

1 AN ACT

2 relating to provision of workers' compensation insurance coverage  
3 through a certified self-insurance group; providing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subtitle A, Title 5, Labor Code, is amended by  
6 adding Chapter 407A to read as follows:

7 CHAPTER 407A. GROUP SELF-INSURANCE COVERAGE

8 SUBCHAPTER A. GENERAL PROVISIONS

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

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

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

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

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

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

1 this chapter.

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

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

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

10 (B) the members of the group are engaged in  
11 similar operations.

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

15 (A) claims adjustment;

16 (B) safety engineering;

17 (C) compilation of statistics and the  
18 preparation of premium, loss, and tax reports;

19 (D) preparation of other required self-insurance  
20 reports;

21 (E) development of members' assessments and  
22 fees; and

23 (F) administration of a claim fund.

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

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

6           (1) are engaged in the same or a similar type of  
7 business;

8           (2) are members of a bona fide trade or professional  
9 association that has been in existence in this state for purposes  
10 other than insurance for at least five years before the  
11 establishment of the group; and

12           (3) enter into agreements to pool their liabilities  
13 for workers' compensation benefits and employers' liability in this  
14 state.

15           (b) This chapter does not apply to public employees or  
16 governmental entities.

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

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

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

27           (1) an insurer based on that certificate; and

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

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

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

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

15           Sec. 407A.007. HEARINGS. A hearing required under this  
16 chapter shall be conducted by the State Office of Administrative  
17 Hearings in the manner provided for a contested case under Chapter  
18 2001, Government Code.

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

21           [Sections 407A.009-407A.050 reserved for expansion]

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

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

1 certificate of approval.

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

4 (1) the name of the group;

5 (2) the location of the group's principal office;

6 (3) the date of organization of the group;

7 (4) the name and address of each employer that is a  
8 member of the group;

9 (5) the name, mailing address, and telephone number of  
10 the trade or professional association to which each group member  
11 belongs as required by Section 407A.002(a)(2);

12 (6) the governing classification code of the group or  
13 a description of the operations of each member of the group showing  
14 that the members of the group are engaged in similar operations;  
15 and

16 (7) any other information reasonably required by the  
17 commissioner.

18 (c) The application must be accompanied by:

19 (1) a nonrefundable \$1,000 filing fee;

20 (2) proof of compliance with the financial  
21 requirements under Section 407A.053;

22 (3) proof of compliance with the excess insurance  
23 requirements under Section 407A.054;

24 (4) a copy of the articles of association or  
25 declaration of trust of the group, if any;

26 (5) a copy of any agreements entered into with an  
27 administrator or a service company;

1           (6) a copy of the bylaws of the proposed group;

2           (7) a copy of the agreement between the group and each  
3 employer who is a member of the group that:

4                   (A) secures the payment of workers' compensation  
5 benefits; and

6                   (B) includes provisions for payment of  
7 assessments as provided by Section 407A.355;

8           (8) designation of the initial board of trustees and  
9 administrator of the group;

10           (9) the address in this state where the books and  
11 records of the group will be maintained at all times;

12           (10) a pro forma financial statement, in a form  
13 acceptable to the commissioner, that shows the financial ability of  
14 the group to pay the workers' compensation obligations of the  
15 employers who are members of the group;

16           (11) proof of one of the following:

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

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

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

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

3           (14) an indemnity agreement that meets the  
4 requirements of Section 407A.056.

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

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

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

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

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

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

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

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

27           Sec. 407A.052. ISSUANCE OF CERTIFICATE OF APPROVAL;

1 REFUSAL. (a) The commissioner shall issue a certificate of  
2 approval to a proposed group on finding that the group has met the  
3 requirements of this subchapter.

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

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

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

14 (b) The combined net worth of all employers who are members  
15 of the group must be at least \$2 million. A member of the group may  
16 not be required to submit an audited financial statement to  
17 establish the \$2 million combined net worth, but the group must file  
18 a report compiled by a certified public accountant and based on  
19 financial statements or tax returns to support the existence of a  
20 combined net worth of at least \$2 million for the initial group. In  
21 the case of a group composed of a trust existing on September 1,  
22 2003, the trust may satisfy the financial requirements of this  
23 section by showing that the trust has participant surplus,  
24 including accrued participant dividends of at least \$2 million, in  
25 lieu of the requirement of the \$2 million combined net worth of its  
26 members. Discounted reserves may not be considered in determining  
27 whether a trust existing on September 1, 2003, has a surplus of at



1 least \$2 million.

2 (c) The group must post security in the form and amount  
3 prescribed by the commissioner, equal to the greater of \$300,000 or  
4 25 percent of the group's total incurred liabilities for workers'  
5 compensation. The security may be provided by a surety bond,  
6 security deposit, or any combination of those securities. If a  
7 surety bond is used to meet the security requirement, the surety  
8 bond must be issued by a corporate surety company authorized to  
9 transact business in this state. If a security deposit is used to  
10 meet the security requirement, the following are acceptable  
11 securities:

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

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

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

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

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

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

25 (d) Any securities posted must be deposited in the state  
26 treasury and must be assigned to and made negotiable by the  
27 executive director of the commission under a trust document

1 acceptable to the commissioner. Interest accruing on a negotiable  
2 security deposited under this subsection shall be collected and  
3 transmitted to the depositor if the depositor is not in default.

4 (e) A bond or security deposit must be:

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

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

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

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

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

23 Sec. 407A.055. PREMIUM REQUIREMENTS. Each group must have  
24 an estimated premium subject to experience modifier of at least  
25 \$250,000 during the group's first year of operation. Thereafter,  
26 the annual standard premium must be at least \$500,000.

27 Sec. 407A.056. INDEMNITY AGREEMENT REQUIREMENTS. (a) An

1 indemnity agreement filed under Section 407A.051 must jointly and  
2 severally bind the group and each employer who is a member of the  
3 group to meet the workers' compensation obligations of each member.

4 (b) The indemnity agreement must be in the form prescribed  
5 by the commissioner and must include minimum uniform substantive  
6 provisions as prescribed by the commissioner. Subject to the  
7 commissioner's approval, a group may add other provisions necessary  
8 because of that group's particular circumstances.

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

10 In addition to the requirements under Section 407A.051, the  
11 commissioner may require a service company providing claim services  
12 to furnish a performance bond of \$250,000 in the form prescribed by  
13 the commissioner.

14 [Sections 407A.058-407A.100 reserved for expansion]

15 SUBCHAPTER C. TERMINATION OF CERTIFICATE OF APPROVAL

16 Sec. 407A.101. CERTIFICATE OF APPROVAL; TERMINATION. (a)

17 A certificate of approval remains in effect until terminated at the  
18 request of the group or revoked by the commissioner.

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

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

27 (2) incurred but not reported claims and expenses

1 associated with those claims.

2 [Sections 407A.102-407A.150 reserved for expansion]

3 SUBCHAPTER D. BOARD OF TRUSTEES

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

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

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

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

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

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

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

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

1 or

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

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

9 [Sections 407A.155-407A.200 reserved for expansion]

10 SUBCHAPTER E. GROUP MEMBERSHIP; TERMINATION; LIABILITY

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

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

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

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

21 (c) The membership of an individual member of a group is  
22 subject to cancellation by the group as provided by the bylaws of  
23 the group. An individual member may also elect to terminate  
24 participation in the group. The group shall notify the  
25 commissioner and the commission of the cancellation or termination  
26 of a membership not later than the 10th day after the date on which  
27 the cancellation or termination takes effect and shall maintain

1 coverage of each canceled or terminated member until the 30th day  
2 after the date of the notice, at the terminating member's expense,  
3 unless before that date the commission notifies the group that the  
4 canceled or terminated member has:

5 (1) obtained workers' compensation insurance  
6 coverage;

7 (2) become a certified self-insurer; or

8 (3) become a member of another group.

9 (d) The group shall pay each workers' compensation claim for  
10 which a member of the group incurs liability during the period of  
11 membership. A member who elects to terminate membership or whose  
12 membership is canceled by the group remains jointly and severally  
13 liable for the workers' compensation obligations of the group and  
14 its members incurred during the canceled or terminated member's  
15 period of membership.

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

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

24 [Sections 407A.202-407A.250 reserved for expansion]

25 SUBCHAPTER F. EXAMINATIONS, FINANCIAL STATEMENTS, AND OTHER  
26 REPORTS

27 Sec. 407A.251. FINANCIAL STATEMENT. (a) Each group shall

1 submit to the commissioner financial statements audited by an  
2 independent certified public accountant on or before the last day  
3 of the sixth month following the end of the group's fiscal year.

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

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

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

19 Sec. 407A.252. EXAMINATION. (a) The commissioner shall  
20 examine the financial condition of each group to determine the  
21 group's ability to meet the group's obligations under this  
22 subtitle. An examination under this section is subject to Article  
23 1.15, Insurance Code, except that, to the extent of a conflict  
24 between this chapter and that article, this chapter prevails. The  
25 commissioner may examine a group annually for the first three years  
26 of the group's operation. Beginning with the fourth year of  
27 operation, the commissioner may not examine a group more frequently

1 than once every three years unless the commissioner determines that  
 2 the group:

- 3 (1) is in an impaired financial condition; or  
 4 (2) otherwise may not be able to continue to meet the  
 5 group's obligations under this subtitle.

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

12 [Sections 407A.253-407A.300 reserved for expansion]

13 SUBCHAPTER G. TAXES, FEES, AND ASSESSMENTS

14 Sec. 407A.301. MAINTENANCE TAX FOR COMMISSION AND RESEARCH  
 15 AND OVERSIGHT COUNCIL. (a) Each group shall pay a self-insurance  
 16 group maintenance tax under this section for:

- 17 (1) the administration of the commission;  
 18 (2) the prosecution of workers' compensation insurance  
 19 fraud in this state; and  
 20 (3) the Research and Oversight Council on Workers'  
 21 Compensation.

22 (b) The tax liability of a group under Subsections (a)(1)  
 23 and (2) is based on gross premium for the group's retention  
 24 multiplied by the rate assessed insurance carriers under Sections  
 25 403.002 and 403.003.

26 (c) The tax liability of a group under Subsection (a)(3) is  
 27 based on gross premium for the group's retention multiplied by the



1 rate assessed insurance carriers under Section 404.003.

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

4 (e) The tax under this section shall be collected by the  
5 comptroller as provided by Article 5.68, Insurance Code.

6 Sec. 407A.302. MAINTENANCE TAX FOR DEPARTMENT. (a) Subject  
7 to Subsection (b), each group shall pay the maintenance tax imposed  
8 under Article 5.68, Insurance Code, for the administrative costs  
9 incurred by the department in implementing this chapter.

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

13 (c) The maintenance tax assessed under this section is  
14 subject to Article 5.68, Insurance Code, and shall be collected by  
15 the comptroller in the manner provided by that article.

16 Sec. 407A.303. COLLECTION AND PAYMENT OF TAXES. (a) The  
17 group shall remit the taxes for deposit in the state treasury to the  
18 credit of the commission.

19 (b) A group commits a violation if the group does not pay the  
20 taxes imposed under Sections 407A.301 and 407A.302 in a timely  
21 manner. A violation under this subsection is a Class B  
22 administrative violation. Each day of noncompliance constitutes a  
23 separate violation.

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

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

5       (b) The rate for the premium tax under this section is the  
6 rate assessed under Article 4.10, Insurance Code.

7       [Sections 407A.305-407A.350 reserved for expansion]

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

9       Sec. 407A.351. RATES. (a) Except as provided by  
10 Subsection (b), each group shall use the uniform classification  
11 system, experience rating plan, and rate relativities of the  
12 department.

13       (b) A group may:

14           (1) use the relativities promulgated by the department  
15 modified to produce rates in accordance with the group's historical  
16 experience; or

17           (2) file its own rates with the department, including  
18 any reasonable and supporting information required by the  
19 commissioner.

20       (c) As approved by the commissioner, a group may use rating  
21 debts or credits and optional rating plans.

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

24       Sec. 407A.352. AUDITS. Each member of a group shall be  
25 audited annually by the administrator or by an auditor acceptable  
26 to the commissioner to verify proper classifications, experience  
27 rating, payroll, and rates. The group shall maintain a record of

1 the audit as part of the group's records that are available to the  
2 commissioner during an examination conducted under Section  
3 407A.252. The audit shall be performed at the expense of the group.

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

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

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

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

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

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

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

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

27 Sec. 407A.355. DEFICITS; INSOLVENCIES. (a) For purposes

1 of this section, "insolvent" means:

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

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

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

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

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

18 (2) administrative funds;

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

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

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

25 (e) If the group fails to assess its members or to otherwise  
26 make up a deficit, the commissioner shall order the group to do so.  
27 If the commissioner determines that the group is in a hazardous

1 financial condition, the commissioner may take action as provided  
2 by Article 21.28-A, Insurance Code, and may order the group to  
3 rectify the condition through an alternate method under Subsection  
4 (c)(4). The group is considered an insurer only for purposes of  
5 Article 21.28-A, Insurance Code. Otherwise, to the extent of a  
6 conflict between this chapter and that article, this chapter  
7 prevails.

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

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

17 Sec. 407A.356. GUARANTY MECHANISM. (a) In the event of a  
18 liquidation under Section 407A.355, after exhausting the security  
19 required under Section 407A.053 and levying an assessment against  
20 the members of an insolvent group under Section 407A.355(g), the  
21 commissioner shall levy an assessment against all groups as  
22 necessary to ensure prompt payment of:

23 (1) benefits; and

24 (2) expenses related to payment of benefits.

25 (b) The assessment under this section on each group shall be  
26 based on the proportion that the premium of each group bears to the  
27 total premium of all groups.

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

4           (d) The assessment under this section does not relieve any  
5 member of an insolvent group of its joint and several liability.

6           (e) Subject to Section 407A.357(d), this section expires on  
7 creation of the Texas Group Self-Insurance Guaranty Association  
8 under Section 407A.357.

9           Sec. 407A.357. TEXAS GROUP SELF-INSURANCE GUARANTY  
10 ASSOCIATION; ADVISORY COMMITTEE. (a) Subject to Subsection (d), the  
11 Texas Group Self-Insurance Guaranty Association shall be  
12 established not later than January 1, 2006, based on  
13 recommendations from the guaranty association advisory committee  
14 established under Subsection (b). The guaranty association shall  
15 provide for the payment of workers' compensation insurance benefits  
16 and expenses related to payment of those benefits for the injured  
17 employees of an insolvent group.

18           (b) The guaranty association advisory committee is composed  
19 of the following voting members:

20           (1) three members who represent different groups under  
21 this chapter, subject to Subsection (c);

22           (2) one commission member who represents wage earners;

23           (3) one member designated by the commissioner; and

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

26           (c) If three groups under this chapter have not been  
27 established by July 1, 2004, the advisory committee shall include

1 representatives of any certified groups, and the commissioner shall  
2 choose the remaining voting members under Subsection (b)(1):

3 (1) from members of a bona fide trade association in  
4 this state that is eligible for and has applied for a certificate of  
5 approval; or

6 (2) if an association described by Subdivision (1)  
7 does not exist as of July 1, 2004, from any association in this  
8 state representing employers in the same or a similar business that  
9 has been in existence for at least five years for purposes other  
10 than obtaining insurance coverage.

11 (d) If the advisory committee under this section recommends  
12 that a guaranty association not be created, the guaranty mechanism  
13 under Section 407A.356 continues in effect.

14 [Sections 407A.358-407A.400 reserved for expansion]

15 SUBCHAPTER I. DISCIPLINARY ACTIONS; PENALTIES

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

21 Sec. 407A.402. FINES. After notice and an opportunity for  
22 a hearing, the commissioner may impose a fine on any person or group  
23 found to be in violation of this chapter or a rule adopted under  
24 this chapter. A fine assessed under this section may not exceed  
25 \$1,000 for each act or violation and may not exceed \$10,000 in the  
26 aggregate. The amount of any fine assessed under this section shall  
27 be paid to the commissioner and deposited in the state treasury.

1       Sec. 407A.403. CEASE AND DESIST ORDERS. (a) After notice  
2 and an opportunity for a hearing, the commissioner may issue an  
3 order requiring a person or group to cease and desist from engaging  
4 in an act or practice found to be in violation of this chapter or a  
5 rule adopted under this chapter.

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

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

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

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

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

18           (1) is found to be insolvent;

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

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

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

27           (1) a certificate of approval issued to the group was



1 obtained by fraud;

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

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

10 SECTION 2. Section 401.011(27), Labor Code, is amended to  
11 read as follows:

12 (27) "Insurance carrier" means:

13 (A) an insurance company;

14 (B) a certified self-insurer for workers'  
15 compensation insurance; [~~or~~]

16 (C) a certified self-insurance group under  
17 Chapter 407A; or

18 (D) a governmental entity that self-insures,  
19 either individually or collectively.

20 SECTION 3. Article 5.57A(a)(3), Insurance Code, is amended  
21 to read as follows:

22 (3) "Group" means:

23 (A) two or more business entities that join  
24 together with the approval of the Board to purchase individual  
25 workers' compensation insurance policies covering each business  
26 entity that is a part of the group; or

27 (B) two or more members of a trade association of

1 business entities that join together to purchase individual  
2 workers' compensation insurance policies covering each  
3 participating trade association member.

4 SECTION 4. Articles 5.57A(b) and (c), Insurance Code, are  
5 amended to read as follows:

6 (b) On receiving approval of the Board as provided by this  
7 article, two or more business entities or two or more members of a  
8 trade association may join together to form a group to purchase  
9 individual workers' compensation insurance policies covering each  
10 member of the group.

11 (c) To be eligible to join a group, a business entity must  
12 be:

13 (1) engaged in a business pursuit that is the same as  
14 or similar to the other business entities participating in the  
15 group as determined by the Board; or

16 (2) a member of the same trade association as the other  
17 business entities participating in the group.

18 SECTION 5. (a) Except as provided by Subsection (b) of this  
19 section, this Act takes effect September 1, 2003.

20 (b) A workers' compensation self-insurance group created  
21 under Chapter 407A, Labor Code, as added by this Act, that is issued  
22 a certificate of approval by the commissioner of insurance under  
23 that chapter, may offer workers' compensation insurance coverage  
24 beginning January 1, 2004. Chapter 407A, Labor Code, as added by  
25 this Act, applies only to a claim for workers' compensation  
26 benefits based on a compensable injury that occurs on or after  
27 January 1, 2004. A claim based on a compensable injury that occurs

1 before that date is governed by the law in effect on the date that  
2 the compensable injury occurred, and the former law is continued in  
3 effect for that purpose.

David Dewhurst

President of the Senate

Jim Caddick

Speaker of the House

I certify that H.B. No. 2095 was passed by the House on May 16, 2003, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 2095 on May 30, 2003, by a non-record vote.

Robert Honey

Chief Clerk of the House

I certify that H.B. No. 2095 was passed by the Senate, with amendments, on May 28, 2003, by a viva-voce vote.

Larry Spaw

Secretary of the Senate

APPROVED:

18 JUNE '03

Date

Rick Perry

Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE

8:30pm O'CLOCK

JUN 18 2003  
Ann Shea  
Secretary of State