

1-1 By: Smithee (Senate Sponsor - Fraser) H.B. No. 4339
1-2 (In the Senate - Received from the House April 16, 2009;
1-3 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 CHAPTER 464. UNAUTHORIZED INSURANCE GUARANTY FUND ACT

1-14 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 state. Persons who suffer damages as a result of unpaid claims on
1-21 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 liberally construed to support the purpose stated in Subsection
1-28 (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 to the commissioner.

1-34 Sec. 464.003. DEFINITIONS. In this chapter:

1-35 (1) "Delinquency proceeding" has the meaning assigned
1-36 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 the deposit of money held by the fund.

1-41 (4) "Policy claim" means an obligation incurred under
1-42 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 when acting in that capacity, or a special deputy receiver.

1-48 (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 Sec. 464.005. IMMUNITY. Liability does not exist and a
1-54 cause of action does not arise against the commissioner or an agent,
1-55 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 state or a political subdivision of this state.

1-62 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]

3-1 in other existing and anticipated delinquency proceedings of
3-2 unauthorized insurers.

3-3 Sec. 464.054. USE OF FUNDS. (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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