STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

HOUSE BILL NO. 1328 By: Weaver

AS INTRODUCED

An Act relating to insurance; amending 36 O.S. 1991, Sections 1902 and 1904, which relate to rehabilitation and liquidation; requiring delinquency proceedings to be filed in district court; providing for exclusive jurisdiction of all property; providing for original jurisdiction of related civil proceedings; allowing the district court to abstain from exercising jurisdiction in certain cases; allowing a party to pursue the right to arbitration; providing for personal jurisdiction of certain persons; limiting jurisdiction over certain coverage disputes involving guaranty associations; providing for consent to jurisdiction in certain cases; making certain determinations binding and conclusive; deleting restriction on exclusive remedy; allowing a party to pursue contractual rights to arbitration; amending 36 O.S. 1991, Section 1928, as amended by Section 3, Chapter 156, O.S.L. 1997 (36 O.S. Supp. 1998, Section 1928), which relates to offsets in liquidation proceedings; clarifying certain contractual arrangements; deleting certain offset prohibitions; prohibiting offset in certain circumstances involving affiliates; prohibiting offset in certain circumstances involving assumed risks; deleting intent language; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 36 O.S. 1991, Section 1902, is amended to read as follows:

Section 1902. A. ~~The~~ Delinquency proceedings under this article shall be filed only in the district court ~~is vested with~~, which shall have original and exclusive ~~original~~ jurisdiction of all delinquency proceedings ~~pursuant to the provisions of~~ filed under this article~~, and~~. The district court is authorized to make all necessary and proper orders to carry out the purposes of this article.

B. The district court shall, as of the commencement of a delinquency proceeding under this article, have exclusive jurisdiction of all property of the insurer, wherever located, including property located outside the territorial limits of such court.

C. 1. The district court shall have original but not exclusive jurisdiction of all civil proceedings arising under this article or arising in or related to delinquency proceedings under this article.

2. On motion of a party in interest and in the interests of justice, the district court may abstain from hearing a matter over which it has original but not exclusive jurisdiction and may permit such action to proceed in another forum.

3. Except as to claims against the estate, nothing in this article shall deprive a party in interest of any contractual right to pursue arbitration of any dispute under any law.

D. In addition to grounds otherwise provided by law, the following persons are subject to the personal jurisdiction of the district court:

1. Current and former agents and brokers of the insurer;

2. Policy holders and reinsurers of the insurer;

3. Current and former officers, directors, managers, trustees, organizers, promoters, and any other persons in control of the insurer; and

4. Any third party administrator for an insurer and any person that maintains information for an insurer.

E. Notwithstanding any other provision in this article, this section does not confer jurisdiction on the district court to resolve coverage disputes between guaranty associations and those asserting claims against an association resulting from the initiation of a delinquency proceeding under this article except to the extent that the guaranty association has otherwise expressly consented to such jurisdiction pursuant to a plan of rehabilitation

or liquidation that resolves its obligations to covered policyholders.

F. The determination of any dispute with respect to the statutory obligations of any guaranty association by a court or administrative agency or body with jurisdiction in the state of domicile of the guaranty association shall be binding and conclusive as to the parties in a delinquency proceeding initiated in the district court, including, without limitation, the policyholders of the insurer.

G. The venue of delinquency proceedings against any insurer shall be in Oklahoma County.

~~C. Delinquency proceedings pursuant to this article shall constitute the sole and exclusive method of liquidating, rehabilitating, reorganizing, or conserving an insurer.~~

H. No person other than the Insurance Commissioner, his attorney, or the Attorney General representing the Insurance Commissioner shall appear in the courts of this state requesting the appointment of a receiver or otherwise commence delinquency proceedings to take over, liquidate, rehabilitate, reorganize, or conserve an insurer and no court shall entertain a petition for the commencement of such proceedings unless the same has been filed in the name of the state on the relation of the Insurance Commissioner.

~~D.~~ I. An appeal shall lie to the Supreme Court from an order granting or refusing rehabilitation, liquidation, or conservation, and from every other order in delinquency proceedings having the character of a final order as to the particular portion of the proceedings embraced therein.

SECTION 2. AMENDATORY 36 O.S. 1991, Section 1904, is amended to read as follows:

Section 1904. A. Upon application by the Insurance Commissioner for such an order to show cause, or at any time thereafter, the court may without notice issue an injunction

restraining the insurer, its officers, directors, stockholders, members, subscribers, agents and all other persons for the transaction of its business or the waste or disposition of its property until the further order of the court.

B. The court may at any time during a proceeding under this article issue such other injunctions or orders as may be deemed necessary to prevent interference with the Insurance Commissioner or the proceedings, or waste of the assets of the insurer, or the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer or against its assets or any part thereof.

C. Notwithstanding any other provision of law, no bond shall be required of the Insurance Commissioner as a prerequisite for the issuance of any injunction or restraining order pursuant to this section.

D. Nothing in this section shall deprive a party in interest of any contractual right to pursue arbitration of any dispute under any law.

SECTION 3. AMENDATORY 36 O.S. 1991, Section 1928, as amended by Section 3, Chapter 156, O.S.L. 1997 (36 O.S. Supp. 1998, Section 1928), is amended to read as follows:

Section 1928. A. 1. In all cases of mutual debts or mutual credits between the insurer and another person, whether arising out of one or more contracts between the insurer and another person, in connection with any action or proceeding under this article, such credits and debts shall be offset and the balance only shall be allowed or paid, except as provided in subsection B of this section.

2. Any mutual debt or mutual credit to be offset shall be filed and approved as a claim against the insurer in accordance with Sections 1918 and 1930 of this title. Any debt or credit not filed

in accordance with this paragraph shall be deemed to have been waived.

B. No offset shall be allowed if:

1. The obligation of the insurer would not, at the date of the entry of any liquidation order or otherwise as provided in Section 1925 of this title, entitle the claimant to share in the assets of the insurer;

2. The obligation of the insurer was purchased by or transferred to the claimant to be used as an offset;

3. The obligation is to pay an assessment levied against the members of a mutual insurer, or against the subscribers of a reciprocal insurer, or to pay a balance upon the subscription to the capital stock of a stock insurer; ~~or~~

4. The obligation of the insurer ~~was the result of a life or accident and health reinsurance agreement that contains terms or conditions structured to avoid reasonable risk transfer and indemnification criteria including, but not limited to:~~

~~a. a reinsurance agreement the primary effect of which is to transfer deficiency reserves or excess interest reserves to the books of the reinsurer for a "risk charge" and the agreement does not provide for mortality, morbidity, or surrender benefit participation by the reinsurer consistent with its participation in the deficiency or excess interest portion of the policies reinsured,~~

~~b. allowing the reserve credit taken by the ceding insurer to be in excess of the actuarial reserve necessary under the Oklahoma Insurance Code and applicable rules or regulations including actuarial interpretations or standards adopted by the Insurance Department to support the policy obligations transferred under the reinsurance agreement,~~

~~c. requiring the ceding insurer to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against prior years' losses nor payment by the ceding insurer of an amount equal to prior years' losses upon voluntary termination of in-force reinsurance by that ceding insurer shall be considered such a reimbursement to the reinsurer for negative experience,~~

~~d. depriving the ceding insurer of surplus at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer, except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums shall not be considered to be such a deprivation of surplus,~~

~~e. requiring the ceding insurer at specific points in time scheduled in the agreement to terminate or automatically recapture all or part of the reinsurance ceded,~~

~~f. a provision that no cash payment is due from the reinsurer, throughout the lifetime of the reinsurance agreement, with all settlements prior to the termination date of the agreement made only in a "reinsurance account", and no funds in the account are available for the payment of claims, or~~

~~g. a reinsurance agreement involving the possible payment by the ceding insurer to the reinsurer of amounts other than from income reasonably expected from the reinsured policies.~~ is owed to an affiliate of such person, or any other entity or association other than the person;

5. The obligation of the person is owed to an affiliate of the insurer, or any other entity or association other than the insurer; or

6. The obligation between the person and the insurer arise from business where either the person or the insurer has assumed risks and obligations from the other party and then has ceded back to that party substantially the same risks and obligations.

~~C. It is the intent of the Legislature that the provisions of paragraph 4 of subsection B of this section only apply to life and accident and health reinsurance agreements made and entered into on and after November 1, 1988.~~

SECTION 4. This act shall become effective July 1, 1999.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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