

SUBJECT: Recovery of TPCIGA payments to charities

COMMITTEE: Insurance — favorable, without amendment

VOTE: 6 ayes — Smithee, Duncan, Averitt, Counts, G. Lewis, Shields
0 nays
3 absent — De La Garza, Driver, Dutton

SENATE VOTE: On final passage, March 27 — 30-0

WITNESSES: For — None
Against — None
On — Jan Ferguson, Texas Property and Casualty Insurance Guarantee Association

BACKGROUND: The Texas Guarantee Act, Insurance code, art. 21.28-C, established the Texas Property and Casualty Insurance Guarantee Association (TPCIGA) in 1971. TPCIGA provides partial safety for policyholders in the event of insurer insolvency. When an insured's insurance company fails or becomes unable to pay claims, the TPCIGA pays those claims, or at least part of those claims, thereby protecting the insured from individual liability.

Under sec. 11 of the Texas Guarantee Act, payments made by TPCIGA may be recovered if an insured had assets greater than \$50 million and liabilities to other persons satisfied, in whole or in part, by payments made under the Texas Guarantee Act. The recovery provision was made effective based on when the insurance company became impaired, making the provisions of the act retroactive.

DIGEST: SB 391 would exempt from the recovery mechanism of sec. 11 of the Texas Guarantee Act an insured who is exempt from federal income tax under sec. 501 of the Internal Revenue Code (certain nonprofit and charitable organizations).

SB 391 would also remove the retroactivity of sec. 11 by applying it only to payments made after January 1, 1992.

This bill would take immediate effect if approved by two-thirds of the membership of each house.

**SUPPORTERS
SAY:**

The ability of TPCIGA to recover from insured for claims paid out was instituted so that companies whose insurers failed but still had sufficient assets would not be able to use the provisions of the Texas Guarantee Act. However, when the insured is a charity or other non-profit organization, which entitles them to tax exemption under sec. 501, those entities should still be protected by the TPCIGA no matter what the assets of the company might be.

When this repayment provision was enacted, it was not intended to have been applied retroactively. The companies that entered into insurance contracts before this provision was enacted in 1991 chose their insurance company based on the law at the time they entered into the contract. Had these companies known that they would be liable for repaying the TPCIGA later, they might have chosen different insurers. The \$50 million threshold was enacted because such companies would have the sophistication to choose their insurer based on the risk of repayment if that insurer failed, but no level of sophistication would have allowed these companies to foresee that the Legislature would change the law to make them liable after they purchased insurance.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The Senate-passed version of SB 391 included only the retroactivity provision; the sec. 501 organization exemption was added by the committee substitute.