

BILL ANALYSIS

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S.B. 850
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 1991, as part of a reform of the workers' compensation system brought on by a crisis in the workers' compensation insurance market, the legislature created the Texas Workers' Compensation Insurance Fund (fund) to address the availability and affordability of workers' compensation insurance for Texas employers and to serve as the insurer of last resort for those employers who could not find coverage in the voluntary market.

While the fund was not created as a state agency, the 1991 legislation required all of the fund's board members to be appointed by the governor and made the fund subject to the state's open meetings and open records laws, the Texas Sunset Act, and oversight by the state auditor and attorney general. The fund was initially capitalized through the sale of revenue bonds, which were repaid with interest many years ago, and received a start-up loan from the state, which was repaid in the first year.

In 2001, the legislature changed the fund's name to the Texas Mutual Insurance Company (TMIC), required TMIC to operate as a domestic mutual insurance company with some continued oversight by the state, and changed the makeup of the board of directors to include a combination of gubernatorial appointees and directors elected by TMIC's policyholders. Since then, state oversight of TMIC has been reduced by eliminating oversight by the attorney general and state auditor, removing TMIC from sunset review, and removing the open meetings and open records law requirements. TMIC currently serves as the sole insurer of last resort.

S.B. 850 continues the corporate existence of TMIC as a mutual insurance company subject to state laws governing mutual insurance companies but establishes TMIC as an independent mutual insurance company with all members of its board of directors elected by TMIC's policyholders.

S.B. 850 also eliminates the requirement for TMIC to be the sole insurer of last resort in the workers' compensation insurance market and directs the commissioner of insurance to establish a new assigned risk program to serve as the insurer of last resort for those employers who are not able to secure workers' compensation insurance in the voluntary market.

As proposed, S.B. 850 amends current law relating to the residual market for workers' compensation insurance in this state and to the operation, governance, and organization of the Texas Mutual Insurance Company.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1.01 (Section 2056.002, Insurance Code) and SECTION 4.01 of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. RESIDUAL MARKET FOR WORKERS' COMPENSATION INSURANCE

SECTION 1.01. WORKERS' COMPENSATION ASSIGNED RISK PROGRAM. Amends Subtitle E, Title 10, Insurance Code, by adding Chapter 2056, as follows:

CHAPTER 2056. WORKERS' COMPENSATION ASSIGNED RISK PROGRAM

Sec. 2056.001. DEFINITIONS. Defines, in this chapter, "assigned risk program," "insurer," and "residual market employer."

Sec. 2056.002. ASSIGNED RISK PROGRAM; PLAN OF OPERATION. (a) Requires the commissioner of insurance (commissioner) by rule to establish an assigned risk program through which residual market employers are authorized to obtain workers' compensation insurance in this state and approve a plan of operation for the assigned risk program established under this section, which must specify the eligibility criteria and procedures for obtaining insurance through the assigned risk program and provide for the implementation and administration of the assigned risk program, including reasonable service standards, policies, forms, and contracts.

(b) Authorizes the commissioner to contract with a licensed statistical agent for workers' compensation in this state to administer the assigned risk program.

(c) Requires the commissioner to require each insurer to participate in the assigned risk program in proportion to the insurer's voluntary market share in this state as a condition of the insurer's authority to engage in the business of insurance in this state.

(d) Authorizes the commissioner to provide for an insurer to meet the insurer's obligation under this section through direct policy assignment, reinsurance, pooling, or otherwise.

Sec. 2056.003. RATES AND FUNDING. (a) Requires the statistical agent, if any, contracted to administer the assigned risk program under Section 2056.002 to file rates for review under Subchapter B (Rate Administration), Chapter 2053 (Rates for Workers' Compensation Insurance).

(b) Requires that the rates for insurance procured through the assigned risk program be actuarially sufficient to cover all incurred losses and administrative expenses of the program.

ARTICLE 2. OPERATION AND ORGANIZATION OF TEXAS MUTUAL INSURANCE COMPANY

SECTION 2.01. ARTICLES OF INCORPORATION. (a) Requires the board of directors of the Texas Mutual Insurance Company (TMIC), not later than January 1, 2015, to file with the commissioner articles of incorporation, which are required to state the name of the company, the purpose of the company, the location of the company's principal or home office, and the name and address of each member of the board of directors.

(b) Requires that the articles of incorporation filed under this Act, notwithstanding any other law, be considered restated articles of incorporation.

SECTION 2.02. BOARD OF DIRECTORS. (a) Requires TMIC, not later than December 31, 2014, to hold a meeting of its policyholders to elect a board of directors to govern the company beginning January 1, 2015.

(b) Provides that the board of directors established under Section 2054.051 (Board of Directors; Composition), Insurance Code, is abolished effective January 1, 2015.

SECTION 2.03. CONTINUATION OF CORPORATE EXISTENCE. (a) Provides that the corporate existence of TMIC continues, and all assets, liabilities, earned surplus, rights, licenses, and permits of the company as it existed under Chapter 2054 (Texas Mutual Insurance Company), Insurance Code, before January 1, 2015, remain in full force and effect as the assets, liabilities, earned surplus, rights, licenses, and permits of the company.

(b) Provides that all policies of insurance and other contracts entered into or issued by TMIC before January 1, 2015, remain in full force and effect in accordance with their respective terms.

(c) Provides that the certificate of authority issued to TMIC as the company existed under Chapter 2054, Insurance Code, before January 1, 2015, continues in effect.

(d) Provides that, effective January 1, 2015, TMIC operates under Chapter 883 (Mutual Insurance Companies Other Than Mutual Life Insurance Companies), Insurance Code, and is neither subject to obligations or limitations not imposed on, nor given advantages not granted to, other mutual insurance companies operating under Chapter 883, Insurance Code.

ARTICLE 3. CONFORMING AMENDMENTS

SECTION 3.01. Repealer: Section 552.0225(c) (relating to providing that this section does not apply to TMIC or a successor to the company), Government Code.

Repealer: Section 552.143(f) (relating to providing that this section does not apply to TMIC or a successor to the company), Government Code.

Repealer: Section 462.008 (Applicability to Texas Mutual Insurance Company), Insurance Code.

Repealer: Section 2051.153(b) (defining "insurer" for purposes of this section), Insurance Code.

Repealer: Chapter 2054 (Texas Mutual Insurance Company), Insurance Code.

SECTION 3.02. CONFORMING AMENDMENT TO LABOR CODE. Amends Section 418.002(c), Labor Code, as follows:

(c) Authorizes the court to order a person to pay restitution to an insurance company if the person commits an offense under this section. Deletes existing text including TMIC as an insurance company to which the court is authorized to order a person to pay restitution.

SECTION 3.03. CONFORMING AMENDMENTS TO INSURANCE CODE. (a) Amends Section 2052.004(a), Insurance Code, to prohibit this subtitle from being construed to prohibit an insurance company from issuing participating policies. Deletes existing text including TMIC as an insurance company referred to in this subtitle.

(b) Amends Section 2053.001(2), Insurance Code, to redefine "insurance company."

(c) Amends Section 2053.154(a), Insurance Code, to redefine "insurance company" for purposes of this section.

SECTION 3.04. EFFECTIVE DATE OF ARTICLE. Effective date, this article: January 1, 2015.

ARTICLE 4. TRANSITION

SECTION 4.01. TRANSITION. (a) Requires the commissioner, as soon as practicable after the effective date of this Act, but not later than January 1, 2015, to adopt rules necessary to implement the assigned risk program required by Chapter 2056, Insurance Code, as added by this Act.

(b) Requires the commissioner, as soon as practicable after TMIC files articles of incorporation with the commissioner and elects a board of directors as required by Article 2 of this Act, to adopt any rules necessary to reflect the fact that TMIC is a mutual

insurance company organized under and governed by Chapter 883, Insurance Code, and other laws applicable to mutual insurance companies in this state.

ARTICLE 5. EFFECTIVE DATE

SECTION 5.01. EFFECTIVE DATE OF ACT. Effective date, except as otherwise provided by this Act: September 1, 2013.