BILL ANALYSIS

Senate Research Center   C.S.S.B. 871
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under Chapter 2254 (Premium Refund for Certain Personal Lines), Insurance Code, if the commissioner of insurance (commissioner) determines that a homeowners or personal automobile insurer has charged policy holders excessive rates, the commissioner may order refunds. The insurer may request an administrative hearing on the refund order. Following the hearing, the refund order will be affirmed, reversed, or modified, and a final order is issued.

The insurer may challenge the final order by filing a petition for judicial review in district court. The insurer may avoid paying refunds during the pendency of the district court proceedings by requesting a temporary injunction and posting a bond. However, courts will typically set a bond amount of $500 even though the amount of refunds at issue may be tens of millions of dollars. The insurer is then free to use millions of dollars in refunds owed to policy holders as capital to fund ongoing operations during the pendency of the challenge.

C.S.S.B. 871 amends current law relating to stay of requirement to provide refunds or discounts on excessive or unfairly discriminatory residential property premium rates.

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 2254, Insurance Code, by adding Section 2254.005, as follows:

Sec. 2254.005. REQUIREMENT TO PROVIDE REFUNDS OR DISCOUNTS ON EXCESSIVE OR UNFAIRLY DISCRIMINATORY PREMIUM RATES. (a) Requires an insurer, not later than the 30th day after the date an order becomes final, notwithstanding and in addition to any other provision of this code or other law, if the insurer files a petition under Subchapter D (Judicial Review), Chapter 36 (Department Rules and Procedures), for judicial review of an order disapproving a rate under Chapter 2251 (Rates) without providing refunds or discounts under Section 2254.003 (Refund or Discount Based on Excessive or Unfairly Discriminatory Premium Rates), to:

(1) stay the requirement to provide refunds or discounts by:

(A) paying the amount of the refunds, discounts, and interest to the court for placement in an escrow account; or

(B) giving the court a bond approved by the court that is for the amount of the refunds, discounts, and interest, and is effective until all judicial review of the commissioner of insurance's (commissioner) order is final; or

(2) obtain from the court in which the petition for judicial review is pending an order staying the requirement to provide refunds or discounts by:

(A) filing with the court an affidavit stating that the insurer is financially unable to provide refunds or discounts and is financially unable to give the bond; and

(B) giving a copy of the affidavit to the commissioner by certified mail.

(b) Authorizes the commissioner, if the commissioner receives a copy of an affidavit under Subsection (a)(2), to file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and to stay the requirement to provide of refunds or discounts on finding that the alleged facts are true. Provides that the insurer that files an affidavit has the burden of proving that the insurer is financially unable to provide refunds or discounts and to give a bond.

(c) Requires the insurer, if the insurer fails to comply with Subsection (a), to provide to each affected policyholder the refunds or discounts ordered pursuant to Section 2254.003.

SECTION 2. Provides that this Act applies to an insurer that files a petition for judicial review under Subchapter D, Chapter 36, Insurance Code, on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2011.