

SUBJECT: Liquidation of insolvent insurers, insurance guaranty associations

COMMITTEE: Insurance — committee substitute recommended

VOTE: 8 ayes — Smithee, Duncan, Averitt, Counts, De La Garza, Driver, G. Lewis, Shields

0 nays

1 absent — Dutton

WITNESSES: For — Will D. Davis, USAA, San Antonio; Karen Benson, Baylor University; Charles Wirth, State Farm Insurance Company

Against — None

On — Jan Ferguson, Texas Property & Casualty Insurance Guaranty Association; Mary Kelly Pauwels, Texas Department of Insurance

BACKGROUND: Guaranty associations are associations that include all insurers that transact business in the state, which are assessed amounts to pay claims of impaired or insolent insurers.

DIGEST: CSHB 2960 would make a number of changes regarding liquidation of insolvent insurers, the judicial immunity of the insurance commissioner as receiver, and the administration of the Texas Property and Casualty Insurance Guaranty Association. The bill would also clarify that the Title Insurance Guaranty Association may hire examiners to examine a title insurance company's financial condition and compliance with state laws and rules.

The bill would allow the insurance commissioner as receiver to dispose of an insolvent insurer's property if the value was \$10,000 or less, instead of \$1,000 or less, without having to ask a court.

The bill would specify that a receiver, the insurance commissioner, or their employees have liability immunity when performing their duties and requires the attorney general to defend them.

The bill specifies that costs and expenses of domestic or foreign insurance guaranty associations for administration of a receivership estate and attorney's fees incurred to defend a policy issued by an impaired insurer are second in line in priority of the distribution of assets of the liquidated company.

The bill would specify that damage to property in Texas is a first-party claim. It also clarifies that the property and casualty guaranty association would not pay claim brought by an insurer against an impaired insurer

Five of the nine board of directors of the property and casualty guaranty association would have to be from the insurance industry. The bill would require that they be full-time employees of a member insurance company.

The bill would clarify that the duty to exhaust other coverage before a guaranty claim is paid includes the right to defense under another policy.

The bill would permit the property and casualty guaranty association to submit its annual audited financial statement on April 30 instead of March 30.

When an insurance company goes bankrupt all the lawsuits are stayed for six months. The bill would clarify that the suspension also would apply to deadlines under the Texas Rules of Civil Procedure or Texas Rules of Appellate Procedure.

In the event of a natural disaster, and with the governor's permission, the property and casualty guaranty association would be allowed to assess each association member, except auto and workers' compensation insurers, up to an additional two percent of the insurer's net premiums for the preceding calendar year. (The regular assessment is up to two percent of a company's premiums.)

The bill would extend by two years, from December 31, 1995, to December 31, 1997, the three percent assessment for workers compensation insurers.

The bill would take effect September 1, 1995 and would only apply to a liquidation or receivership on or after that date.

**SUPPORTERS
SAY:**

CSHB 2960 would clarify current law regarding the authority of examiners of title insurance companies, immunity of receivers, the priority of guaranty association's expenses in distributing assets of an insolvent company and the property and casualty guaranty association's obligations and administration.

The bill would allow the property and casualty guaranty association to assess their members in case of a disaster or catastrophe to assure that claims could be paid. It would also continue to allow the guaranty association to assess workers compensation insurers three percent of premiums written for another two years to assure that it can cover its claims. The base for workers compensation assessments has been declining and the higher assessment is only allowed if it is necessary.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The committee substitute made several technical changes and would allow the insurance commissioner to dispose of an insolvent insurer's property if the value was \$10,000 or less, instead of \$1,000 or less, without having to ask a court.