

## **BILL ANALYSIS**

Senate Research Center

H.B. 4339  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Current law provides administrative and judicial remedies for persons who are harmed by the sale of unauthorized insurance in Texas. The administrative remedies include the issuance of a cease and desist order under Chapter 83 (Sanctions), Insurance Code. The judicial remedies include a receivership proceeding under Chapter 443 (Insurer Receivership Act), Insurance Code, which authorizes the attorney general to file an action on behalf of the commissioner of insurance (commissioner). In a receivership, the commissioner of insurance is appointed by the court as the receiver entity.

While a cease and desist order can suspend the activities of an unauthorized insurer, it does not provide a mechanism through which individuals may recover damages suffered as a result of unpaid claims on policies issued by unauthorized insurers. A receivership proceeding does provide such a mechanism, but the payment of claims depends on whether the entity has the available assets. The process for collecting such assets can be difficult and lengthy and, if the assets are insufficient to pay the claims, claims must be paid on a pro-rata basis. The existing funding mechanisms created to protect policy claimants from failed insurers do not cover the victims of unauthorized insurers. Guaranty associations, which consist of licensed insurers, only cover the claims of their member companies. While funds are available from the Abandoned Property Fund to pay for a receivership's administrative expenses, such funds cannot be used to pay insurance claims.

H.B. 4339 creates an unauthorized insurance guaranty fund to provide the receiver with funding to pay unpaid claims to individuals suffering damages as a result of policies issued by unauthorized insurers in Texas.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to commissioner of insurance in SECTION 1 (Section 464.007, Insurance code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle D, Title 4, Insurance Code, by adding Chapter 464, as follows:

#### CHAPTER 464. UNAUTHORIZED INSURANCE GUARANTY FUND ACT

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 464.001. SHORT TITLE. Authorizes this chapter to be cited as the Unauthorized Insurance Guaranty Fund Act.

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

(b) Requires the powers of the commissioner of insurance (commissioner) under this Act to be liberally construed to support the purpose stated in Subsection (a).

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

Sec. 464.003. DEFINITIONS. Defines "delinquency proceeding," "fund," "fund account," "policy claim," "receiver," and "unauthorized insurer."

Sec. 464.004. APPLICABILITY. Provides that this chapter applies to a delinquency proceeding under Chapter 443 (Insurer Receivership Act) of an unauthorized insurer.

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

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

Sec. 464.007. RULES. Authorizes the commissioner to adopt rules as necessary to implement this chapter.

[Reserves Sections 464.008-464.050 for expansion.]

#### SUBCHAPTER B. FUND

Sec. 464.051. CREATION OF UNAUTHORIZED INSURANCE GUARANTY FUND. Provides that the unauthorized insurance guaranty fund is established.

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

(b) Authorizes the commissioner to identify collected penalties to be deposited into the fund account from certain sources.

(c) Requires the commissioner, in determining the amounts to be deposited into the fund account, to consider certain criteria.

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

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

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

(b) Requires the commissioner, in determining an amount to be advanced, to consider certain criteria.

Sec. 464.054. USE OF FUNDS. (a) Authorizes an amount advanced under Section 464.053 to be used to supplement the assets of an unauthorized insurer to pay administrative expenses and policy claims that are approved by the commissioner in a proceeding under Section 443.051 (Receivership Court's Seizure Order), or the receiver in a proceeding under Section 443.052 (Commencement of Formal Delinquency Proceeding).

(b) Requires approved policy claims under this chapter, for the purposes of Section 443.301(b) (relating to Class 2 claims), to be classified as Class 2 claims.

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

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

(e) Authorizes a person who has a policy claim to receive funds deposited or advanced under this chapter only in accordance with this section.

SECTION 2. Effective date: upon passage or September 1, 2009.