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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2007

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A N A C T

RELATING TO INSURANCE - VOLUNTARY RESTRUCTURING OF SOLVENT
INSURERS

Introduced By: Senator Kevin A. Breene

Date Introduced: February 13, 2007

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

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

3 **27-14.5-1. Definitions.** – As used in this chapter:

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

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

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

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

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

15 (4) "Assumption reinsurance agreement" has the meaning given in section 27-53.1-3(b),
16 subject to the following:

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

18 (ii) If any policy subject to the agreement is protected through a guarantee association,

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

5 (5) "Class of creditors" means:

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

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

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

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

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

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

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

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

25 (9) "Creditor" means:

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

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

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

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

32 (12) "Implementation order" means an order under section 27-14.5-4(c).

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

34 (14) "Person" means an individual, corporation, partnership, association, joint stock

1 company, trust, unincorporated organization, or any similar entity or any combination of the
2 foregoing acting in concert.

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (i) Is domiciled in Rhode Island;

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

28 (iii) Has ceased underwriting new business; and

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

30 **27-14.5-4. Commutation plans.** -- (a) Application. - Any commercial run-off insurer
31 may apply to the court for an order implementing a commutation plan.

32 (b) Procedure.

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

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

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

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

7 (c) Implementation order.

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

12 (2) The implementation order shall:

13 (i) Order implementation of the commutation plan;

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

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

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

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

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

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

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

33 (d) Order of dissolution or discharge.

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

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

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

4 (ii) Transfers those liabilities subject to an assumption reinsurance agreement to the
5 assumption reinsurer, thereby notating the original policy by substituting the assumption reinsurer
6 for the applicant and releasing the applicant of any liability relating to the transferred liabilities;

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

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

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

12 (iv) Either:

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

14 (B) The applicant be dissolved.

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

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

19 (f) Modifications to plan. - After provision of notice and an opportunity to object, and
20 upon a showing that some material factor in approving the plan has changed, the court may
21 modify or change a commutation plan, except that upon entry of an order under subdivision (d)(2)
22 of this section, there shall be no recourse against the applicant's owners absent a showing of
23 fraud.

24 (g) Role of commissioner and guaranty funds; relationship to rehabilitation/liquidation
25 statutes.

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

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

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

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

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

13 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO INSURANCE - VOLUNTARY RESTRUCTURING OF SOLVENT
INSURERS

1 This act would expand the definition of commercial run-off insurer to include a Rhode
2 Island domestic insurance company formed or re-activated for the purpose of entering into a
3 voluntary restructuring whose liabilities consist of commercial liabilities transferred to the
4 company with the approval of the commissioner.

5 This act would take effect upon passage.

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