

BILL ANALYSIS

Senate Research Center

H.B. 1353
By: Cook, Robby (Duncan)
State Affairs
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Committee Report (Amended)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The 78th Legislature, Regular Session, 2003, enacted H.B. 2095, 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 (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 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 provisions of Chapter 407A, Labor Code. The committee met four times to consider whether to recommend a guaranty fund and, if so, how it should be structured.

H.B. 1353 incorporates the unanimous recommendations of the committee, as reflected in the *Report of Recommendations by the Texas Group Self-Insurance Guaranty Association Advisory Committee*. This bill creates the Texas Self-Insurance Group Fund (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 be responsible for ensuring the payment of workers' compensation benefits in the event a group becomes insolvent.

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 407A, Labor Code, by adding Subchapter J, as follows:

SUBCHAPTER J. TEXAS SELF-INSURANCE GROUP GUARANTY FUND

Sec. 407A.451. DEFINITIONS. Defines "board," "guaranty fund," and "trust fund."

Sec. 407A.452. GUARANTY FUND. (a) Provides that the Texas self-insurance group guaranty fund (guaranty fund) is a nonprofit association established to provide for the payment of workers' compensation insurance benefits for injured employees covered by a group declared insolvent under Section 407A.355.

(b) Requires each group that desires to be certified under this chapter to participate as a member of the guaranty fund.

Sec. 407A.453. BOARD OF DIRECTORS. (a) Provides that the guaranty fund is managed by a board of directors (board).

(b) Sets forth the composition of the board.

(c) Authorizes representatives of each group certified under this chapter to participate equally in the election of the three members of the board elected under

Subsection (b)(1). Requires a person elected under Subsection (b)(1) to be approved by the commissioner of insurance (commissioner) before the person is authorized to serve on the board.

(d) Requires the commissioner, notwithstanding Subsection (c), to appoint the initial board members representing groups. Provides that a person appointed as an initial board member under this subsection is eligible to serve additional terms on election by the members of the guaranty fund.

Sec. 407A.454. IMMUNITY. Provides that a board member or a member of the staff of the board is not liable in a civil action for an act performed in good faith in the execution of that person's powers or duties.

Sec. 407A.455. BOARD GENERAL POWERS AND DUTIES. (a) Requires the board to take certain actions relating to the guaranty fund.

(b) Requires the board to control all amounts in the trust fund, including investment of those amounts.

(c) Prohibits the guaranty fund from disclosing confidential information received from the Texas Department of Insurance (department) in a financial report under Subsection (a)(4), including an examination or audit report. Provides that information received from the department remains confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code.

(d) Authorizes the board to make recommendations under Subsection (a)(6) outside of regular board meetings.

Sec. 407A.456. PLAN OF OPERATION. (a) Requires the board to adopt a plan of operation governing the board's activities and the operation of the guaranty fund and the trust fund.

(b) Provides that the plan of operation adopted by the board is subject to approval by the commissioner.

Sec. 407A.457. TRUST FUND; SCHEDULE. (a) Requires each group to contribute an amount, based on the total amount of income benefit payments made in this state for the preceding reported calendar year, to create, over a period of 10 years beginning January 1, 2006, a trust fund of at least \$1 million for certain expenses and payments.

(b) Authorizes the board to adopt provisions in the plan of operation that provide for the indexing of the amount of the trust fund to a risk analysis.

(c) Requires the board, at least annually, to adopt a year-by-year schedule of assessments to meet the funding goal of the trust fund.

(d) Authorizes the board to defer assessments if the fund equals or exceeds \$2 million and to allow the trust fund to accrete based on its investment earnings.

(e) Requires the contribution required for the first year after a group is issued a certificate of approval under this chapter to be based on the group's estimated income benefit payments for the group's first year of operation.

(f) Requires each group certified under this chapter to make contributions under this section to the trust fund, and requires the board to provide a mechanism in the plan of operation to ensure that all groups contribute equitably to the trust fund.

(g) Requires the board to administer the trust fund in accordance with the plan of operation adopted by the board and approved by the commissioner.

Sec. 407A.458. EFFECT OF INSOLVENCY OF GROUP. (a) Requires the commissioner, on determining that a group has become insolvent, to secure release of the surety bond or security deposit required under Section 407A.053 and to promptly make certain estimates

(b) Requires the commissioner, if the bond or security deposit and the available assets of the insolvent group are insufficient to cover all of the group's incurred compensation liabilities, to direct the insolvent group to immediately assess its members to cover all incurred liabilities under a schedule approved by the commissioner.

(c) Requires the commissioner, if the assessments under Subsection (b) will be insufficient to cover the incurred liabilities, to estimate the additional funds necessary to cover the incurred liabilities for benefit compensation and related administration expenses for the insolvent group. Requires the board, on receipt of the commissioner's estimate, to provide from the trust fund the additional funds needed for benefit compensation and related administrative expenses for the insolvent group

(d) Requires disbursements from the trust fund under Subsection (c) to be replenished under certain conditions.

(e) Requires the board if, after application of Subsections (b)-(d), the amount available in the trust fund is still insufficient, to assess all groups for the remaining deficiency.

(f) Authorizes the commissioner to exempt a group from assessment under this section on a determination that the payment of the assessment would render the group insolvent.

(g) Authorizes the commissioner, on a finding of insolvency, to commence a delinquency proceeding for the purpose of liquidating, rehabilitating, reorganizing, or conserving a group. Requires such a group to be considered an insurer for purposes of Article 21.28 (Liquidation, Rehabilitation, Reorganization, or Conservation of Insurers), Insurance Code, and an insurance company for purposes of 11 U.S.C. Section 109. Requires the conservator, receiver, or other statutory successor of a group to coordinate with the board in the furtherance of the purposes of this subchapter.

Sec. 407A.459. COLLECTION OF ASSESSMENTS FROM GROUP MEMBERS; CONTINUATION OF JOINT AND SEVERAL LIABILITY. (a) Requires each member of an insolvent group to pay the amount of its assessment under this chapter to the commissioner not later than the 30th day after the date on which the commissioner notifies the member of the assessment. Requires the commissioner to collect assessments and costs from the members of the insolvent group.

(b) Provides that the joint and several liability of the members of a group under Section 407A.056 continues and is not terminated by payment of benefits through the guaranty fund.

(c) Authorizes the guaranty fund, if the guaranty fund assumes payment of benefits for compensation liabilities on behalf of an insolvent group, to collect delinquent assessments and costs through suit. Provides that the venue for a suit under this subsection is in Travis County.

Sec. 407A.460. PAYMENT OF BENEFITS THROUGH GUARANTY FUND. (a) Provides that the guaranty fund, if the commissioner determines that the payment of benefits and claims administration is required to be made through the guaranty fund, assumes the workers' compensation obligations on behalf of the insolvent group and requires the guaranty fund to begin the payment of the obligations for which it is liable not later than the 30th day after the date of notification by the commissioner.

(b) Requires the guaranty fund to make payments to claimants whose entitlement to benefits can be ascertained by the guaranty fund.

(c) Provides that the guaranty fund, notwithstanding Subsection (a), is not liable for the payment of any penalties assessed for any act or omission on the part of any person other than the guaranty fund.

Sec. 407A.461. POSSESSION OF SECURITY BY GUARANTY FUND. Entitles the guaranty fund, on the assumption of obligations on behalf of an insolvent group by the guaranty fund under the commissioner's determination, to immediate possession of any assets of the insolvent group and any security deposited or the proceeds of any surety bond deposited by the insolvent group, along with all interest on the security. Requires all assessments from members of the insolvent group to be paid to the guaranty fund.

Sec. 407A.462. RELEASE OF CLAIM INFORMATION TO GUARANTY FUND. Authorizes information on a workers' compensation claim, if the guaranty fund has assumed compensation obligations on behalf of an insolvent group, to be released to the guaranty fund as provided by Section 402.084(a).

Sec. 407A.463. GUARANTY FUND AS PARTY IN INTEREST. (a) Provides that the guaranty fund is a party in interest in a proceeding involving a workers' compensation claim against an insolvent group whose compensation obligations have been paid or assumed by the guaranty fund.

(b) Provides that the guaranty fund has the same rights and defenses as the insolvent group, including certain rights.

Sec. 407A.464. PREFERENCES. (a) Entitles benefit payments made by the guaranty fund under this subchapter to the same preference over other debts of the insolvent group as provided by law to benefit payments owed by the insolvent group to the person entitled to the benefits.

(b) Provides that the guaranty fund has the priority status provided by Section 8, Article 21.28, Insurance Code.

Sec. 407A.465. SPECIAL FUND. Provides that monies advanced by the association under this chapter do not become assets of the insolvent group but constitute a special fund advanced to the commissioner, receiver, or other statutory successor only for the payment of compensation liabilities, including the costs of claim administration and legal costs.

SECTION 2. Amends Section 407A.051, Labor Code, by amending Subsection (c) and adding Subsection (h), as follows:

(c) Requires the application for initial certificate approval to be accompanied by a \$250,000 fidelity bond, rather than performance bond, for the administrator and for the service company in the form prescribed by the commissioner.

(h) Authorizes a security deposit of cash or securities acceptable to the commissioner, in lieu of the bonds required under Subsections (c)(12) and (c) (13), to be deposited with the commissioner to be held in the state treasury.

SECTION 3. Amends Section 407A.057, Labor Code, as follows:

Sec. 407A.057. ADDITIONAL PERFORMANCE BOND REQUIREMENTS. (a) Creates this subsection from existing text.

(b) Authorizes a security deposit of cash or securities acceptable to the commissioner, in lieu of a performance bond under Subsection (a), to be deposited with the commissioner to be held in the state treasury.

SECTION 4. Repealer: Sections 407A.356 (Guaranty Mechanism) and 407A.357 (Texas Group Self-Insurance Guaranty Association; Advisory Committee), Labor Code.

SECTION 5. Effective date: September 1, 2005.

SUMMARY OF COMMITTEE CHANGES

COMMITTEE AMENDMENT NO. 1:

Amends H.B. 1353 on page 2, line 6, by deleting Subdivision (2) and inserting a new Subdivision (2) as follows:

"(2) one member to represent wage earners designated by the commission:"