

BILL ANALYSIS

Senate Research Center

S.B. 1367
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Business & Commerce
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Issue: Businesses are requesting insurance products that are responsive to ever-evolving risks, and market-oriented reforms will facilitate robust product offerings.

- Competition is maximized by a regulatory system that promotes an open private insurance market and focuses regulatory attention on protecting consumers and overseeing the financial solvency of insurers.
- In an era of quickly advancing technology and innovation, businesses are asking for a more robust range of insurance products at competitive prices that will allow them to keep pace with the ever-evolving environment and better address their individual risk needs.
- Unfortunately, regulatory filing and review requirements can limit the range of available product choices by discouraging new market entrants, making it harder for existing competitors to develop new products, and slowing the speed at which much-needed innovative products can reach the marketplace.

Solution: Under this proposal, specialty business insurance products and most transactions negotiated by larger businesses would be exempt from the policy form and rate filing and review requirements.

- The large risk exemption language is a recommendation included in the Texas Department of Insurance (TDI) biennial report.
- Thirty-four (34) states currently have similar exemptions for rate filings in force via statute or administrative action.
- Due to the policy premium amount and asset/revenue thresholds subject to the exemption, these policies largely involve two sophisticated parties engaging in arms-length product negotiations.
- The specialty lines exemption concept is in place to some extent or another in the majority of states and is based on the premise that specialty lines products are purchased by businesses in need of a specific product and by those involved in sophisticated negotiations with insurers through the use of brokers. "Bread and butter" insurance products purchased by small businesses—e.g., workers' compensation and non-fleet automobile insurance—would remain subject to TDI filing and review requirements.

S.B. 1367 exempts certain insurance products for large commercial risks from rate filing and review requirements, consistent with the currently existing exemption from form filing requirements for those same risks. It also exempts 17 specialty commercial insurance lines from rate and form filing requirements. Combined, these changes will ensure a more robust and competitive marketplace, giving businesses greater access to commercial insurance products, all while retaining ultimate TDI oversight.

As proposed, S.B. 1367 amends current law relating to the modernization of regulation of commercial property and casualty insurance.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 2 (Section 2251.003, Insurance Code) and SECTION 5 (Section 2301.003, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2251.002, Insurance Code, to define "highly protected commercial property" for Chapter 2251 (Rates).

SECTION 2. Amends Section 2251.003, Insurance Code, as follows:

Sec. 2251.003. **APPLICABILITY OF CERTAIN SUBCHAPTERS.** (a) Makes no changes to this subsection.

(b) Provides that, except as provided by Subsection (d), Subchapters A (General Provisions for Rates), B (Rate Standards), C (Rate Filings), and D (Prior Approval of Rates Under Certain Circumstances) apply to all lines of certain kinds of insurance written under an insurance policy or contract issued by an insurer authorized to engage in the business of insurance in this state. Makes a nonsubstantive change.

(c) Makes no changes to this subsection.

(d) Provides that, except as provided by Subsection (e), Subchapter C does not apply to all lines of the following kinds of insurance written under a commercial insurance policy or contract issued by an insurer authorized to engage in the business of insurance in this state:

- (1) surety bonds;
- (2) fidelity bonds;
- (3) commercial inland marine;
- (4) boiler and machinery;
- (5) environmental impairment or pollution liability;
- (6) kidnap and ransom;
- (7) political risk or expropriation;
- (8) commercial excess liability or umbrella liability;
- (9) directors' and officers' liability;
- (10) fiduciary liability;
- (11) employment practices liability;
- (12) errors and omission and professional liability (other than medical professional liability);
- (13) media liability;

(14) product liability, product recall, or completed operations;

(15) commercial cybersecurity, including first and third party commercial lines coverage for losses arising out of or relating to data privacy breaches, network security, computer viruses, and similar exposures;

(16) highly protected commercial property;

(17) commercial flood insurance (other than National Flood Insurance Program);

(18) any other commercial lines insurance coverage or risk that the commissioner of insurance (commissioner) is required, by rule, to exempt from rate filing requirements under Subchapter C in order to promote enhanced competition or to more effectively use the resources of the Texas Department of Insurance (TDI) that might otherwise be used to review commercial lines filings; and

(19) any combination of only the kinds of insurance in this subsection.

(e) Authorizes the commissioner to temporarily reinstate, for a period of no longer than one year, the requirements for rate filings under Subchapter C for a specific insurance coverage specified under Subsection (d) if, after a hearing, the commissioner makes a finding of fact that a reasonable degree of competition does not exist for that specific type of insurance coverage. Requires that such a finding of fact by the commissioner specify the relevant tests used to determine whether a lack of a reasonable degree of competition exists and the results thereof. Provides that, in the absence of such specific findings of fact by the commissioner, a competitive market is presumed to exist.

(f) Authorizes the commissioner to adopt reasonable and necessary rules to implement this section.

(g) Provides that Section 2251.101 (Rate Filings and Supporting Information) does not apply to rates for use with an insured that has total insured property values of \$5 million or more, total annual gross revenues of \$10 million or more, or a total premium of \$25,000 or more for property insurance, \$25,000 or more for general liability insurance, or \$50,000 or more for multiperil insurance.

SECTION 3. Makes application of Section 2251.003(d), Insurance Code, as added by this Act, prospective.

SECTION 4. Amends Section 2301.002, Insurance Code, to define "highly protected commercial property" for Subchapter A (Policy Forms Generally)

SECTION 5. Amends Section 2301.003, Insurance Code, as follows:

Sec. 2301.003. **APPLICABILITY OF SUBCHAPTER.** (a) Makes no changes to this subsection.

(b) Provides that, except as provided in Subsection (e), Subchapter A applies to all lines of certain kinds of insurance written under an insurance policy or contract issued by an insurer authorized to engage in the business of insurance in this state.

(c) and (d) Makes no changes to these subsections.

(e) Provides that, except as provided by Subsection (f), Sections 2301.006 (Filing and Approval of Forms), 2301.007(a) (relating to authorizing the commissioner to disapprove a certain form) and (b) (relating to authorizing the commissioner to withdraw approval of a form), and 2301.008 (Adoption and Use of Standard

Forms) do not apply to all lines of the following kinds of insurance written under a commercial insurance policy or contract issued by an insurer authorized to engage in the business of insurance in this state:

- (1) surety bonds;
- (2) fidelity bonds;
- (3) commercial inland marine;
- (4) boiler and machinery;
- (5) environmental impairment or pollution liability;
- (6) kidnap and ransom;
- (7) political risk or expropriation;
- (8) commercial excess liability or umbrella liability;
- (9) directors' and officers' liability;
- (10) fiduciary liability;
- (11) employment practices liability;
- (12) errors and omission and professional liability (other than medical professional liability);
- (13) media liability;
- (14) product liability, product recall, or completed operations;
- (15) cybersecurity, including first and third party commercial lines coverage for losses arising out of or relating to data privacy breaches, network security, computer viruses, and similar exposures;
- (16) highly protected commercial property;
- (17) commercial flood insurance (other than National Flood Insurance Program);
- (18) any other commercial lines insurance coverage or risk that the commissioner is required to, by rule, exempt from policy form filing requirements under this subchapter in order to promote enhanced competition or to more effectively use the resources of TDI that might otherwise be used to review commercial lines filings; and
- (19) any combination of only the kinds of insurance in this subsection.

(f) Authorizes the commissioner to temporarily reinstate, for a period of no longer than one year, the requirements of Sections 2301.006, 2301.007(a) and (b), and 2301.008 for a specific insurance coverage specified under Subsection (e) if, after a hearing, the commissioner makes a finding of fact that a reasonable degree of competition does not exist for that specific type of insurance coverage. Requires that such a finding of fact by the commissioner specify the relevant tests used to determine whether a lack of a reasonable degree of competition exists and the results thereof. Provides that, in the absence of such specific findings of fact by the commissioner, a competitive market is presumed to exist.

(g) Authorizes the commissioner to adopt reasonable and necessary rules to implement this section.

SECTION 6. Amends Section 981.004, Insurance Code, to provide that, except with respect to any line of insurance and during any period of time for which the commissioner has temporarily reinstated the requirements for rate and form filings under Section 2251.003(e) and Section 2301.003(f), Subsection (a)(1) (relating to authorizing an eligible surplus lines insurer to provide surplus lines insurance only if the full amount of required insurance cannot be obtained) and Subsection (b) (relating to authorizing an eligible surplus lines insurer to provide surplus lines insurance only in the amount that exceeds the amount of insurance obtainable from authorized insurers) do not apply to insurance procured in all lines of the kinds of insurance described in Section 2251.003(d) and 2301.003(e) and provided by an eligible surplus lines insurer.

SECTION 7. Effective date: September 1, 2021.