

INSURANCE CODE

TITLE 10. PROPERTY AND CASUALTY INSURANCE

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

CHAPTER 2208. TEXAS PUBLIC ENTITY EXCESS INSURANCE POOL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2208.001. DEFINITIONS. In this chapter:

- (1) "Board" means the board of trustees of the pool.
- (2) "Fund" means the Texas public entity excess insurance fund.
- (3) "Insurance" means liability insurance or workers' compensation insurance.
- (4) "Pool" means the Texas public entity excess insurance pool.
- (5) "Public entity" means one or more municipalities that have formed an insurance pool under Chapter 791, Government Code.

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

Sec. 2208.002. POOL NOT ENGAGED IN BUSINESS OF INSURANCE.

(a) Except as provided by Subsection (b), the pool is not engaged in the business of insurance under this code or other laws of this state, and the department has no jurisdiction over the pool.

(b) The pool is subject to Chapter 541.

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. 2.04, eff. September 1, 2015.

SUBCHAPTER B. CREATION OF POOL

Sec. 2208.051. CREATION OF POOL. (a) The Texas Public Entity Excess Insurance Pool is created on the written agreement of the presiding officers of 25 or more public entities in this state.

(b) The pool provides excess liability and workers' compensation insurance coverage to a public entity and the entity's officers and employees as provided by this chapter.
Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2208.052. PARTICIPATION IN POOL. A public entity is entitled to coverage from the pool if the entity:

- (1) submits a complete application;
- (2) provides other relevant information required by the pool;
- (3) meets the underwriting guidelines 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.

SUBCHAPTER C. BOARD OF TRUSTEES

Sec. 2208.101. ADMINISTRATION OF POOL; BOARD MEMBERSHIP.

(a) A board of trustees shall administer the pool.

(b) The board is composed of the members of the governing board of an association that:

- (1) on September 2, 1987, had been providing pooled self-insurance in this state for more than five years; and
- (2) has as the association's members the public entities that entered into the written agreement under Section 2208.051.

(c) Board members shall represent members of the pool.

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

Sec. 2208.102. 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. 2208.103. OFFICERS; MEETINGS. (a) Each individual who serves as an officer of the governing board of the association described by Section 2208.101(b) serves as an officer of the board.

(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. 2208.104. 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 insurance contracts issued to public entities by the pool;

(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. 2208.105. 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 public entity covered by the pool.

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

SUBCHAPTER D. PLAN OF OPERATION

Sec. 2208.151. TIME FOR CREATION OF PLAN OF OPERATION. Not later than the 30th day after the date the pool is created, the board shall meet to prepare a detailed plan of operation for the pool.

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

Sec. 2208.152. 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, the board's method of procedure and operation, and a summary of the method for managing and operating the pool;

(2) a description of the 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 guidelines and procedures for evaluating risks;

(4) procedures for purchasing reinsurance;

(5) methods, procedures, and guidelines for:

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

(B) managing and investing the fund;

(6) procedures for processing and paying claims;

(7) methods and procedures for defraying losses and expenses of the pool; and

(8) guidelines for nonrenewal of coverage.

(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 E. OPERATION OF POOL

Sec. 2208.201. GENERAL POWERS AND DUTIES OF POOL. (a) The pool shall:

- (1) issue insurance coverage to each public entity 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. 2208.202. POOL MANAGER. (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 compensation as authorized by the board.

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

Sec. 2208.203. 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 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 public entity 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. 2208.204. 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. 2208.205. PERFORMANCE BOND AUTHORIZED. The board may require an employee or a person with whom the pool manager contracts under Section 2208.204 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. 2208.206. IMMUNITY OF EMPLOYEES AND CONTRACTORS FROM CERTAIN LIABILITIES. An employee or a person with whom the pool manager contracts under Section 2208.204 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 public entity covered by the pool.

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

Sec. 2208.207. OFFICE; RECORDS. (a) The 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 F. TEXAS PUBLIC ENTITY EXCESS INSURANCE FUND

Sec. 2208.251. FUND CREATION; MANAGEMENT. (a) On creation of the pool, the board shall create the Texas public entity excess insurance fund.

(b) The fund is composed of:

(1) premiums paid by public entities for coverage provided by the pool;

(2) proceeds from bonds and other money received by the pool to cover the 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. 2208.252. USES OF FUND. (a) Administrative expenses of the pool may be paid from the fund.

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

(1) punitive damages;

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

(A) a statute;

(B) an administrative rule or regulation; or

(C) an order or ordinance of a public entity; or

(3) a claim under excess insurance coverage until all

benefits payable under any other underlying policy or self-insurance 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. 2208.253. DEPOSITORY. (a) The board may select one or more banks to serve as 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 G. POOL COVERAGE

Sec. 2208.301. SCOPE OF COVERAGE. (a) Except as provided by Subsection (b), under the excess insurance coverage, the pool shall pay any portion of a claim against a public entity and the entity's officers and employees that:

(1) exceeds \$1 million; and

(2) is finally determined or settled or is included in a final judgment of a court.

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

(c) The pool may participate in evaluating or defending a claim made under the insurance coverage.

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

Sec. 2208.302. BASIS OF COVERAGE. The pool may provide excess 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. 2208.303. PUNITIVE DAMAGES NOT COVERED. Excess insurance coverage provided by the pool may not include coverage for punitive damages.

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

Sec. 2208.304. 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 insurance coverage provided.

(b) The pool manager, for the board's consideration, shall:
(1) collect and compile statistical data relating to the 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 insurance coverage.

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

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

Sec. 2208.305. USE OF PUBLIC MONEY FOR POOL COVERAGE AUTHORIZED. A public entity may use the entity's money to pay any contributions or premiums required by the pool to purchase excess insurance coverage from the pool.

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

Sec. 2208.306. COVERAGE PERIOD. A public entity that accepts coverage provided by the pool shall maintain that coverage for at least 35 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. 2208.307. NONRENEWAL OF COVERAGE. The pool may refuse to renew the insurance coverage of a public entity that fails to comply with the pool's underwriting or risk management guidelines. Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2208.308. SUBSEQUENT COVERAGE. (a) A public entity that voluntarily discontinues insurance coverage provided by the 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 public entity whose insurance coverage is not renewed by the pool is not eligible to subsequently apply for coverage during the 11 calendar months following the month in which the pool gives written notice of nonrenewal.

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

Sec. 2208.309. 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 public entity incurring the original liability shall pay 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.