

INSURANCE CODE

TITLE 10. PROPERTY AND CASUALTY INSURANCE

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

CHAPTER 2207. EXCESS LIABILITY POOLS FOR COUNTIES AND CERTAIN
EDUCATIONAL ENTITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2207.001. DEFINITIONS. In this chapter:

- (1) "Board" means the board of trustees of a pool.
- (2) "County" means a county in this state.
- (3) "Fund" means an excess liability fund.
- (4) "Junior college district" means a junior college district created under the laws of this state.
- (5) "Pool" means an excess liability pool created under this chapter.
- (6) "School district" means a public school district created under the laws of this state.

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

Sec. 2207.002. POOL NOT ENGAGED IN BUSINESS OF INSURANCE.

(a) Except as provided by Subsection (b), a pool is not engaged in the business of insurance under this code or other laws of this state, and the department does not have jurisdiction over a pool.

(b) A pool is subject to Chapter 541 and Section 543.001.

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

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 42 (S.B. 784), Sec. 2.03, eff. September 1, 2015.

SUBCHAPTER B. COUNTY EXCESS LIABILITY POOL

Sec. 2207.051. CREATION OF COUNTY EXCESS LIABILITY POOL.

(a) The county judges of five or more counties may, on written agreement, create a county excess liability pool.

(b) The county excess liability pool provides excess liability insurance coverage as provided by this chapter and the pool's plan of operation.

(c) Not more than one county excess liability pool may be created under this subchapter.

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

Sec. 2207.052. PARTICIPATION IN OTHER POOLS NOT PERMITTED.

A county may participate only in a pool created for counties.

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

Sec. 2207.053. SELECTION OF TEMPORARY BOARD. At the time a written agreement is executed under Section 2207.051, the county judges of each county executing the agreement to create the pool shall select nine individuals to:

- (1) serve as a 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. SCHOOL DISTRICT EXCESS LIABILITY POOL

Sec. 2207.101. CREATION OF SCHOOL DISTRICT EXCESS LIABILITY POOL. (a) Acting on behalf of their boards, the presidents of the boards of trustees of five or more school districts may, on written agreement, create a school district excess liability pool.

(b) The school district excess liability pool provides excess liability insurance coverage as provided by this chapter and the pool's plan of operation.

(c) Not more than one school district excess liability pool may be created under this subchapter.

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

Sec. 2207.102. PARTICIPATION IN OTHER POOLS NOT PERMITTED.

A school district may participate only in a pool created for school districts.

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

Sec. 2207.103. SELECTION OF TEMPORARY BOARD. At the time a written agreement is executed under Section 2207.101, the presidents of the boards of trustees of each school district executing the agreement to create the pool shall select nine individuals to:

- (1) serve as a 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 D. JUNIOR COLLEGE DISTRICT EXCESS LIABILITY POOL

Sec. 2207.151. CREATION OF JUNIOR COLLEGE DISTRICT EXCESS LIABILITY POOL. (a) Acting on behalf of their boards, the presiding officers of the boards of trustees of five or more junior college districts may, on written agreement, create a junior college district excess liability pool.

(b) The junior college district excess liability pool provides excess liability insurance coverage as provided by this chapter and the pool's plan of operation.

(c) Not more than one junior college district excess liability pool may be created under this subchapter.

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

Sec. 2207.152. PARTICIPATION IN OTHER POOLS NOT PERMITTED. A junior college district may participate only in a pool created for junior college districts.

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

Sec. 2207.153. SELECTION OF TEMPORARY BOARD. At the time a

written agreement is executed under Section 2207.151, the presiding officers of the boards of trustees of each junior college district executing the agreement to create the pool shall select nine individuals to:

- (1) serve as a 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 E. PLAN OF OPERATION

Sec. 2207.201. TIME FOR CREATION OF PLAN OF OPERATION. (a) Not later than the 30th day after the date the temporary board of a pool is selected, the temporary board shall meet to prepare a detailed 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 temporary board is selected.

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

Sec. 2207.202. CONTENTS OF PLAN OF OPERATION. (a) Subject to the requirements of this chapter, a pool's plan of operation must include:

- (1) the organizational structure of the pool, including:
 - (A) the method of selecting the board;
 - (B) the board's method of procedure and operation; and
 - (C) a summary of the method 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 data, of the amounts of those contributions or other financial arrangements;
- (3) underwriting standards and procedures for evaluating risks;

- (4) procedures for purchasing reinsurance;
- (5) methods, procedures, and guidelines for:
 - (A) establishing the premium rates for and maximum limits of excess liability insurance coverage available from the pool; and
 - (B) managing and investing money in the fund created for the pool;
- (6) procedures for processing and paying claims;
- (7) methods and procedures for defraying losses and expenses of the pool;
- (8) guidelines for nonrenewal of coverage;
- (9) minimum capital and surplus to be maintained by the pool; and
- (10) 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.

SUBCHAPTER F. BOARD OF TRUSTEES

Sec. 2207.251. BOARD OF TRUSTEES. (a) A 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 temporary board of a pool adopts the plan of operation, the initial regular board must be selected as provided by the plan. 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.

(c) An individual serving on the board who is an officer or employee of a county, school district, or junior college district covered by the pool performs duties on the board as additional duties required of the individual's original office or employment.

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

Sec. 2207.252. TERMS; VACANCY. (a) Board members serve two-year terms that expire at the time 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. 2207.253. 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. 2207.254. 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. 2207.255. OFFICERS; MEETINGS. (a) The board shall select from the board members a presiding officer, an assistant presiding officer, and a secretary who serve one-year terms that expire as provided by the plan of operation.

(b) The board shall hold meetings at the call of the presiding officer and at times established by the board's rules.

(c) A majority of the board members constitutes a quorum.

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

Sec. 2207.256. GENERAL POWERS AND DUTIES OF BOARD. (a) In addition to other duties provided by the plan of operation, the board shall:

(1) approve contracts other than excess liability

insurance contracts issued by the pool to a county, school district, or junior college district, as applicable;

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

(3) receive service of summons on behalf of the pool.

(b) The board may:

(1) adopt necessary rules, including rules to implement this chapter;

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

(3) amend the plan of operation 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. 2207.257. ANNUAL AUDIT; REPORT. (a) Each year as provided by the plan of operation, the board shall have an actuary audit the capital, surplus, and reserves of the pool and prepare a formal report for the pool and the members of the pool.

(b) The actuary must be a member of the American Academy of Actuaries.

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

Sec. 2207.258. 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 county, school district, or junior college district covered by the applicable pool.

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

SUBCHAPTER G. OPERATION OF POOL

Sec. 2207.301. GENERAL POWERS AND DUTIES OF POOL. (a) A

pool shall:

(1) issue excess liability insurance coverage to each county, school district, or junior college district entitled to coverage under this chapter;

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

(3) process and pay valid claims; and

(4) maintain detailed data regarding the pool.

(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. 2207.302. 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 is entitled to receive the compensation authorized by the board.

(c) 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.

(d) 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. 2207.303. GENERAL POWERS AND DUTIES OF POOL MANAGER.

(a) The pool manager shall manage and conduct the affairs of the pool under the general supervision of the board and shall perform any other duties as directed by the board.

(b) In addition to any other duties provided by the board,

the pool manager shall:

- (1) receive and pass on applications for excess liability insurance coverage from the pool;
- (2) negotiate contracts for the pool; and
- (3) prepare and submit to the board for approval proposed policy forms for coverage from the pool.

(c) The pool manager may refuse to renew the coverage of a county, school district, or junior college district insured by the pool based on 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. 2207.304. PERSONNEL. (a) The pool manager shall employ or contract with persons 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. 2207.305. PERFORMANCE BOND AUTHORIZED. The board may require an employee or a person with whom the pool manager contracts under Section 2207.304 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. 2207.306. IMMUNITY OF EMPLOYEES AND CONTRACTORS FROM CERTAIN LIABILITIES. An employee or a person with whom the pool manager contracts under Section 2207.304 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 county, school district, or junior college district covered by the applicable

pool.

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

Sec. 2207.307. OFFICE; RECORDS. (a) A pool shall maintain the pool's principal office in Austin, Texas.

(b) Records, files, and other documents and information relating to 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.

SUBCHAPTER H. EXCESS LIABILITY FUND

Sec. 2207.351. FUND CREATION; MANAGEMENT. (a) On creation of a pool, the initial regular board shall create an excess liability fund.

(b) The fund is composed of:

(1) premiums paid by counties, school districts, or junior college districts, as applicable, 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 shall manage the fund under the general supervision of the board. The fund 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. 2207.352. CONTRIBUTIONS. The board shall determine the amount of any contributions necessary to meet the initial

expenses of the pool. The board shall make this determination based on the data provided by the plan of operation.

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

Sec. 2207.353. USES OF FUND. (a) Administrative expenses of the pool may be paid from the fund. Payments for administrative expenses during a fiscal year of the pool may not exceed the amount established by the board.

(b) The pool may pay commissions from the fund on approval of the board.

(c) 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) an administrative rule or regulation; or
 - (C) an order, rule, or ordinance.

(d) Money for a claim may not be paid from the fund under excess liability insurance coverage until all benefits payable under any other underlying liability insurance policy covering the claim or judgment are exhausted.

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

Sec. 2207.354. DEPOSITORY BANK. (a) The board may select one or more banks to serve as a depository for money in the fund.

(b) A depository bank must execute a bond or provide other security before the pool manager may deposit fund money in the bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation. The bond or other 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 I. POOL COVERAGE

Sec. 2207.401. ENTITLEMENT TO COVERAGE. A county, school

district, or junior college district is entitled to coverage from the pool if the county, school district, or junior college district:

- (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. 2207.402. SCOPE OF COVERAGE. (a) A pool shall insure a county, school district, or junior college district and the entity's officers and employees against liability for acts and omissions under the laws governing that county, school district, or junior college district and the entity's officers and employees in their official or employment capacities.

(b) Except as provided by Subsection (c), under the excess liability insurance coverage, a pool shall pay any portion of a claim against a county, school district, or junior college district, as applicable, and the entity's officers and employees that:

- (1) exceeds \$500,000; and
- (2) is finally determined or settled or is included in a final judgment of a court.

(c) The amount paid by a pool under this section may not exceed the amount the board determines is actuarially sound for the pool.

(d) A pool may participate in evaluating, settling, or defending a claim made under the excess liability insurance coverage.

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

Sec. 2207.403. BASIS OF COVERAGE. The pool may provide excess 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. 2207.404. 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 data relating to the excess liability insurance coverage provided by the pool, including relevant loss, expense, and premium data, and other 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 as conditions change.

(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. 2207.405. USE OF ENTITY MONEY FOR POOL COVERAGE AUTHORIZED. A county, school district, or junior college district may use its money to pay any contributions or premiums required by the applicable pool to purchase excess liability insurance coverage from the pool.

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

Sec. 2207.406. COVERAGE PERIOD. A county, school district, or junior college district that accepts coverage provided by the applicable pool shall maintain that coverage for at least 36 calendar months following the month in which the pool issued the coverage.

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

Sec. 2207.407. NONRENEWAL OF COVERAGE. (a) Except as provided by Subsection (b), the applicable pool may refuse to renew the coverage of a county, school district, or junior college district that fails to comply with the pool's underwriting standards.

(b) The applicable pool may not refuse to renew the coverage of a county, school district, or junior college district during the first 36 calendar months following the month in which the entity is first provided coverage by the pool.

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

Sec. 2207.408. SUBSEQUENT COVERAGE. (a) A county, school district, or junior college district that voluntarily discontinues coverage provided by the applicable pool may not subsequently obtain coverage from the pool for at least 36 calendar months following the month in which the entity discontinues the coverage.

(b) A county, school district, or junior college district whose coverage is not renewed under Section 2207.407 is not eligible to subsequently apply for coverage during the 12 calendar months following the month in which the applicable pool gives written notice of nonrenewal.

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

Sec. 2207.409. 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.