

BILL ANALYSIS

Senate Research Center

H.B. 3575
By: Brimer (Armbrister)
Economic Development
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Engrossed

DIGEST

In 1989, S.B. 1 changed the Texas Workers' Compensation Assigned Risk Pool to the Texas Workers' Compensation Insurance Facility (facility). In 1991, H.B. 62 mandated that the facility should cease writing new policies on or after January 1, 1994 and cease being the insurer of last resort, and required that its claim assets and liabilities be transferred to the Texas Workers' Compensation Insurance Fund (fund) no later than January 1, 1999. This bill will provide regulations regarding the conversion or transfer of the facility.

PURPOSE

As proposed, H.B. 3575 provides regulations regarding the conversion or transfer of the Texas Workers' Compensation Insurance Facility.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the commissioner of insurance in SECTION 2.02 (Section 26(n), Article 21.28-C, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

PART 1. PRIVATIZATION OF FACILITY

SECTION 1.01. **PURPOSE.** Provides that the purpose of this part is to provide a means to convert the Texas Workers' Compensation Insurance Facility (facility) into a stock insurance company (company) and facilitate the transfer of control to a third party as provided by this part; and ensure that the converted facility has full authority to enforce the rights of the facility existing immediately before the effective date of the conversion without impairment or limitation, except as expressly provided by this part.

SECTION 1.02. **DEFINITIONS.** Defines "closing date," "commission," "commissioner," "converted facility," "facility," "fund," "insurer," and "servicing company."

SECTION 1.03. **CONVERSION; CONVERSION EFFECTIVE DATE; CONTINGENT TRANSFER.** Sets forth regulations regarding the conversion of the facility into a company and the conversion effective date.

SECTION 1.04. **CONVERSION AGREEMENT.** Authorizes the facility to enter into an agreement to issue and sell shares of the capital stock created as a result of the conversion described by Section 1.03 of this part. Requires the agreement, in order for it to take effect, to be approved by a majority of the voting members of the governing committee of the facility at a meeting at which a quorum is present.

SECTION 1.05. **COMMISSIONER APPROVAL.** Sets forth regulations regarding approval of the agreement by the commissioner of insurance.

SECTION 1.06. **EFFECT OF CONVERSION.** Sets forth the effects of the conversion.

SECTION 1.07. **APPLICABLE LAW.** Provides that, except as otherwise provided by this part, Article 5.76-2, Insurance Code, ceases to apply to the facility on the closing date and does not apply

to the converted facility. Provides that specifically, neither the converted facility nor any other insurer succeeds to the facility's right to assess the facility's member insurers under Section 4.04, Article 5.76-2, Insurance Code.

SECTION 1.08. COMPLIANCE; CAPITALIZATION REQUIREMENTS. Sets forth regulations regarding compliance and capitalization requirements.

SECTION 1.09. FINAL ASSESSMENT. Sets forth regulations regarding a final assessment to be made by the facility through its governing committee.

SECTION 1.10. IMMUNITY. Provides that the immunity provisions of Sections 2.05(h) and 2.12, Article 5.76-2, Insurance Code, as those provisions existed before their repeal, continue to apply to each act or omission that occurs before, on, or after the closing date and that is performed by the persons or entities covered by those provisions, including an act or omission related to the powers and duties contained in this part.

SECTION 1.11. DEFENSE; INDEMNIFICATION. Sets forth regulations regarding the defense and indemnification of certain persons by the facility.

SECTION 1.12. CONTROLLING LAW. Provides that if a conflict exists between this part and any other statute relating to the facility, this part controls.

SECTION 1.13. CONFORMING AMENDMENT. Amends Article 21.28-C, Insurance Code, by adding Sections 26 and 27, as follows:

Sec. 26. **COVERAGE FOR WORKERS' COMPENSATION INSURANCE POLICIES ISSUED BY TEXAS WORKERS' COMPENSATION INSURANCE FACILITY.** Sets forth regulations regarding coverage for workers' compensation insurance policies issued by the facility.

Sec. 27. **IMMUNITY.** Provides that there is no liability on the part of, and a cause of action does not arise against, certain persons for any act or omission in the performance of any activity related to the negotiations relating to the privatization of the facility. Provides that this section applies to each activity undertaken by such a person or entity, regardless of the date of the act or omission.

SECTION 1.14. EFFECTIVE DATE FOR PART 1. Provides that this part takes effect immediately.

PART 2. CONTINGENT TRANSFER

SECTION 2.01. TRANSFER TO TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION; EFFECTIVE DATE. Effective date: September 1, 1997. Makes application of this Act prospective.

SECTION 2.02. CONFORMING AMENDMENT. Amends Article 21.28-C, Insurance Code, by adding Section 26, as follows:

Sec. 26. **TRANSFER OF FACILITY TO ASSOCIATION.** Sets forth regulations regarding the transfer of the facility to the association. Defines "comptroller," "facility," "fund," "insurer," and "Texas workers' compensation insurance facility account."

PART 3. REPEALER; TRANSITION; EMERGENCY

SECTION 3.01. REPEALER. Provides that Article 5.76-2, Insurance Code (Texas Workers' Compensation Insurance Facility), and Section 18.24(b), Chapter 12, Acts of the 72nd Legislature, 2nd Called Session, 1991, as amended by Section 8, Chapter 885, Acts of the 73rd Legislature, Regular Session, 1993 (Regarding the Texas workers' compensation insurance facility), are repealed on the effective date of this Act except as otherwise provided by this Act.

SECTION 3.02. SEVERABILITY CLAUSE.

SECTION 3.03. SAVING CLAUSE. Provides that the repeal of Article 5.76-2, Insurance Code, under SECTION 3.01 of this Act does not affect rights and liabilities accruing under that article before the effective date of this Act, and that article is continued in effect for that purpose and for the purposes expressly provided by this Act or Section 26, Article 21.28-C, Insurance Code, as added by this Act.

SECTION 3.04. EFFECTIVE DATE. Provides that this part takes effect on the closing date of the conversion of the facility under Part 1 of this Act as that date is defined by Section 1.02 of this Act; or on September 1, 1997, if Part 2 of this Act takes effect.

SECTION 3.05. Emergency clause.