

1-1 By: Hancock S.B. No. 1063
 1-2 (In the Senate - Filed February 25, 2019; March 7, 2019,
 1-3 read first time and referred to Committee on Business & Commerce;
 1-4 March 27, 2019, reported favorably by the following vote: Yeas 8,
 1-5 Nays 0; March 27, 2019, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Hancock	X			
1-8 Nichols	X			
1-9 Campbell	X			
1-10 Creighton	X			
1-11 Menéndez			X	
1-12 Paxton	X			
1-13 Schwertner	X			
1-14 Whitmire	X			
1-15 Zaffirini	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to the operation of the Texas Property and Casualty
 1-20 Insurance Guaranty Association.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 462.004(5), Insurance Code, is amended
 1-23 to read as follows:

1-24 (5) "Impaired insurer" means a member insurer that is
 1-25 subject to a final, nonappealable order of liquidation that
 1-26 includes a finding of insolvency issued by a court of competent
 1-27 jurisdiction in this state or in the insurer's state of domicile [+

1-28 ~~[(A) placed in:~~
 1-29 ~~[(i) temporary or permanent receivership or~~
 1-30 ~~liquidation under a court order, including a court order of another~~
 1-31 ~~state, based on a finding of insolvency; or~~

1-32 ~~[(ii) conservatorship after the~~
 1-33 ~~commissioner determines that the insurer is insolvent; and~~

1-34 ~~[(B) designated by the commissioner as an~~
 1-35 ~~impaired insurer].~~

1-36 SECTION 2. Section 462.055(b), Insurance Code, is amended
 1-37 to read as follows:

1-38 (b) The remaining board members, by majority vote, shall
 1-39 fill a vacancy on the board for the unexpired term of a director who
 1-40 serves as an insurance industry board member, subject to the
 1-41 commissioner's approval. The commissioner shall appoint a director
 1-42 to fill a vacancy on the board for the unexpired term of a director
 1-43 who serves as a public representative.

1-44 SECTION 3. Section 462.059, Insurance Code, is amended by
 1-45 amending Subsections (a), (b), and (c) and adding Subsection (a-1)
 1-46 to read as follows:

1-47 (a) Notwithstanding Chapter 551, Government Code, the board
 1-48 may hold an open meeting by telephone conference call ~~[if immediate~~
 1-49 ~~action is required and convening of a quorum of the board at a~~
 1-50 ~~single location is not reasonable or practical]. A meeting held by~~
 1-51 telephone conference call:

1-52 (1) must be audible to the public at the location
 1-53 specified in the notice described by Subsection (c); and

1-54 (2) must allow two-way audio communication during the
 1-55 entire meeting between the members of the board attending a meeting
 1-56 authorized by this section.

1-57 (a-1) If the two-way audio communication required under
 1-58 Subsection (a) is disrupted during a meeting so that a quorum of the
 1-59 board is no longer able to participate, the meeting may not continue
 1-60 until the two-way audio communication is reestablished.

1-61 (b) The meeting is subject to the notice requirements that

2-1 apply to other meetings of the board of directors.

2-2 (c) The notice of the meeting must specify [~~as~~] the location
2-3 of the meeting [~~the location at which meetings of the board are~~
2-4 ~~usually held~~], and each part of the meeting that is required to be
2-5 open to the public must be audible to the public at that location.
2-6 The association must make an audio recording of the meeting. The
2-7 recording of the open portion of the meeting must be posted publicly
2-8 to the association's Internet website [~~and must be tape recorded.~~
2-9 ~~The tape recording shall be made available to the public~~].

2-10 SECTION 4. Section 462.207, Insurance Code, is amended by
2-11 amending Subsection (b) and adding Subsection (c) to read as
2-12 follows:

2-13 (b) An impaired insurer's insured is not liable, and the
2-14 reinsurer, insurer, self-insurer, insurance pool, or underwriting
2-15 association is not entitled to sue or continue a suit against the
2-16 insured, for a subrogation recovery, reinsurance recovery,
2-17 contribution, indemnification, or any other claim asserted
2-18 directly or indirectly by a reinsurer, insurer, self-insurer,
2-19 insurance pool, or underwriting association to the extent of the
2-20 applicable liability limits of the insurance policy written and
2-21 issued to the insured by the insolvent insurer.

2-22 (c) The association is entitled to recover the
2-23 association's costs, expenses, and reasonable attorney's fees
2-24 incurred in defending the association or an impaired insurer's
2-25 insured against a claim brought in violation of this subsection by a
2-26 reinsurer, insurer, self-insurer, insurance pool, or underwriting
2-27 association, on that entity's own behalf or on behalf of the
2-28 entity's insured, after the date on which the entity is provided
2-29 notice by the association or otherwise of the provisions of this
2-30 section applicable to the entity's suit.

2-31 SECTION 5. Sections 462.212(d), (e), and (f), Insurance
2-32 Code, are amended to read as follows:

2-33 (d) In an instance described by Subsection (c), the
2-34 association is entitled to assert a claim in the bankruptcy or
2-35 receivership proceeding to recover the amount of any covered claim
2-36 and costs of defense paid on behalf of the insured. A court shall
2-37 award the association the association's costs, expenses, and
2-38 reasonable attorney's fees incurred in seeking recovery under this
2-39 section.

2-40 (e) The association may establish procedures for requesting
2-41 financial information from an insured [~~or claimant~~] on a
2-42 confidential basis for the purpose of applying sections concerning
2-43 the net worth of insureds [~~first-party and third-party claimants~~],
2-44 subject to any information requested under this subsection being
2-45 shared with any other association similar to the association and
2-46 with the liquidator for the impaired insurer on the same
2-47 confidential basis. If the insured [~~or claimant~~] refuses to
2-48 provide the requested financial information, the [~~association~~
2-49 ~~requests an auditor's certification of that information, and the~~
2-50 ~~auditor's certification is available but not provided, the~~]
2-51 association may deem the net worth of the insured [~~or claimant~~] to
2-52 be in excess of \$50 million at the relevant time.

2-53 (f) In any lawsuit contesting the applicability of Section
2-54 462.308 or this section when the insured [~~or claimant~~] has declined
2-55 to provide financial information requested by the association
2-56 [under the procedure provided in the plan of operation under
2-57 Section 462.103], the insured [~~or claimant~~] bears the burden of
2-58 proof concerning its net worth at the relevant time and shall pay[-
2-59 ~~If the insured or claimant fails to prove that its net worth at the~~
2-60 ~~relevant time was less than the applicable amount, the court shall~~
2-61 ~~award~~] the association's [~~its full~~] costs,
2-62 expenses, and reasonable attorney's fees incurred in attempting to
2-63 obtain the insured's financial information [~~in contesting the~~
2-64 ~~claim~~].

2-65 SECTION 6. Section 462.303, Insurance Code, is amended by
2-66 amending Subsection (b) and adding Subsection (c) to read as
2-67 follows:

2-68 (b) A judgment, settlement, or release described by
2-69 Subsection (a) is not evidence of liability or of damages in

3-1 connection with a claim brought against the association, an
 3-2 impaired insurer's insured, or another party under this chapter.
 3-3 (c) The association is entitled to recover the
 3-4 association's costs, expenses, and reasonable attorney's fees
 3-5 incurred in contesting a claim based on a judgment, settlement, or
 3-6 release described by Subsection (a) on the association's behalf or
 3-7 on behalf of an impaired insurer's insured after the date on which
 3-8 the party asserting the claim is provided notice by the association
 3-9 or otherwise of the provisions of this section applicable to the
 3-10 judgment, settlement, or release.

3-11 SECTION 7. Sections 462.304(a) and (c), Insurance Code, are
 3-12 amended to read as follows:

3-13 (a) The association shall handle claims through:
 3-14 (1) the association's employees or contract claims
 3-15 adjusters; or
 3-16 (2) subject to the approval of the commissioner,
 3-17 [through] one or more insurers [or other persons] designated[,
 3-18 subject to the approval of the commissioner,] as a servicing
 3-19 facility under a servicing agreement or loss portfolio transfer
 3-20 agreement [facilities].

3-21 (c) The association shall[+
 3-22 [~~1~~] reimburse a servicing facility for[+
 3-23 [~~A~~] obligations of the association paid by the
 3-24 facility[+] and
 3-25 [~~B~~] expenses incurred by the facility in
 3-26 handling claims for the association. The association shall
 3-27 reimburse a servicing facility under this subsection in a manner
 3-28 that is consistent with the applicable servicing agreement or loss
 3-29 portfolio agreement[+ and
 3-30 [~~2~~] pay the other expenses of the association
 3-31 authorized by this chapter].

3-32 SECTION 8. Section 462.307, Insurance Code, is amended by
 3-33 amending Subsection (d) and adding Subsection (f) to read as
 3-34 follows:

3-35 (d) Except as provided by Section 462.308 or 462.212, the
 3-36 association does not have a cause of action against the impaired
 3-37 insurer's insured for money the association has paid, other than a
 3-38 cause of action that the impaired insurer would have had if the
 3-39 money had been paid by the impaired insurer.

3-40 (f) To the extent the association has a right to recover
 3-41 proceeds from the sale of salvage property related to a covered
 3-42 claim, the association's right to recover the proceeds may not be
 3-43 reduced in the amount of any pre-impairment costs, fees, or
 3-44 expenses related to the salvage property that are not part of a
 3-45 covered claim under Subchapter E. A person or entity in possession
 3-46 of salvage property subject to the association's right of recovery
 3-47 may not seek recovery from the association for any pre-impairment
 3-48 costs, fees, or expenses related to the salvage property that are
 3-49 not a covered claim under Subchapter E.

3-50 SECTION 9. Section 462.308, Insurance Code, is amended by
 3-51 amending Subsection (a) and adding Subsection (d) to read as
 3-52 follows:

3-53 (a) The association is entitled to recover:

3-54 (1) the amount of a covered claim and the cost of
 3-55 defense paid on behalf of a person:

3-56 (A) who is an affiliate of the impaired insurer;
 3-57 and

3-58 (B) whose liability obligations to other persons
 3-59 are satisfied wholly or partly by payment made under this chapter;
 3-60 and

3-61 (2) the amount of a covered claim for workers'
 3-62 compensation insurance benefits and the costs of administration and
 3-63 defense of the claim paid under this chapter from an insured
 3-64 employer or any successor entity to the insured employer under
 3-65 state, federal, or international law whose net worth on December 31
 3-66 of the year preceding the date the insurer becomes an impaired
 3-67 insurer exceeds \$50 million.

3-68 (d) A court shall award the association the association's
 3-69 costs, expenses, and reasonable attorney's fees incurred in seeking

4-1 recovery under this section.

4-2 SECTION 10. Except as provided by this section, the changes
4-3 in law made by this Act apply only with respect to a property and
4-4 casualty insurance company that is designated as an impaired
4-5 insurer on or after the effective date of this Act. The law as it
4-6 existed immediately before the effective date of this Act applies
4-7 with respect to a property and casualty insurance company that is
4-8 designated as an impaired insurer before the effective date of this
4-9 Act, and that law is continued in effect for that purpose.

4-10 SECTION 11. This Act takes effect September 1, 2019.

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