

BILL ANALYSIS

C.S.H.B. 1353
By: Cook, Robby
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The 78th Legislature's Regular Session passed House Bill No. 2095 by Robby Cook/Staples allowing employers in the same type of business and belonging to a bona fide Texas trade association to join together to self-insure for workers' compensation. That legislation established the Texas Group Self-Insurance Guaranty Association Advisory Committee to make recommendations about the establishment of a guaranty association to provide for the payment of workers' compensation benefits for the injured employees if a group becomes insolvent.

The Advisory Committee consisted of a representative appointed by the commissioner of the Texas Department of Insurance, a member of the Texas Workers' Compensation Commission representing wage-earners, the public counsel of the Office of Public Insurance Counsel, and three representatives of groups certified by the Texas Department of Insurance under the provisions of Chapter 407A, Labor Code. The Advisory Committee met four times to consider whether to recommend a guaranty fund and, if so, how it should be structured.

This bill incorporates the unanimous recommendations of the Advisory Committee, as reflected in the "Report of Recommendations by the Texas Group Self-Insurance Guaranty Association Advisory Committee". The bill creates the Texas Self-Insurance Group Fund funded by contributions from groups certified under Chapter 407A, Labor Code. The fund will be governed by a board provided for in the bill and is responsible for ensuring the payment of workers' compensation benefits in the event a group becomes insolvent.

RULEMAKING AUTHORITY

While this bill provides no additional rulemaking authority, it is the opinion of the Committee on Business and Industry that it does authorize the Commissioner of Insurance to appoint board members and approve the Plan of Operation of the board.

SECTION-BY-SECTION ANALYSIS

SECTION 1. Adds a new Subchapter J to Chapter 407A of the Texas Workers' Compensation Act (Subtitle A, Title 5, Texas Labor Code) creating a guaranty fund.

Sec. 407A.451: Provides definitions.

Sec. 407A.452: Creates the Texas Self-Insurance Group Fund as a non-profit association that provides for the payment of workers' compensation benefits for employees covered by a group declared insolvent. Requires each certified group to participate in the fund.

Sec. 407A.453: Provides for management of the fund by the Texas Self-Insurance Group Board, composed of three members representing groups, one member of the Texas Workers' Compensation Commission representing wage earners, one member designated by the commissioner of insurance, and the public counsel of the office of public insurance counsel. Provides for the appointment and terms of the board and provides protection from suit for a board member acting in good faith in the execution of board duties.

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Sec. 407A.454: Sets forth the general duties of the board, including responsibility for the fund and interaction with the Department of Insurance in regard to certain issues.

Sec. 407A.455: Requires the board to adopt a Plan of Operation subject to approval by the commissioner of insurance.

Sec. 407A.456: Sets forth the basis for contributions to the fund required from each group to create a trust fund over a period of 10 years. Requires the board to adopt an annual schedule for contribution and requires all groups to contribute equitably to the fund.

Sec. 407A.457: Sets forth actions to be taken if a group is determined to be insolvent, including requiring the Commissioner of Insurance to secure release of the security deposit of the group and to determine whether the security and assets of the group are sufficient to pay the group's liabilities. Requires the Commissioner of Insurance to order assessments against the insolvent group's members before any disbursement from the fund. Requires replenishment of the fund by contributions or assessments. Authorizes the Commissioner of Insurance to commence a delinquency proceeding against an insolvent group.

Sec. 407A.458: Requires assessments to be paid within 30 days and requires the Commissioner of Insurance to collect assessments and costs. Provides that the joint and several liability of the insolvent group's members survives and is not terminated by payment of benefits from the fund. Allows the fund to collect delinquent assessments and costs through suit.

Sec. 407A.459: Requires the fund to begin payment of the workers' compensation obligations, except for penalties assessed for actions or omissions by persons other than the fund, within 30 days of a determination by the Commissioner of Insurance that the fund should pay benefits and administer claims for the insolvent group.

Sec. 407A.460: Provides for immediate access by the fund to the security and assets of the insolvent group and requires all assessments of the members of the group be paid to the fund.

Sec. 407A.461: Authorizes the release of workers' compensation claim information to the fund if the fund assumes the obligations of an insolvent group.

Sec. 407A.462: Makes the fund a party in interest in a proceeding involving a claim for benefits against the insolvent group for which the fund is assuming the obligations and gives the fund the same rights and defenses as the insolvent group.

Sec. 407A.463: Gives fund payments of benefits the same preference over other debt that the insolvent group payments would have and gives the fund priority status pursuant to article 21.28, section 8, Insurance Code.

Sec. 407A.464: Provides that monies of the fund do not become assets of the insolvent group and are for the payment of workers' compensation liabilities, costs of administration, and legal costs only.

SECTION 2. Amends sections 407A.051(c)(12) and (13) to require a fidelity bond rather than a performance bond for the administrator and service company.

SECTION 3. Repeals sections 407A.356 (providing a temporary guaranty mechanism for groups) and 407A.357 (creating the Texas Group Self-Insurance Guaranty Association Advisory Committee).

SECTION 4. Effective September 1, 2005.

COMPARISON OF ORIGINAL BILL TO SUBSTITUTE

A non-Legislative Council draft was filed, and C.S.H.B. No. 1353 is the Legislative Council draft version. The substitute changes the name to the "Texas Self-Insurance Group Guaranty C.S.H.B. 1353 79(R)

Fund" from "Guaranty Fund." It also adds the definition of "Trust Fund." Additionally, it changes the name of the "Board of Directors" from the "Board of the Fund." Further, it allows board members to serve additional terms upon election by members of the guaranty fund, instead of a staggered three year term.

C.S.H.B. No. 1353 states that the Guaranty Fund may not disclose confidential information received from the department in a financial report, including an examination or audit report. The information received from the department remains confidential and is not subject to disclosure. It also allows the board to make recommendations outside of regular board meetings. The substitute inserts application procedures, such as a filing fee, proof of insurance and financial requirements, legal documents, financial statements, etc.

The substitute also allows a cash security deposit or securities acceptable to the commissioner to be held in the state treasury in lieu of bonds, and allows the commissioner to require a service company providing claim services to furnish a performance bond in which a cash or securities deposit will also be acceptable.