

**SUBCHAPTER G. WORKERS' COMPENSATION INSURANCE**  
**DIVISION 2. GROUP SELF-INSURANCE COVERAGE**  
**28 TAC §§5.6401, 5.6402, 5.6404, and 5.6409**

**1. INTRODUCTION.** The Texas Department of Insurance proposes the repeal of §§5.6401, 5.6402, 5.6404, and 5.6409 concerning group self-insurance coverage. This repeal is necessary because the Department is proposing new sections for adoption that better define and reflect the purpose and scope of the division; more clearly and appropriately define the terms to be used in Division 2 of Subchapter G; more clearly define a workers' compensation self insurance group's (group) responsibilities for notifying the Department of certain specified changes in circumstances; more clearly prescribe a group's responsibility for continuing compliance with the requirements of the Labor Code and Division 2 of Subchapter G; and better define the requirements related to the storage and maintenance of a group's books and records, including allowing a group to locate its books and records outside of the State of Texas. These proposed new sections are also published in this edition of the *Texas Register*.

**2. FISCAL NOTE.** Danny Saenz, Senior Associate Commissioner for the Financial Division, has determined that for each year of the first five years the proposed repeal will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposed repeal.

**3. PUBLIC BENEFIT/COST NOTE.** Mr. Saenz has also determined that for each year of the first five years the proposed repeal is in effect, the anticipated public benefit will be the adoption of new requirements that should result in more efficient regulation of workers' compensation self-

insurance groups and their delegated entities, increased financial solvency and stability of groups, and reduced administrative burdens for groups with regard to the storage and maintenance of their books and records.

There are no anticipated economic costs to persons who are required to comply with the proposed repeal.

**4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.** As required by the Government Code §2006.002(c), the Department has determined that the proposed repeal will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the proposed repeal.

**5. TAKINGS IMPACT ASSESSMENT.** The Department has determined that no private real property interests are affected by this proposed repeal and that this proposed repeal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**6. REQUEST FOR PUBLIC COMMENT.** To be considered, written comments on the proposed repeal must be submitted no later than 5:00 p.m. on August 25, 2008, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Danny Saenz, Senior Associate Commissioner for the Financial Program, Mail Code 305-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. Any

request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

**7. STATUTORY AUTHORITY.** Repeal of §§5.6401, 5.6402, 5.6404, and 5.6409 is proposed pursuant to the Labor Code §§407A.001, 407A.002, 407A.005, 407A.008, 407A.009, 407A.051, 407A.052, 407A.355, and the Insurance Code §36.001. The Labor Code §407A.001 provides the definitions for the Labor Code Chapter 407A. The Labor Code §407A.002 provides that an unincorporated association or business trust composed of five or more private employers may establish a workers' compensation self-insurance group under the Labor Code Chapter 407A, provided certain stated conditions are met. The Labor Code §407A.005 requires an association of employers to hold a certificate of approval issued under the Labor Code Chapter 407A in order to act as a workers' compensation self-insurance group. The Labor Code §407A.008 provides that the Commissioner shall adopt rules as necessary to implement the Labor Code Chapter 407A. The Labor Code §407A.009 requires an administrator or service company under the Labor Code Chapter 407A that performs the acts of an administrator as defined in the Insurance Code Chapter 4151 to hold a certificate of authority under the Insurance Code Chapter 4151. The Labor Code §407A.051(a) requires an association of employers that proposes to organize as a workers' compensation self-insurance group to file an application for a certificate of approval with the Department. Additionally, the Labor Code §407A.051(b) and (c) enumerates the particular items that must be included in an applicant's application for a certificate of approval. The Labor Code §407A.051(d) requires a group to notify the Commissioner of any change in the information required to be filed under the Labor Code §407A.051(c) or the manner of a group's compliance with the Labor Code §407A.051(c). Finally, the Labor Code §407A.051(e) specifically requires

the Commissioner to evaluate the financial information provided with the application as necessary to ensure that the funding is sufficient to cover expected losses and expenses and that the funds necessary to pay workers' compensation benefits will be available on a timely basis. The Labor Code §407A.052 requires the Commissioner to issue a certificate of approval to a proposed group on finding that the group has met the requirements of the Labor Code Chapter 407A Subchapter B. The Labor Code §407A.355 defines *insolvent*. Additionally, this section also provides that if the Commissioner determines that the group is in a hazardous financial condition, the Commissioner may take action as provided by the Insurance Code Article 21.28-A. The Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

**8. CROSS REFERENCE TO STATUTE.** The following statutes are affected by the proposed repeal:

<u>Rule</u>	<u>Statute</u>
§§5.6401, 5.6402, 5.6404, and 5.6409	Labor Code §§407A.001, 407A.002, 407A.005, 407A.008, 407A.009, 407A.051, 407A.052, and 407A.355.

**9. TEXT.**

**§5.6401. Purpose and Scope.**

**§5.6402. Definitions.**

**§5.6404. Notification to the Department.**

**§5.6409. Books and Records.**

**10. CERTIFICATION.** This agency hereby certifies that the proposed repeal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued at Austin, Texas, on \_\_\_\_\_, 2008.

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Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance