

05/19/2014 04:09:15 PM

HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB2929

By: Kirby of the House and Sparks of the Senate

Title: Insurance; modifying various sections; effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendment; and
2. That the attached Conference Committee Substitute be adopted.

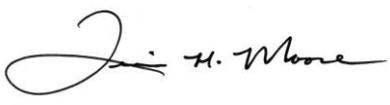
Respectfully submitted,

House Action _____ Date _____ Senate Action _____ Date _____

HB2929 CCR (A)
HOUSE CONFEREES

Dank, David  Kirby, Dan 

Kouplen, Steve _____ Matthews, Kevin _____

Moore, Lewis H.  Mulready, Glen 

Quinn, Marty  Russ, Todd 

Schwartz, Colby  Shelton, Mike _____

Stiles, Aaron _____

HB2929 CCR A

SENATE CONFEREES

Sparks

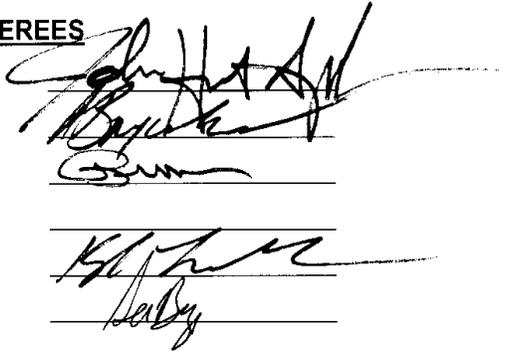
Marlatt

Brown

Stanislawski

Loveless

Burrage



Handwritten signatures of conference members: Sparks, Marlatt, Brown, Stanislawski, Loveless, and Burrage. Each signature is written over a horizontal line.

House Action _____ Date _____ Senate Action _____ Date _____

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 CONFERENCE COMMITTEE
4 SUBSTITUTE
5 FOR ENGROSSED
6 HOUSE BILL NO. 2929

By: Kirby of the House

and

Sparks of the Senate

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10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to insurance; amending 36 O.S. 2011,
12 Section 1927.1, which relates to distribution of
13 claims; prohibiting distribution to shareholders,
14 members or owners under certain conditions; directing
15 distribution to a fund for the receiver under certain
16 conditions; requiring funds distributed to the
17 receiver to be utilized for certain purposes;
18 directing the receiver to certain evidence of
19 indebtedness; prohibiting the use of certain funds to
20 pay certain claims; providing applicability; and
21 providing an effective date.

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

23 SECTION 1. AMENDATORY 36 O.S. 2011, Section 1927.1, is
24 amended to read as follows:

Section 1927.1 A. The priority of distribution of claims from
the insurer's estate shall be in accordance with the order in which
each class of claims is set forth in this section. Before the

1 members of the next class receive any payment, every claim in each
2 class shall be:

- 3 1. Paid in full; or
- 4 2. Protected by adequate funds retained for such payment.

5 Once such funds are approved by the court and paid or retained by
6 the liquidator, the insurer's estate shall have no further liability
7 to members of that class except to the extent of the retained funds
8 and any other undistributed funds. Payment of retained funds
9 pursuant to court order under this section extinguishes the
10 potential liability of the receiver to the United States or any
11 other governmental entity. No subclasses shall be established
12 within any class except as otherwise provided by law. No claim by a
13 shareholder, policyholder or other creditor shall be permitted to
14 circumvent the priority classes through the use of equitable
15 remedies. The order of distribution of claims shall be as provided
16 in subsection B of this section.

17 B. 1. Class 1. The reasonable costs and expenses of
18 administration expressly approved by the receiver, including but not
19 limited to the following:

- 20 a. the actual and necessary costs of preserving or
21 recovering the assets of the insurer,
- 22 b. compensation for all authorized services rendered in
23 the conservation, rehabilitation or liquidation,
- 24 c. any necessary filing or recordation fees,

- 1 d. the fees and mileage payable to witnesses, including
2 experts, and other litigation costs and expenses,
3 e. authorized reasonable ~~attorney's~~ attorney fees and
4 other professional services rendered in the
5 conservation, rehabilitation or liquidation, and
6 f. any reasonable expenses that were incurred in
7 furtherance of activities that provided a material
8 economic benefit to the estate.

9 2. Class 2. The administrative expenses of guaranty
10 associations. For purposes of this section these expenses shall be
11 the reasonable expenses incurred by guaranty associations where the
12 expenses are not payments or expenses which are required to be
13 incurred as direct policy benefits in fulfillment of the terms of
14 the insurance contract or policy, and that are of the type and
15 nature that, but for the activities of the guaranty association
16 otherwise would have been incurred by the receiver, including but
17 not limited to evaluations of policy coverage, activities involved
18 in the adjustment and settlement of claims under policies, including
19 those of in-house or outside adjusters, and the reasonable expenses
20 incurred in connection with the arrangements for ongoing coverage
21 through transfer to other insurers, policy exchanges or maintaining
22 policies in force. The receiver may in his or her sole discretion
23 approve as an administrative expense under this section any other
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1 reasonable expenses of the guaranty association if the receiver
2 finds:

- 3 a. the expenses are not expenses required to be paid or
4 incurred as direct policy benefits by the terms of the
5 policy, and
- 6 b. the expenses were incurred in furtherance of
7 activities that provided a material economic benefit
8 to the estate as a whole, irrespective of whether the
9 activities resulted in additional benefits to covered
10 claimants.

11 The court shall approve such expenses unless it finds the receiver
12 abused his or her discretion in approving the expenses. If the
13 receiver determines that any administrative expenses of a guaranty
14 association were not reasonable expenses, but were nevertheless paid
15 out of a statutory deposit or the proceeds of any bond or other
16 asset located in another state or foreign country, then the court
17 shall adjudge the Class 3 claims of that association to have been
18 paid to the extent of the amount of unreasonable expenses thus paid
19 from those assets.

20 If the receiver determines that the assets of the estate will be
21 sufficient to pay all Class 1 claims in full, Class 2 claims shall
22 be paid, provided that the liquidator shall secure from each of the
23 associations receiving disbursements pursuant to this section an
24 agreement to return to the liquidator such disbursements, together

1 with investment income actually earned on such disbursements, as may
2 be required to pay Class 1 claims. No bond shall be required of any
3 such association.

4 3. Class 3. All claims under policies including claims of the
5 federal or any state or local government for losses incurred ("loss
6 claims") including third-party claims, claims for unearned premiums,
7 all claims of a guaranty association for payment of covered claims
8 or covered obligations of the insurer and all claims of a guaranty
9 association for reasonable expenses other than those included in
10 Class 2. All claims under life and health insurance and annuity
11 policies, whether for death proceeds, health benefits, annuity
12 proceeds, or investment values shall be treated as loss claims.
13 That portion of any loss, indemnification for which is provided by
14 other benefits or advantages recovered by the claimant, shall not be
15 included in this class, other than benefits or advantages recovered
16 or recoverable in discharge of familial obligation of support or by
17 way of succession at death or as proceeds of life insurance, or as
18 gratuities. No payment by an employer to his employee shall be
19 treated as a gratuity.

20 Notwithstanding the foregoing, the following claims shall be
21 excluded from Class 3 priority:

22 a. obligations of the insolvent insurer arising out of
23 reinsurance contracts,
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- 1 b. obligations incurred after the expiration date of the
2 insurance policy or after the policy has been replaced
3 by the insured or canceled at the insured's request or
4 after the policy has been canceled as provided in this
5 act. Notwithstanding the provisions of this
6 paragraph, earned premium claims on policies, other
7 than reinsurance agreements, shall not be excluded,
8 c. obligations to insurers, insurance pools or
9 underwriting associations and their claims for
10 contribution, indemnity or subrogation, equitable or
11 otherwise,
12 d. any claim which is in excess of any applicable limits
13 provided in the insurance policy issued by the
14 insolvent insurer,
15 e. any amount accrued as punitive or exemplary damages
16 unless expressly covered under the terms of the
17 policy, and
18 f. tort claims of any kind against the insurer, and
19 claims against the insurer for bad faith or wrongful
20 settlement practices.

21 4. Class 4. Claims of the federal government other than those
22 claims included in Class 3.

23 5. Class 5. Debts due employees for services, benefits,
24 contractual or otherwise due arising out of such reasonable

1 compensation to employees for services performed to the extent that
2 they do not exceed two (2) months of monetary compensation and
3 represent payment for services performed within six (6) months
4 before the filing of the petition for liquidation or, if
5 rehabilitation preceded liquidation, within one (1) year before the
6 filing of the petition for rehabilitation. Principal officers and
7 directors shall not be entitled to the benefit of this priority
8 except as otherwise approved by the liquidator and the court. This
9 priority shall be in lieu of any other similar priority which may be
10 authorized by law as to wages or compensation of employees.

11 6. Class 6. Claims of any person, including claims of state or
12 local governments, except those specifically classified elsewhere in
13 this section.

14 7. Class 7. Claims for commissions and service fees, and
15 claims of attorneys for fees and expenses owed them by a person for
16 services rendered in opposing a formal delinquency proceeding. In
17 order to prove the claim, the claimant must show that the insurer
18 which is the subject of the delinquency proceeding incurred such
19 fees and expenses based on its best knowledge, information and
20 belief, formed after reasonable inquiry indicating opposition was in
21 the best interests of the person, was well grounded in fact and was
22 warranted by existing law or a good-faith argument for the
23 extension, modification or reversal of existing law, and that
24 opposition was not pursued for any improper purpose, such as to

1 harass or to cause unnecessary delay or needless increase in the
2 cost of the litigation.

3 8. Class 8. Claims of any state or local government for a
4 penalty or forfeiture, but only to the extent of the pecuniary loss
5 sustained from the act, transaction or proceeding out of which the
6 penalty or forfeiture arose, with reasonable and actual costs
7 occasioned thereby. The remainder of such claims shall be postponed
8 to the class of claims under paragraph 9 of this ~~section~~ subsection.

9 9. Class 9. Surplus or contribution notes or similar
10 obligations, premium refunds on assessable policies, interest on
11 claims of Classes 1 through 8 and any other claims specifically
12 subordinated to this class.

13 10. Class 10.

14 a. Claims of shareholders or other owners arising out of
15 their capacity as shareholders or other owners, or
16 arising in any other capacity or facts except as they
17 may be qualified in Class 3 or 4 above; provided,
18 however, that no shareholder, member or other owner
19 shall be entitled to, or receive, any distribution from
20 the insolvent insurer's estate under this paragraph,
21 if:

22 (1) the intentional wrongdoing, fraud, gross
23 negligence, negligence or other act, failure to
24 act, transaction or proceeding of such

1 shareholder, member or owner, alone or in concert
2 with others, or of a director or officer of the
3 insolvent insurer, is found by a court of
4 competent jurisdiction or by the receiver in his
5 or her reasonable discretion, to have caused, or
6 to have been a contributing factor to, the
7 insolvency of the insolvent insurer,

8 (2) funds were collected from the shareholder, member
9 or other owner, either directly or through an
10 insurance carrier, fidelity bond issuer or other
11 entity, as a consequence of, or related to, a
12 claim made or brought by the receiver of said
13 insurer, or

14 (3) any of the funds available for distribution
15 consist of punitive damages recovered by the
16 receiver of said estate from any source based
17 upon any claim made or brought by the receiver.

18 In the event there is no eligible shareholder, member
19 or other owner entitled to distribution in accordance
20 with this paragraph, the remaining funds and other
21 property of the insolvent insurer's estate, if any,
22 shall be distributed to a fund established and held in
23 the name of, and for the use and benefit of, the
24 receiver, through the Oklahoma Receivership Office or

1 any similar entity established by the receiver, which
2 shall be used in the administration of other insurers
3 in rehabilitation or liquidation.

4 b. All funds distributed to the receiver under this
5 paragraph shall be utilized by the receiver's staff
6 engaged in the rehabilitation or liquidation of
7 insolvent insurance business companies for the
8 following purposes:

- 9 (1) the administration of liquidations of estates
10 which temporarily or permanently do not have the
11 financial capability to administer the
12 liquidation, including the prosecution of claims
13 of the receiver, or
14 (2) the prosecution of petitions to place insurers in
15 rehabilitation or liquidation.

16 In the event such funds are distributed to or for an
17 insolvent insurer, the receiver shall obtain from the
18 insurer a promissory note or other evidence of
19 indebtedness, secured by collateral if possible, for
20 the amount distributed, which shall be treated as a
21 Class 1 expense under paragraph 1 of this subsection.
22 The receiver shall make good-faith efforts to collect
23 reimbursement of any such loans. No funds distributed
24 to the receiver under this paragraph shall be used to

1 pay claims other than Class 1 claims under paragraph 1
2 of this subsection. The funds are not funds of the
3 State of Oklahoma and are not funds of the Oklahoma
4 Insurance Department or any other agency of the State
5 of Oklahoma.

6 This paragraph shall apply to the administration of
7 all receivership estates open and ongoing as of
8 November 1, 2014, and to all receivership proceedings
9 commenced after November 1, 2014.

10 C. If any claimant of this state, another state or foreign
11 country shall be entitled to or shall receive a dividend upon his or
12 her claim out of a statutory deposit or the proceeds of any bond or
13 other asset located in another state or foreign country, unless such
14 deposit or proceeds shall have been delivered to the domiciliary
15 liquidator, then the claimants shall not be entitled to any further
16 dividend from the receiver until and unless all other claimants of
17 the same class, irrespective of residence or place of the acts or
18 contracts upon which their claims are based, shall have received an
19 equal dividend upon their claims, and after such equalization, such
20 claimants shall be entitled to share in the distribution of further
21 dividends by the receiver, along with and like all other creditors
22 of the same class, wheresoever residing.

23 D. Upon the declaration of a dividend, the receiver shall apply
24 the amount of the dividend against any indebtedness owed to the

1 insurer by the person entitled to the dividend. There shall be no
2 claim allowed for any deductible charged by a guaranty association
3 or entity performing a similar function.

4 E. This section shall apply to pending and future claims in
5 existing delinquency proceedings as well as to claims in delinquency
6 proceedings arising after the effective date of this section.

7 F. If any provision of this section or the application thereof
8 to any person or circumstances is held invalid, such invalidity
9 shall not affect other provisions or application of this section to
10 the extent such other provisions or application can be given effect
11 without the invalid provision or application.

12 SECTION 2. This act shall become effective November 1, 2014.

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