Texas Department of Insurance

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Summary

The Texas Department of Insurance (TDI) regulates the insurance industry in Texas to ensure that Texas consumers have access to competitive and fair insurance products. TDI regulates insurance companies' solvency, rates, forms, and market conduct; licenses individuals and entities involved in selling insurance policies; provides consumer education on insurance and resolves consumer complaints; investigates and takes enforcement action against those who violate insurance laws or rules; and provides fire prevention services across the state through the State Fire Marshal's Office. The Department also regulates workers' compensation in Texas through the Division of Workers' Compensation. Information about the Division can be found in a separate section of this report.

House Bill 1951 continues TDI for 12 years. The Legislature adopted all of the Sunset Commission's recommendations and added several other statutory modifications to H.B. 1951. A discussion of the bill's major provisions follows.

Sunset Provisions

1. Provide clarity, predictability, and transparency to rate regulation of property and casualty insurance.

House Bill 1951 establishes deemer dates for the Department's review of all property and casualty rate filings. The Department will have 30 days to request information from insurers, conclude rate review, and disapprove rates as necessary. The Commissioner is authorized to extend the review period for one additional 30-day period only, and only for good cause. If TDI requests additional information from insurers, the time it takes for insurers to respond to TDI's requests will not count against the Department's review period.

Insurers will continue to be permitted to use rates as soon as they are filed, if they choose. The provision only affects filings not immediately used, and is not intended to change the Department's ability to disapprove rates under current law, nor to give the Department the authority to approve rates under this regulatory system. The bill permits TDI to administratively disapprove rates until the point that companies implement rates, or the expiration of the review period, whichever event occurs first. If TDI wants to disallow a rate following the review period, the Department will have to disapprove the rate following its implementation, using the contested case process, as currently laid out in state law.

The bill requires TDI to further define, through rulemaking, the process for requesting supplemental information from insurers during its review of property and casualty rates. The review process will require, at a minimum, that TDI:

- make requests in a timely manner, enabling insurers to respond to requests and implement rates more quickly;

- reduce the number of separate requests;
- more specifically define the kinds of information that the Department can request during a rate review; and
- track and routinely analyze the volume and content of information requests to identify trends and ensure that requests are reasonable.

The provision also requires the Department to track and analyze the factors that contribute to administrative disapproval of rates. TDI must track precedent related to disapprovals to help ensure that the Department consistently applies rate standards. In conjunction with analyzing disapprovals, TDI will make information about the Department's general process for rate review, and factors that contribute to disapprovals, available to the public on a yearly basis. All information provided to the public must be general, so as not to infringe upon any individual company's proprietary rate development data or techniques.

House Bill 1951 requires TDI to further define, through rulemaking, guidelines that constitute rating practices, financial conditions, or statewide emergencies that could subject an insurer to prior-approval review. This provision does not require the agency to enumerate specific practices or circumstances. The Commissioner maintains the authority to determine if an individual company's practices or statewide situations warranted additional scrutiny though prior approval.

The bill requires TDI to periodically assess whether insurers need to remain under prior approval for rate filings. To clarify expectations, the bill requires TDI to provide companies with written information, when they are placed under prior approval, detailing the steps they must take to return to file-and-use review. When an insurer meets the stated conditions, this provision requires the Commissioner to issue an order stating that the financial condition, rating practices, or statewide emergency no longer exists, and that future company filings will be subject to file-and-use.

House Bill 1951 requires TDI to collect aggregate claims data including the number of claims filed; pending, including pending litigation; closed with or without payment; and carrying over during the reporting period; as well as any other relevant information relating to the processing of claims. The bill requires this information to be collected on an annual basis, with the information broken down by quarter. In addition to collecting the data, TDI is required to publish or disseminate the collected information to the general public via the agency's website. The provision authorizes TDI to adopt rules as necessary to implement a plan for collecting and publishing claims data.

2. Require TDI to assess what information is needed to promulgate title insurance every five years.

House Bill 1951 requires the Commissioner of Insurance to assess, at least once every five years, the expense data collected for purposes of promulgating title rates and consider whether the data should be revised to capture additional or different information, or whether any items no longer remain necessary.

3. Eliminate 15 of TDI's advisory committees from statute.

House Bill 1951 eliminates the following 15 committees currently in statute:

- Agents Study Proposal/Vendor Committee;
- Consumer Assistance Program for Health Maintenance Organizations Advisory Board;

- Examination of License Applicants Advisory Board;
- Fire Alarm Advisory Committee;
- Fire Extinguisher Advisory Council;
- Fire Sprinkler Advisory Council;
- Fireworks Advisory Council;
- Health Maintenance Organization Solvency Surveillance Committee;
- Insurance Adjusters Advisory Board;
- Public Insurance Adjusters Examination Advisory Committee;
- Technical Advisory Committee on Claims Processing;
- Technical Advisory Committee on Electronic Data Exchange;
- Texas Health Coverage Awareness and Education Program Task Force;
- Texas Residential Property Insurance Market Assistance Program Executive Committee; and
- Utilization Review Advisory Committee.

The Commissioner of Insurance will be allowed to create or re-create advisory committees in rule, as necessary, to provide expertise and to advise the Department. The bill requires the Commissioner of Insurance to adopt rules, in compliance with Chapter 2110 of the Texas Government Code, regarding the purpose, structure, and use of the Department's advisory committees. This provision requires TDI to routinely evaluate advisory committees to ensure that they continue to serve a purpose. TDI will be allowed to retain or develop committees to meet its changing needs. All committees will be structured and used to advise the Commissioner, the State Fire Marshal, or staff, but not be responsible for rulemaking or policymaking. Committee meetings must be open to the public.

4. Target the State Fire Marshal's Office's inspections of buildings to reduce the risk of fire hazard.

As state law already requires of state-owned buildings, H.B. 1951 requires the State Fire Marshal's Office (SFMO) to periodically inspect state-leased buildings, and to take action necessary to protect state employees and the public from fire hazards in state-leased buildings. The provision requires the SFMO to share and coordinate state-leased building inspection information with affected agencies, the Texas Facilities Commission, and the State Office of Risk Management, as already required with state-owned buildings. The bill will allow agencies to make informed decisions regarding lease agreements, but will not pre-empt compliance with locally adopted fire safety codes.

House Bill 1951 requires the SFMO to create a risk-based approach to conducting its routine inspections of state buildings. As part of this change, SFMO will develop guidelines for assigning potential fire safety risks to state buildings. As a part of TDI, the Commissioner of Insurance will adopt these guidelines as rules, allowing for public input. To ensure that even low-risk buildings are inspected at some point, the rules must address a planned timeframe for continuing to inspect all buildings under the SFMO's purview. This change will not affect the SFMO's response to complaints and requests for inspections, as these cannot be assigned a risk and must be dealt with on an as-needed basis. The SFMO must also periodically report its findings on state-owned and state-leased building inspections to the relevant committees of the Legislature.

The bill statutorily authorizes the SFMO to establish a reasonable fee for performing private building inspections. The Commissioner of Insurance will adopt these guidelines as rules, allowing for public input. In developing the fee amount, the SFMO must consider its overall costs in performing these inspections, including the approximate amount of time staff needs to perform the inspection, travel costs, and other expenses.

5. Provide the State Fire Marshal's Office the ability to issue fines to ensure licensee compliance.

House Bill 1951 requires the Commissioner of Insurance to establish, by rule, a penalty matrix for SFMO licensee violations to ensure fair and consistent application of fines. Further, the bill requires the Commissioner by rule to delegate the administration of these penalties to the SFMO, which will give the SFMO the ability to issue fines to violators without referring the violations to TDI's broader enforcement function. In developing the penalty matrix, the Commissioner will take into account factors including the licensee's compliance history, seriousness of violation, or the threat to the public's health and safety. The penalty amounts must reflect the severity of the violation and serve as a deterrent to violations. The Commissioner must also adopt rules defining which types of enforcement actions will be delegated to the SFMO, and outlining the process with which the SFMO will assign penalties. The bill also provides for due process by authorizing a licensee to dispute the fine, and request a contested case hearing. If a licensee does not pay the fine, the SFMO will refer the case to TDI's enforcement division.

6. Amend the Insurance Code to clearly permit businesses and consumers to conduct business electronically if the parties agree.

House Bill 1951 clarifies the applicability of existing and future provisions in the Insurance Code to permit electronic commerce transactions. The provision supplements existing laws by removing barriers to electronic commerce transactions. The Department will provide businesses and consumers with standards for electronically delivering documents. The bill does not require parties to conduct business electronically, but will facilitate transactions in which the parties agree to conduct business electronically.

7. Require TDI to study the accuracy of the designation of areas underserved for residential property insurance and the qualifications for reduced rate filing requirements for insurers serving these areas.

House Bill 1951 requires the Commissioner to study the impact of increasing the percentage of the total amount of premiums collected to qualify for reduced rate filing requirements, and to include the study results in the Department's biennial report. The bill expands the factors that the Commissioner must consider when designating areas of the state as underserved to include reasonable access to the full range of coverages and policy forms. Finally, the bill requires the Commissioner, at least once every six years, to determine which areas to designate as underserved and to study the accuracy of current designations for the purposes of increasing and improving access to insurance in these areas.

8. Continue the Texas Department of Insurance for 12 years.

House Bill 1951 continues TDI as an independent agency for 12 years. In addition, the bill better defines the agency's overall duties in statute by updating existing language to charge the agency with protecting and ensuring the fair treatment of consumers; and ensuring fair competition in the insurance industry, thus fostering a competitive market. The bill also applies the standard Sunset across-the-board requirement for the Commissioner to develop a policy regarding negotiated rulemaking and alternative dispute resolution.

Provisions Added by the Legislature

9. Specify that property and casualty rate filings are public information subject to the State's open records law.

House Bill 1951 specifies that property and casualty rate filings and any supporting information filed with TDI are public information subject to the State's open records law, including the law's applicable exceptions from required disclosure; rather than open to public inspection as of the date of the filing, as is current practice. In addition, the bill redefines "supporting information" to include any information TDI receives from a rate filer in response to a request from the Department.

10. Prohibit a personal property and casualty insurer from reporting inquiries to a claims database until a claim has been filed.

The bill prohibits an insurer or insurer agent from reporting to a claims database information relating to policyholders' inquiries regarding coverage, unless or until the policyholder files a claim. The provision applies only to residential property and personal auto lines.

11. Require certain health care plans to provide enrollees a 60-day notice of premium increases and enhanced consumer information.

These provisions cover health care coverage provided through Health Maintenance Organization plan policies, individual accident and health plan policies, and small employer benefit plan policies. The bill requires these plans to provide each enrollee with written notice of a premium increase not less than 60 days before the effective date, and requires the plan to provide a table with the actual dollar amount of the current charge and the increased charge, and the percentage of change. House Bill 1951 provides that the notice requirements do not prevent the plan and enrollee from negotiating a coverage or rate change after the notice. The provisions further prohibit a plan from requiring an enrollee to respond to or take action on the notice to renew coverage before the 45th day after notice is given. Finally, the bill requires the notice to include information about contacting and filing complaints with TDI and other consumer assistance resources.

12. Authorize TDI to adopt rules necessary to increase the availability of insurance to children under 19 years of age.

House Bill 1951 authorizes the Commissioner of Insurance to adopt rules necessary to increase the availability of coverage to children younger than 19 years of age; establish an open enrollment period; and establish qualifying events as exceptions to an open enrollment period, including loss of coverage when a child becomes ineligible for coverage under the state child health plan. The bill allows the Commissioner to adopt rules on an emergency basis using procedures under the Government Code.

13. Prohibit health plans from requiring a therapeutic optometrist or ophthalmologist to participate in a particular vision panel as a condition for inclusion in the plan's medical panel.

House Bill 1951 prohibits a managed care plan from requiring, as condition to be included in the plan's medical panel, a therapeutic optometrist or ophthalmologist to be included in, or accept the terms of payment under or for, a particular vision panel.

14. Provide an exemption from agent licensure for persons writing a limited amount of job protection insurance.

The bill exempts a person from property and casualty insurance agent licensing requirements, if that person sold job protection insurance policies that generated less than $40,000 in direct premium in the previous year.

15. Amend reinsurance requirements for certain companies writing surety bonds in Texas.

For surety companies without a certificate of authority from the United State Secretary of the Treasury to execute certain surety bonds that exceed $100,000, the bill increases the monetary threshold requiring reinsurance from "any liability in excess of $100,000" to "any liability in excess of $1 million." The bill also removes a provision of state law that prohibits an amount reinsured by a reinsurer from exceeding 10 percent of the reinsurer's capital and surplus.

16. Amend the requirements for licensure as a residential fire alarm technician.

For residential fire alarm technicians, H.B. 1951 reduces the minimum number of curriculum hours required for licensure from eight hours to seven hours. Additionally, the bill requires that one of those minimum hours be dedicated to completing the course exam. The provision requires the course examination to contain a minimum of 25 questions, and requires that an applicant accurately answer at least 80 percent of the questions to pass the examination.

17. Establish an Insurance Adjuster Advisory Board.

House Bill 1951 establishes a nine-member adjuster advisory board to make recommendations to the Commissioner of Insurance on issues related to licensing and regulation of insurance adjusters; professionally relevant issues such as claims handling, ethics, and catastrophic loss preparedness; and any matter the Commissioner submits for recommendation. The bill requires the Commissioner to appoint to the Board two public insurance adjusters; two members representing the general public; two independent adjusters; one adjuster representing a domestic insurer authorized to engage in business in the state; one adjuster representing a foreign insurer authorized to engage in business in the state; and one representative of the Independent Insurance Agents of Texas.

Fiscal Implication Summary

House Bill 1951 will not have a fiscal impact to the State.