

BILL ANALYSIS

Senate Research Center
78R7956 AJA-D

S.B. 1680
By: Gallegos
State Affairs
4/4/2003
As Filed

DIGEST AND PURPOSE

Medical malpractice insurance has been designated an emergency issue for the 78th Texas Legislature. Currently, licensed admitted insurance carriers, writing approximately 30 percent of medical malpractice insurance in Texas, are not rate-regulated, and are therefore not required to file rate information with the commissioner of insurance. As proposed, S.B. 1680 requires a one-time filing of rates and supporting data, by all medical malpractice insurers, for the purpose of a summary report to the legislature.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 5, Insurance Code, by adding Subchapter Q, as follows:

SUBCHAPTER Q. FILING OF RATES FOR PROFESSIONAL LIABILITY INSURANCE FOR PHYSICIANS AND HEALTH CARE PROVIDERS; REPORT TO LEGISLATURE

Article 5.151. FILING OF RATE INFORMATION; REPORT

Sec. 1. PURPOSE. Establishes legislative intent.

Sec. 2. DEFINITIONS. Defines “insurer,” “supplementary rating information,” and “security” or “securities.”

Sec. 3. RATE INFORMATION. (a) Requires insurers to file rates for professional liability insurance for physicians and health care providers and supporting information with the commissioner of insurance (commissioner) in accordance with the requirements determined by the commissioner under this article.

(b) Requires filings made by each insurer to be sufficient to respond to the commissioner’s request for information under this article and to provide current and estimated rates for the six-month period following the effective date of this article based on information reasonably known to the insurer at the time of filing.

(c) Requires the insurer to file, in a format specified by the commissioner, including an electronic format, certain rate, actuarial, fee, investment, reinsurance, computer model, and underwriting information.

(d) Requires each insurer that has a share of the market for professional liability insurance for physicians and health care providers in this state of five percent or more to file the rating information required under this section. Requires the commissioner to determine which insurers that have a share of that market in this state of less than five percent are required to file the rating information under this section.

- (e) Requires the commissioner to determine the date on which the filing is due.
- (f) Authorizes the commissioner to require only one filing of rates and supporting information by an insurer under this section and to require additional information as provided by Section 4 of this article. Requires the commissioner to require the one filing of rates as provided by this section to be made not later than the 30th day after the effective date of this article.
- (g) Requires the commissioner to issue an order specifying the information that insurers must file to comply with this article and the date on which the filing is due.
- (h) Provides that the commissioner is not required to hold a hearing before issuing the order required under Subsection (g) of this section.
- (i) Requires the commissioner to notify an affected insurer of the order requiring the rate filing information under this section on the day the order is issued.

Sec. 4. **ADDITIONAL INFORMATION.** Authorizes the commissioner, after the initial rate submission under Section 3 of this article, to require an insurer to provide additional, reasonable information for purposes of the clarification or completeness of the initial rate submission.

Sec. 5. **USE OF FILED RATE INFORMATION.** (a) Provides that information filed by an insurer with TDI under this article that is confidential under a law that applied to the insurer before the effective date of this article remains confidential and is not subject to disclosure under Chapter 552 (Public Information), Government Code, except that the information may be disclosed as provided by Section 552.008 (Information for Legislative Purposes), Government Code. Requires information disclosed under Section 552.008, Government Code, to be provided in a commonly used electronic format, including in spreadsheet or comma-delimited format, if so requested. Prohibits the information from being released to the public except in summary form in the report required under Section 6 of this article.

- (b) Provides that Subsection (a) of this section does not preclude the use of information filed under this article as evidence in prosecuting a violation of this code. Provides that confidential information described by Subsection (a) of this section that is used in prosecuting a violation is subject to a protective order until all appeals of the case have been exhausted. Provides that if an insurer is found, after the exhaustion of all appeals, to have violated this code, a copy of the confidential information used as evidence of the violation is no longer presumed to be confidential.

Sec. 6. **REPORT.** (a) Requires the commissioner to submit a report to the governor, the lieutenant governor, the speaker of the house of representatives, and the members of the legislature on the information collected from the filings required under this article. Requires the report to be submitted not later than the 30th day after the effective date of this article. Authorizes the report to be created based on a sample of the information provided under Section 3 of this article.

- (b) Requires the report required under this section to provide certain information.

Sec. 7. **NOTIFICATION; NONCOMPLIANCE.** Requires the commissioner to notify the governor, the lieutenant governor, the speaker of the house of representatives, and the members of the legislature of the names of the insurers whom the commissioner requested to make the rate filings under this article and the names of the insurers who did not respond in whole or in part to the commissioner's request. Requires this notification to be made by separate letter on the fourth day following the date on which the commissioner determines the filing is due under Section 3(g) of this article.

Sec. 8. APPLICATION OF CERTAIN LAW. Provides that Chapter 40 (Duties of State Office of Administrative Hearings and Commissioner in Certain Proceedings; Rate Setting Proceedings) of this code does not apply to an action of the commissioner under Section 3(g) of this article.

Sec. 9. FAILURE TO COMPLY. Provides that an insurer that fails to comply with any request for information issued by the commissioner under this article is subject, after notice and opportunity for hearing, to sanctions as provided by Chapters 82 (Sanctions) and 84 (Administrative Penalties) of this code.

Sec. 10. EXPIRATION. Provides that this article expires December 31, 2003.

SECTION 2. Provides that the expiration of Article 5.151, Insurance Code, as added by this Act, does not affect an action or proceeding against an insurer subject to that law for a failure to comply with that law before its expiration, regardless of when the action or proceeding was commenced, and that law is continued in effect for this purpose.

SECTION 3. Effective date: upon passage or September 1, 2003.