

BILL ANALYSIS

Senate Research Center
78R7483 DLF-D

S.B. 1192
By: Carona
State Affairs
3/24/2003
As Filed

DIGEST AND PURPOSE

Under current law, the Texas Property and Casualty Insurance Guaranty Association (association) exists as a non-profit, unincorporated association of all Texas-licensed property and casualty insurers to protect Texas insurance policyholders and claimants when an insurance company fails. As proposed, S.B. 1192 makes a number of amendments to the Insurance Code that affect the operation of the association. The bill amends the definition of "covered claim," defines corporate residency, bars self-insureds from recovering from the association, excludes attorney's fees from a covered claim, amends the triggering language for the association to pay claims, amends the bar date, clarifies and extends the application of statutory offsets, and corrects drafting omissions from previous legislation.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 5(8) and (9), Article 21.28-C, Insurance Code, as follows:

(8) Amends the definition of "covered claim" to provide that a corporation or other entity that is not an individual is considered to be a resident of the state in which the entity's principal place of business is located. Provides that "covered claim" does not include any amount sought as a return of premium under a retrospective rating plan or any amount due any self-insurer, self-insured governmental entity, or a certain self-insurance pool or joint insurance fund, in addition to other entities. Provides that "covered claim" does not include, and the Texas Property and Casualty Insurance Guaranty Association (association) shall not be liable for, any attorney's fees, interest, or other amount sought by or on behalf of an insured or certain persons associated with a claimant in connection with the assertion or prosecution of any covered or other claim against the insured of an impaired insurer or certain associated persons and entities. Provides that "covered claim" does not include shareholder derivative actions or any claim under a policy of insurance placed in force on or after January 1, 1992, for economic or other loss incurred by a claimant in its capacity as a shareholder. Makes conforming changes.

(9) Amends the definition of "impaired insurer" to include a member insurer that is placed in temporary or permanent liquidation, in addition to a member insurer that is placed in temporary or permanent receivership.

SECTION 2. Amends Section 8(d), Article 21.28-C, Insurance Code, as follows:

(d) Provides that an obligation of the guaranty association to or on behalf of an insured and the insured's affiliates on covered claims terminates at the time aggregate payments totaling \$10 million have been paid by certain entities to or on behalf of that insured or other entities on covered claims arising under the policy or policies of one insolvent insurer.

SECTION 3. Amends Section 11(b), Article 21.28-C, Insurance Code, as follows:

(b) Entitles the association to recover from the following persons the amount of any costs of defense, in addition to any covered claim, paid on behalf of that person under this Act:

(1) any insured, other than a certain exempt insured, whose net worth, as computed under Section 11A(b) of this Act on a certain date exceeds \$50 million, and whose obligations under a certain liability or workers' compensation policy are satisfied in whole or in part by payments made under this Act.

SECTION 4. Amends Section 21.28-C, Insurance Code, by adding Section 11A, as follows:

Sec. 11A. NET WORTH EXCLUSION. (a) Provides that the association is not liable to pay a first-party claim of an insured whose net worth on a certain date exceeds \$50 million.

(b) Provides that the net worth of an insured for the purposes of Section 11(b)(1) of this Act and Subsection (a) of this section includes the aggregate net worth of the insured and all of the insured's affiliates computed on a consolidated basis.

SECTION 5. Amends Section 12, Article 21.28-C, Insurance Code, as follows:

(a) Requires any person who has a claim under an insurance policy, without regard to whether the policy is issued by a member insurer, other than a policy of an impaired insurer, that arises from the same facts, injury, or loss that gave rise to a claim against an impaired insurer or its insured, to first exhaust certain rights. Provides that an amount payable as a covered claim under this Act is reduced by the full applicable limits of the other insurance policy and requires the association to receive a full credit in the amount of the full applicable limits. Deletes language requiring the association to have a credit or setoff against any amount of benefits which would otherwise be payable by the association to the claimant under this Act, in a certain amount. Prohibits the association's liability from exceeding \$300,000, rather than \$100,000, in a certain circumstance. Provides that the liability of the person insured by the impaired insurer's policy for the claim is reduced in the same amount as the association's obligation is reduced by the application of this subsection.

(a-1) Deletes language prohibiting a claimant's recovery under this Act from resulting in a recovery to the claimant that is less than that which would have resulted but for the insolvency of the impaired insurer, subject to Section 5(8) of this Act.

(b) Prohibits the association's liability from exceeding \$300,000, rather than \$100,000, in a certain circumstance.

(b-1) Deletes language prohibiting a claimant's recovery under this Act from resulting in a recovery to the claimant that is less than that which would have resulted but for the insolvency of the impaired insurer, subject to Section 5(8) of this Act.

SECTION 6. Amends Section 17, Article 21.28-C, Insurance Code, by creating Subsections (a) and (b) from existing text and amending the new Subsection (a) as follows.

(a) Requires all proceedings in which an impaired insurer is a party or is obligated to defend a party in any court in this state, except for certain proceedings, to be stayed as to all parties and for all purposes for a certain amount of time. Grants a district court of Travis County exclusive jurisdiction if delinquency proceedings are not pending in a court in this state, and authorizes an original action to be brought in that court by certain entities to determine the application, enforcement, or extension of the stay. Authorizes a district court of Travis County to issue injunctions or other orders as considered necessary to enforce the court's determinations under this subsection.

SECTION 7. Amends Section 25, Article 21.28-C, Insurance Code, by deleting Subsection (b), which provides that this section does not apply to a conflict between this Act and certain other

law. Makes conforming changes.

SECTION 8. Makes application of this Act prospective.

SECTION 9. Makes the change in law made by this Act to Section 12(a), Article 21.28-C, Insurance Code, prospective.

SECTION 10: Effective date: September 1, 2003.