

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

481P0573

SENATE BILL NO. 158

Introduced by: Senators Gant and McCracken and Representatives Lust and Willadsen

1 FOR AN ACT ENTITLED, An Act to clarify certain provisions regarding the supervision,
2 rehabilitation, and liquidation of insurers.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 58-29B-141 be amended to read as follows:

5 58-29B-141. If a domiciliary receiver, conservator, or liquidator is appointed in a reciprocal
6 state while a liquidation is proceeding under this section the liquidator under this section shall
7 thereafter act as ancillary receiver under §§ 58-29B-145 to 58-29B-148, inclusive. If a
8 domiciliary liquidator is appointed in a nonreciprocal state while a liquidation is proceeding
9 under this section the liquidator may petition the court for permission to act as ancillary receiver
10 under §§ 58-29B-145 to 58-29B-150, inclusive.

11 Section 2. That § 58-29B-144 be amended to read as follows:

12 58-29B-144. The domiciliary receiver, conservator, or liquidator of an insurer domiciled in
13 a reciprocal state shall, except as to special deposits and security on secured claims under § 58-
14 29B-149, be vested by operation of law with the title to all of the assets, property, contracts, and
15 rights of action, insurance producers' balances, and all of the books, accounts, and other records



1 of the insurer located in this state. The date of vesting shall be the date of the filing of the
2 petition for receivership, conservatorship, or liquidation, as the case may be, if that date is
3 specified by the domiciliary law for the vesting of property in the domiciliary state. Otherwise,
4 the date of vesting shall be the date of entry of the order directing possession to be taken. The
5 domiciliary receiver, conservator, or liquidator may immediately recover balances due from
6 insurance producers and obtain possession of the books, accounts, and other records of the
7 insurer located in this state. The domiciliary receiver, conservator, or liquidator also may
8 recover all other assets of the insurer located in this state, subject to §§ 58-29B-145 to 58-29B-
9 150, inclusive.

10 Section 3. That § 58-29B-146 be amended to read as follows:

11 58-29B-146. Claimants residing in this state may file claims with the liquidator or ancillary
12 receiver, if any, in this state or with the domiciliary receiver, conservator, or liquidator, if the
13 domiciliary law permits. The claims shall be filed on or before the last date fixed for the filing
14 of claims in the domiciliary receivership, conservator, or liquidation proceedings.

15 Section 4. That § 58-29B-147 be amended to read as follows:

16 58-29B-147. If a domiciliary receiver, conservator, or liquidator has been appointed for an
17 insurer not domiciled in this state, the director may file a petition with the circuit court of
18 Hughes County requesting appointment as ancillary receiver in this state:

19 (1) If ~~he~~ the director finds that there are sufficient assets of the insurer located in this
20 state to justify the appointment of an ancillary receiver; or

21 (2) If the protection of creditors or policyholders in this state so requires.

22 Section 5. That § 58-29B-149 be amended to read as follows:

23 58-29B-149. If a domiciliary receiver, conservator, or liquidator has been appointed in a
24 reciprocal state, then the ancillary receiver appointed in this state may, whenever necessary, aid

1 and assist the domiciliary receiver, conservator, or liquidator in recovering assets of the insurer
2 located in this state. The ancillary receiver shall, as soon as practicable, liquidate from their
3 respective securities those special deposit claims and secured claims which are proved and
4 allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the
5 proceedings. ~~He~~ The ancillary receiver shall promptly transfer all remaining assets, books,
6 accounts, and records to the domiciliary receiver, conservator, or liquidator. The ancillary
7 receiver and ~~his~~ the receiver's deputies have the same powers and duties with respect to the
8 administration of assets as a liquidator of an insurer domiciled in this state.

9 Section 6. That § 58-29B-150 be amended to read as follows:

10 58-29B-150. When a domiciliary liquidator has been appointed in this state, ancillary
11 receivers, conservators, or liquidators appointed in reciprocal states shall have, as to assets and
12 books, accounts, and other records in their respective states, corresponding rights, duties, and
13 powers to those provided in this chapter for ancillary receivers appointed in this state.

14 Section 7. That § 58-29B-154 be amended to read as follows:

15 58-29B-154. In a liquidation proceeding in a reciprocal state against an insurer domiciled
16 in that state, claimants against the insurer who reside within this state may file claims either with
17 the ancillary receiver, if any, in this state, or with the domiciliary receiver, conservator, or
18 liquidator. Claims shall be filed on or before the last dates fixed for the filing of claims in the
19 domiciliary receivership, conservatorship, or liquidation proceeding.

20 Section 8. That § 58-29B-155 be amended to read as follows:

21 58-29B-155. Claims belonging to claimants residing in this state may be proved either in
22 the domiciliary state under the law of that state, or in ancillary proceedings, if any, in this state.
23 If a claimant elects to prove ~~his~~ a claim in this state, ~~he~~ the claimant shall file ~~his~~ the claim with
24 the liquidator in the manner provided in §§ 58-29B-103 to 58-29B-111, inclusive. The ancillary

1 receiver shall make ~~his~~ a recommendation to the court as under §§ 58-29B-125 and 58-29B-126.
2 ~~He~~ The ancillary receiver shall also arrange a date for hearing if necessary under §§ 58-29B-124
3 and 58-29B-125 and shall give notice to the receiver, conservator, or liquidator in the
4 domiciliary state, either by registered or certified mail or by personal service at least forty days
5 prior to the date set for hearing. If the domiciliary receiver, conservator, or liquidator, within
6 thirty days after the giving of such notice, gives notice in writing to the ancillary receiver and
7 to the claimant, either by registered or certified mail or by personal service, of ~~his~~ the receiver's
8 intention to contest the claim, ~~he~~ the receiver is entitled to appear or to be represented in any
9 proceeding in this state involving the adjudication of the claim.

10 Section 9. That § 58-29B-157 be amended to read as follows:

11 58-29B-157. During the pendency in this or any other state of a receivership,
12 conservatorship, or liquidation proceeding, whether called by ~~that name~~ those names or not, no
13 action or proceeding in the nature of an attachment, garnishment, or levy of execution may be
14 commenced or maintained in this state against the delinquent insurer or its assets.