

**SENATE . . . . . No. 898**

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**The Commonwealth of Massachusetts**

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PRESENTED BY:

***Joan B. Lovely, (BY REQUEST)***

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to receivership.

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PETITION OF:

NAME:

DISTRICT/ADDRESS:

*Zbigniew Kicinski*

**SENATE . . . . . No. 898**

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By Ms. Lovely (by request), a petition (accompanied by bill, Senate, No. 898) of Zbigniew Kicinski for legislation relative to receivership. The Judiciary.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninetieth General Court  
(2017-2018)**  
\_\_\_\_\_

An Act relative to receivership.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           Massachusetts General Law Chapter 156C, Section 45 is hereby amended by inserting, in  
2 line 22, after the word "trustee." the following language:-

3           (c) The Court shall only appoint a Liquidating Trustee as contemplated by subsection (a)  
4 who is free of any conflicts of interest. Any proposed or considered Liquidating Trustee shall  
5 provide a complete listing of his previous dealings with the parties and their counsel prior to an  
6 appointment becoming effective. The parties in the litigation shall have the opportunity to  
7 question the proposed Liquidating Trustee at a hearing and to object to any proposed Liquidating  
8 Trustee on the grounds of any actual or apparent conflict of interest. If any party to the litigation  
9 later learns of an actual or apparent conflict of interest that was not disclosed by the Liquidating  
10 Trustee, it shall have grounds to move the Court to remove the Liquidating Trustee.

11           Prior to the appointment of a Liquidating Trustee, the Court must determine which of the  
12 parties' claims are derivative and belong to the Limited Liability Company. Derivative claims

13 and choses in action shall be assigned to the Liquidating Trustee, who shall have the exclusive  
14 authority to litigate, prosecute and/or settle such claims and choses in action, or shall have the  
15 discretion to choose to not pursue such claims, subject to the provisions set forth below. Should  
16 the Liquidating Trustee choose to not pursue any derivative claims, such claims will be forever  
17 barred and the Members of the LLC will have no right to pursue such claims. To the extent that  
18 claims are partly derivative and partly belong to a Member, the Court shall consider such claims  
19 to be completely derivative if the alleged payment due or the damages would have been paid  
20 from or to the Limited Liability Company. Questions of doubt should be resolved in favor of a  
21 finding that claims or choses in action are derivative.

22         The Liquidating Trustee shall present a plan to prosecute any such claims or choses in  
23 action that he deems worthy of pursuing, considering the costs, chances of success, and the  
24 amount and collectability of such claims or choses in action. The Liquidating Trustee must  
25 obtain Court approval prior of such a plan, after notice to the parties and an opportunity to be  
26 heard.

27         The Liquidating Trustee shall have a fiduciary duty to the Limited Liability Company  
28 and the Court to act in the best interest of the Limited Liability Company and in a manner to  
29 preserve and maximize its assets for creditors and Members. The Liquidating Trustee shall  
30 provide the parties with advance notice of any action or intended action affecting the finances of  
31 the Limited Liability Company, including any potential settlements of any claims, and any sale  
32 or encumbrance of any assets. Any party to the litigation may propose a course of action to the  
33 Liquidating Trustee. Any party may file a motion with the Court if they disagree with the  
34 Liquidating Trustee's proposed actions or failures to act. If the Court shall enter such orders that  
35 are in the best interests of the Limited Liability Company and that do not unduly impact or

36 prejudice one or more Members of the Limited Liability Company. The Court may order the  
37 Liquidating Trustee that any action be taken or not taken and may make such other order as  
38 justice requires.

39           The Liquidating Trustee will not hire any other attorney, accountant or other professional  
40 without permission of the Court. The Liquidating Trustee will disclose to the parties and the  
41 Court his relationship with such other attorney, accountant or other professional, including any  
42 previous dealings, as well as the professional's relationship and prior dealings with all parties and  
43 attorneys in the litigation. The parties in the case shall have the opportunity to question the  
44 proposed Liquidating Trustee and any proposed attorney, accountant or other professional at a  
45 hearing and to object to their appointment on the grounds of any actual or apparent conflict of  
46 interest. If any party to the litigation later learns of an actual or apparent conflict of interest that  
47 was not disclosed by the Liquidating Trustee, it shall have grounds to move the Court to remove  
48 such person.

49           The Liquidating Trustee will follow all applicable laws and codes pertaining to the  
50 business of the Limited Liability Company, especially if the Liquidating Trustee operates it as a  
51 going concern. The Court should give special consideration as to whether the operation of the  
52 Limited Liability Company requires a special license and whether one of the Members should  
53 continue to be involved in the operation of the business, if they so desire, with due  
54 compensation. The Liquidating Trustee shall not act in a way that violates any contractual rights  
55 of any creditor or third-party, including a Member or an entity owned or operating as a Member  
56 without specific Court approval, subject to the Parties and such creditor or third-party's right to  
57 be heard.

58           Within 30 days of accepting an appointment, the Liquidating Trustee shall provide notice  
59 to any creditor or potential creditor of the Limited Liability Company of the liquidation. Any  
60 person or entity who claims to be a creditor of the Limited Liability Company may file a claim in  
61 the proceeding and will be considered a Party to the action.

62           On motion by the Liquidating Trustee, and after notice to all Parties and all Members of  
63 the LLC and a hearing, the court may approve a compromise or settlement of claims or choses in  
64 action by the Liquidating Trustee. In deciding whether to approve any proposed settlement or  
65 compromise of controversies, the court shall consider:

66           (i) The probability of the Liquidating Trustee's success in the litigation to be settled,

67           (ii) The difficulties, if any, in collecting a judgment in favor of the Limited Liability  
68 Company,

69           (iii) The complexity of the litigation, including the expense, inconvenience, and delay  
70 attendant to

71 further proceedings,

72 and

73           (iv) The paramount interests of creditors and Members, with appropriate deference to  
74 their reasonable view.

75           A Liquidating Trustee has the following duties in addition to those specifically conferred  
76 by this section or otherwise by statute or court rule:

77 (i) The duty to notify all federal and state taxing and applicable regulatory agencies of the  
78 Liquidating Trustee's appointment in accordance with any applicable laws imposing this duty,  
79 including but not limited to 26 U.S.C. Sec. 6036, or any successor statutes;

80 (ii) The duty to comply with state law;

81 (iii) Other duties as the Liquidating Trustee may be directed to perform by the court or as  
82 may be provided for by statute or rule.

83 A Liquidating Trustee shall file with the court a monthly report of the Liquidating  
84 Trustee's operations and financial affairs unless otherwise ordered by the court. Except as  
85 otherwise ordered by the court, each report of a Liquidating Trustee shall be due by the last day  
86 of the subsequent month and shall include the following:

87 (i) A balance sheet;

88 (ii) A statement of income and expenses;

89 (iii) A statement of cash receipts and disbursements;

90 (iv) A statement of accrued accounts receivable. The statement shall disclose amounts  
91 considered to be uncollectable;

92 (v) A statement of accounts payable of the Liquidating Trustee, including professional  
93 fees. The statement shall list the name of each creditor and the amounts owing and remaining  
94 unpaid over thirty days; and

95 (vi) A tax disclosure statement, which shall list post filing taxes due or tax deposits  
96 required, the name of the taxing agency, the amount due, the date due, and an explanation for  
97 any failure to make payments or deposits.

98 Except as otherwise ordered by the court, the entry of an order appointing a Liquidating  
99 Trustee shall operate for sixty days as a stay, applicable to all persons, of: (a) The  
100 commencement or continuation, including the issuance or employment of process, of a judicial,  
101 administrative, or other action or proceeding against the person over whose property the  
102 Liquidating Trustee is appointed that was or could have been commenced before the entry of the  
103 order of appointment, or to recover a claim against the person that arose before the entry of the  
104 order of appointment; (b) The enforcement, against the person over whose property the  
105 Liquidating Trustee is appointed or any estate property, of a judgment obtained before the order  
106 of appointment; (c) Any act to obtain possession of estate property from the Liquidating Trustee,  
107 or to interfere with, or exercise control over, estate property; (d) Any act to create, perfect, or  
108 enforce any lien or claim against estate property except by exercise of a right of setoff, to the  
109 extent that the lien secures a claim against the person that arose before the entry of the order of  
110 appointment; or (e) Any act to collect, assess, or recover a claim against the person that arose  
111 before the entry of the order of appointment.