

SENATE BILL REPORT

ESHB 2842

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, February 23, 2010

Title: An act relating to insurer receiverships.

Brief Description: Addressing confidentiality as it relates to insurer receivership.

Sponsors: House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Parker, Kirby and Kenney; by request of Insurance Commissioner).

Brief History: Passed House: 2/12/10, 96-1.

Committee Activity: Financial Institutions, Housing & Insurance: 2/17/10, 2/23/10 [DP].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: Do pass.

Signed by Senators Berkey, Chair; Hobbs, Vice Chair; Franklin, McDermott and Parlette.

Staff: Diane Smith (786-7410)

Background: The Insurance Commissioner (Commissioner) oversees the regulation of insurance in Washington. One regulatory responsibility of the Commissioner is the monitoring of solvency of insurers. The monitoring is achieved by the use of risk assessment formulas and various financial reporting requirements. If certain criteria are met, the Commissioner can apply for a court order for rehabilitation or liquidation of a domestic insurer, which is an insurer formed under the laws of Washington.

There are specific procedures to follow in the rehabilitation. One of the first steps in rehabilitation is the superior court's appointment of the Commissioner to take charge of the insurer. The Commissioner, then, generally assigns a person or persons to manage the insurer and to correct the solvency issues. If the court believes the concerns are resolved, the court can release the insurer from rehabilitation. If the court decides the insurer cannot be rehabilitated, it may order the Commissioner to liquidate the insurer.

A superior court will appoint the Commissioner as the liquidator to sell the insurer's assets and distribute the proceeds to insurer's claimants under the Uniform Insurers Liquidation Act (UILA). In the UILA, receiver is defined to include receiver, liquidator, rehabilitator, or conservator as the context may require.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Public Records Act (PRA) requires that all state and local government agencies make all public records available for public inspection and copying unless they fall within certain statutory exemptions. Information produced by, obtained by, or disclosed to the Commissioner in the course of a financial or market conduct examination, financial analysis, or a market conduct desk audit is generally exempt from public disclosure requirements. There are several exceptions to this general exemption. One exception is records connected to allegations of official negligence or malfeasance.

If exempt information obtained in the course of a financial or market conduct examination, financial analysis, or a market conduct desk audit is connected to allegations of negligence or malfeasance by the Commissioner, then any person may petition a superior court in Washington for access to the information. In that case, the court must conduct an in-camera review after providing notice to the Commissioner and parties who provided information. The court may order the Commissioner to allow the petitioner access to the information; the petitioner must maintain confidentiality of the information. After conducting a hearing, the court may order disclosure of the information if the court finds that there is a public interest in disclosure and that exemption from disclosure is not necessary to protect any individual's right of privacy or any vital government function.

Summary of Bill: Documents and other information obtained by the Commissioner in the Commissioner's capacity as a receiver remain private company documents, and are: confidential by law and privileged; records under the jurisdiction and control of the receivership court; not subject to the PRA or laws requiring the preservation of public records; and not subject to subpoena directed to the Commissioner or any person who received documents and other information while acting under the authority of the Commissioner.

The Commissioner may use these documents to further any regulatory or legal action brought as a part of the Commissioner's official duties. The confidentiality and privilege related to those documents and other information is not waived if the information is shared with any person acting under the authority of the Commissioner, representatives of insurance guaranty associations, the National Association of Insurance Commissioners and its affiliates and subsidiaries, regulatory and law enforcement officials of other states and nations, the federal government, and international authorities.

The Commissioner, and any person who received documents and other information while acting under the authority of the Commissioner as receiver, are not required to testify in any private civil action concerning any confidential and privileged documents, materials, or information.

The confidentiality or privilege related to the records does not apply in any litigation to which the insurer in receivership is a party. In this litigation, the state's rules of civil procedure are the controlling authority regarding what must be disclosed.

Any person may file a motion in the receivership proceedings to allow inspection of private company documents and information otherwise not subject to review. However, the person

must demonstrate a legal interest in the receivership estate; or a reasonable suspicion of negligence or malfeasance by the Commissioner related to an insurer's receivership.

The court must conduct an in-camera review after notifying the Commissioner and every party that produced the documents and information. The court may order the Commissioner to allow the petitioner to have access to the documents and information, provided the petitioner maintains the confidentiality of the information.

After a hearing, the court may order that the information can be disclosed publicly if the court finds that there is a public interest in the disclosure of the information and protection of the information from public disclosure is clearly unnecessary to protect any individual's right of privacy, or any company's proprietary information, and the Commissioner has not demonstrated that disclosure would impair any vital governmental function, or the receiver's ability to manage the estate.

The PRA is amended to exempt the documents and materials from public disclosure requirements. The Commissioner is not required to comply with the requirements of the PRA regarding records that are under the control of a receivership court, unless ordered to do so by the receivership court.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: A recent Thurston County Superior Court case held that receivership records are public records. This bill just reflects the current and long-standing practice that courts maintain confidentiality of the insurance company's records when that company is in receivership. There are exceptions in the bill to protect the public should the Commissioner's receiver be suspected of malfeasance. The records of the company are its most valuable asset and if these were free for the asking by a public records request, there would be little value left in the company.

OTHER: There is also the question of malfeasance of the company's officers in the run-up to state take-over. This allegation should also trigger the bill's provisions for judicial in camera review and hearing on public disclosure.

Persons Testifying: PRO: Drew Bouton, Office of Insurance Commissioner; Mel Sorensen, Property Casualty Insurers Association of America.

OTHER: Rowland Thompson, Allied Daily Newspapers.