BILL ANALYSIS

Senate Research Center

H.B. 1476
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Economic Development
5-12-97
Engrossed

DIGEST

Currently, the Insurance Code prioritizes receiverships, or how an insurance company's assets will be distributed should it become insolvent. In a 1993 case, *U.S. Department of Treasury v. Fabe,* the U.S. Supreme Court found part of the Ohio receivership statute unconstitutional because it permitted the payment of employee wage claims and general creditor claims ahead of federal government claims. The Texas Insurance Code contains the same prioritization scheme as the Ohio statute. H.B. 1476 would clarify that employee wages are paid as part of administrative expenses and would place federal claims before the claims of general creditors in the priority of distribution of assets.

PURPOSE

As proposed, H.B. 1476 establishes the priorities for distribution of certain assets of insurance companies in receivership.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 6, Article 21.28, Insurance Code, as follows:

> Sec. 6. New heading: EMPLOYEES. Deletes existing text regarding payment of wages actually owed to employees of an insurer against whom a proceeding is commenced. Requires the receiver to pay wages actually owed to employees of an insurer against whom a temporary restraining order has been issued for services rendered during the period covered by the temporary restraining order as a Class 1 claim as provided by Section 8(a) of this article.

SECTION 2. Amends Section 8(a), Article 21.28, Insurance Code, to provide that to further the protection of policyholders and those making claims under insurance policies, certain priorities are established. Provides that a Class 1 claim includes repayment of funds advanced to the receiver from the abandoned property fund of the Texas Department of Insurance, rather than the State Board of Insurance. Deletes existing text including wages owed to employees of the insurer as a Class 1 claim. Provides that a Class 3 claim includes claims of the federal government. Deletes existing text including claims for taxes and debts due the federal government as a Class 3 claim. Provides that a Class 4 claim includes all other claims of general creditors not falling within any other priority. Establishes that a Class 5 claim includes claims of surplus or contribution note holders, holders of debentures or holders of similar obligations and proprietary claims of shareholders, members, or other owners according to the terms of the instruments. Provides that if any provision of this subsection or the application of any provision of this subsection to any person or circumstance is held invalid, that invalidity does not affect the other provisions or applications of this subsection. Makes conforming changes.

SECTION 3. Amends Sections 10(a) and (b), Article 21.28, Insurance Code, to provide that there shall be no diminution of the liability of the reinsurer to the receiver under the contracts reinsured because of the delinquency proceeding against the delinquent company if the receiver has claims under policies covered by the reinsurance, with certain exceptions. Requires the reinsurance to be payable under a contract reinsured by the assuming insurer on the basis of reported approved claims allowed in the liquidation proceeding pursuant to Section 3(h) of this article. Requires the expense, where two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to such claim, to be apportioned in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer. Makes a conforming change.

SECTION 4. Effective date: September 1, 1997.

SECTION 5. Emergency clause.