

Regular Session, 2012

SENATE BILL NO. 394

BY SENATOR GARY SMITH

INSURERS. Changes the rehabilitation, liquidation, and conservation provisions. (8/1/12)

1 AN ACT

2 To amend and reenact the heading of R.S. 22:2005 and R.S. 22:2008(B), 2009(E)(3),  
3 2028(D)(3), and 2036(A) and to enact R.S. 22:2005.1 and 2043.1, relative to  
4 rehabilitation and liquidation of insurers; to comply with the federal Dodd-Frank  
5 Act; to provide for notice by mail when the receiver allows or disallows a claim; to  
6 provide for actions by and against a receiver; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. The heading of R.S. 22:2005 and R.S. 22:2008(B), 2009(E)(3),  
9 2028(D)(3), and 2036(A) are hereby amended and reenacted and R.S. 22:2005.1 and 2043.1  
10 are hereby enacted to read as follows:

11 §2005. Grounds for rehabilitation **and liquidation**

12 \* \* \*

13 **§ 2005.1. Compliance with certain federal provisions**

14 **A. The provisions of this Section apply in accordance with Title II of the**  
15 **federal Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L.**  
16 **111-203 with respect to each insurance company that is a covered financial**  
17 **company, or a subsidiary or affiliate of a covered financial company, as defined**

1           under 12 U.S.C. 5381.

2           B. The commissioner of insurance may file a petition for an order of  
3           rehabilitation or liquidation pursuant to this Section on any of the following  
4           grounds:

5           (1) Upon determination and notification given by the Secretary of the  
6           Treasury of the United States in consultation with the president of the United  
7           States that the insurance company is a financial company satisfying the  
8           requirements of 12 U.S.C. 5383(b), and the board of directors, or any body  
9           performing similar functions, of the insurance company acquiesces or consents  
10          to the appointment of a receiver pursuant to 12 U.S.C. 5382(a)(1)(A)(i), with  
11          such consent to be considered as consent to an order of rehabilitation or  
12          liquidation.

13          (2) Upon an order of the United States District Court for the District of  
14          Columbia under 12 U.S.C. 5382(a)(1)(A)(iv)(I) granting the petition of the  
15          Secretary of the Treasury of the United States concerning the insurance  
16          company under 12 U.S.C. 5382(a)(1)(A)(i).

17          (3) A petition by the Secretary of the Treasury of the United States  
18          concerning the insurance company is granted by operation of law under 12  
19          U.S.C. 5382(a)(1)(A)(v).

20          C. Notwithstanding any other provision of law to the contrary, after  
21          notice to the insurance company, the receivership court may grant an order on  
22          the petition of the commissioner for rehabilitation or liquidation within twenty-  
23          four hours after the filing of the petition pursuant to this Section.

24          D. If the receivership court does not make a determination on a petition  
25          for rehabilitation or liquidation filed by the commissioner pursuant to this  
26          Section within twenty-four hours after its filing, then the petition shall be  
27          deemed granted by operation of law upon the expiration of the twenty-four  
28          hour period. At the time that an order is deemed granted pursuant to this  
29          Section, the provisions of this Chapter shall be deemed to be in effect, and the

1           commissioner or his designee shall be deemed to be affirmed as receiver and  
2           have all of the applicable powers provided by this Code, regardless of whether  
3           an order has been entered. The receivership court shall, within ten days, enter  
4           an order of rehabilitation or liquidation that does both of the following:

5                     (1) Is effective as of the date that it is deemed granted by operation of  
6                     law.

7                     (2) Conforms to provisions for rehabilitation or liquidation contained  
8                     in this Chapter, as applicable.

9                     E. The court may hold a hearing within ten days after granting of such  
10                    an order of liquidation or rehabilitation pursuant to this Section at which  
11                    hearing the court may sustain or revoke the order of rehabilitation or  
12                    liquidation or grant such other relief as the nature of the case and the interest  
13                    of the insurer's policyholders, creditors, or the public may require.

14                    F. Any order of rehabilitation or liquidation granted pursuant to this  
15                    Section or any part thereof shall not be subject to any stay or injunction  
16                    pending appeal.

17                    G. Nothing in this Section shall be construed to supersede or impair any  
18                    other power or authority of the commissioner or the court under this Code.

19                    H. There shall be no liability on the part of, and no cause of action of  
20                    any nature shall arise against, the department or its employees, or the  
21                    commissioner or his designee in his capacity as receiver, rehabilitator,  
22                    liquidator, or conservator, or otherwise, or a special deputy, or the receiver's  
23                    assistants or the receiver's contractors for any action taken by them in the  
24                    performance of their powers and duties pursuant to this Section or their duties  
25                    under this Chapter.

26   \*       \*       \*

27                    §2008. Order of rehabilitation or liquidation

28   \*       \*       \*

29                    B. Notwithstanding any law to the contrary, the filing of a suit by the

1 commissioner of insurance seeking an order of conservation or rehabilitation shall  
 2 suspend the running of prescription **and peremption** as to all claims in favor of the  
 3 subject insurer during the pendency of such proceeding. The filing of a suit by the  
 4 commissioner of insurance seeking an order of liquidation shall interrupt the running  
 5 of prescription **and peremption** as to such claims from the date of the filing of such  
 6 proceeding for a period of two years, if an order of liquidation is granted.

7 \* \* \*

8 §2009. Duties of commissioner of insurance as rehabilitator; termination

9 \* \* \*

10 E. The rehabilitator, in addition to other powers, shall have the following  
 11 powers:

12 (1) \* \* \*

13 (3) To use assets of the estate of an insurer under a liquidation **or**  
 14 **rehabilitation** order to transfer policy obligations to a solvent assuming insurer.

15 \* \* \*

16 §2028. Proof and allowance of claims

17 \* \* \*

18 D.(1) \* \* \*

19 (3) When the receiver allows or disallows a claim in a lesser amount than  
 20 claimed, he shall notify the person making the claim by ~~petition in the receivership~~  
 21 **proceedings letter addressed to the last known address of the claimant**, allowing  
 22 ten days after receipt of said notice in which to file objections to the action of the  
 23 receiver. The objections **shall be filed with the receiver and in the receivership**  
 24 **court and** shall be heard in the receivership proceedings in a summary manner.

25 \* \* \*

26 §2036. Provisions for conservation of assets of domestic company

27 A. Upon the filing by the commissioner of insurance of a verified petition  
 28 alleging that with respect to a domestic company, a condition exists that would  
 29 justify a court order for proceedings under ~~R.S. 22:2006~~ **this Chapter**, and that the

1 interests of creditors, policyholders, or the public will probably be endangered by  
 2 delay, then the ~~court of~~ Nineteenth Judicial District Court for the parish Parish  
 3 of East Baton Rouge or the court of the parish in which such company has or last had  
 4 its principal office, shall issue forthwith without a hearing its order directing the  
 5 commissioner of insurance to take possession and control of the property, business,  
 6 books, records, and accounts of the company and of the premises occupied by it for  
 7 the transaction of its business, or such part of each as the petition shall specify, and  
 8 enjoining the company and its officers, directors, agents, servants, and employees  
 9 from disposition of its property and from transaction of its business except with the  
 10 concurrence of the commissioner of insurance until the further order of the court.

11 \* \* \*

12 §2043.1. Actions by and against the receiver

13 A. No prior wrongful or negligent actions of any present or former  
 14 officer, manager, director, trustee, owner, employee, or agent of the insurer may  
 15 be asserted as a defense to a claim by the receiver under a theory of estoppel,  
 16 comparative fault, intervening cause, proximate cause, reliance, mitigation of  
 17 damages, or otherwise; provided however that the affirmative defense of fraud  
 18 in the inducement may be asserted against the receiver in a claim based on a  
 19 contract, and a principal under a surety bond or a surety undertaking shall be  
 20 entitled to credit against any reimbursement obligation to the receiver for the  
 21 value of any property pledged to secure the reimbursement obligation to the  
 22 extent that the receiver has possession or control of the property or the insurer  
 23 or its agents misappropriated or commingled such property. Evidence of fraud  
 24 in the inducement shall be admissible only if it is contained in the records of the  
 25 insurer.

26 B. No action or inaction by the insurance regulatory authorities may be  
 27 asserted as a defense to a claim by the receiver.

28 C. There shall be no liability on the part of, and no cause of action of any  
 29 nature shall arise against, the department or its employees, or the commissioner

1           **or his designee in his capacity as receiver, liquidator, rehabilitator or**  
2           **conservator, or otherwise, or any special deputy, the receiver's assistants or**  
3           **contractors, or the attorney general's office for any action taken by them in**  
4           **performance of their powers and duties under this Code.**

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Laura Gail Sullivan.

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DIGEST

Gary Smith (SB 394)

Proposed law provides for compliance with present federal law. Provides that the commissioner of insurance may place in rehabilitation or liquidation an insurance company pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Effective August 1, 2012.

(Amends R.S. 22:2005(heading), 2008(B), 2009(E)(3), 2028(D)(3), and 2036(A); adds R.S. 22:2005.1 and 2043.1)