

FINAL BILL REPORT

HB 1634

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Synopsis as Enacted

Brief Description: Prioritizing and ordering the distribution of claims of an insurer's estate.

Sponsors: By Representatives Santos, DeBolt, Hatfield and Benson; by request of Insurance Commissioner.

House Committee on Financial Institutions & Insurance
Senate Committee on Labor, Commerce & Financial Institutions

Background:

The regulatory authority of the Office of the Insurance Commissioner (OIC) includes the power to initiate court proceedings to liquidate— an insurer. Such liquidation can be based on a variety of grounds, including insolvency, failure to transact business for a period of one year, or the failure of an effort by the OIC to rehabilitate— a troubled insurer.

In a liquidation, a court determines the rights and liabilities of an insurer and its creditors, policyholders, stockholders, and other interested parties in accordance with the pertinent regulations in the insurance code. Among these regulations are fixed rules pertaining to the distribution of the insurer's assets among the various claimants. The claimants are divided into classes for the purpose of prioritizing the order in which claims are to be satisfied.

The order of priority for distributing an insurer's assets is determined by reference to eight classes of claims:

Class 1 - Those claims arising from the costs and expenses of administration of the rehabilitation and/or liquidation;

Class 2 - Reasonable compensation owed to employees of the insured, but subject to numerous conditions and limitations;

Class 3 - Loss claims— arising from the policies of the insurer;

Class 4 - Claims relating to refunds for unearned premiums and the claims of general creditors;

Class 5 - All federal, state, and local government claims, subject to certain conditions;

Class 6 - Claims filed late and all claims not falling within other listed classes;

Class 7 - Surplus or contribution notes, and premium refunds on assessable policies; and

Class 8 - Claims of shareholders or other owners.

The United States Supreme Court has held that federal law preempts state law with respect to claims of the federal government against the assets of an insolvent insurance company. Under federal law, the federal government's claims must take precedence over other claims, except those claims arising from the policies of the insolvent insurer. Washington law is thus at odds with federal law, insofar as it prioritizes federal claims behind those of several classes of claimants who are not policy holders.

Summary:

The classes of claims against the assets of an insurer subject to liquidation are redefined and re-prioritized as follows:

Class 1 - Those claims arising from the costs and expenses of administration of the rehabilitation and/or liquidation;

Class 2 - Loss claims— arising from the policies of the insurer and claims relating to refunds from unearned premiums;

Class 3 - Claims of the federal government, excluding federal claims falling under Class 2;

Class 4 - Reasonable compensation owed to the employees of the insurer, but subject to numerous conditions and limitations. This class shares top priority with Class 1 if the federal government has no claims or potential claims against the assets of the insurer;

Class 5 - Claims of general creditors;

Class 6 - Claims of state and local governments;

Class 7 - Claims filed late and all claims not falling within other listed classes;

Class 8 - Surplus or contribution notes, and premium refunds on assessable policies; and

Class 9 - Claims of shareholders or other owners.

These provisions are applicable to all claims in liquidation proceedings filed on or after

January 1, 2001.

Votes on Final Passage:

House 98 0

Senate 48 0

Effective: July 22, 2001