

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.4741 Administrative supervision, conservation, rehabilitation, receivership, and liquidation of insurers.

Sec. 4741.

(1) Except as otherwise provided in this section, the terms and conditions under chapter 81 pertaining to administrative supervision, conservation, rehabilitation, receivership, and liquidation of insurers apply in full to SPFCs or each of the SPFC's protected cells, individually or in combination, without causing or otherwise effecting an administrative supervision, conservation, rehabilitation, receivership, or liquidation of the SPFC or another protected cell.

(2) Notwithstanding any other provision of this act and without causing or otherwise affecting the conservation or rehabilitation of an otherwise solvent protected cell of an SPFC and subject to subsection (7)(e), the commissioner may petition the circuit court for an order authorizing the commissioner to conserve, rehabilitate, or liquidate an SPFC domiciled in this state on 1 or more of the following grounds:

(a) There has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the SPFC intended to be used to pay amounts owed to the counterparty or the holders of SPFC securities.

(b) The SPFC is insolvent and the holders of a majority in outstanding principal amount of each class of SPFC securities request or consent to conservation, rehabilitation, or liquidation pursuant to this chapter.

(3) Notwithstanding any other provision of this act, the commissioner may petition the circuit court for an order authorizing the commissioner to conserve, rehabilitate, or liquidate 1 or more of an SPFC's protected cells, independently, without causing or otherwise effecting a conservation, rehabilitation, receivership, or liquidation of the SPFC generally or another of its protected cells, on 1 or more of the following grounds:

(a) There has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the SPFC attributable to the affected protected cell or cells intended to be used to pay amounts owed to the counterparty or the holders of SPFC securities of the affected cell or cells.

(b) The affected protected cell is insolvent and the holders of a majority in outstanding principal amount of each class of SPFC securities attributable to that particular protected cell request or consent to conservation, rehabilitation, or liquidation pursuant to this chapter.

(4) The court may not grant relief provided by subsection (2)(a) or subsection (3)(a) unless, after notice and a hearing, the commissioner, who shall have the burden of proof, establishes by the applicable rules of evidence that relief must be granted. The court's order may be made in respect of 1 or more protected cells by name, rather than the SPFC generally.

(5) Notwithstanding any other provision of this act, rules promulgated or regulations entered under this act, or other applicable law, rule, or regulation, a receiver appointed pursuant to any order or conservation, rehabilitation, or liquidation shall do all of the following:

(a) For an SPFC subject to an order of conservation, rehabilitation, or liquidation, manage the assets and liabilities of the SPFC pursuant to this chapter.

(b) For a protected cell or cells subject to an order of conservation, rehabilitation, or liquidation, manage the assets and liabilities of the protected cell or cells pursuant to this chapter and the SPFC contract.

(c) Ensure that the assets of 1 protected cell are not utilized to satisfy the liabilities of another protected cell or of the SPFC generally.

(6) With respect to amounts recoverable under an SPFC contract, the amount recoverable by the receiver, including all expenses of taking possession of the SPFC or 1 or more of the SPFC's protected cells, shall not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to the counterparty, notwithstanding any other provision in the contracts or other documentation governing the SPFC insurance securitization.

(7) Notwithstanding any other provision of this act or other laws of this state:

(a) An application or petition, or a temporary restraining order or injunction issued pursuant to this act, with respect to a counterparty does not prohibit the transaction of a business by an SPFC, including any payment by an SPFC made pursuant to an SPFC security, or any action or proceeding against an SPFC or its assets.

(b) The commencement of a summary proceeding or other interim proceeding commenced before a formal delinquency proceeding with respect to an SPFC, and any order issued by the court does not prohibit the payment by an SPFC made pursuant to an SPFC security or SPFC contract or the SPFC from taking any action required to make the payment.

(c) A receiver of a counterparty shall not void a nonfraudulent transfer by a counterparty to an SPFC of money or other property made pursuant to an SPFC contract.

(d) A receiver of an SPFC shall not void a nonfraudulent transfer by the SPFC of money or other property made to a counterparty pursuant to an SPFC contract or made to or for the benefit of any holder of an SPFC security on

account of the SPFC security.

(e) The commissioner shall not seek to have an SPFC with protected cells declared insolvent as long as at least 1 of the SPFC's protected cells remains solvent, and in the case of such an insolvency, the receiver shall handle SPFC's assets in compliance with subsection (5) and other laws of this state.

(8) Subsection (7) does not prohibit the commissioner from taking any action permitted under chapter 81 with respect only to the conservation or rehabilitation of an SPFC with protected cell or cells, provided the commissioner would have had sufficient grounds to seek to declare the SPFC insolvent, subject to and without otherwise affecting subsection (7)(e). In this case, with respect to the solvent protected cell or cells, the commissioner shall not prohibit payments made by the SPFC pursuant to an SPFC security, an SPFC contract, or otherwise made under the insurance securitization transaction that are attributable to these protected cell or cells or prohibit the SPFC from taking any action required to make these payments.

(9) With the exception of the fulfillment of the obligations under an SPFC contract, and notwithstanding any other provision of this chapter or other laws of this state, the assets of an SPFC, including assets held in trust, shall not be consolidated with or included in the estate of a counterparty in any delinquency proceeding against the counterparty pursuant to this chapter for any purpose including, without limitation, distribution to creditors of the counterparty.

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