

INSURANCE CODE

TITLE 4. REGULATION OF SOLVENCY

SUBTITLE D. GUARANTY ASSOCIATIONS

CHAPTER 462. TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY
ASSOCIATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 462.001. SHORT TITLE. This chapter may be cited as the Texas Property and Casualty Insurance Guaranty Act.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.002. PURPOSES. The purposes of this chapter are to:

(1) provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment;

(2) avoid financial loss to claimants or policyholders because of an insurer's impairment;

(3) assist in the detection and prevention of insurer insolvencies; and

(4) provide an association to assess the cost of that protection among insurers.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.003. CONSTRUCTION. This chapter shall be liberally construed to implement the purposes of this chapter described by Section 462.002, which shall be used to aid and guide interpretation of this chapter.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.004. GENERAL DEFINITIONS. In this chapter:

(1) "Affiliate" means a person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an impaired insurer on December 31 of the year preceding the date the insurer becomes an impaired insurer.

(2) "Association" means the Texas Property and Casualty Insurance Guaranty Association.

(3) "Board" means the board of directors of the association.

(4) "Claimant" means an insured making a first-party claim or a person instituting a liability claim.

(5) "Impaired insurer" means a member insurer that is:

(A) placed in:

(i) temporary or permanent receivership or liquidation under a court order, including a court order of another state, based on a finding of insolvency; or

(ii) conservatorship after the commissioner determines that the insurer is insolvent; and

(B) designated by the commissioner as an impaired insurer.

(6) "Member insurer" means an insurer, including a stock insurance company, a mutual insurance company, a Lloyd's plan, a reciprocal or interinsurance exchange, and a county mutual insurance company, that:

(A) writes any kind of insurance to which this chapter applies under Sections 462.007 and 462.008, including reciprocal or interinsurance exchange contracts; and

(B) holds a certificate of authority to engage in the business of insurance in this state.

(7) "Person" means an individual, corporation, partnership, association, or voluntary organization.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.005. DESCRIPTION OF CONTROL. (a) For purposes of this chapter, control is the power to direct, or cause the direction of, the management and policies of a person, other than power that results from an official position with the person or a corporate office held by the person. The power may be possessed directly or indirectly by any means, including through the ownership of voting securities or by contract, other than a commercial contract for goods or nonmanagement services.

(b) A person is presumed to control another person if the

person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of the other person. This presumption may be rebutted by a showing that the person does not in fact control the other person.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.006. NET DIRECT WRITTEN PREMIUMS. (a) Except as provided by Subsection (b) and subject to Subsection (c), in this chapter, "net direct written premiums" means direct premiums written in this state on insurance policies to which this chapter applies, less return premiums on those policies and dividends paid or credited to policyholders on that direct business.

(b) Subject to Subsection (c), for assessing the workers' compensation line of business, the term "net direct written premiums" includes the modified annual premium before the application of a deductible premium credit, less return premiums on those policies and dividends paid or credited to policyholders on that direct business.

(c) The term "net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.007. APPLICABILITY IN GENERAL; EXCEPTIONS. (a) Except as provided by Subsection (b), this chapter applies to each kind of direct insurance.

(b) Except as provided by Subchapter F, this chapter does not apply to:

- (1) life, annuity, health, or disability insurance;
- (2) mortgage guaranty, financial guaranty, or other kinds of insurance offering protection against investment risks;
- (3) a fidelity or surety bond, or any other bonding obligation;
- (4) credit insurance, vendors' single-interest insurance, collateral protection insurance, or similar insurance protecting a creditor's interest arising out of a creditor-debtor transaction;

(5) insurance of warranties or service contracts;

(6) title insurance;

(7) ocean marine insurance;

(8) a transaction or combination of transactions between a person, including an affiliate of the person, and an insurer, including an affiliate of the insurer, that involves the transfer of investment or credit risk unaccompanied by the transfer of insurance risk, including transactions, except for workers' compensation insurance, involving captive insurers, policies in which deductible or self-insured retention is substantially equal in amount to the limit of the liability under the policy, and transactions in which the insured retains a substantial portion of the risk; or

(9) insurance provided by or guaranteed by government.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [730](#), Sec. 3B.005(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. [921](#), Sec. 9.005(a), eff. September 1, 2007.

Sec. 462.008. APPLICABILITY TO TEXAS MUTUAL INSURANCE COMPANY. (a) This chapter applies to insurance written through the Texas Mutual Insurance Company only as provided by this section.

(b) This chapter applies to the Texas Mutual Insurance Company on a prospective basis on and after January 1, 2000. The Texas Mutual Insurance Company is only liable for assessments for a claim with a date of injury that occurs on or after January 1, 2000. The association, with respect to an insolvency of the Texas Mutual Insurance Company, is only liable for a claim with a date of injury that occurs on or after January 1, 2000.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.009. APPLICABILITY TO FORMER TEXAS WORKERS' COMPENSATION INSURANCE FACILITY AND SUCCESSOR. (a) Notwithstanding any other provision of this chapter, this chapter applies to each insurance policy issued under Article 5.76 or

5.76-2, as those articles existed before their repeal.

(b) Notwithstanding any other provision of this chapter, the stock insurance company that resulted from the transfer of the former Texas workers' compensation insurance facility is considered an impaired insurer for purposes of this chapter if any action described by Section 462.004(5) is taken with respect to the company.

(c) A claim under an insurance policy described by Subsection (a) is a covered claim for purposes of this chapter if the claim is a covered claim for purposes of Sections 462.201-462.203, 462.205-462.210, 462.213, 462.214, and 462.305 without regard to whether the stock insurance company described by Subsection (b):

(1) issued or assumed the policy; or

(2) was authorized to engage in business in this state at the time:

(A) the policy was written; or

(B) the company became an impaired insurer.

(d) If a conflict exists between this section and any other statute relating to the former Texas workers' compensation insurance facility or the association, this section controls.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.010. CONFLICT WITH OTHER LAWS. (a) Except as provided by Subsection (b), if this chapter conflicts with another statute relating to the association, this chapter controls.

(b) This section does not apply to a conflict between this chapter and:

(1) Subtitle A, Title 5, Labor Code, except as described by Subsection (c); or

(2) Subtitle E, Title 10.

(c) This chapter controls with respect to subrogation rights of an insurance carrier under Chapter 417, Labor Code, against an impaired insurer's insured or the association.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.011. IMMUNITY IN GENERAL. (a) Liability does not

exist and a cause of action does not arise against any of the following persons for any good faith act or omission in performing the person's powers and duties under this chapter:

- (1) the commissioner or the commissioner's representative;
- (2) the association or the association's agent or employee;
- (3) a member insurer;
- (4) the board;
- (5) the receiver; or
- (6) a special deputy receiver or the special deputy receiver's agent or employee.

(b) The attorney general shall defend any action to which this section applies that is brought against the commissioner or the commissioner's representative, the association or the association's agent or employee, a member insurer or the insurer's agent or employee, a board member, or a special deputy receiver or the special deputy receiver's agent or employee, including an action instituted after the defendant's service with the association, commissioner, or department has terminated. This subsection does not require the attorney general to defend a person with respect to an issue other than the applicability or effect of the immunity created by Subsection (a). The attorney general is not required to defend the association or the association's agent or employee, a member insurer or the member insurer's agent or employee, a board member, or a special deputy receiver or the special deputy receiver's agent or employee against an action regarding the disposition of a claim filed with the association under this chapter or any issue other than the applicability or effect of the immunity created by Subsection (a). The association may contract with the attorney general under Chapter 771, Government Code, for legal services not covered by this subsection. Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.012. IMMUNITY IN RELATION TO CERTAIN REPORTS AND RECOMMENDATIONS. Liability does not exist and a cause of action does not arise against any of the following persons for a statement

made in good faith by the person in a report or recommendation made under Section 462.111 or 462.113:

(1) the commissioner or the commissioner's representative;

(2) the association or the association's agent or employee;

(3) a member insurer; or

(4) the board.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.013. IMMUNITY IN RELATION TO CERTAIN NEGOTIATIONS.

(a) Liability does not exist and a cause of action does not arise against any of the following persons for an act or omission in the performance of an activity related to the negotiations relating to the privatization of the former Texas workers' compensation facility:

(1) the commissioner or the commissioner's representative;

(2) the association or the association's agent or employee;

(3) a member insurer; or

(4) a board member.

(b) This section applies to each activity undertaken by a person described by Subsection (a), regardless of the date of the act or omission.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.014. RULES. The commissioner shall adopt reasonable rules as necessary to implement and supplement this chapter and this chapter's purposes.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.015. INFORMATION PROVIDED BY OR TO COMMISSIONER.

(a) The commissioner shall notify the association of the existence of an impaired insurer not later than the third day after the date the commissioner gives notice of the designation of impairment. The association is entitled to a copy of any complaint

seeking an order of receivership with a finding of insolvency against a member insurer at the time the complaint is filed with a court.

(b) On the board's request, the commissioner shall provide the association with a statement of the net direct written premiums of each member insurer.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.016. PENALTY FOR FAILURE TO PAY ASSESSMENTS OR COMPLY WITH PLAN OF OPERATION. (a) The commissioner shall suspend or revoke, after notice and hearing, the certificate of authority to engage in the business of insurance in this state of a member insurer that:

(1) fails to pay an assessment at the time the assessment is due; or

(2) otherwise fails to comply with the plan of operation.

(b) As an alternative to action under Subsection (a), the commissioner may assess a fine on a member insurer that fails to pay an assessment at the time the assessment is due. The fine may not exceed the lesser of:

(1) five percent of the unpaid assessment per month; or

(2) \$100 per month.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.017. APPEALS AND OTHER ACTIONS. (a) A final action or order of the commissioner under this chapter is subject to judicial review by a court.

(b) Venue in a suit by or against the commissioner or association relating to an action or ruling of the commissioner or association under this chapter is in Travis County. The commissioner or association is not required to give an appeal bond in an appeal of a cause of action arising under this chapter.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [730](#), Sec. 3B.008(a), eff.

September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. [921](#), Sec. 9.008(a), eff. September 1, 2007.

SUBCHAPTER B. GOVERNANCE OF ASSOCIATION

Sec. 462.051. ASSOCIATION AS LEGAL ENTITY; MEMBERSHIP. (a) The Texas Property and Casualty Insurance Guaranty Association is a nonprofit unincorporated legal entity.

(b) The association is composed of all member insurers. A member insurer must remain a member of the association as a condition of engaging in the business of insurance in this state. Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.052. BOARD OF DIRECTORS. (a) The association's powers are exercised through a board of directors consisting of nine individuals.

(b) Member insurers shall select five insurance industry board members, subject to the approval of the commissioner. In approving selections to the board, the commissioner shall consider whether all member insurers are fairly represented.

(c) Four board members must be public representatives appointed by the commissioner.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.053. ELIGIBILITY TO SERVE AS PUBLIC REPRESENTATIVE. A board member who is a public representative may not be:

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

(2) a person required to register with the Texas Ethics Commission under Chapter 305, Government Code, in connection with the person's representation of clients in the field of insurance; or

(3) related to a person described by Subdivision (1) or (2) within the second degree of affinity or consanguinity.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.054. ELIGIBILITY TO SERVE AS INDUSTRY REPRESENTATIVE. To be eligible to serve as an insurance industry board member, an individual must be a full-time employee of a member insurer.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.055. TERM; VACANCY. (a) A board member serves a term established by the plan of operation.

(b) The remaining board members, by majority vote, shall fill a vacancy on the board for the unexpired term, subject to the commissioner's approval.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.056. REIMBURSEMENT OF BOARD MEMBERS. A board member may be reimbursed from the assets of the association for expenses the board member incurs as a board member.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.057. FINANCIAL STATEMENT OF BOARD MEMBER. Each board member shall file with the Texas Ethics Commission a financial statement as provided by Subchapter B, Chapter 572, Government Code.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.058. CONFLICT OF INTEREST. (a) A director of the association or a member insurer or other entity represented by the director may not receive money or another valuable thing directly, indirectly, or through any substantial interest in any other corporation, firm, or business unit for negotiating, procuring, participating in, recommending, or aiding in a reinsurance agreement, merger, or other transaction, including the purchase, sale, or exchange of assets, insurance policies, or property made by the association or the supervisor, conservator, or receiver on behalf of an impaired insurer.

(b) The director, member insurer, or entity may not be

pecuniarily or contractually interested, as principal, coprincipal, agent, or beneficiary, directly, indirectly, or through any substantial interest in any other corporation, firm, or business unit, in the reinsurance agreement, merger, purchase, sale, exchange, or other transaction.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.059. MEETING BY CONFERENCE CALL. (a) Notwithstanding Chapter 551, Government Code, the board may hold an open meeting by telephone conference call if immediate action is required and convening of a quorum of the board at a single location is not reasonable or practical.

(b) The meeting is subject to the notice requirements that apply to other meetings.

(c) The notice of the meeting must specify as the location of the meeting the location at which meetings of the board are usually held, and each part of the meeting that is required to be open to the public must be audible to the public at that location and must be tape recorded. The tape recording shall be made available to the public.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

SUBCHAPTER C. GENERAL POWERS AND DUTIES OF ASSOCIATION

Sec. 462.101. GENERAL POWERS AND DUTIES. (a) The association may:

(1) employ or retain persons as necessary to handle claims and perform other duties of the association;

(2) borrow money necessary to implement this chapter in accordance with the plan of operation;

(3) sue or be sued;

(4) negotiate and enter into a contract as necessary to implement this chapter; and

(5) perform other acts as necessary or proper to implement this chapter.

(b) A contract authorized by Subsection (a)(4) includes a lump-sum or structured compromise and settlement agreement with a

claimant who has a claim for medical or indemnity benefits for a period of three years or more, other than a settlement or lump-sum payment in violation of Subtitle A, Title 5, Labor Code.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.102. ASSOCIATION NOT IN PLACE OF IMPAIRED INSURER. In performing the association's statutory obligations under this chapter, the association is not considered:

- (1) to be engaged in the business of insurance;
- (2) to have assumed or succeeded to a liability of the impaired insurer; or
- (3) to otherwise stand in the place of the impaired insurer for any purpose, including for the purpose of determining whether the association is subject to personal jurisdiction of the courts of another state.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.103. PLAN OF OPERATION. (a) The association shall perform the association's functions under a plan of operation necessary or suitable to ensure the fair, reasonable, and equitable administration of the association. The plan of operation must:

- (1) be submitted to and approved in writing by the commissioner;
- (2) establish:
 - (A) procedures under which the powers and duties of the association are performed;
 - (B) procedures for handling assets of the association;
 - (C) the amount and method of reimbursing board members;
 - (D) acceptable forms of proof of covered claims;
 - (E) regular places and times for board meetings;
 - (F) procedures for records to be kept of each financial transaction of the association, the association's agents, and the board; and
 - (G) procedures under which selections for the board are submitted to the commissioner;

(3) provide:

(A) for the establishment of a claims filing procedure that includes:

(i) notice by the association to claimants;
(ii) procedures for filing claims seeking recovery from the association; and

(iii) a procedure for appealing the denial of claims by the association; and

(B) that a member insurer aggrieved by a final action or decision of the association may appeal to the commissioner not later than the 30th day after the date of the action or decision; and

(4) contain additional provisions necessary or proper for the execution of the association's powers and duties.

(b) The association shall submit to the commissioner any amendment to the plan of operation necessary or suitable to ensure the fair, reasonable, and equitable administration of the association. The amendment takes effect on the commissioner's written approval.

(c) If the association does not submit a suitable amendment to the plan of operation, the commissioner after notice and hearing shall adopt reasonable rules as necessary or advisable to implement this chapter. A rule continues in effect until modified by the commissioner or superseded by an amendment submitted by the association and approved by the commissioner.

(d) Each member insurer shall comply with the plan of operation.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.104. NOTICE TO INSUREDS. (a) The commissioner may require that the association notify an impaired insurer's insureds and any other interested parties of:

(1) the designation of impairment; and
(2) the insureds' and other parties' rights under this chapter.

(b) The association shall give notice as the commissioner directs under this section. The association shall mail the notice

to the last known address, if available. If sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation is sufficient notice.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.105. ACCOUNTS. For purposes of administration and assessment, the association is divided into:

- (1) the workers' compensation insurance account;
- (2) the automobile insurance account; and
- (3) the account for all other lines of insurance to which this chapter applies.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.106. ADMINISTRATIVE EXPENSES. (a) The association may use money in the administrative account to pay administrative costs and other general expenses of the association.

(b) The association may transfer income from investment of the association's money to the administrative account.

(c) On notification by the association of the amount of any additional money needed for the administrative account, the association shall assess member insurers in the manner provided by Sections 462.159-462.168 for that money. The commissioner shall consider the net direct written premiums collected in this state for all lines of business covered by this chapter. An assessment for administrative expenses incurred by a supervisor or conservator appointed by the commissioner or a court-appointed receiver for a nonmember of the association or unauthorized insurer operating in this state may not exceed \$1 million each calendar year.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.107. EXAMINATION OF ASSOCIATION. Not later than April 30 of each year, the association shall submit an audited financial statement for the preceding calendar year to the state auditor in a form approved by the state auditor's office.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.108. DEPOSIT OF MONEY. The board may deposit the

money the association collects into the Texas Treasury Safekeeping Trust Company in accordance with procedures established by the comptroller. The comptroller shall account to the association for the deposited money separately from all other money.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.109. DELEGATION OF POWERS AND DUTIES. (a) Except as provided by Subsection (b), the plan of operation may provide that, on approval of the board and the commissioner, the association may delegate by contract any or all powers or duties of the association to a corporation or other organization that:

(1) performs or will perform in two or more states functions similar to those of the association or the association's equivalent; and

(2) provides protection not substantially less favorable and effective than that provided by this chapter.

(b) The association may not delegate a power or duty under Section 462.101(a)(2), 462.151, 462.154, 462.155, or 462.302(d) under this section.

(c) The association shall:

(1) reimburse the corporation or other organization as a servicing facility would be reimbursed; and

(2) pay the corporation or other organization for the performance of any other functions of the association.

(d) A contract entered into under this section is subject to the performance standards imposed under Section 442.112.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.110. EXEMPTION FROM CERTAIN FEES AND TAXES. The association is exempt from payment of all fees and of all taxes levied by this state or a subdivision of this state, except taxes levied on real or personal property.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.111. ACCESS TO RECORDS OF MEMBER INSURER IN RECEIVERSHIP; ACTUARIAL AND OPERATIONAL ANALYSIS. (a) The association shall have access to the books and records of a member

insurer in receivership to determine the extent of the impact on the association if the member becomes impaired.

(b) The association may:

(1) perform or cause to be performed an actuarial and operational analysis of the member insurer; and

(2) prepare a report on matters relating to the impact or potential impact on the association in the event of impairment.

(c) A report prepared under Subsection (b) is not a public document.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.112. BOARD ACCESS TO RECORDS OF IMPAIRED INSURER.

The receiver or statutory successor of an impaired insurer covered by this chapter shall give the board or the board's representative:

(1) access to the insurer's records as necessary for the board to perform the board's functions under this chapter relating to covered claims; and

(2) copies of those records on the board's request and at the board's expense.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.1121. ACTION TO OBTAIN INFORMATION CONCERNING INSURER IN RECEIVERSHIP AUTHORIZED. (a) The association may bring an action against any third-party administrator, agent, attorney, or other representative of an insurer for which a receiver has been appointed to obtain custody and control of all information, including files, records, and electronic data, related to the insurer that is appropriate or necessary for the association, or a similar association in other states, to carry out its duties under this chapter or a similar law of another state. The association has the absolute right to obtain information under this section through emergency equitable relief, regardless of where the information is physically located.

(b) In bringing an action under this section, the association is not subject to any defense, possessory lien or other type of lien, or other legal or equitable ground for refusal to surrender the information that may be asserted against the receiver

of the insurer.

(c) The association is entitled to an award of reasonable attorney's fees and costs incurred by the association in any action to obtain information under this section.

(d) The rights granted to the association under this section do not affect the receiver's title to information, and information obtained under this section remains the property of the receiver while in the custody of the association.

Added by Acts 2007, 80th Leg., R.S., Ch. [730](#), Sec. 3B.007(b), eff. September 1, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. [921](#), Sec. 9.007(b), eff. September 1, 2007.

Sec. 462.113. BOARD REPORT ON CONCLUSION OF INSOLVENCY. On the conclusion of the insolvency of a domestic insurer with respect to which the association was obligated to pay covered claims, the board may:

(1) prepare a report on the history and causes of the insolvency, based on information available to the association; and

(2) submit the report to the commissioner.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.114. DUTY OF RECEIVER. The receiver shall periodically submit a list of claims to the association or similar organization in another state.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

SUBCHAPTER D. ASSESSMENTS IN GENERAL

Sec. 462.151. MAKING OF ASSESSMENT; AMOUNT. (a) The association shall assess member insurers the amount necessary to pay:

(1) the association's obligations under Section 462.302 and the expenses of handling covered claims subsequent to an insolvency; and

(2) other expenses authorized by this chapter.

(b) The assessment of each member insurer must be in the

proportion that the net direct written premiums of the insurer for the calendar year preceding the assessment bear to the net direct written premiums of all member insurers for that year.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.152. MAXIMUM TOTAL ASSESSMENT. (a) The total assessment of a member insurer in a year may not exceed an amount equal to two percent of the insurer's net direct written premiums for the calendar year preceding the assessment.

(b) If the maximum assessment and the association's other assets are insufficient in a year to make all necessary payments, the money available shall be prorated and the association shall pay the unpaid portion as soon as money becomes available.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.153. REFUND OF CONTRIBUTION. The association may refund to the member insurers in proportion to the contribution of each member insurer to the association the amount by which the association's assets exceed the association's liabilities, if at the end of a calendar year the board finds that the assets of the association exceed the liabilities of the association as estimated by the board for the next year.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.154. NOTICE OF ASSESSMENT. The association shall notify a member insurer of an assessment not later than the 30th day before the date the assessment is due.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.155. DEFERMENT. (a) The association may defer wholly or partly an assessment of a member insurer that would cause the insurer's financial statement to show amounts of capital or surplus less than the minimum amounts required for a certificate of authority in any jurisdiction in which the insurer is authorized to engage in the business of insurance.

(b) The member insurer shall pay the deferred assessment at the time payment will not reduce capital or surplus below required

minimums. The payment shall be refunded to or credited against future assessments of any member insurer receiving a larger assessment because of the deferment, as elected by that insurer.

(c) During a period of deferment, the member insurer may not pay a dividend to shareholders or policyholders.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.156. USE OF ASSESSMENTS. (a) The amounts provided under assessments made under this chapter supplement the marshalling of assets by the receiver under Chapter 442 to make payments on the impaired insurer's behalf.

(b) This section does not require the receiver to exhaust the assets of the impaired insurer before an assessment is made or before money derived from an assessment may be used to pay covered claims.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.157. TAX CREDIT. (a) An insurer is entitled to a credit against the insurer's premium tax under Chapter 221 for the total amount of an assessment paid by the insurer under this chapter.

(b) The tax credit may be taken at a rate of 10 percent each year for 10 successive years after the date of assessment. At the option of the insurer, the tax credit may be taken over an additional number of years.

(c) The balance of a tax credit not claimed in a particular year may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in an annual statement under Section 862.001.

(d) Available credit against premium tax allowed under this section may be transferred or assigned among insurers if:

(1) a merger, acquisition, or total assumption of reinsurance among the insurers occurs; or

(2) the commissioner by order approves the transfer or assignment.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.158. ADVANCE AS LOAN. Money advanced by the association under this chapter is considered a special fund loan to the impaired insurer for payment of covered claims and does not become an asset of the impaired insurer. The loan is repayable to the extent money from the impaired insurer is available.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.159. ESTIMATE OF ADDITIONAL MONEY NEEDED ON IMPAIRMENT OF INSURER. (a) If the commissioner determines that an insurer has become an impaired insurer, the association shall promptly estimate the amount of additional money, by lines of business, needed to supplement the immediately available assets of the impaired insurer to pay covered claims.

(b) The board shall make additional money available as the actual need arises for each impaired insurer.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.160. ASSESSMENT FOR ADDITIONAL MONEY FOR ACCOUNTS. If the board determines that additional money is needed in any of the three accounts described by Section 462.105, the board shall make assessments as needed to produce the necessary money.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.161. AMOUNT OF ASSESSMENT; PRORATION OF PAYMENT. (a) The association, in determining the proportionate amount to be paid by individual insurers under an assessment under Section 462.160, shall consider the lines of business written by the impaired insurer and shall assess individual insurers in proportion to the ratio that the total net direct written premiums collected in this state by the insurer for those lines of business bears to the total net direct written premiums collected by all insurers, other than impaired insurers, in this state for those lines of business.

(b) The association shall determine the total net direct written premiums of an individual insurer and of all insurers in the state from the insurers' annual statements for the year preceding assessment.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.162. MAXIMUM ASSESSMENT OF INSURER; ADDITIONAL ASSESSMENT AUTHORITY UNDER CERTAIN CIRCUMSTANCES. (a) Except as otherwise provided by this section, assessments under Section 462.160 during a calendar year may not exceed two percent of each insurer's net direct written premiums for the preceding calendar year in the lines of business for which the assessments are made.

(b) In the event of a natural disaster or other catastrophe, the association may apply to the governor, in the manner prescribed by the plan of operation, for authority to assess each member insurer that writes insurance coverage, other than automobile insurance coverage or workers' compensation insurance coverage, an additional amount not to exceed two percent of the insurer's net direct written premiums for the preceding calendar year.

(c) If the maximum assessment in a calendar year does not provide an amount sufficient for payment of covered claims of impaired insurers, the association may make assessments in successive calendar years.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.163. PAYMENT OF ASSESSMENT. An insurer shall pay the amount of an assessment under Section 462.160 or 462.162(b) to the association not later than the 30th day after the date the association gives notice of the assessment.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.164. PARTICIPATION RECEIPTS. (a) On receipt from a member insurer of payment of an assessment or partial assessment under Section 462.160 or 462.162(b), the association shall provide the insurer with a participation receipt. A participation receipt creates liability against the account described by Section 462.105 for the line or lines of business for which the assessment was made.

(b) The account from which an advance is made to an impaired insurer for the payment of covered claims is a general creditor of the impaired insurer for the money advanced. With reference to the remaining balance of an advance not used to pay covered claims, the claim of the account has preference over other general creditors.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.165. ACCOUNTING; REPORTS; REFUND. (a) The association, with respect to an impaired insurer, shall adopt accounting procedures that reflect the use of all money and shall make a final report of the use of the money to the commissioner. The final report must state any remaining balance from the money advanced to an impaired insurer for the payment of covered claims.

(b) The association shall make interim accounting reports as required by the commissioner or requested by the conservator.

(c) As soon as practicable after completion of the final report, the association shall refund by line of business the remaining balance of those advances to the association's accounts.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.166. USE OF EXCESS MONEY IN ACCOUNT. (a) If the association determines that money in the account described by Section 462.164(b) for a line of business exceeds the amount reasonably necessary for efficient future operation under this chapter, the association shall, after deducting any premium tax credit taken under Section 462.157, return the excess money pro rata to the holders of participation receipts:

(1) on which an outstanding balance exists; and

(2) that were issued for an assessment on the same line of business as the line for which the excess money is found to exist.

(b) The association shall transfer an excess amount that exists in the account described by Section 462.164(b) to the comptroller to be deposited to the credit of the general revenue fund if:

(1) after a distribution under this section the association finds that an excess amount still exists; or

(2) participation receipts on which there is an outstanding balance do not exist.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.167. COLLECTION OF ASSESSMENTS. (a) The commissioner may collect an assessment on behalf of the association through a suit brought for that purpose.

(b) Venue for a suit under this section is in Travis County.

(c) Either party to the suit may appeal to an appellate court. The appeal is at once returnable to the appellate court. The appeal has precedence in the appellate court over all causes of a different character pending before the court.

(d) The commissioner is not required to give an appeal bond in any cause of action arising under this section.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.168. EXEMPTION FOR IMPAIRED INSURER. An impaired insurer is exempt from assessment from the date the insurer is designated an impaired insurer until the date the commissioner determines that the insurer is no longer an impaired insurer.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

SUBCHAPTER E. COVERED CLAIMS; CLAIMANTS

Sec. 462.201. COVERED CLAIMS IN GENERAL. A claim is a covered claim if:

(1) the claim is an unpaid claim;

(2) the claim is made under an insurance policy to which this chapter applies that is:

(A) issued by an insurer authorized to engage in business in this state; or

(B) assumed by an insurer authorized to engage in business in this state that issues an assumption certificate to the insured;

(3) the claim arises out of the policy and is within the coverage and applicable limits of the policy;

(4) the insurer that issued the policy or assumed the policy under an assumption certificate issued to the insured is an impaired insurer; and

(5) the claim:

(A) is made by a liability claimant or insured

who is a resident of this state at the time of the insured event; or

(B) is a first-party claim for damage to property that is permanently located in this state.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.202. CLAIM FOR UNEARNED PREMIUMS. (a) A claim for unearned premiums is a covered claim. A covered claim for unearned premiums may not exceed \$25,000.

(b) With respect to a covered claim for unearned premiums, a person has a covered claim under this chapter if the person is a resident of this state at the time:

(1) the policy is issued; or

(2) the insurer is determined to be an impaired insurer.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.203. CERTAIN EXPENSES OF RECEIVERSHIP OR CONSERVATORSHIP ESTATE COVERED. An administration expense incurred in processing or paying a claim against a receivership or conservatorship estate is a covered claim if the impaired insurer has insufficient assets to pay the expenses of administering the estate.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.204. AFFILIATE MAY NOT BE CLAIMANT. A person who is an affiliate of an impaired insurer may not be a claimant of the insurer.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.205. DETERMINATION OF RESIDENCE OF ENTITIES. A corporation or other entity that is not an individual is considered to be a resident of the state in which the entity's principal place of business is located.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.206. CLAIMS NOT COVERED: PREMIUM UNDER RETROSPECTIVE RATING PLAN. An amount sought as a return of premium

under a retrospective rating plan is not a covered claim.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.207. CLAIMS NOT COVERED: AMOUNTS DUE CERTAIN ENTITIES. (a) Any amount directly or indirectly due any reinsurer, insurer, self-insurer, insurance pool, or underwriting association, as a subrogation recovery, reinsurance recovery, contribution, or indemnification, or otherwise, is not a covered claim.

(b) An impaired insurer's insured is not liable, and the reinsurer, insurer, self-insurer, insurance pool, or underwriting association is not entitled to sue or continue a suit against the insured, for a subrogation recovery, reinsurance recovery, contribution, indemnification, or any other claim asserted directly or indirectly by a reinsurer, insurer, insurance pool, or underwriting association to the extent of the applicable liability limits of the insurance policy written and issued to the insured by the insolvent insurer.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [730](#), Sec. 3B.006(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. [921](#), Sec. 9.006(a), eff. September 1, 2007.

Sec. 462.208. CLAIMS NOT COVERED: SUPPLEMENTARY PAYMENT OBLIGATIONS. A supplementary payment obligation, including an adjustment fee or expense, attorney's fee or expense, court cost, interest or penalty, or interest or bond premium, incurred before an insurer is determined to be an impaired insurer is not a covered claim.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.209. CLAIMS NOT COVERED: PREJUDGMENT OR POSTJUDGMENT INTEREST. Prejudgment or postjudgment interest that accrues after an insurer is determined to be an impaired insurer is not a covered claim.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.210. CLAIMS NOT COVERED: CERTAIN DAMAGES. A claim against the insured, insurer, guaranty association, receiver, special deputy receiver, or commissioner for recovery of punitive, exemplary, extracontractual, or bad-faith damages awarded in a court judgment against an insured or insurer is not a covered claim. Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.211. CLAIMS NOT COVERED: LATE FILED CLAIMS. (a) Notwithstanding any other provision of this chapter or any other law to the contrary, and subject to Subsection (b), a claim that is filed with the association on a date that is later than 18 months after the date of the order of liquidation or that is unknown and unreported as of the date is not a covered claim.

(b) This section does not apply to a claim for workers' compensation benefits governed by Title 5, Labor Code, and the applicable rules of the commissioner of workers' compensation.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [730](#), Sec. 3B.007(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. [921](#), Sec. 9.007(a), eff. September 1, 2007.

Sec. 462.212. NET WORTH EXCLUSION. (a) Except for a workers' compensation claim governed by Title 5, Labor Code, a covered claim does not include, and the association is not liable for, any claim arising from an insurance policy of any insured whose net worth on December 31 of the year preceding the date the insurer becomes an impaired insurer exceeds \$50 million.

(b) For purposes of this section, an insured's net worth includes the aggregate net worth of the insured and of the insured's parent, subsidiary, and affiliated companies computed on a consolidated basis.

(c) This section does not apply:

(1) to third-party claims against an insured that has:

(A) applied for or consented to the appointment of a receiver, trustee, or liquidator for all or a substantial part of the insurer's assets;

(B) filed a voluntary petition in bankruptcy; or

(C) filed a petition or an answer seeking a reorganization or arrangement with creditors or to take advantage of any insolvency law; or

(2) if an order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating the insured bankrupt or insolvent or approving a petition seeking reorganization of the insured or of all or a substantial part of its assets.

(d) In an instance described by Subsection (c), the association is entitled to assert a claim in the bankruptcy or receivership proceeding to recover the amount of any covered claim and costs of defense paid on behalf of the insured.

(e) The association may establish procedures for requesting financial information from an insured or claimant on a confidential basis for the purpose of applying sections concerning the net worth of first-party and third-party claimants, subject to any information requested under this subsection being shared with any other association similar to the association and with the liquidator for the impaired insurer on the same confidential basis. If the insured or claimant refuses to provide the requested financial information, the association requests an auditor's certification of that information, and the auditor's certification is available but not provided, the association may deem the net worth of the insured or claimant to be in excess of \$50 million at the relevant time.

(f) In any lawsuit contesting the applicability of Section 462.308 or this section when the insured or claimant has declined to provide financial information under the procedure provided in the plan of operation under Section 462.103, the insured or claimant bears the burden of proof concerning its net worth at the relevant time. If the insured or claimant fails to prove that its net worth at the relevant time was less than the applicable amount, the court shall award the association its full costs, expenses, and

reasonable attorney's fees in contesting the claim.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [730](#), Sec. 3B.010(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. [921](#), Sec. 9.010(a), eff. September 1, 2007.

Sec. 462.213. AMOUNT OF INDIVIDUAL COVERED CLAIM; LIMIT.

(a) Except as provided by Subsection (b) and Section 462.252, an individual covered claim may not exceed \$300,000.

(b) The association shall pay the full amount of a covered claim arising out of a workers' compensation claim made under a workers' compensation insurance policy.

(c) For purposes of this section, an individual covered claim includes any derivative claims by more than one person that arise from the same occurrence. The claims shall be considered collectively as a single claim under this chapter.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.214. CERTAIN SHAREHOLDERS' CLAIMS: LIMIT.

Notwithstanding any other provision of this chapter, the association's liability for shareholder derivative actions or other claims for economic loss incurred by a claimant in the claimant's capacity as a shareholder under an insurance policy placed in force on or after January 1, 1992, is limited to \$300,000 for each policy, including defense costs, regardless of the number of claimants under each policy.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

SUBCHAPTER F. NONDUPLICATION OF RECOVERY

Sec. 462.251. EXHAUSTION OF RIGHTS UNDER OTHER POLICY

REQUIRED. (a) Any person who has a claim under an insurance policy, other than an impaired insurer's policy, and whose claim arises from the same facts, injury, or loss giving rise to a claim against an impaired insurer or the insurer's insured, must first

exhaust the person's rights under the insurance policy, including:

(1) a claim for benefits under a workers' compensation insurance policy or a claim for indemnity or medical benefits under a health, disability, uninsured motorist, personal injury protection, medical payment, liability, or other insurance policy; and

(2) the right to defense under the insurance policy.

(b) Subsection (a) applies without regard to whether the insurance policy is issued by a member insurer.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.252. REDUCTION IN AMOUNT OF COVERED CLAIM FOR OTHER POLICY. (a) Except as provided by Subsection (b), an amount payable as a covered claim under this chapter is reduced by the full applicable limits of another insurance policy described by Section 462.251, and the association shall receive a full credit in the amount of the full applicable limits of the other policy.

(b) A covered claim for workers' compensation benefits is subject to reduction only by a third-party liability recovery under Section 417.002, Labor Code.

(c) Subject to Section 462.255, the maximum amount payable by the association is the damages incurred by the claimant, less the association's credit or offset under this section, except that the association's liability may not exceed the lesser of:

(1) \$300,000; or

(2) the limits of the insurance policy under which the claim is made.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.253. EFFECT ON INSURED OF REDUCTION IN AMOUNT OF COVERED CLAIM. To the extent that the association's obligation is reduced by the application of Sections 462.251 and 462.252, the liability of the person insured by the impaired insurer's policy for the claim is reduced in the same amount.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.254. RECOVERY FROM MORE THAN ONE GUARANTY

ASSOCIATION. (a) Except as provided by Subsections (b) and (c), a person who has a claim that may be recovered from more than one insurance guaranty association or the equivalent shall seek recovery first from the association of the insured's residence.

(b) A claimant shall seek recovery of a first-party claim for damage to property with a permanent location first from the association of the location of the property.

(c) A claimant shall seek recovery of a workers' compensation claim first from the association of the claimant's residence.

(d) The association has a credit or offset against the benefits under this chapter in the amount of the claimant's recovery under this section.

(e) Subject to Section 462.255, the maximum amount payable by the association is the amount of damages incurred by the claimant, less the credit or offset, except that the association's liability may not exceed \$300,000.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.255. CERTAIN CLAIMS SUBJECT TO LIEN OR SUBROGATION; LIMIT ON TOTAL RECOVERY. (a) Notwithstanding Sections 462.252(c) and 462.254(e), if a claimant is seeking recovery of insurance policy benefits that, had the impaired insurer not been insolvent, would be subject to lien or subrogation by any other insurer, including a workers' compensation insurer or health insurer, regardless of whether the other insurer is impaired, the association's credit or offset is deducted from the lesser of the damages incurred by the claimant or the limits of the policy under which the claim is made.

(b) A claimant's recovery under this chapter may not result in a total recovery to the claimant that is greater than the recovery that would have resulted had the impaired insurer not been insolvent.

(c) Subject to Sections 462.201-462.203, 462.205-462.210, 462.213, 462.214, and 462.305 of this code and Title 5, Labor Code, a claim for workers' compensation benefits under this chapter may not result in a recovery to the claimant that is less than the

recovery that would have resulted had the impaired insurer not been insolvent.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

SUBCHAPTER G. ASSOCIATION POWERS AND DUTIES RELATING TO COVERED
CLAIMS

Sec. 462.301. GENERAL POWERS AND DUTIES OF ASSOCIATION IN CONNECTION WITH PAYMENT OF COVERED CLAIMS. (a) The association shall investigate and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims.

(b) The association may review a settlement, release, or judgment to which an impaired insurer or the impaired insurer's insured was a party to determine the extent to which the settlement, release, or judgment may be properly contested.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.302. PAYMENT OF COVERED CLAIMS. (a) The association shall pay covered claims that exist before the designation of impairment or that arise:

(1) not later than the 30th day after the date of the designation of impairment;

(2) before the insurance policy expiration date, if that date is not later than the 30th day after the date of the designation of impairment; or

(3) before the insured replaces the insurance policy or causes the policy's cancellation, if the insured does so not later than the 30th day after the date of the designation of impairment.

(b) The association satisfies the obligation to pay a covered claim by paying the claimant the full amount of a covered claim for benefits.

(c) The association's liability is limited to the payment of covered claims. The association is not liable for any other claim or damages against the insured, an impaired insurer, the association, the receiver, the special deputy receiver, the

commissioner, or the liquidator, including a claim for:

(1) recovery of attorney's fees, prejudgment or postjudgment interest, or penalties;

(2) extracontractual damages, multiple damages, or exemplary damages; or

(3) any other amount sought in connection with the assertion or prosecution of a claim, without regard to whether the claim is a covered claim, by or on behalf of:

(A) an insured or claimant; or

(B) a provider of goods or services retained by an insured or claimant.

(d) The association shall pay claims in the order the association considers reasonable, including paying as claims are received from the claimants or in groups or categories of claims.

(e) This section does not exclude the payment of workers' compensation benefits or other liabilities or penalties authorized by Title 5, Labor Code, arising from the association's processing and paying workers' compensation benefits after the designation of impairment.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.303. CERTAIN DETERMINATIONS NOT BINDING. (a) The association is not bound by:

(1) a judgment taken before the designation of impairment in which an insured under a liability insurance policy or the insurer failed to exhaust all appeals;

(2) a judgment taken by default or consent against an insured or the impaired insurer; or

(3) a judgment, settlement, or release entered into by the insured or the impaired insurer.

(b) A judgment, settlement, or release described by Subsection (a) is not evidence of liability or of damages in connection with a claim brought against the association or another party under this chapter.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.304. SERVICING FACILITY. (a) The association

shall handle claims through the association's employees or through one or more insurers or other persons designated, subject to the approval of the commissioner, as servicing facilities.

(b) A member insurer may decline designation as a servicing facility.

(c) The association shall:

(1) reimburse a servicing facility for:

(A) obligations of the association paid by the facility; and

(B) expenses incurred by the facility in handling claims for the association; and

(2) pay the other expenses of the association authorized by this chapter.

(d) The commissioner may revoke the designation of a servicing facility if the commissioner finds that servicing facility is handling claims unsatisfactorily.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.305. LIMITATION OF ASSOCIATION'S LIABILITY. The association is not liable to an insured or liability claimant for the association's failure to settle a liability claim within the limits of a covered claim under this chapter. A claim described by this section for failure to settle a liability claim is not a covered claim.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.306. DISCHARGE OF POLICY OBLIGATION. (a) The association shall discharge an impaired insurer's policy obligations, including the duty to defend insureds under a liability insurance policy, to the extent that the policy obligation is a covered claim under this chapter.

(b) In performing the association's statutory obligations, the association may also enforce a duty imposed on the insured or beneficiary under the terms of an insurance policy within the scope of this chapter.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.307. ASSIGNMENT OF RIGHTS. (a) A person recovering under this chapter assigns to the association the person's rights:

(1) under the insurance policy; and

(2) to recover for the occurrence that is the basis of the claim under this chapter under an insurance policy issued by an unimpaired insurer to the extent of the person's recovery from the association.

(b) The association may pursue a claim to which the association is subrogated under Subsection (a) in the association's own name or in the name of the person recovering under this chapter.

(c) An insured or claimant seeking the protection of this chapter shall cooperate with the association to the same extent as that person would have been required to cooperate with the impaired insurer.

(d) Except as provided by Section 462.308, the association does not have a cause of action against the impaired insurer's insured for money the association has paid, other than a cause of action that the impaired insurer would have had if the money had been paid by the impaired insurer.

(e) In the case of an impaired insurer operating on a plan with assessment liability, the payment of a claim of the association does not reduce the liability of the insured to the receiver or statutory successor for an unpaid assessment.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.308. RECOVERY FROM CERTAIN PERSONS. (a) The association is entitled to recover:

(1) the amount of a covered claim and the cost of defense paid on behalf of a person:

(A) who is an affiliate of the impaired insurer;
and

(B) whose liability obligations to other persons are satisfied wholly or partly by payment made under this chapter;
and

(2) the amount of a covered claim for workers' compensation insurance benefits and the costs of administration and

defense of the claim paid under this chapter from an insured employer whose net worth on December 31 of the year preceding the date the insurer becomes an impaired insurer exceeds \$50 million.

(b) The association is not entitled to recover under Subsection (a)(2) against an insured who is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, by being described by Section 501(c)(3) of that code.

(c) For purposes of Subsection (a)(2), an insured's net worth is deemed to include the aggregate net worth of the insured and of the insured's parent, subsidiary, and affiliated companies computed on a consolidated basis.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [730](#), Sec. 3B.009(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. [921](#), Sec. 9.009(a), eff. September 1, 2007.

Sec. 462.309. STAY OF PROCEEDINGS; CERTAIN DECISIONS NOT BINDING. (a) To permit the association to properly defend a pending cause of action, a proceeding in which an impaired insurer is a party or is obligated to defend a party in a court in this state, other than a proceeding directly related to the receivership or instituted by the receiver, is stayed for:

(1) a six-month period beginning on the later of the date of the designation of impairment or the date an ancillary proceeding is brought in this state; and

(2) a subsequent period as determined by the court, if any.

(b) The stay applies to each party to the proceeding and the proceeding is stayed for all purposes.

(c) A deadline imposed under the Texas Rules of Civil Procedure or the Texas Rules of Appellate Procedure is tolled during the stay. Statutes of limitation or repose are not tolled during the stay, and any action filed during the stay is stayed upon the filing of the action.

(d) The court in which the delinquency proceeding is pending

has exclusive jurisdiction regarding the application, enforcement, and extension of the stay and may issue an injunction or another similar order to enforce the stay.

(e) The commissioner may bring an ancillary conservation proceeding under Section 443.401 for the purpose of determining the application, enforcement, and extension of the stay to an impaired insurer that is not domiciled in this state.

(f) With respect to a covered claim arising from a judgment, order, decision, verdict, or finding based on the default of an impaired insurer or an impaired insurer's failure to defend the insured, the association, on the association's own behalf or on behalf of an insured and on application, shall be entitled to:

(1) have the court or administrator that made the judgment, order, decision, verdict, or finding set aside the judgment, order, decision, verdict, or finding; and

(2) defend the claim on the merits.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [730](#), Sec. 3B.011(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. [921](#), Sec. 9.011(a), eff. September 1, 2007.

Sec. 462.310. SETTLEMENT BY ASSOCIATION BINDING; PRIORITY OF CLAIM AND EXPENSES. (a) The settlement of a covered claim by the association or a similar organization in another state binds the receiver or statutory successor of an impaired insurer.

(b) The court having jurisdiction shall give the covered claim the same priority against assets of the impaired insurer that the claim would have had in the absence of this chapter.

(c) The expenses of the association or a similar organization in another state in handling claims have the same priority as the receiver's expenses.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

Sec. 462.311. REPORT TO RECEIVER. The association shall periodically file with the receiver of an impaired insurer a

statement of covered claims paid by the association and an estimate of claims anticipated against the association. The statement preserves the rights of the association against the assets of the impaired insurer.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.

SUBCHAPTER H. RELEASE FROM RECEIVERSHIP

Sec. 462.351. ISSUANCE OF POLICIES AFTER RELEASE FROM RECEIVERSHIP. (a) Except as provided by Subsection (b), an impaired insurer placed in receivership for which money has been advanced under this chapter may not be authorized, on release from receivership, to issue new or renewal insurance policies until the insurer repays the advances to the association.

(b) On application of the association and after hearing, the commissioner may permit the insurer to issue new insurance policies in accordance with the insurer's plan of operation for repayment of advances.

(c) The commissioner, in approving the plan of operation, may place restrictions on the issuance of new or renewal insurance policies as the commissioner considers necessary to implement the plan.

Added by Acts 2005, 79th Leg., Ch. [727](#), Sec. 1, eff. April 1, 2007.