

CHAPTER 885

H.B. No. 2858

AN ACT

relating to the issuance of workers' compensation insurance coverage by and the operations of the Texas workers' compensation insurance facility and the Texas Workers' Compensation Insurance Fund.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 2.05, Article 5.76-2, Insurance Code, is amended by adding Subsection (m) to read as follows:

(m) In addition to other rights of the facility under this article, the facility has the legal rights of a private person in this state and the power to sue in its own name. No procedure established under this article is a prerequisite to the exercise of the power by the facility to sue.

SECTION 2. Section 2.08(b), Article 5.76-2, Insurance Code, is amended to read as follows:

(b) The board shall *set a hearing for an* [~~hear the~~] appeal from an act or decision of the facility not later than the 30th day after the day the request for hearing is made. The board shall notify the facility and the appellant in writing of the time and place of the hearing not later than the 10th day before the date of the hearing. Not later than the 30th day after the

last day of the hearing, the board shall affirm, reverse, or modify ~~[its previous action on]~~ the act of the facility that is the subject of the appeal ~~[appealed]~~ to the board.

SECTION 3. Section 4.08, Article 5.76-2, Insurance Code, is amended to read as follows:

Sec. 4.08. **SERVICING COMPANIES.** (a) *The executive director of the facility may solicit proposals for servicing contracts from members and other entities to act as servicing companies. Each solicitation must be published in the Texas Register. The executive director shall evaluate each proposal and negotiate contracts, and the governing committee shall award servicing contracts, to an appropriate number of members or entities whose proposals conform to the required specifications and whose final negotiated contractual terms, in the judgment of the governing committee, are most advantageous to the facility. In determining which contractual terms are most advantageous to the facility, in addition to price, the governing committee shall consider the required specifications and the proposers' ability to provide the services described in Subsection (c) of this section. The facility may also consider:*

(1) *any economies of scale to be achieved by limiting the number of servicing companies;*

(2) *the number and scope of any conditions attached to the proposal;*

(3) *whether the proposer can execute the contract and provide the required services promptly, or within the time required, without delay or interference;*

(4) *the character, responsibility, integrity, reputation, and experience of the proposer;*

(5) *the quality of performance of previous contracts or services; and*

(6) *the sufficiency of the financial resources and ability of the proposer to perform the contract and provide the services* ~~[The board shall establish standards, qualifications, requirements, and all other particulars regarding servicing companies necessary to service the fund adequately. The board shall establish practices, policies, and procedures for the selection of servicing companies on a competitive basis. The board shall solicit proposals for an appropriate number of servicing contracts, as determined by the board, from members and other eligible entities to act as servicing companies. Proposals shall be publicly opened by the board. The board shall evaluate each proposal and award a servicing contract to the appropriate number of members or entities whose proposals conform with the solicitation and, in the judgment of the board, are most advantageous to the fund; provided that the board gives full consideration to economies of scale to be achieved by limiting the number of servicing companies. The board shall consider the fee bid by each member or entity, as well as other factors, in making the contract awards. Each servicing company selected shall receive the fee that it bid].~~

(b) *The governing committee may reject any and all proposals from entities desiring to become servicing companies and may solicit proposals, negotiate terms, and award new servicing company contracts in accordance with this section. A servicing company contract awarded by the governing committee is subject to approval by the board and does not take effect until the approval is granted. The proposal, negotiation, and contracting process is not subject to the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes). All final contracts are public records for purposes of the open records act, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).*

(c) Any entity desiring to be a servicing company shall submit a proposal to the facility ~~[board]~~ pursuant to the solicitation process described by *Subsections (a) and (b)* ~~[Subsection (a)]~~ of this section. Among the other requirements specified by the facility ~~[board]~~, the proposal shall provide satisfactory evidence that *the proposer* ~~[such applicant]~~ possesses the demonstrated records of competence, financial stability, and resources sufficient to assure the facility ~~[board]~~ that it is able to provide all services required by the facility ~~[board]~~, including the following:

(1) investigating, reporting, and paying claims;

(2) complying with requirements of the Texas Workers' Compensation Commission;

(3) conducting safety inspections and presenting loss prevention programs or courses of instruction at the insured's office or work location;

- (4) inspecting risks for classification purposes;
- (5) promptly issuing policies, endorsements, and certificates of insurance;
- (6) making and preparing final payroll audits;
- (7) preparing for litigation, litigating, and conducting legal support required under the policy contract;
- (8) preparation and timely submission of all appropriate financial and statistical reports; and
- (9) all other services required for servicing workers' compensation policies in all particulars throughout this state.

(d) ~~[(e)]~~ An entity that is not a member but that desires to be a servicing company shall submit a proposal to the *facility [board]* to be a servicing company pursuant to the solicitation process *described under [prescribed by]* Subsections (a), ~~[and]~~ (b), and (c) of this section. An entity that is not an insurer is not required to hold a license under this code to perform the functions of a servicing company. If an unlicensed entity is selected by the *facility [board]* to be a servicing carrier, the *facility [board]* may require a fidelity bond, surety bond, and/or other financial security of such an entity. An entity appointed under this subsection shall be subject to the provisions of Articles 21.21 and 21.21-2 of this code.

~~[(d) The performance of servicing companies shall be subject to the continuing jurisdiction of the board.~~

~~[(e) The board shall develop a fair and nondiscriminatory plan for assignments to servicing companies.~~

~~[(f) The board shall promulgate and adopt rules to implement this section. Such rules shall be distributed to all member companies, and to other entities upon request.]~~

SECTION 4. Section 2, Article 5.76-3, Insurance Code, is amended by amending Subsection (c) and by adding Subsection (e) to read as follows:

(c) A decision by the fund to deny, cancel, or refuse to renew a policy or risk insured under Article 5.76-4 of this code is appealable to the board not later than the 30th day after the date on which the affected party received actual notice that the act occurred or that the decision was made. The board shall hear the appeal not later than the 30th day after the date on which the request for hearing is made and shall notify the fund and the appellant in writing of the time and place of the hearing not later than the 10th day before the date of the hearing. Not later than the 30th day after the last day of the hearing, the board shall affirm, reverse, or modify the act appealed to the board. A hearing under this subsection does not suspend the operation of any act, ruling, decision, or order of the fund, unless the board specifically so orders. A decision of the board under this subsection is subject to review *by the commissioner of insurance* in the manner provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). *A person aggrieved by the decision of the commissioner may appeal that decision to the district court. Judicial review under this subsection is governed by the substantial evidence rule.*

(e) In addition to other rights of the fund under this article, the fund has the legal rights of a private person in this state and the power to sue in its own name. No procedure established under this article is a prerequisite to the exercise of the power by the fund to sue.

SECTION 5. Section 7(b), Article 5.76-3, Insurance Code, is amended to read as follows:

(b) The fund shall adopt such rules as required to provide for the financing of all or part of the premiums by the fund or a person licensed under Chapter 24 of this code. Those rules shall require that the fund receive a minimum initial premium sufficient to cover the administrative costs of issuing and booking the policy in the event of cancellation. *Those rules shall not unfairly discriminate against applicants based upon the amount of premium to be paid by the applicant for workers' compensation coverage. Notwithstanding the foregoing, the premium financing rules adopted by the fund may provide that premium financing shall not be offered to any applicant who appears to present an unacceptable credit risk.*

SECTION 6. Sections 13(d) and (f), Article 5.76-3, Insurance Code, are amended to read as follows:

(d) Money in the fund shall be invested, subject to a policy approved by the state treasurer, in the types of investments authorized by law for *an insurer authorized to write workers' compensation insurance coverage in this state* [~~investment of state funds as provided by Chapter 404, Government Code~~].

(f) The fund must maintain a ratio of *net written* premiums on policies written after *reinsurance* to surplus of not more than:

(1) *3.3 to one, for the period beginning on September 1, 1993 and extending through August 31, 1996;*

(2) *3.2 to one, for the period beginning on September 1, 1996 and extending through August 31, 1997;*

(3) *3.1 to one, for the period beginning on September 1, 1997 and extending through August 31, 1998; and*

(4) *3.0 to one on and after September 1, 1998* [~~three to one~~].

SECTION 7. Article 5.76-4, Insurance Code, is amended by adding Subsection (f) to read as follows:

(f) The fund and the Texas workers' compensation insurance facility may exchange information relating to actual or suspected fraud by any applicant, policyholder, claimant, agent, or insurer with respect to workers' compensation insurance policies issued by, or applications for coverage submitted to, the facility or the fund. That information may be kept confidential and is not subject to disclosure under the open records act, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

SECTION 8. Section 18.24(b), Chapter 12, Acts of the 72nd Legislature, 2nd Called Session, 1991, is amended to read as follows:

(b) The Texas workers' compensation insurance facility shall contract with the Texas Workers' Compensation Insurance Fund to assume all claim liabilities and assets of the facility no later than January 1, 1999. The contract must transfer assets sufficient to pay all claim liabilities assumed by the fund on policies issued on or before December 31, 1993. In the event the facility's assets are insufficient to pay the assumed claim liabilities as the liabilities come due, the contract shall require the facility to make a final assessment to its members and the fund in accordance with Section 4.04, Article 5.76-2, Insurance Code.

SECTION 9. The change made by this Act to Section 7(b), Article 5.76-3, Insurance Code, applies only to an insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 1994. A policy that is delivered, issued for delivery, or renewed before January 1, 1994, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 10. This Act takes effect September 1, 1993, except that Section 7 of this Act takes effect January 1, 1994.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 6, 1993, by a non-record vote; passed by the Senate on May 26, 1993, by a viva-voce vote.

Approved June 18, 1993.

Effective Sept. 1, 1993, except Section 7 effective Jan. 1, 1994.