

INSURANCE CODE

TITLE 4. REGULATION OF SOLVENCY

SUBTITLE D. GUARANTY ASSOCIATIONS

CHAPTER 464. UNAUTHORIZED INSURANCE GUARANTY FUND ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 464.001. SHORT TITLE. This chapter may be cited as the Unauthorized Insurance Guaranty Fund Act.

Added by Acts 2009, 81st Leg., R.S., Ch. 1026 (H.B. 4339), Sec. 1, eff. June 19, 2009.

Sec. 464.002. CONSTRUCTION AND PURPOSE. (a) The purpose of this chapter is to alleviate the financial hardship imposed on persons who are harmed by the sale of unauthorized insurance in this state. Persons who suffer damages as a result of unpaid claims on policies issued by unauthorized insurers in this state are not covered under guaranty acts, which provide protection to persons with claims against authorized insurers. The legislature finds that it is appropriate to provide additional remedies to these persons.

(b) The commissioner's powers under this Act shall be liberally construed to support the purpose stated in Subsection (a).

(c) This chapter does not limit the powers granted the commissioner under other provisions of law. The powers and authority of the commissioner under this chapter are cumulative and are in addition to all other powers and authority that are available to the commissioner.

Added by Acts 2009, 81st Leg., R.S., Ch. 1026 (H.B. 4339), Sec. 1, eff. June 19, 2009.

Sec. 464.003. DEFINITIONS. In this chapter:

(1) "Delinquency proceeding" has the meaning assigned by Section 443.004.

(2) "Fund" means the unauthorized insurance guaranty fund.

(3) "Fund account" means the account established for the deposit of money held by the fund.

(4) "Policy claim" means an obligation incurred under a contract or policy of insurance issued by an unauthorized insurer as described by Chapter 101. The term does not include claims under reinsurance contracts or claims of other creditors.

(5) "Receiver" means the receiver of an unauthorized insurer in a delinquency proceeding, including the commissioner when acting in that capacity, or a special deputy receiver.

(6) "Unauthorized insurer" has the meaning assigned by Section 443.004.

Added by Acts 2009, 81st Leg., R.S., Ch. 1026 (H.B. 4339), Sec. 1, eff. June 19, 2009.

Sec. 464.004. APPLICABILITY. This chapter applies to a delinquency proceeding under Chapter 443 of an unauthorized insurer.

Added by Acts 2009, 81st Leg., R.S., Ch. 1026 (H.B. 4339), Sec. 1, eff. June 19, 2009.

Sec. 464.005. IMMUNITY. Liability does not exist and a cause of action does not arise against the commissioner or an agent, employee, or representative of the commissioner for any good faith act or omission in performing the commissioner's, or the agent's, employee's, or representative's powers and duties under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1026 (H.B. 4339), Sec. 1, eff. June 19, 2009.

Sec. 464.006. EXEMPTION FROM CERTAIN FEES AND TAXES. The fund is exempt from payment of all fees and taxes levied by this state or a political subdivision of this state.

Added by Acts 2009, 81st Leg., R.S., Ch. 1026 (H.B. 4339), Sec. 1, eff. June 19, 2009.

Sec. 464.007. RULES. The commissioner may adopt rules as necessary to implement this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1026 (H.B. 4339), Sec. 1, eff. June 19, 2009.

SUBCHAPTER B. FUND

Sec. 464.051. CREATION OF UNAUTHORIZED INSURANCE GUARANTY FUND. The unauthorized insurance guaranty fund is established.

Added by Acts 2009, 81st Leg., R.S., Ch. 1026 (H.B. 4339), Sec. 1, eff. June 19, 2009.

Sec. 464.052. DEPOSIT OF FUNDS. (a) The fund account shall be established with the Texas Treasury Safekeeping Trust Company in accordance with procedures adopted by the comptroller. The comptroller shall account for the deposited money separately from all other money.

(b) The commissioner may identify collected penalties to be deposited into the fund account from:

(1) administrative penalties assessed by the commissioner for violations of Chapter 101 or penalties under Section 861.702, including amounts collected through state warrant holds;

(2) civil penalties assessed under Chapter 101 when the commissioner is the party requesting penalties;

(3) administrative penalties assessed by the commissioner against a person holding a certificate of authority, license, registration, or other authorization to engage in the business of insurance that is issued or recognized by the commissioner for engaging in conduct outside the scope of the person's certificate, license, registration, or authorization;

(4) administrative penalties assessed by the commissioner against a person holding a certificate of authority, license, registration, or authorization issued or recognized by the commissioner for using unapproved forms, rates, or advertisements if the forms, rates, or advertisements are required to be approved by the commissioner before being used in this state; and

(5) forfeitures of bonds issued under Section 101.353 or 101.354.

(c) In determining the amounts to be deposited into the fund account, the commissioner shall consider:

- (1) the amount existing in the fund account;
- (2) the anticipated penalties described by Subsection (b) that have been or may be collected;
- (3) the estimated assets, administrative expenses, and claims of any unauthorized insurers subject to a delinquency proceeding; and
- (4) any anticipated delinquency proceedings of unauthorized insurers.

(d) If the commissioner determines that the amounts on deposit in the fund account exceed the amount required to pay administrative expenses and claims of existing and anticipated delinquency proceedings of unauthorized insurers, the commissioner may transfer the excess amount from the fund to the comptroller for deposit into the general revenue fund.

(e) The commissioner shall notify the comptroller of the existence of money under Subsection (c) to be credited to the fund account. The commissioner must enter an order to transfer amounts from the fund account.

Added by Acts 2009, 81st Leg., R.S., Ch. 1026 (H.B. [4339](#)), Sec. 1, eff. June 19, 2009.

Sec. 464.053. ADVANCE OF FUNDS. (a) In the event of a delinquency proceeding of an unauthorized insurer, the commissioner may advance funds from the fund account if the assets of the unauthorized insurer are insufficient to pay administrative expenses or policy claims. The commissioner shall hold the funds in a separate account. Funds advanced under this section are available to supplement the assets of the unauthorized insurer, and do not become property of the unauthorized insurer or the receivership estate.

(b) In determining an amount to be advanced, the commissioner shall consider:

- (1) the amount existing in the fund, and any estimated future amounts to be deposited in the fund;
- (2) the assets of the unauthorized insurer that are

anticipated to be available to pay administrative expenses and claims;

(3) the projected administrative expenses and claims in the delinquency proceeding; and

(4) the projected administrative expenses and claims in other existing and anticipated delinquency proceedings of unauthorized insurers.

Added by Acts 2009, 81st Leg., R.S., Ch. 1026 (H.B. 4339), Sec. 1, eff. June 19, 2009.

Sec. 464.054. USE OF FUNDS. (a) An amount advanced under Section 464.053 may be used to supplement the assets of an unauthorized insurer to pay administrative expenses and policy claims that are approved by:

(1) the commissioner in a proceeding under Section 443.051; or

(2) the receiver in a proceeding under Section 443.052.

(b) For the purposes of Section 443.301(b), approved policy claims under this chapter shall be classified as Class 2 claims.

(c) The commissioner or receiver, as applicable, is not required to make distributions from the assets of the unauthorized insurer before using amounts advanced under Section 464.053. Any payment of a policy claim made under Subsection (a) shall be treated as a distribution under Section 443.302. If approved policy claims cannot be paid in full from the funds advanced under Section 464.053 and the assets of the unauthorized insurer available for distribution, the claims shall be paid on a pro rata basis in the manner described in Section 443.301.

(d) Amounts advanced that are not needed to pay administrative expenses or policy claims shall be returned to the fund account. On a final distribution under Section 443.302 or the termination of a delinquency proceeding, any funds of the unauthorized insurer remaining after the payment in full of administrative expenses and policy claims shall be used to repay the advance, up to the amount of the advance.

(e) A person who has a policy claim may receive funds

deposited or advanced under this chapter only in accordance with this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1026 (H.B. [4339](#)), Sec. 1, eff. June 19, 2009.