

SUBJECT: Joint underwriting liability insurance for security services contractors

COMMITTEE: Insurance — committee substitute recommended

VOTE: 7 ayes — Smithee, Seaman, Eiland, B. Keffer, Taylor, Thompson, Van Arsdale

0 nays

2 absent — Isett, Oliveira

WITNESSES: For — Bob Burt, Associate Security Services and Investigators of the State of Texas

Against — Ronald G. DeLord, Combined Law Enforcement Associations of Texas; Joe Williams, Texas Retailers Association

BACKGROUND: The Private Security Bureau, a division of DPS, licenses individuals and companies engaged in the private security industry. The bureau offers four different types of licenses. The class A license is the investigations company license, covering operations of an investigations company. The class B license is the security services contractor license, covering operations of a security services contractor. The class C license covers the operations included within class A and class B. The class D license is the electronic access control device license, covering operations of an electronic access control device company. A person must hold a class B or C license to act as an alarm systems company, armored car company, courier company, guard company, or guard dog company.

To obtain a license from the bureau, an applicant must submit proof of a general liability insurance policy or a certificate of insurance for surplus lines coverage. The general liability insurance policy must pay on behalf of the licensee damages the licensee is legally obligated to pay resulting from bodily injury, property damage, or personal injury. The minimum limits of the policy must be \$100,000 for each occurrence of bodily injury and property damage, \$50,000 for each occurrence for personal injury, and a total aggregate of \$200,000 for all occurrences.

An insurance certificate filed with the bureau remains in effect until the insurer terminates future liability by providing to the bureau intent to terminate liability with 10 days notice.

DIGEST:

CSHB 1132 would amend the Insurance Code to establish a joint underwriting association (JUA) to provide general liability insurance to security services contractors on a self-supporting basis. The JUA would be authorized to:

- issue or cause to be issued general liability insurance policies, including primary, excess, and incidental coverages;
- underwrite general liability insurance and adjust and pay losses related to that insurance, or appoint servicing insurers to perform those functions;
- accept and/or refuse the assumption of reinsurance from JUA members; and
- cede and purchase reinsurance.

The JUA could not offer surplus lines insurance with respect to general liability insurance for security services contractors. The JUA would provide general liability insurance coverage in at least the amounts sufficient to satisfy the requirements of Occupations Code, sec. 1702.124. The coverage would be allowed to include additional related liability coverage necessary or advisable for the operations of a security services contractor.

The insurance commissioner would establish the categories of security services contractors eligible to obtain general liability insurance coverage from the JUA based on the types of services the contractors provide. Coverage would have to be available for security services contractors that provide services that support critical infrastructure and homeland security activities in Texas. If a category of security services contractors were excluded from eligibility to obtain coverage from the association, and if the commissioner determined after a hearing that general liability insurance was not otherwise available, the previously excluded category of contractors would be eligible to obtain coverage from the association. In the hearing to establish that it could not obtain coverage outside of the association, the contractor would have to show that it made an effort to obtain coverage but was unable to do so.

The JUA would issue a general liability insurance policy to an applicant if the JUA determined that the applicant met the underwriting standards of the JUA established in the plan of operation and if there were no unpaid and uncontested premium, policyholder's stabilization reserve fund charge, or assessment due from the applicant for prior insurance. The JUA would also be required to receive payment of the premium and the policyholder's stabilization reserve fund charge before it could issue the policy. The JUA could offer an installment payment plan for general liability insurance coverage obtained through the JUA and for the required payment into the policyholder's stabilization fund. A general liability insurance policy issued by the JUA would be for a term of one year or less. To terminate the policy, the JUA would notify the Private Security Bureau of its intent to terminate liability with 10 days notice as required by Occupations Code, sec. 1702.124.

The JUA would be subject to the laws that govern other insurers, including ch. 251 (General Provisions), ch. 253 (Casualty Insurance and Fidelity, Guaranty, and Surety Bond Insurance), art. 1.15 (To Examine Carriers), and art. 1.16 (Expenses of Examinations; Disposition of Sums Collected).

The membership of the JUA would include every insurer, including a Lloyd's plan and a reciprocal or interinsurance exchange, that was authorized to write and who was writing liability insurance, including automobile liability insurance, on a direct basis in Texas. The membership would not include a farm mutual insurance company or a county mutual insurance company. Each member would participate in the writings, expenses, and losses of the JUA in the proportion to its net direct premiums written during the preceding calendar year with respect to the aggregate net direct premiums written in Texas by all members.

The JUA would be governed by a board of directors composed of the nine members, including five representatives of insurers that are JUA members and are elected by members, two representatives of security services contractors appointed by the insurance commissioner, and two public members appointed by the commissioner.

The JUA would operate under a plan of operation adopted by the commissioner. The plan would provide for economic, fair, and nondiscriminatory administration and for the prompt and efficient provision of general liability insurance. Other required provisions would

relate to the establishment of necessary facilities, the association's management, the assessment of members and policyholders to defray losses and expenses, the administration of the policyholder's stabilization reserve fund, and reasonable and objective underwriting standards. The plan would direct that any revenue exceeding expenditures that remained in the association's funds at the close of the association's fiscal year be added to the association's reserves. Amendments to the plan of operation could be made in two ways: at the commissioner's discretion or by the board of directors with the commissioner's approval.

The JUA would file an annual statement by March 1 of each year with the Department of Insurance containing information on its transactions, condition, operations, and affairs during the preceding calendar year. The Department of Insurance at any time would be authorized to require the JUA to provide additional information regarding its transactions or condition or any related matter that was material and helpful in evaluating the scope, operation, and experience of the association.

The JUA could not issue or renew a general liability insurance policy for a security services contractor that included coverage for punitive damages assessed against the contractor.

To determine rates, rating plans, rating rules, rating classifications, territories, and policy forms, the JUA would consider several factors. Rates, rating plans, and rating rules would be based on the JUA's loss and expense experience and other information based on that experience. The premiums would have to be actuarially sound and self-supporting.

The JUA would be required to collect and administer the policyholder's stabilization reserve fund. Each policyholder would have to make an annual payment to the fund in an amount stated in its policy. The JUA would have to assess this fund until the net balance of the fund equaled the projected sum of premiums to be written in the year following the valuation date.

If the JUA sustained a deficit in a single year, the JUA would be required to recoup the losses in accordance with the plan of operation and with the rating plan in effect when the deficit was sustained under one or more of the following procedures, in this order: a contribution from the policyholder's stabilization reserve fund until the fund was exhausted; an assessment on the policyholders; or an assessment on the members.

Policyholders would share liability proportionately. If a deficit were sustained in a single year, the board would be required to levy an assessment on policyholders who held policies in force at any time during the two most recently completed calendar years. The total amount of such an assessment would have to be the amount that could not be recouped through the policyholder's stabilization reserve fund. The maximum assessment on each policyholder could not exceed the annual premium for the general liability insurance policy most recently in effect. If a JUA member were assessed, its maximum assessment would be limited to 1 percent of that member's policyholder surplus. Any amount not reimbursed by a particular member because of the limitation would be reallocated among the other JUA members. If the deficit exceeded 1 percent of all members' respective policyholder surplus, the JUA would be required to allocate to each member the amount of the deficit in accordance with the method of determining a member's participation.

If sufficient funds were not available for the sound financial operation of the association, each member would contribute to the financial requirements of the association. The JUA would reimburse an assessment or contribution with interest to JUA members or the state if members had recouped their assessments using premium tax credits. A member could show its assessment or contribution as an admitted asset until the amount was reimbursed or recouped. If a member had not been reimbursed, it could claim a credit against its premium taxes at a rate of 20 percent per year for five years.

An administrative appeals process would be available to an insured, an applicant for insurance, or an affected insurer that believed it had been wronged by an act, ruling, or decision of the JUA. Such a party would have 30 days from the date the act occurred to appeal to the board of directors. The board would have to hear the appeal within 30 days of receiving the appeal and to issue a decision within 10 days of the hearing. If the party was still aggrieved, it could appeal to the commissioner of insurance within 30 days of the final action taken by the board. The commissioner would hear the appeal within 30 days of receiving it and would issue a decision within 30 days of the hearing. After the commissioner's decision, the original complaining party or the JUA could petition for judicial review.

The JUA would not be liable and no cause of action would arise against the JUA, a JUA employee, an insurer, the commissioner of insurance, or

the Texas Department of Insurance for a good faith statement made by any of them in a report or communication concerning risks insured or to be insured through the JUA, or at an administrative hearing conducted in connection with the report or communication.

By October 1, 2005, the commissioner of insurance would appoint an initial board of directors. The initial board would serve until September 30, 2006. By January 1, 2006, the commissioner would adopt a plan of operation for the JUA after consulting with the initial board of directors, representatives of the public, and representatives of the security services industry. The plan would be required to include an assessment of the members for initial operating expenses of the association.

The bill also would amend sec. 1702.163 to require an applicant for a security officer commission to demonstrate minimum marksmanship competency with a handgun rather than a shotgun. The bill would amend sec. 1702.282 to exempt peace officers from providing fingerprints to the board for a criminal background check. The bill would instead require a law enforcement agency that employed a peace officer who applied for a security officer commission to provide the officer's fingerprints to the board.

The bill would amend Penal Code, sec. 46.005, to state that for purposes of asserting a defense to prosecution for possession of a chemical dispensing device, a defendant would have to be a commissioned security officer as defined by sec. 1702.002 of the Occupations Code or a noncommissioned security officer registered under sec. 1702.221 of the Occupations Code. The bill would replace references in sec. 46.005 to the Texas Commission on Private Security with references to the Texas Private Security Board.

The bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

Texas law requires anyone who holds a license under the Private Security Board to carry liability insurance. Security services contractors, however, often encounter difficulty finding an insurer willing to cover them. In particular, security services contractors who provide services that support critical infrastructure, such as highways or airports, and homeland security activities have trouble obtaining liability insurance. CSHB 1132 would ensure that all security services contractors were able to obtain liability insurance.

The bill also would eliminate the requirement that peace officers applying to become commissioned security officers submit fingerprints to the Private Security Board. Peace officers already must submit fingerprints to their employer, so requiring additional fingerprints is unnecessarily duplicative. The bill would allow any security officer, not just commissioned security officers, to carry pepper spray. The bill would require security officers to demonstrate marksmanship proficiency with a handgun – which security officers generally use – rather than with a shotgun.

OPPONENTS
SAY:

Except for farm and county mutual insurance companies, every insurer in Texas would be forced to become a member in the JUA established by CSHB 1132. In order to engage in the business of insurance, an insurer would have to remain a member. Every member would be forced to bear financial responsibility for losses incurred by the JUA in proportion to the amount of business that member does in Texas compared with other members. Potential losses in providing general liability insurance can be quite large, and the losses could be even greater because the members would be required to insure security services contractors that provide services that support critical infrastructure and homeland security. This could create a disincentive for some insurers to provide insurance in Texas because the more business they did, the more financial responsibility they would bear in the association.

NOTES:

HB 1132 as introduced would have provided immunity for an act or omission arising out of training for law enforcement agencies that train security officers. It would have required a person who failed to pay a licensed security services contractor for security services to pay the contractor three times the unpaid amount and all costs incurred as a result of failure to pay, including attorney's fees. It would have allowed a commissioned security officer who carried a weapon and made an incidental stop on the way to or from work to be exempt from the crime of unlawfully carrying a weapon. It also would have required obedience to a security officer who was directing traffic and had received training to do so.