

By: Cook of Colorado

H.B. No. 1353

A BILL TO BE ENTITLED

AN ACT

relating to creation and maintenance of a guaranty fund for groups certified to self insure for workers' compensation under Chapter 407A, Labor Code.

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

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

SUBCHAPTER J. GUARANTY FUND

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

(1) "Fund" means the Texas Self-Insurance Group Fund created under this subchapter; and

(2) "Board" means the Texas Self-Insurance Group Board created under this subchapter.

Sec. 407A.452. GUARANTY FUND. (a) The Texas Self-Insurance Group Fund is a non-profit association that provides for the payment of workers' compensation insurance benefits for the injured employees covered by a group declared insolvent under Sec. 407A.355 of this chapter.

(b) Each group certified by the commissioner under this chapter must participate in the fund.

Sec. 407A.453. BOARD OF THE FUND. (a) The fund is managed by the Texas Self-Insurance Group Board.

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

(1) three members who represent different groups under

1 this chapter;

2 (2) one commission member representing wage earners;

3 (3) one member designated by the commissioner of
4 insurance; and

5 (4) the public counsel of the office of public
6 insurance counsel.

7 (c) Representatives of each group certified under this
8 chapter may participate equally in the election of the three
9 members of the board representing groups, which appointment shall
10 be subject to approval by the commissioner.

11 (d) The three group representatives on the board shall serve
12 staggered three-year terms.

13 (e) Notwithstanding subsection (c), the initial members of
14 the board representing groups certified under this chapter shall be
15 appointed by the commissioner of insurance. One shall serve a one
16 year term, one shall serve a two-year term, and one shall serve a
17 three-year term. All initial appointees may serve additional terms
18 upon election by the members of the fund.

19 (f) A member of the board or a member of the staff of the
20 board is not liable in a civil action for an act performed in good
21 faith in the execution of that person's powers or duties.

22 Sec. 407A.454. GENERAL DUTIES OF THE BOARD. (a) The board
23 shall:

24 (1) create and maintain the trust fund for payment of
25 compensation liabilities of an insolvent group;

26 (2) hire staff as necessary;

27 (3) provide recommendations to the commissioner of

1 insurance on rules or guidelines applicable to groups;

2 (4) receive reports from the Department of Insurance
3 on the financial condition of groups, including examination and
4 audit reports, which will remain confidential;

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

9 (6) provide advisory recommendations as necessary
10 regarding an applicant's compliance with subchapter B relating to
11 application requirements for certification, which recommendations
12 may be made between board meetings; and

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

17 (b) All monies in the trust fund, including investment of
18 funds, are controlled by the board.

19 Sec. 407A.455. BOARD PLAN OF OPERATION. (a) The board
20 shall adopt a Plan of Operation governing the Board's activities
21 and the operation of the fund.

22 (b) The Plan of Operation adopted by the board is subject to
23 the approval of the commissioner of insurance.

24 Sec. 407A.456. TRUST FUND; SCHEDULE. (a) Each group shall
25 contribute an amount, based on total amount of income benefit
26 payments made in this state for the preceding reported calendar
27 year, to create, over a period of 10 years beginning January 1,

1 2006, a trust fund of at least \$1 million for the emergency payment
2 of the compensation liabilities of an insolvent group and
3 administration of the fund.

4 (b) The Board may adopt provisions in its Plan of Operation
5 that provide for the indexing of the amount of the fund to a risk
6 analysis.

7 (c) At least annually, the board shall adopt a year-by-year
8 schedule of contributions to meet the funding goal of the trust
9 fund.

10 (d) The Board may consider deferring contributions if the
11 fund equals or exceeds \$2 million and allow the fund to accrete
12 based on its investment earnings.

13 (e) The contribution for the first year after a group is
14 issued a certificate of authority under this chapter shall be based
15 on the estimated income benefit payments for the first year of
16 operation of the group.

17 (f) All groups certified under this chapter shall
18 contribute to the trust fund, and the board shall provide a
19 mechanism in the Plan of Operation to ensure that all groups
20 contribute equitably to the trust fund.

21 (g) The board shall administer the trust fund in accordance
22 with the Plan of Operation adopted by the board and approved by the
23 commissioner of insurance.

24 Sec. 407A.457. INSOLVENT GROUP. (a) On determination that
25 a group has become insolvent, the commissioner of insurance shall
26 secure release of the security deposit required by this chapter and
27 shall promptly estimate:

1 (1) the amount of additional funds needed to
2 supplement the security deposit; and

3 (2) the available assets of the insolvent group for
4 the purpose of making payment of all incurred liabilities for
5 compensation.

6 (b) If the security and available assets of the group are
7 insufficient to cover all incurred liabilities for compensation,
8 the commissioner shall direct the insolvent group to immediately
9 assess its members to cover all incurred liabilities under a
10 schedule approved by the commissioner.

11 (c) If the assessments will not be sufficient to cover the
12 incurred liabilities, the commissioner shall estimate the
13 additional funds necessary to cover the incurred liabilities for
14 benefit compensation and related administration expenses for the
15 insolvent group.

16 (d) Upon receipt of the commissioner's estimation, the
17 board shall provide the additional funds needed from the trust fund
18 for benefit compensation and related administrative expenses for
19 the insolvent group.

20 (e) Such disbursements from the fund shall be replenished by
21 adjusting the next year's schedule of contributions from groups, if
22 within the 10 year funding period of the Trust, or by assessment of
23 all groups, if beyond the initial 10 year funding period.

24 (f) If funds available in the trust fund remain
25 insufficient, then the board shall assess all groups for the
26 remaining deficiency.

27 (g) The commissioner may exempt a group from assessment

1 under this section on a determination that the payment of the
2 assessment would render the group insolvent.

3 (h) The Commissioner may, upon a finding of insolvency,
4 commence a delinquency proceeding for the purpose of liquidating,
5 rehabilitating, reorganizing or conserving a group and such group
6 shall be considered an insurer for purposes of article 21.28 and 11
7 USC 109.

8 (i) The conservator, liquidator or other statutory
9 successor of a group shall coordinate with the board in the
10 furtherance of the purposes of this subchapter J.

11 Sec. 407A.458. COLLECTION OF ASSESSMENTS FROM GROUP
12 MEMBERS; CONTINUATION OF JOINT AND SEVERAL LIABILITY. (a) Each
13 member of an insolvent group shall pay the amount of its assessment
14 under this chapter to the commissioner of insurance not later than
15 the 30th day after the date on which the commissioner of insurance
16 notifies the member of the assessment. The commissioner of
17 insurance shall collect assessments and costs from the members of
18 the insolvent group.

19 (b) The joint and several liability of the members of a
20 group under Sec. 407A.056 continue and are not terminated by
21 payment of benefits through the fund.

22 (c) If the fund assumes payment of benefits for the
23 compensation liabilities on behalf of an insolvent group, the fund
24 may collect delinquent assessments and costs through suit. Venue
25 is in Travis County.

26 Sec. 407A.459. PAYMENT OF BENEFITS THROUGH FUND. (a) If
27 the commissioner of insurance determines that the payment of

1 benefits and claims administration shall be made through the fund,
2 the fund assumes the workers' compensation obligations on behalf of
3 the insolvent group and shall begin the payment of the obligations
4 for which it is liable not later than the 30th day after the date of
5 notification by the commissioner of insurance.

6 (b) The fund shall make payments to claimants whose
7 entitlement to benefits can be ascertained by the fund.

8 (c) Notwithstanding Subsection (a), the fund is not liable
9 for the payment of any penalties assessed for any act or omission on
10 the part of any person other than the fund.

11 Sec. 407A.460. POSSESSION OF SECURITY BY FUND. On the
12 assumption of obligations on behalf of an insolvent group by the
13 fund under the commissioner's determination, the fund is entitled
14 to immediate possession of any assets and deposited security, along
15 with all interest on the security, of the insolvent group, and all
16 assessments from members of the insolvent group shall be paid to the
17 fund.

18 Sec. 407A.461. RELEASE OF CLAIM INFORMATION TO FUND.
19 Information on a workers' compensation claim may be released to the
20 fund as provided by Section 402.084(a) of this title, if the fund
21 has assumed the obligations on behalf of an insolvent group.

22 Sec. 407A.462. FUND AS PARTY IN INTEREST. (a) The fund is a
23 party in interest in a proceeding involving a workers' compensation
24 claim against an insolvent group whose compensation obligations
25 have been paid or assumed by the fund.

26 (b) The fund has the same rights and defenses as the
27 insolvent group, including the right to:

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

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

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

5 Sec. 407A.463. PREFERENCES. (a) The benefit payments made
6 by the fund under this chapter are entitled to the same preference
7 over other debts of the insolvent group as provided by law to
8 benefit payments owed by the insolvent group to the person entitled
9 to the benefits.

10 (b) The fund has the priority status provided by art. 21.28,
11 sec. 8.

12 Sec. 407A.464. SPECIAL FUND. Monies advanced by the fund
13 under this chapter do not become assets of the insolvent group but
14 are advanced to the commissioner, receiver or other statutory
15 successor only for the payment of compensation liabilities,
16 including the costs of claim administration and legal costs.

17 SECTION 2. Amend sections 407A.051(c)(12) and (13) as
18 follows:

19 (12) \$250,000 fidelity [~~performance~~] bond for the
20 administrator in the form prescribed by the commissioner;

21 (13) a \$250,000 fidelity [~~performance~~] bond for the
22 servicing company in the form prescribed the commissioner;

23 SECTION 3. REPEALER. Sections 407A.356 and 407A.357 of
24 Chapter 407A, Labor Code, are repealed.

25 SECTION 4. This Act takes effect September 1, 2005.