

By: Representative Stevens

To: Insurance

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1162

1 AN ACT TO AMEND SECTION 83-24-83, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE PROVISION ESTABLISHING PRIORITY AND ORDER OF
3 DISTRIBUTIONS OF CLAIMS UNDER THE INSURERS REHABILITATION AND
4 LIQUIDATION ACT; TO CREATE A NEW SECTION TO BE CODIFIED AS SECTION
5 83-24-18, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR CERTAIN
6 PROTECTIONS REGARDING RECEIVERS; AND FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 SECTION 1. Section 83-24-83, Mississippi Code of 1972, is
9 amended as follows:

10 83-24-83. The priority of distribution of claims from the
11 insurer's estate shall be in accordance with the order in which
12 each class of claims is * * * set forth in this section. Every
13 claim in each class shall be paid in full or adequate funds
14 retained for such payment before the members of the next class
15 receive any payment. Once such funds are retained by the
16 liquidator and approved by the court, the insurer's estate shall
17 have no further liability to members of that class except to the
18 extent of the retained funds and any other undistributed funds.
19 No subclasses shall be established within any class except as
20 provided in Section 83-24-41(1). No claim by a shareholder,
21 policyholder or other creditor shall be permitted to circumvent
22 the priority classes through the use of equitable remedies. The
23 order of distribution of claims shall be:

24 (1) Class 1. The costs and expenses of administration
25 expressly approved by the receiver, including but not limited to
26 the following:

27 (a) The actual and necessary costs of preserving or
28 recovering the assets of the insurer;

29 (b) Compensation for all authorized services rendered
30 in the conservation, rehabilitation or liquidation;

31 (c) Any necessary filing fees;

32 (d) The fees and mileage payable to witnesses; and

33 (e) Authorized reasonable attorney's fees and other
34 professional services rendered in the conservation, rehabilitation
35 or liquidation.

36 * * *

37 (2) Class 2. The administrative expenses of guaranty
38 associations. For purposes of this section these expenses shall
39 be the reasonable expenses incurred by guaranty associations where
40 the expenses are not payments or expenses which are required to be
41 incurred as direct policy benefits in fulfillment of the terms of
42 the insurance contract or policy, and that are of the type and
43 nature that, but for the activities of the guaranty association
44 otherwise would have been incurred by the receiver, including, but
45 not limited to, evaluations of policy coverage, activities
46 involved in the adjustment and settlement of claims under
47 policies, including those of in-house or outside adjusters, and
48 the reasonable expenses incurred in connection with the
49 arrangements for ongoing coverage through transfer to other
50 insurers, policy exchanges or maintaining policies in force. The
51 receiver may, in his or her sole discretion, approve as an
52 administrative expense under this section any other reasonable
53 expenses of the guaranty association if the receiver finds:

54 (a) The expenses are not expenses required to be paid
55 or incurred as direct policy benefits by the terms of the policy,
56 and

57 (b) The expenses were incurred in furtherance of
58 activities that provided a material economic benefit to the estate
59 as a whole, irrespective of whether the activities resulted in
60 additional benefits to covered claimants. The court shall approve
61 such expenses unless it finds the receiver abused his or her

62 discretion in approving the expenses.

63 If the receiver determines that the assets of the estate will
64 be sufficient to pay all Class 1 claims in full, Class 2 claims
65 shall be paid currently, provided that the liquidator shall secure
66 from each of the associations receiving disbursements pursuant to
67 this section an agreement to return to the liquidator such
68 disbursements, together with investment income actually earned on
69 such disbursements, as may be required to pay Class 1 claims. No
70 bond shall be required of any such association.

71 (3) Class 3. All claims under policies including * * *
72 claims of the federal or any state or local government for losses
73 incurred, ("loss claims") including third party claims, claims for
74 unearned premiums, and all claims of a guaranty association * * *,
75 for payment of covered claims or covered obligations of the
76 insurer. All claims of a guaranty association for reasonable
77 expenses other than those included in Class 2. All claims under
78 life and health insurance and annuity policies, whether for death
79 proceeds, health benefits, annuity proceeds, or investment values
80 shall be treated as loss claims. That portion of any loss,
81 indemnification for which is provided by other benefits or
82 advantages recovered by the claimant, shall not be included in
83 this class, other than benefits or advantages recovered or
84 recoverable in discharge of familial obligation of support or by
85 way of succession at death or as proceeds of life insurance, or as
86 gratuities. No payment by an employer to his employee shall be
87 treated as a gratuity.

88 Notwithstanding the foregoing, the following claims shall be
89 excluded from Class 3 priority:

90 (a) Obligations of the insolvent insurer arising out of
91 reinsurance contracts;

92 (b) Obligations incurred after the expiration date of
93 the insurance policy or after the policy has been replaced by the
94 insured or canceled at the insured's request or after the policy

95 has been cancelled as provided in this chapter;

96 (c) Obligations to insurers, insurance pools or
97 underwriting associations and their claims for contribution,
98 indemnity or subrogation, equitable or otherwise;

99 (d) Any claim which is in excess of any applicable
100 limits provided in the insurance policy issued by the insolvent
101 insurer;

102 (e) Any amount accrued as punitive or exemplary damages
103 unless expressly covered under the terms of the policy; and

104 (f) Tort claims of any kind against the insurer, and
105 claims against the insurer for bad faith or wrongful settlement
106 practices.

107 (4) Class 4. * * * Claims of the federal government other
108 than those claims included in Class 3.

109 (5) Class 5. Debts due employees for services, benefits,
110 contractual or otherwise due arising out of such reasonable
111 compensation to employees for services performed to the extent
112 that they do not exceed two (2) months of monetary compensation
113 and represent payment for services performed within six (6) months
114 before the filing of the petition for liquidation or, if
115 rehabilitation preceded liquidation, within one (1) year before
116 the filing of the petition for rehabilitation. Principal officers
117 and directors shall not be entitled to the benefit of this
118 priority except as otherwise approved by the liquidator and the
119 court. This priority shall be in lieu of any other similar
120 priority which may be authorized by law as to wages or
121 compensation of employees.

122 (6) Class 6. Claims of any person, including claims of
123 state or local governments, except those specifically classified
124 elsewhere in this section. Claims of attorneys for fees and
125 expenses owed them by a person for services rendered in opposing a
126 formal delinquency proceeding. In order to prove the claim, the
127 claimant must show that the insurer which is the subject of the

128 delinquency proceeding incurred such fees and expenses based on
129 its best knowledge, information and belief, formed after
130 reasonable inquiry indicating opposition was in the best interests
131 of the person, was well grounded in fact and was warranted by
132 existing law or a good faith argument for the extension,
133 modification or reversal of existing law, and that opposition was
134 not pursued for any improper purpose, such as to harass or to
135 cause unnecessary delay or needless increase in the cost of the
136 litigation.

137 (7) Class 7. Claims, of * * * any state or local
138 government * * * for a penalty or forfeiture but only to the
139 extent of the pecuniary loss sustained from the act, transaction,
140 or proceeding out of which the penalty or forfeiture arose, with
141 reasonable and actual costs occasioned thereby. The remainder of
142 such claims shall be postponed to the class of claims under
143 subsection (8) of this section.

144 (8) Class 8. Surplus or contribution notes, or similar
145 obligations, * * * premium refunds on assessable policies,
146 interest on claims of Classes 1 through 7 and any other claims
147 specifically subordinated to this class.

148 (9) Class 9. * * * Claims of shareholders or other owners
149 arising out of their capacity as shareholders or other owners, or
150 any other capacity except as they may be qualified in Class 3 or 6
151 above.

152 If any claimant of this state, another state or foreign
153 country shall be entitled to or shall receive a dividend upon his
154 or her claim out of a statutory deposit or the proceeds of any
155 bond or other asset located in another state or foreign country,
156 unless such deposit or proceeds shall have been delivered to the
157 domiciliary liquidator pursuant to Section 83-24-104, then the
158 claimants shall not be entitled to any further dividend from the
159 receiver until and unless all other claimants of the same class,
160 irrespective of residence or place of the acts or contracts upon

161 which their claims are based, shall have received an equal
162 dividend upon their claims, and after such equalization, such
163 claimants shall be entitled to share in the distribution of
164 further dividends by the receiver, along with and like all other
165 creditors of the same class, wheresoever residing.

166 Upon the declaration of a dividend, the receiver shall apply
167 the amount of the dividend against any indebtedness owed to the
168 insurer by the person entitled to the dividend. There shall be no
169 claim allowed for any deductible charged by a guaranty association
170 or entity performing a similar function.

171 SECTION 2. This section shall be codified as Section
172 83-24-18, Mississippi Code of 1972:

173 83-24-18. (1) For the purposes of this section, the persons
174 entitled to protection under this section are:

175 (a) All receivers responsible for the conduct of a
176 delinquency proceeding under this chapter including present and
177 former receivers; and

178 (b) Their employees meaning all present and former
179 special deputies and assistant special deputies appointed by the
180 commissioner and all persons whom the commissioner, special
181 deputies, or assistant special deputies have employed to assist in
182 a delinquency proceeding under this chapter. Attorneys,
183 accountants, auditors and other professional persons or firms, who
184 are retained by the receiver as independent contractors and their
185 employees, shall not be considered employees of the receiver for
186 purposes of this section.

187 (2) The receiver and his employees shall have official
188 immunity and shall be immune from suit and liability, both
189 personally and in their official capacities, for any claim for
190 damage to or loss of property or personal injury or other civil
191 liability caused by or resulting from any alleged act, error or
192 omission of the receiver or any employee arising out of or by
193 reason of their duties or employment; provided that nothing in

194 this provision shall be construed to hold the receiver or any
195 employee immune from suit and/or liability for any damage, loss,
196 injury or liability caused by the intentional or willful and
197 wanton misconduct of the receiver or any employee.

198 (3) If any legal action is commenced against the receiver or
199 any employee, whether against him personally or in his official
200 capacity, alleging property damage, property loss, personal injury
201 or other civil liability caused by or resulting from any alleged
202 act, error or omission of the receiver or any employee arising out
203 of or by reason of their duties or employment, the receiver and
204 any employee shall be indemnified from the assets of the insurer
205 for all expenses, attorneys' fees, judgments, settlements, decrees
206 or amounts due and owing or paid in satisfaction of or incurred in
207 the defense of such legal action unless it is determined upon a
208 final adjudication on the merits that the alleged act, error or
209 omission of the receiver or employee giving rise to the claim did
210 not arise out of or by reason of his duties or employment, or was
211 caused by intentional or willful and wanton misconduct.

212 (a) Attorneys' fees and any and all related expenses
213 incurred in defending a legal action for which immunity or
214 indemnity is available under this section shall be paid from the
215 assets of the insurer, as they are incurred, in advance of the
216 final disposition of such action upon receipt of an undertaking by
217 or on behalf of the receiver or employee to repay the attorneys'
218 fees and expenses if it shall ultimately be determined upon a
219 final adjudication on the merits that the receiver or employee is
220 not entitled to immunity or indemnity under this section.

221 (b) Any indemnification for expense payments,
222 judgments, settlements, decrees, attorneys' fees, surety bond
223 premiums or other amounts paid or to be paid from the insurer's
224 assets pursuant to this section shall be an administrative expense
225 of the insurer.

226 (c) In the event of any actual or threatened litigation

227 against a receiver or any employee for which immunity or indemnity
228 may be available under this section, a reasonable amount of funds
229 which in the judgment of the commissioner may be needed to provide
230 immunity or indemnity shall be segregated and reserved from the
231 assets of the insurer as security for the payment of indemnity
232 until such time as all applicable statutes of limitation shall
233 have run and all actual or threatened actions against the receiver
234 or any employee have been completely and finally resolved, and all
235 obligations of the insurer and the commissioner under this section
236 shall have been satisfied.

237 (d) In lieu of segregation and reserving of funds, the
238 commissioner may, in his discretion, obtain a surety bond or make
239 other arrangements which will enable the commissioner to fully
240 secure the payment of all obligations under this section.

241 (4) If any legal action against an employee for which
242 indemnity may be available under this section is settled prior to
243 final adjudication on the merits, the insurer must pay the
244 settlement amount on behalf of the employee, or indemnify the
245 employee for the settlement amount, unless the commissioner
246 determines:

247 (a) That the claim did not arise out of or by reason of
248 the employee's duties or employment; or

249 (b) That the claim was caused by the intentional or
250 willful and wanton misconduct of the employee.

251 (5) In any legal action in which the receiver is a
252 defendant, that portion of any settlement relating to the alleged
253 act, error or omission of the receiver shall be subject to the
254 approval of the court before which the delinquency proceeding is
255 pending. The court shall not approve that portion of the
256 settlement if it determines:

257 (a) That the claim did not arise out of or by reason of
258 the receiver's duties or employment; or

259 (b) That the claim was caused by the intentional or

260 willful and wanton misconduct of the receiver.

261 (6) Nothing contained or implied in this section shall
262 operate, or be construed or applied to deprive the receiver or any
263 employee of any immunity, indemnity, benefits of law, rights or
264 any defense otherwise available.

265 (7) (a) Subsection (2) of this section shall apply to any
266 suite based in whole or in part on any alleged act, error or
267 omission which takes place on or after the effective date of this
268 chapter.

269 (b) No legal action shall lie against the receiver or
270 any employee based in whole or in part on any alleged act, error
271 or omission which took place prior to the effective date of this
272 chapter, unless suit is filed and valid service of process is
273 obtained within twelve (12) months after the effective date of
274 this chapter.

275 (c) Subsections (3), (4) and (5) of this section shall
276 apply to any suit which is pending on or filed after the effective
277 date of this chapter without regard to when the alleged act, error
278 or omission took place.

279 SECTION 3. This act shall take effect and be in force from
280 and after its passage.