

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 58th Legislature (2022)

4 ENGROSSED SENATE
5 BILL NO. 1246

By: Quinn of the Senate

and

Sneed of the House

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7
8
9 An Act relating to insurance receivership; amending
10 36 O.S. 2021, Sections 1636, 1901, 1918, 1930, and
11 1938, which relate to transactions within an
12 insurance holding company, definitions, claims
13 against an insurer, and delinquency proceedings;
14 directing Insurance Commissioner to make certain
15 determinations; requiring certain insurers secure
16 funds under certain circumstances; maintaining
17 property ownership over certain documents, records,
18 and funds; requiring certain documents be provided to
19 certain persons; authorizing restrictions against use
20 of data under certain circumstances; providing for
21 access to records when a default of lease or
22 agreement occurs; establishing provisions for
23 jurisdiction of parties to insurer agreement;
24 modifying definition; establishing compliance
25 measures; modifying time period for reporting certain
26 claim to court; providing for certain alternative
27 court procedures in claim hearings; establishing
28 service list for certain claim notices; establishing
29 requirements for providing notice and hearing
30 information; establishing objection process;
31 conforming language; and providing an effective date.

32 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. AMENDATORY 36 O.S. 2021, Section 1636, is
2 amended to read as follows:

3 Section 1636. A. 1. Transactions within an insurance holding
4 company system to which an insurer subject to registration is a
5 party shall be subject to the following standards:

- 6 a. the terms shall be fair and reasonable,
- 7 b. agreements for cost-sharing services and management
8 shall include such provisions as required by rule and
9 regulation issued by the Insurance Commissioner,
- 10 c. charges or fees for services performed shall be
11 reasonable,
- 12 d. expenses incurred and payment received shall be
13 allocated to the insurer in conformity with customary
14 insurance accounting practices consistently applied,
- 15 e. the books, accounts and records of each party to all
16 such transactions shall be so maintained as to clearly
17 and accurately disclose the nature and details of the
18 transactions including such accounting information as
19 is necessary to support the reasonableness of the
20 charges or fees to the respective parties, ~~and~~
- 21 f. the insurer's surplus as regards policyholders
22 following any dividends or distributions to
23 shareholder affiliates shall be reasonable in relation
24

1 to the insurer's outstanding liabilities and adequate
2 to meet its financial needs,

3 g. if an insurer subject to this act is deemed by the
4 Commissioner to be in a hazardous financial condition
5 pursuant to Section 1905 of this title and regulations
6 pursuant to Title 365 of the Oklahoma Administrative
7 Code or a condition that would be grounds for
8 supervision, conservation, or a delinquency
9 proceeding, the Commissioner may require the insurer
10 to secure and maintain from any affiliate with whom
11 the insurer has a service or management agreement
12 either a deposit held by the Commissioner or a bond,
13 as determined by the insurer at the insurer's
14 discretion, for the protection of the insurer for the
15 duration of the contract, agreement, or existence of
16 the condition for which the Commissioner required the
17 deposit or the bond. In determining whether a deposit
18 or a bond is required, the Commissioner should
19 consider whether concerns exist with respect to the
20 affiliated person's ability to fulfill the contract or
21 agreement if the insurer were to be put into
22 liquidation. Once the insurer is deemed to be in a
23 hazardous financial condition or a condition that
24 would be grounds for supervision, conservation, or a

1 delinquency proceeding, and a deposit or bond is
2 necessary, the Commissioner has discretion to
3 determine the amount of the deposit or bond, not to
4 exceed the value of the contract or agreement in any
5 one year, and whether such deposit or bond should be
6 required for a single contract, multiple contracts, or
7 a contract only with a specific person,

8 h. all records and data of the insurer held by an
9 affiliate shall remain the property of the insurer.
10 All records and data of the insurer shall be subject
11 to the control of the insurer, identifiable, and
12 segregated or readily capable of segregation, at no
13 additional cost to the insurer, from all other
14 persons' records and data. This includes all records
15 and data in any form that are otherwise the property
16 of the insurer including, but not limited to, claims
17 and claim files, policyholder lists, application
18 files, litigation files, premium records, rate books,
19 underwriting manuals, personnel records, financial
20 records, or similar records within the possession,
21 custody, or control of the affiliate. At the request
22 of the insurer, the affiliate shall provide the
23 receiver all records of any type that pertain to the
24 insurer's business, access to the operating systems on

1 which the data is maintained, and the software that
2 runs those systems either through assumption of
3 licensing agreements or otherwise. The receiver may
4 restrict the use of the data by the affiliate if it is
5 not operating the insurer's business. The affiliate
6 shall provide a waiver of any landlord lien or other
7 encumbrance to give the insurer access to all records
8 and data in the event of the affiliate's default under
9 a lease or other agreement, and

10 i. premiums or other funds belonging to the insurer that
11 are collected by or held by an affiliate are the
12 exclusive property of the insurer and are subject to
13 the control of the insurer. Any right of offset in
14 the event an insurer is placed into receivership shall
15 be subject to Article 19 of this title.

16 2. The following transactions involving a domestic insurer and
17 any person in its insurance holding company system, including
18 amendments or modifications of affiliate agreements previously filed
19 pursuant to this section, which are subject to any materiality
20 standards contained in subparagraphs a through g of this paragraph,
21 shall not be entered into unless the insurer has notified the
22 Commissioner in writing of its intention to enter into the
23 transaction at least thirty (30) days prior thereto, or such shorter
24 period as the Commissioner may permit, and the Commissioner has not

1 disapproved it within that period. The notice for amendments or
2 modifications shall include the reasons for the change and the
3 financial impact on the domestic insurer. Informal notice shall be
4 reported, within thirty (30) days after a termination of a
5 previously filed agreement, to the Commissioner for determination of
6 the type of filing required, if any:

7 a. sales, purchases, exchanges, loans, extensions of
8 credit, or investments, provided the transactions are
9 equal to or exceed:

10 (1) with respect to nonlife insurers, the lesser of
11 three percent (3%) of the insurer's admitted
12 assets or twenty-five percent (25%) of surplus as
13 regards policyholders as of the 31st day of
14 December next preceding, and

15 (2) with respect to life insurers, three percent (3%)
16 of the insurer's admitted assets as of the 31st
17 day of December next preceding,

18 b. loans or extensions of credit to any person who is not
19 an affiliate, where the insurer makes loans or
20 extensions of credit with the agreement or
21 understanding that the proceeds of the transactions,
22 in whole or in substantial part, are to be used to
23 make loans or extensions of credit to, to purchase
24 assets of, or to make investments in, any affiliate of

1 the insurer making the loans or extensions of credit
2 provided the transactions are equal to or exceed:

- 3 (1) with respect to nonlife insurers, the lesser of
4 three percent (3%) of the insurer's admitted
5 assets or twenty-five percent (25%) of surplus as
6 regards policyholders as of the 31st day of
7 December next preceding, and
8 (2) with respect to life insurers, three percent (3%)
9 of the insurer's admitted assets as of the 31st
10 day of December next preceding,

11 c. reinsurance agreements or modifications thereto,
12 including:

- 13 (1) all reinsurance pooling agreements, and
14 (2) agreements in which the reinsurance premium or a
15 change in the insurer's liabilities, or the
16 projected reinsurance premium or a change in the
17 insurer's liabilities in any of the next three
18 (3) years, equals or exceeds five percent (5%) of
19 the insurer's surplus as regards policyholders,
20 as of the 31st day of December next preceding,
21 including those agreements which may require as
22 consideration the transfer of assets from an
23 insurer to a nonaffiliate, if an agreement or
24 understanding exists between the insurer and

1 nonaffiliate that any portion of the assets will
2 be transferred to one or more affiliates of the
3 insurer,

4 d. all management agreements, service contracts, tax
5 allocation agreements, guarantees and all cost-sharing
6 arrangements,

7 e. guarantees when made by a domestic insurer; provided,
8 however, that a guarantee which is quantifiable as to
9 amount is not subject to the notice requirements of
10 this paragraph unless it exceeds the lesser of one-
11 half of one percent (.5%) of the insurer's admitted
12 assets or ten percent (10%) of surplus as regards
13 policyholders as of the 31st day of December next
14 preceding. Further, all guarantees which are not
15 quantifiable as to amount are subject to the notice
16 requirements of this paragraph,

17 f. direct or indirect acquisitions or investments in a
18 person that controls the insurer or in an affiliate of
19 the insurer in an amount which, together with its
20 present holdings in such investments, exceeds two and
21 one-half percent (2.5%) of the insurer's surplus to
22 policyholders. Direct or indirect acquisitions or
23 investments in subsidiaries acquired pursuant to
24 Section 2 of this act (or authorized under any other

1 section of this title), or in nonsubsidiary insurance
2 affiliates that are subject to the provisions of this
3 act, are exempt from this requirement, and

4 g. any material transactions, specified by regulation,
5 which the Commissioner determines may adversely affect
6 the interests of the insurer's policyholders.

7 Nothing in this paragraph shall be deemed to authorize or permit
8 any transactions which, in the case of an insurer not a member of
9 the same insurance holding company system, would be otherwise
10 contrary to law.

11 3. A domestic insurer may not enter into transactions which are
12 part of a plan or series of like transactions with persons within
13 the insurance holding company system if the purpose of those
14 separate transactions is to avoid the statutory threshold amount and
15 thus avoid the review that would occur otherwise. If the
16 Commissioner determines that separate transactions were entered into
17 over any twelve-month period for that purpose, the Commissioner may
18 exercise his or her authority under Section 11 of this act.

19 4. The Commissioner, in reviewing transactions pursuant to
20 paragraph 2 of this subsection, shall consider whether the
21 transactions comply with the standards set forth in paragraph 1 of
22 this subsection and whether they may adversely affect the interests
23 of policyholders.
24

1 5. The Commissioner shall be notified within thirty (30) days
2 of any investment of the domestic insurer in any one corporation if
3 the total investment in the corporation by the insurance holding
4 company system exceeds ten percent (10%) of the corporation's voting
5 securities.

6 6. Any affiliate that is party to an agreement or contract with
7 a domestic insurer that is subject to subparagraph d of paragraph 2
8 of subsection A of this section shall be subject to the jurisdiction
9 of any supervision, seizure, conservatorship, or receivership
10 proceedings against the insurer and to the authority of any
11 supervisor, conservator, rehabilitator, or liquidator for the
12 insurer appointed pursuant to Articles 18 and 19 of this title for
13 the purpose of interpreting, enforcing, and overseeing the
14 affiliate's obligations under the agreement or contract to perform
15 services for the insurer that:

- 16 a. are an integral part of the insurer's operations
17 including but not limited to management,
18 administrative, accounting, data processing,
19 marketing, underwriting, claims handling, investment,
20 any other similar functions, or
21 b. are essential to the insurer's ability to fulfill its
22 obligations under insurance policies.

23 7. The Commissioner may require that an agreement or contract
24 pursuant to subparagraph d of paragraph 2 of subsection A of this

1 section for the provision of services described in subparagraphs a
2 and b of paragraph 6 of subsection A of this section that the
3 affiliate consents to the jurisdiction as set forth in this section.

4 B. No domestic insurer shall pay any extraordinary dividend or
5 make any other extraordinary distribution to its shareholders until
6 thirty (30) days after the Commissioner has received notice of the
7 declaration thereof and has not within that period disapproved the
8 payment, or until the Commissioner has approved the payment within
9 the thirty-day period. For purposes of this section, an
10 extraordinary dividend or distribution includes any dividend or
11 distribution of cash or other property whose fair market value
12 together with that of other dividends or distributions made within
13 the preceding twelve (12) months exceeds the greater of:

14 1. Ten percent (10%) of the insurer's surplus as regards
15 policyholders as of the 31st day of December next preceding; or

16 2. The net gain from operations of the insurer, if the insurer
17 is a life insurer, or the net income, if the insurer is not a life
18 insurer, not including realized capital gains, for the twelve-month
19 period ending the 31st day of December next preceding, but shall not
20 include pro rata distributions of any class of the insurer's own
21 securities.

22 In determining whether a dividend or distribution is
23 extraordinary, an insurer other than a life insurer may carry
24 forward net income from the previous two (2) calendar years that has

1 not already been paid out as dividends. This carry-forward shall be
2 computed by taking the net income from the second and third
3 preceding calendar years, not including realized capital gains, less
4 dividends paid in the second and immediate preceding calendar years.

5 Notwithstanding any other provision of law, an insurer may
6 declare an extraordinary dividend or distribution which is
7 conditional upon the Commissioner's approval, and the declaration
8 shall confer no rights upon shareholders until (1) the Commissioner
9 has approved the payment of the dividend or distribution or (2) the
10 Commissioner has not disapproved payment within the thirty-day
11 period.

12 C. 1. Notwithstanding the control of a domestic insurer by any
13 person, the officers and directors of the insurer shall not thereby
14 be relieved of any obligation or liability to which they would
15 otherwise be subject by law, and the insurer shall be managed so as
16 to assure its separate operating identity consistent with this act.

17 2. Nothing in this section shall preclude a domestic insurer
18 from having or sharing a common management or cooperative or joint
19 use of personnel, property or services with one or more other
20 persons under arrangements meeting the standards of paragraph 1 of
21 subsection A of this section.

22 3. Not less than one-third (1/3) of the directors of a domestic
23 insurer, and not less than one-third (1/3) of the members of each
24 committee of the board of directors of any domestic insurer, shall

1 be persons who are not officers or employees of the insurer or of
2 any entity controlling, controlled by, or under common control with
3 the insurer and who are not beneficial owners of a controlling
4 interest in the voting stock of the insurer or entity. At least one
5 such person must be included in any quorum for the transaction of
6 business at any meeting of the board of directors or any committee
7 thereof.

8 4. The board of directors of a domestic insurer shall establish
9 one or more committees comprised solely of directors who are not
10 officers or employees of the insurer or of any entity controlling,
11 controlled by, or under common control with the insurer and who are
12 not beneficial owners of a controlling interest in the voting stock
13 of the insurer or any such entity. The committee or committees
14 shall have responsibility for nominating candidates for director for
15 election by shareholders or policyholders, evaluating the
16 performance of officers deemed to be principal officers of the
17 insurer and recommending to the board of directors the selection and
18 compensation of the principal officers.

19 5. The provisions of paragraphs 3 and 4 of this subsection
20 shall not apply to a domestic insurer if the person controlling the
21 insurer, such as an insurer, a mutual insurance holding company, or
22 a publicly held corporation, has a board of directors and committees
23 thereof that meet the requirements of paragraphs 3 and 4 of this
24 subsection with respect to such controlling entity.

1 6. An insurer may make application to the Commissioner for a
2 waiver from the requirements of this subsection, if the insurer's
3 annual direct written and assumed premium, excluding premiums
4 reinsured with the Federal Crop Insurance Corporation and ~~Federal~~
5 ~~Flood Program~~ National Flood Insurance Program, is less than Three
6 Hundred Million Dollars (\$300,000,000.00). An insurer may also make
7 application to the Commissioner for a waiver from the requirements
8 of this subsection based upon unique circumstances. The
9 Commissioner may consider various factors including, but not limited
10 to, the type of business entity, volume of business written,
11 availability of qualified board members, or the ownership or
12 organizational structure of the entity.

13 D. For purposes of this act, in determining whether an
14 insurer's surplus as regards policyholders is reasonable in relation
15 to the insurer's outstanding liabilities and adequate to meet its
16 financial needs, the following factors, among others, shall be
17 considered:

18 1. The size of the insurer as measured by its assets, capital
19 and surplus, reserves, premium writings, insurance in force and
20 other appropriate criteria;

21 2. The extent to which the insurer's business is diversified
22 among several lines of insurance;

23 3. The number and size of risks insured in each line of
24 business;

1 4. The extent of the geographical dispersion of the insurer's
2 insured risks;

3 5. The nature and extent of the insurer's reinsurance program;

4 6. The quality, diversification and liquidity of the insurer's
5 investment portfolio;

6 7. The recent past and projected future trend in the size of
7 the insurer's investment portfolio;

8 8. The surplus as regards policyholders maintained by other
9 comparable insurers;

10 9. The adequacy of the insurer's reserves; and

11 10. The quality and liquidity of investments in affiliates.

12 The Commissioner may treat any such investment as a disallowed asset
13 for purposes of determining the adequacy of surplus as regards
14 policyholders whenever in the judgment of the Commissioner the
15 investment so warrants.

16 SECTION 2. AMENDATORY 36 O.S. 2021, Section 1901, is
17 amended to read as follows:

18 Section 1901. For the purpose of Article 19 of the Insurance
19 Code:

20 1. "Impairment" or "insolvency." The capital of a stock
21 insurer, or limited stock life, accident and health insurer, the net
22 assets of a ~~Lloyds~~ Lloyd's association, or the surplus of a mutual
23 or reciprocal insurer, shall be deemed to be impaired and the
24 insurer shall be deemed to be insolvent, when such insurer shall not

1 be possessed of assets at least equal to all liabilities and
2 required reserves together with its total issued and outstanding
3 capital stock if a stock insurer, the net assets if a ~~Lloyds~~ Lloyd's
4 association, or the minimum surplus if a mutual or reciprocal
5 insurer required by this code to be maintained for the kind or kinds
6 of insurance it is then authorized to transact.

7 2. "Insurer" means any person, firm, corporation, health
8 maintenance organizations, association or aggregation of persons
9 doing an insurance business and subject to the insurance supervisory
10 authority of, or to liquidation, rehabilitation, reorganization or
11 conservation by the Insurance Commissioner or the equivalent
12 insurance supervisory official of another state.

13 3. "Delinquency proceeding" means any proceeding commenced
14 against an insurer pursuant to this article for the purpose of
15 liquidating, rehabilitating, reorganizing or conserving such
16 insurer.

17 4. "State" means any state of the United States and also the
18 District of Columbia, Alaska, Hawaii, and Puerto Rico.

19 5. "Foreign country" means territory not in any state.

20 6. "Domiciliary state" means the state in which an insurer is
21 incorporated or organized, or in the case of an insurer incorporated
22 or organized in a foreign country, the state in which such insurer,
23 having become authorized to do business in such state, has at the
24 commencement of delinquency proceedings, the largest amount of its

1 assets held in trust and assets held on deposit for the benefit of
2 its policyholders or policyholders and creditors in the United
3 States, and any such insurer is deemed to be domiciled in such
4 state.

5 7. "Ancillary state" means any state other than a domiciliary
6 state.

7 8. "Reciprocal state" means any state other than this state ~~in~~
8 ~~which in substance and effect the provisions of the Uniform Insurers~~
9 ~~Liquidation Act, as defined in Section 1921 of this title, are in~~
10 ~~force, including the provisions requiring that the Insurance~~
11 ~~Commissioner or equivalent insurance supervisory official be the~~
12 ~~receiver of a delinquent insurer~~ that has enacted a law that sets
13 forth a scheme for the administration of an insurer in receivership
14 by the state's insurance commissioner, or comparable insurance
15 regulatory official.

16 9. "General assets" means all property, real, personal or
17 otherwise, not specifically mortgaged, pledged, deposited or
18 otherwise encumbered for the security or benefit of specified
19 persons or a limited class or classes of persons, and as to such
20 specifically encumbered property the term includes all such property
21 or its proceeds in excess of the amount necessary to discharge the
22 sum or sums secured thereby. Assets held in trust and assets held
23 on deposit for the security or benefit of all policyholders or all
24

1 policyholders and creditors in the United States shall be deemed
2 general assets.

3 10. "Preferred claim" means any claim with respect to which the
4 law of the state or of the United States accords priority of
5 payments from the general assets of the insurer.

6 11. "Special deposit claim" means any claim secured by a
7 deposit made pursuant to statute for the security or benefit of a
8 limited class or classes of persons, but not including any general
9 assets.

10 12. "Secured claim" means any claim secured by mortgage, trust
11 deed, pledge, deposit as security, escrow, or otherwise, but not
12 including special deposit claim or claims against general assets.
13 The term also includes claims which more than four months prior to
14 the commencement of delinquency proceedings in the state of the
15 insurer's domicile have become liens upon specific assets by reason
16 of judicial process.

17 13. "Receiver" means receiver, liquidator, rehabilitator, or
18 conservator as the context may require.

19 SECTION 3. AMENDATORY 36 O.S. 2021, Section 1918, is
20 amended to read as follows:

21 Section 1918. A. All claims against an insurer against which
22 delinquency proceedings have been begun shall set forth in
23 reasonable detail the amount of the claim, or the basis upon which
24 such amount can be ascertained, the facts upon which the claim is

1 based, and the priorities asserted, if any. All such claims shall
2 be ~~verified~~ signed by the ~~affidavit of the~~ claimant, or someone
3 authorized to act on ~~his~~ the claimant's behalf ~~and having knowledge~~
4 ~~of the facts~~, and shall be supported by such documents as may be
5 material thereto. The claimant shall, in the time and manner set
6 forth by the receiver, fully comply with any and all requests by the
7 receiver for providing information or evidence that is supplementary
8 to the information that is required pursuant to Article 19 of this
9 title including, but not limited to, testimony under oath,
10 affidavits, and depositions.

11 B. All claims filed in this state shall be filed with the
12 receiver, whether domiciliary or ancillary, in this state, on or
13 before the last date for filing as specified ~~in this article~~ by the
14 court.

15 C. Within ~~ten (10) days of the receipt of any claim, or within~~
16 such ~~further~~ period as the court may, ~~for good cause shown;~~ fix, the
17 receiver shall report the claim to the court, specifying in such
18 report ~~his~~ the receiver's recommendation with respect to the action
19 to be taken thereon. Upon receipt of such report, the court shall
20 fix a time for hearing the claim and shall direct that the claimant
21 or the receiver, as the court shall specify, shall give such notice
22 as the court shall determine to such persons as shall appear to the
23 court to be interested therein. All such notices shall specify the
24 time and place of the hearing and shall concisely state the amount

1 and nature of the claim, the priorities asserted, if any, and the
2 recommendation of the receiver with reference thereto.

3 D. At the hearing, all persons interested shall be entitled to
4 appear and the court shall enter an order allowing, allowing in
5 part, or disallowing the claim. Any such order shall be deemed to
6 be an appealable order.

7 SECTION 4. AMENDATORY 36 O.S. 2021, Section 1930, is
8 amended to read as follows:

9 Section 1930. A. If upon commencement of delinquency
10 proceedings under this article or at any time during the proceedings
11 the insurer shall not be clearly solvent, the court shall, after
12 such notice and hearing as it deems proper, make an order declaring
13 the insurer to be insolvent. Thereupon, regardless of any prior
14 notice which may have been given to creditors, the Insurance
15 Commissioner shall notify all persons who may have claims against
16 the insurer and who have not filed proper proofs thereof to present
17 the same to the Commissioner, at a place specified in the notice,
18 within four (4) months from the date of entry of the order, or
19 within a longer time prescribed by the court not to exceed one
20 hundred eighty (180) days which shall be specified in the notice.
21 The notice shall be given in a manner determined by the court.

22 B. Only upon application of the liquidator, the receivership
23 court may allow alternative procedures and requirements for the
24 filing of proofs of claim or for allowing or proving claims. Upon

1 application, if the court dispenses with the requirements of filing
2 a proof of claim by a person, class, or group of persons, a proof of
3 claim for such a person, class, or group shall be deemed as having
4 been filed for all purposes, except that the receivership court's
5 waiver of proof of claim requirements shall not impact guaranty
6 association proof of claim filing requirement or coverage
7 determinations to the extent that the guaranty fund statute or
8 filing requirements are inconsistent with the court's waiver of
9 proof.

10 C. Proofs of claim may be filed after the date specified in the
11 notice, but no such claim shall share in the distribution of the
12 assets until all allowed claims, proofs of which have been filed
13 before that date, have been paid in full with interest.

14 SECTION 5. AMENDATORY 36 O.S. 2021, Section 1938, is
15 amended to read as follows:

16 Section 1938. A. Upon written notice to the receiver, a person
17 shall be placed on the service list to receive notice of matters
18 filed by the receiver. It shall be the responsibility of the person
19 requesting notice to inform the receiver in writing of any changes
20 to his or her address, or to request that his or her name be deleted
21 from the service list. The receiver may require that the person on
22 the service list provide confirmation that they wish to remain on
23 the service list. Any person who fails to confirm upon the
24 receiver's request may be removed from the service list. Inclusion

1 on the service list does not confer standing in the delinquency
2 proceeding to raise, appear, or be heard on any issue.

3 B. Except as otherwise provided by this act, notice and hearing
4 of any matter submitted by the receiver to the receivership court
5 for approval pursuant to this act shall be conducted as follows:

6 1. The receiver shall file an application explaining the
7 proposed action and the basis for such action. The receiver may
8 include any evidence in support of the application. If the receiver
9 determines that any documents supporting the application are
10 confidential, the receiver may submit them to the receivership court
11 under seal for in camera inspection;

12 2. The receiver shall provide notice of the application to all
13 persons on the service list and any other parties as determined by
14 the receiver. Notice may be provided by first class mail postage
15 paid, electronic mail, or facsimile transmission, at the receiver's
16 discretion. For purposes of this section, notice is deemed to be
17 given on the date that it is deposited with the United States
18 Postmaster or transmitted, as applicable, to the last known address
19 as shown on the service list;

20 3. Any party in interest objecting to the application shall
21 file an objection specifying the grounds therefore within fourteen
22 (14) days or such longer time as the court may specify in the notice
23 of the filing of the application and shall serve copies on the
24 receiver and any other persons served with the application within

1 the same time period. An objecting party shall have the burden of
2 showing why the receivership court should not authorize the proposed
3 action;

4 4. If no objection to the application is timely filed, the
5 receivership court may enter an order approving the application
6 without a hearing or hold a hearing to determine if the receiver's
7 application should be approved. The receiver may request that the
8 receivership court enter an order or hold a hearing on an expedited
9 basis; and

10 5. If an objection is timely filed, the receivership court may
11 hold a hearing. If the receivership court approves the application
12 and, upon a motion by the receiver, determines that the objection
13 was frivolous or filed merely for delay or for other improper
14 purpose, the receivership court shall order the objecting party to
15 pay the receiver's reasonable costs and fees of defending the
16 action.

17 ~~A.~~ C. In any proceeding commenced against an insurer pursuant
18 to Article 18 by a judicial proceeding or Article 19 of this title
19 for the purpose of liquidating, rehabilitating, reorganizing, or
20 conserving such insurer, hereinafter called delinquency proceeding,
21 the compensation of personnel employed or retained to assist the
22 Insurance ~~Department~~ Commissioner with the proceeding shall be
23 approved by the court ~~at a full hearing~~ before the compensation may
24 be paid. The Insurance Commissioner shall apply to the court for

1 ~~the hearing approval; provided, that if any board has been created~~
2 ~~by law to commence and administer delinquency proceedings under~~
3 ~~Article 18 or 19 of this title, or if any board or association is~~
4 authorized by the Commissioner to provide assistance to the
5 Commissioner, the board or association shall apply to the court.
6 ~~Provided, this section shall not apply to a supervisorship~~
7 ~~authorized by Article 18 of this title.~~

8 B. D. Upon receiving the application for approval of
9 compensation, ~~the court shall schedule a hearing. The~~ the party
10 responsible for the filing of the application shall cause notice in
11 writing of the application, time to file objections, and hearing to
12 be served upon the following persons not less than ten (10) days
13 before the ~~hearing is scheduled~~ objection period expires:

- 14 1. The persons or firms requesting the compensation;
- 15 2. The Commissioner, if not the applicant; and
- 16 3. Ten persons, or such lesser number as there may be, who hold
17 the largest number of shares in the insurance company involved in
18 the delinquency proceeding, as indicated by the company's stock
19 register as of the time that the company was placed under
20 supervision pursuant to Section 1804 of this title or at the time
21 that an application was filed with the court for the commencement of
22 a delinquency proceeding pursuant to Section 1903 of this title.
23 Said shareholders shall serve as representatives of the insurance
24 company.

1 ~~C.~~ E. The notice shall state the time ~~and~~ period for filing
2 objections, place of the hearing if there are objections, ~~the~~
3 reasons for the hearing, and the following rights of any party
4 served with notice:

5 1. To appear in person at the hearing or to be represented by
6 counsel;

7 2. To testify under oath, call witnesses to testify, and
8 furnish documentary evidence, relevant to the determination of the
9 compensation;

10 3. To cross-examine witnesses and have a reasonable opportunity
11 to inspect all documentary evidence; and

12 4. To subpoena witnesses and compel the production of testimony
13 and documents, relevant to the determination of the compensation.
14 The person making service shall make an affidavit of such service
15 and file the notice and affidavit with the court.

16 ~~D.~~ F. At the hearing, the court shall fully investigate the
17 compensation of persons employed or retained to assist the Insurance
18 ~~Department~~ Commissioner with the conduct of the delinquency
19 proceeding. The court shall not approve the compensation until it
20 has been made to appear to the satisfaction of the court, based upon
21 competent evidence, that such compensation is justified.

22 SECTION 6. This act shall become effective November 1, 2022.

23 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 04/18/2022 - DO
24 PASS.