

LABOR CODE

TITLE 5. WORKERS' COMPENSATION

SUBTITLE A. TEXAS WORKERS' COMPENSATION ACT

CHAPTER 407A. GROUP SELF-INSURANCE COVERAGE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 407A.001. DEFINITIONS. (a) In this chapter:

(1) "Administrator" means an individual, partnership, or corporation engaged by the board of trustees of a group to implement the policies established by the board of trustees and to provide day-to-day management of the group.

(2) "Commissioner" means the commissioner of insurance.

(3) "Department" means the Texas Department of Insurance.

(4) "Estimated premium subject to experience modifier" means the premium derived from applying the filed rates to estimated payrolls and before the adjustment of the premium by experience modifiers, schedule rating plan factors, deductible credits, minimum premiums, and premium discounts.

(5) "Group" means a workers' compensation self-insurance group that holds a certificate of approval under this chapter.

(5-a) "Managing company" means an individual, partnership, or corporation engaged by the board of trustees of a group to implement the policies established by the board of trustees and to provide day-to-day management of the group.

(6) "Modified schedule rating premium" means premium derived from applying filed rates to estimated payrolls and then adjusted by the experience modifier and any schedule rating plan factors.

(7) "Same or similar" means, with regard to members of a group, that:

(A) the governing classification code of the members of the group is the same; or

(B) the members of the group are engaged in

similar operations.

(8) "Service company" means a person that provides services to the group other than services provided by the managing company, including:

- (A) claims adjustment;
- (B) safety engineering;
- (C) compilation of statistics and the preparation of premium, loss, and tax reports;
- (D) preparation of other required self-insurance reports;
- (E) development of members' assessments and fees; and
- (F) administration of a claim fund.

(b) For purposes of this chapter, when used as a modifier of "benefits," "liabilities," or "obligations," the term "workers' compensation" includes both workers' compensation and employers' liability.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 3.04, eff. September 1, 2007.

Sec. 407A.002. APPLICATION OF CHAPTER; ESTABLISHMENT OF PRIVATE GROUP. (a) An unincorporated association or business trust composed of five or more private employers may establish a workers' compensation self-insurance group under this chapter if the employers:

- (1) are engaged in the same or a similar type of business;
- (2) are members of a bona fide trade or professional association that has been in existence in this state for purposes other than insurance for at least five years before the establishment of the group; and
- (3) enter into agreements to pool their liabilities for workers' compensation benefits and employers' liability in this state.

(b) This chapter does not apply to public employees or

governmental entities.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.003. MERGER OF GROUPS. (a) Subject to the approval of the commissioner, a group may merge with another group engaged in the same or a similar type of business if the resulting group assumes in full all obligations of the merging groups.

(b) The commissioner may conduct a hearing on a proposed merger and shall conduct a hearing if any party, including a member of either group, requests a hearing.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.004. GROUP NOT INSURER. A group issued a certificate of approval by the commissioner under this chapter is not:

(1) an insurer based on that certificate; and

(2) subject to the insurance laws and rules of this state except as otherwise provided by this chapter.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.005. CERTIFICATE OF APPROVAL REQUIRED. An association of employers may not act as a workers' compensation self-insurance group unless it has been issued a certificate of approval by the commissioner under this chapter.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.006. SERVICE OF PROCESS. (a) Each group shall be deemed to have appointed the commissioner as its attorney to receive service of legal process issued against the group in this state.

(b) The appointment of the commissioner is irrevocable, binds any successor in interest, and remains in effect as long as any obligation or liability of the group for workers' compensation benefits exists in this state.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.007. HEARINGS. A hearing required under this

chapter shall be conducted by the State Office of Administrative Hearings in the manner provided for a contested case under Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.008. RULES. The commissioner shall adopt rules as necessary to implement this chapter.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.009. CERTIFICATE OF AUTHORITY REQUIRED FOR CERTAIN ADMINISTRATORS AND SERVICE COMPANIES. (a) An administrator or service company under this chapter that performs the acts of an administrator as defined in Chapter 4151, Insurance Code, must hold a certificate of authority under that chapter.

(b) An entity is required to hold only one certificate of authority under Chapter 4151, Insurance Code, if:

(1) the entity acts as an administrator and a service company as defined in this chapter; and

(2) performs the acts of an administrator as that term is defined in Chapter 4151, Insurance Code.

(c) Exemptions in Chapter 4151, Insurance Code, as provided in Sections 4151.002(18), (19), and (20), apply to an administrator or service company under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 3.05, eff. September 1, 2007.

SUBCHAPTER B. APPLICATION REQUIREMENTS FOR CERTIFICATE OF APPROVAL FOR SELF-INSURANCE GROUP

Sec. 407A.051. APPLICATION FOR INITIAL CERTIFICATE OF APPROVAL; APPROVAL REQUIREMENTS. (a) An association of employers that proposes to organize as a workers' compensation self-insurance group shall file with the department an application for a certificate of approval.

(b) The application must be in the form prescribed by the commissioner and must include:

(1) the name of the group;

- (2) the location of the group's principal office;
- (3) the date of organization of the group;
- (4) the name and address of each employer that is a member of the group;
- (5) the name, mailing address, and telephone number of the trade or professional association to which each group member belongs as required by Section [407A.002\(a\)\(2\)](#);
- (6) the governing classification code of the group or a description of the operations of each member of the group showing that the members of the group are engaged in similar operations; and
- (7) any other information reasonably required by the commissioner.

(c) The application must be accompanied by:

- (1) a nonrefundable \$1,000 filing fee;
- (2) proof of compliance with the financial requirements under Section [407A.053](#);
- (3) proof of compliance with the excess insurance requirements under Section [407A.054](#);
- (4) a copy of the articles of association or declaration of trust of the group, if any;
- (5) a copy of any agreements entered into with an administrator or a service company;
- (6) a copy of the bylaws of the proposed group;
- (7) a copy of the agreement between the group and each employer who is a member of the group that:
 - (A) secures the payment of workers' compensation benefits; and
 - (B) includes provisions for payment of assessments as provided by Section [407A.355](#);
- (8) designation of the initial board of trustees and administrator of the group;
- (9) the address in this state where the books and records of the group will be maintained at all times;
- (10) a pro forma financial statement, in a form acceptable to the commissioner, that shows the financial ability of the group to pay the workers' compensation obligations of the

employers who are members of the group;

(11) proof of one of the following:

(A) payment to the group, or a bona fide promise to pay on approval of the group, by each employer who is a member of the group of not less than 25 percent of that member's first year estimated modified schedule rating premium on a date prescribed by the commissioner, which shall be considered part of the first year premium payment of each member; or

(B) if the group is formed from a trust existing on September 1, 2003, that the assets of the trust are sufficient to cover the workers' compensation obligations of the trust;

(12) a \$250,000 fidelity bond for the administrator in the form prescribed by the commissioner;

(13) a \$250,000 fidelity bond for the service company in the form prescribed by the commissioner; and

(14) an indemnity agreement that meets the requirements of Section [407A.056](#).

(d) Not later than the 30th day after the effective date of the change, a group shall notify the commissioner of any change in:

(1) the information required to be filed under Subsection (c); or

(2) the manner of the group's compliance with Subsection (c).

(e) The commissioner shall evaluate the financial information provided with the application as necessary to ensure that:

(1) the funding is sufficient to cover expected losses and expenses; and

(2) the funds necessary to pay workers' compensation benefits will be available on a timely basis.

(f) Except as otherwise provided by this subsection, the commissioner shall act on a complete application for a certificate of approval not later than the 90th day after the date on which the application is filed with the department. If, because of the number of applications, the commissioner is unable to act on an application in a timely manner, the commissioner may extend the period for an additional 30 days.

(g) Fees collected under this section shall be deposited in the department's operating account.

(h) In lieu of the bonds required under Subsections (c)(12) and (c)(13), a security deposit of cash or securities acceptable to the commissioner may be deposited with the commissioner to be held in the state treasury.

Added by Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 2, eff. September 1, 2005.

Sec. 407A.052. ISSUANCE OF CERTIFICATE OF APPROVAL; REFUSAL. (a) The commissioner shall issue a certificate of approval to a proposed group on finding that the group has met the requirements of this subchapter.

(b) If the commissioner determines that a proposed group has not satisfied the requirements under this subchapter for a certificate of approval, the commissioner shall issue an order refusing the certificate. The order must set forth the reasons for the refusal.

(c) On issuance of the certificate of approval, the group is authorized to provide workers' compensation benefits.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.053. FINANCIAL REQUIREMENTS. (a) To obtain a certificate of approval, each group shall comply with the financial requirements adopted under this section.

(b) The combined net worth of all employers who are members of the group must be at least \$2 million. A member of the group may not be required to submit an audited financial statement to establish the \$2 million combined net worth, but the group must file a report compiled by a certified public accountant and based on financial statements or tax returns to support the existence of a combined net worth of at least \$2 million for the initial group. In the case of a group composed of a trust existing on September 1, 2003, the trust may satisfy the financial requirements of this

section by showing that the trust has participant surplus, including accrued participant dividends of at least \$2 million, in lieu of the requirement of the \$2 million combined net worth of its members. Discounted reserves may not be considered in determining whether a trust existing on September 1, 2003, has a surplus of at least \$2 million.

(c) The group must post security in the form and amount prescribed by the commissioner, equal to the greater of \$300,000 or 25 percent of the group's total incurred liabilities for workers' compensation. The security may be provided by a surety bond, security deposit, or any combination of those securities. If a surety bond is used to meet the security requirement, the surety bond must be issued by a corporate surety company authorized to transact business in this state. If a security deposit is used to meet the security requirement, the following are acceptable securities:

(1) a bond or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America or by an agency or instrumentality of the United States of America;

(2) certificates of deposit in a federally insured bank;

(3) shares or savings deposits in a federally insured savings and loan association or credit union;

(4) a bond or security issued by a state and backed by the full faith and credit of that state;

(5) public securities described by Subsection (f);
and

(6) commercial paper payable in United States currency that is rated in one of the two highest credit rating categories by each rating agency.

(d) Any securities posted must be deposited in the state treasury and must be assigned to and made negotiable by the commissioner of workers' compensation under a trust document acceptable to the commissioner of insurance. Interest accruing on a negotiable security deposited under this subsection shall be collected and transmitted to the depositor if the depositor is not in default.

(e) A bond or security deposit must be:

(1) made for the benefit of the state, to be used solely to pay claims and associated expenses; and

(2) payable on the failure of the group to pay workers' compensation benefits that it is legally obligated to pay.

(f) Public securities may be used as security under this section if the public securities bear interest or are sold at a discount and are issued by any corporation, denominated in United States dollars.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.071, eff. September 1, 2005.

Sec. 407A.054. EXCESS INSURANCE REQUIREMENTS. (a) To obtain an initial certificate of approval and to be eligible to renew its certificate of approval, each group must comply with the excess insurance requirements adopted under this section.

(b) Each group shall obtain specific excess insurance for losses that exceed the group's retention in a form prescribed by the commissioner. The commissioner may establish minimum requirements for the amount of specific excess insurance based on differences among groups in size, types of employment, years in existence, and other relevant factors.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.055. PREMIUM REQUIREMENTS. Each group must have an estimated premium subject to experience modifier of at least \$250,000 during the group's first year of operation. Thereafter, the annual standard premium must be at least \$500,000.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.056. INDEMNITY AGREEMENT REQUIREMENTS. (a) An indemnity agreement filed under Section [407A.051](#) must jointly and severally bind the group and each employer who is a member of the group to meet the workers' compensation obligations of each member.

(b) The indemnity agreement must be in the form prescribed

by the commissioner and must include minimum uniform substantive provisions as prescribed by the commissioner. Subject to the commissioner's approval, a group may add other provisions necessary because of that group's particular circumstances.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.057. ADDITIONAL PERFORMANCE BOND REQUIREMENTS.

(a) In addition to the requirements under Section [407A.051](#), the commissioner may require a service company providing claim services to furnish a performance bond of \$250,000 in the form prescribed by the commissioner.

(b) In lieu of a performance bond under Subsection (a), a security deposit of cash or securities acceptable to the commissioner may be deposited with the commissioner to be held in the state treasury.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1055 (H.B. [1353](#)), Sec. 3, eff. September 1, 2005.

SUBCHAPTER C. TERMINATION OF CERTIFICATE OF APPROVAL

Sec. 407A.101. CERTIFICATE OF APPROVAL; TERMINATION. (a) A certificate of approval remains in effect until terminated at the request of the group or revoked by the commissioner.

(b) The commissioner may not grant the request of any group to terminate its certificate of approval unless the group has insured or reinsured all incurred workers' compensation obligations with an authorized insurer under an agreement filed with and approved in writing by the commissioner. For purposes of this subsection, those obligations include:

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

(2) incurred but not reported claims and expenses associated with those claims.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER D. BOARD OF TRUSTEES

Sec. 407A.151. BOARD MEMBERSHIP. (a) Each group shall be operated by a board of trustees composed of at least five persons whom the members of the group elect for stated terms of office. The trustees must be employees, officers, or directors of employers who are members of the group. Each board member shall be a resident of this state or an officer of a corporation authorized to do business in this state.

(b) An administrator or service company of the group, or owner, officer, employee of, or any other person affiliated with the administrator or service company, may not serve on the board of trustees.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.152. BOARD GENERAL POWERS AND DUTIES. The board of trustees shall:

(1) maintain minutes of its meetings and make the minutes available to the commissioner;

(2) designate an administrator and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator; and

(3) retain an independent certified public accountant to audit the financial statements required by Section [407A.251](#).

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.153. PROHIBITED ACTIVITIES. The board of trustees may not:

(1) extend credit to individual members for payment of a premium, except under payment plans approved by the commissioner; or

(2) without first advising the commissioner of the nature and purpose of the loan and obtaining prior approval from the commissioner, borrow any money from the group or in the name of the group except in the ordinary course of business.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.154. GROUP FUNDS. The board of trustees shall maintain responsibility for all money collected or disbursed from the group.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER E. GROUP MEMBERSHIP; TERMINATION; LIABILITY

Sec. 407A.201. ADMISSION OF EMPLOYER AS MEMBER. (a) An employer who joins an approved workers' compensation self-insurance group shall:

(1) submit an application for membership to the board of trustees or its administrator; and

(2) enter into the indemnity agreement as required by Section 407A.056.

(b) The board of trustees shall maintain as a permanent record the employer's application for membership and the approval of the application.

(c) The membership of an individual member of a group is subject to cancellation by the group as provided by the bylaws of the group. An individual member may also elect to terminate participation in the group. The group shall notify the commissioner and the commissioner of workers' compensation of the cancellation or termination of a membership not later than the 10th day after the date on which the cancellation or termination takes effect and shall maintain coverage of each canceled or terminated member until the 30th day after the date of the notice, at the terminating member's expense, unless before that date the commissioner of workers' compensation notifies the group that the canceled or terminated member has:

(1) obtained workers' compensation insurance coverage;

(2) become a certified self-insurer; or

(3) become a member of another group.

(d) The group shall pay each workers' compensation claim for which a member of the group incurs liability during the period of membership. A member who elects to terminate membership or whose membership is canceled by the group remains jointly and severally

liable for the workers' compensation obligations of the group and its members incurred during the canceled or terminated member's period of membership.

(e) A member of a group is not relieved of workers' compensation liabilities incurred during its period of membership except through payment by the group or the member of required workers' compensation benefits.

(f) The insolvency or bankruptcy of a member does not relieve a group or any other member of the group of liability for the payment of any workers' compensation benefits incurred during the insolvent or bankrupt member's period of membership.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.072, eff. September 1, 2005.

SUBCHAPTER F. EXAMINATIONS, FINANCIAL STATEMENTS, AND OTHER REPORTS

Sec. 407A.251. FINANCIAL STATEMENT. (a) Each group shall submit to the commissioner financial statements audited by an independent certified public accountant on or before the last day of the sixth month following the end of the group's fiscal year.

(b) The financial statement must include a balance sheet, income statement, and statement of cash flow and must be prepared on the basis of accounting principles generally accepted in the United States.

(c) Loss reserves may be discounted subject to generally accepted accounting principles. The discounting must be documented in the notes accompanying the financial statement. Notwithstanding this subsection, dividends paid to members of the group must be based on undiscounted loss reserves.

(d) The audited financial statements required by this section must be accompanied by an actuarial opinion on the adequacy of the group's loss reserves, including the reasonableness of any reserve discount. The actuarial opinion must be given by a member in good standing of the American Academy of Actuaries and the

Casualty Actuarial Society.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.252. EXAMINATION. (a) The commissioner shall examine the financial condition of each group to determine the group's ability to meet the group's obligations under this subtitle. An examination under this section is subject to Article 1.15, Insurance Code, except that, to the extent of a conflict between this chapter and that article, this chapter prevails. The commissioner may examine a group annually for the first three years of the group's operation. Beginning with the fourth year of operation, the commissioner may not examine a group more frequently than once every three years unless the commissioner determines that the group:

(1) is in an impaired financial condition; or

(2) otherwise may not be able to continue to meet the group's obligations under this subtitle.

(b) The commissioner has full access to the records, officers, agents, and employees of a group as necessary to complete an examination under this section. The commissioner may recover the expenses of the examination under Article 1.16, Insurance Code, to the extent the maintenance tax under Section 407A.302 does not cover those expenses.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER G. TAXES, FEES, AND ASSESSMENTS

Sec. 407A.301. MAINTENANCE TAX FOR DIVISION AND RESEARCH FUNCTIONS OF DEPARTMENT. (a) Each group shall pay a self-insurance group maintenance tax under this section for:

(1) the administration of the division of workers' compensation of the department;

(2) the prosecution of workers' compensation insurance fraud in this state;

(3) the research functions of the department under Chapter 405; and

(4) the administration of the office of injured

employee counsel under Chapter 404.

(b) The tax liability of a group under Subsections (a)(1) and (2) is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Sections 403.002 and 403.003.

(c) The tax liability of a group under Subsection (a)(3) is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Section 405.003.

(d) The tax under this section does not apply to premium collected by the group for excess insurance.

(e) The tax under this section shall be collected by the comptroller as provided by Section 201.051 and Chapter 255, Insurance Code.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.073, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.074, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.138, eff. September 1, 2005.

Sec. 407A.302. MAINTENANCE TAX FOR DEPARTMENT. (a) Subject to Subsection (b), each group shall pay the maintenance tax imposed under Chapter 255, Insurance Code, for the administrative costs incurred by the department in implementing this chapter.

(b) The tax liability of a group under this section is based on gross premium for the group's retention and does not include premium collected by the group for excess insurance.

(c) The maintenance tax assessed under this section is subject to Chapter 255, Insurance Code, and shall be collected by the comptroller in the manner provided by that chapter.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.139, eff. September 1, 2005.

Sec. 407A.303. COLLECTION AND PAYMENT OF TAXES. (a) The group shall remit the taxes for deposit in the Texas Department of Insurance operating account to the credit of the division.

(b) A group commits an administrative violation if the group does not pay the taxes imposed under Sections 407A.301 and 407A.302 in a timely manner.

(c) If the certificate of approval of a group is terminated, the commissioner or the commissioner of insurance shall immediately notify the comptroller to collect taxes as directed under Sections 407A.301 and 407A.302.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.075, eff. September 1, 2005.

Sec. 407A.304. PREMIUM TAX. (a) Each group shall pay to the comptroller a premium tax on gross premiums for the group's retention. The premium tax assessed under this subsection does not apply to premium collected for excess insurance.

(b) The rate for the premium tax under this section is the rate assessed under Chapter 221, Insurance Code.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.140, eff. September 1, 2005.

SUBCHAPTER H. RATES; REFUNDS; PREMIUM PAYMENTS; RESERVES;
DEFICITS

Sec. 407A.351. RATES.

(a) Except as provided by Subsection (b), each group shall use the uniform classification system and experience rating plan of the department.

(b) A group may file rates with the department, including any reasonable and supporting information required by the commissioner.

(c) As approved by the commissioner, a group may use rating

debits or credits and optional rating plans.

(d) Rates of the group may not be excessive, inadequate, or unfairly discriminatory.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 558 (S.B. 1336), Sec. 5, eff. September 1, 2019.

Sec. 407A.352. AUDITS. Each member of a group shall be audited annually by the administrator or by an auditor acceptable to the commissioner to verify proper classifications, experience rating, payroll, and rates. The group shall maintain a record of the audit as part of the group's records that are available to the commissioner during an examination conducted under Section 407A.252. The audit shall be performed at the expense of the group. Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.353. REFUNDS. (a) The board of trustees may declare refundable any money for a fund year in excess of the amount necessary to fund all obligations.

(b) The board of trustees shall give each member a written description of the group's refund plan at the time of application for membership.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.354. PREMIUM PAYMENT PLAN; RESERVES. (a) Until the assets of a group reach a level sufficient to cover the group's liabilities, each group shall establish to the satisfaction of the commissioner a premium payment plan.

(b) As long as the assets of the group remain sufficient to cover the group's liabilities, the group may determine its own premium plan if the premium plan is disclosed to each member at the time of application and is filed with the commissioner.

(c) Each group shall establish and maintain actuarially appropriate loss reserves, which must include reserves for:

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

(2) claims incurred but not reported and expenses associated with those claims.

(d) Each group shall establish and maintain bad debt reserves based on the historical experience of the group or of other groups composed of similar employer members.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.355. DEFICITS; INSOLVENCIES. (a) For purposes of this section, "insolvent" means:

(1) the inability of a group to pay the group's outstanding lawful obligations as they mature in the regular course of business; or

(2) that the group's liabilities exceed the group's assets, determined without reducing liabilities by any reserve discount.

(b) If the assets of a group are at any time insufficient to enable the group to discharge its legal liabilities and other obligations and to maintain the reserves required under this chapter, the group shall make up the deficiency or levy an assessment on its members for the amount needed to make up the deficiency.

(c) In the event of a deficiency in any fund year, the deficiency shall be made up immediately from:

(1) surplus from a fund year other than the current fund year;

(2) administrative funds;

(3) assessments of the membership, if ordered by the group; or

(4) any alternate method that the commissioner approves or directs.

(d) The commissioner shall be notified before any transfer of surplus funds from one fund year to another under Subsection (c).

(e) If the group fails to assess its members or to otherwise make up a deficit, the commissioner shall order the group to do so. If the commissioner determines that the group is in a hazardous financial condition, the commissioner may take action as provided by Article 21.28-A, Insurance Code, and may order the group to

rectify the condition through an alternate method under Subsection (c)(4). The group is considered an insurer only for purposes of Article 21.28-A, Insurance Code. Otherwise, to the extent of a conflict between this chapter and that article, this chapter prevails.

(f) If the group fails to make the required assessment of its members after the commissioner's order under Subsection (e), or if the deficiency is not fully made up, the group shall be deemed to be insolvent.

(g) If a group is liquidated, the commissioner shall secure release of the security deposit and levy an assessment on the members of the group in an amount determined necessary by the commissioner to discharge all liabilities of the group, including the reasonable cost of liquidation.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER I. DISCIPLINARY ACTIONS; PENALTIES

Sec. 407A.401. PROHIBITED SOLICITATION. In connection with the solicitation of membership in a group, a person may not make an untrue statement of a material fact, or omit to state a material fact necessary to make the statement made, in light of the circumstances under which it is made, not misleading.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.402. FINES. After notice and an opportunity for a hearing, the commissioner may impose a fine on any person or group found to be in violation of this chapter or a rule adopted under this chapter. A fine assessed under this section may not exceed \$1,000 for each act or violation and may not exceed \$10,000 in the aggregate. The amount of any fine assessed under this section shall be paid to the commissioner and deposited in the state treasury.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.403. CEASE AND DESIST ORDERS. (a) After notice and an opportunity for a hearing, the commissioner may issue an order requiring a person or group to cease and desist from engaging

in an act or practice found to be in violation of this chapter or a rule adopted under this chapter.

(b) On a finding, after notice and opportunity for a hearing, that a person or group has violated a cease and desist order issued under this section, the commissioner may:

(1) impose a fine not to exceed \$1,000 for each violation of the order, not to exceed an aggregate fine of \$100,000;

(2) revoke the group's certificate of approval or any license held by the person issued under the Insurance Code; or

(3) impose the fine and revoke the certificate or license.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.404. REVOCATION OF CERTIFICATE OF APPROVAL. (a) After notice and an opportunity for a hearing, the commissioner may revoke a group's certificate of approval if the group:

(1) is found to be insolvent;

(2) fails to pay a tax, assessment, or special fund contribution imposed on the group; or

(3) fails to comply in a timely manner with this chapter, a rule adopted under this chapter, or an order of the commissioner.

(b) In addition, the commissioner may revoke a group's certificate of approval if, after notice and an opportunity for hearing, the commissioner determines that:

(1) a certificate of approval issued to the group was obtained by fraud;

(2) there was a material misrepresentation in the application for the certificate of approval; or

(3) the group or its administrator has misappropriated, converted, illegally withheld, or refused to pay on proper demand any money that belongs to a member, an employee of a member, or a person otherwise entitled to the money and that has been entrusted to the group or its administrator in their fiduciary capacities.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER J. TEXAS SELF-INSURANCE GROUP GUARANTY FUND

Sec. 407A.451. DEFINITIONS. In this subchapter:

(1) "Board" means the board of directors of the guaranty fund.

(2) "Guaranty fund" means the Texas self-insurance group guaranty fund.

(3) "Trust fund" means the trust fund established under Section [407A.457](#).

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. [1353](#)), Sec. 1, eff. September 1, 2005.

Sec. 407A.452. GUARANTY FUND. (a) The Texas self-insurance group guaranty fund is a nonprofit association established to provide for the payment of workers' compensation insurance benefits for injured employees covered by a group declared insolvent under Section [407A.355](#).

(b) Each group that desires to be certified under this chapter must participate as a member of the guaranty fund.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. [1353](#)), Sec. 1, eff. September 1, 2005.

Sec. 407A.453. BOARD OF DIRECTORS. (a) The guaranty fund is managed by a board of directors.

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

(1) three members elected as provided by Subsection (c), each of whom represents a different group certified under this chapter;

(2) one member to represent wage earners designated by the commission;

(3) one member designated by the commissioner; and

(4) the public counsel of the office of public insurance counsel.

(c) Representatives of each group certified under this chapter may participate equally in the election of the three members of the board elected under Subsection (b)(1). A person elected under Subsection (b)(1) must be approved by the

commissioner before the person may serve on the board.

(d) Notwithstanding Subsection (c), the commissioner shall appoint the initial board members representing groups. A person appointed as an initial board member under this subsection is eligible to serve additional terms on election by the members of the guaranty fund.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.454. IMMUNITY. A board member or a member of the staff of the board is not liable in a civil action for an act performed in good faith in the execution of that person's powers or duties.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.455. BOARD GENERAL POWERS AND DUTIES. (a) The board shall:

(1) create and maintain a trust fund for payment of the workers' compensation liabilities of an insolvent group;

(2) hire staff as necessary;

(3) provide recommendations to the commissioner regarding rules or guidelines applicable to groups;

(4) receive reports from the department on the financial condition of groups, including examination and audit reports;

(5) engage consulting experts as necessary to review information provided by or filed with the department to ensure financial solvency of groups under this chapter;

(6) provide advisory recommendations to the commissioner as necessary regarding an applicant's compliance with Subchapter B relating to application requirements for certification; and

(7) take action, in response to a finding by the commissioner that a group is insolvent, to use the trust fund's resources to ensure the payment of the group's valid workers' compensation claims and related administrative expenses.

(b) The board shall control all amounts in the trust fund, including investment of those amounts.

(c) The guaranty fund may not disclose confidential information received from the department in a financial report under Subsection (a)(4), including an examination or audit report. Information received from the department remains confidential and not subject to disclosure under Chapter 552, Government Code.

(d) The board may make recommendations under Subsection (a)(6) outside of regular board meetings.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.456. PLAN OF OPERATION. (a) The board shall adopt a plan of operation governing the board's activities and the operation of the guaranty fund and the trust fund.

(b) The plan of operation adopted by the board is subject to approval by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.457. TRUST FUND; SCHEDULE. (a) Each group shall contribute an amount, based on the total amount of income benefit payments made in this state for the preceding reported calendar year, to create, over a period of 10 years beginning January 1, 2006, a trust fund of at least \$1 million for:

(1) the emergency payment of the compensation liabilities of an insolvent group; and

(2) the administrative expenses of the guaranty fund.

(b) The board may adopt provisions in the plan of operation that provide for the indexing of the amount of the trust fund to a risk analysis.

(c) At least annually, the board shall adopt a year-by-year schedule of assessments to meet the funding goal of the trust fund.

(d) The board may:

(1) defer assessments if the fund equals or exceeds \$2 million; and

(2) allow the trust fund to accrete based on its investment earnings.

(e) The contribution required for the first year after a group is issued a certificate of approval under this chapter shall be based on the group's estimated income benefit payments for the group's first year of operation.

(f) Each group certified under this chapter shall make contributions under this section to the trust fund, and the board shall provide a mechanism in the plan of operation to ensure that all groups contribute equitably to the trust fund.

(g) The board shall administer the trust fund in accordance with the plan of operation adopted by the board and approved by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.458. EFFECT OF INSOLVENCY OF GROUP. (a) On determining that a group has become insolvent, the commissioner shall secure release of the surety bond or security deposit required under Section 407A.053 and shall promptly estimate:

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

(2) the assets of the insolvent group available to pay all incurred compensation liabilities.

(b) If the bond or security deposit and the available assets of the insolvent group are insufficient to cover all of the group's incurred compensation liabilities, the commissioner shall direct the insolvent group to immediately assess its members to cover all incurred liabilities under a schedule approved by the commissioner.

(c) If the assessments under Subsection (b) will be insufficient to cover the incurred liabilities, the commissioner shall estimate the additional funds necessary to cover the incurred liabilities for benefit compensation and related administration expenses for the insolvent group. On receipt of the commissioner's estimate, the board shall provide from the trust fund the additional funds needed for benefit compensation and related administrative expenses for the insolvent group.

(d) Disbursements from the trust fund under Subsection (c) shall be replenished:

(1) if within the 10-year funding period of the trust fund, by adjusting the next year's schedule of assessments from groups; or

(2) if beyond the initial 10-year funding period, by assessment of all groups.

(e) If, after application of Subsections (b)-(d), the amount available in the trust fund is still insufficient, the board shall assess all groups for the remaining deficiency.

(f) The commissioner may exempt a group from assessment under this section on a determination that the payment of the assessment would render the group insolvent.

(g) The commissioner may, on a finding of insolvency, commence a delinquency proceeding for the purpose of liquidating, rehabilitating, reorganizing, or conserving a group. Such a group shall be considered an insurer for purposes of Article 21.28, Insurance Code, and an insurance company for purposes of 11 U.S.C. Section 109. The conservator, receiver, or other statutory successor of a group shall coordinate with the board in the furtherance of the purposes of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. [1353](#)), Sec. 1, eff. September 1, 2005.

Sec. 407A.459. COLLECTION OF ASSESSMENTS FROM GROUP MEMBERS; CONTINUATION OF JOINT AND SEVERAL LIABILITY. (a) Each member of an insolvent group shall pay the amount of its assessment under this chapter to the commissioner not later than the 30th day after the date on which the commissioner notifies the member of the assessment. The commissioner shall collect assessments and costs from the members of the insolvent group.

(b) The joint and several liability of the members of a group under Section [407A.056](#) continues and is not terminated by payment of benefits through the guaranty fund.

(c) If the guaranty fund assumes payment of benefits for compensation liabilities on behalf of an insolvent group, the guaranty fund may collect delinquent assessments and costs through

suit. Venue for a suit under this subsection is in Travis County.
Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff.
September 1, 2005.

Sec. 407A.460. PAYMENT OF BENEFITS THROUGH GUARANTY FUND.

(a) If the commissioner determines that the payment of benefits and claims administration shall be made through the guaranty fund, the guaranty fund assumes the workers' compensation obligations on behalf of the insolvent group 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 commissioner.

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

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

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff.
September 1, 2005.

Sec. 407A.461. POSSESSION OF SECURITY BY GUARANTY FUND. On the assumption of obligations on behalf of an insolvent group by the guaranty fund under the commissioner's determination, the guaranty fund is entitled to immediate possession of any assets of the insolvent group and any security deposited or the proceeds of any surety bond deposited by the insolvent group, along with all interest on the security. All assessments from members of the insolvent group shall be paid to the guaranty fund.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff.
September 1, 2005.

Sec. 407A.462. RELEASE OF CLAIM INFORMATION TO GUARANTY FUND. If the guaranty fund has assumed compensation obligations on behalf of an insolvent group, information on a workers' compensation claim may be released to the guaranty fund as provided by Section 402.084(a).

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff.
September 1, 2005.

Sec. 407A.463. GUARANTY FUND AS PARTY IN INTEREST. (a) The guaranty fund is a party in interest in a proceeding involving a workers' compensation claim against an insolvent group whose compensation obligations have been paid or assumed by the guaranty fund.

(b) The guaranty fund has the same rights and defenses as the insolvent group, 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.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.464. PREFERENCES. (a) Benefit payments made by the guaranty fund under this subchapter are entitled to the same preference over other debts of the insolvent group as provided by law to benefit payments owed by the insolvent group to the person entitled to the benefits.

(b) The guaranty fund has the priority status provided by Section 8, Article 21.28, Insurance Code.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.465. SPECIAL FUND. Monies advanced by the association under this chapter do not become assets of the insolvent group but constitute a special fund advanced to the commissioner, receiver, or other statutory successor only for the payment of compensation liabilities, including the costs of claim administration and legal costs.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.