

STATE OF NEW YORK

8025

IN SENATE

March 20, 2018

Introduced by Sen. SEWARD -- (at request of the Department of Financial Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to administrative supervision and insurers deemed to be in a hazardous financial condition (Part A); and to amend the insurance law, in relation to revocation or suspension of licenses (Part B)

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act enacts into law major components of legislation
2 relating to administrative supervision and insurers deemed to be in a
3 hazardous financial condition, the national association of registered
4 agents and brokers, and technical amendments. Each component is wholly
5 contained within a Part identified as Parts A through B. The effective
6 date for each particular provision contained within such Part is set
7 forth in the last section of such Part. Any provision in any section
8 contained within a Part, including the effective date of the Part, which
9 makes a reference to a section "of this act", when used in connection
10 with that particular component, shall be deemed to mean and refer to the
11 corresponding section of the Part in which it is found. Section three of
12 this act sets forth the general effective date of this act.

13 PART A

14 Section 1. Legislative findings. In order to increase the authority of
15 the superintendent of financial services to respond to the harm posed by
16 impaired insurers in this state, the legislature finds that it is in the
17 best interest of the people of this state to enact an administrative
18 supervision statute. The superintendent of financial services has the
19 right and responsibility to enforce the insurance law and the authority
20 to seek redress against any person responsible for the impairment or
21 insolvency of the insurer, and nothing in this act is intended to
22 restrict or limit such right, responsibility, or authority.

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

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§ 2. The insurance law is amended by adding a new section 1123 to read as follows:

§ 1123. Administrative supervision. (a)(1) The superintendent may issue an order placing a domestic insurer under administrative supervision if the superintendent determines that one or more of the conditions set forth in subsection (c) of this section exists. Upon such a determination, the superintendent shall furnish the insurer with a written list of requirements to abate the condition or conditions within the time specified in the order, which shall be sixty days or another period of time as designated by the superintendent. The domestic insurer may challenge the order by requesting an administrative hearing pursuant to the adjudicatory proceeding rules in article three of the state administrative procedure act. Upon issuance of the order, the superintendent shall advise such domestic insurer of its right to request a hearing challenging the order pursuant to the adjudicatory proceeding rules in article three of the state administrative procedure act and regulations promulgated by the superintendent.

(2) If, at the end of the period specified in the order, the superintendent determines that the condition or conditions that gave rise to the order still exists or exist, then administrative supervision shall continue. The insurer may request a hearing to challenge the superintendent's determination to continue administrative supervision.

(3) If the superintendent determines that the condition or conditions that gave rise to administrative supervision no longer exists or exist, then the superintendent shall release the insurer from supervision.

(b) (1) An insurer may be subject to administrative supervision by the superintendent if upon examination or any other time it appears in the superintendent's discretion that:

(A) The insurer's condition renders the continuance of its business hazardous to the public or to its insureds;

(B) The insurer has or appears to have exceeded its powers, as that term is defined in paragraph two of this subsection, granted under its charter and applicable law;

(C) The insurer has failed to comply with the applicable provisions of this chapter;

(D) The business of the insurer is being conducted fraudulently; or

(E) The insurer gives its consent.

(2) The term "exceeded its powers" means any one or more of the following conditions:

(A) The insurer has refused to permit examination of its books, papers, accounts, records or affairs by the superintendent, his or her deputies, employees or duly commissioned examiners;

(B) A domestic insurer has unlawfully removed from this state books, papers, accounts or records necessary for an examination of the insurer;

(C) The insurer has failed to promptly comply with the applicable financial reporting statutes or rules and departmental requests relating thereto;

(D) The insurer has neglected or refused to observe an order by the superintendent to make good, within the time prescribed by law, any prohibited deficiency in its capital, capital stock or surplus;

(E) The insurer is continuing to transact insurance or write business after its license has been revoked or suspended by the superintendent;

(F) The insurer, by contract or otherwise, has unlawfully or has in violation of an order of the superintendent or has without first having obtained written approval of the superintendent if approval is required by law: (i) totally reinsured its entire outstanding business or (ii)

1 merged or consolidated substantially its entire property or business
2 with another insurer;

3 (G) The insurer engaged in any transaction in which it is not author-
4 ized to engage under the laws of this state; or

5 (H) The insurer refused to comply with a lawful order of the super-
6 intendent.

7 (3) The term "consent" means agreement to administrative supervision
8 by the insurer.

9 (c) During the period of supervision, the superintendent may prohibit
10 the insurer from engaging in any of the following activities without the
11 superintendent's prior approval:

12 (1) disposing of, conveying, or encumbering any of its assets or its
13 business in force;

14 (2) withdrawing any funds from its bank accounts;

15 (3) lending any of its funds;

16 (4) investing any of its funds;

17 (5) paying any claims;

18 (6) transferring any of its property;

19 (7) incurring any debt, obligation, or liability;

20 (8) merging or consolidating with another company;

21 (9) approving new premiums or renewing any policies;

22 (10) entering into any new reinsurance contract or treaty;

23 (11) terminating, surrendering, forfeiting, converting, or lapsing any
24 insurance policy, certificate, or contract, except for nonpayment of
25 premiums due;

26 (12) releasing, paying, or refunding premium deposits, accrued cash or
27 loan values, unearned premiums, or other reserves on any insurance poli-
28 cy, certificate, or contract;

29 (13) making any material change in management; or

30 (14) increasing salaries and benefits of officers or directors or the
31 payment of bonuses, dividends, or other payments.

32 (d) The superintendent may appoint as administrative supervisor, at
33 the insurer's expense, one or more persons not employed by any insurer
34 or interested in such insurer, except as a policyholder.

35 (e) During the period of administrative supervision, an insurer may
36 contest an action taken or proposed to be taken by the superintendent or
37 by the administrative supervisor on the grounds that the action or
38 proposed action would not result in improving the condition of the
39 insurer. Denial of the insurer's request upon reconsideration may be
40 challenged by the insurer by requesting an administrative hearing pursu-
41 ant to the adjudicatory proceeding rules in article three of the state
42 administrative procedure act.

43 (f) (1) The expenses of administrative supervision pursuant to this
44 section shall be borne and paid by the insurer so supervised.

45 (2) In the event that an insurer becomes subject to a proceeding under
46 article seventy-four of this chapter within one year of the superinten-
47 dent releasing the insurer from administrative supervision, all accrued
48 and outstanding expenses incurred in connection with administrative
49 supervision shall be treated as actual and necessary costs and expenses
50 of the administration of such proceeding under article seventy-four of
51 this chapter.

52 (g) All matters pertaining to a proceeding or determination pursuant
53 to this section shall be confidential and not subject to subpoena or
54 public inspection under article six of the public officers law or any
55 other statute, except to the extent that the superintendent finds
56 release of information necessary to protect the public.

1 (h) Nothing in this section shall be construed as precluding the
2 superintendent from initiating judicial proceedings to place an insurer
3 in rehabilitation, liquidation, conservation, or dissolution
4 proceedings.

5 § 3. Subsection (a) of section 1309 of the insurance law is amended to
6 read as follows:

7 (a) Whenever the superintendent finds from a financial statement or
8 report on examination that an authorized insurer is unable to pay its
9 outstanding lawful obligations as they mature in the regular course of
10 business, as shown by an excess of required reserves and other liabil-
11 ities over admitted assets, or by its not having sufficient assets to
12 reinsure all outstanding risks with other solvent authorized assuming
13 insurers after paying all accrued claims owed, such insurer shall be
14 deemed insolvent and the superintendent may proceed against it pursuant
15 to the provisions of article seventy-four of this chapter or may place
16 the insurer under administrative supervision pursuant to section one
17 thousand one hundred twenty-three of this chapter.

18 § 4. Subsection (a) of section 1310 of the insurance law is amended to
19 read as follows:

20 (a) Whenever the superintendent finds from a financial statement, or a
21 report on examination, of any domestic stock insurer that [~~(i)~~] (1) the
22 admitted assets are less than the aggregate amount of its liabilities
23 and outstanding capital stock or [~~(ii)~~] (2) the admitted assets of any
24 such insurer [~~which~~] that is required to maintain a minimum surplus to
25 policyholders are less than the aggregate amount of its liabilities and
26 the amount of its minimum surplus to policyholders, [~~he~~] the superinten-
27 dent shall determine the amount of the impairment and order the insurer
28 to eliminate the impairment within such period as [~~he~~] the superinten-
29 dent designates, not more than ninety days from the service of the
30 order. [~~He~~] The superintendent may also order the insurer not to issue
31 any new policies while the impairment exists. If the impairment as
32 determined by the provisions of [~~item (i) hereof~~] paragraph one of this
33 subsection equals or exceeds twenty-five percent of the insurer's
34 outstanding capital stock, or as determined by the provisions of [~~item~~
35 ~~(i) or (ii) hereof~~] paragraph one or two of this subsection is such that
36 the insurer does not have the minimum capital or minimum surplus to
37 policyholders required by this chapter, and if at the expiration of such
38 designated period, such insurer has not satisfied the superintendent
39 that such impairment has been eliminated, the superintendent may proceed
40 against the insurer pursuant to the provisions of article seventy-four
41 of this chapter on the ground that its condition is such that its
42 further transaction of business will be hazardous to its policyholders
43 or its creditors or the public or the superintendent may place the
44 insurer under administrative supervision pursuant to section one thou-
45 sand one hundred twenty-three of this chapter.

46 § 5. Subsection (c) of section 1311 of the insurance law is amended to
47 read as follows:

48 (c) If the impairment so determined is such that such insurer does not
49 have the minimum surplus required for item (iii) of subsection (a) here-
50 of, and if when such designated period expires the insurer has not
51 satisfied the superintendent that such impairment has been eliminated,
52 then the superintendent may proceed against such insurer pursuant to the
53 provisions of article seventy-four of this chapter on the ground that
54 its further transaction of business will be hazardous to its policyhold-
55 ers, its creditors or the public or the superintendent may place the

insurer under administrative supervisions pursuant to section one thousand one hundred twenty-three of this chapter.

§ 6. Paragraph 2 of subsection (c) of section 1312 of the insurance law is amended to read as follows:

(2) If at the expiration of such designated period such insurer has not satisfied the superintendent that such impairment has been eliminated, the superintendent may proceed against such insurer pursuant to the provisions of article seventy-four of this chapter as an insurer whose condition is such that its further transaction of business in the United States will be hazardous to its policyholders, its creditors or the public in the United States or the superintendent may place the insurer under administrative supervision pursuant to section one thousand one hundred twenty-three of this chapter.

§ 7. This act shall take effect immediately.

PART B

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, the opening paragraph of subsection (c) as amended by chapter 598 of the laws of 2000, is amended to read as follows:

§ 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 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;

1 (v) whether the insurer's operating loss in the last twelve-month
2 period or any shorter period of time, including net capital gain or
3 loss, change in non-admitted assets, and cash dividends paid to share-
4 holders, is greater than fifty percent of the insurer's remaining
5 surplus to policyholders in excess of the minimum required;

6 (vi) whether the insurer's operating loss in the last twelve-month
7 period or any shorter period of time, excluding net capital gains, is
8 greater than twenty percent of the insurer's remaining surplus to poli-
9 cyholders in excess of the minimum required;

10 (vii) whether a reinsurer, an obligor, any entity in the insurer's
11 holding company system, as defined in paragraph six of subsection (a) of
12 section one thousand five hundred one of this chapter, or any subsidiary
13 of an insurer, is insolvent, threatened with insolvency, or delinquent
14 in payment of its monetary or other obligations, and which in the opin-
15 ion of the superintendent may affect the solvency of the insurer;

16 (viii) contingent liabilities, pledges, or guarantees that either
17 individually or collectively involve a total amount that in the super-
18 intendent's opinion may affect the insurer's solvency;

19 (ix) whether any person who controls an insurer, as defined in para-
20 graph two of subsection (a) of section one thousand five hundred one of
21 this chapter, is delinquent in the transmitting to, or payment of, net
22 premiums to the insurer;

23 (x) the age and collectibility of receivables;

24 (xi) whether the management of an insurer, including officers, direc-
25 tors, or any other person who directly or indirectly controls the opera-
26 tion of the insurer, fails to possess and demonstrate the competence,
27 fitness, and reputation deemed necessary to serve the insurer in such
28 position;

29 (xii) whether the insurer's management has failed to respond to an
30 inquiry of the superintendent relative to the insurer's condition or has
31 furnished false and misleading information concerning such an inquiry;

32 (xiii) whether the insurer has failed to meet financial filing
33 requirements or filing requirements pursuant to articles fifteen,
34 sixteen, or seventeen of this chapter, or regulations promulgated there-
35 under, in the absence of a reason satisfactory to the superintendent;

36 (xiv) whether the insurer's management either has filed any false or
37 misleading sworn financial statement, or has released false or mislead-
38 ing financial statements to lending institutions or to the general
39 public, or has made a false or misleading entry, or has omitted an entry
40 of material amount in the insurer's books;

41 (xv) whether the insurer has grown so rapidly and to such an extent
42 that it lacks adequate financial and administrative capacity to meet its
43 obligations in a timely manner;

44 (xvi) whether the insurer has experienced or is expected to experience
45 in the foreseeable future cash flow or liquidity problems;

46 (xvii) whether management has established reserves that do not comply
47 with minimum standards established by this chapter or regulations
48 promulgated thereunder, statutory accounting standards, as adopted by
49 the superintendent, sound actuarial principles and standards of prac-
50 tice;

51 (xviii) whether management persistently engages in material under
52 reserving that results in adverse development;

53 (xix) whether any transaction with an affiliate, a subsidiary, or a
54 parent for which the insurer receives assets or capital gains, or both,
55 does 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 authority, 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, except that, for purposes of this section, the term "insurer" shall not include any health maintenance organization operating pursuant to

1 section one thousand one hundred nine of this article or any continuing
2 care retirement community operating pursuant to section one thousand one
3 hundred nineteen of this article.

4 § 2. This act shall take effect immediately.

5 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
6 sion, section or part of this act shall be adjudged by any court of
7 competent jurisdiction to be invalid, such judgment shall not affect,
8 impair, or invalidate the remainder thereof, but shall be confined in
9 its operation to the clause, sentence, paragraph, subdivision, section
10 or part thereof directly involved in the controversy in which such judg-
11 ment shall have been rendered. It is hereby declared to be the intent of
12 the legislature that this act would have been enacted even if such
13 invalid provisions had not been included herein.

14 § 3. This act shall take effect immediately provided, however, that
15 the applicable effective date of Parts A through B of this act shall be
16 as specifically set forth in the last section of such Parts.