

BILL ANALYSIS

Senate Research Center

S.B. 1063
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Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Property and Casualty Insurance Guaranty Association (TPCIGA) is a non-profit association created by the Texas Legislature to provide financial protections for insurance consumers in the event a member insurer becomes insolvent. Its membership consists of all property and casualty insurers licensed to do business in Texas. TPCIGA pays claims and defends insureds as allowed by its governing act, Chapter 462, Insurance Code. Separate guaranty funds cover title and life, annuity, health, and disability insurance.

TPCIGA is not an insurance company. It is a safety net designed by the legislature to protect Texas insurance consumers. TPCIGA is governed by a nine-member board of directors composed of five insurance industry members and four public or consumer members.

TPCIGA's staff and board have identified some statutory changes to clarify the law and allow TPCIGA to operate more efficiently.

The proposed bill to amend Chapter 462 of the Texas Insurance Code is intended to accomplish the following:

- Align TPCIGA with other state guaranty associations by triggering its duties upon a court order of liquidation, without need of a separate commissioner's order.
- Allow the commissioner to fill the interim vacancy of a public member of the board.
- Allow TPCIGA's board to conduct meetings by conference call, as does the Texas Windstorm Insurance Association and as proposed in separate bills by the two other Texas guaranty associations.
- Allow TPCIGA to recover costs and attorney's fees incurred in enforcing existing statutory rights.
- Authorize use of loss portfolio transfers to aid TPCIGA in fulfilling its statutory duties.
- Clarify that TPCIGA's right to recover the proceeds from salvage property may not be reduced by pre-impairment costs not otherwise recoverable against the association.
- Clarify that TPCIGA's right to recover from certain high net worth insureds extends to the insured's successor entity. (Original Author's/Sponsor's Statement of Intent)

S.B. 1063 amends current law relating to the operation of the Texas Property and Casualty Insurance Guaranty Association.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 462.004(5), Insurance Code, to redefine "impaired insurer" to mean a member insurer that is subject to a final, nonappealable order of liquidation that includes a finding of insolvency issued by a court of competent jurisdiction in this state or in the insurer's state of domicile.

SECTION 2. Amends Section 462.055(b), Insurance Code, as follows:

(b) Requires the remaining members of the board of directors of the Texas Property and Casualty Insurance Guaranty Association (board; association), by majority vote, to fill a vacancy on the board for the unexpired term of a director who serves as an insurance industry board member, subject to the approval of the commissioner of insurance (commissioner). Requires the commissioner to appoint a director to fill a vacancy on the board for the unexpired term of a director who serves as a public representative.

SECTION 3. Amends Section 462.059, Insurance Code, by amending Subsections (a), (b), and (c) and adding Subsection (a-1), as follows:

(a) Authorizes the board, notwithstanding Chapter 551 (Open Meetings), Government Code, to hold an open meeting by telephone conference call. Deletes text referring to holding a conference call if immediate action is required and convening of a quorum of the board at a single location is not reasonable or practical. Provides that a meeting held by telephone conference call:

(1) is required to be audible to the public at the location specified in the notice described by Subsection (c); and

(2) is required to allow two-way audio communication during the entire meeting between the members of the board attending a meeting authorized by this section.

(a-1) Prohibits the meeting, if the two-way communication required under Subsection (a) is disrupted during a meeting so that a quorum of the board is no longer able to participate, from continuing until the two-way audio communication is reestablished.

(b) Provides that the meeting is subject to the notice requirements that apply to other meetings of the board.

(c) Requires the notice of the meeting to specify the location of the meeting, rather than specify as the location of the meeting the location at which meetings of the board are usually held, and requires each part of the meeting that is required to be open to the public to be audible to the public at the location. Requires the association to make an audio recording of the meeting. Requires the recording of the open portion of the meeting to be posted publicly to the association's Internet website, rather than requiring the meeting to be tape recorded and the recording to be made available to the public.

SECTION 4. Amends Section 462.007, Insurance Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Provides that an impaired insured's insurer is not liable, and the reinsurer, insurer, self-insurer, insurance pool, or underwriting association is not entitled to sue or continue a suit against the insured, for a subterfuge recovery, reinsurance recovery, contribution, indemnification, or any other claim asserted directly or indirectly by a reinsurer, insurer, self-insurer, insurance pool, underwriting association to the extent of the applicable liability limits of the insurance policy written and issued to the insured by the insolvent insurer.

(c) Entitles the association to recover the association's costs, expenses, and reasonable attorney's fees incurred in defending the association or an impaired insurer's insured against a claim brought in violation of this subsection by a reinsurer, insurer, self-insurer,

insurance pool, or underwriting association, on that entity's own behalf or on behalf of the entity's insured, after the date on which the entity is provided notice by the association or otherwise of the provisions of this section applicable to the entity's suit.

SECTION 5. Amends Sections 462.212(d), (e), and (f), Insurance Code, as follows:

(d) Requires a court to award the association the association's costs, expenses, and reasonable attorney's fees incurred in seeking recovery under this section (Net Worth Exclusion).

(e) Authorizes the association to establish procedures for requesting financial information from an insured, rather than an insured or claimant, on a confidential basis for the purpose of applying sections concerning the net worth of insureds, rather than the net worth of first-party and third-party claimants, subject to any information requested under this subsection being shared with any other association similar to the association and with the liquidator for the impaired insurer on the same confidential basis. Authorizes the association, if the insured refuses to provide the requested financial information, to deem the net worth of the insured to be in excess of \$50 million at the relevant time, rather than authorizing the association, if the insured or claimant refuses to provide the requested information, the association requests an auditor's certification of that information, and the auditor's certification is available but not provided, to deem the net worth of the insured or claimant to be in excess of \$50 million at the relevant time.

(f) Provides that, in any lawsuit contesting the applicability of Section 462.308 (Recovery From Certain Persons) or this section when the insured has declined to provide financial information requested by the association, the insured bears the burden of proof concerning its net worth at the relevant time and is required to pay the association's costs, expenses, and reasonable attorney's fees incurred in attempting to obtain the insured's financial information, rather than providing that, in any lawsuit concerning the applicability of Section 462.308 or this section when the insured or claimant has declined to provide financial information under the procedure provided in the plan of operation under Section 462.103 (Plan of Operation), the insured or claimant bears the burden of proof concerning its net worth at the relevant time. Deletes existing text requiring the court, if the insured or claimant fails to prove that its net worth at the relevant time was less than the applicable amount, to award the association its full costs, expenses, and reasonable attorney's fees in contesting the claim.

SECTION 6. Amends Section 462.303, Insurance Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Provides that a judgment, settlement, or release described by Subsection (a) is not evidence of liability or of damages in connection with a claim brought against the association, an impaired insurer's insured, or another party under this chapter, rather than the association or another party under this chapter.

(c) Entitles the association to recover the association's costs, expenses, and reasonable attorney's fees incurred in contesting a claim based on a judgment, settlement, or release described by Subsection (a) on the association's behalf or on behalf of an impaired insurer's insured after the date on which the party asserting the claim is provided notice by the association or otherwise of the provisions of this section (Certain Determinations Not Binding) applicable to the judgment, settlement, or release.

SECTION 7. Amends Sections 462.304(a) and (c), Insurance Code, as follows:

(a) Creates Subdivisions (1) and (2) from existing text. Requires the association to handle claims through:

(1) the association's employees or contract claims adjusters; or

(2) subject to the approval of the commissioner, one or more insurers designated as a servicing facility under a servicing agreement or loss portfolio transfer agreement, rather than through one or more insurers or other persons designated, subject to the approval of the commissioner, as servicing facilities.

(c) Requires the association to reimburse a servicing facility for obligations of the association paid by the facility and expenses incurred by the facility in handling claims for the association. Requires the association to reimburse a servicing facility under this subsection in a manner that is consistent with the applicable servicing agreement or loss portfolio agreement. Deletes existing text requiring the association to pay the other expenses of the association authorized by this chapter.

SECTION 8. Amends Section 462.307, Insurance Code, by amending Subsection (d) and adding Subsection (f), as follows:

(d) Provides that, except as provided by Section 462.308 or 462.212, rather than except as provided by Section 462.308, the association does not have a cause of action against the impaired insurer's insured for money the association has paid, other than a cause of action that the impaired insurer would have had if the money had been paid by the impaired insurer.

(f) Prohibits the association's right to recover the proceeds, to the extent the association has a right to recover proceeds from the sale of salvage property related to a covered claim, from being reduced in the amount of any pre-impairment costs, fees, or expenses related to the salvage property that are not part of a covered claim under Subchapter E (Covered Claims; Claimants). Prohibits a person or entity in possession of salvage property subject to the association's right of recovery from seeking recovery from the association for any pre-impairment costs, fees, or expenses related to the salvage property that are not a covered claim under Subchapter E.

SECTION 9. Amends Section 462.308, Insurance Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Provides that the association is entitled to recover:

(1) makes no changes to this subdivision; and

(2) the amount of a covered claim for workers' compensation insurance benefits and the costs of administration and defense of the claim paid under this chapter from an insured employer or any successor entity to the insured employer under state, federal, or international law, rather than from an insured employer, whose net worth on December 31 of the year preceding the date the insurer becomes an impaired insurer exceeds \$50 million.

(d) Requires a court to award the association the association's costs, expenses, and reasonable attorney's fees incurred in seeking recovery under this section.

SECTION 10. Makes application of this Act prospective.

SECTION 11. Effective date: September 1, 2019.