1-1	By: Smithee (Senate Sponsor - Fraser) H.B. No. 4339
1-2 1-3	(In the Senate - Received from the House April 16, 2009; April 27, 2009, read first time and referred to Committee on
1-4	Business and Commerce; May 13, 2009, reported favorably by the
1-5	following vote: Yeas 8, Nays 0; May 13, 2009, sent to printer.)
1-6	A BILL TO BE ENTITLED
1-7	AN ACT
1-8	relating to the establishment and operation of the unauthorized
1-9	insurance guaranty fund.
1-10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-11	SECTION 1. Subtitle D, Title 4, Insurance Code, is amended
1-12	by adding Chapter 464 to read as follows:
1 - 13 1 - 14	CHAPTER 464. UNAUTHORIZED INSURANCE GUARANTY FUND ACT SUBCHAPTER A. GENERAL PROVISIONS
1-15	Sec. 464.001. SHORT TITLE. This chapter may be cited as the
1-16	Unauthorized Insurance Guaranty Fund Act.
1-17	Sec. 464.002. CONSTRUCTION AND PURPOSE. (a) The purpose of
1-18	this chapter is to alleviate the financial hardship imposed on
1-19	persons who are harmed by the sale of unauthorized insurance in this
1-20 1-21	state. Persons who suffer damages as a result of unpaid claims on policies issued by unauthorized insurers in this state are not
1-22	covered under guaranty acts, which provide protection to persons
1-23	with claims against authorized insurers. The legislature finds
1-24	that it is appropriate to provide additional remedies to these
1-25	persons.
1-26	(b) The commissioner's powers under this Act shall be
1-27 1-28	liberally construed to support the purpose stated in Subsection (a).
1-29	(c) This chapter does not limit the powers granted the
1-30	commissioner under other provisions of law. The powers and
1-31	authority of the commissioner under this chapter are cumulative and
1-32	are in addition to all other powers and authority that are available
1-33 1-34	to the commissioner. Sec. 464.003. DEFINITIONS. In this chapter:
1-34 1-35	(1) "Delinquency proceeding" has the meaning assigned
	by Section 443.004.
1-37	(2) "Fund" means the unauthorized insurance guaranty
1-38	fund.
1-39	(3) "Fund account" means the account established for
1-40 1-41	the deposit of money held by the fund. (4) "Policy claim" means an obligation incurred under
1-41	a contract or policy of insurance issued by an unauthorized insurer
1-43	as described by Chapter 101. The term does not include claims under
1-44	reinsurance contracts or claims of other creditors.
1-45	(5) "Receiver" means the receiver of an unauthorized
1-46	insurer in a delinquency proceeding, including the commissioner
1-47 1-48	when acting in that capacity, or a special deputy receiver. (6) "Unauthorized insurer" has the meaning assigned by
1-49	Section 443.004.
1-50	Sec. 464.004. APPLICABILITY. This chapter applies to a
1-51	delinquency proceeding under Chapter 443 of an unauthorized
1-52	insurer.
1 - 53 1 - 54	Sec. 464.005. IMMUNITY. Liability does not exist and a
1-54 1-55	cause of action does not arise against the commissioner or an agent, employee, or representative of the commissioner for any good faith
1-56	act or omission in performing the commissioner's or the agent's,
1-57	employee's, or representative's powers and duties under this
1-58	chapter.
1-59	Sec. 464.006. EXEMPTION FROM CERTAIN FEES AND TAXES. The
1-60	fund is exempt from payment of all fees and taxes levied by this
1-61 1-62	state or a political subdivision of this state. Sec. 464.007. RULES. The commissioner may adopt rules as
1-63	necessary to implement this chapter.
1 - 64	[Sections 464.008-464.050 reserved for expansion]

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2-1	SUBCHAPTER B. FUND
2-2	Sec. 464.051. CREATION OF UNAUTHORIZED INSURANCE GUARANTY
2-3 2-4	FUND. The unauthorized insurance guaranty fund is established. Sec. 464.052. DEPOSIT OF FUNDS. (a) The fund account shall
2-5	be established with the Texas Treasury Safekeeping Trust Company in
2-6	accordance with procedures adopted by the comptroller. The
2-7 2-8	comptroller shall account for the deposited money separately from all other money.
2-9	(b) The commissioner may identify collected penalties to be
2-10 2-11	<u>deposited into the fund account from:</u> (1) administrative penalties assessed by the
2-11 2 - 12	commissioner for violations of Chapter 101 or penalties under
2-13	Section 861.702, including amounts collected through state warrant
2 - 14 2 - 15	holds; (2) civil penalties assessed under Chapter 101 when
2-16	the commissioner is the party requesting penalties;
2-17	(3) administrative penalties assessed by the
2 - 18 2 - 19	commissioner against a person holding a certificate of authority, license, registration, or other authorization to engage in the
2-20	business of insurance that is issued or recognized by the
2-21 2-22	commissioner for engaging in conduct outside the scope of the person's certificate, license, registration, or authorization;
2-22 2-23	(4) administrative penalties assessed by the
2-24	commissioner against a person holding a certificate of authority,
2 - 25 2 - 26	license, registration, or authorization issued or recognized by the commissioner for using unapproved forms, rates, or advertisements
2-27	if the forms, rates, or advertisements are required to be approved
2-28	by the commissioner before being used in this state; and
2-29 2-30	(5) forfeitures of bonds issued under Section 101.353 or 101.354.
2-31	(c) In determining the amounts to be deposited into the fund
2-32 2-33	account, the commissioner shall consider:
2 - 33 2 - 34	(1) the amount existing in the fund account;(2) the anticipated penalties described by Subsection
2 - 35	(b) that have been or may be collected;
2-36 2-37	(3) the estimated assets, administrative expenses, and claims of any unauthorized insurers subject to a delinguency
2-38	proceeding; and
2-39 2-40	(4) any anticipated delinquency proceedings of unauthorized insurers.
2-40 2 - 41	(d) If the commissioner determines that the amounts on
2-42	deposit in the fund account exceed the amount required to pay
2-43 2-44	administrative expenses and claims of existing and anticipated delinguency proceedings of unauthorized insurers, the commissioner
2-45	may transfer the excess amount from the fund to the comptroller for
2-46	deposit into the general revenue fund.
2 - 47 2 - 48	(e) The commissioner shall notify the comptroller of the existence of money under Subsection (c) to be credited to the fund
2-49	account. The commissioner must enter an order to transfer amounts
2 - 50 2 - 51	<u>from the fund account.</u> Sec. 464.053. ADVANCE OF FUNDS. (a) In the event of a
2-52	delinquency proceeding of an unauthorized insurer, the
2-53	commissioner may advance funds from the fund account if the assets
2 - 54 2 - 55	of the unauthorized insurer are insufficient to pay administrative expenses or policy claims. The commissioner shall hold the funds in
2-56	a separate account. Funds advanced under this section are
2 - 57 2 - 58	available to supplement the assets of the unauthorized insurer and do not become property of the unauthorized insurer or the
2-58 2 - 59	receivership estate.
2-60	(b) In determining an amount to be advanced, the
2-61 2-62	commissioner shall consider: (1) the amount existing in the fund and any estimated
2-63	future amounts to be deposited in the fund;
2 - 64 2 - 65	(2) the assets of the unauthorized insurer that are anticipated to be available to pay administrative expenses and
2 - 65 2 - 66	claims;
2-67	(3) the projected administrative expenses and claims
2 - 68 2 - 69	in the delinquency proceeding; and (4) the projected administrative expenses and claims

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3-1	in other existing and anticipated delinguency proceedings of
3-2	unauthorized insurers.
3-3	Sec. 464.054. USE OF FUNDS. (a) An amount advanced under
	Section 404.054. OSE OF FORDS. (a) An amount advanced under
3-4	Section 464.053 may be used to supplement the assets of an
3-5	unauthorized insurer to pay administrative expenses and policy
3-6	claims that are approved by:
3-7	(1) the commissioner in a proceeding under Section
3-8	443.051; or
3-9	(2) the receiver in a proceeding under Section
3-10	443.052.
3-11	(b) For the purposes of Section 443.301(b), approved policy
3-12	claims under this chapter shall be classified as Class 2 claims.
3-13	(c) The commissioner or receiver, as applicable, is not
3-14	required to make distributions from the assets of the unauthorized
3-15	insurer before using amounts advanced under Section 464.053. Any
3-16	payment of a policy claim made under Subsection (a) shall be treated
3-17	as a distribution under Section 443.302. If approved policy claims
3-18	cannot be paid in full from the funds advanced under Section 464.053
3-19	and the assets of the unauthorized insurer available for
3-20	distribution, the claims shall be paid on a pro rata basis in the
3-21	manner described in Section 443.301.
3-22	(d) Amounts advanced that are not needed to pay
3-23	administrative expenses or policy claims shall be returned to the
3-24	fund account. On a final distribution under Section 443.302 or the
3-25	termination of a delinquency proceeding, any funds of the
3-26	unauthorized insurer remaining after the payment in full of
3-27	administrative expenses and policy claims shall be used to repay
3-28	the advance, up to the amount of the advance.
3-29	(e) A person who has a policy claim may receive funds
3-30	deposited or advanced under this chapter only in accordance with
3-31	this section.
3-32	SECTION 2. This Act takes effect immediately if it receives
3-33	a vote of two-thirds of all the members elected to each house, as
3-34	provided by Section 39, Article III, Texas Constitution. If this
3-35	Act does not receive the vote necessary for immediate effect, this
3-36	Act takes effect September 1, 2009.

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