

By: Cook of Colorado

H.B. No. 1353

Substitute the following for H.B. No. 1353:

By: Elkins

C.S.H.B. No. 1353

A BILL TO BE ENTITLED

AN ACT

1
2 relating to creation and operation of a guaranty fund for certain
3 groups certified to self insure for workers' compensation insurance
4 coverage and to service companies that administer the guaranty
5 fund.

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

7 SECTION 1. Chapter 407A, Labor Code, is amended by adding
8 Subchapter J to read as follows:

9 SUBCHAPTER J. TEXAS SELF-INSURANCE GROUP GUARANTY FUND

10 Sec. 407A.451. DEFINITIONS. In this subchapter:

11 (1) "Board" means the board of directors of the
12 guaranty fund.

13 (2) "Guaranty fund" means the Texas self-insurance
14 group guaranty fund.

15 (3) "Trust fund" means the trust fund established
16 under Section 407A.457.

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

22 (b) Each group that desires to be certified under this
23 chapter must participate as a member of the guaranty fund.

24 Sec. 407A.453. BOARD OF DIRECTORS. (a) The guaranty fund is

1 managed by a board of directors.

2 (b) The board is composed of the following voting members:

3 (1) three members elected as provided by Subsection
4 (c), each of whom represents a different group certified under this
5 chapter;

6 (2) the commission member representing wage earners;

7 (3) one member designated by the commissioner; and

8 (4) the public counsel of the office of public
9 insurance counsel.

10 (c) Representatives of each group certified under this
11 chapter may participate equally in the election of the three
12 members of the board elected under Subsection (b)(1). A person
13 elected under Subsection (b)(1) must be approved by the
14 commissioner before the person may serve on the board.

15 (d) Notwithstanding Subsection (c), the commissioner shall
16 appoint the initial board members representing groups. A person
17 appointed as an initial board member under this subsection is
18 eligible to serve additional terms on election by the members of the
19 guaranty fund.

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

24 Sec. 407A.455. BOARD GENERAL POWERS AND DUTIES. (a) The
25 board shall:

26 (1) create and maintain a trust fund for payment of the
27 workers' compensation liabilities of an insolvent group;

1 (2) hire staff as necessary;

2 (3) provide recommendations to the commissioner
3 regarding rules or guidelines applicable to groups;

4 (4) receive reports from the department on the
5 financial condition of groups, including examination and audit
6 reports;

7 (5) engage consulting experts as necessary to review
8 information provided by or filed with the department to ensure
9 financial solvency of groups under this chapter;

10 (6) provide advisory recommendations to the
11 commissioner as necessary regarding an applicant's compliance with
12 Subchapter B relating to application requirements for
13 certification; and

14 (7) take action, in response to a finding by the
15 commissioner that a group is insolvent, to use the trust fund's
16 resources to ensure the payment of the group's valid workers'
17 compensation claims and related administrative expenses.

18 (b) The board shall control all amounts in the trust fund,
19 including investment of those amounts.

20 (c) The guaranty fund may not disclose confidential
21 information received from the department in a financial report
22 under Subsection (a)(4), including an examination or audit report.
23 Information received from the department remains confidential and
24 not subject to disclosure under Chapter 552, Government Code.

25 (d) The board may make recommendations under Subsection
26 (a)(6) outside of regular board meetings.

27 Sec. 407A.456. PLAN OF OPERATION. (a) The board shall adopt

1 a plan of operation governing the board's activities and the
2 operation of the guaranty fund and the trust fund.

3 (b) The plan of operation adopted by the board is subject to
4 approval by the commissioner.

5 Sec. 407A.457. TRUST FUND; SCHEDULE. (a) Each group shall
6 contribute an amount, based on the total amount of income benefit
7 payments made in this state for the preceding reported calendar
8 year, to create, over a period of 10 years beginning January 1,
9 2006, a trust fund of at least \$1 million for:

10 (1) the emergency payment of the compensation
11 liabilities of an insolvent group; and

12 (2) the administrative expenses of the guaranty fund.

13 (b) The board may adopt provisions in the plan of operation
14 that provide for the indexing of the amount of the trust fund to a
15 risk analysis.

16 (c) At least annually, the board shall adopt a year-by-year
17 schedule of assessments to meet the funding goal of the trust fund.

18 (d) The board may:

19 (1) defer assessments if the fund equals or exceeds \$2
20 million; and

21 (2) allow the trust fund to accrete based on its
22 investment earnings.

23 (e) The contribution required for the first year after a
24 group is issued a certificate of approval under this chapter shall
25 be based on the group's estimated income benefit payments for the
26 group's first year of operation.

27 (f) Each group certified under this chapter shall make

1 contributions under this section to the trust fund, and the board
2 shall provide a mechanism in the plan of operation to ensure that
3 all groups contribute equitably to the trust fund.

4 (g) The board shall administer the trust fund in accordance
5 with the plan of operation adopted by the board and approved by the
6 commissioner.

7 Sec. 407A.458. EFFECT OF INSOLVENCY OF GROUP. (a) On
8 determining that a group has become insolvent, the commissioner
9 shall secure release of the surety bond or security deposit
10 required under Section 407A.053 and shall promptly estimate:

11 (1) the amount of additional funds needed to
12 supplement the bond or security deposit; and

13 (2) the assets of the insolvent group available to pay
14 all incurred compensation liabilities.

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

20 (c) If the assessments under Subsection (b) will be
21 insufficient to cover the incurred liabilities, the commissioner
22 shall estimate the additional funds necessary to cover the incurred
23 liabilities for benefit compensation and related administration
24 expenses for the insolvent group. On receipt of the commissioner's
25 estimate, the board shall provide from the trust fund the
26 additional funds needed for benefit compensation and related
27 administrative expenses for the insolvent group.

1 (d) Disbursements from the trust fund under Subsection (c)
2 shall be replenished:

3 (1) if within the 10-year funding period of the trust
4 fund, by adjusting the next year's schedule of assessments from
5 groups; or

6 (2) if beyond the initial 10-year funding period, by
7 assessment of all groups.

8 (e) If, after application of Subsections (b)-(d), the
9 amount available in the trust fund is still insufficient, the board
10 shall assess all groups for the remaining deficiency.

11 (f) The commissioner may exempt a group from assessment
12 under this section on a determination that the payment of the
13 assessment would render the group insolvent.

14 (g) The commissioner may, on a finding of insolvency,
15 commence a delinquency proceeding for the purpose of liquidating,
16 rehabilitating, reorganizing, or conserving a group. Such a group
17 shall be considered an insurer for purposes of Article 21.28,
18 Insurance Code, and an insurance company for purposes of 11 U.S.C.
19 Section 109. The conservator, receiver, or other statutory
20 successor of a group shall coordinate with the board in the
21 furtherance of the purposes of this subchapter.

22 Sec. 407A.459. COLLECTION OF ASSESSMENTS FROM GROUP
23 MEMBERS; CONTINUATION OF JOINT AND SEVERAL LIABILITY. (a) Each
24 member of an insolvent group shall pay the amount of its assessment
25 under this chapter to the commissioner not later than the 30th day
26 after the date on which the commissioner notifies the member of the
27 assessment. The commissioner shall collect assessments and costs

1 from the members of the insolvent group.

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

5 (c) If the guaranty fund assumes payment of benefits for
6 compensation liabilities on behalf of an insolvent group, the
7 guaranty fund may collect delinquent assessments and costs through
8 suit. Venue for a suit under this subsection is in Travis County.

9 Sec. 407A.460. PAYMENT OF BENEFITS THROUGH GUARANTY FUND.

10 (a) If the commissioner determines that the payment of benefits and
11 claims administration shall be made through the guaranty fund, the
12 guaranty fund assumes the workers' compensation obligations on
13 behalf of the insolvent group and shall begin the payment of the
14 obligations for which it is liable not later than the 30th day after
15 the date of notification by the commissioner.

16 (b) The guaranty fund shall make payments to claimants whose
17 entitlement to benefits can be ascertained by the guaranty fund.

18 (c) Notwithstanding Subsection (a), the guaranty fund is
19 not liable for the payment of any penalties assessed for any act or
20 omission on the part of any person other than the guaranty fund.

21 Sec. 407A.461. POSSESSION OF SECURITY BY GUARANTY FUND. On
22 the assumption of obligations on behalf of an insolvent group by the
23 guaranty fund under the commissioner's determination, the guaranty
24 fund is entitled to immediate possession of any assets of the
25 insolvent group and any security deposited or the proceeds of any
26 surety bond deposited by the insolvent group, along with all
27 interest on the security. All assessments from members of the

1 insolvent group shall be paid to the guaranty fund.

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

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

12 (b) The guaranty fund has the same rights and defenses as
13 the insolvent group, including the right to:

14 (1) appear, defend, or appeal a claim;

15 (2) receive notice of, investigate, adjust,
16 compromise, settle, or pay a claim; and

17 (3) investigate, handle, or deny a claim.

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

23 (b) The guaranty fund has the priority status provided by
24 Section 8, Article 21.28, Insurance Code.

25 Sec. 407A.465. SPECIAL FUND. Monies advanced by the
26 association under this chapter do not become assets of the
27 insolvent group but constitute a special fund advanced to the

1 commissioner, receiver, or other statutory successor only for the
2 payment of compensation liabilities, including the costs of claim
3 administration and legal costs.

4 SECTION 2. Section 407A.051, Labor Code, is amended by
5 amending Subsection (c) and by adding Subsection (h) to read as
6 follows:

7 (c) The application must be accompanied by:

8 (1) a nonrefundable \$1,000 filing fee;

9 (2) proof of compliance with the financial
10 requirements under Section 407A.053;

11 (3) proof of compliance with the excess insurance
12 requirements under Section 407A.054;

13 (4) a copy of the articles of association or
14 declaration of trust of the group, if any;

15 (5) a copy of any agreements entered into with an
16 administrator or a service company;

17 (6) a copy of the bylaws of the proposed group;

18 (7) a copy of the agreement between the group and each
19 employer who is a member of the group that:

20 (A) secures the payment of workers' compensation
21 benefits; and

22 (B) includes provisions for payment of
23 assessments as provided by Section 407A.355;

24 (8) designation of the initial board of trustees and
25 administrator of the group;

26 (9) the address in this state where the books and
27 records of the group will be maintained at all times;

1 (10) a pro forma financial statement, in a form
2 acceptable to the commissioner, that shows the financial ability of
3 the group to pay the workers' compensation obligations of the
4 employers who are members of the group;

5 (11) proof of one of the following:

6 (A) payment to the group, or a bona fide promise
7 to pay on approval of the group, by each employer who is a member of
8 the group of not less than 25 percent of that member's first year
9 estimated modified schedule rating premium on a date prescribed by
10 the commissioner, which shall be considered part of the first year
11 premium payment of each member; or

12 (B) if the group is formed from a trust existing
13 on September 1, 2003, that the assets of the trust are sufficient to
14 cover the workers' compensation obligations of the trust;

15 (12) a \$250,000 fidelity [~~performance~~] bond for the
16 administrator in the form prescribed by the commissioner;

17 (13) a \$250,000 fidelity [~~performance~~] bond for the
18 service company in the form prescribed by the commissioner; and

19 (14) an indemnity agreement that meets the
20 requirements of Section 407A.056.

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

25 SECTION 3. Section 407A.057, Labor Code, is amended to read
26 as follows:

27 Sec. 407A.057. ADDITIONAL PERFORMANCE BOND REQUIREMENTS.

1 (a) In addition to the requirements under Section 407A.051, the
2 commissioner may require a service company providing claim services
3 to furnish a performance bond of \$250,000 in the form prescribed by
4 the commissioner.

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

9 SECTION 4. Sections 407A.356 and 407A.357, Labor Code, are
10 repealed.

11 SECTION 5. This Act takes effect September 1, 2005.