

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 644
By: Hegar
Government Organization
3/23/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Department of Insurance (TDI) regulates insurance companies' solvency, rates, forms, and market conduct; licenses individuals and entities involved in selling insurance policies; provides consumer education and resolves consumer complaints; and takes enforcement action against those who violate insurance laws. TDI also regulates workers' compensation insurance, but the Sunset Advisory Commission's recommendations for the Division of Workers' Compensation are contained in separate Sunset legislation.

TDI underwent Sunset review last session, but the bill did not pass. As a result, TDI underwent a special purpose Sunset review, and this bill contains the recommendations that continue to be appropriate for consideration by this legislature. TDI is subject to the Sunset Act and will be abolished on September 1, 2011, unless continued by the legislature.

C.S.S.B. 644 amends current law relating to the continuation and operation of TDI and the operation of certain insurance programs, and imposes administrative penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance (commissioner) in SECTION 2.001 (Sections 32.151 and 32.152, Insurance Code), SECTION 3.006 (Section 2251.151, Insurance Code), SECTION 4.001 (Section 417.008, Government Code), SECTION 4.002 (Section 417.0081, Government Code), SECTION 4.004 (Section 417.010, Government Code), SECTION 6.001 (Section 35.004, Insurance Code), and SECTION 7.001 (Sections 38.403 and 38.404, Insurance Code) of this bill.

Rulemaking authority previously granted to the commissioner is modified in SECTION 1.003 (Section 36.110, Insurance Code) SECTION 2.003 (Section 1660.004, Insurance Code), SECTION 2.006 (Section 4102.005, Insurance Code), and SECTION 2.007 (Section 2154.052, Occupations Code), SECTION 3.001 (Section 2251.101, Insurance Code), and SECTION 4.003 (Section 417.0082, Government Code) of this bill.

Rulemaking authority previously granted to the commissioner is modified under SECTION 2.008 and SECTION 2.009 of this bill.

Rulemaking authority previously granted to the commissioner, the Finance Commission of Texas, and the risk management board is modified in SECTION 4.003 (Section 417.0082, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.001. Amends Section 31.002, Insurance Code, as follows:

Sec. 31.002. DUTIES OF DEPARTMENT. Requires the Texas Department of Insurance (TDI), in addition to the other duties required of TDI, to:

- (1) regulate the business of insurance in this state;

- (2) administer the workers' compensation system of this state as provided by Title 5 (Workers' Compensation), Labor Code;
- (3) ensure that this code and other laws regarding insurance and insurance companies are executed;
- (4) protect and ensure the fair treatment of consumers; and
- (5) ensure fair competition in the insurance industry in order to foster a competitive market.

Makes a nonsubstantive change.

SECTION 1.002. Amends Section 31.004(a), Insurance Code, to provide that TDI, unless continued in existence as provided by Chapter 325 (Texas Sunset Act), Government Code, is abolished September 1, 2017, rather than September 1, 2011.

SECTION 1.003. Amends Subchapter B, Chapter 36, Insurance Code, by adding Section 36.110, as follows:

Sec. 36.110. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) Requires the commissioner of insurance (commissioner) to develop and implement a policy to encourage the use of:

- (1) negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of TDI rules; and
- (2) appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies), Government Code, to assist in the resolution of internal and external disputes under TDI's jurisdiction.

(b) Requires that TDI's procedures relating to alternative dispute resolution conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires the commissioner to:

- (1) coordinate the implementation of the policy adopted under Subsection (a);
- (2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and
- (3) collect data concerning the effectiveness of those procedures.

ARTICLE 2. CERTAIN ADVISORY BOARDS, COMMITTEES, AND COUNCILS AND RELATED TECHNICAL CORRECTIONS

SECTION 2.001. Amends Chapter 32, Insurance Code, by adding Subchapter E, as follows:

SUBCHAPTER E. RULES REGARDING USE OF ADVISORY COMMITTEES

Sec. 32.151. RULEMAKING AUTHORITY. (a) Requires the commissioner to adopt rules, in compliance with Section 39.003 (Public Representation on Advisory Body) of this code and Chapter 2110 (State Agency Advisory Committees), Government Code, regarding the purpose, structure, and use of advisory committees by the commissioner, the state fire marshal, or TDI staff, including rules governing an advisory committee's:

- (1) purpose, role, responsibility, and goals;
- (2) size and quorum requirements;
- (3) qualifications for membership, including experience requirements and geographic representation;
- (4) appointment procedures;
- (5) terms of service;
- (6) training requirements; and
- (7) duration.

(b) Requires an advisory committee to be structured and used to advise the commissioner, the state fire marshal, or TDI staff. Prohibits an advisory committee from being responsible for rulemaking or policymaking.

Sec. 32.152. PERIODIC EVALUATION. Requires the commissioner by rule to establish a process by which TDI is required to periodically evaluate an advisory committee to ensure its continued necessity. Authorizes TDI to retain or develop committees as appropriate to meet changing needs.

Sec. 32.153. COMPLIANCE WITH OPEN MEETINGS ACT. Requires a TDI advisory committee to comply with Chapter 551 (Open Meetings), Government Code.

SECTION 2.002. Transfers Section 843.441, Insurance Code, to Subchapter L, Chapter 843, Insurance Code, redesignates it as Section 843.410, Insurance Code, and amends it, as follows:

Sec. 843.410. ASSESSMENTS. Redesignates Section 843.441 as Section 843.410. (a) Requires the commissioner, to provide funds for the administrative expenses of the commissioner regarding rehabilitation, liquidation, supervision, conservatorship, or seizure of a health maintenance organization in this state that is placed under supervision or in conservatorship under Chapter 441 (Supervision and Conservatorship) or against which a delinquency proceeding is commenced under Chapter 443 (Insurer Receivership Act) and that is found by the commissioner to have insufficient funds to pay the total amount of health care claims and the administrative expenses incurred by the commissioner regarding the rehabilitation, liquidation, supervision, conservatorship, or seizure, to assess each health maintenance organization in the proportion that the gross premiums of the health maintenance organization that were written in this state during the preceding calendar year bear to the aggregate gross premiums that were written in this state by all health maintenance organizations, as found after review of annual statements and other reports the commissioner considers necessary. Deletes existing text requiring the committee, to provide funds for the conservation of an impaired health maintenance organization in this state, including expenses incurred by the commissioner acting as receiver or by a special deputy receiver, at the commissioner's direction, to assess each health maintenance organization in the proportion that the gross premiums of the health maintenance organization that were written in this state during the preceding calendar year bear to the aggregate gross premiums that were written in this state by all health maintenance organizations, as provided to the committee by the commissioner after review of annual statements and other reports the commissioner considers necessary.

(b) Redesignates existing Subsection (c) as Subsection (b). Authorizes that the amount of an abatement or deferral, if an assessment is abated or deferred in whole or in part, be assessed against the remaining health maintenance organizations in a manner consistent with the calculations made by the commissioner under Subsection (a), rather than with the basis for assessments provided by the approved plan of operation.

(c) Redesignates existing Subsection (d) as Subsection (c). Makes no further changes to the subsection.

(d) Redesignates existing Subsection (e) as Subsection (d). Prohibits funds derived from an assessment made under this section, notwithstanding any other provision of this subchapter, from being used for more than 180 consecutive days for the expenses of administering the affairs of a health maintenance organization the surplus of which is impaired and that is in supervision or conservatorship. Authorizes the commissioner to extend the period during which the commissioner makes assessments for the administrative expenses. Deletes existing text prohibiting funds derived from an assessment made under this section, notwithstanding any other provision of this subchapter, from being used for the expenses of administering the affairs of an impaired health maintenance organization while in supervision, rehabilitation, or conservation for more than 150 days. Deletes existing text authorizing the committee to extend the period during which it makes assessments for the administrative expenses of an impaired health maintenance organization as it considers appropriate.

SECTION 2.003. Amends Section 1660.004, Insurance Code, to delete existing text authorizing the commissioner to adopt rules requiring the implementation and provision of the technology recommended by the advisory committee.

SECTION 2.004. Amends Section 1660.102(b), Insurance Code, to authorize the commissioner to consider recommendations, rather than the recommendations of the advisory committee, or any other information provided in response to a department-issued request for information relating to electronic data exchange, including identification card programs, before adopting rules regarding information to be included on the identification cards, technology to be used to implement the identification card pilot program, and confidentiality and accuracy of the information required to be included on the identification cards.

SECTION 2.005. Amends Section 4001.009(a), Insurance Code, to delete Chapters 523 (Market Assistance Program for Residential Property Insurance), 702, 1209, and 1212 (Technical Advisory Committee on Claims Processing) from the list of statutes under which a reference to an agent in the laws includes a subagent without regard to whether a subagent is specifically mentioned, as referenced in Section 4001.003(9) (defining "subagent").

SECTION 2.006. Amends Section 4102.005, Insurance Code, to delete existing text relating to guidance from the public insurance adjusters examination advisory committee for the purpose of rulemaking relating to a code of ethics and certain matters.

SECTION 2.007. Amends Section 2154.052(a), Occupations Code, to authorize the commissioner to issue rules to administer this chapter, rather than rules to administer this chapter in compliance with Section 2154.054 (Advisory Council).

SECTION 2.008. Repealers:

- (1) Article 3.70-3D(d) (Consumer Assistance Program for Health Maintenance Organizations), Insurance Code, as effective on appropriation in accordance with Section 5, Chapter 1457 (H.B. 3021), Acts of the 76th Legislature, Regular Session, 1999;
- (2) Chapter 523 (Market Assistance Program for Residential Property Insurance), Insurance Code;
- (3) Section 524.061 (Task Force), Insurance Code;
- (4) the heading to Subchapter M (Health Maintenance Organization Solvency Surveillance Committee), Chapter 843, Insurance Code;

- (5) Sections 843.435 (Definition), 843.436 (Composition and Administration), 843.437 (Plan of Operation), 843.438 (Examination and Regulation), 843.439 (Immunity from Liability), and 843.440 (General Powers and Duties), Insurance Code;
- (6) Chapter 1212 (Technical Advisory Committee on Claims Processing), Insurance Code;
- (7) Section 1660.002(2) (defining "advisory committee"), Insurance Code;
- (8) Subchapter B (Advisory Committee), Chapter 1660, Insurance Code;
- (9) Section 1660.101(c) (relating to the implementation of the identification card pilot program), Insurance Code;
- (10) Sections 4002.004 (Advisory Board), 4004.002 (Advisory Council), 4101.006 (Advisory Board), and 4102.059 (Examination Advisory Committee), Insurance Code;
- (11) Sections 4201.003 (c) (relating to the appointment of an advisory committee on development of rules) and (d) (relating to advisory committee deliberations being subject to Chapter 551, Government Code), Insurance Code;
- (12) Subchapter C (Fire Extinguisher Advisory Council), Chapter 6001, Insurance Code;
- (13) Subchapter C (Fire Detection and Alarm Devices Advisory Council), Chapter 6002, Insurance Code;
- (14) Subchapter C (Fire Protection Advisory Council), Chapter 6003, Insurance Code;
- (15) Section 2154.054 (Advisory Council), Occupations Code; and
- (16) Section 2154.055(c) (relating to a program administered by the advisory council), Occupations Code.

SECTION 2.009. (a) Abolishes the following boards, committees, councils, and task forces on the effective date of this Act:

- (1) the consumer assistance program for health maintenance organizations advisory committee;
- (2) the executive committee of the market assistance program for residential property insurance;
- (3) the TexLink to Health Coverage Program task force;
- (4) the health maintenance organization solvency surveillance committee;
- (5) the technical advisory committee on claims processing;
- (6) the technical advisory committee on electronic data exchange;
- (7) the examination of license applicants advisory board;
- (8) the advisory council on continuing education for insurance agents;
- (9) the insurance adjusters examination advisory board;
- (10) the public insurance adjusters examination advisory committee;
- (11) the utilization review agents advisory committee;

- (12) the fire extinguisher advisory council;
- (13) the fire detection and alarm devices advisory council;
- (14) the fire protection advisory council; and
- (15) the fireworks advisory council.

(b) Requires that all powers, duties, obligations, rights, contracts, funds, records, and real or personal property of a board, committee, council, or task force listed under Subsection (a) of this section be transferred to TDI not later than February 28, 2012.

SECTION 2.010. Makes application of the changes in law made by this Act by repealing Sections 523.003 (Immunity) and 843.439 (Immunity from Liability), Insurance Code, apply only to a cause of action that accrues on or after the effective date of this Act.

ARTICLE 3. RATE REGULATION

SECTION 3.001. Amends Section 2251.101, Insurance Code, as follows:

Sec. 2251.101. RATE FILINGS AND SUPPORTING INFORMATION. (a) Authorizes an insurer to use a rate filed under this subchapter on and after the date the rate is filed.

(b) Requires the commissioner by rule to:

(1) determine the information required to be included in the filing, including:

(A) categories of supporting information and supplementary rating information;

(B) statistics or other information to support the rates to be used by the insurer, including information necessary to evidence that the computation of the rate does not include disallowed expenses; and

(C) information concerning policy fees, service fees, and other fees that are charged or collected by the insurer under Section 550.001 (Solicitation or Collection of Certain Payments) or 4005.003 (Fees); and

(2) prescribe the process through which TDI requests supplementary rating information and supporting information under this section, including:

(A) the number of times TDI may make a request for information; and

(B) the types of information TDI may request when reviewing a rate filing.

SECTION 3.002. Amends Section 2251.103, Insurance Code, as follows:

Sec. 2251.103. New heading: COMMISSIONER ACTION CONCERNING RATE FILING NOT YET IN EFFECT; HEARING AND ANALYSIS. (a) Requires the commissioner, not later than the earlier of the date a rate takes effect or the 30th day after the date a rate is filed with TDI under Section 2251.101, to disapprove the rate if the commissioner determines that the rate does not comply with the requirements of this chapter. Deletes existing text requiring the commissioner to disapprove a rate if the commissioner determines that the rate filing made under this chapter does not meet the standards established under Subchapter B.

(b) Provides that except as provided by Subsection (c), if a rate has not been disapproved by the commissioner before the expiration of the 30-day period described by Subsection (a), the rate is not considered disapproved under this section.

(c) Authorizes the commissioner, for good cause, on the expiration of the 30-day period described by Subsection (a), to extend the period for disapproval of a rate for one additional 30-day period. Prohibits the commissioner and the insurer by agreement from extending the 30-day period described by Subsection (a) or this subsection.

(d) Creates this subsection from existing text. Requires the commissioner, if the commissioner disapproves a rate under this section, rather than a filing, to issue an order specifying in what respects the rate fails to meet the requirements of this chapter. Makes a conforming change.

(e) Entitles an insurer that files a rate that is disapproved under this section to a hearing on written request made to the commissioner not later than the 30th day after the date the order disapproving the rate takes effect. Makes a conforming and a nonsubstantive change.

(f) Requires TDI to track, compile, and routinely analyze the factors that contribute to the disapproval of rates under this section.

SECTION 3.003. Amends Subchapter C, Chapter 2251, Insurance Code, by adding Section 2251.1031, as follows:

Sec. 2251.1031. REQUESTS FOR ADDITIONAL INFORMATION. (a) Authorizes TDI, if TDI determines that the information filed by an insurer under this subchapter or Subchapter D is incomplete or otherwise deficient, to request additional information from the insurer.

(b) Provides that if TDI requests additional information from the insurer during the 30-day period described by Section 2251.103(a) or 2251.153(a) (relating to requiring the commissioner to approve or disapprove a rate filing) or under a second 30-day period described by Section 2251.103(c) or 2251.153(c) (relating to extending the period for approval or disapproval of a rate), as applicable, the time between the date TDI submits the request to the insurer and the date TDI receives the information requested is not included in the computation of the first 30-day period or the second 30-day period, as applicable.

(c) Provides that for purposes of this section, the date of TDI's submission of a request for additional information is the earlier of:

(1) the date of TDI's electronic mailing or documented telephone call relating to the request for additional information; or

(2) the postmarked date on TDI's letter relating to the request for additional information.

(d) Requires TDI to track, compile, and routinely analyze the volume and content of requests for additional information made under this section to ensure that all requests for additional information are fair and reasonable.

SECTION 3.004. Amends the heading to Section 2251.104, Insurance Code, to read as follows:

Sec. 2251.104. COMMISSIONER DISAPPROVAL OF RATE IN EFFECT;
HEARING

SECTION 3.005. Amends Section 2251.107, Insurance Code, as follows:

Sec. 2251.107. New heading: PUBLIC INFORMATION. (a) Creates this subsection from existing text. Makes no further changes to this subsection.

(b) Requires TDI each year to make available to the public information concerning TDI's general process and methodology for rate review under this chapter, including factors that contribute to the disapproval of a rate. Requires that information provided under this subsection be general in nature and prohibits it from revealing proprietary or trade secret information of any insurer.

SECTION 3.006. Amends Section 2251.151, Insurance Code, by amending Subsection (e) and adding Subsections (c-1) and (f), as follows:

(c-1) Requires the commissioner, if the commissioner requires an insurer to file the insurer's rates under this section, to periodically assess whether the conditions described by Subsection (a) (relating to requiring insurer's to file certain information with TDI for the commissioner's approval) continue to exist. Requires the commissioner, if the commissioner determines that the conditions no longer exist, to issue an order excusing the insurer from filing the insurer's rates under this section.

(e) Requires the commissioner, if the commissioner requires an insurer to file the insurer's rates under this section, to issue an order specifying the commissioner's reasons for requiring the rate filing and explaining any steps the insurer is required to take and any conditions the insurer is required to meet in order to be excused from filing the insurer's rates under this section.

(f) Requires the commissioner by rule to define:

(1) the financial conditions and rating practices that may subject an insurer to this section under Subsection (a)(1) (relating to insurer's rates requiring supervision); and

(2) the process by which the commissioner determines that a statewide insurance emergency exists under Subsection (a)(2) (relating to a statewide emergency).

SECTION 3.007. Amends Section 2251.156, Insurance Code, as follows:

Sec. 2251.156. RATE FILING DISAPPROVAL BY COMMISSIONER; HEARING.

(a) Requires the commissioner, if the commissioner disapproves a rate filing under Section 2251.153(a)(2) (relating to disapproval of a rate filing), to issue an order disapproving the filing in accordance with Section 2251.103(d), rather than Section 2251.103(b).

(b) Entitles an insurer whose rate filing is disapproved to a hearing in accordance with Section 2251.103(e), rather than Section 2251.103(c).

(c) Requires TDI to track precedents related to disapprovals of rates under this subchapter to ensure uniform application of rate standards by TDI.

SECTION 3.008. Amends Section 2254.003, Insurance Code, by amending Subsection (a) and adding Subsections (a-1), (a-2), and (a-3), as follows:

(a) Provides that this section applies to a rate for personal automobile insurance or residential property insurance filed on or after the effective date of Chapter 206 (S.B. 14), Acts of the 78th Legislature, Regular Session, 2003.

(a-1) Provides that, if TDI provides an insurer with formal written notice that a rate is excessive or unfairly discriminatory, then the insurer is authorized to file a new rate or take other corrective action to substantially address TDI's concerns. Requires that the

new rate or other corrective action be filed on or before the 60th day following the date of formal written notice. Authorizes the commissioner, at the commissioner's discretion, to extend the deadline to file by an additional 30 days. Requires the insurer, if TDI accepts the new rate or other corrective action, to then according to commissioner order, refund or issue a premium discount directly to each affected policyholder on the portion of the premium found to be excessive or unfairly discriminatory, plus interest on that amount. Provides that the interest rate to be paid on refunds or discounts under this subsection is the sum of six percent and the prime rate for the calendar year in which formal written notice is given. Provides that for purposes of this subsection, the prime rate is the prime rate as published in *The Wall Street Journal* for the first day of the calendar year that is not a Saturday, Sunday, or legal holiday.

(a-2) Requires the insurer, if the insurer does not file or take, or TDI does not accept, a new rate or other corrective action as provided under Subsection (a-1), and the commissioner issues an order disapproving the rate as excessive or unfairly discriminatory under Section 2251.104, to then refund or issue a premium discount directly to each affected policyholder on the portion of the premium found to be excessive or unfairly discriminatory, plus interest on that amount. Provides that the interest rate to be paid on refunds or discounts under this subsection is 18 percent. Provides that an insurer is not required to pay any interest penalty if the insurer prevails in an appeal of the commissioner's order under Subchapter D (Judicial Review), Chapter 36.

(a-3) Provides that the period for the refund and interest begins on the date TDI first provides the insurer with formal written notice that the insurer's filed rate is excessive or unfairly discriminatory, and interest continues to accrue until the refund or discount is paid or issued.

SECTION 3.009. Repealer: Section 2251.154 (Additional Information), Insurance Code.

SECTION 3.010. Repealer: Section 2254.003(c) (relating to the rate for interest assessed and certain other information), Insurance Code.

SECTION 3.011. Makes application of Section 2251.103, Insurance Code, as amended by this Act, and Section 2251.1031, Insurance Code, as added by this Act, to a rate filing, prospective.

SECTION 3.012. Makes application of Section 2251.151(c-1), Insurance Code, as added by this Act, to an insurer that is required to file the insurer's rates for approval under Section 2251.151, Insurance Code, on or after the effective date of this Act, regardless of when the order requiring the insurer to file the insurer's rates for approval under that section is first issued.

SECTION 3.013. Makes application of Section 2251.151(e), Insurance Code, as amended by this Act, to an order issued by the commissioner, prospective.

ARTICLE 4. STATE FIRE MARSHAL'S OFFICE

SECTION 4.001. Amends Section 417.008, Government Code, by adding Subsection (f), as follows:

(f) Requires the commissioner by rule to prescribe a reasonable fee for an inspection performed by the state fire marshal that may be charged to a property owner or occupant who requests the inspection, as the commissioner considers appropriate. Requires the commissioner, in prescribing the fee, to consider the overall cost to the state fire marshal to perform the inspections, including the approximate amount of time the staff of the state fire marshal needs to perform an inspection, travel costs, and other expenses.

SECTION 4.002. Amends Section 417.0081, Government Code, as follows:

Sec. 417.0081. New heading: INSPECTION OF CERTAIN STATE-OWNED OR STATE-LEASED BUILDINGS. (a) Creates this subsection from existing text. Requires

the state fire marshal, at the commissioner's direction, to periodically inspect public buildings under the charge and control of the Texas Facilities Commission, rather than the General Services Commission, and buildings leased for the use of a state agency by the Texas Facilities Commission.

(b) Requires the commissioner by rule, for the purpose of determining a schedule for conducting inspections under this section, to adopt guidelines for assigning potential fire safety risk to state-owned and state-leased buildings. Requires that rules adopted under this subsection provide for the inspection of each state-owned and state-leased building to which this section applies, regardless of how low the potential fire safety risk of the building may be.

(c) Requires the state fire marshal, on or before January 1 of each year, to report to the governor, lieutenant governor, speaker of the house of representatives, and appropriate standing committees of the legislature regarding the state fire marshal's findings in conducting inspections under this section.

SECTION 4.003. Amends Section 417.0082, Government Code, as follows:

Sec. 417.0082. New heading: PROTECTION OF CERTAIN STATE-OWNED OR STATE-LEASED BUILDINGS AGAINST FIRE HAZARDS. (a) Requires the state fire marshal, under the direction of the commissioner, to take any action necessary to protect a public building under the charge and control of the Texas Facilities Commission, rather than the Texas Building and Procurement Commission, and the building's occupants, and the occupants of a building leased for the use of a state agency by the Texas Facilities Commission, against an existing or threatened fire hazard. Makes a conforming change.

(b) Makes a conforming change.

SECTION 4.004. Amends Section 417.010, Government Code, as follows:

Sec. 417.010. New heading: DISCIPLINARY AND ENFORCEMENT ACTIONS; ADMINISTRATIVE PENALTIES (a) Provides that this section applies to each person and firm licensed, registered, or otherwise regulated by TDI through the state fire marshal, including a person regulated under Title 20 (Regulation of Other Occupations), Insurance Code, and a person licensed under Chapter 2154 (Regulation of Fireworks and Fireworks Displays), Occupations Code.

(b) Requires the commissioner by rule to delegate to the state fire marshal the authority to take disciplinary and enforcement actions, including the imposition of administrative penalties in accordance with this section on a person regulated under a law listed under Subsection (a) who violates that law or a rule or order adopted under that law. Requires the commissioner, in the rules adopted under this subsection, to specify which types of disciplinary and enforcement actions are delegated to the state fire marshal, and to outline the process through which the state fire marshal may, subject to Subsection (e), impose administrative penalties or take other disciplinary and enforcement actions.

(c) Requires the commissioner by rule to adopt a schedule of administrative penalties for violations subject to a penalty under this section to ensure that the amount of an administrative penalty imposed is appropriate to the violation. Requires TDI to provide the administrative penalty schedule to the public on request. Requires that the amount of an administrative penalty imposed under this section be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

- (2) the economic harm to the public interest or public confidence caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation;
- (6) whether the violation was intentional; and
- (7) any other matter that justice may require.

(d) Creates this subsection from existing text. Authorizes the state fire marshal, in the enforcement of a law that is enforced by or through the state fire marshal, in lieu of cancelling, revoking, or suspending a license or certificate of registration, to impose on the holder of the license or certificate of registration an order directing the holder to do one or more of the following:

- (1) cease and desist from a specified activity;
- (2) pay an administrative penalty imposed under this section, rather than remit to the commissioner within a specified time a monetary forfeiture not to exceed \$10,000 for each violation of an applicable law or rule; or, rather than and,
- (3) make restitution to a person harmed by the holder's violation of an applicable law or rule.

Makes nonsubstantive changes.

(e) Requires the state fire marshal to impose an administrative penalty under this section in the manner prescribed for imposition of an administrative penalty under Subchapter B (Imposition of Administrative Penalty), Chapter 84, Insurance Code. Authorizes the state fire marshal to impose an administrative penalty under this section without referring the violation to TDI for commissioner action.

(f) Authorizes an affected person to dispute the imposition of the penalty or the amount of the penalty imposed in the manner prescribed by Subchapter C (Procedural Requirements), Chapter 84, Insurance Code. Provides that failure to pay an administrative penalty imposed under this section is subject to enforcement by TDI.

ARTICLE 5. TITLE INSURANCE

SECTION 5.001. Amends Section 2703.153(c), Insurance Code, to require the commissioner, not less frequently than once every five years, to evaluate the information required under this section to determine whether TDI needs additional or different information or no longer needs certain information to promulgate rates.

ARTICLE 6. ELECTRONIC TRANSACTIONS

SECTION 6.001. Amends Subtitle A, Title 2, Insurance Code, by adding Chapter 35, as follows:

CHAPTER 35. ELECTRONIC TRANSACTIONS

Sec. 35.001. DEFINITIONS. Defines "conduct business" and "regulated entity" in this chapter.

Sec. 35.002. CONSTRUCTION WITH OTHER LAW. (a) Authorizes a regulated entity, notwithstanding any other provision of this code, to conduct business electronically in accordance with this chapter and the rules adopted under Section 35.004.

(b) Provides that to the extent of any conflict between another provision of this code and a provision of this chapter, the provision of this chapter controls.

Sec. 35.003. ELECTRONIC TRANSACTIONS AUTHORIZED. Authorizes a regulated entity to conduct business electronically to the same extent that the entity is authorized to conduct business otherwise if before the conduct of business each party to the business agrees to conduct the business electronically.

Sec. 35.004. RULES. (a) Requires the commissioner to adopt rules necessary to implement and enforce this chapter.

(b) Requires that the rules adopted by the commissioner under this section include rules that establish minimum standards with which a regulated entity must comply in the entity's electronic conduct of business with other regulated entities and consumers.

SECTION 6.002. Makes application of Chapter 35, Insurance Code, as added by this Act, prospective.

ARTICLE 7. DATA COLLECTION

SECTION 7.001. Amends Chapter 38, Insurance Code, by adding Subchapter I, as follows:

SUBCHAPTER I. DATA COLLECTION RELATING TO CERTAIN PERSONAL LINES OF INSURANCE

Sec. 38.401. APPLICABILITY OF SUBCHAPTER. Provides that this subchapter applies only to an insurer who writes personal automobile insurance or residential property insurance in this state.

Sec. 38.402. FILING OF CERTAIN CLAIMS INFORMATION. (a) Requires the commissioner to require each insurer described by Section 38.401 to file with the commissioner aggregate personal automobile insurance and residential property insurance claims information for the period covered by the filing, including the number of claims:

- (1) filed during the reporting period;
- (2) pending on the last day of the reporting period, including pending litigation;
- (3) closed with payment during the reporting period;
- (4) closed without payment during the reporting period; and
- (5) carrying over from the reporting period immediately preceding the current reporting period.

(b) Requires an insurer described by Section 38.401 to file the information described by Subsection (a) on an annual basis. Requires that the information filed be broken down by quarter.

Sec. 38.403. PUBLIC INFORMATION. (a) Requires TDI to post the data contained in claims information filings under Section 38.402 on TDI's Internet website. Authorizes the commissioner by rule to establish a procedure for posting data under this subsection

that includes a description of the data that is required to be posted and the manner in which the data is required to be posted.

(b) Requires that information provided under this section be aggregate data by line of insurance for each insurer and prohibits revealing proprietary or trade secret information of any insurer.

Sec. 38.404. RULES. Authorizes the commissioner to adopt rules necessary to implement this subchapter.

ARTICLE 8. STUDY ON RATE FILING AND APPROVAL REQUIREMENTS FOR CERTAIN INSURERS WRITING IN UNDERSERVED AREAS; UNDERSERVED AREA DESIGNATION

SECTION 8.001. Amends Section 2004.002, Insurance Code, by amending Subsection (b) and by adding Subsections (c) and (d), as follows:

(b) Requires the commissioner, in determining which areas to designate as underserved, to consider:

- (1) whether residential property insurance is not reasonably available to a substantial number of owners of insurable property in the area;
- (2) whether access to the full range of coverages and policy forms for residential property insurance does not reasonably exist; and
- (3) any other relevant factor as determined by the commissioner.

Makes a nonsubstantive change.

(c) Requires the commissioner to determine which areas to designate as underserved under this section not less than once every six years.

(d) Requires the commissioner to conduct a study concerning the accuracy of current designations of underserved areas under this section for the purpose of increasing and improving access to insurance in those areas not less than once every six years.

SECTION 8.002. Amends Subchapter F, Chapter 2251, Insurance Code, by adding Section 2251.253, as follows:

Sec. 2251.253. REPORT. (a) Requires the commissioner to conduct a study concerning the impact of increasing the percentage of the total amount of premiums collected by insurers for residential property insurance under Section 2251.252 (Exemption From Certain Other Law).

(b) Requires the commissioner to report the results of the study in the biennial report required under Section 32.022 (Biennial Report to Legislature).

(c) Provides that this section expires September 1, 2013.

ARTICLE 9. TRANSITION; EFFECTIVE DATE

SECTION 9.001. Provides that, except as otherwise provided by this Act, this Act applies only to an insurance policy, contract, or evidence of coverage that is delivered, issued for delivery, or renewed on or after January 1, 2012. Provides that a policy, contract, or evidence of coverage delivered, issued for delivery, or renewed before January 1, 2012, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 9.002. Effective date: September 1, 2011.