

INSURANCE CODE

CHAPTER 463. TEXAS LIFE, ACCIDENT, HEALTH, AND HOSPITAL SERVICE  
INSURANCE GUARANTY ASSOCIATION  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 463.001. SHORT TITLE. This chapter may be cited as the Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association Act.

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.012(b), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 9.012(b), eff. September 1, 2007.

Sec. 463.002. PURPOSE. The purpose of this chapter is to protect, subject to certain limitations, a person specified by Section 463.201 against failure in the performance of a contractual obligation under a life, accident, or health insurance policy or annuity contract with respect to which this chapter provides coverage as determined under Subchapter E, because of the impairment or insolvency of the member insurer that issued the policy or contract.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.003. GENERAL DEFINITIONS. In this chapter:

(1) "Association" means the Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association.

(1-a) "Benefit plan" means a specific employee, union, or association of natural persons benefit plan.

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

(3) "Contractual obligation" means an obligation under a policy or contract or certificate under a group policy or contract, or part of a policy or contract or certificate, for which coverage is provided under Subchapter E.

(4) "Covered policy" means a policy or contract, or portion of a policy or contract, with respect to which this chapter provides coverage as determined under Subchapter E.

(5) "Impaired insurer" means a member insurer that is designated an "impaired insurer" by the commissioner and is:

(A) placed by a court in this state or another state under an order of supervision, liquidation, rehabilitation, or conservation;

(B) placed under an order of liquidation or rehabilitation under Chapter 443; or

(C) placed under an order of supervision or conservation by the commissioner under Chapter 441.

(6) "Insolvent insurer" means a member insurer that has been placed under an order of liquidation with a finding of insolvency by a court in this state or another state.

(7) "Member insurer" means an insurer that is required to participate in the association under Section 463.052.

(7-a) "Owner" means the owner of a policy or contract and "policy owner" and "contract owner" mean the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and is properly recorded as the owner on the books of the insurer. The terms "owner," "contract owner," and "policy owner" do not include persons with a mere beneficial interest in a policy or contract.

(8) "Person" means an individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.

(8-a) "Plan sponsor" means:

(A) the employer in the case of a benefit plan established or maintained by a single employer;

(B) the employee organization in the case of a benefit plan established or maintained by an employee organization; or

(C) in a case of a benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.

(9) "Premium" means an amount received on a covered

policy, less any premium, consideration, or deposit returned on the policy, and any dividend or experience credit on the policy. The term does not include:

(A) an amount received for a policy or contract or part of a policy or contract for which coverage is not provided under Section 463.202, except that assessable premiums may not be reduced because of:

(i) an interest limitation provided by Section 463.203(b)(3); or

(ii) a limitation provided by Section 463.204 with respect to a single individual, participant, annuitant, or contract owner;

(B) premiums in excess of \$5 million on an unallocated annuity contract not issued under a governmental benefit plan established under Section 401, 403(b), or 457, Internal Revenue Code of 1986;

(C) premiums received from the state treasury or the United States treasury for insurance for which this state or the United States contracts to:

(i) provide welfare benefits to designated welfare recipients; or

(ii) implement Title 2, Human Resources Code, or the Social Security Act (42 U.S.C. Section 301 et seq.); or

(D) premiums in excess of \$5 million with respect to multiple nongroup policies of life insurance owned by one owner, regardless of whether the policy owner is an individual, firm, corporation, or other person and regardless of whether the persons insured are officers, managers, employees, or other persons, regardless of the number of policies or contracts held by the owner.

(10) "Resident" means a person who resides in this state on the earlier of the date a member insurer becomes an impaired insurer or the date of entry of a court order that determines a member insurer to be an impaired insurer or the date of entry of a court order that determines a member insurer to be an insolvent insurer and to whom the member insurer owes a contractual obligation. For the purposes of this subdivision:

(A) a person is considered to be a resident of only one state;

(B) a person other than an individual is considered to be a resident of the state in which the person's principal place of business is located; and

(C) a United States citizen who is either a resident of a foreign country or a resident of a United States possession, territory, or protectorate that does not have an association similar to the association created by this chapter is considered a resident of the state of domicile of the insurer that issued the policy or contract.

(10-a) "Structured settlement annuity" means an annuity purchased to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

(11) "Supplemental contract" means a written agreement for the distribution of policy or contract proceeds.

(12) "Unallocated annuity contract" means an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under the contract or certificate.

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.013(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 9.013(a), eff. September 1, 2007.

Sec. 463.0031. DEFINITION OF PRINCIPAL PLACE OF BUSINESS OF PLAN SPONSOR OR OTHER PERSON. (a) Except as otherwise provided by this section, in this chapter, the "principal place of business" of a plan sponsor or a person other than an individual means the single state in which the individuals who establish policy for the direction, control, and coordination of the operations of the plan sponsor or person as a whole primarily exercise that function, as determined by the association in its reasonable judgment by considering the following factors:

(1) the state in which the primary executive and administrative headquarters of the plan sponsor or person is

located;

(2) the state in which the principal office of the chief executive officer of the plan sponsor or person is located;

(3) the state in which the board of directors, or similar governing person or persons, of the plan sponsor or person conduct the majority of their meetings;

(4) the state in which the executive or management committee of the board of directors, or similar governing person or persons, of the plan sponsor or person conduct the majority of their meetings;

(5) the state from which the management of the overall operations of the plan sponsor or person is directed; and

(6) in the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the factors described by Subdivisions (1)-(5).

(b) In the case of a plan sponsor, if more than 50 percent of the participants in the benefit plan are employed in a single state, that state is the principal place of business of the plan sponsor.

(c) The principal place of business of a plan sponsor of a benefit plan described in Section 463.003(8-a)(C) is the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, shall be deemed to be the principal place of business of the employer or employee organization that has the largest investment in that benefit plan.

Added by Acts 2007, 80th Leg., R.S., Ch. 730, Sec. 3B.013(b), eff. September 1, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 9.013(b), eff. September 1, 2007.

Sec. 463.004. CONSTRUCTION. This chapter shall be liberally construed to implement the purpose of this chapter described by Section 463.002. Section 463.002 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. 463.005. IMMUNITY. (a) The following persons are not liable, and a cause of action does not arise against any of the following persons, for a good faith act or omission in exercising powers and performing 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 or the insurer's agent or employee;

(4) a board member;

(5) the receiver; and

(6) a special deputy receiver or the special deputy receiver's agent or employee.

(b) Immunity under Subsection (a) extends to participation in an organization of one or more state associations that have similar purposes and to a similar organization and the organization's agent or employee.

(c) 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 brought 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 this section. The attorney general is not required to defend 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 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 this section. 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. 463.006. RULES. The commissioner shall adopt reasonable rules as necessary to carry out and supplement this chapter and the purposes of this chapter.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

SUBCHAPTER B. GOVERNANCE OF AND PARTICIPATION IN ASSOCIATION

Sec. 463.051. PURPOSE AND REGULATION OF ASSOCIATION.

(a) The Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association is a nonprofit legal entity existing to pay benefits and continue coverage as provided by this chapter.

(b) The association is subject to the applicable provisions of this code and other insurance laws of this state and the immediate supervision of the commissioner. The commissioner may examine and regulate the association in the same manner as an insurer under this code.

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.014(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 9.014(a), eff. September 1, 2007.

Sec. 463.052. REQUIRED PARTICIPATION IN ASSOCIATION.

(a) As a condition of engaging in the business of insurance in this state, an insurer, including a mutual assessment company, a local mutual aid association, a statewide mutual assessment company, and a stipulated premium company authorized to engage in business in this state, shall participate as a member of the association if the insurer holds a certificate of authority to engage in a kind of insurance business in this state with respect to which this chapter provides coverage as determined under Subchapter E. The requirement to participate applies regardless of whether the insurer's certificate of authority in this state is suspended, revoked, not renewed, or voluntarily withdrawn.

(b) The following do not participate as member insurers:

- (1) a health maintenance organization;
- (2) a fraternal benefit society;
- (3) a mandatory state pooling plan;
- (4) a reciprocal or interinsurance exchange;
- (5) an organization which has a certificate of

authority or license limited to the issuance of charitable gift annuities, as defined by this code or rules adopted by the commissioner; and

(6) an entity similar to an entity described by Subdivision (1), (2), (3), (4), or (5).

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.013(c), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 9.013(c), eff. September 1, 2007.

Sec. 463.053. BOARD OF DIRECTORS. (a) The association's powers are exercised through a board of directors consisting of nine individuals appointed by the commissioner as provided by this section.

(b) The commissioner shall appoint three board members from officers or employees of the 50 member insurers having the largest total direct premium income according to the most recent financial statement on file on the date of appointment.

(c) To give fair representation to member insurers, the commissioner shall appoint two board members from member insurers other than insurers described by Subsection (b), considering the varying categories of premium income and geographical location.

(d) The commissioner shall appoint four board members who are public representatives.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.054. ELIGIBILITY TO SERVE AS PUBLIC REPRESENTATIVE. To be eligible to serve as a public representative, an individual may not:

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

(2) be a person required to register under Chapter 305, Government Code; or

(3) be related within the second degree by affinity or

consanguinity to a person described by Subdivision (1) or (2).  
Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.055. TERM; VACANCY. (a) Board members serve staggered six-year terms, with the terms of three members expiring each odd-numbered year. A member may be reappointed.

(b) A board member shall serve until a successor is appointed.

(c) If a board member who is an officer or employee of a member insurer ceases to be an officer or employee of the insurer, the member's office becomes vacant.

(d) The commissioner shall appoint an individual to fill a vacancy on the board for the unexpired term.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.056. COMPENSATION OF BOARD MEMBERS. A board member may not receive compensation from the association for the member's services but may be reimbursed from the association's assets for expenses incurred as a board member.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.057. 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. 463.058. CONFLICT OF INTEREST. (a) In this section, "transaction on behalf of an impaired insurer" includes a reinsurance agreement, transaction, merger, purchase, sale, contribution, or exchange of assets, insurance policies, or property made by the association or a supervisor, conservator, or receiver on behalf of an impaired insurer.

(b) A board member may not:

(1) receive money or another thing of value for negotiating, procuring, participating in, recommending, or aiding a transaction on behalf of an impaired insurer; or

(2) as a principal, coprincipal, agent, or beneficiary, have a pecuniary interest in a transaction on behalf of an impaired insurer.

(c) For the purposes of this section, a board member is considered to receive a thing of value or have a pecuniary interest in a transaction on behalf of an impaired insurer regardless of whether the receipt or interest is direct, indirect, or through a substantial interest in a corporation, firm, or other business unit.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

#### SUBCHAPTER C. GENERAL POWERS AND DUTIES OF ASSOCIATION

Sec. 463.101. GENERAL POWERS AND DUTIES. (a) The association may:

(1) enter into contracts as necessary or proper to carry out this chapter and the purposes of this chapter;

(2) sue or be sued, including taking:

(A) necessary or proper legal action to:

(i) recover an unpaid assessment under Subchapter D; or

(ii) settle a claim or potential claim against the association; or

(B) necessary legal action to avoid payment of an improper claim;

(3) borrow money to effect the purposes of this chapter;

(4) exercise, for the purposes of this chapter and to the extent approved by the commissioner, the powers of a domestic life, accident, or health insurance company or a group hospital service corporation, except that the association may not issue an insurance policy or annuity contract other than to perform the association's obligations under this chapter;

(5) to further the association's purposes, exercise the association's powers, and perform the association's duties, join an organization of one or more state associations that have similar purposes;

(6) request information from a person seeking coverage from the association in determining its obligations under this chapter with respect to the person, and the person shall promptly comply with the request; and

(7) take any other necessary or appropriate action to discharge the association's duties and obligations under this chapter or to exercise the association's powers under this chapter.

(b) If not in default, a note or other evidence of indebtedness of the association is a legal investment for a domestic insurer and may be carried as an admitted asset.

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.015(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 9.015(a), eff. September 1, 2007.

Sec. 463.102. PLAN OF OPERATION; AMENDMENTS. (a) The association shall perform the association's functions under a plan of operation approved by the commissioner. The plan of operation must:

- (1) establish:
  - (A) procedures for handling the assets of the association;
  - (B) the amount and method of reimbursing board members under Section 463.056;
  - (C) regular places and times for board meetings, including telephone conference calls;
  - (D) procedures for maintaining records of all financial transactions of the association, the association's agents, and the board; and
  - (E) additional procedures for assessments under Subchapter D; and

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

(b) The association may amend the plan of operation. An amendment must be approved by the commissioner and takes effect on:

(1) the date the commissioner approves the amendment;

or

(2) the 30th day after the date the amendment is submitted to the commissioner for approval, if the commissioner does not approve or disapprove the amendment before the 30th day.

(c) 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. 463.103. PERSONNEL. The association may employ or retain employees or contractors to handle the association's financial transactions and to perform other functions under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.104. ASSOCIATION RECORDS. (a) The association shall maintain a record of each negotiation or meeting in which the association or the association's representative discusses the association's activities in carrying out the powers and duties under Section 463.101, 463.103, 463.109, or 463.111(c) or Subchapter F.

(b) A record under Subsection (a) may be made public only on:

(1) termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer;

(2) termination of the impairment or insolvency of the insurer; or

(3) order of a court.

(c) This section does not limit the association's duty to report on the association's activities as required by Section 463.110.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.105. ACCOUNTS. For the purposes of administration and assessment, the association shall maintain:

(1) an accident, health, and hospital services insurance account;

(2) a life insurance account;

(3) an annuity account; and

(4) an administrative account.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.106. DELEGATION OF POWERS AND DUTIES. (a) The plan of operation may provide that, on approval of the board and the commissioner, a power or duty of the association is delegated to a corporation or other organization that:

(1) performs 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) A power or duty under Section 463.261(c) or Subchapter D, other than a duty under Section 463.161(c), may not be delegated under this section.

(c) The corporation or other organization to which a power or duty is delegated shall be:

(1) reimbursed for a payment made on behalf of the association; and

(2) paid for performing any other function of the association.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.107. EXEMPTION FROM TAXATION. The association is exempt from payment of all fees and all taxes levied by this state or a subdivision of this state, except taxes levied on property.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.108. DETECTION AND PREVENTION OF IMPAIRMENT AND INSOLVENCY. On a majority vote, the board:

(1) may make recommendations to the commissioner for detecting and preventing insurer insolvencies; and

(2) shall notify the commissioner of information indicating that a member insurer may be impaired or insolvent.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.109. ASSOCIATION APPEARANCE BEFORE COURT; INTERVENTION. (a) The association may appear before a court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this chapter. The association's right to appear applies to:

(1) a proposal for reinsuring, modifying, or guaranteeing the insurer's policies or contracts;

(2) the determination of the insurer's policies or contracts and contractual obligations; and

(3) any other matter germane to the association's powers and duties.

(b) The association may appear or intervene before a court in another state with jurisdiction over:

(1) an impaired or insolvent insurer concerning which the association is or may become obligated; or

(2) a third party against whom the association may have rights through subrogation of the insurer's policyholders.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.110. ANNUAL REPORT. Not later than the 120th day after the last day of each association fiscal year, the board shall submit to the commissioner:

(1) a financial report in a form approved by the commissioner; and

(2) a report of the association's activities during the preceding fiscal year.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.111. BOARD AND ASSOCIATION ADVICE AND ASSISTANCE.

(a) On a majority vote, the board may report and make recommendations to the commissioner on any matter germane to:

(1) the solvency, liquidation, rehabilitation, or conservation of a member insurer; or

(2) the solvency of an insurer seeking to engage in the business of insurance in this state.

(b) A report or recommendation under Subsection (a) is not a public document, and Chapter 552, Government Code, does not apply to the report or recommendation until the insurer that is the subject of the report or recommendation is designated as impaired.

(c) On the commissioner's request, the association may assist and advise the commissioner concerning rehabilitation, payment of claims, continuation of coverage, or the performance of other contractual obligations of an impaired or insolvent insurer.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.112. BOARD ACCESS TO RECORDS. The receiver or statutory successor of an impaired insurer shall give the board or a representative of the board:

(1) access to the insurer's records as necessary for the board to carry out 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. 463.113. BOARD REPORT AT CONCLUSION OF INSOLVENCY.

(a) At the conclusion of an insurer insolvency in which the

association was obligated to pay a covered claim, the board shall prepare and submit to the commissioner a report containing any information the board possesses concerning the history and causes of the insolvency.

(b) The board:

(1) shall cooperate with the boards of directors of guaranty associations in other states to prepare a report on the history and causes of the insolvency of a particular insurer; and

(2) may adopt by reference a report prepared by any of those associations.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.114. SUMMARY DOCUMENT; DISCLAIMER. (a) The association shall prepare a summary document describing the general purposes and limitations of this chapter and amend the document as necessary to comply with this chapter. The document must clearly and conspicuously contain on the document's face a disclaimer that:

(1) states the name and address of the association and department;

(2) warns the policy or contract holder that:

(A) the association may not cover the policy; or

(B) coverage, if available, is subject to substantial limitations and exclusions and requires continuous residence in this state;

(3) states that an insurer and the insurer's agent are prohibited by law from using the association's existence to sell, solicit, or induce the purchase of any kind of insurance;

(4) warns the policy or contract holder not to rely on association coverage in selecting an insurer; and

(5) provides other information the commissioner prescribes.

(b) The association shall submit the document to the commissioner for approval.

(c) At the expiration of the 60th day after approval of the document, an insurer may not deliver a policy or contract with respect to which this chapter provides coverage as determined under Subchapter E to a policy or contract holder before a copy of the summary document is delivered to the policy or contract holder. The document must also be available on request of a policyholder.

(d) The distribution, delivery, content, or interpretation of a summary document does not guarantee that a policy or contract or a policy or contract holder is provided coverage by this chapter if a member insurer becomes impaired or insolvent. Failure to receive the document does not give an insured or policy, contract, or certificate holder any rights greater than those provided by this chapter.

(e) An insurer or agent may not deliver a policy or contract described by Section 463.202 that is excluded from the coverage provided by this chapter by Section 463.203 unless the insurer or agent, either before or in conjunction with delivery, gives the policy or contract holder a separate written notice clearly and conspicuously disclosing that the policy or contract is not covered by the association.

(f) The commissioner shall specify by rule the form and content of the disclaimer required by Subsection (a) and the notice required by Subsection (e).

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

#### SUBCHAPTER D. ASSESSMENTS

Sec. 463.151. MAKING AND PAYMENT OF ASSESSMENT. (a) The association shall assess member insurers, separately for each account under Section 463.105, in the amounts and at the times the board determines necessary to provide money for the association to exercise the association's powers, perform the association's duties, and carry out the purposes of this chapter. The association may not authorize and call an assessment to meet the requirements of the association with respect to an impaired or insolvent insurer until the assessment is necessary to carry out the purposes of this chapter. The board shall classify assessments under Section 463.152 and determine the amount of assessments with reasonable accuracy, recognizing that exact determinations may not always be possible.

(a-1) The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called not later than the 180th day after the date the assessment is authorized.

(b) An assessment is due on the date the association specifies, which may not be earlier than the 30th day after the date the association gives written notice of the assessment to member insurers. Interest accrues on an unpaid amount at a rate of 10 percent beginning on the due date.

(c) An insurer whose certificate of authority to engage in business in this state is revoked or surrendered remains liable for any unpaid assessment made before the date of the revocation or surrender.

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.016(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 9.016(a), eff. September 1, 2007.

Sec. 463.152. CLASSES OF ASSESSMENTS. (a) Assessments are classified as Class A or Class B assessments.

(b) Class A assessments are authorized and called to pay:

(1) the association's administrative costs;

(2) administrative expenses that:

(A) are properly incurred under this chapter; and

(B) relate to an unauthorized insurer or to an

entity that is not a member insurer; and

(3) other general expenses not related to a particular impaired or insolvent insurer.

(c) Class B assessments are authorized and called to the extent necessary for the association to carry out the association's powers and duties under Sections 463.101, 463.103, 463.109, and 463.111(c) and Subchapter F with regard to an impaired or insolvent insurer.

(d) For purposes of this section, an assessment is authorized at the time a resolution by the board is passed under which an assessment will be called immediately or in the future from member insurers for a specified amount and an assessment is called at the time a notice has been issued by the association to member insurers requiring that an authorized assessment be paid within a period stated in the notice. An authorized assessment becomes a called assessment at the time notice is mailed by the association to member insurers.

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.016(b), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 9.016(b), eff. September 1, 2007.

Sec. 463.153. AMOUNT OF ASSESSMENTS. (a) The board shall determine the amount of a Class A assessment for each account under Section 463.105, considering with respect to member insurers one or more of the following as shown by annual statements for the year preceding the date of the assessment:

(1) annual premium receipts;

(2) admitted assets; or

(3) insurance in force.

(b) Class B assessments against a member insurer for each account under Section 463.105 shall be authorized and called in the proportion that the premiums received on business in this state by the insurer on policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the insurer became impaired or insolvent bear to premiums received on business in this state for those calendar years by all assessed member insurers. The amount of a Class B assessment shall be allocated among the separate accounts in accordance with an allocation formula that may be based on:

(1) the premiums or reserves of the impaired or insolvent insurer; or

(2) any other standard deemed by the board in the board's sole discretion as being fair and reasonable under the circumstances.

(c) The total amount of assessments on a member insurer for each account under Section 463.105 may not exceed two percent of the insurer's premiums on the policies covered by the account during the three calendar years preceding the year in which the insurer became an impaired or insolvent insurer. If two or more assessments are authorized in a calendar year with respect to

insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation described by this subsection shall be equal to the higher of the three-year average annual premiums for the applicable subaccount or account as computed in accordance with this section. If the maximum assessment and the other assets of the association do not provide in a year an amount sufficient to carry out the association's responsibilities, the association shall make necessary additional assessments as soon as this chapter permits.

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.016(c), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 9.016(c), eff. September 1, 2007.

Sec. 463.154. DEFERMENT. The association may wholly or partly defer an assessment of a member insurer if the association believes payment of the assessment would endanger the ability of the insurer to fulfill the insurer's contractual obligations. The amount of the assessment that is deferred may be assessed against the other member insurers in a manner consistent with this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.155. DEPOSIT OF ASSESSMENTS. The association may deposit assessments 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. 463.156. CERTIFICATE OF CONTRIBUTION. The association shall issue to each member insurer that pays a Class B assessment a certificate of contribution, in a form the commissioner prescribes, for the amount paid. All outstanding certificates are of equal priority regardless of the amount of the assessment paid or the date the certificate is issued.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.157. REFUNDS. (a) The board may refund to member insurers the amount by which the association's assets, including any net realized gains and income from investments, exceed the amount the board determines is necessary to carry out the association's obligations regarding that amount during the next year.

(b) A refund must be made:

(1) by an equitable method established in the plan of operation; and

(2) in proportion to the contribution of each member insurer.

(c) The board may retain a reasonable amount to provide for the association's continuing expenses and for future losses if refunds are impractical.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.158. USE OF ASSESSMENTS. Money from assessments supplements the marshalling of an impaired insurer's assets to make payments on the insurer's behalf.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.159. FAILURE TO PAY; COLLECTION BY COMMISSIONER. On failure of a member insurer to pay an assessment when due, the commissioner may either:

(1) suspend or revoke, after notice and hearing, the insurer's certificate of authority to engage in the business of insurance in this state; or

(2) levy a forfeiture in an amount not less than \$100 each month or more than five percent of the unpaid assessment each month.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.160. PREMIUM TAX CREDIT FOR CLASS A ASSESSMENT. The amount of a Class A assessment paid by a member insurer shall be allowed as a credit on the amount of premium taxes due in the same manner as a credit is allowed under Section 401.151(e).

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.161. PREMIUM TAX CREDIT FOR CLASS B ASSESSMENT. (a) A member insurer is entitled to show as an admitted asset a certificate of contribution in the form the commissioner approves under Section 463.156. Unless the commissioner requires a longer

period, the certificate may be shown at:

(1) for the calendar year of issuance, an amount equal to the certificate's original face value approved by the commissioner; and

(2) beginning with the year following the calendar year of issuance, an amount equal to the certificate's original face value, reduced by 20 percent a year for each year after the year of issuance, for a period of five years.

(b) An amount written off during a calendar year under Subsection (a) shall be allowed as a credit against the member insurer's premium tax owed for business engaged in during that year. The insurer is not required to write off in a single year an amount that exceeds the amount of premium tax owed for the business described by this subsection.

(c) The association shall pay to the commissioner, and the commissioner shall deliver to the comptroller for deposit to the credit of the general revenue fund, any amount owed as a refund from the association under Section 463.157 that was written off and used for a tax credit under this section.

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.017(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 9.017(a), eff. September 1, 2007.

Sec. 463.162. ASSIGNMENT OR TRANSFER OF CREDIT. (a) A member insurer may assign or transfer a credit against premium tax to another member insurer if:

(1) an acquisition, merger, or total assumption of reinsurance occurs between the insurers; or

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

(b) Not later than the later of November 1 or the 60th day after the date of the assignment or transfer, each member insurer shall:

(1) report the assignment or transfer to the comptroller on a form the comptroller prescribes; and

(2) include with the report any documents from the commissioner that show approval of the assignment or transfer.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.163. INSURED'S LIABILITY UNDER ASSESSMENT PLAN. This chapter does not reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

#### SUBCHAPTER E. COVERAGE PROVIDED BY ASSOCIATION

Sec. 463.201. INSUREDS COVERED. (a) Subject to Subsections (b) and (c), this chapter provides coverage for a policy or contract described by Section 463.202 to a person who is:

(1) a person, other than a certificate holder under a group policy or contract who is not a resident, who is a beneficiary, assignee, or payee of a person described by Subdivision (2);

(2) a person who is an owner of or certificate holder under a policy or contract specified by Section 463.202, other than an unallocated annuity contract or structured settlement annuity, and who is:

(A) a resident; or

(B) not a resident, but only under all of the following conditions:

(i) the insurers that issued the policies or contracts are domiciled in this state;

(ii) the state in which the person resides has an association similar to the association; and

(iii) the person is not eligible for coverage by an association in any other state because the insurer was not licensed in the state at the time specified in that state's guaranty association law;

(3) a person who is the owner of an unallocated annuity contract issued to or in connection with:

(A) a benefit plan whose plan sponsor has the sponsor's principal place of business in this state; or

(B) a government lottery, if the owner is a resident; or

(4) a person who is the payee under a structured

settlement annuity, or beneficiary of the payee if the payee is deceased, if:

(A) the payee is a resident, regardless of where the contract owner resides;

(B) the payee is not a resident, the contract owner of the structured settlement annuity is a resident, and the payee is not eligible for coverage by the association in the state in which the payee resides; or

(C) the payee and the contract owner are not residents, the insurer that issued the structured settlement annuity is domiciled in this state, the state in which the contract owner resides has an association similar to the association, and neither the payee or, if applicable, the payee's beneficiary, nor the contract owner is eligible for coverage by the association in the state in which the payee or contract owner resides.

(b) This chapter does not provide coverage to:

(1) a person who is a payee or the beneficiary of a payee with respect to a contract the owner of which is a resident of this state, if the payee or the payee's beneficiary is afforded any coverage by the association of another state; or

(2) a person otherwise described by Subsection (a)(3), if any coverage is provided by the association of another state to that person.

(c) This chapter is intended to provide coverage to persons who are residents of this state, and in those limited circumstances as described in this chapter, to nonresidents. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this chapter is provided coverage under the laws of any other state, the person may not be provided coverage under this chapter. In determining the application of the provisions of this subsection in situations in which a person could be covered by the association of more than one state, whether as an owner, payee, beneficiary, or assignee, this chapter shall be construed in conjunction with other state laws to result in coverage by only one association.

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.018(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 9.018(a), eff. September 1, 2007.

Sec. 463.202. POLICIES AND CONTRACTS COVERED. (a) Except as limited by this chapter, the coverage provided by this chapter to a person specified by Section 463.201, subject to Sections 463.201(b) and (c), applies with respect to the following policies and contracts issued by a member insurer:

(1) a direct, nongroup life, health, accident, annuity, or supplemental policy or contract;

(2) a certificate under a direct group policy or contract;

(3) a group hospital service contract; and

(4) an unallocated annuity contract.

(b) The coverage provided by this chapter also applies with respect to all other insurance coverage written by the following entities authorized to engage in business in this state:

(1) a mutual assessment company;

(2) a local mutual aid association;

(3) a statewide mutual assessment company; and

(4) a stipulated premium company.

(c) For the purposes of this section, an annuity contract or a certificate under a group annuity contract includes:

(1) a guaranteed investment contract;

(2) a deposit administration contract;

(3) an allocated or unallocated funding agreement;

(4) a structured settlement annuity;

(5) an annuity issued to or in connection with a government lottery; and

(6) an immediate or deferred annuity contract.

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.018(b), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 9.018(b), eff. September 1, 2007.

Sec. 463.203. POLICIES AND CONTRACTS EXCLUDED. (a) In

this section, "Moody's Corporate Bond Yield Average" means the monthly average corporates as published by Moody's Investors Service, Inc., or any successor to that entity.

(b) This chapter does not provide coverage for:

(1) any part of a policy or contract not guaranteed by the insurer or under which the risk is borne by the policy or contract owner;

(2) a policy or contract of reinsurance, unless an assumption certificate has been issued;

(3) any part of a policy or contract to the extent that the rate of interest on which that part is based:

(A) as averaged over the period of four years before the date the member insurer becomes impaired or insolvent under this chapter, whichever is earlier, exceeds a rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield Average averaged for the same four-year period or for a lesser period if the policy or contract was issued less than four years before the date the member insurer becomes impaired or insolvent under this chapter, whichever is earlier; and

(B) on and after the date the member insurer becomes impaired or insolvent under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available;

(4) a portion of a policy or contract issued to a plan or program of an employer, association, similar entity, or other person to provide life, health, or annuity benefits to the entity's employees, members, or others, to the extent that the plan or program is self-funded or uninsured, including benefits payable by an employer, association, or similar entity under:

(A) a multiple employer welfare arrangement as defined by Section 3, Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002);

(B) a minimum premium group insurance plan;

(C) a stop-loss group insurance plan; or

(D) an administrative services-only contract;

(5) any part of a policy or contract to the extent that the part provides dividends, experience rating credits, or voting rights, or provides that fees or allowances be paid to any person, including the policy or contract owner, in connection with the service to or administration of the policy or contract;

(6) a policy or contract issued in this state by a member insurer at a time the insurer was not authorized to issue the policy or contract in this state;

(7) an unallocated annuity contract issued to or in connection with a benefit plan protected under the federal Pension Benefit Guaranty Corporation, regardless of whether the Pension Benefit Guaranty Corporation has not yet become liable to make any payments with respect to the benefit plan;

(8) any part of an unallocated annuity contract that is not issued to or in connection with a specific employee, a benefit plan for a union or association of individuals, or a governmental lottery;

(9) any part of a financial guarantee, funding agreement, or guaranteed investment contract that:

(A) does not contain a mortality guarantee; and

(B) is not issued to or in connection with a specific employee, a benefit plan, or a governmental lottery;

(10) a part of a policy or contract to the extent that the assessments required by Subchapter D with respect to the policy or contract are preempted by federal or state law;

(11) a contractual agreement that established the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or the plan's trustee in a case in which neither the benefit plan sponsor nor its trustee is an affiliate of the member insurer; or

(12) a part of a policy or contract to the extent the policy or contract provides for interest or other changes in value that are to be determined by the use of an index or external reference stated in the policy or contract, but that have not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under

this chapter, whichever date is earlier, subject to Subsection (c).

(c) For purposes of determining the values that have been credited and are not subject to forfeiture as described by Subsection (b)(12), if a policy's or contract's interest or changes in value are credited less frequently than annually, the interest or change in value determined by using the procedures defined in the policy or contract is credited as if the contractual date of crediting interest or changing values is the earlier of the date of impairment or the date of insolvency, and is not subject to forfeiture.

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.018(c), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 9.018(c), eff. September 1, 2007.

Sec. 463.204. OBLIGATIONS EXCLUDED. A contractual obligation does not include:

(1) death benefits in an amount in excess of \$300,000 or a net cash surrender or net cash withdrawal value in an amount in excess of \$100,000 under one or more policies on a single life;

(2) an amount in excess of:

(A) \$100,000 in the present value under one or more annuity contracts issued with respect to a single life under individual annuity policies or group annuity policies; or

(B) \$5 million in unallocated annuity contract benefits with respect to a single contract owner regardless of the number of those contracts;

(3) an amount in excess of the following amounts, including any net cash surrender or cash withdrawal values, under one or more accident, health, accident and health, or long-term care insurance policies on a single life:

(A) \$500,000 for basic hospital, medical-surgical, or major medical insurance, as those terms are defined by this code or rules adopted by the commissioner;

(B) \$300,000 for disability and long-term care insurance, as those terms are defined by this code or rules adopted by the commissioner; or

(C) \$200,000 for coverages that are not defined as basic hospital, medical-surgical, major medical, disability, or long-term care insurance;

(4) an amount in excess of \$100,000 in present value annuity benefits, in the aggregate, including any net cash surrender and net cash withdrawal values, with respect to each individual participating in a governmental retirement benefit plan established under Section 401, 403(b), or 457, Internal Revenue Code of 1986 (26 U.S.C. Sections 401, 403(b), and 457), covered by an unallocated annuity contract or the beneficiary or beneficiaries of the individual if the individual is deceased;

(5) an amount in excess of \$100,000 in present value annuity benefits, in the aggregate, including any net cash surrender and net cash withdrawal values, with respect to each payee of a structured settlement annuity or the beneficiary or beneficiaries of the payee if the payee is deceased;

(6) aggregate benefits in an amount in excess of \$300,000 with respect to a single life, except with respect to:

(A) benefits paid under basic hospital, medical-surgical, or major medical insurance policies, described by Subdivision (3)(A), in which case the aggregate benefits are \$500,000; and

(B) benefits paid to one owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, in which case the maximum benefits are \$5 million regardless of the number of policies and contracts held by the owner;

(7) an amount in excess of \$5 million in benefits, with respect to either one plan sponsor whose plans own directly or in trust one or more unallocated annuity contracts not included in Subdivision (4) irrespective of the number of contracts with respect to the contract owner or plan sponsor or one contract owner provided coverage under Section 463.201(a)(3)(B), except that, if one or more unallocated annuity contracts are covered contracts under this chapter and are owned by a trust or other entity for the

benefit of two or more plan sponsors, coverage shall be afforded by the association if the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of business is in this state, and in no event shall the association be obligated to cover more than \$5 million in benefits with respect to all these unallocated contracts;

(8) any contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic value of economic benefits of the covered policy or contract; or

(9) punitive, exemplary, extracontractual, or bad faith damages, regardless of whether the damages are:

(A) agreed to or assumed by an insurer or insured; or

(B) imposed by a court.

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.013(d), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 9.013(d), eff. September 1, 2007.

Sec. 463.205. PROTECTION PROVIDED BY OTHER JURISDICTION. This chapter does not provide coverage for a resident with respect to an impaired or insolvent insurer domiciled in another jurisdiction if guaranty protection is provided to the resident by the law of that jurisdiction.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.206. ASSOCIATION DISCRETION IN MANNER OF PROVIDING BENEFITS. (a) The board shall have discretion and may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of this chapter in an economical and efficient manner.

(b) If the association arranges or offers to provide the benefits of this chapter to a covered person under a plan or arrangement that fulfills the association's obligations under this chapter, the person is not entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

Added by Acts 2007, 80th Leg., R.S., Ch. 730, Sec. 3B.015(b), eff. September 1, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 9.015(b), eff. September 1, 2007.

SUBCHAPTER F. POWERS AND DUTIES OF ASSOCIATION RELATING TO IMPAIRED OR INSOLVENT INSURER

Sec. 463.251. IMPAIRED DOMESTIC INSURER. (a) This section applies only to a member insurer that is an impaired domestic insurer.

(b) With the commissioner's approval, the association may:

(1) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, one or more of the insurer's policies or contracts;

(2) provide money, pledges, notes, guarantees, or other means proper to:

(A) implement Subdivision (1); and

(B) ensure payment of the insurer's contractual obligations until action is taken under Subdivision (1); or

(3) loan money to the insurer.

(c) In taking action under Subsection (b), the association may impose any condition that:

(1) does not impair the insurer's contractual obligations; and

(2) is approved by:

(A) the commissioner; and

(B) the insurer, except in a conservation or rehabilitation ordered by a court.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.252. IMPAIRED DOMESTIC, FOREIGN, OR ALIEN INSURER NOT PAYING CLAIMS. (a) This section applies only to a member insurer that:

(1) is an impaired domestic, foreign, or alien insurer; and

(2) is not timely paying claims.

(b) Subject to Subsection (d), the association shall:

(1) with respect to the insurer, take one or more actions that the association is authorized to take under Section

463.251 with respect to an impaired domestic insurer, subject to the conditions of that section; or

(2) provide substitute benefits instead of the insurer's contractual obligations as provided by Subsection (c).

(c) A policy or contract owner who claims emergency or hardship may petition for substitute benefits under standards the association proposes and the commissioner approves. Substitute benefits are available only for a health claim, periodic annuity benefit payment, death benefit, supplemental benefit, or cash withdrawal.

(d) The association is required to take action under this section only if:

(1) the laws of the insurer's state of domicile provide that, until all payments of or on account of the insurer's contractual obligations are made by all guaranty associations and all expenses of the associations and interest on those payments and expenses have been repaid to the associations or a plan of repayment by the insurer has been approved by the associations:

(A) the delinquency proceeding may not be dismissed;

(B) the insurer and the insurer's assets may not be returned to the control of the insurer's shareholders or private management; and

(C) the insurer may not solicit or accept new business or have any suspended or revoked certificate of authority restored;

(2) the insurer is a domestic insurer that has been placed under an order of rehabilitation by a court in this state; or

(3) the insurer is a foreign or alien insurer and:

(A) the insurer has been prohibited from soliciting or accepting new business in this state;

(B) the insurer's certificate of authority has been suspended or revoked in this state; and

(C) a petition for rehabilitation or liquidation has been filed in a court in the insurer's state of domicile by the insurance official of that state.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.253. INSOLVENT INSURER. (a) This section applies only to a member insurer that is an insolvent insurer.

(b) The association shall provide money, pledges, guarantees, or other means reasonably necessary to discharge the insurer's duties and to:

(1) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the insurer's policies or contracts; or

(2) ensure payment of the insurer's contractual obligations.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.254. LIFE OR HEALTH INSURANCE POLICIES OR CONTRACTS. (a) This section applies only when the association is taking an action under Section 463.252(b)(2) or 463.253 with respect to a life or health insurance policy or contract.

(b) The association, in accordance with Subsections (c) and (d), as applicable, shall ensure payment of benefits identical to the benefits that would have been payable under the policy or contract of the insurer, at premiums identical to the premiums that would have been applicable under that policy or contract, except for terms of conversion and renewability.

(c) For a group policy or contract, the association shall ensure payment of benefits under Subsection (b) for claims incurred before the later of:

(1) the earlier of the next renewal date under the policy or contract or the 45th day after the date the association becomes obligated with respect to the policy or contract; or

(2) the 30th day after the date the association becomes obligated with respect to the policy or contract.

(d) For an individual policy, the association shall ensure payment of benefits under Subsection (b) for claims incurred before the later of:

(1) the earlier of the next renewal date under the policy, if any, or the first anniversary of the date the association becomes obligated with respect to the policy; or

(2) the 30th day after the date the association becomes obligated with respect to the policy.

(e) The association shall diligently attempt to provide each known insured or group policyholder with notice before the 30th day before the date the benefits are terminated.

(f) As provided by Subsections (g)-(i), the association shall make substitute coverage available on an individual basis to:

(1) each known insured under an individual policy, or the owner if other than the insured; and

(2) each individual who:

(A) was formerly insured under a group policy or contract; and

(B) is not eligible for replacement group coverage.

(g) Substitute coverage is available for an individual policy under Subsection (f) only if the insured or owner was entitled under law or the terminated policy to continue an individual policy in force until a specified age or for a specified period during which the insurer:

(1) was not entitled to unilaterally change a provision of the policy; or

(2) was entitled only to change a premium by class.

(h) Substitute coverage is available for a group policy or contract under Subsection (f) only if the formerly insured individual was entitled under law or the terminated policy or contract to convert group coverage to individual coverage.

(i) To provide substitute coverage under Subsection (f), the association may offer to reissue the terminated coverage or issue an alternative policy. The association shall offer the reissued or alternative policy without requiring evidence of insurability. The reissued or alternative policy may not provide for a waiting period or exclusion that would not have applied under the terminated policy. The association may reinsure a reissued or alternative policy.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.255. POLICY OR CONTRACT WITH GUARANTEED INTEREST RATE. In taking an action under Section 463.252(b)(2) or 463.253 with respect to a policy or contract with a guaranteed minimum interest rate, the association shall ensure the payment or crediting of a rate of interest consistent with Section 463.203(b)(3).

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.256. ALTERNATIVE POLICY. (a) An alternative policy issued by the association must:

(1) be approved by the commissioner;

(2) provide coverage of a kind that the association determines is similar to the coverage of the policy issued by the impaired or insolvent insurer;

(3) contain at least the minimum provisions required by the statutes of this state; and

(4) provide benefits that are not unreasonable in relation to the premium charged.

(b) The association shall set the premium according to a table of rates the association adopts. The premium:

(1) must reflect:

(A) the amount of insurance provided; and

(B) each insured's age and class of risk; and

(2) may not reflect any change in an insured's health occurring after the original policy was most recently underwritten.

(c) The association may adopt various kinds of alternative policies to issue at a later date without regard to any particular impairment or insolvency.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.257. IMPOSITION OF LIEN OR MORATORIUM. To carry out the association's duties under this chapter and with the court's approval, the association may:

(1) impose a permanent policy or contract lien in connection with any guarantee, assumption, or reinsurance agreement if the association determines that:

(A) the amounts that may be assessed under this chapter are insufficient to ensure full and prompt performance of the association's duties under this chapter; or

(B) adverse economic or financial conditions affecting member insurers make imposition of the lien in the public interest; or

(2) in addition to any contractual provision for deferral of cash or policy loan value, impose a temporary

moratorium or lien on payment of cash values and policy loans or the exercise of any other right to withdraw money held in connection with a policy or contract.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.258. PREMIUM FOR REISSUANCE OF TERMINATED COVERAGE. If the association reissues terminated coverage at a premium different from the terminated policy's premium, the premium must:

(1) reflect the amount of insurance provided and the insured's age and class of risk; and

(2) be approved by the commissioner or a court.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.259. PREMIUM DUE DURING RECEIVERSHIP. After a court enters an order of receivership with respect to an impaired or insolvent insurer, a premium due for coverage issued by the insurer is owned by and is payable at the direction of the association. The association is liable for an unearned premium owed to a policy or contract owner that arises after the court enters the order.

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.015(c), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 9.015(c), eff. September 1, 2007.

Sec. 463.260. LIMITS ON AND TERMINATION OF ASSOCIATION OBLIGATION. (a) The association is not liable for benefits that exceed the contractual obligations for which the insurer is liable or would have been liable if not impaired or insolvent. The association has no obligation to provide benefits outside the express written terms of the policy or contract, including:

(1) claims based on marketing materials;

(2) claims based on side letters, riders, or other documents that were issued without meeting applicable policy form filing or approval requirements;

(3) claims based on misrepresentation of or regarding policy benefits;

(4) extracontractual claims; or

(5) claims for penalties or consequential or incidental damages.

(b) The association's obligations with respect to coverage under a policy of an impaired or insolvent insurer or under a reissued or alternative policy terminate on the date the coverage or policy is replaced by another similar policy by the policyholder, the insured, or the association.

(c) If a premium is not paid before the 32nd day after the date the premium is due under a guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage, the association's obligations under the policy, contract, or coverage terminate, except with respect to a claim incurred or any net cash surrender value due as provided by 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.018(d), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 9.018(d), eff. September 1, 2007.

Sec. 463.261. ASSIGNMENT OF RIGHTS. (a) A person receiving a benefit under this chapter, including a payment of or on account of a contractual obligation, continuation of coverage, or provision of substitute or alternative coverage, is considered to have assigned to the association the rights under, and any cause of action relating to, the covered policy to the extent of the benefit received. The association may require a payee, policy or contract owner, beneficiary, insured, or annuitant to assign the person's rights and cause of action to the association as a condition of receiving a right or benefit under this chapter.

(b) The association's subrogation rights under Subsection (a) have the same priority against the assets of the impaired or insolvent insurer as that held by the person entitled to receive a benefit under this chapter.

(c) The association has all common law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or holder of a policy or contract with respect to the policy or contract.

(d) The rights of the association under Subsection (c)

include, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received under this chapter, against any person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment for the annuity, other than a person responsible solely by reason of serving as an assignee in respect of a qualified assignment under Section 130, Internal Revenue Code of 1986 (26 U.S.C. Section 130).

(e) If a provision of this section is invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations is reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies, or portion of the policies, covered by the association. If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights described in this section, the person shall pay to the association the portion of the recovery attributable to the policies, or portion of the policies, covered by the association.

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.015(d), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 9.015(d), eff. September 1, 2007.

Sec. 463.262. EFFECT OF SUBROGATION AND ASSIGNMENT OF RIGHTS AND AVAILABLE ASSETS ON ASSOCIATION OBLIGATION. (a) The limitations set forth in this chapter are limitations on the benefits for which the association is obligated before taking into account either the association's subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies.

(b) The costs of the association's obligations under this chapter may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to the association's subrogation and assignment rights.

Added by Acts 2007, 80th Leg., R.S., Ch. 730, Sec. 3B.018(e), eff. September 1, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 9.018(e), eff. September 1, 2007.

Sec. 463.263. DEPOSIT TO BE PAID TO ASSOCIATION. (a) A deposit in this state, held under law or required by the commissioner for the benefit of creditors, including policy owners, that is not turned over to the domiciliary receiver on the entry of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in this state or a reciprocal state in accordance with Section 443.402 shall be promptly paid to the association.

(b) The association is entitled to retain a portion of any amount paid to the association under this section equal to the percentage determined by dividing the aggregate amount of policy owners' claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy owners' claims in this state related to that insolvency and shall remit to the domiciliary receiver the amount paid to the association and retained under this section.

(c) The amount paid to the association under this section, less the amount retained by the association under this section, is treated as a distribution of estate assets under Section 443.303 or the similar law of the state of domicile of the impaired or insolvent insurer.

Added by Acts 2007, 80th Leg., R.S., Ch. 730, Sec. 3B.015(e), eff. September 1, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 9.015(e), eff. September 1, 2007.

#### SUBCHAPTER G. OPERATION OF IMPAIRED OR INSOLVENT INSURER

Sec. 463.301. ISSUANCE OR RENEWAL OF POLICIES FOLLOWING CONSERVATORSHIP OR RECEIVERSHIP. (a) If an assessment has been made under this chapter for the insurer or guaranty fees have been provided for the insurer, an impaired insurer placed in conservatorship or receivership may not issue a new or renewal insurance policy on release from the conservatorship or receivership until the insurer has repaid in full the amount of

guaranty fees provided by the association.

(b) Notwithstanding Subsection (a), on application of the association and after hearing, the commissioner may permit the insurer to issue new policies as provided by a plan of operation by the insurer for repayment. In approving the plan, the commissioner may restrict the issuance of new or renewal policies as necessary to implement the plan.

(c) The commissioner shall give 10 days' notice of the hearing to the association. The association and the member insurers that paid assessments in relation to the impaired insurer are entitled to appear at and participate in the hearing.

(d) Money recovered against an impaired insurer under this section shall be repaid to the member insurers that paid assessments in relation to the impaired insurer on return of the member insurers' certificates of contribution.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.302. DISTRIBUTIONS TO SHAREHOLDERS AND AFFILIATES. (a) An impaired or insolvent insurer may not make a distribution to shareholders until the association has recovered the total amount of valid claims for money spent in carrying out the association's powers and performing the association's duties under Section 463.101, 463.103, 463.109, or 463.111(c) or Subchapter F with respect to that insurer, plus interest on that amount.

(b) Except as otherwise provided by this section, a receiver appointed under an order of receivership for an insurer domiciled in this state may recover on behalf of the insurer from an affiliate that controlled the insurer the amount of any distribution, other than a stock dividend the insurer paid on the insurer's capital stock, made during the five years preceding the date of the petition for liquidation or rehabilitation.

(c) A person who was an affiliate that controlled the insurer when a distribution described by Subsection (b) was paid is liable for the amount of the distribution received. A person who was an affiliate that controlled the insurer when the distribution was declared is liable for the amount of the distribution the affiliate would have received if the distribution had been paid immediately. Two or more persons liable for the same distribution are jointly and severally liable. If a person liable under this subsection is insolvent, all of the affiliates that controlled the insolvent person when the distribution was paid are jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent person.

(d) The maximum amount recoverable under Subsections (b) and (c) is the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the insurer's contractual obligations.

(e) The receiver may not recover a distribution to shareholders under Subsection (b) if the insurer shows that, at the time the distribution was paid, the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill the insurer's contractual obligations.

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.019(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 9.019(a), eff. September 1, 2007.

Sec. 463.303. ASSETS ATTRIBUTABLE TO COVERED POLICIES.

(a) For the purposes of this section, assets attributable to covered policies are the proportion of the assets that the reserves that should have been established for the covered policies bear to the reserves that should have been established for all insurance policies written by the impaired or insolvent insurer.

(b) To carry out the association's obligations under this chapter, the association is considered a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies, less any amount to which the association is entitled as subrogee under Section 463.261.

(c) Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this chapter.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.304. DISTRIBUTION OF OWNERSHIP RIGHTS OF IMPAIRED OR INSOLVENT INSURER. In making an equitable distribution of the ownership rights of an impaired or insolvent insurer before the termination of a receivership, the court:

(1) shall consider the welfare of the policyholders of the continuing or successor insurer; and

(2) may consider the contributions of the respective parties, including the association, the shareholders and policyholders of the impaired or insolvent insurer, and any other party with a bona fide interest.

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.019(b), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 9.019(b), eff. September 1, 2007.

SUBCHAPTER H. POWERS AND DUTIES OF COMMISSIONER AND DEPARTMENT

Sec. 463.351. NOTICE OF COMMISSIONER ACTIONS. (a) The commissioner shall:

(1) notify the insurance officials of all the other states, territories of the United States, and the District of Columbia by mail not later than the 30th day after the date the commissioner:

(A) revokes or suspends a member insurer's certificate of authority; or

(B) issues a formal order requiring a member insurer to:

(i) restrict the insurer's premium writing;  
(ii) withdraw from this state;  
(iii) reinsure all or part of the insurer's business;

(iv) obtain additional contributions to surplus; or

(v) increase capital, surplus, or another account for the security of policyholders or creditors;

(2) report to the board when the commissioner:

(A) takes an action described by Subdivision (1) or receives from another insurance official a report indicating that a similar action has been taken in another state; or

(B) has reasonable cause to believe from a completed or continuing examination that a member insurer may be impaired or insolvent; and

(3) provide to the board the National Association of Insurance Commissioners Insurance Regulatory Information System ratios and listings of insurers not included in those ratios.

(b) A report under Subsection (a)(2)(A) must contain all significant details of the action taken or report received.

(c) The board may use information described by this section to carry out the board's duties under this chapter. The board shall keep a report made under this section and the contents of the report confidential until the commissioner or other lawful authority makes the report and the contents public.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.352. ADVICE FROM BOARD. The commissioner may seek the board's advice and recommendations on a matter affecting the commissioner's duties regarding the financial condition of:

(1) a member insurer; or

(2) an insurer applying for a certificate of authority to engage in the business of insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.353. EXAMINATION. (a) The board by majority vote may request the commissioner to order an examination of a member insurer that the board in good faith believes may be impaired or insolvent. The commissioner shall keep the request on file. The request is open for public inspection before release of the examination report to the public.

(b) Not later than the 30th day after the date the commissioner receives the request, the commissioner shall begin the examination. The examination may be conducted:

(1) as a National Association of Insurance Commissioners examination; or

(2) by a person the commissioner designates.

(c) The association shall pay the cost of the examination.

(d) The commissioner shall notify the board when the examination is completed. The examination report shall be treated

in the same manner as other examination reports. The report may not be released to the board before the report is released to the public, except that the commissioner may comply with Section 463.351.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.354. DEMAND TO CURE IMPAIRMENT. (a) When an impairment is declared and the amount of the impairment is determined, the commissioner shall serve a demand on the impaired insurer to cure the impairment within a reasonable time.

(b) Notice of the demand under Subsection (a) to the impaired insurer constitutes notice to any shareholders of the insurer.

(c) Failure of the impaired insurer to comply promptly with the demand does not excuse the association from exercising the association's powers and performing the association's duties under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.355. FAILURE TO COMPLY WITH PLAN OF OPERATION. On failure of a member insurer to comply with the plan of operation, the commissioner may suspend or revoke, after notice and hearing, the insurer's certificate of authority to engage in the business of insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.356. ASSUMPTION OF POWERS AND DUTIES OF ASSOCIATION. The commissioner may assume the powers and duties of the association under this chapter with respect to impaired or insolvent insurers if the association does not within a reasonable period act as provided by:

- (1) Section 463.252(b)(2);
- (2) Section 463.253; and
- (3) Section 463.254.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.357. NOTIFICATION OF EFFECT OF CHAPTER. The commissioner, as receiver of an impaired insurer, may notify all interested persons of the effect of this chapter.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.358. STATEMENT OF PREMIUMS. On request, the commissioner shall provide the association with a statement of the premiums in this state and any other appropriate state for each member insurer.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

#### SUBCHAPTER I. APPEALS AND OTHER ACTIONS

Sec. 463.401. APPEAL TO COMMISSIONER. (a) Not later than the 60th day after the date of a final action of the association or the board, a member insurer may appeal the action to the commissioner.

(b) A member insurer appealing an assessment shall pay the assessment to the association. The association may use the money to meet the association's obligations while the appeal is pending. If the appeal on the assessment is upheld, the association shall return to the insurer the amount paid in error or in excess of the amount the commissioner determines the insurer was obligated to pay.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.402. VENUE. Venue for an action against the association under this chapter is in Travis County.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.403. APPEAL BOND. The association is not required to give an appeal bond in an appeal of a cause of action under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

Sec. 463.404. STAY OF PROCEEDINGS; CERTAIN DECISIONS NOT BINDING. (a) To permit the receiver or 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 brought by the receiver, is stayed for:

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

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

(b) If a covered claim arises from a judgment, order, verdict, finding, or other decision based on the default of an impaired insurer or the insurer's failure to defend an insured, the association on the association's behalf or on behalf of the insured

may apply to the court or administrator that made the decision to have the decision set aside and is entitled to defend the claim on the merits.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.

SUBCHAPTER J. PROHIBITED PRACTICES

Sec. 463.451. PROHIBITED USE OF PROTECTION PROVIDED BY CHAPTER. (a) A person may not make, publish, disseminate, circulate, or place before the public, or directly or indirectly cause to be made, published, disseminated, circulated, or placed before the public, a written or oral advertisement, announcement, or statement that uses the existence of the association to sell, solicit, or induce the purchase of a kind of insurance with respect to which this chapter provides coverage.

(b) This section applies to an advertisement, announcement, or statement made, published, disseminated, circulated, or placed before the public:

- (1) in a newspaper, magazine, or other publication;
- (2) in a notice, circular, pamphlet, letter, or poster;
- (3) over a radio or television station; or
- (4) in any other manner.

(c) Except as provided by Section 463.114, the use by a person of the protection provided by this chapter in the sale of insurance is unfair competition and an unfair practice under Chapter 541.

(d) This section does not apply to the association or any other entity that does not sell or solicit insurance.

Added by Acts 2005, 79th Leg., Ch. 727, Sec. 1, eff. April 1, 2007.