

1-1 By: Cook of Colorado (Senate Sponsor - Duncan) H.B. No. 1353
1-2 (In the Senate - Received from the House May 10, 2005;
1-3 May 12, 2005, read first time and referred to Committee on State
1-4 Affairs; May 18, 2005, reported favorably, as amended, by the
1-5 following vote: Yeas 8, Nays 0; May 18, 2005, sent to printer.)

1-6 COMMITTEE AMENDMENT NO. 1 By: Duncan

1-7 Amend H.B. 1353, Engrossed Version, on page 1, line 42 (Sec.
1-8 407A.453(b)(2), by deleting Subdivision (2) and inserting a new
1-9 Subdivision (2) as follows:

1-10 "(2) one member to represent wage earners designated by the
1-11 commission;"

1-12 A BILL TO BE ENTITLED
1-13 AN ACT

1-14 relating to creation and operation of a guaranty fund for certain
1-15 groups certified to self insure for workers' compensation insurance
1-16 coverage and to service companies that administer the guaranty
1-17 fund.

1-18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-19 SECTION 1. Chapter 407A, Labor Code, is amended by adding
1-20 Subchapter J to read as follows:

1-21 SUBCHAPTER J. TEXAS SELF-INSURANCE GROUP GUARANTY FUND

1-22 Sec. 407A.451. DEFINITIONS. In this subchapter:

1-23 (1) "Board" means the board of directors of the
1-24 guaranty fund.

1-25 (2) "Guaranty fund" means the Texas self-insurance
1-26 group guaranty fund.

1-27 (3) "Trust fund" means the trust fund established
1-28 under Section 407A.457.

1-29 Sec. 407A.452. GUARANTY FUND. (a) The Texas self-insurance
1-30 group guaranty fund is a nonprofit association established to
1-31 provide for the payment of workers' compensation insurance benefits
1-32 for injured employees covered by a group declared insolvent under
1-33 Section 407A.355.

1-34 (b) Each group that desires to be certified under this
1-35 chapter must participate as a member of the guaranty fund.

1-36 Sec. 407A.453. BOARD OF DIRECTORS. (a) The guaranty fund is
1-37 managed by a board of directors.

1-38 (b) The board is composed of the following voting members:

1-39 (1) three members elected as provided by Subsection
1-40 (c), each of whom represents a different group certified under this
1-41 chapter;

1-42 (2) the commission member representing wage earners;

1-43 (3) one member designated by the commissioner; and

1-44 (4) the public counsel of the office of public
1-45 insurance counsel.

1-46 (c) Representatives of each group certified under this
1-47 chapter may participate equally in the election of the three
1-48 members of the board elected under Subsection (b)(1). A person
1-49 elected under Subsection (b)(1) must be approved by the
1-50 commissioner before the person may serve on the board.

1-51 (d) Notwithstanding Subsection (c), the commissioner shall
1-52 appoint the initial board members representing groups. A person
1-53 appointed as an initial board member under this subsection is
1-54 eligible to serve additional terms on election by the members of the
1-55 guaranty fund.

1-56 Sec. 407A.454. IMMUNITY. A board member or a member of the
1-57 staff of the board is not liable in a civil action for an act
1-58 performed in good faith in the execution of that person's powers or
1-59 duties.

1-60 Sec. 407A.455. BOARD GENERAL POWERS AND DUTIES. (a) The
1-61 board shall:

1-62 (1) create and maintain a trust fund for payment of the

2-1 workers' compensation liabilities of an insolvent group;
2-2 (2) hire staff as necessary;
2-3 (3) provide recommendations to the commissioner
2-4 regarding rules or guidelines applicable to groups;
2-5 (4) receive reports from the department on the
2-6 financial condition of groups, including examination and audit
2-7 reports;
2-8 (5) engage consulting experts as necessary to review
2-9 information provided by or filed with the department to ensure
2-10 financial solvency of groups under this chapter;
2-11 (6) provide advisory recommendations to the
2-12 commissioner as necessary regarding an applicant's compliance with
2-13 Subchapter B relating to application requirements for
2-14 certification; and
2-15 (7) take action, in response to a finding by the
2-16 commissioner that a group is insolvent, to use the trust fund's
2-17 resources to ensure the payment of the group's valid workers'
2-18 compensation claims and related administrative expenses.
2-19 (b) The board shall control all amounts in the trust fund,
2-20 including investment of those amounts.
2-21 (c) The guaranty fund may not disclose confidential
2-22 information received from the department in a financial report
2-23 under Subsection (a)(4), including an examination or audit report.
2-24 Information received from the department remains confidential and
2-25 not subject to disclosure under Chapter 552, Government Code.
2-26 (d) The board may make recommendations under Subsection
2-27 (a)(6) outside of regular board meetings.
2-28 Sec. 407A.456. PLAN OF OPERATION. (a) The board shall adopt
2-29 a plan of operation governing the board's activities and the
2-30 operation of the guaranty fund and the trust fund.
2-31 (b) The plan of operation adopted by the board is subject to
2-32 approval by the commissioner.
2-33 Sec. 407A.457. TRUST FUND; SCHEDULE. (a) Each group shall
2-34 contribute an amount, based on the total amount of income benefit
2-35 payments made in this state for the preceding reported calendar
2-36 year, to create, over a period of 10 years beginning January 1,
2-37 2006, a trust fund of at least \$1 million for:
2-38 (1) the emergency payment of the compensation
2-39 liabilities of an insolvent group; and
2-40 (2) the administrative expenses of the guaranty fund.
2-41 (b) The board may adopt provisions in the plan of operation
2-42 that provide for the indexing of the amount of the trust fund to a
2-43 risk analysis.
2-44 (c) At least annually, the board shall adopt a year-by-year
2-45 schedule of assessments to meet the funding goal of the trust fund.
2-46 (d) The board may:
2-47 (1) defer assessments if the fund equals or exceeds \$2
2-48 million; and
2-49 (2) allow the trust fund to accrete based on its
2-50 investment earnings.
2-51 (e) The contribution required for the first year after a
2-52 group is issued a certificate of approval under this chapter shall
2-53 be based on the group's estimated income benefit payments for the
2-54 group's first year of operation.
2-55 (f) Each group certified under this chapter shall make
2-56 contributions under this section to the trust fund, and the board
2-57 shall provide a mechanism in the plan of operation to ensure that
2-58 all groups contribute equitably to the trust fund.
2-59 (g) The board shall administer the trust fund in accordance
2-60 with the plan of operation adopted by the board and approved by the
2-61 commissioner.
2-62 Sec. 407A.458. EFFECT OF INSOLVENCY OF GROUP. (a) On
2-63 determining that a group has become insolvent, the commissioner
2-64 shall secure release of the surety bond or security deposit
2-65 required under Section 407A.053 and shall promptly estimate:
2-66 (1) the amount of additional funds needed to
2-67 supplement the bond or security deposit; and
2-68 (2) the assets of the insolvent group available to pay
2-69 all incurred compensation liabilities.

3-1 (b) If the bond or security deposit and the available assets
 3-2 of the insolvent group are insufficient to cover all of the group's
 3-3 incurred compensation liabilities, the commissioner shall direct
 3-4 the insolvent group to immediately assess its members to cover all
 3-5 incurred liabilities under a schedule approved by the commissioner.

3-6 (c) If the assessments under Subsection (b) will be
 3-7 insufficient to cover the incurred liabilities, the commissioner
 3-8 shall estimate the additional funds necessary to cover the incurred
 3-9 liabilities for benefit compensation and related administration
 3-10 expenses for the insolvent group. On receipt of the commissioner's
 3-11 estimate, the board shall provide from the trust fund the
 3-12 additional funds needed for benefit compensation and related
 3-13 administrative expenses for the insolvent group.

3-14 (d) Disbursements from the trust fund under Subsection (c)
 3-15 shall be replenished:

3-16 (1) if within the 10-year funding period of the trust
 3-17 fund, by adjusting the next year's schedule of assessments from
 3-18 groups; or

3-19 (2) if beyond the initial 10-year funding period, by
 3-20 assessment of all groups.

3-21 (e) If, after application of Subsections (b)-(d), the
 3-22 amount available in the trust fund is still insufficient, the board
 3-23 shall assess all groups for the remaining deficiency.

3-24 (f) The commissioner may exempt a group from assessment
 3-25 under this section on a determination that the payment of the
 3-26 assessment would render the group insolvent.

3-27 (g) The commissioner may, on a finding of insolvency,
 3-28 commence a delinquency proceeding for the purpose of liquidating,
 3-29 rehabilitating, reorganizing, or conserving a group. Such a group
 3-30 shall be considered an insurer for purposes of Article 21.28,
 3-31 Insurance Code, and an insurance company for purposes of 11 U.S.C.
 3-32 Section 109. The conservator, receiver, or other statutory
 3-33 successor of a group shall coordinate with the board in the
 3-34 furtherance of the purposes of this subchapter.

3-35 Sec. 407A.459. COLLECTION OF ASSESSMENTS FROM GROUP
 3-36 MEMBERS; CONTINUATION OF JOINT AND SEVERAL LIABILITY. (a) Each
 3-37 member of an insolvent group shall pay the amount of its assessment
 3-38 under this chapter to the commissioner not later than the 30th day
 3-39 after the date on which the commissioner notifies the member of the
 3-40 assessment. The commissioner shall collect assessments and costs
 3-41 from the members of the insolvent group.

3-42 (b) The joint and several liability of the members of a
 3-43 group under Section 407A.056 continues and is not terminated by
 3-44 payment of benefits through the guaranty fund.

3-45 (c) If the guaranty fund assumes payment of benefits for
 3-46 compensation liabilities on behalf of an insolvent group, the
 3-47 guaranty fund may collect delinquent assessments and costs through
 3-48 suit. Venue for a suit under this subsection is in Travis County.

3-49 Sec. 407A.460. PAYMENT OF BENEFITS THROUGH GUARANTY FUND.
 3-50 (a) If the commissioner determines that the payment of benefits and
 3-51 claims administration shall be made through the guaranty fund, the
 3-52 guaranty fund assumes the workers' compensation obligations on
 3-53 behalf of the insolvent group and shall begin the payment of the
 3-54 obligations for which it is liable not later than the 30th day after
 3-55 the date of notification by the commissioner.

3-56 (b) The guaranty fund shall make payments to claimants whose
 3-57 entitlement to benefits can be ascertained by the guaranty fund.

3-58 (c) Notwithstanding Subsection (a), the guaranty fund is
 3-59 not liable for the payment of any penalties assessed for any act or
 3-60 omission on the part of any person other than the guaranty fund.

3-61 Sec. 407A.461. POSSESSION OF SECURITY BY GUARANTY FUND. On
 3-62 the assumption of obligations on behalf of an insolvent group by the
 3-63 guaranty fund under the commissioner's determination, the guaranty
 3-64 fund is entitled to immediate possession of any assets of the
 3-65 insolvent group and any security deposited or the proceeds of any
 3-66 surety bond deposited by the insolvent group, along with all
 3-67 interest on the security. All assessments from members of the
 3-68 insolvent group shall be paid to the guaranty fund.

3-69 Sec. 407A.462. RELEASE OF CLAIM INFORMATION TO GUARANTY

4-1 FUND. If the guaranty fund has assumed compensation obligations on
 4-2 behalf of an insolvent group, information on a workers'
 4-3 compensation claim may be released to the guaranty fund as provided
 4-4 by Section 402.084(a).

4-5 Sec. 407A.463. GUARANTY FUND AS PARTY IN INTEREST. (a) The
 4-6 guaranty fund is a party in interest in a proceeding involving a
 4-7 workers' compensation claim against an insolvent group whose
 4-8 compensation obligations have been paid or assumed by the guaranty
 4-9 fund.

4-10 (b) The guaranty fund has the same rights and defenses as
 4-11 the insolvent group, including the right to:

- 4-12 (1) appear, defend, or appeal a claim;
 4-13 (2) receive notice of, investigate, adjust,
 4-14 compromise, settle, or pay a claim; and
 4-15 (3) investigate, handle, or deny a claim.

4-16 Sec. 407A.464. PREFERENCES. (a) Benefit payments made by
 4-17 the guaranty fund under this subchapter are entitled to the same
 4-18 preference over other debts of the insolvent group as provided by
 4-19 law to benefit payments owed by the insolvent group to the person
 4-20 entitled to the benefits.

4-21 (b) The guaranty fund has the priority status provided by
 4-22 Section 8, Article 21.28, Insurance Code.

4-23 Sec. 407A.465. SPECIAL FUND. Monies advanced by the
 4-24 association under this chapter do not become assets of the
 4-25 insolvent group but constitute a special fund advanced to the
 4-26 commissioner, receiver, or other statutory successor only for the
 4-27 payment of compensation liabilities, including the costs of claim
 4-28 administration and legal costs.

4-29 SECTION 2. Section 407A.051, Labor Code, is amended by
 4-30 amending Subsection (c) and by adding Subsection (h) to read as
 4-31 follows:

- 4-32 (c) The application must be accompanied by:
 4-33 (1) a nonrefundable \$1,000 filing fee;
 4-34 (2) proof of compliance with the financial
 4-35 requirements under Section 407A.053;
 4-36 (3) proof of compliance with the excess insurance
 4-37 requirements under Section 407A.054;
 4-38 (4) a copy of the articles of association or
 4-39 declaration of trust of the group, if any;
 4-40 (5) a copy of any agreements entered into with an
 4-41 administrator or a service company;
 4-42 (6) a copy of the bylaws of the proposed group;
 4-43 (7) a copy of the agreement between the group and each
 4-44 employer who is a member of the group that:
 4-45 (A) secures the payment of workers' compensation
 4-46 benefits; and
 4-47 (B) includes provisions for payment of
 4-48 assessments as provided by Section 407A.355;
 4-49 (8) designation of the initial board of trustees and
 4-50 administrator of the group;
 4-51 (9) the address in this state where the books and
 4-52 records of the group will be maintained at all times;
 4-53 (10) a pro forma financial statement, in a form
 4-54 acceptable to the commissioner, that shows the financial ability of
 4-55 the group to pay the workers' compensation obligations of the
 4-56 employers who are members of the group;
 4-57 (11) proof of one of the following:
 4-58 (A) payment to the group, or a bona fide promise
 4-59 to pay on approval of the group, by each employer who is a member of
 4-60 the group of not less than 25 percent of that member's first year
 4-61 estimated modified schedule rating premium on a date prescribed by
 4-62 the commissioner, which shall be considered part of the first year
 4-63 premium payment of each member; or
 4-64 (B) if the group is formed from a trust existing
 4-65 on September 1, 2003, that the assets of the trust are sufficient to
 4-66 cover the workers' compensation obligations of the trust;
 4-67 (12) a \$250,000 fidelity [~~performance~~] bond for the
 4-68 administrator in the form prescribed by the commissioner;
 4-69 (13) a \$250,000 fidelity [~~performance~~] bond for the

5-1 service company in the form prescribed by the commissioner; and
5-2 (14) an indemnity agreement that meets the
5-3 requirements of Section 407A.056.

5-4 (h) In lieu of the bonds required under Subsections (c)(12)
5-5 and (c)(13), a security deposit of cash or securities acceptable to
5-6 the commissioner may be deposited with the commissioner to be held
5-7 in the state treasury.

5-8 SECTION 3. Section 407A.057, Labor Code, is amended to read
5-9 as follows:

5-10 Sec. 407A.057. ADDITIONAL PERFORMANCE BOND REQUIREMENTS.
5-11 (a) In addition to the requirements under Section 407A.051, the
5-12 commissioner may require a service company providing claim services
5-13 to furnish a performance bond of \$250,000 in the form prescribed by
5-14 the commissioner.

5-15 (b) In lieu of a performance bond under Subsection (a), a
5-16 security deposit of cash or securities acceptable to the
5-17 commissioner may be deposited with the commissioner to be held in
5-18 the state treasury.

5-19 SECTION 4. Sections 407A.356 and 407A.357, Labor Code, are
5-20 repealed.

5-21 SECTION 5. This Act takes effect September 1, 2005.

5-22 * * * * *