

## **BILL ANALYSIS**

Senate Research Center

H.B. 3315  
By: Keffer, Jim (Duncan)  
Finance  
5/16/2007  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

H.B. 3315 provides guidance and clarification concerning the imposition and collection of insurance taxes and authorizes flexibility in the adoption of certain reciprocity and reciprocal or multi-state agreements relating to those taxes. The purpose of the bill is to clarify several issues that have led to litigation, such as the taxability of home warranty insurance premiums and whether premiums on certain risks are taxable in Texas. The bill is also designed to codify administrative practice, and to enable the comptroller of public accounts (comptroller), by administrative rule, to work cooperatively with other states on multi-state insurance premium tax issues that may be necessary because of federal legislation, and to protect the insurance tax base of this state. The bill repeals one preempted tax statute and an outdated provision within another tax statute.

In addition, this bill is designed to clarify the impact on insurance maintenance taxes resulting from regulatory changes made through S.B. 14, enacted by the 78th Legislature, Regular Session, 2003. The bill codifies current Department of Insurance and comptroller practice interpreting the amendments from S.B. 14.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 4 (Section 225.004, Insurance Code), SECTION 5 (Section 225.009, Insurance Code), SECTION 6 (Section 225.014), SECTION 7 (Section 226.003, Insurance Code), SECTION 9 (Section 226.053, Insurance Code), SECTION 11 (Section 228.002, Insurance Code), and SECTION 16 (Section 281.008, Insurance Code) of this bill.

Rulemaking authority granted to the comptroller of public accounts is expressly limited in SECTION 8 (Section 226.006, Insurance Code), SECTION 10 (Section 226.057, Insurance Code), and SECTION 16 (Section 281.008, Insurance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 221.002(b), Insurance Code, to require the insurer, in determining an insurer's taxable premium receipts, to include the total gross amounts of premiums, membership fees, assessments, dues, revenues, and any other considerations for insurance written by the insurer, rather than the total gross amounts of premiums written by the insurer, in a calendar year from any kind of insurance written by the insurer on each kind of property of risk located in this state, including, among others, home warranty insurance.

SECTION 2. Amends Section 222.002(b), Insurance Code, to require an insurer or health maintenance organization to include the total gross amounts of certain items received by the insurer or organization in a calendar year from any kind of health maintenance organization certificate or contract or insurance policy or contract covering risks on individuals or groups, rather than covering a person, located in Texas and arising from the business of a health maintenance organization or certain types of insurance.

SECTION 3. Amends Section 223.003(a), Insurance Code, to provide that an annual tax is imposed on all premiums, rather than on each title insurance company that receives premiums, from the business of title insurance. Makes conforming changes.

SECTION 4. Amends Section 225.004, Insurance Code, by adding Subsection (d-1), to authorize the comptroller of public accounts (comptroller) to establish that all premiums are considered to be on risks located in Texas under certain circumstances, notwithstanding Subsections (b) through (d) (relating to taxable premiums).

SECTION 5. Amends Section 225.009, Insurance Code, by adding Subsection (c), to authorize the comptroller by rule to change the accrued tax amount for which prepayment is required under Subsection (a) (relating to when the amount of the accrued taxes due is equal to at least \$70,000) and the prepayment deadline under Subsection (b) (relating to the deadline of the 15th day of the month following the month in which the amount of taxes accrues).

SECTION 6. Amends Chapter 225, Insurance Code, by adding Section 225.014, as follows:

Sec. 225.014. **LIMITATION ON RULEMAKING.** Prohibits the comptroller from adopting a rule under this chapter that exceeds the requirements of this chapter (Surplus Lines Insurance Premium Tax).

SECTION 7. Amends Section 226.003, Insurance Code, by adding Subsection (d-1), to authorize the comptroller by rule to establish that all premiums are considered to be on risks located in Texas under certain circumstances, notwithstanding Subsections (b) through (d) (relating to a title insurance company's taxable premiums).

SECTION 8. Amends Subchapter A, Chapter 226, Insurance Code, by adding Section 226.006, as follows:

Sec. 226.006. **LIMITATION ON RULEMAKING.** Prohibits the comptroller from adopting a rule under this chapter that exceeds the requirements of this chapter (Unauthorized and Independently Procured Insurance Premium Tax).

SECTION 9. Amends Section 226.053, Insurance Code, by adding Subsection (b-1), to authorize the comptroller by rule to establish that all premiums are considered to be on risks located in Texas under certain circumstances, notwithstanding Subsections (a) and (b) (relating to the computation of the tax imposed).

SECTION 10. Amends Subchapter B, Chapter 226, Insurance Code, by adding Section 226.057, as follows:

Sec. 226.057. **LIMITATION ON RULEMAKING.** Prohibits the comptroller from adopting a rule under this chapter that exceeds the requirements of this chapter.

SECTION 11. Amends Subtitle B, Title 3, Insurance Code, by adding Chapter 228, as follows:

#### CHAPTER 228. COOPERATIVE AGREEMENTS WITH OTHER STATES

Sec. 228.001. **DEFINITIONS.** Defines "agent," "insurer," "premium," "processing entity," and "stamping office."

Sec. 228.002. **COOPERATIVE AGREEMENTS WITH OTHER STATES.** (a) Authorizes the comptroller to enter into a cooperative agreement, reciprocal agreement, or compact with another state for the collection of insurance premium taxes imposed by Chapters 225 (Surplus Lines Insurance Premium Tax) and 226 (Unauthorized And Independently Procured Insurance Premium Tax) on a multistate basis. Provides that an agreement or amendment of an agreement takes effect according to its terms, except that an agreement or amendment is prohibited from taking effect until the proposed agreement or amendment is published in the Texas Register.

(b) Authorizes an agreement to provide for certain requirements, actions, and procedures.

(c) Authorizes the comptroller, as required by the terms of an agreement, to provide to an officer of another state any information that relates to the

solicitation, negotiation, procurement, placement, issuance, receipt, or collection of premiums by an agent, insurer, or other person for an insurance contract or policy that may be subject to the premium taxes imposed by Chapter 225 or 226.

(d) Authorizes an agreement to provide for each state to audit the records of an agent, insurer, or other person based in this state to determine if insurance premium taxes due each state that is a party to the agreement are properly reported and paid. Authorizes an agreement to provide for each state to forward the findings of an audit performed on an agent, insurer, or other person based in this state to each other state in which the person has an allocation of taxable premiums.

(e) Authorizes the comptroller to use an audit performed by another state that is a party to an agreement with this state to make an assessment of insurance premium taxes against an agent, insurer, or other person. Provides that an assessment made by the comptroller under this subsection is prima facie evidence that the amount shown as due is correct.

(f) Provides that an agreement entered into under this section does not affect the comptroller's authority to audit any person under any other law.

(g) Provides that an agreement entered into under this section prevails over an inconsistent rule of the comptroller. Provides that a statute of this state prevails over an inconsistent provision of an agreement entered in under this section, except as otherwise provided by this section.

(h) Authorizes the comptroller to segregate certain amounts, fees, and costs in a separate fund or account. Authorizes the comptroller, on a determination of an amount held that is due to be remitted to another jurisdiction, to issue a warrant or make an electronic transfer of the amount as necessary to carry out the purposes of the agreement. Authorizes an auditing cost, membership fee, or other cost associated with the agreement to be paid from interest earned on funds segregated under this subsection. Requires any interest earnings in excess of the costs associated with the agreement to be credited to general revenue.

(i) Provides that the legislature finds that it is in the public interest to enter into insurance tax and regulatory agreements with other jurisdictions that may provide for the temporary remittal of amounts due other jurisdictions that exceed the amounts collected and for cooperation with other jurisdictions for the collection of taxes imposed by this state under Chapters 225 and 226 and similar taxes imposed under statutes of other jurisdictions on insurance premiums. Requires the comptroller to ensure that reasonable measures are developed to recover insurance taxes and other amounts due this state during each biennium.

(j) Authorizes the comptroller to enter into a cooperative agreement, reciprocal agreement, or compact with another state to provide for the collection of taxes imposed by this state and the other states on insurance taxes that may be due the states and this state based on a standardized premium allocation adopted by the states under the agreements. Authorizes the comptroller to also enter into other cooperative agreements with surplus lines stamping offices located in this state and other states in the reporting and capturing of related tax information. Authorizes the comptroller to also enter into cooperative agreements with processing entities located in this state or other states related to the capturing and processing of insurance premium and tax data.

(k) Authorizes the comptroller to adopt rules as necessary to implement this chapter. Prohibits the comptroller from adopting rules under this chapter that do not specifically implement this section.

SECTION 12. Amends Section 252.003, Insurance Code, as follows:

Sec. 252.003. **PREMIUMS SUBJECT TO TAXATION.** Requires an insurer to pay maintenance taxes under this chapter (Fire And Allied Lines Insurance) on the correctly reported gross premiums, rather than gross premiums collected, from writing insurance in this state against loss or damage by certain causes, including loss by hail on farm crops, an event covered under a home warranty insurance policy, or an event covered under an inland marine insurance policy.

SECTION 13. Amends Section 254.003, Insurance Code, to require an insurer to pay maintenance taxes under this chapter (Motor Vehicle Insurance) on the correctly reported gross premiums from writing motor vehicle insurance in this state, including personal and commercial automobile insurance.

SECTION 14. Amends Section 257.001, Insurance Code, as follows:

Sec. 257.001. **MAINTENANCE TAX IMPOSED.** (a) Creates this subsection from existing text. Provides that a maintenance tax is imposed on certain entities, including a managed care organization.

(b) Defines "managed care organization."

SECTION 15. Amends Section 271.002(a), Insurance Code, to provide that a maintenance fee is imposed on all premiums, rather than on each insurer with gross premiums, subject to assessment under Section 271.006 (Premiums Subject to Assessment).

SECTION 16. Amends Subchapter A, Chapter 281, Insurance Code, by adding Section 281.008, as follows:

Sec. 281.008. **RECIPROCITY AGREEMENTS.** Authorizes the comptroller by rule to enter into a reciprocity agreement with another state under which the parties agree to mutually set aside retaliatory provisions in situations in which this state and the other state determine that retaliation is not the preferred approach to protect their domestic insurers from excessive taxation or from other financial obligations. Prohibits the comptroller from adopting a rule that does not specifically implement this section.

SECTION 17. Amends Section 401.151(e), Insurance Code, to require the amount of all examination and evaluation fees paid to the state by an insurer in each taxable year to be allowed as a credit on the amount of premium taxes due, rather than due under this subchapter (Examination Expenses).

SECTION 18. Amends Section 401.154, Insurance Code, to entitle an insurer to a credit on the amount of premium taxes, rather than the amount of premium or other taxes, to be paid by the insurer for all examination fees paid under Section 401.153 (Reimbursement of Expenses of Certain Persons or Firms).

SECTION 19. Amends Section 1502.053, Insurance Code, as follows:

Sec. 1502.053. **EXEMPTION FROM CERTAIN TAXES.** (a) Creates this subsection from existing text.

(b) Provides that the issuer of a children's health benefit plan approved under Section 1502.051 (Children's Health Benefit Plan) is not subject to the retaliatory tax imposed under Chapter 281 (Retaliatory Provisions) with respect to money received for coverage provided under that plan.

SECTION 20. Amends Section 2210.058(c), Insurance Code, to require the tax credit authorized under this subsection be allowed at a rate not to exceed 20 percent per year for five or more successive years beginning the calendar year that the assessments under this section are paid, rather than following the year of payment of the claims.

SECTION 21. (a) Repealer: Article 4.11A (Administrative Services Tax), Insurance Code.

(b) Repealer: Section 281.006(a) (relating to the reduction of a tax rate or the grant of a tax credit in this state if such reductions or credits are given to a domestic insurer in another state under certain circumstances), Insurance Code.

SECTION 22. Effective date: upon passage or September 1, 2007.