

By: Smithee

H.B. No. 4339

A BILL TO BE ENTITLED

AN ACT

relating to the establishment and operation of the unauthorized insurance guaranty fund.

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

SECTION 1. Subtitle D, Title 4, Insurance Code, is amended by adding Chapter 464 to read as follows:

CHAPTER 464. UNAUTHORIZED INSURANCE GUARANTY FUND ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 464.001. SHORT TITLE. This chapter may be cited as the Unauthorized Insurance Guaranty Fund Act.

Sec. 464.002. CONSTRUCTION AND PURPOSE. (a) The purpose of this chapter is to alleviate the financial hardship imposed on persons who are harmed by the sale of unauthorized insurance in this state. Persons who suffer damages as a result of unpaid claims on policies issued by unauthorized insurers in this state are not covered under guaranty acts, which provide protection to persons with claims against authorized insurers. The legislature finds that it is appropriate to provide additional remedies to these persons.

(b) The commissioner's powers under this Act shall be liberally construed to support the purpose stated in Subsection (a).

(c) This chapter does not limit the powers granted the commissioner under other provisions of law. The powers and

1 authority of the commissioner under this chapter are cumulative and
2 are in addition to all other powers and authority that are available
3 to the commissioner.

4 Sec. 464.003. DEFINITIONS. In this chapter:

5 (1) "Delinquency proceeding" has the meaning assigned
6 by Section 443.004.

7 (2) "Fund" means the unauthorized insurance guaranty
8 fund.

9 (3) "Fund account" means the account established for
10 the deposit of money held by the fund.

11 (4) "Policy claim" means an obligation incurred under
12 a contract or policy of insurance issued by an unauthorized insurer
13 as described by Chapter 101. The term does not include claims under
14 reinsurance contracts or claims of other creditors.

15 (5) "Receiver" means the receiver of an unauthorized
16 insurer in a delinquency proceeding, including the commissioner
17 when acting in that capacity, or a special deputy receiver.

18 (6) "Unauthorized insurer" has the meaning assigned by
19 Section 443.004.

20 Sec. 464.004. APPLICABILITY. This chapter applies to a
21 delinquency proceeding under Chapter 443 of an unauthorized
22 insurer.

23 Sec. 464.005. IMMUNITY. Liability does not exist and a
24 cause of action does not arise against the commissioner or an agent,
25 employee, or representative of the commissioner for any good faith
26 act or omission in performing the commissioner's or the agent's,
27 employee's, or representative's powers and duties under this

1 chapter.

2 Sec. 464.006. EXEMPTION FROM CERTAIN FEES AND TAXES. The
3 fund is exempt from payment of all fees and taxes levied by this
4 state or a political subdivision of this state.

5 Sec. 464.007. RULES. The commissioner may adopt rules as
6 necessary to implement this chapter.

7 [Sections 464.008-464.050 reserved for expansion]

8 SUBCHAPTER B. FUND

9 Sec. 464.051. CREATION OF UNAUTHORIZED INSURANCE GUARANTY
10 FUND. The unauthorized insurance guaranty fund is established.

11 Sec. 464.052. DEPOSIT OF FUNDS. (a) The fund account shall
12 be established with the Texas Treasury Safekeeping Trust Company in
13 accordance with procedures adopted by the comptroller. The
14 comptroller shall account for the deposited money separately from
15 all other money.

16 (b) The commissioner may identify collected penalties to be
17 deposited into the fund account from:

18 (1) administrative penalties assessed by the
19 commissioner for violations of Chapter 101 or penalties under
20 Section 861.702, including amounts collected through state warrant
21 holds;

22 (2) civil penalties assessed under Chapter 101 when
23 the commissioner is the party requesting penalties;

24 (3) administrative penalties assessed by the
25 commissioner against a person holding a certificate of authority,
26 license, registration, or other authorization to engage in the
27 business of insurance that is issued or recognized by the

1 commissioner for engaging in conduct outside the scope of the
2 person's certificate, license, registration, or authorization;

3 (4) administrative penalties assessed by the
4 commissioner against a person holding a certificate of authority,
5 license, registration, or authorization issued or recognized by the
6 commissioner for using unapproved forms, rates, or advertisements
7 if the forms, rates, or advertisements are required to be approved
8 by the commissioner before being used in this state; and

9 (5) forfeitures of bonds issued under Section 101.353
10 or 101.354.

11 (c) In determining the amounts to be deposited into the fund
12 account, the commissioner shall consider:

13 (1) the amount existing in the fund account;

14 (2) the anticipated penalties described by Subsection
15 (b) that have been or may be collected;

16 (3) the estimated assets, administrative expenses,
17 and claims of any unauthorized insurers subject to a delinquency
18 proceeding; and

19 (4) any anticipated delinquency proceedings of
20 unauthorized insurers.

21 (d) If the commissioner determines that the amounts on
22 deposit in the fund account exceed the amount required to pay
23 administrative expenses and claims of existing and anticipated
24 delinquency proceedings of unauthorized insurers, the commissioner
25 may transfer the excess amount from the fund to the comptroller for
26 deposit into the general revenue fund.

27 (e) The commissioner shall notify the comptroller of the

1 existence of money under Subsection (c) to be credited to the fund
2 account. The commissioner must enter an order to transfer amounts
3 from the fund account.

4 Sec. 464.053. ADVANCE OF FUNDS. (a) In the event of a
5 delinquency proceeding of an unauthorized insurer, the
6 commissioner may advance funds from the fund account if the assets
7 of the unauthorized insurer are insufficient to pay administrative
8 expenses or policy claims. The commissioner shall hold the funds in
9 a separate account. Funds advanced under this section are
10 available to supplement the assets of the unauthorized insurer and
11 do not become property of the unauthorized insurer or the
12 receivership estate.

13 (b) In determining an amount to be advanced, the
14 commissioner shall consider:

15 (1) the amount existing in the fund and any estimated
16 future amounts to be deposited in the fund;

17 (2) the assets of the unauthorized insurer that are
18 anticipated to be available to pay administrative expenses and
19 claims;

20 (3) the projected administrative expenses and claims
21 in the delinquency proceeding; and

22 (4) the projected administrative expenses and claims
23 in other existing and anticipated delinquency proceedings of
24 unauthorized insurers.

25 Sec. 464.054. USE OF FUNDS. (a) An amount advanced under
26 Section 464.053 may be used to supplement the assets of an
27 unauthorized insurer to pay administrative expenses and policy

1 claims that are approved by:

2 (1) the commissioner in a proceeding under Section
3 443.051; or

4 (2) the receiver in a proceeding under Section
5 443.052.

6 (b) For the purposes of Section 443.301(b), approved policy
7 claims under this chapter shall be classified as Class 2 claims.

8 (c) The commissioner or receiver, as applicable, is not
9 required to make distributions from the assets of the unauthorized
10 insurer before using amounts advanced under Section 464.053. Any
11 payment of a policy claim made under Subsection (a) shall be treated
12 as a distribution under Section 443.302. If approved policy claims
13 cannot be paid in full from the funds advanced under Section 464.053
14 and the assets of the unauthorized insurer available for
15 distribution, the claims shall be paid on a pro rata basis in the
16 manner described in Section 443.301.

17 (d) Amounts advanced that are not needed to pay
18 administrative expenses or policy claims shall be returned to the
19 fund account. On a final distribution under Section 443.302 or the
20 termination of a delinquency proceeding, any funds of the
21 unauthorized insurer remaining after the payment in full of
22 administrative expenses and policy claims shall be used to repay
23 the advance, up to the amount of the advance.

24 (e) A person who has a policy claim may receive funds
25 deposited or advanced under this chapter only in accordance with
26 this section.

27 SECTION 2. This Act takes effect immediately if it receives

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1 a vote of two-thirds of all the members elected to each house, as
2 provided by Section 39, Article III, Texas Constitution. If this
3 Act does not receive the vote necessary for immediate effect, this
4 Act takes effect September 1, 2009.