

R590. Insurance, Administration.

R590-265. Hazardous Financial Condition Rule.

R590-265-1. Authority.

This rule is promulgated by the Insurance Commissioner pursuant to Utah Insurance Code Sections:

- (1) 31A-2-201, which authorizes the commissioner to make rules to implement the provisions of Title 31A; and
- (2) 31A-27-503(1) (a) (v) and 31A-27a-101(3) (c), which authorize the commissioner to make rules pertaining to an insurer deemed to be in hazardous financial condition or potentially hazardous financial condition.

R590-265-2. Purpose and Scope.

(1) The purpose of this rule is to set forth the standards which the commissioner may use for identifying insurers found to be in such condition as to render the continuance of their business hazardous to:

- (a) their policyholders;
- (b) creditors; or
- (c) the general public.

(2) This rule shall not be interpreted to:

- (a) limit the powers granted the commissioner by any laws or parts of laws of this state; or
- (b) supersede any laws or parts of laws of this state.

R590-265-3. Standards.

The following standards, either singly or a combination of two or more, may be considered by the commissioner to determine whether the continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous to its policyholders, creditors or the general public. The commissioner may consider:

- (1) adverse findings reported in:
 - (a) financial condition examination reports;
 - (b) market conduct examination reports;
 - (c) audit reports; and
 - (d) actuarial opinions, reports or summaries;

(2) the National Association of Insurance Commissioners' Insurance Regulatory Information System and its other financial analysis solvency tools and reports;

(3) the insurer's 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:

- (a) investment earnings on such assets; and
- (b) considerations anticipated to be received and retained under such policies and contracts;

(4) an assuming reinsurer's ability to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus after taking into account:

- (a) the insurer's cash flow;

- (b) classes of business written; and
- (c) the financial condition of the assuming reinsurer;
- (5) the 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, change in non-admitted assets, and cash dividend paid to shareholders, if greater than 50% of the insurer's remaining surplus as regards policyholders in excess of the minimum required;
- (6) the insurer's operating loss in the last 12 month period or any shorter period of time, excluding net capital gains, if it is greater than 20% of the insurer's remaining surplus as regards policyholders in excess of the minimum required;
- (7) an insolvent or nearly insolvent or delinquent in payment of its monetary obligations, obligor or any entity within the insurer's insurance holding company system, when in the opinion of the commissioner it may also affect the solvency of the insurer;
- (8) contingent liabilities, pledges or guaranties which either individually or collectively involve a total amount which in the opinion of the commissioner may affect the solvency of the insurer;
- (9) any "controlling person" of an insurer who is delinquent in transmitting to, or payment of, net premiums to the insurer;
- (10) the age and collectability of receivables;
- (11) whether 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 competence, fitness and reputation deemed necessary to serve the insurer in such position;
- (12) the insurer's failure to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;
- (13) the insurer's failure to meet financial and holding company filing requirements in the absence of a reason satisfactory to the commissioner;
- (14) whether management of an insurer has:
 - (a) filed any false or misleading sworn financial statement;
 - (b) released any false or misleading financial statement to lending institutions or to the general public;
 - (c) made a false or misleading entry or omitted an entry of material amount in the books of the insurer;
- (15) a lack of adequate financial and administrative capacity to meet obligations in a timely manner due to the insurer's rapid growth;
- (16) cash flow or liquidity problems currently identified or expected in the foreseeable future;
- (17) insurer reserves that do not comply with minimum standards established by the state insurance laws, regulations, statutory accounting standards, sound actuarial principles and standards of practice;

(18) persistent under reserving resulting in adverse development;

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

(20) any other finding determined by the commissioner to be hazardous to the insurer's policyholders, creditors or general public.

R590-265-4. Commissioner's Authority.

(1) For the purposes of making a determination of an insurer's financial condition under this rule, the commissioner may:

(a) disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired or otherwise subject to a delinquency proceeding;

(b) make appropriate adjustments including disallowance to asset values attributable to investments in or transactions with parents, subsidiaries or affiliates consistent with the NAIC Accounting Practices and Procedures Manual, state laws and regulations;

(c) refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor;

(d) 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 with the next 12 month period.

(2) If the commissioner determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to its policyholders, creditors or the general public, then the commissioner may, upon a determination, issue an order requiring the insurer to:

(a) reduce the total amount of present and potential liability for policy benefits by reinsurance;

(b) reduce, suspend or limit the volume of business being accepted or renewed;

(c) reduce general insurance and commission expenses by specified methods;

(d) increase the insurer's capital and surplus;

(e) suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policy holders;

(f) file reports in a form acceptable to the commissioner concerning the market value of an insurer's assets;

(g) limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary;

(h) document the adequacy of premium rates in relation to

the risks insured;

(i) file, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or in such format as promulgated by the commissioner;

(j) correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the commissioner;

(k) provide a business plan to the commissioner in order to continue to transact business in the state; or

(l) notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, adjust rates for any non-life insurance product written by the insurer that the commissioner considers necessary to improve the financial condition of the insurer.

(3) If the insurer is a foreign insurer the commissioner's order may be limited to the extent provided by statute.

(4) An insurer subject to an order under Subsection (1) may request a hearing to review that order. The notice of hearing shall:

(a) be served upon the insurer pursuant to 31A-27-503;

(b) state the time and place of hearing, and the conduct, condition or ground upon which the commissioner based the order.

(5) Unless mutually agreed between the commissioner and the insurer, all hearings under Subsection (4) shall:

(a) occur not less than 10 days nor more than 30 days after notice is served;

(b) be either in Salt Lake County or in some other place convenient to the parties designated by the commissioner.

(6) The commissioner shall hold all hearings under Subsection (4) privately, unless the insurer requests a public hearing, in which case the hearing shall be public.

R590-265-5. Judicial Review.

Any order or decision of the commissioner shall be subject to review in accordance with 31A-27-503(4)(b) at the instance of any party to the proceedings whose interests are substantially affected.

R590-265-6. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 30 days from the rule's effective date.

R590-265-7. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**KEY: insurer, hazardous financial condition
31A-2-201, 31A-27-503(1)(a)(v), 31A-27a-101(3)(c)**