

2018 -- S 3008

=====
LC005967
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

—————
A N A C T

RELATING TO INSURANCE -- VOLUNTARY RESTRUCTURING OF SOLVENT
INSURERS

Introduced By: Senator Roger Picard

Date Introduced: June 23, 2018

Referred To: Placed on Senate Calendar

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 27-14.5-1, 27-14.5-3, 27-14.5-4 and 27-14.5-6 of the General
2 Laws in Chapter 27-14.5 entitled "Voluntary Restructuring of Solvent Insurers" are hereby
3 amended to read as follows:

4 **27-14.5-1. Definitions.**

5 As used in this chapter:

6 (1) "Applicant" means a commercial run-off insurer applying under § 27-14.5-4.

7 (2) "Assessment deficit" means the amount that the assessment for the previous year
8 under § 27-14.5-5 is less than, and "assessment surplus" is the amount that the assessment for the
9 previous year exceeds:

10 (i) The run-off insurer's proportionate share of regulatory expenditure for the previous
11 year, if the run-off insurer was domiciled in Rhode Island on March 15 of the previous year; or

12 (ii) The redomestication expenditure for the previous year attributable to the run-off
13 insurer, if the run-off insurer was not domiciled in Rhode Island on March 15 of the previous
14 year.

15 (3) "Assumption policyholder" means a policyholder whose policy is reinsured under an
16 assumption reinsurance agreement between the applicant and a reinsurer.

17 (4) "Assumption reinsurance agreement" has the meaning given in § 27-53.1-3(b),
18 subject to the following:

1 (i) The agreement may be conditioned upon the court's entry of an implementation order.

2 (ii) If any policy subject to the agreement is protected through a guarantee association,
3 then the assuming insurer must have been and be licensed, and must have been and be a member
4 of the guarantee association, in all states known to the applicant in which either: (A) any property
5 covered under the policy has a permanent situs; or (B) the policyholder resided while the policy
6 was in force.

7 (5) "Class of creditors" means:

8 (i) All voting policyholders, including those without known claims;

9 (ii) Voting creditors, other than policyholders; or

10 (iii) Any separate class of creditors as the court may in its discretion determine should
11 approve the commutation plan.

12 (6) "Commercial run-off insurer" means:

13 (i) A run-off insurer domiciled in Rhode Island, or the protected cell of such insurer,
14 whose business, excluding all business subject to an assumption reinsurance agreement, includes
15 only the reinsuring of any line(s) of business other than life and/or the insuring of any line(s) of
16 business other than life, workers' compensation, and personal lines insurance; or

17 (ii) A Rhode Island domestic insurance company, or the protected cell of such insurer,
18 meeting the requirements of subsection (i) ~~hereof and formed or re-activated for the sole purpose~~
19 ~~of entering into a voluntary restructuring under this chapter and~~ whose liabilities consist of
20 commercial liabilities transferred to said company with the approval of the ~~commissioners~~
21 commissioner and pursuant to the regulations issued by the department under this chapter. The
22 amount of the commercial liabilities transferred must be less than or equal to the amount of assets
23 transferred to the newly formed or re-activated company.

24 (7) "Commissioner" means the director of the department.

25 (8) "Commutation plan" means a plan for extinguishing the outstanding liabilities of a
26 commercial run-off insurer.

27 (9) "Creditor" means:

28 (i) Any person that has a claim against the applicant; or

29 (ii) A policyholder other than an assumption policyholder.

30 (10) "Department" means the department of business regulation.

31 (11) "Guarantee association" means a guarantee association or foreign guarantee
32 association, as those terms are defined in § 27-14.3-3(10), that is potentially obligated with
33 respect to the applicant's policies.

34 (12) "Implementation order" means an order under § 27-14.5-4(c).

1 (13) "Insurer" has the meaning given in § 27-14.3-3(12).

2 (14) "Person" means an individual, corporation, partnership, association, joint stock
3 company, trust, unincorporated organization, or any similar entity or any combination of the
4 foregoing acting in concert.

5 (15) "Personal lines insurance" means insurance issued for personal, family, or household
6 purposes.

7 (16) "Policy" means a contract of insurance or a contract of reinsurance.

8 (17) "Policyholder" means an insured or a reinsured of the insurer.

9 (18) "Proportionate share" means, for a particular run-off insurer as of December 31 of
10 the previous year, the ratio of:

11 (i) The gross assets of that run-off insurer; to

12 (ii) The gross assets of all run-off insurers, other than those that were not domiciled in
13 Rhode Island on March 15 of that calendar year.

14 (19) "Redomestication expenditure" means, for any calendar year:

15 (i) The amount that the department's expenditures attributable to the regulation of run-off
16 insurers increases as a result of any run-off insurer redomiciling to Rhode Island on or after
17 March 15 of that year; less

18 (ii) Filing fees, examination costs, and any other fees in relation to insurance regulation in
19 this state paid to this state by run-off insurers that redomiciled to Rhode Island on or after March
20 15 of that year, but excluding any premium taxes.

21 (20) "Regulatory expenditure" means, for any calendar year:

22 (i) The amount of the department's expenditures attributable to the regulation of run-off
23 insurers domiciled in Rhode Island on March 15 of that year; less

24 (ii) Filing fees, examination costs, and any other fees in relation to insurance regulation in
25 this state paid to this state by run-off insurers domiciled in Rhode Island on March 15 of that
26 year, but excluding any premium taxes.

27 (21) "Run-off insurer" means an insurer that:

28 (i) Is domiciled in Rhode Island;

29 (ii) Has liabilities under policies for property and casualty lines of business;

30 (iii) Has ceased underwriting new business; and

31 (iv) Is only renewing ongoing business to the extent required by law or by contract.

32 (22) "Voluntary restructuring" means the act of reorganizing the legal ownership,
33 operational, governance, or other structures of a solvent insurer, for the purpose of enhancing
34 organization and maximizing efficiencies, and shall include the transfer of assets and liabilities to

1 [or from an insurer, or the protected cell of an insurer pursuant to an insurance business transfer](#)
2 [plan. A voluntary restructuring under this chapter may be approved by the commissioner only if,](#)
3 [in the commissioner's opinion, it would have no material adverse impact on the insurer's](#)
4 [policyholders, reinsureds, or claimants of policies subject to the restructuring.](#)

5 **27-14.5-3. Notice.**

6 (a) Wherever in this chapter notice is required, the applicant shall, within ten (10) days of
7 the event triggering the requirement, cause transmittal of the notice:

8 (1) ~~By first class mail and facsimile to~~ [To](#) the insurance regulator in each jurisdiction in
9 which the applicant is doing business;

10 (2) ~~By first class mail to~~ [To](#) the national conference of insurance guaranty funds and all
11 guaranty associations for the states in which the applicant is doing business;

12 (3) ~~Pursuant~~ [To all reinsurers of the applicant pursuant](#) to the notice provisions of
13 reinsurance agreements or, where an agreement has no provision for notice, ~~by first class mail in~~
14 [a manner reasonably designed to provide actual notice](#) to all ~~reinsures~~ [reinsurers](#) of the applicant;

15 (4) ~~By first class mail to~~ [To](#) all insurance agents or insurance producers of the applicant;

16 (5) ~~By first class mail to~~ [To](#) all persons known or reasonably expected to have claims
17 against the applicant including all policyholders, at their last known address as indicated by the
18 records of the applicant;

19 (6) ~~By first class mail to~~ [To](#) federal, state, and local government agencies and
20 instrumentalities as their interests may arise; and

21 (7) By publication in a newspaper of general circulation in the state in which the
22 applicant has its principal place of business and in any other locations that the court overseeing
23 the proceeding deems appropriate.

24 [\(b\) Notice under this section shall be given in a manner designed to provide actual notice](#)
25 [to the intended recipient. Depending upon the circumstances, that notice may take the form of](#)
26 [first class mail, facsimile and/or electronic notice.](#)

27 ~~(b)~~(c) If notice is given in accordance with this section, any orders under this chapter
28 shall be conclusive with respect to all claimants and policyholders, whether or not they received
29 notice.

30 ~~(c)~~(d) Where this chapter requires that the applicant provide notice but the commissioner
31 has been named receiver of the applicant, the commissioner shall provide the required notice.

32 **27-14.5-4. Commutation plans.**

33 (a) Application. Any commercial run-off insurer may apply to the court for an order
34 implementing a commutation plan.

1 (b) Procedure.

2 (1) The applicant shall give notice of the application and proposed commutation plan.

3 (2) All creditors shall be given the opportunity to vote on the plan.

4 (3) All creditors, assumption policyholders, reinsurers, and guaranty associations shall be
5 provided with access to the same information relating to the proposed plan and shall be given the
6 opportunity to file comments or objections with the court.

7 (4) Approval of a commutation plan requires consent of: (i) fifty percent (50%) of each
8 class of creditors; and (ii) the holders of seventy-five percent (75%) in value of the liabilities
9 owed to each class of creditors.

10 (c) Implementation order.

11 (1) The court shall enter an implementation order if: (i) the plan is approved under
12 subdivision (b)(4) of this section; and (ii) the court determines that implementation of the
13 commutation plan would not materially adversely affect either the interests of objecting creditors
14 or the interests of assumption policyholders.

15 (2) The implementation order shall:

16 (i) Order implementation of the commutation plan;

17 (ii) Subject to any limitations in the commutation plan, enjoin all litigation in all
18 jurisdictions between the applicant and creditors other than with the leave of the court;

19 (iii) Require all creditors to submit information requested by the bar date specified in the
20 plan;

21 (iv) Require that upon a noticed application, the applicant obtain court approval before
22 making any payments to creditors other than, to the extent permitted under the commutation plan,
23 payments in the ordinary course of business, this approval to be based upon a showing that the
24 applicant's assets exceed the payments required under the terms of the commutation plan as
25 determined based upon the information submitted by creditors under paragraph (iii) of this
26 subdivision;

27 (v) Release the applicant of all obligations to its creditors upon payment of the amounts
28 specified in the commutation plan;

29 (vi) Require quarterly reports from the applicant to the court and commissioner regarding
30 progress in implementing the plan; and

31 (vii) Be binding upon the applicant and upon all creditors and owners of the applicant,
32 whether or not a particular creditor or owner is affected by the commutation plan or has accepted
33 it or has filed any information on or before the bar date, and whether or not a creditor or owner
34 ultimately receives any payments under the plan.

1 (3) The applicant shall give notice of entry of the order.

2 (d) Applicable law and procedure with respect to dispute resolution procedures.

3 (1) Any dispute resolution procedure in any commutation plan brought by a ceding
4 insurance creditor to challenge the value of its claim assessed in any commutation plan will be
5 consistent with the provisions of title 9, United States code;

6 (2) The adjudicator and the court, if applicable, hearing any appeal from an adjudication
7 proceeding where the ceding insurance creditor challenges the value of its claim assessed by the
8 applicant in its commutation plan, shall:

9 (i) Not attempt to enforce a reinsurance contract on terms different than those set forth in
10 the reinsurance contract;

11 (ii) Not apply the laws of Rhode Island to reinsurance agreements of ceding insurers not
12 domiciled in Rhode Island unless the reinsurance contract provides that Rhode Island law shall
13 apply;

14 (iii) Apply the law applicable to the underlying contract between the ceding insurer and
15 the applicant or, if the underlying reinsurance contract has no choice of law provision, the law of
16 the state of domicile of the ceding insurer shall apply.

17 (e) Order of dissolution or discharge.

18 (1) Upon completion of the commutation plan, the applicant shall advise the court.

19 (2) The court shall then enter an order that:

20 (i) Is effective upon filing with the court proof that the applicant has provided notice of
21 entry of the order;

22 (ii) Transfers those liabilities subject to an assumption reinsurance agreement to the
23 assumption reinsurer, thereby ~~notating~~ novating the original policy by substituting the assumption
24 reinsurer for the applicant and releasing the applicant of any liability relating to the transferred
25 liabilities;

26 (iii) Assigns each assumption reinsurer the benefit of reinsurance on transferred
27 liabilities, except that the assignment shall only be effective upon the consent of the reinsurer if
28 either:

29 (A) The reinsurance contract requires that consent; or

30 (B) The consent would otherwise be required under applicable law; and

31 (iv) Either:

32 (A) The applicant be discharged from the proceeding without any liabilities; or

33 (B) The applicant be dissolved.

34 (3) The applicant shall provide notice of entry of the order.

1 (f) Reinsurance. Nothing in this chapter shall be construed as authorizing the applicant, or
2 any other entity, to compel payment from a reinsurer on the basis of estimated incurred but not
3 reported losses or loss expenses, or case reserves for unpaid losses and loss expenses.

4 (g) Modifications to plan. After provision of notice and an opportunity to object, and
5 upon a showing that some material factor in approving the plan has changed, the court may
6 modify or change a commutation plan, except that upon entry of an order under subdivision (e)(2)
7 of this section, there shall be no recourse against the applicant's owners absent a showing of
8 fraud.

9 (h) Role of commissioner and guaranty funds; relationship to rehabilitation/liquidation
10 statutes.

11 (1) The commissioner and guaranty funds shall have the right to intervene in any and all
12 proceedings under this section; provided, that notwithstanding any provision of title 27, any
13 action taken by a commercial run-off insurer to restructure pursuant to chapter 14.5, including the
14 formation or re-activation of an insurance company for the sole purpose of entering into a
15 voluntary restructuring shall not affect the guaranty fund coverage existing on the business of
16 such commercial run-off insurer prior to the taking of such action.

17 (2) If, at any time, the conditions for placing an insurer in rehabilitation or liquidation
18 specified in chapter 14.3 of this title exist, the commissioner may request and, upon a proper
19 showing, the court shall order that the commissioner be named statutory receiver of the applicant.

20 (3) If no implementation order has been entered, then upon being named receiver, the
21 commissioner may request, and if requested, the court shall order, that the proceeding under this
22 chapter be converted to a rehabilitation or liquidation pursuant to chapter 14.3 of this title. If an
23 implementation order has already been entered, then the court may order a conversion upon a
24 showing that some material factor in approving the original order has changed.

25 (4) The commissioner, any creditor, or the court on its own motion may move to have the
26 commissioner named as receiver. The court may enter such an order only upon finding either that
27 one or more grounds for rehabilitation or liquidation specified in chapter 14.3 of this title exist or
28 that the applicant has materially failed to follow the commutation plan or any other court
29 instructions.

30 (5) Unless and until the commissioner is named receiver, the board of directors or other
31 controlling body of the applicant shall remain in control of the applicant.

32 **27-14.5-6. Rules and regulations.**

33 The commissioner shall promulgate rules and regulations that may be necessary to
34 effectuate the purposes of this chapter ~~no later than January 1, 2003. The department shall not~~

1 ~~accept applications under § 27-14.5-4 until the time that these regulations have been promulgated~~
2 including, but not limited to, procedures for transferring commercial liabilities to a new or
3 existing domestic insurer and standards for commutation plans.

4 SECTION 2. Chapter 27-14.5 of the General Laws entitled "Voluntary Restructuring of
5 Solvent Insurers" is hereby amended by adding thereto the following section:

6 **27-14.5-4.1. Insurance business transfer plans.**

7 The commissioner shall promulgate rules and regulations establishing standards by which
8 liabilities may be novated to a new or existing domestic insurer pursuant to an Insurance Business
9 Transfer Plan.

10 SECTION 3. Section 27-64-2 of the General Laws in Chapter 27-64 entitled "The
11 Protected Cell Companies Act" is hereby amended to read as follows:

12 **27-64-2. Purpose.**

13 This act is adopted to provide a basis for the creation of protected cells by a domestic
14 insurer as one means of accessing alternative sources of capital and achieving the benefits of
15 insurance securitization or voluntary restructuring as contemplated under chapter 14.5 of this title,
16 including through effectuating insurance business transfers in accordance with the procedures
17 promulgated by the commissioner under § 27-14.5-6. Investors in fully funded insurance
18 securitization transactions provide funds that are available to pay the insurer's insurance
19 obligations or to repay the investors or both. The creation of protected cells is intended to be a
20 means to achieve more efficiencies in conducting insurance securitizations or voluntary
21 restructurings.

22 SECTION 4. This act shall take effect upon passage.

=====
LC005967
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO INSURANCE -- VOLUNTARY RESTRUCTURING OF SOLVENT
INSURERS

1 This act would allow domestic insurance company to enter into a voluntary restructuring,
2 including the use of a protected cell, with the approval of the commissioner. It would also allow
3 various notices to be given electronically, and for the insurance commissioner to promulgate rules
4 and regulations to effectuate the purposes of the act.

5 This act would take effect upon passage.

=====
LC005967
=====