

By: Hancock

S.B. No. 1063

A BILL TO BE ENTITLED

AN ACT

relating to the operation of the Texas Property and Casualty Insurance Guaranty Association.

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

SECTION 1. Section 462.004(5), Insurance Code, is amended to read as follows:

(5) "Impaired insurer" means 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[-

~~[(A) placed in:~~

~~[(i) temporary or permanent receivership or liquidation under a court order, including a court order of another state, based on a finding of insolvency; or~~

~~[(ii) conservatorship after the commissioner determines that the insurer is insolvent; and~~

~~[(B) designated by the commissioner as an impaired insurer].~~

SECTION 2. Section 462.055(b), Insurance Code, is amended to read as follows:

(b) The remaining board members, by majority vote, shall fill a vacancy on the board for the unexpired term of a director who serves as an insurance industry board member, subject to the commissioner's approval. The commissioner shall appoint a director

1 to fill a vacancy on the board for the unexpired term of a director
2 who serves as a public representative.

3 SECTION 3. Section 462.059, Insurance Code, is amended by
4 amending Subsections (a), (b), and (c) and adding Subsection (a-1)
5 to read as follows:

6 (a) Notwithstanding Chapter 551, Government Code, the board
7 may hold an open meeting by telephone conference call [~~if immediate~~
8 ~~action is required and convening of a quorum of the board at a~~
9 ~~single location is not reasonable or practical~~]. A meeting held by
10 telephone conference call:

11 (1) must be audible to the public at the location
12 specified in the notice described by Subsection (c); and

13 (2) must allow two-way audio communication during the
14 entire meeting between the members of the board attending a meeting
15 authorized by this section.

16 (a-1) If the two-way audio communication required under
17 Subsection (a) is disrupted during a meeting so that a quorum of the
18 board is no longer able to participate, the meeting may not continue
19 until the two-way audio communication is reestablished.

20 (b) The meeting is subject to the notice requirements that
21 apply to other meetings of the board of directors.

22 (c) The notice of the meeting must specify [~~as~~] the location
23 of the meeting [~~the location at which meetings of the board are~~
24 ~~usually held~~], and each part of the meeting that is required to be
25 open to the public must be audible to the public at that location.
26 The association must make an audio recording of the meeting. The
27 recording of the open portion of the meeting must be posted publicly

1 to the association's Internet website [~~and must be tape recorded.~~
2 ~~The tape recording shall be made available to the public~~].

3 SECTION 4. Section 462.207, Insurance Code, is amended by
4 amending Subsection (b) and adding Subsection (c) to read as
5 follows:

6 (b) An impaired insurer's insured is not liable, and the
7 reinsurer, insurer, self-insurer, insurance pool, or underwriting
8 association is not entitled to sue or continue a suit against the
9 insured, for a subrogation recovery, reinsurance recovery,
10 contribution, indemnification, or any other claim asserted
11 directly or indirectly by a reinsurer, insurer, self-insurer,
12 insurance pool, or underwriting association to the extent of the
13 applicable liability limits of the insurance policy written and
14 issued to the insured by the insolvent insurer.

15 (c) The association is entitled to recover the
16 association's costs, expenses, and reasonable attorney's fees
17 incurred in defending the association or an impaired insurer's
18 insured against a claim brought in violation of this subsection by a
19 reinsurer, insurer, self-insurer, insurance pool, or underwriting
20 association, on that entity's own behalf or on behalf of the
21 entity's insured, after the date on which the entity is provided
22 notice by the association or otherwise of the provisions of this
23 section applicable to the entity's suit.

24 SECTION 5. Sections 462.212(d), (e), and (f), Insurance
25 Code, are amended to read as follows:

26 (d) In an instance described by Subsection (c), the
27 association is entitled to assert a claim in the bankruptcy or

1 receivership proceeding to recover the amount of any covered claim
2 and costs of defense paid on behalf of the insured. A court shall
3 award the association the association's costs, expenses, and
4 reasonable attorney's fees incurred in seeking recovery under this
5 section.

6 (e) The association may establish procedures for requesting
7 financial information from an insured [~~or claimant~~] on a
8 confidential basis for the purpose of applying sections concerning
9 the net worth of insureds [~~first-party and third-party claimants~~],
10 subject to any information requested under this subsection being
11 shared with any other association similar to the association and
12 with the liquidator for the impaired insurer on the same
13 confidential basis. If the insured [~~or claimant~~] refuses to
14 provide the requested financial information, the [~~association~~
15 ~~requests an auditor's certification of that information, and the~~
16 ~~auditor's certification is available but not provided, the~~]
17 association may deem the net worth of the insured [~~or claimant~~] to
18 be in excess of \$50 million at the relevant time.

19 (f) In any lawsuit contesting the applicability of Section
20 [462.308](#) or this section when the insured [~~or claimant~~] has declined
21 to provide financial information requested by the association
22 [~~under the procedure provided in the plan of operation under~~
23 ~~Section [462.103](#)~~], the insured [~~or claimant~~] bears the burden of
24 proof concerning its net worth at the relevant time and shall pay[-
25 ~~If the insured or claimant fails to prove that its net worth at the~~
26 ~~relevant time was less than the applicable amount, the court shall~~
27 ~~award~~] the association the association's [~~its full~~] costs,

1 expenses, and reasonable attorney's fees incurred in attempting to
2 obtain the insured's financial information [~~in contesting the~~
3 ~~claim~~].

4 SECTION 6. Section 462.303, Insurance Code, is amended by
5 amending Subsection (b) and adding Subsection (c) to read as
6 follows:

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

11 (c) The association is entitled to recover the
12 association's costs, expenses, and reasonable attorney's fees
13 incurred in contesting a claim based on a judgment, settlement, or
14 release described by Subsection (a) on the association's behalf or
15 on behalf of an impaired insurer's insured after the date on which
16 the party asserting the claim is provided notice by the association
17 or otherwise of the provisions of this section applicable to the
18 judgment, settlement, or release.

19 SECTION 7. Sections 462.304(a) and (c), Insurance Code, are
20 amended to read as follows:

21 (a) The association shall handle claims through:

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

24 (2) subject to the approval of the commissioner,
25 [~~through~~] one or more insurers [~~or other persons~~] designated[~~7~~
26 ~~subject to the approval of the commissioner,~~] as a servicing
27 facility under a servicing agreement or loss portfolio transfer

1 agreement [~~facilities~~].

2 (c) The association shall[+]

3 [~~(1)~~] reimburse a servicing facility for[+]

4 [~~(A)~~] obligations of the association paid by the
5 facility[+] and

6 [~~(B)~~] expenses incurred by the facility in
7 handling claims for the association. The association shall
8 reimburse a servicing facility under this subsection in a manner
9 that is consistent with the applicable servicing agreement or loss
10 portfolio agreement[+ and

11 [~~(2) pay the other expenses of the association~~
12 ~~authorized by this chapter~~].

13 SECTION 8. Section [462.307](#), Insurance Code, is amended by
14 amending Subsection (d) and adding Subsection (f) to read as
15 follows:

16 (d) Except as provided by Section [462.308](#) or [462.212](#), the
17 association does not have a cause of action against the impaired
18 insurer's insured for money the association has paid, other than a
19 cause of action that the impaired insurer would have had if the
20 money had been paid by the impaired insurer.

21 (f) To the extent the association has a right to recover
22 proceeds from the sale of salvage property related to a covered
23 claim, the association's right to recover the proceeds may not be
24 reduced in the amount of any pre-impairment costs, fees, or
25 expenses related to the salvage property that are not part of a
26 covered claim under Subchapter E. A person or entity in possession
27 of salvage property subject to the association's right of recovery

1 may not seek recovery from the association for any pre-impairment
2 costs, fees, or expenses related to the salvage property that are
3 not a covered claim under Subchapter E.

4 SECTION 9. Section 462.308, Insurance Code, is amended by
5 amending Subsection (a) and adding Subsection (d) to read as
6 follows:

7 (a) The association is entitled to recover:

8 (1) the amount of a covered claim and the cost of
9 defense paid on behalf of a person:

10 (A) who is an affiliate of the impaired insurer;
11 and

12 (B) whose liability obligations to other persons
13 are satisfied wholly or partly by payment made under this chapter;
14 and

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

22 (d) A court shall award the association the association's
23 costs, expenses, and reasonable attorney's fees incurred in seeking
24 recovery under this section.

25 SECTION 10. Except as provided by this section, the changes
26 in law made by this Act apply only with respect to a property and
27 casualty insurance company that is designated as an impaired

1 insurer on or after the effective date of this Act. The law as it
2 existed immediately before the effective date of this Act applies
3 with respect to a property and casualty insurance company that is
4 designated as an impaired insurer before the effective date of this
5 Act, and that law is continued in effect for that purpose.

6 SECTION 11. This Act takes effect September 1, 2019.