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LC02481
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2003

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A N A C T

RELATING TO INSURANCE

Introduced By: Senators Connors, DaPonte, and Goodwin

Date Introduced: February 26, 2003

Referred To: Senate Financial, Technology, Regulatory

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 27-34-3, 27-34-5 and 27-34-11 of the General Laws in Chapter 27-
2 34 entitled "Rhode Island Insurers' Insolvency Fund" are hereby amended to read as follows:

3 **27-34-3. Scope.** -- This chapter shall apply to all kinds of direct insurance, but shall not
4 be applicable to the following:

5 (1) Life, annuity, health, or disability insurance;

6 (2) Mortgage guaranty, financial guaranty or other forms of insurance offering protection
7 against investment risks;

8 (3) Fidelity or surety bonds, or any other bonding obligations;

9 (4) Credit insurance;

10 (5) Insurance of warranties or service contracts;

11 (6) Title insurance;

12 (7) Ocean marine insurance, except that portion of the marine protection and indemnity
13 insurance covering liability of the insured for personal injury, illness, or death to employees and
14 insurance covering pleasure craft;

15 (8) ~~Commercial lines excess liability insurance;~~

16 (9) Any transaction or combination of transactions between a person, including affiliates
17 of the person, and an insurer, including affiliates of the insurer, which involves the transfer of
18 investment or credit risk unaccompanied by transfer of insurance risk; and

19 (10) Any transaction or combination of transactions between a protected cell and the

1 general account or another protected cell of a protected cell company organized under the
2 Protected Cell Companies Act, chapter 64 of this title, as those terms are defined in this chapter.

3 **27-34-5. Definitions.** -- As used in this chapter:

4 (1) "Account" means any one of the three (3) accounts created by section 27-34-6;

5 (2) "Affiliate" means a person, who directly or indirectly, through one or more
6 intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on
7 December 31 of the year next preceding the date the insurer becomes an insolvent insurer;

8 (3) "Claimant" means any insured making a first party claim or any person instituting a
9 liability claim; provided that no person who is an affiliate of the insolvent insurer may be a
10 claimant;

11 ~~(4) "Commercial lines excess liability insurance" means any commercial lines liability~~
12 ~~insurance written over an underlying policy with policy limits of at least three hundred thousand~~
13 ~~dollars (\$300,000) or a self insured retention of at least three hundred thousand dollars~~
14 ~~(\$300,000);~~

15 (5) "Commercial lines insurance" means any insurance to which this chapter applies
16 which is not personal lines insurance;

17 (6) "Commissioner" means the commissioner of insurance;

18 (7) "Control" means the possession, direct or indirect, of the power to direct or cause the
19 direction of the management and policies of a person, whether through the ownership of voting
20 securities, by contract other than a commercial contract for goods or nonmanagement services, or
21 otherwise, unless the power is the result of an official position with, or corporate office held by,
22 the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls,
23 holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the
24 voting securities of any other person. This presumption may be rebutted by a showing that control
25 does not exist in fact;

26 (8) "Covered claim" means an unpaid claim, including one for unearned premiums,
27 submitted by a claimant, which arises out of and is within the coverage and subject to the
28 applicable limits of an insurance policy to which this chapter applies issued by an insurer if the
29 insurer becomes an insolvent insurer and:

30 (i) The claimant or insured is a resident of this state at the time of the insured event;
31 provided, that for entities other than an individual, the residence of a claimant or insured is the
32 state in which its principal place of business is located at the time of the insured event; or

33 (ii) The property from which the claim arises is permanently located in this state.

34 "Covered claim" shall not include any amount:

1 (A) Awarded as punitive or exemplary damages;
2 (B) Sought as a return of premium under any retrospective rating plan; or
3 (C) Due any reinsurer, insurer, insurance pool, or underwriting association, as
4 subrogation recoveries or otherwise; provided, that a claim for any amount, asserted against a
5 person insured under a policy issued by an insurer which has become an insolvent insurer, which,
6 if it were not a claim by or for the benefit of a reinsurer, insurer, insurance pool, or underwriting
7 association, would be a "covered claim", may be filed directly with the receiver of the insolvent
8 insurer, but in no event may any the claim be asserted against the insured of the insurer;

9 (9) "Fund" means the Rhode Island insurers' insolvency fund created under section 27-
10 34-6;

11 (10) "Insolvent insurer" means an insurer licensed to transact in this state any of the
12 kinds of insurance within the scope of this chapter, either at the time the policy was issued or
13 when the insured event occurred, against which an order of liquidation with a finding of
14 insolvency has been entered by a court of competent jurisdiction in the insurer's state of domicile
15 or in this state under the provision(s) of chapter 14.3 of this title which order of liquidation has
16 not been stayed or been the subject of a writ of supersedeas or other comparable order;

17 (11) "Member insurer" means any person who:

18 (i) Writes any kind of insurance to which this chapter applies, including the exchange of
19 reciprocal or interinsurance contracts; and

20 (ii) Is licensed to transact insurance in this state;

21 (12) "Net direct written premiums" means direct gross premiums written in this state on
22 insurance policies to which this chapter applies, less return premiums on those policies and
23 dividends or unabsorbed premiums paid or credited to policyholders on the direct business. "Net
24 direct written premiums" does not include premiums on contracts between insurers or reinsurers;

25 (13) "Person" means any individual, corporation, partnership, association, or voluntary
26 organization;

27 (14) "Personal lines insurance" means any insurance to which this chapter applies issued
28 for personal, family, or household purposes;

29 (15) "Pleasure craft" means watercraft, other than a seaplane on the water or a houseboat,
30 not greater than thirty-five (35) feet in length used solely for pleasure and not used for:

31 (i) Charter or hire; or

32 (ii) To carry persons or property for fee or any commercial use; and

33 (16) "Self-insured retention" means:

34 (i) Any fund or other arrangement to pay claims other than by an insurance company; or

1 (ii) Any arrangement under which an insurance company has no obligation to pay claims
2 on behalf of an insured if it is not reimbursed by the insured.

3 **27-34-11. Effect of paid claims.** -- (a) Any person recovering under this chapter shall be
4 deemed to have assigned his or her rights under the policy to the fund to the extent of his
5 recovery from the fund. Every insured or claimant seeking the protection of this chapter shall
6 cooperate with the fund to the same extent as the person would have been required to cooperate
7 with the insolvent insurer. The fund shall have no cause of action against the insured of the
8 insolvent insurer for any sums it has paid out except any causes of action the insolvent insurer
9 would have had if the sums had been paid by the insolvent insurer and except as provided in
10 subsection (b) of this section.

11 (b) The fund shall have the right to recover from the following persons the amount of
12 any "covered claim" paid on behalf of the person pursuant to this chapter:

13 ~~(1) Any insured whose net worth on December 31 of the year next preceding the date the~~
14 ~~insurer became an insolvent insurer exceeded fifty million dollars (\$50,000,000) and whose~~
15 ~~liability obligations to other persons are satisfied in whole or in part by payments made under this~~
16 ~~chapter; provided, that there is no recovery of any prejudgment interest on any pending or future~~
17 ~~claims against this insured, including claims presently in suit or on appeal; and~~

18 (2) Any person who is an affiliate of the insolvent insurer and whose liability obligations
19 to other persons are satisfied in whole or in part by payments made under this chapter.

20 (c) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound
21 by settlements of covered claims by the fund or a similar organization in another state. The court
22 having jurisdiction shall grant these claims priority equal to that which the claimant would have
23 been entitled in the absence of this chapter against the assets of the insolvent insurer. The
24 expenses of the fund or similar organization in handling claims shall be accorded the same
25 priority as the liquidator's expenses.

26 (d) The fund shall periodically file with the receiver or liquidator of the insolvent insurer
27 statements of the covered claims paid by the fund and estimates of anticipated claims on the fund
28 that shall preserve the rights of the fund against the assets of the insolvent insurer.

29 SECTION 2. This act shall take effect on January 1, 2004.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO INSURANCE

1 This act would provide for the rights and obligations of the fund as to insurers that
2 become insolvent on or after January 1, 2004.

3 This act would take effect on January 1, 2004.

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