

2010 -- S 2397

=====
LC01558
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO INSURANCE - STANDARDS AND DIRECTOR'S AUTHORITY FOR
COMPANIES DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION

Introduced By: Senators Miller, Bates, Gallo, and Jabour

Date Introduced: February 11, 2010

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 27-14.2-2 and 27-14.2-3 of the General Laws in Chapter 27-14.2
2 entitled "Standards and Director's Authority for Companies Deemed to be in Hazardous Financial
3 Condition" are hereby amended to read as follows:

4 **27-14.2-2. Standards.** -- (a) The following standards, either singly or a combination of
5 two (2) or more, may be considered by the director to determine whether the continued operation
6 of any insurer transacting an insurance business in this state might be deemed to be hazardous to
7 ~~the~~ its policyholders, creditors, or the general public. The director may consider:

8 (1) Adverse findings reported in financial condition and market conduct examination
9 reports, audit reports, and actuarial opinions, reports or summaries;

10 (2) The National Association of Insurance Commissioners insurance regulatory
11 information system and its ~~related~~ other financial analysis solvency tools and reports;

12 ~~(3) The ratios of commission expense, general insurance expense, policy benefits and~~
13 ~~reserve increases as to annual premium and net investment income, which could lead to an~~
14 ~~impairment of capital and surplus;~~

15 ~~(4) The insurer's asset portfolio when viewed in light of current economic conditions is~~
16 ~~not of sufficient value, liquidity, or diversity to assure the company's ability to meet its~~
17 ~~outstanding obligations as they mature;~~

18 (3) Whether the insurer has made adequate provisions, according to presently accepted

1 actuarial standards of practice, for the anticipated cash flows required by the contractual
2 obligations and related expenses of the insurer, when considered in light of the assets held by the
3 insurer with respect to such reserves and related actuarial items, including, but not limited to, the
4 investment earnings on such assets, and the considerations anticipated to be received and retained
5 under such policies and contracts;

6 ~~(5)~~(4) The ability of an assuming reinsurer to perform and whether the insurer's
7 reinsurance program provides sufficient protection for the company's remaining surplus after
8 taking into account the insurer's cash flow and the classes of business written and the financial
9 condition of the assuming reinsurer;

10 ~~(6)~~(5) ~~The~~ Whether the insurer's operating loss in the last twelve (12) month period or
11 any shorter period of time, including but not limited to net capital gain or loss, change in
12 nonadmitted assets, and cash dividends paid to shareholders, is greater than fifty percent (50%) of
13 the insurer's remaining surplus as regards policyholders in excess of the minimum required;

14 (6) Whether the insurer's operating loss in the last twelve (12) month period or any
15 shorter period of time, excluding net capital gains, is greater than twenty percent (20%) of the
16 insurer's remaining surplus as regards policyholders in excess of the minimum required;

17 (7) Whether a reinsurer, oblig or or any ~~affiliate, subsidiary, or reinsurer~~ entity within the
18 insurer's insurance holding company system, is insolvent, threatened with insolvency, or
19 delinquent in payment of its monetary or other obligation; and which in the opinion of the
20 director may affect the solvency of the insurer;

21 (8) Contingent liabilities, pledges, or guaranties that either individually or collectively
22 involve a total amount which in the opinion of the director may affect the solvency of the insurer;

23 (9) Whether any "controlling person" of an insurer is delinquent in the transmitting to, or
24 payment of, net premiums to the insurer;

25 (10) The age and collectibility of receivables;

26 (11) Whether the management of an insurer, including officers, directors, or any other
27 person who directly or indirectly controls the operation of the insurer, fails to possess and
28 demonstrate the competence, fitness, and reputation deemed necessary to serve the insurer in the
29 position;

30 (12) Whether the management of an insurer has failed to respond to inquiries relative to
31 the condition of the insurer or has furnished false and misleading information concerning an
32 inquiry;

33 (13) Whether the insurer has failed to meet financial and holding company filing
34 requirements in the absence of a reason satisfactory to the director;

1 ~~(13)~~(14) Whether the management of an insurer either has filed any false or misleading
2 sworn financial statement, or has released a false or misleading financial statement to lending
3 institutions or to the general public, or has made a false or misleading entry, or has omitted an
4 entry of material amount in the books of the insurer;

5 ~~(14)~~(15) Whether the insurer has grown so rapidly and to such an extent that it lacks
6 adequate financial and administrative capacity to meet its obligations in a timely manner; or

7 ~~(15)~~(16) Whether the ~~company~~ insurer has experienced or will experience in the
8 foreseeable future cash flow and/or liquidity problems.

9 (17) Whether management has established reserves that do not comply with minimum
10 standards established by state insurance laws, regulations statutory accounting standards, sound
11 actuarial principles and standards of practice;

12 (18) Whether management persistently engages in material under reserving that results in
13 adverse development;

14 (19) Whether transactions among affiliates, subsidiaries or controlling persons for which
15 the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity or
16 diversity to assure the insurer's ability to meet its outstanding obligations as they mature;

17 (20) Any other finding determined by the director to be hazardous to the insurer's
18 policyholders, creditors or general public.

19 (b) The standards enumerated in subsection (a) of this section shall not be construed as
20 limiting the director from making a finding that other conditions not specifically enumerated also
21 constitute hazardous conditions.

22 **27-14.2-3. Director's orders. --- Director's authority. --** (a) For the purposes of making
23 a determination of an insurer's financial condition under this chapter, the director may:

24 (1) Disregard any credit or amount receivable resulting from transactions with a
25 reinsurer which is insolvent, impaired, or otherwise subject to a delinquency proceeding;

26 (2) Make appropriate adjustments, including disallowances to asset values attributable to
27 investments in or transactions with parents, subsidiaries, or affiliates consistent with the NAIC
28 Accounting Practices and Procedures Manual, state laws and regulations;

29 (3) Refuse to recognize the stated value of accounts receivable if the ability to collect
30 receivables is highly speculative in view of the age of the account or the financial condition of the
31 debtor; ~~or~~

32 (4) Increase the insurer's liability in an amount equal to any contingent liability, pledge,
33 or guarantee not otherwise included if there is a substantial risk that the insurer will be called
34 upon to meet the obligation undertaken within the next twelve (12) month period.

1 (b) If the director determines that the continued operation of the insurer licensed to
2 transact business in this state may be hazardous to ~~the~~ its policyholders, creditors or the general
3 public, then the director may, upon his or her determination, issue an order requiring the insurer
4 to:

5 (1) Reduce the total amount of present and potential liability for policy benefits by
6 reinsurance;

7 (2) Reduce, suspend, or limit the volume of business being accepted or renewed;

8 (3) Reduce general insurance and commission expenses by specified methods;

9 (4) Increase the insurer's capital and surplus;

10 (5) Suspend or limit the declaration and payment of a dividend by an insurer to its
11 stockholders or to its policyholders;

12 (6) File reports in a form acceptable to the director concerning the market value of an
13 insurer's assets;

14 (7) Limit or withdraw from certain investments or discontinue certain investment
15 practices to the extent the ~~commissioner~~ director deems necessary;

16 (8) Document the adequacy of premium rates in relation to the risks insured; or

17 (9) File, in addition to regular annual statements, interim financial reports on the form
18 adopted by the national association of insurance commissioners or on a format as promulgated by
19 the ~~commissioner~~ director.

20 (10) Correct corporate governance practice deficiencies, and adopt and utilize governance
21 practices acceptable to the director.

22 (11) Provide a business plan to the director in order to continue to transact business in the
23 state.

24 (12) Notwithstanding any other provision of law limiting the frequency or amount of
25 premium rate adjustments, adjust rates for any non-life insurance product written by the insurer
26 that the director considers necessary to improve the financial condition of the insurer.

27 (c) If the insurer is a foreign insurer, the director's order under subsection (b) of this
28 section may be limited to the extent provided by statute.

29 (d) Any insurer subject to an order under subsection (b) of this section may request a
30 hearing to review that order. The notice of hearing shall be served upon the insurer pursuant to
31 the Administrative Procedures Act, chapter 35 of title 42. The notice of hearing shall state the
32 time and place of the hearing, and the conduct, condition, or ground upon which the director
33 based the order. Unless mutually agreed between the director and the insurer, the hearing shall
34 occur not less than ten (10) days nor more than thirty (30) days after notice is served and shall be

1 either in Providence County or in some other place of convenience to the parties to be designated
2 by the director. The director shall hold all hearings under this subsection privately, unless the
3 insurer requests a public hearing, in which case the hearing shall be public.

4 SECTION 2. This act shall take effect on July 1, 2010.

=====
LC01558
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO INSURANCE - STANDARDS AND DIRECTOR'S AUTHORITY FOR
COMPANIES DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION

1 This act would update the standards upon which it can be determined whether an insurer
2 is in hazardous financial condition and the remedies the director may make in accordance with
3 the current NAIC Model Act.

4 This act would take effect on July 1, 2010.

=====
LC01558
=====