

CHAPTER 381
2002-S 2754A
Enacted 06/28/2002

A N A C T

**TO AMEND THE INSURANCE LAW TO PROVIDE FOR THE VOLUNTARY RESTRUCTURING
OF SOLVENT DOMESTIC PROPERTY AND CASUALTY INSURERS AND REINSURERS**

Introduced By: Senators Irons, Badeau, Celona, Bates, and DaPonte

Date Introduced: February 07, 2002

It is enacted by the General Assembly as follows:

SECTION 1. Title 27 of the General Laws entitled "Insurance" is hereby amended by adding thereto the following chapter:

CHAPTER 14.5
VOLUNTARY RESTRUCTURING OF SOLVENT INSURERS

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

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

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

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

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

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

(d) "Assumption reinsurance agreement" shall have the meaning given in section 27-53.1-3(b), subject to the following:

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

(2) If any policy subject to the agreement is protected through a guarantee association, then the assuming insurer must have been and be licensed, and must have been and be a member of the guarantee association, in all states known to the applicant in which either: (i) any property covered under the policy has a permanent situs; or (ii) the policyholder resided while the policy was in force.

(e) "Class of creditors" means:

(1) all voting policyholders, including those without known claims;

(2) voting creditors, other than policyholders; or

(3) any separate class of creditors as the court may in its discretion determine should approve the commutation plan.

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

(g) "Commissioner" means the director of the department.

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

(i) "Creditor" means:

(1) any person that has a claim against the applicant; or

(2) a policyholder other than an assumption policyholder.

(j) "Department" means the department of business regulation.

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

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

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

(n) "Person" means an individual, corporation, partnership, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing acting in concert.

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

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

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

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

(1) the gross assets of that run-off insurer; to

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

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

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

(2) filing fees, examination costs, and any other fees in relation to insurance regulation in this state paid to

this state by run-off insurers that redomiciled to Rhode Island on or after March 15 of that year, but excluding any premium taxes.

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

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

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

(u) "Run-off insurer" means an insurer that:

(1) is domiciled in Rhode Island;

(2) has liabilities under policies for property and casualty lines of business;

(3) has ceased underwriting new business; and

(4) is only renewing ongoing business to the extent required by law or by contract.

27-14.5-2. Jurisdiction, venue, and court orders. --

(a) The court considering applications brought under this chapter shall have the same jurisdiction as a court under chapter 27-14.3.

(b) Venue for all court proceedings under this chapter shall lie in the superior court for the county of Providence.

(c) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this chapter. No provision of this chapter providing for the raising of an issue by a party in interest shall be construed to preclude the court from, on its own motion, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

27-14.5-3. Notice. --

(a) Wherever in this chapter notice is required, the applicant shall, within ten (10) days of the event triggering the requirement, cause transmittal of the notice:

(1) by first class mail and facsimile to the insurance regulator in each jurisdiction in which the applicant is doing business;

(2) by first class mail to all guarantee associations;

(3) pursuant to the notice provisions of reinsurance agreements or, where an agreement has no provision for notice, by first class mail to all reinsurers of the applicant;

(4) by first class mail to all insurance agents or insurance producers of the applicant;

(5) by first class mail to all persons known or reasonably expected to have claims against the applicant including all policyholders, at their last known address as indicated by the records of the applicant;

(6) by first class mail to federal, state, and local government agencies and instrumentalities as their interests may arise; and

(7) by publication in a newspaper of general circulation in the state in which the applicant has its principal place of business and in such other locations that the court overseeing the proceeding deems appropriate.

(b) If notice is given in accordance with this section, any orders under this chapter shall be conclusive with respect to all claimants and policyholders, whether or not they received notice.

(c) Where this chapter requires that the applicant provide notice but the commissioner has been named receiver of the applicant, the commissioner shall provide the required notice.

27-14.5-4. Commutation plans. --

(a) Application. - Any commercial run-off insurer may apply to the court for an order implementing a commutation plan.

(b) Procedure.

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

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

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

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

(c) Implementation order.

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

(2) The implementation order shall:

(i) order implementation of the commutation plan;

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

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

(iv) require that upon a noticed application, the applicant obtain court approval before making any payments to creditors other than, to the extent permitted under the commutation plan, payments in the ordinary course of business, such approval to be based upon a showing that the applicant's assets exceed the payments required under the terms of the commutation plan as determined based upon the information submitted by creditors under subsection (c)(2)(iii);

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

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

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

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

(d) Order of dissolution or discharge.

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

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

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

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

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

(A) the reinsurance contract requires such consent, or

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

(iv) either:

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

(B) the applicant be dissolved.

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

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

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

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

(1) The commissioner and guaranty funds shall have the right to intervene in any and all proceedings under this section.

(2) If, at any time, the conditions for placing an insurer in rehabilitation or liquidation specified in

chapter 27-14.3 exist, the commissioner may request and, upon a proper showing, the court shall order that the commissioner be named statutory receiver of the applicant.

(3) If no implementation order has been entered, then upon being named receiver, the commissioner may request, and if requested, the court shall order, that the proceeding under this chapter be converted to a rehabilitation or liquidation pursuant to chapter 27-14.3. If an implementation order has already been entered, then the court may order a conversion upon a showing that some material factor in approving the original order has changed.

(4) The commissioner, any creditor, or the court on its own motion may move to have the commissioner named as receiver. The court may enter such an order only upon finding either that one (1) or more grounds for rehabilitation or liquidation specified in chapter 27-14.3 exist or that the applicant has materially failed to follow the commutation plan or any other court instructions.

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

27-14.5-5. Taxes, fees, assessments, pools, and regulatory and supervision fund. -- (a) Application fee. - Upon application to a court pursuant to section 14.5-4 of this title, the applicant shall pay a fee to the department in the amount of one hundred and twenty-five thousand dollars (\$125,000) or such lesser amount as the commissioner shall deem adequate for appropriate and thorough review of the application.

(b) Assessment.

(1) Every March 15, the commissioner shall assess each run-off insurer an amount equal to the greater of: (i) one thousand dollars (\$1,000), or (ii) the sum of that run-off insurer's proportionate share of estimated regulatory expenditure for that calendar year and that run-off insurer's assessment deficit, less its assessment surplus.

(2) The calculation of the assessment surplus or deficit shall reflect the total cost of any examinations, which shall be borne by the companies so examined, and shall include the following expenses:

(i) One hundred fifty percent (150%) of the total salaries and benefits paid to the examining personnel of the department of business regulation engaged in those examinations, including, but not limited to, examiners, actuaries, attorneys, managers, and para-professionals, less any salary reimbursements;

(ii) All reasonable technology costs related to the examination process. Technology costs shall include the actual cost of software and hardware utilized in the examination process and the cost of training examination personnel in the proper use of the software or hardware;

(iii) All necessary and reasonable education and training costs incurred by the state to maintain the proficiency and competence of the examining personnel. All such costs shall be incurred in accordance with appropriate state of Rhode Island regulations, guidelines and procedures.

(3) Each run-off insurer shall pay the assessment to the department on or before the following fifteenth (15th) day of April.

(4) An insurer that redomiciles to Rhode Island after March 15 of any year and that qualifies as a run-off insurer upon redomestication shall pay an assessment equal to the commissioner's estimate of redomestication expenditure attributable to that run-off insurer.

(5) All revenues collected pursuant to this section shall be deposited as general revenues. That assessment

shall be in addition to any taxes and fees otherwise payable to the state.

(c) Pools. - Except with respect to policy renewals required by law or contract, no run-off insurer shall be subject to any assessment or assignment in connection with any residual market, fair plan, or assigned-risk plan mechanisms in this state.

(d) Scope. - This section shall only apply to run-off insurers that cease underwriting new business after January 1, 2002 or that were not domiciled in Rhode Island on January 1, 2002.

27-14.5-6. Rules. -- The commissioner shall promulgate rules and regulations as may be necessary to effectuate the purposes of this chapter no later than January 1, 2003. The department shall not accept applications under section 27-14.5-4 until such time as these regulations have been promulgated.

SECTION 2. Section 27-53.1-2 of the General Laws in Chapter 27-53.1 entitled "Assumption Reinsurance" is hereby amended to read as follows:

27-53.1-2. Scope. -- (a) This chapter applies to any insurer authorized in this state which either assumes or transfers the obligations and/or risks on contracts of insurance pursuant to an assumption reinsurance agreement.

(b) This chapter does not apply to:

(1) Any reinsurance agreement or transaction in which the ceding insurer continues to remain directly liable for its insurance obligations and/or risks under the contracts of insurance subject to the reinsurance agreement;

(2) The substitution of one insurer for another upon the expiration of insurance coverage pursuant to statutory or contractual requirements and the issuance of a new contract of insurance by another insurer;

(3) The transfer of contracts of insurance pursuant to mergers or consolidations of two (2) or more insurers to the extent that those transactions are regulated by statute;

(4) Any insurer subject to a judicial order of liquidation or rehabilitation;

(5) Any reinsurance agreement or transaction to which a state insurance guaranty association is a party, provided that policyholders do not lose any rights or claims afforded under their original policies pursuant to chapters 34, 34.1 and 34.3 of title 27;

(6) The transfer of liabilities from one insurer to another under a single group policy upon the request of the group policyholder;

(7) The transfer of liabilities from one (1) insurer to another under chapter 27-14.5.

SECTION 3. Implementation of this act shall be subject to and conditioned upon: (i) an appropriation to the department in FY 2003 in an amount necessary to fund a deputy chief examiner position, two (2) junior examiner positions and an actuary position; (ii) the increase of the department's FTE's in FY 2003 by four (4) positions more than the department's FTE level for FY 2002; (iii) the hiring of staff by the department to fill said positions; and (iv) certification by the commissioner that there is adequate and appropriate departmental staff to carry out its regulatory obligations under the act. It is the legislative intent to insure that the department continues to have adequate staffing and resources necessary in the future to carry out its obligations under the act as those evolve and/or increase. To that end, it is the further legislative intent to increase the department's FTE's in FY 2004 to fund five (5) additional positions and thereafter fund such

additional positions in subsequent fiscal years as necessary for the department to continue to carry out the regulatory obligations under the act. To the extent that said FTE's are not funded in any subsequent year and the commissioner determines that said FTE's are necessary to carry out the department's obligations under the act, the commissioner shall be authorized to refuse to accept applications sought to be filed under Rhode Island general laws section 27-14.5-1 et seq.

SECTION 4. This act shall take effect upon passage.

As always, your [comments](#) concerning this page are welcomed and appreciated.

Thank you for stopping by!

[Back](#)