

By: Hegar

S.B. No. 1932

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the appointment of a master in chancery to oversee, and
3 payment of certain expenses in, an insurance receivership.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 443.301, Insurance Code, is amended to
6 read as follows:

7 Sec. 443.301. PRIORITY OF DISTRIBUTION. The priority of
8 payment of distributions on unsecured claims must be in accordance
9 with the order in which each class of claims is set forth in this
10 section. Every claim in each class shall be paid in full, or
11 adequate funds retained for their payment, before the members of
12 the next class receive payment, and all claims within a class must
13 be paid substantially the same percentage of the amount of the
14 claim. Except as provided by Subsections (a)(2), (a)(3), (i), and
15 (k), subclasses may not be established within a class. No claim by
16 a shareholder, policyholder, or other creditor shall be permitted
17 to circumvent the priority classes through the use of equitable
18 remedies. The order of distribution of claims shall be:

19 (a) Class 1. (1) The costs and expenses of administration
20 expressly approved or ratified by the liquidator, including the
21 following:

22 (A) the actual and necessary costs of preserving
23 or recovering the property of the insurer;

24 (B) in accordance with Section

1 443.015, reasonable compensation for all services rendered on
2 behalf of the administrative supervisor or receiver;

3 (C) any necessary filing fees;

4 (D) the fees and mileage payable to witnesses;

5 (E) unsecured loans obtained by the receiver; and

6 (F) expenses, if any, approved by the
7 rehabilitator of the insurer and incurred in the course of the
8 rehabilitation that are unpaid at the time of the entry of the order
9 of liquidation.

10 (2) The reasonable expenses of a guaranty association,
11 including overhead, salaries and other general administrative
12 expenses allocable to the receivership to include administrative
13 and claims handling expenses and expenses in connection with
14 arrangements for ongoing coverage, other than expenses incurred in
15 the performance of duties under Section 462.002(3), 463.108,
16 463.111, 463.113, 463.353, or 2602.113 or similar duties under the
17 statute governing a similar organization in another state. In the
18 case of the Texas Property and Casualty Insurance Guaranty
19 Association and other property and casualty guaranty associations,
20 the expenses shall include loss adjustment expenses, including
21 adjusting and other expenses and defense and cost containment
22 expenses. In the event that there are insufficient assets to pay
23 all of the costs and expenses of administration under Subsection
24 (a)(1) and the expenses of a guaranty association, the costs and
25 expenses under Subsection (a)(1) shall have priority over the
26 expenses of a guaranty association. In this event, the expenses of
27 a guaranty association shall be paid on a pro rata basis after the

1 payment of costs and expenses under Subsection (a)(1) in full.

2 (3) For purposes of Subsection (a)(1)(E), any
3 unsecured loan obtained by the receiver, unless by its terms it
4 otherwise provides, has priority over all other costs of
5 administration. Absent agreement to the contrary, all claims in
6 this subclass share pro rata.

7 (4) Except as expressly approved by the receiver, any
8 expenses arising from a duty to indemnify the directors, officers,
9 or employees of the insurer are excluded from this class and, if
10 allowed, are Class 5 claims.

11 (b) Class 2. All claims under policies of insurance,
12 including third-party claims, claims under nonassessable policies
13 for unearned premium, claims of obligees and, subject to the
14 discretion of the receiver, completion contractors under surety
15 bonds and surety undertakings other than bail bonds, mortgage or
16 financial guaranties, or other forms of insurance offering
17 protection against investment risk, claims by principals under
18 surety bonds and surety undertakings for wrongful dissipation of
19 collateral by the insurer or its agents, and claims incurred during
20 the extension of coverage provided for in Section 443.152. All
21 other claims incurred in fulfilling the statutory obligations of a
22 guaranty association not included in Class 1, including indemnity
23 payments on covered claims and, in the case of the Life, Accident,
24 Health, and Hospital Service Insurance Guaranty Association or
25 another life and health guaranty association, all claims as a
26 creditor of the impaired or insolvent insurer for all payments of
27 and liabilities incurred on behalf of covered claims or covered

1 obligations of the insurer and for the funds needed to reinsure
2 those obligations with a solvent insurer. Notwithstanding any
3 provision of this chapter, the following claims are excluded from
4 Class 2 priority:

5 (1) obligations of the insolvent insurer arising out
6 of reinsurance contracts;

7 (2) obligations, excluding unearned premium claims on
8 policies other than reinsurance agreements, incurred after:

9 (A) the expiration date of the insurance policy;

10 (B) the policy has been replaced by the insured
11 or canceled at the insured's request; or

12 (C) the policy has been canceled as provided by
13 this chapter;

14 (3) obligations to insurers, insurance pools, or
15 underwriting associations and their claims for contribution,
16 indemnity, or subrogation, equitable or otherwise;

17 (4) any claim that is in excess of any applicable
18 limits provided in the insurance policy issued by the insurer;

19 (5) any amount accrued as punitive or exemplary
20 damages unless expressly covered under the terms of the policy;

21 (6) tort claims of any kind against the insurer and
22 claims against the insurer for bad faith or wrongful settlement
23 practices; and

24 (7) claims of the guaranty associations for
25 assessments not paid by the insurer, which must be paid as claims in
26 Class 5.

27 (c) Class 3. Claims of the federal government not included

1 in Class 3.

2 (d) Class 4. Debts due employees for services or benefits
3 to the extent that the debts do not exceed \$5,000 or two months
4 salary, whichever is the lesser, and represent payment for services
5 performed within one year before the entry of the initial order of
6 receivership. This priority is in lieu of any other similar
7 priority that may be authorized by law as to wages or compensation
8 of employees.

9 (e) Class 5. Claims of other unsecured creditors not
10 included in Classes 1 through 4, including claims under reinsurance
11 contracts, claims of guaranty associations for assessments not paid
12 by the insurer, and other claims excluded from Class 2.

13 (f) Class 6. Claims of any state or local governments,
14 except those specifically classified elsewhere in this
15 section. Claims of attorneys for fees and expenses owed them by an
16 insurer for services rendered in opposing a formal delinquency
17 proceeding. In order to prove the claim, the claimant must show
18 that the insurer that is the subject of the delinquency proceeding
19 incurred the fees and expenses based on its best knowledge,
20 information, and belief, formed after reasonable inquiry,
21 indicating opposition was in the best interests of the insurer, was
22 well grounded in fact, and was warranted by existing law or a good
23 faith argument for the extension, modification, or reversal of
24 existing law, and that opposition was not pursued for any improper
25 purpose, such as to harass or to cause unnecessary delay or needless
26 increase in the cost of the litigation.

27 (g) Class 7. Claims of any state or local government for a

1 penalty or forfeiture, but only to the extent of the pecuniary loss
2 sustained from the act, transaction, or proceeding out of which the
3 penalty or forfeiture arose, with reasonable and actual costs
4 occasioned thereby. The balance of the claims must be treated as
5 Class 9 claims under Subsection (i).

6 (h) Class 8. Except as provided in Sections 443.251(b) and
7 (d), late filed claims that would otherwise be classified in
8 Classes 2 through 7.

9 (i) Class 9. Surplus notes, capital notes or contribution
10 notes or similar obligations, premium refunds on assessable
11 policies, and any other claims specifically assigned to this
12 class. Claims in this class are subject to any subordination
13 agreements related to other claims in this class that existed
14 before the entry of the liquidation order.

15 (j) Class 10. Interest on allowed claims of Classes 1
16 through 9, according to the terms of a plan proposed by the
17 liquidator and approved by the receivership court.

18 (k) Class 11. Claims of shareholders or other owners
19 arising out of their capacity as shareholders or other owners, or
20 any other capacity, except as they may be qualified in Class 2, 5,
21 or 10. Claims in this class are subject to any subordination
22 agreements related to other claims in this class that existed
23 before the entry of the liquidation order.

24 SECTION 2. Subchapter B, Chapter 443, Insurance Code, is
25 amended by adding Section 443.060 to read as follows:

26 Sec. 443.060. APPOINTMENT OF MASTER. (a) For the purposes
27 of Rule 171, Texas Rules of Civil Procedure, or a successor to that

1 rule, a delinquency proceeding under this chapter is an exceptional
2 case for which good cause exists for a receivership court to appoint
3 one or more masters in chancery to oversee the proceeding. A master:

4 (1) must:

5 (A) be a citizen of this state; and

6 (B) perform all of the duties required of the
7 master as directed by the receivership court;

8 (2) may not:

9 (A) be an attorney for a party to the proceeding;

10 or

11 (B) be related to any party to the proceeding;

12 and

13 (3) has the same powers as a master in chancery in a
14 court of equity.

15 (b) A master may be appointed in a delinquency proceeding:

16 (1) on a motion of a party to the delinquency
17 proceeding;

18 (2) on the receivership court's own motion; or

19 (3) as provided by local rules or procedures of the
20 Travis County district courts.

21 (c) The receivership court may consider any reasonable
22 criteria in appointing a master to a delinquency proceeding,
23 including:

24 (1) the overall complexity of the delinquency
25 proceeding;

26 (2) the number of delinquency proceedings on the
27 master's docket;

1 (3) the number of related delinquency proceedings to
2 which the master has been previously appointed;

3 (4) the anticipated duration of the delinquency
4 proceeding;

5 (5) the scope of matters assigned to the master;

6 (6) whether to appoint the master to hear all matters
7 arising in a delinquency proceeding, or certain matters or types of
8 matters, as specified by the receivership court;

9 (7) the term of the master in relation to the
10 anticipated duration of the assignment; and

11 (8) the number of claims existing and reasonably
12 expected, in addition to anticipated derivative litigation,
13 against the receivership estate at the commencement of, or during,
14 the delinquency proceeding, provided that a determination under
15 this subdivision:

16 (A) is made without a bias or appearance of bias
17 toward a specific claim or litigation; and

18 (B) does not impose an undue or premature burden
19 on a party that may have a claim or cause of action against a
20 receivership estate.

21 (d) Except as provided by this subsection, a master shall
22 serve a term of not more than 10 years. The receivership court may:

23 (1) appoint a master to a longer term if the duration
24 of a delinquency proceeding to which the master has been previously
25 assigned lasts longer than 10 years; and

26 (2) hear petitions from parties to a delinquency
27 proceeding to have another master assigned to that delinquency

1 proceeding.

2 (e) If the receivership court appoints one or more masters,
3 the court must, by local rule, procedure, or order, adopt
4 procedures for the succession of the master or masters.

5 (f) Before the expiration of a master's term, the master may
6 resign by providing written notice to the receivership court, filed
7 with the Travis County district clerk. If a master resigns under
8 this subsection, the receivership court shall promptly appoint a
9 successor master.

10 (g) Rule 171, Texas Rules of Civil Procedure, or a successor
11 to that rule, applies to the order of reference to the master.

12 (h) Except as provided by Subsection (i), a master's fees
13 and expenses are payable as a cost of administration of the
14 receivership estate in accordance with this section. A master
15 shall submit a statement of time and costs, with notice to the
16 parties in interest. A party in interest may file an objection to a
17 master's statement not later than 30 days after the date of the
18 filing of the statement and set the objection for hearing before the
19 receivership court. A master's fees shall be paid if no objection
20 is timely filed or if all timely filed objections are overruled.

21 (i) If a master is appointed to hear a dispute between
22 particular parties in interest in the delinquency proceeding, the
23 receivership court may tax the master's fees and expenses to the
24 parties to the dispute.

25 SECTION 3. (a) The changes in law made by this Act do not
26 abrogate the valid appointment of a master under Rule 171, Texas
27 Rules of Civil Procedure, entered before September 1, 2011, in a

1 proceeding under Chapter 443, Insurance Code.

2 (b) Before January 1, 2012, the changes in law made by this
3 Act do not apply to a proceeding under Chapter 443, Insurance Code,
4 in which the court appointed a master under Rule 171, Texas Rules of
5 Civil Procedure, before September 1, 2011.

6 SECTION 4. This Act takes effect September 1, 2011.