

INSURANCE CODE

TITLE 10. PROPERTY AND CASUALTY INSURANCE

SUBTITLE G. POOLS, GROUPS, PLANS, AND SELF-INSURANCE

CHAPTER 2205. TEXAS CHILD-CARE FACILITY LIABILITY POOL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2205.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of trustees of the pool.

(2) "Child-care facility" has the meaning assigned by Section 42.002, Human Resources Code.

(3) "Fund" means the Texas child-care facility liability fund.

(4) "Pool" means the Texas Child-Care Facility Liability Pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.002. POOL NOT ENGAGED IN BUSINESS OF INSURANCE.

(a) Except as provided by this section and Section 2205.003(b), the pool is not engaged in the business of insurance under this code or other state law, and this code and other state insurance laws do not apply to the pool.

(b) The pool is subject to:

(1) this chapter;

(2) the requirements of this code or commissioner rules relating to reporting liability claims information; and

(3) the requirements of Chapter 2251 and Article 5.13-2 relating to making, filing, and approving rates.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.003. DEPARTMENT AND COMMISSIONER SUPERVISION.

(a) The pool is subject to the department's continuing supervision relating to the pool's solvency.

(b) The commissioner may set minimum requirements to ensure the capability of the pool to satisfy the pool's obligations.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER B. CREATION OF POOL

Sec. 2205.051. CREATION OF POOL. (a) The Texas Child-Care Facility Liability Pool is created when the governing bodies of 10 or more child-care facilities agree in writing to participate in the pool.

(b) The pool provides liability insurance coverage for child-care facilities as provided by this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.052. PARTICIPATION IN POOL. A child-care facility is entitled to coverage from the pool if the facility:

(1) submits a complete application;

(2) provides other information required by the pool;

(3) meets the underwriting standards established by the pool; and

(4) pays the premiums required for the coverage.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.053. SELECTION OF TEMPORARY BOARD. At the time the governing bodies of the child-care facilities enter into the written agreement under Section 2205.051, the governing bodies shall select nine individuals to:

(1) serve as the temporary board; and

(2) draft the plan of operation for the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER C. PLAN OF OPERATION

Sec. 2205.101. TIME FOR CREATION OF PLAN OF OPERATION. (a) Not later than the 30th day after the date the last member of the

temporary board is selected, the temporary board shall meet to prepare a plan of operation for the pool.

(b) The temporary board shall complete and adopt the plan of operation not later than the 90th day after the date the last member of the temporary board is selected.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.102. CONTENTS OF PLAN OF OPERATION. (a) Subject to the requirements of this chapter, the plan of operation must include:

(1) the organizational structure of the pool, including:

(A) the method of selecting the board;

(B) the board's methods of procedure and operation; and

(C) a summary of the methods for managing and operating the pool;

(2) a description of the contributions and other financial arrangements necessary to cover the initial expenses of the pool and estimates, supported by statistical information, of the amounts of those contributions or other financial arrangements;

(3) underwriting standards and procedures for evaluating risks;

(4) a requirement that each participant in the pool receive continuing training in the methods of controlling liability losses;

(5) procedures for purchasing reinsurance;

(6) procedures and guidelines for:

(A) establishing premium rates for and maximum limits of excess liability coverage available from the pool;

(B) negotiating and paying settlements, defending claims, and paying judgments; and

(C) managing and investing the fund;

(7) procedures for:

(A) processing and paying claims; and

(B) defraying losses or expenses of the pool;

- (8) guidelines for nonrenewal of coverage;
- (9) the minimum capital and surplus to be maintained by the pool; and
- (10) the minimum standards for reserve requirements for the pool.

(b) The plan of operation may include any matter relating to the organization and operation of the pool or to the pool's finances.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.103. APPROVAL OF PLAN OF OPERATION. (a) On completion of the plan of operation, the temporary board shall submit the plan to the department for examination, suggested changes, and final approval.

(b) The department shall approve the plan of operation on the determination that the pool is able and will continue to be able to pay valid claims made against the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER D. BOARD OF TRUSTEES

Sec. 2205.151. GOVERNANCE OF POOL. (a) The pool is governed by a board of trustees composed of nine members selected as provided by the plan of operation.

(b) Not later than the 15th day after the date the department approves the plan of operation, the initial regular board must be selected as provided by the plan of operation. The members of the initial regular board shall take office not later than the 30th day after the date the plan of operation is adopted.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.152. TERMS; VACANCY. (a) Board members serve two-year terms. The terms expire as provided by the plan of operation.

(b) A vacancy on the board shall be filled as provided by the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.153. PERFORMANCE BOND REQUIRED. (a) Each board member shall execute a bond in the amount required by the plan of operation. The bond must be payable to the pool and conditioned on the faithful performance of the member's duties.

(b) The pool shall pay the cost of the bond executed under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.154. COMPENSATION. A board member is not entitled to compensation for the member's service on the board.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.155. OFFICERS; MEETINGS. (a) The board shall elect from the board's membership a presiding officer and other officers as provided by the plan of operation.

(b) Each officer serves a one-year term that expires as provided by the plan of operation.

(c) The board shall meet at the call of the presiding officer and at times established by the board's rules.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.156. GENERAL POWERS AND DUTIES OF BOARD. (a) The board shall:

(1) approve contracts, other than liability insurance contracts issued by the pool to child-care facilities; and

(2) adopt premium rate schedules and policy forms for the pool.

(b) The board may:

(1) adopt rules as necessary for the operation of the

pool;

(2) delegate specific responsibilities to the pool manager; and

(3) with the department's approval, amend the plan of operation as necessary to ensure the orderly management and operation of the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.157. IMMUNITY OF BOARD MEMBERS FROM CERTAIN LIABILITIES. A board member is not liable:

(1) with respect to a claim or judgment for which coverage is provided by the pool; or

(2) for a claim or judgment against a child-care facility covered by the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER E. OPERATION OF POOL

Sec. 2205.201. GENERAL POWERS AND DUTIES OF POOL. (a) The pool shall:

(1) issue primary and excess liability coverage to each child-care facility entitled to coverage under this chapter;

(2) collect premiums for coverage issued or renewed by the pool;

(3) process and pay valid claims;

(4) maintain detailed information regarding the pool; and

(5) establish a plan to conduct loss control training or contract with an outside entity to establish continuing training and inspections programs designed to reduce the potential liability losses of pool participants.

(b) The pool may:

(1) enter into contracts;

(2) purchase reinsurance;

(3) cancel or refuse to renew coverage; and

(4) perform any other act necessary to implement this chapter, the plan of operation, or a rule adopted by the board.
Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.202. POOL MANAGER; PERFORMANCE BOND REQUIRED.

(a) The board shall appoint a pool manager who serves at the pleasure of the board, and the board shall supervise the pool manager's activities.

(b) The pool manager shall execute a bond in the amount determined by the board. The bond must be payable to the pool and conditioned on the faithful performance of the pool manager's duties.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.203. GENERAL POWERS AND DUTIES OF POOL MANAGER.

(a) The pool manager shall direct the general operation of the pool and perform other duties as directed by the board.

(b) The pool manager shall:

(1) receive and approve applications for liability coverage from the pool;

(2) negotiate contracts for the pool; and

(3) prepare proposed policy forms for board approval.

(c) The pool manager may refuse to renew the coverage of a child-care facility insured by the pool that fails to meet the guidelines included in the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.204. PERSONNEL. (a) The pool manager may employ or contract with persons as necessary to assist the board and the pool manager in implementing the powers and duties of the pool.

(b) The board must approve:

(1) the compensation paid to a pool employee; and

(2) a contract made with a person under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff.

April 1, 2007.

Sec. 2205.205. PERFORMANCE BOND AUTHORIZED. The board may require an employee or a person with whom the pool manager contracts under Section 2205.204 to execute a bond in an amount determined by the board. The bond must be payable to the board and conditioned on the faithful performance of the employee's or other person's duties to the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.206. IMMUNITY OF EMPLOYEES AND CONTRACTORS FROM CERTAIN LIABILITIES. An employee or a person with whom the pool manager contracts under Section 2205.204 is not liable with respect to a claim or judgment against a child-care facility covered by the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.207. OFFICE; RECORDS. (a) The pool shall maintain the pool's principal office in Austin, Texas.

(b) Records and other information relating to the operation of the pool must be maintained in the pool's principal office.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.208. ANNUAL AUDIT. The board shall require an annual audit of the pool's capital, surplus, and reserves. The audit must be conducted by an actuary who is a member of the American Academy of Actuaries or a similar national organization of actuaries recognized by the board.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER F. TEXAS CHILD-CARE FACILITY LIABILITY FUND

Sec. 2205.251. FUND CREATION; MANAGEMENT. (a) The Texas

child-care facility liability fund is established on the creation of the pool.

(b) The fund is composed of:

(1) premiums paid by child-care facilities for coverage provided by the pool;

(2) contributions and other money received by the pool to cover the initial expenses of the fund;

(3) investments of the fund and money earned from those investments; and

(4) any other money received by the pool.

(c) The pool manager, under the general supervision of the board, shall manage and invest the money in the fund in the manner provided by the plan of operation.

(d) Money earned by the investment of money in the fund must be deposited in the fund or reinvested for the fund.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.252. CONTRIBUTIONS. The board shall determine the amount of contributions necessary to meet the initial expenses of the pool. The board shall make this determination based on the information provided by the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.253. USES OF FUND. (a) Administrative expenses of the pool may be paid from the fund. Payments for administrative expenses during a fiscal year may not exceed 10 percent of the total amount of the money in the fund during that fiscal year.

(b) Money in the fund may not be used to pay:

(1) punitive damages; or

(2) a fine or penalty imposed for a violation of:

(A) a statute;

(B) a rule of a state agency; or

(C) an ordinance or order of a local government.

(c) A claim or judgment may be paid from the fund under excess liability insurance coverage only if all benefits payable

under any other underlying liability insurance policy covering that claim or judgment are exhausted.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.254. DEPOSITORY BANK. (a) The board may select one or more banks to serve as a depository for the fund.

(b) A depository bank must provide security before money in the fund may be deposited in the bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation. The security must be in an amount sufficient to secure the excess amount of the deposit.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER G. POOL COVERAGE

Sec. 2205.301. SCOPE OF COVERAGE. (a) The pool shall insure a child-care facility and the facility's officers and employees against liability for acts and omissions under the laws of this state by the officers and employees in their official or employment capacities.

(b) The pool shall provide to a child-care facility that qualifies under this chapter and the plan of operation:

(1) primary liability insurance coverage in an amount not to exceed \$300,000; and

(2) excess liability insurance coverage in an amount that the board determines is actuarially sound.

(c) The pool may participate in evaluating, settling, and defending a claim against a child-care facility insured by the pool.

(d) The pool is liable in an amount not to exceed the limit of coverage provided to a child-care facility on a claim made against the facility.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.302. BASIS OF COVERAGE. The pool may provide liability insurance coverage on a claims-made basis or an occurrence basis.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.303. RATES AND LIMITS OF COVERAGE. (a) To ensure that the pool is actuarially sound, the board shall:

(1) set the premium rates charged; and

(2) determine the maximum limits of coverage provided.

(b) The pool manager, for the board's consideration, shall:

(1) collect and compile statistical information relating to the liability coverage provided by the pool, including relevant loss, expense, and premium information, and other necessary information;

(2) prepare the proposed premium rate schedules for the approval of the board; and

(3) prepare the maximum limits of coverage.

(c) The board shall periodically reexamine the rate schedules and the maximum limits of coverage.

(d) The pool manager shall make available to the public the information described by Subsection (b)(1).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.304. COVERAGE PERIOD. A child-care facility that accepts coverage provided by the pool shall maintain that coverage for at least 24 consecutive months following the date the pool issued the coverage.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.305. NONRENEWAL OF COVERAGE. (a) Except as provided by Subsection (b), the pool may refuse to renew the coverage of a child-care facility that fails to comply with the pool's underwriting standards.

(b) The pool may not refuse to renew the coverage of a

child-care facility during the first 24 months following the date the facility is first provided coverage by the pool if the facility maintains the underwriting standards established by the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.306. SUBSEQUENT COVERAGE. A child-care facility that voluntarily discontinues coverage provided by the pool is not eligible to subsequently obtain coverage from the pool for at least 12 months following the date the coverage is discontinued.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.307. PAYMENT OF CLAIMS AND JUDGMENTS. (a) If money in the fund would be exhausted by the payment of all final and settled claims and final judgments during a fiscal year, the pool shall prorate the amount paid to each person having the claim or judgment.

(b) If the amount paid by the pool is prorated under this section, each person described by Subsection (a) shall receive an amount equal to the percentage that the amount owed to that person by the pool bears to the total amount owed, outstanding, and payable by the pool.

(c) The pool shall pay in the next fiscal year the remaining amount that is due and unpaid to a person who receives a prorated payment under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.