

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

HOUSE BILL 4230

By: Sneed

AS INTRODUCED

An Act relating to insurance; amending 36 O.S. 2021, Section 1636, which relates to subsidiaries of insurers; granting the Insurance Commissioner the discretion to require insurers in hazardous financial condition to secure and maintain either a deposit or a bond; clarifying that all records and data held by an affiliate are and remain the insurer's property; clarifying that premiums and other funds collected or held by an affiliate are the exclusive property of the insurer; establishing jurisdiction for supervision, seizure, conservatorship, or receivership proceedings; amending 36 O.S. 2021, Section 1901, which relates to rehabilitation and liquidation; modifying definition; amending 36 O.S. 2021, Section 1918, which relates to proof of claims, notice, and hearings; clarifying that claimant must sign claims; mandating that claimants shall comply with certain requirements by receiver; modifying time period in which the receiver shall report claim; amending 36 O.S. 2021, Section 1930, which relates to time to file claims; authorizing receivership court to allow alternative procedures and requirements for the filling of proofs of claim; amending 36 O.S. 2021, Section 1938, which relates to delinquency proceedings; modifying the procedures of delinquency proceedings; clarifying reference to the Insurance Commissioner; and providing an effective date.

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

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

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

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

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

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

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

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

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

19 2. The following transactions involving a domestic insurer and
20 any person in its insurance holding company system, including
21 amendments or modifications of affiliate agreements previously filed
22 pursuant to this section, which are subject to any materiality
23 standards contained in subparagraphs a through g of this paragraph,
24 shall not be entered into unless the insurer has notified the

1 Commissioner in writing of its intention to enter into the
2 transaction at least thirty (30) days prior thereto, or such shorter
3 period as the Commissioner may permit, and the Commissioner has not
4 disapproved it within that period. The notice for amendments or
5 modifications shall include the reasons for the change and the
6 financial impact on the domestic insurer. Informal notice shall be
7 reported, within thirty (30) days after a termination of a
8 previously filed agreement, to the Commissioner for determination of
9 the type of filing required, if any:

10 a. sales, purchases, exchanges, loans, extensions of
11 credit, or investments, provided the transactions are
12 equal to or exceed:

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

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

21 b. loans or extensions of credit to any person who is not
22 an affiliate, where the insurer makes loans or
23 extensions of credit with the agreement or
24 understanding that the proceeds of the transactions,

1 in whole or in substantial part, are to be used to
2 make loans or extensions of credit to, to purchase
3 assets of, or to make investments in, any affiliate of
4 the insurer making the loans or extensions of credit
5 provided the transactions are equal to or exceed:

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

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

14 c. reinsurance agreements or modifications thereto,
15 including:

16 (1) all reinsurance pooling agreements, and

17 (2) agreements in which the reinsurance premium or a
18 change in the insurer's liabilities, or the
19 projected reinsurance premium or a change in the
20 insurer's liabilities in any of the next three

21 (3) years, equals or exceeds five percent (5%) of
22 the insurer's surplus as regards policyholders,
23 as of the 31st day of December next preceding,
24 including those agreements which may require as

1 consideration the transfer of assets from an
2 insurer to a nonaffiliate, if an agreement or
3 understanding exists between the insurer and
4 nonaffiliate that any portion of the assets will
5 be transferred to one or more affiliates of the
6 insurer,

7 d. all management agreements, service contracts, tax
8 allocation agreements, guarantees and all cost-sharing
9 arrangements,

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

20 f. direct or indirect acquisitions or investments in a
21 person that controls the insurer or in an affiliate of
22 the insurer in an amount which, together with its
23 present holdings in such investments, exceeds two and
24 one-half percent (2.5%) of the insurer's surplus to

1 policyholders. Direct or indirect acquisitions or
2 investments in subsidiaries acquired pursuant to
3 Section ~~2~~ 1632 of this ~~act~~ title (or authorized under
4 any other section of this title), or in nonsubsidiary
5 insurance affiliates that are subject to the
6 provisions of this act, are exempt from this
7 requirement, and

8 g. any material transactions, specified by regulation,
9 which the Commissioner determines may adversely affect
10 the interests of the insurer's policyholders.

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

15 3. A domestic insurer may not enter into transactions which are
16 part of a plan or series of like transactions with persons within
17 the insurance holding company system if the purpose of those
18 separate transactions is to avoid the statutory threshold amount and
19 thus avoid the review that would occur otherwise. If the
20 Commissioner determines that separate transactions were entered into
21 over any twelve-month period for that purpose, the Commissioner may
22 exercise his or her authority under Section ~~11~~ 1641 of this ~~act~~
23 title.

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

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

11 6. a. Any affiliate that is party to an agreement or
12 contract with a domestic insurer that is subject to
13 subparagraph d of paragraph 2 of this subsection shall
14 be subject to the jurisdiction of any supervision,
15 seizure, conservatorship, or receivership proceedings
16 against the insurer and to the authority of any
17 supervisor, conservator, rehabilitator, or liquidator
18 for the insurer appointed pursuant to Article 18 or 19
19 of this title regarding rehabilitation and liquidation
20 of insurers for the purpose of interpreting,
21 enforcing, and overseeing the affiliate's obligations
22 under the agreement or contract to perform services
23 for the insurer that are:
24

1 (1) an integral part of the insurer's operations,
2 including, but not limited to, management,
3 administrative, accounting, data processing,
4 marketing, underwriting, claims handling,
5 investment, or any other similar functions, or
6 (2) essential to the insurer's ability to fulfill its
7 obligations under insurance policies.

8 b. The Commissioner may require that an agreement or
9 contract pursuant to subparagraph d of paragraph 2 of
10 this subsection for the provision of services
11 described in divisions (1) and (2) of subparagraph a
12 of this paragraph specify the affiliate consents to
13 the jurisdiction as set forth in this paragraph.

14 B. No domestic insurer shall pay any extraordinary dividend or
15 make any other extraordinary distribution to its shareholders until
16 thirty (30) days after the Commissioner has received notice of the
17 declaration thereof and has not within that period disapproved the
18 payment, or until the Commissioner has approved the payment within
19 the thirty-day period. For purposes of this section, an
20 extraordinary dividend or distribution includes any dividend or
21 distribution of cash or other property whose fair market value
22 together with that of other dividends or distributions made within
23 the preceding twelve (12) months exceeds the greater of:

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

3 2. The net gain from operations of the insurer, if the insurer
4 is a life insurer, or the net income, if the insurer is not a life
5 insurer, not including realized capital gains, for the twelve-month
6 period ending the 31st day of December next preceding, but shall not
7 include pro rata distributions of any class of the insurer's own
8 securities.

9 In determining whether a dividend or distribution is
10 extraordinary, an insurer other than a life insurer may carry
11 forward net income from the previous two (2) calendar years that has
12 not already been paid out as dividends. This carry-forward shall be
13 computed by taking the net income from the second and third
14 preceding calendar years, not including realized capital gains, less
15 dividends paid in the second and immediate preceding calendar years.

16 Notwithstanding any other provision of law, an insurer may
17 declare an extraordinary dividend or distribution which is
18 conditional upon the Commissioner's approval, and the declaration
19 shall confer no rights upon shareholders until (1) the Commissioner
20 has approved the payment of the dividend or distribution or (2) the
21 Commissioner has not disapproved payment within the thirty-day
22 period.

23 C. 1. Notwithstanding the control of a domestic insurer by any
24 person, the officers and directors of the insurer shall not thereby

1 be relieved of any obligation or liability to which they would
2 otherwise be subject by law, and the insurer shall be managed so as
3 to assure its separate operating identity consistent with this act.

4 2. Nothing in this section shall preclude a domestic insurer
5 from having or sharing a common management or cooperative or joint
6 use of personnel, property or services with one or more other
7 persons under arrangements meeting the standards of paragraph 1 of
8 subsection A of this section.

9 3. Not less than one-third (1/3) of the directors of a domestic
10 insurer, and not less than one-third (1/3) of the members of each
11 committee of the board of directors of any domestic insurer, shall
12 be persons who are not officers or employees of the insurer or of
13 any entity controlling, controlled by, or under common control with
14 the insurer and who are not beneficial owners of a controlling
15 interest in the voting stock of the insurer or entity. At least one
16 such person must be included in any quorum for the transaction of
17 business at any meeting of the board of directors or any committee
18 thereof.

19 4. The board of directors of a domestic insurer shall establish
20 one or more committees comprised solely of directors who are not
21 officers or employees of the insurer or of any entity controlling,
22 controlled by, or under common control with the insurer and who are
23 not beneficial owners of a controlling interest in the voting stock
24 of the insurer or any such entity. The committee or committees

1 shall have responsibility for nominating candidates for director for
2 election by shareholders or policyholders, evaluating the
3 performance of officers deemed to be principal officers of the
4 insurer and recommending to the board of directors the selection and
5 compensation of the principal officers.

6 5. The provisions of paragraphs 3 and 4 of this subsection
7 shall not apply to a domestic insurer if the person controlling the
8 insurer, such as an insurer, a mutual insurance holding company, or
9 a publicly held corporation, has a board of directors and committees
10 thereof that meet the requirements of paragraphs 3 and 4 of this
11 subsection with respect to such controlling entity.

12 6. An insurer may make application to the Commissioner for a
13 waiver from the requirements of this subsection, if the insurer's
14 annual direct written and assumed premium, excluding premiums
15 reinsured with the Federal Crop Insurance Corporation and Federal
16 Flood Program, is less than Three Hundred Million Dollars
17 (\$300,000,000.00). An insurer may also make application to the
18 Commissioner for a waiver from the requirements of this subsection
19 based upon unique circumstances. The Commissioner may consider
20 various factors including, but not limited to, the type of business
21 entity, volume of business written, availability of qualified board
22 members, or the ownership or organizational structure of the entity.

23 D. For purposes of this act, in determining whether an
24 insurer's surplus as regards policyholders is reasonable in relation

1 to the insurer's outstanding liabilities and adequate to meet its
2 financial needs, the following factors, among others, shall be
3 considered:

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

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

9 3. The number and size of risks insured in each line of
10 business;

11 4. The extent of the geographical dispersion of the insurer's
12 insured risks;

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

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

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

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

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

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

22 The Commissioner may treat any such investment as a disallowed asset
23 for purposes of determining the adequacy of surplus as regards
24

1 policyholders whenever in the judgment of the Commissioner the
2 investment so warrants.

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

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

7 1. "Impairment" or "insolvency." The capital of a stock
8 insurer, or limited stock life, accident and health insurer, the net
9 assets of a Lloyds association, or the surplus of a mutual or
10 reciprocal insurer, shall be deemed to be impaired and the insurer
11 shall be deemed to be insolvent, when such insurer shall not be
12 possessed of assets at least equal to all liabilities and required
13 reserves together with its total issued and outstanding capital
14 stock if a stock insurer, the net assets if a Lloyds association, or
15 the minimum surplus if a mutual or reciprocal insurer required by
16 this code to be maintained for the kind or kinds of insurance it is
17 then authorized to transact.

18 2. "Insurer" means any person, firm, corporation, health
19 maintenance organizations, association or aggregation of persons
20 doing an insurance business and subject to the insurance supervisory
21 authority of, or to liquidation, rehabilitation, reorganization or
22 conservation by the Insurance Commissioner or the equivalent
23 insurance supervisory official of another state.

1 3. "Delinquency proceeding" means any proceeding commenced
2 against an insurer pursuant to this article for the purpose of
3 liquidating, rehabilitating, reorganizing or conserving such
4 insurer.

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

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

8 6. "Domiciliary state" means the state in which an insurer is
9 incorporated or organized, or in the case of an insurer incorporated
10 or organized in a foreign country, the state in which such insurer,
11 having become authorized to do business in such state, has at the
12 commencement of delinquency proceedings, the largest amount of its
13 assets held in trust and assets held on deposit for the benefit of
14 its policyholders or policyholders and creditors in the United
15 States, and any such insurer is deemed to be domiciled in such
16 state.

17 7. "Ancillary state" means any state other than a domiciliary
18 state.

19 8. "Reciprocal state" means any state other than this state ~~in~~
20 ~~which in substance and effect the provisions of the Uniform Insurers~~
21 ~~Liquidation Act, as defined in Section 1921 of this title, are in~~
22 ~~force, including the provisions requiring that the Insurance~~
23 ~~Commissioner or equivalent insurance supervisory official be the~~
24 ~~receiver of a delinquent insurer~~ that has enacted a law that sets

1 forth a scheme for the administration of an insurer in receivership
2 by the state's Insurance Commissioner, or comparable insurance
3 regulatory official.

4 9. "General assets" means all property, real, personal or
5 otherwise, not specifically mortgaged, pledged, deposited or
6 otherwise encumbered for the security or benefit of specified
7 persons or a limited class or classes of persons, and as to such
8 specifically encumbered property the term includes all such property
9 or its proceeds in excess of the amount necessary to discharge the
10 sum or sums secured thereby. Assets held in trust and assets held
11 on deposit for the security or benefit of all policyholders or all
12 policyholders and creditors in the United States shall be deemed
13 general assets.

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

17 11. "Special deposit claim" means any claim secured by a
18 deposit made pursuant to statute for the security or benefit of a
19 limited class or classes of persons, but not including any general
20 assets.

21 12. "Secured claim" means any claim secured by mortgage, trust
22 deed, pledge, deposit as security, escrow, or otherwise, but not
23 including special deposit claim or claims against general assets.
24 The term also includes claims which more than four months prior to

1 the commencement of delinquency proceedings in the state of the
2 insurer's domicile have become liens upon specific assets by reason
3 of judicial process.

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

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

8 Section 1918. A. All claims against an insurer against which
9 delinquency proceedings have been begun shall set forth in
10 reasonable detail the amount of the claim, or the basis upon which
11 such amount can be ascertained, the facts upon which the claim is
12 based, and the priorities asserted, if any. All such claims shall
13 be ~~verified~~ signed by the ~~affidavit of the~~ claimant, or someone
14 authorized to act on his or her behalf ~~and having knowledge of the~~
15 ~~facts~~, and shall be supported by such documents as may be material
16 thereto. Claimant shall, in the time and manner set forth by the
17 receiver, fully comply with any and all requests by the receiver for
18 claimant to provide information or evidence supplementary to that
19 required in this article, including, but not limited to, testimony
20 under oath, affidavits, and depositions.

21 B. All claims filed in this state shall be filed with the
22 receiver, whether domiciliary or ancillary, in this state, on or
23 before the last date for filing as specified ~~in this article~~ by the
24 court.

1 C. Within ~~ten (10) days of the receipt of any claim, or within~~
2 such ~~further~~ period as the court may, ~~for good cause shown;~~ fix, the
3 receiver shall report the claim to the court, specifying in such
4 report his recommendation with respect to the action to be taken
5 thereon. Upon receipt of such report, the court shall fix a time
6 for hearing the claim and shall direct that the claimant or the
7 receiver, as the court shall specify, shall give such notice as the
8 court shall determine to such persons as shall appear to the court
9 to be interested therein. All such notices shall specify the time
10 and place of the hearing and shall concisely state the amount and
11 nature of the claim, the priorities asserted, if any, and the
12 recommendation of the receiver with reference thereto.

13 D. At the hearing, all persons interested shall be entitled to
14 appear and the court shall enter an order allowing, allowing in
15 part, or disallowing the claim. Any such order shall be deemed to
16 be an appealable order.

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

19 Section 1930. If upon commencement of delinquency proceedings
20 under this article or at any time during the proceedings the insurer
21 shall not be clearly solvent, the court shall, after such notice and
22 hearing as it deems proper, make an order declaring the insurer to
23 be insolvent. Thereupon, regardless of any prior notice which may
24 have been given to creditors, the Insurance Commissioner shall

1 notify all persons who may have claims against the insurer and who
2 have not filed proper proofs thereof to present the same to the
3 Commissioner, at a place specified in the notice, within four (4)
4 months from the date of entry of the order, or within a longer time
5 prescribed by the court not to exceed one hundred eighty (180) days
6 which shall be specified in the notice. The notice shall be given
7 in a manner determined by the court.

8 Only upon application of the liquidator, the receivership court
9 may allow alternative procedures and requirements for the filing of
10 proofs of claim or for allowing or proving claims. Upon
11 application, if the court dispenses with the requirements of filing
12 a proof of claim by a person, class, or group of persons, a proof of
13 claim for such a person, class, or group shall be deemed as having
14 been filed for all purposes, except that the receivership court's
15 waiver of proof-of-claim requirements shall not impact a guaranty
16 association's proof-of-claim filing requirement or coverage
17 determinations to the extent that the guaranty fund statute or
18 filing requirements are inconsistent with the court's waiver of
19 proof.

20 Proofs of claim may be filed after the date specified in the
21 notice, but no such claim shall share in the distribution of the
22 assets until all allowed claims, proofs of which have been filed
23 before that date, have been paid in full with interest.

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

3 Section 1938. A. Upon written notice to the receiver, a person
4 shall be placed on the service list to receive notice of matters
5 filed by the receiver. It shall be the responsibility of the person
6 requesting notice to inform the receiver in writing of any changes
7 to his or her address, or to request that his or her name be deleted
8 from the service list. The receiver may require that the persons on
9 the service list provide confirmation that they wish to remain on
10 the service list. Any person who fails to confirm his or her intent
11 to remain on the service list may be purged from the service list.
12 Inclusion on the service list does not confer standing in the
13 delinquency proceeding to raise, appear, or be heard on any issue.

14 B. Except as otherwise provided by this act, notice and hearing
15 of any matter submitted by the receiver to the receivership court
16 for approval under this act shall be conducted as follows:

17 1. The receiver shall file an application explaining the
18 proposed action, and the basis, therefor. The receiver may include
19 any evidence in support of the application. If the receiver
20 determines that any documents supporting the application are
21 confidential, the receiver may submit them to the receivership court
22 under seal for in-camera inspection;

23 2. The receiver shall provide notice of the application to all
24 persons on the service list and any other parties as determined by

1 the receiver. Notice may be provided by first class mail postage
2 paid, electronic mail, or facsimile transmission, at the receiver's
3 discretion. For purposes of this section, notice is deemed to be
4 given on the date that it is deposited with the U.S. Postmaster or
5 transmitted, as applicable, to the last-known address as shown on
6 the service list;

7 3. Any party in interest objecting to the application shall
8 file an objection specifying the grounds therefor within fourteen
9 (14) days or such longer time as the court may specify in the notice
10 of the filing of the application and shall serve copies on the
11 receiver and any other persons served with the application within
12 the same time period. An objecting party shall have the burden of
13 showing why the receivership court should not authorize the proposed
14 action;

15 4. If no objection to the application is timely filed, the
16 receivership court may enter an order approving the application
17 without a hearing or hold a hearing to determine if the receiver's
18 application should be approved. The receiver may request that the
19 receivership court enter an order or hold a hearing on an expedited
20 basis; and

21 5. If an objection is timely filed, the receivership court may
22 hold a hearing. If the receivership court approves the application
23 and, upon a motion by the receiver, determines that the objection
24 was frivolous or filed merely for delay or for other improper

1 purpose, the receivership court shall order the objecting party to
2 pay the receiver's reasonable costs and fees of defending the
3 action.

4 C. In any proceeding commenced against an insurer pursuant to
5 Article 18 by a judicial proceeding or Article 19 of this title for
6 the purpose of liquidating, rehabilitating, reorganizing or
7 conserving such insurer, hereinafter called delinquency proceeding,
8 the compensation of personnel employed or retained to assist the
9 Insurance ~~Department~~ Commissioner with the proceeding shall be
10 approved by the court ~~at a full hearing~~ before the compensation may
11 be paid. The Insurance Commissioner shall apply to the court for
12 ~~the hearing approval~~; provided, ~~that if any board has been created~~
13 ~~by law to commence and administer delinquency proceedings under~~
14 ~~Article 18 or 19 of this title, or if any~~ board or association is
15 authorized by the Commissioner to provide assistance to the
16 Commissioner, the board or association shall apply to the court.
17 ~~Provided, this section shall not apply to a supervisorship~~
18 ~~authorized by Article 18 of this title.~~

19 ~~B.~~ D. Upon receiving the application for approval of
20 compensation, the ~~court shall schedule a hearing.~~ The party
21 responsible for the filing of the application shall cause notice in
22 writing of the application, time to file objections, and hearing if
23 there are objections to be served upon the following persons not
24

1 less than ten (10) days before the ~~hearing is scheduled~~ objection
2 period expires:

3 1. The persons or firms requesting the compensation;

4 2. The Commissioner, if not the applicant; and

5 3. Ten persons, or such lesser number as there may be, who hold
6 the largest number of shares in the insurance company involved in
7 the delinquency proceeding, as indicated by the company's stock
8 register as of the time that the company was placed under
9 supervision pursuant to Section 1804 of this title or at the time
10 that an application was filed with the court for the commencement of
11 a delinquency proceeding pursuant to Section 1903 of this title.
12 Said shareholders shall serve as representatives of the insurance
13 company.

14 ~~C.~~ E. The notice shall state the time to file objections and
15 place of the hearing if there are objections, the reasons for the
16 hearing and the following rights of any party served with notice:

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

19 2. To testify under oath, call witnesses to testify, and
20 furnish documentary evidence, relevant to the determination of the
21 compensation;

22 3. To cross-examine witnesses and have a reasonable opportunity
23 to inspect all documentary evidence; and
24

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

5 ~~D.~~ F. At the hearing, the court shall fully investigate the
6 compensation of persons employed or retained to assist the Insurance
7 ~~Department~~ Commissioner with the conduct of the delinquency
8 proceeding. The court shall not approve the compensation until it
9 has been made to appear to the satisfaction of the court, based upon
10 competent evidence, that such compensation is justified.

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

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