

LABOR CODE

TITLE 5. WORKERS' COMPENSATION

SUBTITLE A. TEXAS WORKERS' COMPENSATION ACT

CHAPTER 407. SELF-INSURANCE REGULATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 407.001. DEFINITIONS. In this chapter:

(1) "Association" means the Texas Certified Self-Insurer Guaranty Association.

(2) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(17), eff. September 1, 2005.

(3) "Impaired employer" means a certified self-insurer:

(A) who has suspended payment of compensation as determined by the division;

(B) who has filed for relief under bankruptcy laws;

(C) against whom bankruptcy proceedings have been filed; or

(D) for whom a receiver has been appointed by a court of this state.

(4) "Incurred liabilities for compensation" means the amount equal to the sum of:

(A) the estimated amount of the liabilities for outstanding workers' compensation claims, including claims incurred but not yet reported; and

(B) the estimated amount necessary to provide for the administration of those claims, including legal costs.

(5) "Qualified claims servicing contractor" means a person who provides claims service for a certified self-insurer, who is a separate business entity from the affected certified self-insurer, and who holds a certificate of authority under Chapter 4151.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.042, eff.

September 1, 2005.

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 7.01(17), eff.

September 1, 2005.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.137, eff.

September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 3.02, eff. September 1, 2007.

SUBCHAPTER B. DIVISION OF SELF-INSURANCE REGULATION

Sec. 407.023. EXCLUSIVE POWERS AND DUTIES OF COMMISSIONER.

The commissioner shall:

(1) approve or deny the issuance or revocation of a certificate of authority to self-insure; and

(2) certify that a certified self-insurer has suspended payment of compensation or has otherwise become an impaired employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.0421, eff. September 1, 2005.

Sec. 407.024. CLAIM OR SUIT. (a) A claim or suit brought by a claimant or a certified self-insurer shall be styled "in re: [name of employee] and [name of certified self-insurer]."

(b) The commissioner is the agent for service of process for a claim or suit brought by a workers' compensation claimant against the qualified claims servicing contractor of a certified self-insurer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.0422, eff. September 1, 2005.

SUBCHAPTER C. CERTIFICATE OF AUTHORITY TO SELF-INSURE

Sec. 407.041. APPLICATION. (a) An employer who desires to

self-insure under this chapter must submit an application to the division for a certificate of authority to self-insure.

(b) The application must be:

(1) submitted on a form adopted by the commissioner;
and

(2) accompanied by a nonrefundable \$1,000 application fee.

(c) Not later than the 60th day after the date on which the application is received, the commissioner shall approve or deny the application.

(d) During the pendency of the approval or denial of the application, the applicant may not operate as a self-insurer under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.043, eff. September 1, 2005.

Sec. 407.042. ISSUANCE OF CERTIFICATE. With the approval of the Texas Certified Self-Insurer Guaranty Association, the commissioner shall issue a certificate of authority to self-insure to an applicant who meets the certification requirements under this chapter and pays the required fee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.044, eff. September 1, 2005.

Sec. 407.043. PROCEDURES ON DENIAL OF APPLICATION. (a) If the commissioner determines that an applicant for a certificate of authority to self-insure does not meet the certification requirements, the division shall notify the applicant in writing of the commissioner's determination, stating the specific reasons for the denial and the conditions to be met before approval may be granted.

(b) The applicant is entitled to a reasonable period, as determined by the commissioner, to meet the conditions for approval

before the application is considered rejected for purposes of appeal.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.045, eff. September 1, 2005.

Sec. 407.044. TERM OF CERTIFICATE OF AUTHORITY; RENEWAL.

(a) A certificate of authority to self-insure is valid for one year after the date of issuance and may be renewed under procedures prescribed by the commissioner.

(b) The commissioner may stagger the renewal dates of certificates of authority to self-insure to facilitate the work load of the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.046, eff. September 1, 2005.

Sec. 407.045. WITHDRAWAL FROM SELF-INSURANCE. (a) A certified self-insurer may withdraw from self-insurance at any time with the approval of the commissioner. The commissioner shall approve the withdrawal if the certified self-insurer shows to the satisfaction of the commissioner that the certified self-insurer has established an adequate program to pay all incurred losses, including unreported losses, that arise out of accidents or occupational diseases first distinctly manifested during the period of operation as a certified self-insurer.

(a-1) For purposes of Subsection (a), an adequate program includes a program in which the certified self-insurer has insured or reinsured all workers' compensation obligations incurred by the self-insurer with an authorized insurer under an agreement that is filed with and approved in writing by the commissioner. The obligations incurred include:

(1) all known claims and expenses associated with those claims; and

(2) all incurred but not reported claims and expenses

associated with those claims.

(b) A certified self-insurer who withdraws from self-insurance shall surrender to the division the certificate of authority to self-insure.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.047, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 1054 (H.B. 1989), Sec. 1, eff. September 1, 2017.

Sec. 407.046. REVOCATION OF CERTIFICATE OF AUTHORITY. (a) The commissioner may revoke the certificate of authority to self-insure of a certified self-insurer who fails to comply with requirements or conditions established by this chapter or a rule adopted by the commissioner under this chapter.

(b) If the commissioner believes that a ground exists to revoke a certificate of authority to self-insure, the commissioner shall refer the matter to the State Office of Administrative Hearings. That office shall hold a hearing to determine if the certificate should be revoked. The hearing shall be conducted in the manner provided for a contested case hearing under Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall notify the certified self-insurer of the hearing and the grounds not later than the 30th day before the scheduled hearing date.

(d) If the certified self-insurer fails to show cause why the certificate should not be revoked, the commissioner immediately shall revoke the certificate.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 980, Sec. 1.21, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.048, eff. September 1, 2005.

Sec. 407.047. EFFECT OF REVOCATION. (a) A certified

self-insurer whose certificate of authority to self-insure is revoked is not relieved of the obligation for compensation to an employee for an accidental injury or occupational disease that occurred during the period of self-insurance.

(b) The security required under Sections 407.064 and 407.065 shall be maintained with the division or under the division's control until each claim for workers' compensation benefits is paid, is settled, or lapses under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.049, eff. September 1, 2005.

SUBCHAPTER D. REQUIREMENTS FOR CERTIFICATE OF AUTHORITY

Sec. 407.061. GENERAL REQUIREMENTS. (a) To be eligible for a certificate of authority to self-insure, an applicant for an initial or renewal certificate must present evidence satisfactory to the commissioner and the association of sufficient financial strength and liquidity, under standards adopted by the commissioner, to ensure that all workers' compensation obligations incurred by the applicant under this chapter are met promptly.

(b) The applicant must:

(1) be a business entity, or one of the consolidated subsidiaries of the entity, that is required to register under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) and furnish financial information prepared in accordance with the requirements for those business entities; or

(2) annually furnish audited financial statements comparable in form and manner of preparation to those filed by a business entity required to register under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.).

(c) The applicant must present a plan for claims administration that:

(1) is acceptable to the commissioner;

(2) designates a qualified claims servicing contractor; and

(3) complies with Chapter 4151, Insurance Code.

(d) The applicant must demonstrate the existence of an effective safety program for each location in the state at which it conducts business.

(e) The applicant must provide to the commissioner a copy of each contract entered into with a person that provides claims services, underwriting services, or accident prevention services if the provider of those services is not an employee of the applicant. The contract must be acceptable to the commissioner and must be submitted in a standard form adopted by the commissioner, if the commissioner adopts such a form.

(f) The commissioner shall adopt rules for the requirements for the financial statements required by Subsection (b)(2).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.050, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 3.03, eff. September 1, 2007.

Sec. 407.062. FINANCIAL STRENGTH AND LIQUIDITY REQUIREMENTS. In assessing the financial strength and liquidity of an applicant, the commissioner shall consider:

(1) the applicant's organizational structure and management background;

(2) the applicant's profit and loss history;

(3) the applicant's compensation loss history;

(4) the source and reliability of the financial information submitted by the applicant;

(5) the number of employees affected by self-insurance;

(6) the applicant's access to excess insurance markets;

(7) financial ratios, indexes, or other financial measures that the commissioner finds appropriate; and

(8) any other information considered appropriate by the commissioner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.051, eff. September 1, 2005.

Sec. 407.063. PREMIUM REQUIREMENTS. (a) In addition to meeting the other certification requirements imposed under this chapter, an applicant for an initial certificate of authority to self-insure must present evidence satisfactory to the commissioner of a total unmodified workers' compensation insurance premium in this state in the calendar year of application of at least \$500,000.

(b) Instead of the state premium required under this section, the applicant may present evidence of a total unmodified national workers' compensation insurance premium of at least \$10 million.

(c) Expired.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.052, eff. September 1, 2005.

Sec. 407.064. GENERAL SECURITY REQUIREMENTS. (a) Each applicant shall provide security for incurred liabilities for compensation through a deposit with the division, in a combination and from institutions approved by the commissioner, of the following security:

(1) cash or negotiable securities of the United States or of this state;

(2) a surety bond that names the commissioner as payee; or

(3) an irrevocable letter of credit that names the commissioner as payee.

(b) If an applicant who has provided a letter of credit as all or part of the security required under this section desires to cancel the existing letter of credit and substitute a different letter of credit or another form of security, the applicant shall notify the division in writing not later than the 60th day before

the effective date of the cancellation of the original letter of credit.

(c) An estimate of the applicant's incurred liabilities for compensation must be signed and sworn to by an accredited casualty actuary and submitted with the application.

(d) The sum of the deposited securities must be at least equal to the greater of:

(1) \$300,000; or

(2) 125 percent of the applicant's incurred liabilities for compensation.

(e) If an applicant is granted a certificate of authority to self-insure, any interest or other income that accrues from cash or negotiable securities deposited by the applicant as security under this section while the cash or securities are on deposit with the division shall be paid to the applicant quarterly.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.053, eff. September 1, 2005.

Sec. 407.065. SPECIFIC SECURITY REQUIREMENTS. (a) A security deposit must include within its coverage all amounts covered by terminated surety bonds or terminated excess insurance policies.

(b) A surety bond, irrevocable letter of credit, or document indicating issuance of an irrevocable letter of credit must be in a form approved by the commissioner and must be issued by an institution acceptable to the commissioner. The instrument may be released only according to its terms but may not be released by the deposit of additional security.

(c) The certified self-insurer shall deposit the security with the comptroller on behalf of the division. The comptroller may accept securities for deposit or withdrawal only on the written order of the commissioner.

(d) On receipt by the division of a request to renew, submit, or increase or decrease a security deposit, a perfected security interest is created in the certified self-insurer's assets

in favor of the commissioner to the extent of any then unsecured portion of the self-insurer's incurred liabilities for compensation. That perfected security interest transfers to cash or securities deposited by the self-insurer with the division after the date of the request and may be released only on:

(1) the acceptance by the commissioner of a surety bond or irrevocable letter of credit for the full amount of the incurred liabilities for compensation; or

(2) the return of cash or securities by the division.

(e) The certified self-insurer loses all right to, title to, interest in, and control of the assets or obligations submitted or deposited as security. The commissioner may liquidate the deposit and apply it to the certified self-insurer's incurred liabilities for compensation either directly or through the association.

(f) If the commissioner determines that a security deposit is not immediately available for the payment of compensation, the commissioner shall determine the appropriate method of payment and claims administration, which may include payment by the surety that issued the bond or by the issuer of an irrevocable letter of credit, and administration by a surety, an adjusting agency, the association, or through any combination of those entities approved by the commissioner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 12.12, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.054, eff. September 1, 2005.

Sec. 407.066. EFFECT OF DISPUTE. (a) The commissioner, after notice to the concerned parties and an opportunity for a hearing, shall resolve a dispute concerning the deposit, renewal, termination, release, or return of all or part of the security, liability arising out of the submission or failure to submit security, or the adequacy of the security or reasonableness of the administrative costs, including legal fees, that arises among:

(1) a surety;

(2) an issuer of an agreement of assumption and

guarantee of workers' compensation liabilities;

- (3) an issuer of a letter of credit;
- (4) a custodian of the security deposit;
- (5) a certified self-insurer; or
- (6) the association.

(b) A party aggrieved by a decision of the commissioner is entitled to judicial review. Venue for an appeal is in Travis County.

(c) Payment of claims from the security deposit or by the association may not be stayed pending the resolution of a dispute under this section unless the court issues a determination staying the payment of claims.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.055, eff. September 1, 2005.

Sec. 407.067. EXCESS INSURANCE; REINSURANCE; ADMINISTRATIVE VIOLATION. (a) Each applicant shall obtain excess insurance or reinsurance to cover liability for losses not paid by the self-insurer in an amount not less than the amount required by the commissioner.

(b) The commissioner shall require excess insurance or reinsurance in at least the amount of \$5 million per occurrence.

(c) A certified self-insurer shall notify the division not later than the 10th day after the date on which the certified self-insurer has notice of the cancellation or termination of excess insurance or reinsurance coverage required under this section.

(d) A person commits an administrative violation if the person violates Subsection (c).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.056, eff. September 1, 2005.

Sec. 407.068. GUARANTEE BY PARENT ORGANIZATION. If an

applicant for a certificate of authority to self-insure is a subsidiary, the parent organization of the applicant must guarantee the obligations imposed by this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. POWERS AND DUTIES OF CERTIFIED SELF-INSURER

Sec. 407.081. ANNUAL REPORT. (a) Each certified self-insurer shall file an annual report with the division. The commissioner shall prescribe the form of the report and shall furnish blank forms for the preparation of the report to each certified self-insurer.

(b) The report must:

(1) include payroll information, in the form prescribed by this chapter and the commissioner;

(2) state the number of injuries sustained in the three preceding calendar years; and

(3) indicate separately the amount paid during each year for income benefits, medical benefits, death benefits, burial benefits, and other proper expenses related to worker injuries.

(c) Each certified self-insurer shall file with the division as part of the annual report annual independent financial statements that reflect the financial condition of the self-insurer. The division shall make a financial statement filed under this subsection available for public review.

(d) The division may require that the report include additional financial and statistical information.

(e) The certified self-insurer shall present evidence in the report of sufficient financial ability to meet all obligations under this chapter.

(f) The report must include an estimate of future liability for compensation. The estimate must be signed and sworn to by a certified casualty actuary every third year, or more frequently if required by the commissioner.

(g) If the commissioner considers it necessary, the commissioner may order a certified self-insurer whose financial condition or claims record warrants closer supervision to report as

provided by this section more often than annually.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.057, eff. September 1, 2005.

Sec. 407.082. EXAMINATION OF RECORDS; ADMINISTRATIVE VIOLATION. (a) Each certified self-insurer shall maintain the books, records, and payroll information necessary to compile the annual report required under Section 407.081 and any other information reasonably required by the commissioner.

(b) The certified self-insurer may maintain the books, records, and payroll information in locations outside this state.

(c) The material maintained by the certified self-insurer shall be open to examination by an authorized agent or representative of the division at reasonable times to ascertain the correctness of the information.

(d) The examination may be conducted at any location, including the division's Austin offices, or, at the certified self-insurer's option, in the offices of the certified self-insurer. The certified self-insurer shall pay the reasonable expenses, including travel expenses, of an inspector who conducts an inspection at its offices.

(e) An unreasonable refusal on the part of a certified self-insurer to make available for inspection the books, records, payroll information, or other required information constitutes grounds for the revocation of the certificate of authority to self-insure and is an administrative violation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.058, eff. September 1, 2005.

Sec. 407.083. PAYMENT OF INSURANCE AGENT'S COMMISSION. This chapter does not prohibit a certified self-insurer from paying a commission to an insurance agent licensed in this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER F. FINANCING OF SELF-INSURANCE PROGRAM

Sec. 407.101. FUND. (a) The workers' compensation self-insurance fund is a fund in the state treasury. The fund may be used only for the regulation of certified self-insurers.

(b) The department shall deposit the application fee for a certificate of authority to self-insure in the Texas Department of Insurance operating account to the credit of the division.

(c) Any amount remaining in the fund at the end of a fiscal year shall be used to reduce the regulatory fee assessed under Section 407.102 in the succeeding fiscal year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.059, eff. September 1, 2005.

Sec. 407.102. REGULATORY FEE. (a) Each certified self-insurer shall pay an annual fee to cover the administrative costs incurred by the division in implementing this chapter.

(b) The division shall base the fee on the total amount of income benefit payments made in the preceding calendar year. The division shall assess each certified self-insurer a pro rata share based on the ratio that the total amount of income benefit payments made by that certified self-insurer bears to the total amount of income benefit payments made by all certified self-insurers.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.060, eff. September 1, 2005.

Sec. 407.103. SELF-INSURER MAINTENANCE TAX; EFFECT ON GENERAL MAINTENANCE TAX. (a) Each certified self-insurer shall pay a self-insurer maintenance tax for the administration of the division and the office of injured employee counsel and to support the prosecution of workers' compensation insurance fraud in this state. Not more than two percent of the total tax base of all

certified self-insurers, as computed under Subsection (b), may be assessed for a maintenance tax under this section.

(b) To determine the tax base of a certified self-insurer for purposes of this chapter, the department shall multiply the amount of the certified self-insurer's liabilities for workers' compensation claims incurred in the previous year, including claims incurred but not reported, plus the amount of expense incurred by the certified self-insurer in the previous year for administration of self-insurance, including legal costs, by 1.02.

(c) The tax liability of a certified self-insurer under this section is the tax base computed under Subsection (b) multiplied by the rate assessed workers' compensation insurance companies under Sections 403.002 and 403.003.

(d) In setting the rate of maintenance tax assessment for insurance companies, the commissioner of insurance may not consider revenue or expenditures related to the operation of the self-insurer program under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.22, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1443, Sec. 6, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.061, eff. September 1, 2005.

Sec. 407.104. COLLECTION OF TAXES AND FEES; ADMINISTRATIVE VIOLATION. (a) The regulatory fee imposed by Section 407.102 and the taxes imposed by Section 407.103 are due on the 60th day after the issuance of a certificate of authority to self-insure and on the 60th day after each annual renewal date.

(b) The department shall compute the fee and taxes of a certified self-insurer and notify the certified self-insurer of the amounts due. The taxes and fees shall be remitted to the division.

(c) The regulatory fee imposed under Section 407.102 shall be deposited in the Texas Department of Insurance operating account to the credit of the division. The self-insurer maintenance tax shall be deposited in the Texas Department of Insurance operating account to the credit of the division.

(d) A certified self-insurer commits an administrative violation if the self-insurer does not pay the taxes and fee imposed under Sections 407.102 and 407.103 in a timely manner.

(e) If the certificate of authority to self-insure of a certified self-insurer is terminated, the commissioner or the commissioner of insurance shall proceed immediately to collect taxes due under this subtitle, using legal process as necessary.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.062, eff. September 1, 2005.

SUBCHAPTER G. TEXAS CERTIFIED SELF-INSURER GUARANTY ASSOCIATION

Sec. 407.121. GUARANTY ASSOCIATION. (a) The Texas Certified Self-Insurer Guaranty Association provides for the payment of workers' compensation insurance benefits for the injured employees of an impaired employer.

(b) Each employer who desires to become a certified self-insurer must be a member of the association.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 407.122. BOARD OF DIRECTORS. (a) The members of the association shall elect a board of directors.

(b) The board of directors is composed of the following voting members:

- (1) three certified self-insurers;
- (2) one member designated by the commissioner; and
- (3) the public counsel of the office of public insurance counsel.

(c) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(19), eff. September 1, 2005.

(d) A member of the board of directors or a member of the staff of the board of directors is not liable in a civil action for an act performed in good faith in the execution of that person's powers or duties.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended

by Acts 1995, 74th Leg., ch. 980, Sec. 1.23, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.063, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 7.01(19), eff. September 1, 2005.

Sec. 407.123. BOARD RULES. (a) The board of directors may adopt rules for the operation of the association.

(b) Rules adopted by the board are subject to the approval of the commissioner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.064, eff. September 1, 2005.

Sec. 407.124. IMPAIRED EMPLOYER; ASSESSMENTS. (a) On determination by the division that a certified self-insurer has become an impaired employer, the commissioner shall secure release of the security deposit required by this chapter and shall promptly estimate:

(1) the amount of additional funds needed to supplement the security deposit;

(2) the available assets of the impaired employer for the purpose of making payment of all incurred liabilities for compensation; and

(3) the funds maintained by the association for the emergency payment of compensation liabilities.

(b) The commissioner shall advise the board of directors of the association of the estimate of necessary additional funds, and the board shall promptly assess each certified self-insurer to collect the required funds. An assessment against a certified self-insurer shall be made in proportion to the ratio that the total paid income benefit payment for the preceding reported calendar year for that self-insurer bears to the total paid income benefit payment by all certified self-insurers, except impaired employers, in this state in that calendar year.

(c) A certified self-insurer designated as an impaired employer is exempt from assessments beginning on the date of the designation until the division determines that the employer is no longer impaired.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.065, eff. September 1, 2005.

Sec. 407.125. PAYMENT OF ASSESSMENTS. Each certified self-insurer shall pay the amount of its assessment to the association not later than the 30th day after the date on which the division notifies the self-insurer of the assessment. A delinquent assessment may be collected on behalf of the association through suit. Venue is in Travis County.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 407.126. TRUST FUND; FEE; SCHEDULE. (a) Each member of the association shall be assessed an annual fee, based on total amount of income benefits payments made in this state for the preceding reported calendar year, to maintain a Texas certified self-insurer guaranty trust fund of at least \$2 million for the emergency payment of the compensation liabilities of an impaired employer. The fund may not exceed three percent of the combined value of the security deposits of all certified self-insurers.

(b) The board of directors shall submit to the commissioner for approval a recommended balance of the trust fund. On approval by the commissioner of the recommended balance, the board of directors shall adopt a year-by-year schedule of assessments to meet the funding goal of the fund.

(c) The assessment for the first year after an employer is issued a certificate of authority to self-insure shall be based on the income benefit payments paid by the employer's insurance carrier on the employer's policy in the year before the certificate was issued.

(d) The board of directors shall administer the trust fund in accordance with rules adopted by the commissioner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.24, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.066, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 1055 (H.B. 1990), Sec. 1, eff. September 1, 2017.

Sec. 407.127. PAYMENT OF BENEFITS THROUGH ASSOCIATION. (a) If the commissioner determines that the payment of benefits and claims administration shall be made through the association, the association assumes the workers' compensation obligations of the impaired employer and shall begin the payment of the obligations for which it is liable not later than the 30th day after the date of notification by the director.

(b) The association shall make payments to claimants whose entitlement to benefits can be ascertained by the association.

(c) Notwithstanding Subsection (a), the association is not liable for the payment of any penalties assessed for any act or omission on the part of any person other than the association.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.52(a), eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.067, eff. September 1, 2005.

Sec. 407.128. POSSESSION OF SECURITY BY ASSOCIATION. On the assumption of obligations by the association under the commissioner's determination, the association is entitled to immediate possession of any deposited security, and the custodian, surety, or issuer of an irrevocable letter of credit shall deliver the security to the association with any accrued interest.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.068, eff. September 1, 2005.

Sec. 407.129. RELEASE OF CLAIM INFORMATION TO ASSOCIATION. Information on a workers' compensation claim may be released to the association as provided by Section 402.084(a), if the association has assumed the obligations of an impaired employer. Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 407.130. ASSOCIATION AS PARTY IN INTEREST. (a) The association is a party in interest in a proceeding involving a workers' compensation claim against an impaired employer whose compensation obligations have been paid or assumed by the association.

(b) The association has the same rights and defenses as the impaired employer, including the right to:

- (1) appear, defend, or appeal a claim;
- (2) receive notice of, investigate, adjust, compromise, settle, or pay a claim; and
- (3) investigate, handle, or deny a claim.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 407.131. PREFERENCE. The benefit payments made by the association or the surety under this chapter are entitled to the same preference over other debts of the impaired employer or the impaired employer's estate as provided by law to benefit payments owed by the employer or employer's estate to the person entitled to the benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 407.132. SPECIAL FUND. Funds advanced by the association under this subchapter do not become assets of the impaired employer but are a special fund advanced to the commissioner, trustee in bankruptcy, receiver, or other lawful conservator only for the payment of compensation liabilities, including the costs of claims administration and legal costs.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.069, eff. September 1, 2005.

Sec. 407.133. SUSPENSION OR REVOCATION OF CERTIFICATE FOR FAILURE TO PAY ASSESSMENT. (a) The commissioner may suspend or revoke the certificate of authority to self-insure of a certified self-insurer who fails to pay an assessment. The association promptly shall report such a failure to the director.

(b) A certified self-insurer whose certificate of authority to self-insure is revoked or surrendered remains liable for any unpaid assessments made against an impaired employer who becomes an impaired employer before the date of the revocation or surrender.

(c) Repealed by Acts 1995, 74th Leg., ch. 76, Sec. 9.52(b), eff. Sept. 1, 1995.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.52(b), eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.070, eff. September 1, 2005.