

SUBJECT: Revising insurance liquidation requirements

COMMITTEE: Insurance — favorable, with amendments

VOTE: 9 ayes — Smithee, Van de Putte, Averitt, Bonnen, Burnam, Eiland, G. Lewis, Olivo, Wise
0 nays

WITNESSES: For — None
Against — None
On — Kevin Brady, Texas Department of Insurance

BACKGROUND : The Insurance Code lists in order of priority how an insurance company's assets will be distributed if the company becomes insolvent. In this priority scheme, the federal government is included in the third priority group (class 3) along with all other claims of general creditors. 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 priority scheme has the same elements that the Supreme Court found unconstitutional in the Ohio case.

DIGEST: HB 1476 would amend the Insurance Code to specify that employee wages should be paid as part of administrative expenses, and to place federal claims before the claims of general creditors in the priority of distribution of assets.
The bill would take effect September 1, 1997.

NOTES: The committee amendments would require that proceeds of reinsurance agreements with an insolvent insurer be paid to the receiver and for the benefit of all claimants against the insolvent insurer, except in two specifically defined situations: when a contract signed before the insolvency

specifically provided for another payee in the event of an insolvency, or when the assuming insurer had assumed the policy obligation of the insolvent insurer.