

By: Kirby

To: Insurance

SENATE BILL NO. 2281

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.

Principal officers and directors shall not be entitled to the benefit of this priority except as otherwise approved by the liquidator and the court. Such priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.

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

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

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

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

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

SECTION 2. It is the intent of the Legislature that Section 83-24-83 as amended by this act applies to pending and future claims in existing delinquency proceedings as well as to claims in 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.