

BILL ANALYSIS

S.B. 1433
By: Carona
Insurance
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Insurer Receivership Act, Chapter 443, Insurance Code, provides for insurance receiverships. The Act was enacted in 2005, in H.B. 2157, by the 79th Legislature. S.B. 1433 seeks to comport the Act to federal laws to avoid pre-emption of the Act, to rectify drafting errors in the Act, and to address unintended variances with the model Insurer Receivership Act on which the Act is based.

Pub. L. No. 111-203, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) grants additional authority to the federal government to liquidate financial companies under certain circumstances. Dodd-Frank provides that if an insurance company is determined to pose a systemic risk to the economy, it may be rehabilitated or liquidated pursuant to state law. However, if the state insurance regulator does not file an action within 60 days, the Federal Deposit Insurance Corporation has authority to initiate an action under state law in the place of the state regulator.

S.B. 1433 would enable the commissioner of insurance to perform his duties under the Act in the event that action is taken under Dodd-Frank.

As proposed, S.B. 1433 amends current law relating to insurer receivership.

RULEMAKING AUTHORITY

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

ANALYSIS

SECTION 1. Amends Sections 443.005(a) and (e), Insurance Code, as follows:

(a) Prohibits a delinquency proceeding, except as authorized by Section 203(e)(3), Pub. L. No. 111-203, from being commenced under this chapter by a person other than the commissioner of insurance (commissioner), and provides that a court does not have jurisdiction to entertain, hear, or determine any delinquency proceeding commenced by any other person.

(e) Authorizes a party in arbitration to bring a claim or counterclaim against the estate, but provides that the claim or counterclaim is subject to this chapter, rather than to Section 443.209 (Setoffs).

SECTION 2. Amends Section 443.0135, Insurance Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Creates an exception to this subsection under Subsection (c). Makes no further changes to this subsection.

(c) Authorizes the receiver, in the event of an emergency, to appoint a special deputy without soliciting competitive bids. Provides that for the purposes of this subsection, an emergency exists if:

(1) a court has made a determination described by Section 202 (a)(1)(A)(iv)(I), Pub. L. No. 111-203; or

(2) the receiver concludes that the competitive bidding process would delay the appointment of a special deputy and that the delay could be hazardous to the insurer's policyholders or creditors or the general public.

SECTION 3. Amends Section 443.052(a), Insurance Code, to create an exception as authorized by Section 2039(e)(3), Pub. L. No. 111-203.

SECTION 4. Amends Section 443.057, Insurance Code, to authorize a petition with respect to an insurer domiciled in this state or an unauthorized insurer for an order of rehabilitation or liquidation to be filed, rather than to authorize the commissioner to file with a court in this state a petition with respect to an insurer domiciled in this state or an unauthorized insurer for an order of rehabilitation or liquidation, on any one or more of certain grounds, including that a court has made a determination described by Section 202(a)(1)(A)(iv)(I), Pub. L. No. 111-203.

SECTION 5. Amends Section 443.058, Insurance Code, to require the receivership court, if any of the grounds provided in Section 443.057 are established, rather than if the commissioner establishes any of the grounds provided in Section 443.057, to grant the petition and issue the order of rehabilitation or liquidation requested in the petition.

SECTION 6. Amends Section 443.102, Insurance Code, by adding Subsection (f), to authorize the rehabilitator to exercise all powers possessed on August 31, 2005, by a receiver appointed for the purpose of rehabilitating an insurer, or conferred on a rehabilitator after that date by the laws of this state that are not inconsistent with this chapter.

SECTION 7. Amends Section 443.154(i), Insurance Code, to authorize the liquidator, subject to Subsection (y) (relating to authorizing the liquidator to take certain actions), rather than Subsection (x) (relating to the powers and authority of the liquidator), to acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with any property of the estate at its market value or upon terms and conditions that are fair and reasonable.

SECTION 8. Amends Section 443.211(b), Insurance Code, to require that any reinsurance, except as provided by Subsection (a), be payable to the receiver under a policy reinsured by the assuming insurer on the basis of claims allowed under Section 443.253 (Allowance of Claims), or, rather than and, paid under Chapter 462 (Texas Property and Casualty Insurance Guaranty Association), Chapter 463 (Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association), or Chapter 2602 (Texas Title Insurance Guaranty Association), or the guaranty associations of other states.

SECTION 9. Amends Section 443.253(e), Insurance Code, to provide that a judgment or order against an insured or the insurer entered after the date of the initial filing of a successful petition for receivership, or within 120 days before the initial filing of the petition, or, rather than and, a judgment or order against an insured or the insurer entered at any time by default or by collusion need not be considered as evidence of liability or of the amount of damages.

SECTION 10. Amends Section 443.301, Insurance Code, to provide that Class 2 includes claims for benefits under a health care plan issued by a maintenance organization, and claims under insurance policies or contracts for benefits issued by an unauthorized insurer. Makes nonsubstantive and conforming changes.

SECTION 11. Amends Sections 443.303(a) and (b), Insurance Code, as follows:

(a) Redefines "distributable assets."

(b) Provides that where sufficient distributable assets are available, amounts advanced are not limited to the claims and expenses paid to date by the guaranty associations; however, the liquidator is prohibited from distributing distributable assets to the guaranty associations in excess of the anticipated entire claims of the guaranty associations falling within the priority classes of claims established in Sections 443.301(a) and (b), rather than Sections 443.301(b) and (c).

SECTION 12. Provides that the changes in law made by this Act apply to a receivership proceeding pending on the effective date of this Act or initiated on or after the effective date of this Act.

SECTION 13. Effective date: September 1, 2011.

EFFECTIVE DATE

Effective date: September 1, 2011.