

BILL ANALYSIS

H.B. 4339
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Insurance
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Current law provides administrative and judicial remedies for persons who are harmed by the sale of unauthorized insurance in Texas. The administrative remedies include the issuance of a cease and desist order under Chapter 83 of the Insurance Code. The judicial remedies include a receivership proceeding under Chapter 443 of the Insurance Code, which authorizes the attorney general to file an action on behalf of the commissioner of insurance. In a receivership, the commissioner is appointed by the court as the receiver of the entity.

While a cease and desist order can suspend the activities of an unauthorized insurer, it does not provide a mechanism through which individuals may recover damages suffered as a result of unpaid claims on policies issued by unauthorized insurers. A receivership proceeding does provide such a mechanism, but the payment of claims depends on whether the entity has the available assets. The process for collecting such assets can be difficult and lengthy and, if the assets are insufficient to pay the claims, claims must be paid on a pro-rata basis. The existing funding mechanisms created to protect policy claimants from failed insurers do not cover the victims of unauthorized insurers. Guaranty associations, which consist of licensed insurers, only cover the claims of their member companies. While funds are available from the Abandoned Property Fund to pay for a receivership's administrative expenses, such funds cannot be used to pay insurance claims.

H.B. 4339 creates an unauthorized insurance guaranty fund to provide the receiver with funding to pay unpaid claims to individuals suffering damages as a result of policies issued by unauthorized insurers in Texas.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 of this bill.

ANALYSIS

H.B. 4339 amends the Insurance Code to create the Unauthorized Insurance Guaranty Fund Act and makes its provisions applicable to a delinquency proceeding of an unauthorized insurer under the Insurer Receivership Act. The bill establishes the unauthorized insurance guaranty fund and requires the account established for the deposit of money held by the fund to be established with the Texas Treasury Safekeeping Trust Company in accordance with procedures adopted by the comptroller of public accounts. The bill requires the comptroller to account for the deposited money separately from all other money. The bill authorizes the commissioner of insurance to identify collected penalties to be deposited into the fund account and sets forth the collected penalties that the commissioner of insurance is authorized to deposit into the fund account. The bill requires the commissioner, in determining the amounts to be deposited into the fund account, to consider the amount existing in the fund account, the anticipated penalties that have been or may be collected, the estimated assets, administrative expenses, and claims of any unauthorized insurers subject to a delinquency proceeding, and any anticipated delinquency

proceedings of unauthorized insurers. The bill authorizes the commissioner, if the commissioner determines that the amounts on deposit in the fund account exceed the amount required to pay administrative expenses and claims of existing and anticipated delinquency proceedings of unauthorized insurers, to transfer the excess amount from the fund to the comptroller for deposit into the general revenue fund. The bill requires the commissioner to notify the comptroller of the existence of money to be credited to the fund account and to enter an order to transfer amounts from the fund account.

H.B. 4339 authorizes the commissioner to advance funds from the fund account in the event of a delinquency proceeding of an unauthorized insurer if the assets of the unauthorized insurer are insufficient to pay administrative expenses or policy claims. The bill requires the commissioner to hold these funds in a separate account. The bill provides that the advanced funds are available to supplement the assets of the unauthorized insurer, and do not become property of the unauthorized insurer or the receivership estate. The bill requires the commissioner, in determining an amount to be advanced, to consider the amount existing in the fund, and any estimated future amounts to be deposited in the fund; the assets of the unauthorized insurer that are anticipated to be available to pay administrative expenses and claims; the projected administrative expenses and claims in the delinquency proceeding; and the projected administrative expenses and claims in other existing and anticipated delinquency proceedings of unauthorized insurers.

H.B. 4339 authorizes an advanced amount to be used to supplement the assets of an unauthorized insurer to pay administrative expenses and policy claims that are approved by the commissioner in a proceeding relating to a receivership court's seizure order, or the receiver in a commencement of formal delinquency proceeding. The bill requires that for the purposes of prioritizing distributions under the Insurer Receivership Act, approved policy claims are classified as Class 2 claims. The bill provides that the commissioner or receiver, as applicable, is not required to make distributions from the assets of the unauthorized insurer before using the advanced amounts. The bill requires any payment of a policy claim to be treated as a distribution under applicable provisions of the Insurer Receivership Act. The bill requires approved policy claims to be paid on a pro rata basis in the manner described in provisions relating to priority of payment of distributions under the Insurer Receivership Act if the claims cannot be paid in full from the advanced funds and the assets of the unauthorized insurer available for distribution. The bill requires amounts advanced that are not needed to pay administrative expenses or policy claims to be returned to the fund account, and requires, on a final distribution of assets or the termination of a delinquency proceeding, any funds of the unauthorized insurer remaining after the payment in full of administrative expenses and policy claims to be used to repay the advance, up to the amount of the advance. The bill requires that a person who has a policy claim may receive funds deposited or advanced under provisions of the bill only in accordance with the provisions relating to use of funds.

H.B. 4339 provides that liability does not exist and a cause of action does not arise against the commissioner of insurance or an agent, employee, or representative of the commissioner for any good faith act or omission in performing the commissioner's, or the agent's, employee's, or representative's powers and duties under the Unauthorized Insurance Guaranty Fund Act. The bill exempts the unauthorized insurance guaranty fund from payment of all fees and taxes levied by Texas or a political subdivision of Texas. The bill authorizes the commissioner of insurance to adopt rules as necessary to implement the Unauthorized Insurance Guaranty Fund Act.

H.B. 4339 provides that the legislative purpose of the Unauthorized Insurance Guaranty Fund Act is to protect individuals from the sale of unauthorized insurance in Texas. The bill requires the powers of the commissioner of insurance under these provisions to be liberally construed to support this purpose, and specifies that the bill does not limit the powers granted to the commissioner under other provisions, and that the powers and authority of the commissioner are accumulative and are in addition to all other powers and authority that are available to the commissioner.

H.B. 4339 defines "delinquency proceeding," "fund," "fund account," "policy claim," "receiver," and "unauthorized insurer."

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.