

§ 58-30-60. Commissioner's summary orders and supervision proceedings.

(a) Whenever the Commissioner has reasonable cause to believe, and determines after a hearing held under subsection (e) of this section, that any domestic insurer has committed or is engaged in, or is about to commit or engage in, any act, practice, or transaction that would subject it to delinquency proceedings under this Article, he may make and serve upon the insurer and any other persons involved, such orders as are reasonably necessary to correct, eliminate, or remedy such conduct, condition, or ground.

(b) The Commissioner may consider any or all of the following standards to determine whether the continued operation of any licensed insurer is hazardous to its policyholders, creditors, or the general public:

- (1) Adverse findings reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports, or summaries;
- (2) The NAIC Insurance Regulatory Information System and its other financial analysis solvency tools and reports;
- (3) Repealed by Session Laws 2013-199, s. 6, effective July 1, 2013.
- (4) 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, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts;
- (5) 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;
- (6) Whether an insurer's operating loss in the last 12-month period or any shorter period of time, including, but not limited to, net capital gain or loss, changes in nonadmitted assets, and cash dividends paid to shareholders, is greater than fifty percent (50%) of the insurer's remaining policyholders' surplus in excess of the minimum required;
- (6a) Whether the insurer's operating loss in the last 12-month period or any shorter period of time, excluding net capital gains, is greater than twenty percent (20%) of the insurer's remaining policyholders' surplus in excess of the minimum required;
- (7) Whether a reinsurer, obligor, or any entity within the insurer's insurance holding company system is insolvent, threatened with insolvency, or delinquent in payment of its monetary or any other obligation and which in the opinion of the Commissioner may affect the solvency of the insurer;
- (8) Contingent liabilities, pledges, or guaranties that either individually or collectively involve a total amount that in the Commissioner's opinion may affect an insurer's solvency;
- (9) Whether any controlling person of an insurer is delinquent in the transmitting to or payment of net premiums to the insurer;
- (10) The age and collectibility of receivables;
- (11) 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, or reputation considered by the Commissioner to be necessary to serve the insurer in that position;
- (12) Whether the management of an insurer has failed to respond to the Commissioner's inquiries about the condition of the insurer or has furnished false and misleading information in response to an inquiry by the Commissioner;
 - (12a) Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the Commissioner;
 - (13) Whether the management of an insurer has filed any false or misleading sworn financial statement, has released a false or misleading financial statement to a lending institution or to the general public, or has made a false or misleading entry or omitted an entry of material amount in the insurer's books;
 - (14) 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;
 - (15) Whether the insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems;
 - (16) Whether management has established reserves that do not comply with minimum standards established by State insurance laws, regulations, statutory accounting standards, sound actuarial principles, and standards of practice;
 - (17) Whether management persistently engages in material under reserving that results in adverse development;
 - (18) Whether transactions among affiliates, subsidiaries, or controlling persons 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; or
 - (19) Any other finding determined by the Commissioner to be hazardous to the insurer's policyholders, creditors, or general public.

To determine an insurer's financial condition under this Article, the Commissioner may: disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired, or otherwise subject to a delinquency proceeding; make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates of an insurer; refuse to recognize the stated value of accounts receivable if the insurer's ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12-month period.

If upon examination or at any other time the Commissioner has reasonable cause to believe that any domestic insurer is in such condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, or if the domestic insurer gives its consent, then the Commissioner shall upon the Commissioner's determination:

- (1) Issue an order notifying the insurer of that determination; and
- (2) Furnish to the insurer a written list of the Commissioner's requirements to abate that determination that may include any of the following:

- a. A reduction in the total amount of present and potential liability for policy benefits by reinsurance.
- b. A reduction, suspension, or limitation of the volume of insurance being accepted or renewed.
- c. A reduction in general insurance and commission expenses by specified methods.
- d. An increase in the insurer's capital and surplus.
- e. A suspension or limitation in the insurer's declaration and payment of dividends to its stockholders or policyholders.
- f. The filing of reports in a form acceptable to the Commissioner concerning the market value of its assets.
- g. A limitation or withdrawal from certain investments or the discontinuance of certain investment practices to the extent the Commissioner considers necessary.
- h. Documentation of the adequacy of premium rates in relation to the risks insured.
- i. The filing, in addition to regular annual financial statements, of interim financial reports on the form adopted by the NAIC or on such format prescribed by the Commissioner.
- j. The correction of corporate governance practice deficiencies.
- k. The adoption and utilization of governance practices acceptable to the Commissioner.
- l. The provision of a business plan to the Commissioner in order to continue to transact business in the State.

Notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, the Commissioner may adjust rates for any nonlife insurance product written by the insurer that the Commissioner considers necessary to improve the financial condition of the insurer.

(c) If the Commissioner makes a determination to supervise an insurer subject to an order under subsections (a) or (b) of this section, he shall notify the insurer that it is under the supervision of the Commissioner. During the period of supervision, the Commissioner may appoint a supervisor to supervise such insurer. The order appointing a supervisor shall direct the supervisor to enforce orders issued under subsections (a) and (b) of this section and may also require that the insurer may not do any of the following things during the period of supervision, without the prior approval of the Commissioner or his supervisor:

- (1) Dispose of, convey, or encumber any of its assets or its business in force;
- (2) Withdraw from any of its bank accounts;
- (3) Lend any of its funds;
- (4) Invest any of its funds;
- (5) Transfer any of its property;
- (6) Incur any debt, obligation, or liability;
- (7) Merge or consolidate with another company; or
- (8) Enter into any new reinsurance contract or treaty.

(d) Any insurer subject to an order under this section shall comply with the lawful requirements of the Commissioner and, if placed under supervision, shall comply with the requirements of the Commissioner within such period of time established by the Commissioner. The Commissioner may in his discretion extend the time for compliance beyond such period of time for cause. In the event of such insurer's failure to comply within such period of time, the

Commissioner may institute proceedings under this Article to have a rehabilitator or liquidator appointed, or extend the period of supervision.

(e) The notice of hearing under subsection (a) of this section and any order issued pursuant to that subsection shall be served upon the insurer pursuant to the applicable rules of civil procedure. The notice of hearing shall state the time and place of hearing, and the conduct, condition, or ground upon which the Commissioner would base his order. Unless mutually agreed upon between the Commissioner and the insurer, the hearing shall occur not less than 10 days nor more than 30 days after notice is served and shall be either in Wake County or in some other place designated by the Commissioner. The Commissioner shall hold all hearings under subsection (a) of this section privately unless the insurer requests a public hearing, in which case the hearing shall be public.

(f) Any insurer subject to an order under subsection (b) of this section may request an administrative hearing before the Commissioner or his designee to review that order. Such hearing shall be held as provided in subsection (e) of this section, but the request for a hearing shall not stay the effect of the order. If the Commissioner issues an order under subsection (b) of this section, the insurer may, at any time, waive the hearing and apply for immediate judicial relief by means of any remedy afforded by law without first exhausting its administrative remedies. Subsequent to an administrative hearing, any party to the proceedings whose interests are substantially affected is entitled to judicial review of any order issued by the Commissioner.

(g) During the period of supervision the insurer may request the Commissioner to review any action taken or proposed to be taken by the supervisor, specifying wherein the action complained of is believed not to be in the best interest of the insurer.

(h) If any person violates any supervision order issued under this section that as to him is then still in effect, he shall be liable to pay a civil penalty imposed by the Court not to exceed ten thousand dollars (\$10,000). The clear proceeds of civil penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(i) The Commissioner may apply for, and any court of general jurisdiction may grant, such restraining orders, preliminary and permanent injunctions, and other orders as may be deemed to be necessary and proper to enforce a supervision order.

(j) In the event that any person subject to the provisions of this Article, including any person described in G.S. 58-30-25(a), knowingly and willfully violates any valid order of the Commissioner issued under the provisions of this section and, as a result of such violation, the net worth of the insurer is reduced or the insurer suffers loss that it would not otherwise have suffered, said person shall become personally liable to the insurer for the amount of any such reduction or loss. The Commissioner or supervisor is authorized to bring an action on behalf of the insurer in the Court to recover the amount of the reduction or loss together with any costs. (1989, c. 452, s. 1; 1989 (Reg. Sess., 1990), c. 1021, s. 6; 1991, c. 681, s. 43; 1998-215, s. 86; 2013-199, s. 6.)