

BILL ANALYSIS

S.B. 1192
By: Carona
Insurance
Committee Report (Amended)

BACKGROUND 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. C.S.S.B. 1192 makes a number of amendments to the Insurance Code that affect the operation of the association.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

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 the insured of an impaired insurer is not liable, and the reinsurer, self-insurer, insurance pool, underwriting association, self-insured governmental entity, or self-insurance pool or joint insurance fund created by one or more political subdivisions under Chapter 791 (Interlocal Cooperation Contracts), Government Code, or Chapter 504 (Workers' Compensation Insurance Coverage for Employees of Political Subdivisions), Labor Code, is not entitled to sue or continue a suit against that insured, for any subrogation recovery, reinsurance recovery, contribution, or indemnity to a certain extent. Deletes text regarding an assertion by a reinsurer, insurer, insurance pool, or underwriting association. Provides that, notwithstanding any other provision of this Act, the Texas Property and Casualty Insurance Guaranty Association's (association) liability for shareholder derivative actions or other claims for economic loss incurred by a claimant in the claimant's capacity as a shareholder under an insurance policy placed in force on or after January 1, 1002, is limited to \$300,000 for each policy, inclusive of defense costs, regardless of the number of claimants under each policy. 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 Sections 8(a) and (d), Article 21.28-C, Insurance Code, as follows:

(a) Provides that the association's liability is limited to the payment of covered claims. Provides that the association has no liability for any other claim or damages, including claims for recovery of attorney's fees, prejudgment or postjudgment interest, or penalties, extracontractual damages, multiple damages, or exemplary damages, or any other amount sought by or on behalf of any insured or claimant or any other

provider of goods or services retained by any insured or claimant in connection with the assertion or prosecution of any claims, without regard to whether the claims are covered, against the insured of an impaired insurer, the impaired insurer, the guaranty association, receiver, special deputy receiver, commissioner, or liquidator. Provides that this subsection does not exclude the payment of workers' compensation benefits or other liabilities or penalties authorized by Title 5 (Workers' Compensation), Labor Code, arising from the association's processing and payment of workers' compensation benefits after the designation of impairment.

(d) Provides that any judgment taken before the designation of impairment in which an insured under a liability policy or the insurer failed to exhaust all appeals is not binding on the association, and may not be considered as evidence of liability or of damages in connection with any claim brought against the association or any other party under this Act. Provides that, notwithstanding any other provision of this Act, a covered claim shall not include any claim filed with the guaranty association on a date that is later than, rather than after the later of the final date for filing claims against the liquidator or receiver of an insolvent insurer or, eighteen months after the date of the order of liquidation, except that a claim for workers' compensation benefits is governed by Title 5, Labor Code, and the applicable rules of the Texas Workers' Compensation Commission.

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 on a certain date exceeds \$50 million, provided that an insured's net worth on that date is considered to include the aggregate net worth of the insured and all the insured's parent, subsidiary, and affiliated companies as computed on a consolidated basis, and whose obligations under a certain liability 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 this section includes the aggregate net worth of the insured and all of the insured's parent, subsidiary, and affiliated companies computed on a consolidated basis.

(c) Provides that this section does not exclude the payment of a covered claim for workers' compensation benefits otherwise payable under this Act.

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, except that a covered claim for workers' compensation benefits is subject only to reduction by a third-party liability recovery under Section 417.002, Labor Code. 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) Provides that, subject to Section 5(8) of this Act and Title 5, Labor Code, a claim for workers' compensation benefits, rather than claimant's recovery, under this Act may not result in a recovery to the claimant that is less than that which would have resulted but for the insolvency of the impaired insurer.

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

(b-1) Provides that, subject to Section 5(8) of this Act and Title 5, Labor Code, a claim for workers' compensation benefits, rather than claimant's recovery, under this Act may not result in a recovery to the claimant that is less than that which would have resulted but for the insolvency of the impaired insurer.

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, to permit proper defense by the association of all pending causes of action. Authorize the court in which the delinquency proceeding is pending to issue injunctions or other similar orders to enforce the stay. Authorizes the commissioner, if the impaired insurer is not domiciled in this state, to bring an ancillary delinquency proceeding under Section 13 (Ancillary delinquency proceedings), Article 21.28, of this code for the limited purpose of determining the application, enforcement, and extension of the stay.

SECTION 7. Amends Section 25(b), Article 21.28-C, Insurance Code, to provide that this section does not apply to a conflict between this Act and Subtitle A (Texas Workers' Compensation Act), Title 5, Labor Code, except that this Act controls with respect to subrogation rights of an insurance carrier under Chapter 417 (Third-party Liability), Labor Code, against an insured of an impaired insurer or the association. Makes conforming changes.

SECTION 8. Makes application of this Act prospective.

Effective date: upon passage or September 1, 2003.

EFFECTIVE DATE

On passage or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2003.

EXPLANATION OF AMENDMENTS

The amendment removes claims arising under a statutorily authorized self-insurance plan operated by a governmental entity from the definition of a "covered claim" arising under an insurance policy subject to 21.28-C, Insurance Code.