

INSURANCE CODE

TITLE 10. PROPERTY AND CASUALTY INSURANCE

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

CHAPTER 2209. TEXAS NONPROFIT ORGANIZATIONS LIABILITY POOL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2209.001. DEFINITIONS. In this chapter:

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

(2) "Fund" means the Texas nonprofit organizations liability fund.

(3) "Nonprofit organization" means an organization that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being described as an exempt organization by Section 501(c)(3) or (4), Internal Revenue Code of 1986.

(4) "Pool" means the Texas Nonprofit Organizations Liability Pool.

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

Sec. 2209.002. POOL NOT ENGAGED IN BUSINESS OF INSURANCE.

(a) Except as provided by this section and Section 2209.003(b), the pool is not engaged in the business of insurance under this code or other laws of this state, and this code, including Chapter 462, and other insurance laws of this state do not apply to the pool.

(b) The pool is subject to:

(1) this chapter;

(2) the requirements of this code or the commissioner relating to reporting liability claims data; 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. 2209.003. 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 certain minimum requirements to ensure the capability of the pool to satisfy the pool's obligations.

(c) The department shall charge the pool reasonable fees for services performed by the department under this chapter.

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

SUBCHAPTER B. CREATION OF POOL

Sec. 2209.051. CREATION OF POOL. (a) The Texas Nonprofit Organizations Liability Pool is created on the written agreement of the chief executive officers of 15 or more nonprofit organizations.

(b) The pool provides primary and excess liability insurance coverage as provided by this chapter.

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

Sec. 2209.052. PARTICIPATION IN POOL. A nonprofit organization is entitled to coverage from the pool if the organization:

- (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. 2209.053. SELECTION OF TEMPORARY BOARD. At the time the chief executive officers of the nonprofit organizations enter into the written agreement under Section 2209.051, the officers 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. 2209.101. TIME FOR CREATION OF PLAN OF OPERATION. (a) Not later than the 30th day after the date the temporary board 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. 2209.102. 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 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, including a requirement that all participants in the pool receive ongoing training in the methods of controlling liability losses;

(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;

(B) negotiating and paying settlements,

defending claims, and paying judgments; and

(C) 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.

Sec. 2209.103. APPROVAL OF PLAN. (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 only if the department is satisfied 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. 2209.151. GOVERNANCE OF POOL; BOARD MEMBERSHIP. (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.

(c) Four board members must be representatives of the public. A public representative may not:

(1) be an officer, director, or employee of an insurer, insurance agency, agent, broker, solicitor, adjuster, or other business entity regulated by the department;

(2) be a person required to register under Chapter

305, Government Code; or

(3) be related to a person described by Subdivision (1) or (2) within the second degree by consanguinity or affinity.
Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.152. TERMS; VACANCY. (a) Board members serve staggered two-year terms. The terms of four members expire in odd-numbered years 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. 2209.153. 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. 2209.154. 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. 2209.155. 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. 2209.156. 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 insurance contracts issued by the pool to nonprofit organizations;

(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) with the department's approval, 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. 2209.157. 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 nonprofit organization 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. 2209.201. GENERAL POWERS AND DUTIES OF POOL. (a) The pool shall:

(1) issue primary and excess liability coverage to each nonprofit organization 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 data regarding the pool; and
- (5) establish a plan to conduct loss control training or contract with an outside organization or individual to establish ongoing training and facilities inspection 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 carry out 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. 2209.202. 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 is entitled to receive compensation as 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. 2209.203. 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 liability 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 nonprofit organization 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. 2209.204. PERSONNEL. (a) The pool manager shall employ or contract with persons necessary to assist the board and the pool manager in carrying out 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. 2209.205. PERFORMANCE BOND AUTHORIZED. The board may require an employee or a person with whom the pool manager contracts under Section 2209.204 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. 2209.206. IMMUNITY OF EMPLOYEES AND CONTRACTORS FROM CERTAIN LIABILITIES. An employee or a person with whom the pool manager contracts under Section 2209.204 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 nonprofit organization covered by the pool.

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

April 1, 2007.

Sec. 2209.207. RECORDS. 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 NONPROFIT ORGANIZATIONS LIABILITY FUND

Sec. 2209.251. FUND CREATION; MANAGEMENT. (a) On creation of the pool, the initial regular board shall create the Texas nonprofit organizations liability fund.

(b) The fund is composed of:

(1) premiums paid by nonprofit organizations 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. 2209.252. 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. 2209.253. 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 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) an administrative rule of a state agency; or

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

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

Sec. 2209.254. 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 G. POOL COVERAGE

Sec. 2209.301. SCOPE OF COVERAGE. (a) The pool shall insure a nonprofit organization and the organization's officers and employees against liability for acts and omissions under the laws of this state.

(b) The pool shall provide to a nonprofit organization that qualifies under this chapter and the plan of operation:

(1) primary liability insurance coverage in an amount not to exceed \$250,000; and

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

(c) The pool may participate in evaluating, settling, and

defending a claim against a nonprofit organization insured by the pool if the claim is covered by pool coverage.

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

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

Sec. 2209.302. COVERAGE ON CLAIMS-MADE BASIS. The pool may provide liability insurance coverage on a claims-made basis on forms approved by the department.

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

Sec. 2209.303. PUNITIVE DAMAGES NOT COVERED. Liability 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. 2209.304. 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 coverage provided.

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

(1) collect and compile statistical data relating to the 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. 2209.305. COVERAGE PERIOD. A nonprofit organization that accepts coverage provided by the pool shall maintain that coverage for at least 24 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. 2209.306. NONRENEWAL OF COVERAGE. (a) Except as provided by Subsection (b), the pool may refuse to renew the coverage of a nonprofit organization that fails to comply with the pool's underwriting standards.

(b) The pool may not refuse to renew the coverage of a nonprofit organization during the first 24 calendar months following the month in which the nonprofit organization is first provided coverage by the pool if the organization 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. 2209.307. SUBSEQUENT COVERAGE. (a) A nonprofit organization that voluntarily discontinues coverage provided by the pool may not subsequently obtain coverage from the pool for at least 12 calendar months following the month in which the organization discontinues the coverage.

(b) A nonprofit organization whose coverage is not renewed under Section 2209.306 is not eligible to subsequently apply for coverage during the 12 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. 2209.308. 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.