S T A T E O F N E W Y O R K

10442

I N A S S E M B L Y

May 27, 2016

Introduced by M. of A. CAHILL -- (at request of the Department of Financial Services) -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to insurers deemed to be in a hazardous financial condition

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 1104 of the insurance law, the section heading as amended and subsections (c) and (d) as added by chapter 235 of the laws of 1989, and the opening paragraph of subsection (c) as amended by chapter 598 of the laws of 2000, is amended to read as follows:

S 1104. Revocation or suspension of license; restriction of license authority or limitation on premiums written. (a) The superintendent may revoke any license, CERTIFICATE OF AUTHORITY, OR REGISTRATION issued to any foreign or alien insurer to do an insurance business in this state if, after notice to and hearing, [he] THE SUPERINTENDENT finds that such insurer has failed to comply with any requirement imposed upon it by the provisions of this chapter and if in [his] THE SUPERINTENDENT'S judgment such revocation is reasonably necessary to protect the interests of the people of this state. The superintendent may, in his OR HER discretion, reinstate any such license, CERTIFICATE OF AUTHORITY, OR REGISTRATION if [he] THE SUPERINTENDENT finds that a ground for such revocation no longer exists.

(b) The superintendent shall revoke the certificate of authority of any corporation or agent convicted of violating section two thousand six hundred three of this chapter.

(c) [The] (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, THE superintendent may [suspend the license, restrict the license authority, or limit the amount of premiums written in this state of any accident and health insurance company, property/casualty insurance company, co-operative property/casualty insurance company, title insurance company, mortgage guaranty insurance company, reciprocal insurer, Lloyds underwriters or nonprofit property/casualty insurance company] TAKE ONE OR MORE OF THE ACTIONS SPECIFIED IN SUBPARAGRAPH (B) OF PARAGRAPH FOUR OF THIS SUBSECTION AGAINST AN INSURER, except those insurers subject to

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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the provisions of subsection (c) of section two thousand three hundred forty-three of this chapter, if after a hearing on a record, unless waived by the affected insurer, the superintendent determines that such insurer's surplus to policyholders is not adequate in relation to the insurer's outstanding liabilities or to its financial needs OR IF THE SUPERINTENDENT OTHERWISE DETERMINES THAT THE CONTINUED OPERATION OF THE INSURER MIGHT BE DEEMED TO BE HAZARDOUS TO THE INSURER'S POLICYHOLDERS, CREDITORS, OR TO THE GENERAL PUBLIC.

(2) All matters pertaining to a proceeding or determination pursuant to this subsection shall be confidential and not subject to subpoena or public inspection under article six of the public officers law or any other statute, except to the extent that the superintendent finds release of information necessary to protect the public. The hearing shall be initiated within twenty days after written notice to the insurer. Any determination pursuant to this subsection shall contain findings specifying the factors deemed significant in regard to the particular insurer, and shall set forth the reasons supporting the suspension, restriction or limitation ordered by the superintendent.

(3) The SUPERINTENDENT MAY CONSIDER THE following factors [shall be considered by the superintendent] in making [such] A determination AS TO WHETHER AN INSURER'S SURPLUS TO POLICYHOLDERS IS ADEQUATE IN RELATION TO THE INSURER'S OUTSTANDING LIABILITIES OR TO ITS FINANCIAL NEEDS:

[(1)] (A) the size of the insurer as measured by its admitted assets, capital and surplus to policyholders, reserves, premium writings, insurance in force and other appropriate criteria, with such surplus to policyholders for foreign insurers adjusted in accordance with section one thousand four hundred thirteen of this chapter;

[(2)] (B) the extent to which the insurer's business is diversified among the several kinds of insurance;

[(3)] (C) the number and size of risks insured in each kind of insurance and the insurer's loss experience in regard to such risks;

[(4)] (D) the extent of geographical dispersion of the insurer's risks;

[(5)] (E) the nature and extent of the insurer's reinsurance program;

[(6)] (F) the quality, diversification and liquidity of the insurer's investment portfolio;

[(7)] (G) the recent past and projected future trends in regard to the insurer's loss experience and in the size of the insurer's surplus to policyholders;

[(8)] (H) the surplus to policyholders maintained by other comparable insurers;

[(9)] (I) the adequacy of the insurer's reserves; and

[(10)] (J) the quality and liquidity of investments in subsidiaries made pursuant to this chapter.

(4)(A) THE SUPERINTENDENT MAY CONSIDER THE FOLLOWING STANDARDS, EITHER SINGLY OR A COMBINATION OF TWO OR MORE, TO DETERMINE WHETHER THE CONTINUED OPERATION OF ANY INSURER MIGHT BE DEEMED TO BE HAZARDOUS TO ITS POLICYHOLDERS, CREDITORS, OR TO THE GENERAL PUBLIC:

(I) ADVERSE FINDINGS REPORTED IN FINANCIAL CONDITION AND MARKET CONDUCT EXAMINATION REPORTS, AUDIT REPORTS, ACTUARIAL OPINIONS, REPORTS, OR SUMMARIES, OR OTHER REPORTS;

(II) THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS INSURANCE REGULATORY INFORMATION SYSTEM AND ITS OTHER FINANCIAL ANALYSIS SOLVENCY TOOLS AND REPORTS;

(III) WHETHER THE INSURER HAS MADE ADEQUATE PROVISION, ACCORDING TO PRESENTLY ACCEPTED ACTUARIAL STANDARDS OF PRACTICE, FOR THE ANTICIPATED

CASH FLOWS REQUIRED BY THE CONTRACTUAL OBLIGATIONS AND RELATED EXPENSES OF THE INSURER, WHEN CONSIDERED IN LIGHT OF THE ASSETS HELD BY THE INSURER WITH RESPECT TO SUCH RESERVES AND RELATED ACTUARIAL ITEMS, INCLUDING THE INVESTMENT EARNINGS ON SUCH ASSETS, AND THE CONSIDERATIONS ANTICIPATED TO BE RECEIVED AND RETAINED UNDER SUCH POLICIES AND CONTRACTS;

(IV) THE ABILITY OF AN ASSUMING REINSURER TO PERFORM AND WHETHER THE INSURER'S REINSURANCE PROGRAM PROVIDES SUFFICIENT PROTECTION FOR THE INSURER'S REMAINING SURPLUS AFTER TAKING INTO ACCOUNT THE INSURER'S CASH FLOW AND THE CLASSES OF BUSINESS WRITTEN AS WELL AS THE FINANCIAL CONDITION OF THE ASSUMING REINSURER;

(V) WHETHER THE INSURER'S OPERATING LOSS IN THE LAST TWELVE-MONTH PERIOD OR ANY SHORTER PERIOD OF TIME, INCLUDING NET CAPITAL GAIN OR LOSS, CHANGE IN NON-ADMITTED ASSETS, AND CASH DIVIDENDS PAID TO SHAREHOLDERS, IS GREATER THAN FIFTY PERCENT OF THE INSURER'S REMAINING SURPLUS TO POLICYHOLDERS IN EXCESS OF THE MINIMUM REQUIRED;

(VI) WHETHER THE INSURER'S OPERATING LOSS IN THE LAST TWELVE-MONTH PERIOD OR ANY SHORTER PERIOD OF TIME, EXCLUDING NET CAPITAL GAINS, IS GREATER THAN TWENTY PERCENT OF THE INSURER'S REMAINING SURPLUS TO POLICYHOLDERS IN EXCESS OF THE MINIMUM REQUIRED;

(VII) WHETHER A REINSURER, AN OBLIGOR, ANY ENTITY IN THE INSURER'S HOLDING COMPANY SYSTEM, AS DEFINED IN PARAGRAPH SIX OF SUBSECTION (A) OF SECTION ONE THOUSAND FIVE HUNDRED ONE OF THIS CHAPTER, OR ANY SUBSIDIARY OF AN INSURER, IS INSOLVENT, THREATENED WITH INSOLVENCY, OR DELINQUENT IN PAYMENT OF ITS MONETARY OR OTHER OBLIGATIONS, AND WHICH IN THE OPINION OF THE SUPERINTENDENT MAY AFFECT THE SOLVENCY OF THE INSURER;

(VIII) CONTINGENT LIABILITIES, PLEDGES, OR GUARANTEES THAT EITHER INDIVIDUALLY OR COLLECTIVELY INVOLVE A TOTAL AMOUNT THAT IN THE SUPERINTENDENT'S OPINION MAY AFFECT THE INSURER'S SOLVENCY;

(IX) WHETHER ANY PERSON WHO CONTROLS AN INSURER, AS DEFINED IN PARAGRAPH TWO OF SUBSECTION (A) OF SECTION ONE THOUSAND FIVE HUNDRED ONE OF THIS CHAPTER, IS DELINQUENT IN THE TRANSMITTING TO, OR PAYMENT OF, NET PREMIUMS TO THE INSURER;

(X) THE AGE AND COLLECTABILITY OF RECEIVABLES;

(XI) WHETHER THE MANAGEMENT OF AN INSURER, INCLUDING OFFICERS, DIRECTORS, OR ANY OTHER PERSON WHO DIRECTLY OR INDIRECTLY CONTROLS THE OPERATION OF THE INSURER, FAILS TO POSSESS AND DEMONSTRATE THE COMPETENCE, FITNESS, AND REPUTATION DEEMED NECESSARY TO SERVE THE INSURER IN SUCH POSITION;

(XII) WHETHER THE INSURER'S MANAGEMENT HAS FAILED TO RESPOND TO AN INQUIRY OF THE SUPERINTENDENT RELATIVE TO THE INSURER'S CONDITION OR HAS FURNISHED FALSE AND MISLEADING INFORMATION CONCERNING SUCH AN INQUIRY;

(XIII) WHETHER THE INSURER HAS FAILED TO MEET FINANCIAL FILING REQUIREMENTS OR FILING REQUIREMENTS PURSUANT TO ARTICLES FIFTEEN, SIXTEEN, OR SEVENTEEN OF THIS CHAPTER, OR REGULATIONS PROMULGATED THEREUNDER, IN THE ABSENCE OF A REASON SATISFACTORY TO THE SUPERINTENDENT;

(XIV) WHETHER THE INSURER'S MANAGEMENT EITHER HAS FILED ANY FALSE OR MISLEADING SWORN FINANCIAL STATEMENT, OR HAS RELEASED FALSE OR MISLEADING FINANCIAL STATEMENTS TO LENDING INSTITUTIONS OR TO THE GENERAL PUBLIC, OR HAS MADE A FALSE OR MISLEADING ENTRY, OR HAS OMITTED AN ENTRY OF MATERIAL AMOUNT IN THE INSURER'S BOOKS;

(XV) WHETHER THE INSURER HAS GROWN SO RAPIDLY AND TO SUCH AN EXTENT THAT IT LACKS ADEQUATE FINANCIAL AND ADMINISTRATIVE CAPACITY TO MEET ITS OBLIGATIONS IN A TIMELY MANNER;

(XVI) WHETHER THE INSURER HAS EXPERIENCED OR IS EXPECTED TO EXPERIENCE IN THE FORESEEABLE FUTURE CASH FLOW OR LIQUIDITY PROBLEMS;

(XVII) WHETHER MANAGEMENT HAS ESTABLISHED RESERVES THAT DO NOT COMPLY WITH MINIMUM STANDARDS ESTABLISHED BY THIS CHAPTER OR REGULATIONS PROMULGATED THEREUNDER, STATUTORY ACCOUNTING STANDARDS, AS ADOPTED BY THE SUPERINTENDENT, SOUND ACTUARIAL PRINCIPLES AND STANDARDS OF PRACTICE;

(XVIII) WHETHER MANAGEMENT PERSISTENTLY ENGAGES IN MATERIAL UNDER RESERVING THAT RESULTS IN ADVERSE DEVELOPMENT;

(XIX) WHETHER ANY TRANSACTION WITH AN AFFILIATE, A SUBSIDIARY, OR A PARENT FOR WHICH THE INSURER RECEIVES ASSETS OR CAPITAL GAINS, OR BOTH, DO NOT PROVIDE SUFFICIENT VALUE, LIQUIDITY, OR DIVERSITY TO ASSURE THE INSURER'S ABILITY TO MEET ITS OUTSTANDING OBLIGATIONS AS THEY MATURE; AND

(XX) ANY OTHER FINDING DETERMINED BY THE SUPERINTENDENT TO BE HAZARDOUS TO THE INSURER'S POLICYHOLDERS, CREDITORS, OR TO THE GENERAL PUBLIC.

(B) IF THE SUPERINTENDENT DETERMINES THAT THE INSURER'S SURPLUS TO POLICYHOLDERS IS NOT ADEQUATE IN RELATION TO THE INSURER'S OUTSTANDING LIABILITIES OR TO ITS FINANCIAL NEEDS OR IF THE SUPERINTENDENT OTHERWISE DETERMINES THAT THE CONTINUED OPERATION OF THE INSURER MAY BE HAZARDOUS TO ITS POLICYHOLDERS, CREDITORS, OR TO THE GENERAL PUBLIC, THEN THE SUPERINTENDENT MAY, UPON A DETERMINATION, SUSPEND THE INSURER'S LICENSE, CERTIFICATE OF AUTHORITY, OR REGISTRATION, RESTRICT THE INSURER'S LICENSE, CERTIFICATE OF AUTHORITY, OR REGISTRATION, OR ISSUE AN ORDER REQUIRING THE INSURER TO DO ONE OR MORE OF THE FOLLOWING:

(I) REDUCE THE TOTAL AMOUNT OF PRESENT AND POTENTIAL LIABILITY FOR POLICY BENEFITS BY REINSURANCE;

(II) REDUCE, SUSPEND, OR LIMIT THE VOLUME OF BUSINESS BEING ACCEPTED OR RENEWED, OR LIMIT THE AMOUNT OF PREMIUMS WRITTEN IN THIS STATE;

(III) REDUCE GENERAL INSURANCE AND COMMISSION EXPENSES BY SPECIFIED METHODS;

(IV) INCREASE THE INSURER'S CAPITAL AND SURPLUS;

(V) SUSPEND OR LIMIT THE DECLARATION AND PAYMENT OF DIVIDENDS BY AN INSURER TO ITS STOCKHOLDERS OR POLICYHOLDERS;

(VI) FILE REPORTS ON A FORM AND IN A MANNER ACCEPTABLE TO THE SUPERINTENDENT CONCERNING THE MARKET VALUE OF AN INSURER'S ASSETS;

(VII) LIMIT OR WITHDRAW FROM CERTAIN INVESTMENTS OR DISCONTINUE CERTAIN INVESTMENT PRACTICES TO THE EXTENT THE SUPERINTENDENT DEEMS NECESSARY;

(VIII) DOCUMENT THE ADEQUACY OF PREMIUM RATES IN RELATION TO THE RISKS INSURED;

(IX) FILE, IN ADDITION TO REGULAR ANNUAL STATEMENTS, INTERIM FINANCIAL REPORTS ON A FORM AND IN A MANNER PRESCRIBED BY THE SUPERINTENDENT, WHICH MAY INCLUDE A FORM ADOPTED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS;

(X) CORRECT CORPORATE GOVERNANCE PRACTICE DEFICIENCIES, AND ADOPT AND UTILIZE GOVERNANCE PRACTICES ACCEPTABLE TO THE SUPERINTENDENT;

(XI) PROVIDE A BUSINESS PLAN TO THE SUPERINTENDENT IN ORDER TO CONTINUE TO TRANSACT BUSINESS IN THIS STATE; OR

(XII) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ADJUST RATES FOR ANY NON-LIFE INSURANCE POLICY OR CONTRACT WRITTEN BY THE INSURER THAT THE SUPERINTENDENT CONSIDERS NECESSARY TO IMPROVE THE INSURER'S FINANCIAL CONDITION.

(d) [The superintendent shall identify and review those licensed property/casualty insurers needing immediate or targeted regulatory attention, and shall include the number of insurers so identified in the report required by section three hundred thirty-four of this chapter. Such report shall also include the name of each licensed

property/casualty insurer placed in formal conservatorship, rehabilitation or liquidation during the preceding year. Nothing herein shall be construed to restrict or diminish any right or power of the superintendent under any other provision of this chapter] FOR THE PURPOSES OF THIS SECTION, "INSURER" SHALL MEAN ANY PERSON, FIRM, ASSOCIATION, CORPORATION, OR JOINT-STOCK COMPANY AUTHORIZED TO DO AN INSURANCE BUSINESS IN THIS STATE BY A LICENSE IN FORCE PURSUANT TO THE PROVISIONS OF THIS CHAPTER OR EXEMPTED BY THE PROVISIONS OF THIS CHAPTER FROM SUCH LICENSING.

S 2. This act shall take effect immediately.