An Act

ENROLLED HOUSE
BILL NO. 2929

By: Kirby of the House

and

Sparks of the Senate

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

SUBJECT: Priority of claims against an insurer's estate

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

SECTION 1. AMENDATORY 36 O.S. 2011, Section 1927.1, is 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 members of the next class receive any payment, every claim in each class shall be:

1. Paid in full; or

2. Protected by adequate funds retained for such payment.

Once such funds are approved by the court and paid or retained by the liquidator, the insurer's estate shall have no further liability to members of that class except to the extent of the retained funds and any other undistributed funds. Payment of retained funds pursuant to court order under this section extinguishes the

potential liability of the receiver to the United States or any other governmental entity. No subclasses shall be established within any class except as otherwise provided by law. No claim by a shareholder, policyholder or other creditor shall be permitted to circumvent the priority classes through the use of equitable remedies. The order of distribution of claims shall be as provided in subsection B of this section.

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

a. the actual and necessary costs of preserving or recovering the assets of the insurer,

b. compensation for all authorized services rendered in the conservation, rehabilitation or liquidation,

c. any necessary filing or recordation fees,

d. the fees and mileage payable to witnesses, including experts, and other litigation costs and expenses,

e. authorized reasonable ~~attorney's~~ attorney fees and other professional services rendered in the conservation, rehabilitation or liquidation, and

f. any reasonable expenses that were incurred in furtherance of activities that provided a material economic benefit to the estate.

2. Class 2. The administrative expenses of guaranty associations. For purposes of this section these expenses shall be the reasonable expenses incurred by guaranty associations where the expenses are not payments or expenses which are required to be incurred as direct policy benefits in fulfillment of the terms of the insurance contract or policy, and that are of the type and nature that, but for the activities of the guaranty association otherwise would have been incurred by the receiver, including but not limited to evaluations of policy coverage, activities involved in the adjustment and settlement of claims under policies, including those of in-house or outside adjusters, and the reasonable expenses incurred in connection with the arrangements for ongoing coverage through transfer to other insurers, policy exchanges or maintaining policies in force. The receiver may in his or her sole discretion

approve as an administrative expense under this section any other reasonable expenses of the guaranty association if the receiver finds:

a. the expenses are not expenses required to be paid or incurred as direct policy benefits by the terms of the policy, and

b. the expenses were incurred in furtherance of activities that provided a material economic benefit to the estate as a whole, irrespective of whether the activities resulted in additional benefits to covered claimants.

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

If the receiver determines that the assets of the estate will be sufficient to pay all Class 1 claims in full, Class 2 claims shall be paid, provided that the liquidator shall secure from each of the associations receiving disbursements pursuant to this section an agreement to return to the liquidator such disbursements, together with investment income actually earned on such disbursements, as may be required to pay Class 1 claims. No bond shall be required of any such association.

3. Class 3. All claims under policies including claims of the federal or any state or local government for losses incurred ("loss claims") including third-party claims, claims for unearned premiums, all claims of a guaranty association for payment of covered claims or covered obligations of the insurer and all claims of a guaranty association for reasonable expenses other than those included in Class 2. All claims under life and health insurance and annuity policies, whether for death proceeds, health benefits, annuity proceeds, or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered

or recoverable in discharge of familial obligation of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to his employee shall be treated as a gratuity.

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

a. obligations of the insolvent insurer arising out of reinsurance contracts,

b. obligations incurred after the expiration date of the insurance policy or after the policy has been replaced by the insured or canceled at the insured's request or after the policy has been canceled as provided in this act. Notwithstanding the provisions of this paragraph, earned premium claims on policies, other than reinsurance agreements, shall not be excluded,

c. obligations to insurers, insurance pools or underwriting associations and their claims for contribution, indemnity or subrogation, equitable or otherwise,

d. any claim which is in excess of any applicable limits provided in the insurance policy issued by the insolvent insurer,

e. any amount accrued as punitive or exemplary damages unless expressly covered under the terms of the policy, and

f. tort claims of any kind against the insurer, and claims against the insurer for bad faith or wrongful settlement practices.

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

5. Class 5. Debts due employees for services, benefits, contractual or otherwise due arising out of such reasonable compensation to employees for services performed to the extent that they do not exceed two (2) months of monetary compensation and represent payment for services performed within six (6) months before the filing of the petition for liquidation or, if

rehabilitation preceded liquidation, within one (1) year before the filing of the petition for rehabilitation. Principal officers and directors shall not be entitled to the benefit of this priority except as otherwise approved by the liquidator and the court. This priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.

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

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

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

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

10. Class 10.

a. Claims of shareholders or other owners arising out of their capacity as shareholders or other owners, or arising in any other capacity or facts except as they may be qualified in Class 3 or 4 above; provided, however, that no shareholder, member or other owner shall be entitled to, or receive, any distribution from

the insolvent insurer's estate under this paragraph, if:

(1) the intentional wrongdoing, fraud, gross negligence, negligence or other act, failure to act, transaction or proceeding of such shareholder, member or owner, alone or in concert with others, or of a director or officer of the insolvent insurer, is found by a court of competent jurisdiction or by the receiver in his or her reasonable discretion, to have caused, or to have been a contributing factor to, the insolvency of the insolvent insurer,

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

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

In the event there is no eligible shareholder, member or other owner entitled to distribution in accordance with this paragraph, the remaining funds and other property of the insolvent insurer's estate, if any, shall be distributed to a fund established and held in the name of, and for the use and benefit of, the receiver, through the Oklahoma Receivership Office or any similar entity established by the receiver, which shall be used in the administration of other insurers in rehabilitation or liquidation.

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

(1) the administration of liquidations of estates which temporarily or permanently do not have the

financial capability to administer the liquidation, including the prosecution of claims of the receiver, or

(2) the prosecution of petitions to place insurers in rehabilitation or liquidation.

In the event such funds are distributed to or for an insolvent insurer, the receiver shall obtain from the insurer a promissory note or other evidence of indebtedness, secured by collateral if possible, for the amount distributed, which shall be treated as a Class 1 expense under paragraph 1 of this subsection. The receiver shall make good-faith efforts to collect reimbursement of any such loans. No funds distributed to the receiver under this paragraph shall be used to pay claims other than Class 1 claims under paragraph 1 of this subsection. The funds are not funds of the State of Oklahoma and are not funds of the Oklahoma Insurance Department or any other agency of the State of Oklahoma.

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

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

D. Upon the declaration of a dividend, the receiver shall apply the amount of the dividend against any indebtedness owed to the insurer by the person entitled to the dividend. There shall be no

claim allowed for any deductible charged by a guaranty association or entity performing a similar function.

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

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

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

Passed the House of Representatives the 20th day of May, 2014.

Presiding Officer of the House of Representatives

Passed the Senate the 21st day of May, 2014.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 22nd day of May, 2014, at 3:00 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 3rd day of June, 2014, at 10:30 o'clock A M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 3rd day of June, 2014, at 1:38 o'clock P. M.

By: Chris Benge