

By: Haggerty

H.B. No. 1132

Substitute the following for H.B. No. 1132:

By: Thompson

C.S.H.B. No. 1132

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of and rights of private security personnel; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. INSURANCE CODE CHANGES

SECTION 1.01. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.49-21 to read as follows:

Art. 21.49-21. JOINT UNDERWRITING ASSOCIATION FOR SECURITY SERVICES CONTRACTORS

Sec. 1. DEFINITIONS. In this article:

(1) "Association" means the joint underwriting association established under this article.

(2) "Board of directors" means the board of directors of the association.

(3) "Critical infrastructure" and "homeland security activity" have the meanings assigned by Section 421.001, Government Code.

(4) "Security services contractor" means a person who holds a license as a securities services contractor in accordance with Section 1702.102, Occupations Code.

Sec. 2. IMMUNITY. Liability does not exist on the part of, and a cause of action does not arise against, the association, an association agent or employee, an insurer, an agent licensed under this code, the commissioner or department, or an authorized

1 representative of the commissioner or department for a statement
2 made in good faith by any of them:

3 (1) in a report or communication concerning risks
4 insured or to be insured through the association; or

5 (2) at an administrative hearing conducted in
6 connection with the report or communication.

7 Sec. 3. APPLICABILITY OF OTHER LAW. The association is
8 subject to Chapters 251 and 253 and Articles 1.15 and 1.16 of this
9 code.

10 Sec. 4. RELATIONSHIP TO SURPLUS LINES INSURANCE. The
11 association is not an authorized insurer for purposes of Chapter
12 981 of this code with respect to general liability insurance for
13 security services contractors.

14 Sec. 5. PURPOSE OF ASSOCIATION. The association provides
15 general liability insurance on a self-supporting basis.

16 Sec. 6. BOARD OF DIRECTORS. (a) The association is
17 governed by a board of directors composed of the following nine
18 members:

19 (1) five representatives of insurers that are required
20 to be association members, elected by association members in
21 accordance with the plan of operation;

22 (2) two representatives of security services
23 contractors, appointed by the commissioner; and

24 (3) two public members, appointed by the commissioner.

25 (b) The board members serve one-year terms beginning on
26 October 1 of each year.

27 Sec. 7. PLAN OF OPERATION. (a) The association operates

1 under a plan of operation adopted by the commissioner.

2 (b) The plan of operation must:

3 (1) provide for economic, fair, and nondiscriminatory
4 administration;

5 (2) provide for the prompt and efficient provision of
6 general liability insurance; and

7 (3) contain other provisions, including provisions
8 relating to:

9 (A) the establishment of necessary facilities;

10 (B) the association's management;

11 (C) the assessment of members and policyholders
12 to defray losses and expenses;

13 (D) the administration of the policyholder's
14 stabilization reserve fund;

15 (E) commission arrangements;

16 (F) reasonable and objective underwriting
17 standards;

18 (G) the acceptance, assumption, and cession of
19 reinsurance;

20 (H) the appointment of servicing insurers; and

21 (I) procedures for determining amounts of
22 insurance to be provided by the association.

23 (c) The plan of operation must direct that any revenue
24 exceeding expenditures that remains in the association's funds at
25 the close of the association's fiscal year, after the association
26 reimburses members' contributions in accordance with Section 26(a)
27 of this article, be added to the association's reserves.

1 Sec. 8. AMENDMENTS TO PLAN OF OPERATION. Amendments to the
2 plan of operation:

- 3 (1) shall be made at the commissioner's direction; or
4 (2) may be made by the board of directors, subject to
5 the commissioner's approval.

6 Sec. 9. JOINT UNDERWRITING ASSOCIATION MEMBERSHIP. (a)
7 The association is composed of each insurer, including a Lloyd's
8 plan and a reciprocal or interinsurance exchange, authorized to
9 write and writing liability insurance, including automobile
10 liability insurance, on a direct basis in this state, other than:

11 (1) a farm mutual insurance company authorized under
12 Chapter 911 of this code; and

13 (2) a county mutual insurance company authorized under
14 Chapter 912 of this code.

15 (b) An insurer that is a member of the association must
16 remain a member as a condition of the insurer's authority to engage
17 in the business of the insurance described by Subsection (a) of this
18 section.

19 (c) Each association member participates in the writings,
20 expenses, and losses of the association in the proportion that the
21 net direct premiums of the member, excluding the portion of
22 premiums attributable to the operation of the association, written
23 during the preceding calendar year bear to the aggregate net direct
24 premiums written in this state by all association members.

25 (d) The association shall annually determine a member's
26 participation in the association on the basis of the net direct
27 premiums written by the member during the preceding calendar year,

1 as reported in the annual statements and other reports the member
2 files as required by the department.

3 Sec. 10. ANNUAL STATEMENT; ADDITIONAL INFORMATION. (a)
4 Not later than March 1 of each year, the association shall file with
5 the department a statement that contains information regarding the
6 association's transactions, condition, operations, and affairs
7 during the preceding calendar year.

8 (b) The statement must:

9 (1) contain the matters and information required by
10 the department; and

11 (2) be in the form approved by the department.

12 (c) The department at any time may require the association
13 to provide additional information regarding the association's
14 transactions or condition, or any related matter considered to be:

15 (1) material; and

16 (2) of assistance in evaluating the scope, operation,
17 and experience of the association.

18 Sec. 11. GENERAL ELIGIBILITY FOR COVERAGE. (a) The
19 commissioner shall by order establish the categories of security
20 services contractors that are eligible to obtain general liability
21 insurance coverage from the association based on the types of
22 services the contractors provide. The commissioner shall ensure
23 coverage is available for security services contractors that
24 provide services that support critical infrastructure and homeland
25 security activities in this state.

26 (b) If a category of security services contractor is
27 excluded from eligibility to obtain insurance coverage from the

1 association, the commissioner may determine, after notice of at
2 least 10 days and a hearing, that general liability insurance is not
3 otherwise available. On that determination, the previously
4 excluded category is eligible to obtain insurance coverage from the
5 association.

6 Sec. 12. INSURER OF LAST RESORT. (a) A security services
7 contractor not otherwise eligible for insurance coverage from the
8 association under Section 11 of this article is eligible for that
9 coverage if the contractor demonstrates, in accordance with the
10 requirements of the association, that the contractor:

11 (1) made a verifiable effort to obtain insurance
12 coverage from authorized insurers and eligible surplus lines
13 insurers; and

14 (2) was unable to obtain substantially equivalent
15 insurance coverage and rates.

16 (b) The commissioner by rule may adopt loss control or best
17 practices requirements applicable to a security services
18 contractor who obtains general liability insurance coverage from
19 the association under this section.

20 Sec. 13. APPLICATION FOR COVERAGE. (a) A security services
21 contractor included in a category eligible for general liability
22 insurance coverage by the association is entitled to apply to the
23 association for the coverage. An agent authorized under Chapter
24 4051 of this code may apply on behalf of an applicant.

25 (b) The association shall issue a general liability
26 insurance policy to an applicant:

27 (1) if the association determines that:

1 (A) the applicant meets the underwriting
2 standards of the association prescribed by the plan of operation;
3 and

4 (B) there is no unpaid and uncontested premium,
5 policyholder's stabilization reserve fund charge, or assessment
6 due from the applicant for prior insurance, as shown by the
7 insured's failure to pay or to object in writing to the charges on
8 or before the 30th day after the date of the billing; and

9 (2) on receipt of the premium and the policyholder's
10 stabilization reserve fund charge, or the portion of the premium
11 and charge prescribed by the plan of operation.

12 Sec. 14. POWERS RELATING TO GENERAL LIABILITY INSURANCE
13 COVERAGE. Under this article and the plan of operation, the
14 association, on behalf of the association members, may:

15 (1) issue, or cause to be issued, general liability
16 insurance policies to applicants, including primary, excess, and
17 incidental coverages, subject to the limits specified in the plan
18 of operation and Section 15 of this article;

19 (2) underwrite general liability insurance and adjust
20 and pay losses related to that insurance, or appoint servicing
21 insurers to perform those functions;

22 (3) either or both accept and refuse the assumption of
23 reinsurance from association members; and

24 (4) cede and purchase reinsurance.

25 Sec. 15. GENERAL LIABILITY INSURANCE COVERAGE PROVIDED.
26 The association shall provide general liability insurance coverage
27 in a form and in at least the amounts sufficient to satisfy the

1 requirements of Section 1702.124, Occupations Code. The insurance
2 coverage provided may, in accordance with the plan of operation,
3 include additional related liability coverages necessary or
4 advisable for the operations of a security services contractor.

5 Sec. 16. FOLLOWING FORM EXCESS LIABILITY COVERAGE. Excess
6 liability insurance coverage written for a security services
7 contractor by the association must be written as following form
8 excess liability insurance to the contractor's primary insurance
9 coverage.

10 Sec. 17. PUNITIVE DAMAGES EXCLUDED. The association may
11 not issue or renew a general liability insurance policy for a
12 security services contractor that includes coverage for punitive
13 damages assessed against the contractor.

14 Sec. 18. INSTALLMENT PLAN. The association may offer an
15 installment payment plan for general liability insurance coverage
16 obtained through the association.

17 Sec. 19. TERM OF POLICY; NOTICE OF TERMINATION OF COVERAGE.
18 A general liability insurance policy issued by the association must
19 be for a term of one year or less, as determined by the association.
20 To terminate coverage under the policy, the association must comply
21 with the requirements of Section 1702.124(e), Occupations Code.

22 Sec. 20. APPLICABILITY OF OTHER LAW TO RATES AND POLICY
23 FORMS. (a) Except as provided by Subsection (b) of this section
24 and Section 21 of this article, the rates, rating plans, rating
25 rules, rating classifications, territories, and policy forms
26 applicable to the general liability insurance written by the
27 association and related statistics are governed by Subchapter B,

1 Chapter 5, of this code, and the other provisions of this code, to
2 the same extent as other general liability insurance written in
3 this state.

4 (b) If a provision of a law described by Subsection (a) of
5 this section conflicts with a provision of this article, this
6 article prevails.

7 Sec. 21. RATE STANDARDS. (a) In determining rates, rating
8 plans, rating rules, rating classifications, territories, and
9 policy forms, the association shall consider:

10 (1) the past and prospective loss and expense
11 experience for general liability insurance, inside and outside this
12 state, of all of the association members;

13 (2) trends in the frequency and severity of losses;

14 (3) the association's investment income; and

15 (4) other information the commissioner may require.

16 (b) Rates, rating plans, and rating rules must be based on:

17 (1) the association's loss and expense experience; and

18 (2) other information based on that experience the
19 department considers appropriate.

20 (c) The resultant premium rates must be:

21 (1) actuarially sound; and

22 (2) computed to be self-supporting.

23 Sec. 22. DEFICIT RECOUPMENT. (a) This section applies to a
24 deficit sustained in a single year by the association.

25 (b) The deficit must be recouped in accordance with the plan
26 of operation and the rating plan in effect when the deficit is
27 sustained under one or more of the following procedures, in this

1 sequence:

2 (1) a contribution from the policyholder's
3 stabilization reserve fund established under this article, until
4 the respective fund is exhausted;

5 (2) an assessment on the policyholders in accordance
6 with Section 23 of this article; or

7 (3) an assessment on the members in accordance with
8 Sections 9(c) and (d) and 24 of this article.

9 Sec. 23. ASSESSMENT OF POLICYHOLDERS FOR DEFICIT
10 RECOUPMENT. (a) Each policyholder has contingent liability for a
11 proportionate share of an assessment of policyholders made under
12 this article.

13 (b) If a deficit, as computed under the plan of operation,
14 is sustained in a single year, the board of directors shall levy an
15 assessment only on the policyholders who held policies in force at
16 any time during the two most recently completed calendar years:

17 (1) before the date the assessment is levied; and

18 (2) in which the association was issuing policies.

19 (c) The aggregate amount of an assessment under Subsection
20 (b) of this section must be equal to the amount of the deficit not
21 recouped under Section 22(b)(1) of this article from the
22 policyholder's stabilization reserve fund. Subject to Subsection
23 (d) of this section, each policyholder shall be assessed for a
24 portion of the deficit that reflects the proportion that the earned
25 premium on the policies of that policyholder bears to the total
26 earned premium for all policies of the association in the two most
27 recently completed calendar years.

1 (d) The maximum aggregate assessment on each policyholder
2 may not exceed the annual premium for the general liability
3 insurance policy most recently in effect.

4 Sec. 24. LIMITATION ON REIMBURSEMENT BY MEMBER FOR DEFICIT
5 RECOUPMENT. (a) An association member is not obligated in a single
6 year to reimburse the association for the member's proportionate
7 share of the deficits from the association's operations in that
8 year in an amount that exceeds one percent of the member's
9 policyholder surplus. The aggregate amount not reimbursed in
10 accordance with this subsection shall be reallocated among the
11 other association members. The association shall reallocate that
12 amount in accordance with the method of determining a member's
13 participation under Sections 9(c) and (d) of this article, after
14 excluding the total net direct premiums of all members not sharing
15 in the excess deficits.

16 (b) If the deficits from the association's operations
17 allocated to all association members in a calendar year exceed one
18 percent of all members' respective policyholder surplus, the
19 association shall allocate to each member the amount of the
20 deficits in accordance with the method of determining a member's
21 participation under Sections 9(c) and (d) of this article.

22 Sec. 25. CONTRIBUTION BY MEMBERS FOR SOUND FINANCIAL
23 OPERATION. If sufficient funds are not available for the sound
24 financial operation of the association, each association member
25 shall contribute to the financial requirements of the association
26 in accordance with Sections 9(c) and (d), 23, and 24 of this
27 article, as authorized and considered necessary by the department.

1 A contribution under this subsection is in addition to:

2 (1) an assessment paid in accordance with the plan of
3 operation under this article; and

4 (2) a contribution from a policyholder's stabilization
5 reserve fund.

6 Sec. 26. REIMBURSEMENT OF ASSESSMENT OR CONTRIBUTION;
7 PREMIUM TAX CREDIT. (a) Subject to commissioner approval, the
8 association shall reimburse an assessment or contribution, with
9 interest at a rate approved by the commissioner, to:

10 (1) the association members; or

11 (2) the state, to the extent that the members have
12 recouped their assessments using premium tax credits as provided by
13 Subsection (c) of this section.

14 (b) Pending recoupment or reimbursement of an assessment or
15 contribution paid by a member to the association, the unrepaid
16 balance of the assessment or contribution may be reflected in the
17 member's books and records as an admitted asset of the member for
18 all purposes, including exhibition in an annual statement under
19 Section 862.001 of this code.

20 (c) To the extent a member has paid one or more assessments
21 and has not received reimbursement from the association in
22 accordance with Subsection (a) of this section, a credit against
23 premium taxes under Chapter 221 of this code is allowed at a rate of
24 20 percent a year for five successive years following the year in
25 which the deficit was sustained. At the member's option, the tax
26 credit may be taken over an additional number of years.

27 Sec. 27. STANDARDS FOR RECOUPMENT PROVISIONS. A provision

1 for recoupment must be based on:

2 (1) the association's loss and expense experience; and

3 (2) other information based on that experience the

4 department considers appropriate.

5 Sec. 28. POLICYHOLDER'S STABILIZATION RESERVE FUND. (a)

6 The policyholder's stabilization reserve fund is collected and

7 administered by the association as provided by this section,

8 Section 29 of this article, and the plan of operation.

9 (b) The policyholder's stabilization reserve fund shall be:

10 (1) credited with all policyholder's stabilization

11 reserve fund charges collected under Section 29 of this article;

12 (2) charged with any deficit sustained from the

13 association's operation during the previous year;

14 (3) treated as a liability of the association along

15 with, and in the same manner as, premium and loss reserves; and

16 (4) valued annually by the board of directors as of the

17 close of the preceding year.

18 Sec. 29. POLICYHOLDER'S STABILIZATION RESERVE FUND CHARGE.

19 (a) Each policyholder shall pay annually into the policyholder's

20 stabilization reserve fund under Section 28 of this article a

21 charge that:

22 (1) is in an amount established annually by advisory

23 directors chosen by security services contractors eligible for

24 insurance through the association in accordance with the plan of

25 operation;

26 (2) is in proportion to each premium payment due for

27 general liability insurance through the association; and

1 (3) is separately stated in the policy.

2 (b) A charge stated in a policy as required by Subsection
3 (a)(3) of this section is not:

4 (1) a part of premiums; or

5 (2) subject to premium taxation or a servicing fee,
6 acquisition cost, or any other similar charge.

7 (c) If the association offers an installment payment plan
8 for coverage obtained through the association, the association may:

9 (1) permit payment of the policyholder's stabilization
10 reserve fund charge under this section on an installment basis; or

11 (2) require the policyholder to pay the charge as an
12 annual lump sum.

13 (d) Collections of the policyholder's stabilization reserve
14 fund charge under this section shall continue until the net balance
15 of the policyholder's stabilization reserve fund under Section 28
16 of this article is not less than the projected sum of premiums to be
17 written in the year following the valuation date.

18 Sec. 30. APPEAL TO BOARD OF DIRECTORS; HEARING. (a) A
19 person insured or applying for insurance under this article, the
20 person's authorized representative, or an affected insurer that may
21 be aggrieved by an act, ruling, or decision of the association may
22 appeal to the board of directors not later than the 30th day after
23 the date the act occurs. At the time the person is notified of the
24 act, ruling, or decision, the association shall provide to the
25 person written notice of the person's right to appeal under this
26 subsection.

27 (b) The board of directors shall:

1 (1) hear an appeal brought under Subsection (a) of
2 this section not later than the 30th day after the date the board of
3 directors receives the appeal; and

4 (2) give not less than 10 days' written notice of the
5 time and place of the hearing to the person bringing the appeal or
6 the person's authorized representative.

7 Sec. 31. DECISION OF BOARD OF DIRECTORS. (a) Not later
8 than the 10th day after the date of the hearing under Section 30(b)
9 of this article, the board of directors shall affirm, reverse, or
10 modify the board's previous action or the appealed act, ruling, or
11 decision.

12 (b) At the time the person is notified of the final action of
13 the board of directors, the association shall provide to the person
14 written notice of the person's right to appeal under Section 32 of
15 this article.

16 Sec. 32. APPEAL TO COMMISSIONER; HEARING. (a) Not later
17 than the 30th day after the date of the final action of the board of
18 directors under Section 31 of this article, a person insured or
19 applying for insurance aggrieved by that final action may appeal to
20 the commissioner by making a written request for a hearing.

21 (b) The appeal shall be heard not later than the 30th day
22 after the date the appeal is received. The person bringing the
23 appeal or the person's authorized representative must be given
24 written notice of the time and place of the hearing on or before the
25 10th day before the date of the hearing.

26 Sec. 33. COMMISSIONER'S DECISION. (a) Not later than the
27 30th day after the date of the hearing under Section 32, the

1 commissioner shall affirm, reverse, or modify the appealed act,
2 ruling, or decision.

3 (b) Pending the hearing and decision, the commissioner may
4 suspend or postpone the effective date of a rule or of the act,
5 ruling, or decision appealed.

6 Sec. 34. APPEAL OF COMMISSIONER'S DECISION. (a) The
7 association or a person aggrieved by an order or decision of the
8 commissioner may appeal in accordance with Subchapter D, Chapter
9 36, of this code.

10 (b) At the time the person is notified of the commissioner's
11 order or decision, the commissioner shall provide to the person
12 written notice of the person's right to appeal under this section.

13 SECTION 1.02. (a) Not later than October 1, 2005, the
14 commissioner of insurance shall appoint an initial board of
15 directors for the joint underwriting association established by
16 Article 21.49-21, Insurance Code, as added by this article,
17 including five representatives of insurers that will be required to
18 be association members. The initial board of directors appointed
19 under this section serves until September 30, 2006.

20 (b) Not later than January 1, 2006, the commissioner of
21 insurance shall adopt a plan of operation for the joint
22 underwriting association established by Article 21.49-21,
23 Insurance Code, as added by this article. Before adopting the plan
24 of operation, the commissioner shall consult with the initial board
25 of directors of the association, representatives of the public, and
26 representatives of the security services industry. The plan of
27 operation must include provisions that authorize a preliminary

1 assessment of the members of the association for initial operating
2 expenses of the association.

3 ARTICLE 2. OCCUPATIONS CODE CHANGES

4 SECTION 2.01. Section 1702.163(a), Occupations Code, is
5 amended to read as follows:

6 (a) The board [~~commission~~] may not issue a security officer
7 commission to an applicant employed by a license holder unless the
8 applicant submits evidence satisfactory to the board [~~commission~~]
9 that the applicant has:

10 (1) completed the basic training course at a school or
11 under an instructor approved by the board [~~commission~~];

12 (2) met each qualification established by this chapter
13 and board [~~commission~~] rule;

14 (3) achieved the score required by the board
15 [~~commission~~] on the examination under Section 1702.1685; and

16 (4) demonstrated to the satisfaction of the firearm
17 training instructor that the applicant has complied with other
18 board [~~commission~~] standards for minimum marksmanship competency
19 with a handgun [~~shotgun~~].

20 SECTION 2.02. Section 1702.282, Occupations Code, is
21 amended by amending Subsection (a) and adding Subsection (d) to
22 read as follows:

23 (a) The board [~~commission~~] shall conduct a criminal history
24 check, including a check of any criminal history record information
25 maintained by the Federal Bureau of Investigation, in the manner
26 provided by Subchapter F, Chapter 411, Government Code, on each
27 applicant for a license, registration, security officer

1 commission, letter of approval, permit, or certification. An
2 applicant is not eligible for a license, registration, commission,
3 letter of approval, permit, or certification if the check reveals
4 that the applicant has committed an act that constitutes grounds
5 for the denial of the license, registration, commission, letter of
6 approval, permit, or certification. Except as provided by
7 Subsection (d), each [~~Each~~] applicant shall include in the
8 application two complete sets of fingerprints on forms prescribed
9 by the board [~~commission~~] accompanied by the fee set by the board
10 [~~commission~~].

11 (d) An applicant who is a peace officer is not required to
12 submit fingerprints with the applicant's application. On request,
13 the law enforcement agency or other entity that employs the peace
14 officer or the entity that maintains the peace officer's
15 fingerprints shall provide the fingerprints for the peace officer
16 to the board. The applicant shall provide sufficient information
17 to the board to enable the board to obtain the fingerprints under
18 this subsection.

19 ARTICLE 3. PENAL CODE CHANGES

20 SECTION 3.01. Section 46.05, Penal Code, is amended by
21 amending Subsection (f) and adding Subsection (g) to read as
22 follows:

23 (f) It is a defense to prosecution under this section for
24 the possession of a chemical dispensing device that the actor is
25 [~~holds~~] a security officer [~~commission issued by the Texas~~
26 ~~Commission on Private Security~~] and has received training on the
27 use of the chemical dispensing device by a training program that is:

1 (1) provided by the Commission on Law Enforcement
2 Officer Standards and Education; or

3 (2) approved for the purposes described by this
4 subsection by the Texas [~~Commission on~~] Private Security Board of
5 the Department of Public Safety.

6 (g) In Subsection (f), "security officer" means a
7 commissioned security officer as defined by Section 1702.002,
8 Occupations Code, or a noncommissioned security officer registered
9 under Section 1702.221, Occupations Code.

10 ARTICLE 4. EFFECTIVE DATE

11 SECTION 4.01. This Act takes effect September 1, 2005.