a conforming change.

(c) Provides that the company is not a state agency.

Sec. 22. TMIC STABILIZATION FUND. (a) Defines "Hazard Group III and IV," "net underwriting loss," "net written premium," "reserves," "statutory accounting principles," "surplus," and "TMIC stabilization fund."

(b) Provides that the TMIC stabilization fund is established as a special fund of the company with the comptroller to be used for the sole benefit of the company. Provides that the comptroller is the custodian of the TMIC stabilization fund. Provides that the TMIC stabilization fund is composed of the initial deposit made under this section and any net investment income accruing to the fund. Requires that, not later than October 15, 2001, the company to make a one-time deposit from its surplus of \$150 million in cash or securities to the TMIC stabilization fund. Requires the comptroller to invest the monies in the TMIC stabilization fund only as directed by the company and to sell fund investments only as directed by the company. Provides that the State of Texas covenants with the policyholders of the company, the persons receiving workers' compensation benefits through the company, and the creditors of the company that the state will not borrow, appropriate, or direct payments from the TMIC stabilization fund for any purpose. Prohibits the TMIC stabilization fund from being used by or for the benefit of the state or for the benefit of a creditor of the state and from being commingled with other assets.

(c) Requires the company's independent auditor, beginning in 2003, and not later than April 1 of that year and each subsequent year, to provide to the company's board of directors and president a report stating certain requirements.

(d) Requires the company's independent auditor, if the company's independent auditor reports that the company's net written premium to surplus ratio for the preceding calendar year exceeded 1 to 1, to specify the amount of monies needed to establish a 1 to 1 ratio. Requires the company's independent auditor, if the company's independent auditor reports that the company's reserves to surplus ratio for the preceding calendar year exceeded 1 to 1, to specify the amount of monies needed to establish a 1 to 1 ratio.

(e) Requires the company's president, based on the independent auditor's report as provided by Subsection (c) of this section, not later than April 15 of each year to certify to the comptroller the amount to be issued from the TMIC stabilization fund for deposit into the company's surplus to restore the applicable ratio to 1 to 1. Requires the comptroller to issue payments to the company not later than the 30th day after the date on which the comptroller receives the president's written certification.

(f) Requires the company to recover net underwriting losses for Hazard Group III and IV policies and policies with a premium of \$10,000 or less from the TMIC stabilization fund, for the preceding calendar year, as specified by Subsections (g) and (h) of this section.

(g) Requires the company's independent auditor, beginning in 2002, and not later than April 1 of each year, to provide to the company's board of directors and president a

report stating certain items.

(h) Requires the company's president, based on the company's independent auditor's report as provided by Subsection (g), if there is a net underwriting loss for Hazard Group III and IV policies and/or policies with a premium of \$10,000 or less,, to certify to the comptroller, on or before April 15 of each year the amount of the net underwriting loss to be recovered from the TMIC stabilization fund for deposit into the company's operating income. Requires the comptroller to issue payments to the company under this subsection not later than the 30th day after the date on which the comptroller receives the president's written certification.

ARTICLE 2. CONFORMING AMENDMENTS

Sets forth conforming amendments in the Insurance and Labor Codes.

ARTICLE 3. TRANSITION; EFFECTIVE DATE

SECTION 3.01. GENERAL TRANSITION. (a) Authorizes the Texas Mutual Insurance Company to exercise all the rights, privileges, powers, and authority of any other mutual insurance company organized to transact workers' compensation insurance business in this state, subject to the requirements of Article 5.76-3, Insurance Code, as amended by this Act. Provides that on the effective date of this Act the company is considered to be a continuation of the Texas Workers' Compensation Insurance Fund and the company is vested with all property of that fund.

(b) Authorizes the Texas Mutual Insurance Company to enforce all contract and statutory rights of the Texas Workers' Compensation Insurance Fund.

SECTION 3.02. ASSETS AND LIABILITIES. (a) Provides that each debt, claim, and cause of action of the Texas Workers' Compensation Insurance Fund, and each property right, privilege, franchise, or other interest of the Texas Workers' Compensation Insurance Fund, remains the property of the Texas Mutual Insurance Company.

(b) Requires that the rights of all policyholders and creditors and the standing of all claims under the Texas Workers' Compensation Insurance Fund be preserved unimpaired under the Texas Mutual Insurance Company.

(c) Provides that each debt, liability, and duty of the Texas Workers' Compensation Insurance Fund becomes a debt, liability, or duty of the Texas Mutual Insurance Company and may be enforced against the Texas Mutual Insurance Company as if it were incurred or contracted by the company.

SECTION 3.03. CAUSES OF ACTION. Provides that a cause of action or similar proceeding to which the Texas Workers' Compensation Insurance Fund was a party that is pending on the effective date of this Act is not affected by the establishment of the Texas Mutual Insurance Company under this Act; may be continued to be prosecuted by or against the company and continues to be governed by and conducted under Articles 5.76-3 and 5.76-4, Insurance Code, as applicable, as those articles existed before the effective date of this Act, and the applicable bylaws, rules, and regulations of the Texas Workers' Compensation Insurance Fund, as amended by the Texas Mutual Insurance Company.

SECTION 3.04. INITIAL BOARD OF DIRECTORS. (a) Requires the members of the board of directors of the Texas Workers' Compensation Insurance Fund who are serving on the effective date of this Act to serve as the initial board of directors of the Texas Mutual Insurance Company. Provides that board members who are qualified to serve on the effective date of this Act are not disqualified by the amendments to Section 3(d), Article 5.76-3, Insurance Code, and may serve out their initial terms. Provides that the terms of the initial board members are extended from February 1 to July 1 of their

respective expiring years, subject to Section 3, Article 5.76-3, Insurance Code, as amended by this Act, regarding election of members.

(b) Requires that, before July 1, 2002, the company's initial board of directors draw lots to determine which four positions on the board are to be converted to elected board positions. Requires the drawing by lot to be conducted in a manner to ensure that not more than two board positions appointed to terms expiring in the same year will be converted to elected positions.

(c) Requires the company, on or before July 1, 2002, to hold its first meeting of the policyholders. Requires that at that meeting the policyholders elect four directors. Requires the method of election to be specified in the company's bylaws.

(d) Requires the remaining five directors from the initial board of directors to constitute the appointed directors.

(e) Provides that the bylaws and board policies of the fund on the effective date of this Act become the bylaws and board policies of the company until amended or revised by the company's board.

SECTION 3.05. INITIAL RATES. Provides that the premium rates on file with the Texas Department of Insurance on the effective date of this Act for the Texas Workers' Compensation Insurance Fund are the initial premium rates for the Texas Mutual Insurance Company.

SECTION 3.06. EFFECTIVE DATE. Effective date: September 1, 2001.