

By: Kirby

To: Insurance

SENATE BILL NO. 2281
(As Passed the Senate)

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; AND FOR RELATED PURPOSES.

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

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

8 83-24-83. The priority of distribution of claims from the
9 insurer's estate shall be in accordance with the order in which
10 each class of claims is herein set forth. Every claim in each
11 class shall be paid in full or adequate funds retained for such
12 payment before the members of the next class receive any payment.

13 No subclasses shall be established within any class. The order
14 of distribution of claims shall be:

15 (1) **Class 1.** The costs and expenses of administration
16 during rehabilitation and liquidation, including but not limited
17 to the following:

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

20 (b) Compensation for all authorized services rendered
21 in the rehabilitation and liquidation;

22 (c) Any necessary filing fees;

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

24 (e) Authorized reasonable attorney's fees and other
25 professional services rendered in the rehabilitation and
26 liquidation;

27 (f) The reasonable expenses of a guaranty association

28 or foreign guaranty association for unallocated loss adjustment
29 expenses.

30 * * *

31 (2) Class 2. All claims under policies including such
32 claims of the federal or any state or local government for losses
33 incurred ("loss claims") including third party claims and all
34 claims of a guaranty association or foreign guaranty association.

35 All claims under life insurance and annuity policies, whether for
36 death proceeds, annuity proceeds or investment values shall be
37 treated as loss claims. That portion of any loss, indemnification
38 for which is provided by other benefits or advantages recovered by
39 the claimant, shall not be included in this class, other than
40 benefits or advantages recovered or recoverable in discharge of
41 familial obligation of support or by way of succession at death or
42 as proceeds of life insurance, or as gratuities. No payment by an
43 employer to his employee shall be treated as a gratuity.

44 (3) Class 3. Claims under nonassessable policies for
45 unearned premium or other premium refunds * * *.

46 (4) Class 4. Claims of the federal government not included
47 in Class (2) or (3) above.

48 (5) Class 5. Reasonable compensation to employees for
49 services performed to the extent that they do not exceed two (2)
50 months of monetary compensation and represent payment for services
51 performed within one (1) year before the filing of the petition
52 for liquidation or, if rehabilitation preceded liquidation, within
53 one (1) year before the filing of the petition for rehabilitation.
54 Principal officers and directors shall not be entitled to the
55 benefit of this priority except as otherwise approved by the
56 liquidator and the court. Such priority shall be in lieu of any
57 other similar priority which may be authorized by law as to wages
58 or compensation of employees.

59 (6) Class 6. Claims of general creditors including claims
60 of ceding and assuming companies in their capacity as such.

61 (7) **Class 7.** Claims of * * * any state or local government
62 except those under Class (2) or 3 above. Claims, including those
63 of any state or local governmental body for a penalty or
64 forfeiture, shall be allowed in this class only to the extent of
65 the pecuniary loss sustained from the act, transaction, or
66 proceeding out of which the penalty or forfeiture arose, with
67 reasonable and actual costs occasioned thereby. The remainder of
68 such claims shall be postponed to the class of claims under
69 subsection (10).

70 (8) **Class 8.** Claims filed late or any other claims other
71 than claims under subsections (9) and (10).

72 (9) **Class 9.** Surplus or contribution notes, or similar
73 obligations, and premium refunds on assessable policies. Payments
74 to members of domestic mutual insurance companies shall be limited
75 in accordance with law.

76 (10) **Class 10.** The claims of shareholders or other owners
77 in their capacity as shareholders.

78 SECTION 2. It is the intent of the Legislature that Section
79 83-24-83 as amended by this act applies to pending and future
80 claims in existing delinquency proceedings as well as to claims in
81 delinquency proceedings arising after the effective date of this
82 act; that, in light of the ruling of the United States Supreme
83 Court in U.S. Department of the Treasury v. Fabe, 113 S.Ct. 2202
84 (1993), the Legislature considers this act to be curative,
85 remedial and not affecting substantive rights in the distribution
86 of assets in delinquency proceedings; that this act is necessary
87 to cure any potential defect in the present priority of
88 distribution scheme that may result from the Fabe decision and to
89 preserve the original intent of the Legislature with regard to the
90 priorities of payment in delinquency proceedings.

91 SECTION 3. If any classification or priority provided for in
92 Section 1 of this act is held to be unconstitutional or otherwise
93 invalid, the remaining classifications and priorities shall

94 continue in effect.

95 SECTION 4. This act shall take effect and be in force from
96 and after its passage.