

CHAPTER 139

INSURANCE

SENATE BILL 93-119

BY SENATOR Schroeder;
also REPRESENTATIVES Tucker, Owen, and DeGette.

AN ACT

CONCERNING THE SOLVENCY OF CERTAIN INSURANCE COMPANIES, AND PROVIDING LIMITATIONS ON THE PAYMENT OF DIVIDENDS BY DOMESTIC INSURERS AND FOR THE USE OF LETTERS OF CREDIT BY ALIEN INSURERS IN TRUST ACCOUNTS FOR THE BENEFIT OF AMERICAN POLICYHOLDERS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 10-3-805 (2) and (3), Colorado Revised Statutes, 1987 Repl. Vol., as amended, are amended, and the said 10-3-805 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

10-3-805. Standards. (2) (a) For the purposes of this part 8 in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate for its financial needs, the following factors, among others, shall be considered:

~~(a)~~ (I) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

~~(b)~~ (II) The extent to which the insurer's business is diversified among the several lines of insurance;

~~(c)~~ (III) The number and size of risks insured in each line of business;

~~(d)~~ (IV) The extent of the geographical dispersion of the insurer's insured risks;

~~(e)~~ (V) The nature and extent of the insurer's reinsurance program;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~(f)~~ (VI) The quality, diversification, and liquidity of the insurer's investment portfolio;

~~(g)~~ (VII) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

~~(h)~~ (VIII) The surplus as regards policyholders maintained by other comparable insurers;

~~(i)~~ (IX) The adequacy of the insurer's reserves; ~~and~~

~~(j)~~ (X) ~~The quality and liquidity of investments in subsidiaries made pursuant to section 10-3-802. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders, whenever in his judgment such investment so warrants. THE QUALITY OF THE INSURER'S EARNINGS AND THE EXTENT TO WHICH THE REPORTED EARNINGS INCLUDE EXTRAORDINARY ITEMS, SUCH AS SURPLUS RELIEF REINSURANCE TRANSACTIONS;~~

(XI) THE QUALITY AND LIQUIDITY OF INVESTMENTS IN SUBSIDIARIES MADE PURSUANT TO SECTION 10-3-802. THE COMMISSIONER MAY TREAT ANY SUCH INVESTMENT AS A DISALLOWED ASSET FOR PURPOSES OF DETERMINING THE ADEQUACY OF SURPLUS AS REGARDS POLICYHOLDERS, WHENEVER SUCH INVESTMENT SO WARRANTS; AND

(XII) ANY OTHER SITUATION NOT DESCRIBED IN THIS PARAGRAPH (a) WHICH MAY RENDER THE OPERATIONS OF THE INSURER HAZARDOUS TO THE PUBLIC OR ITS POLICYHOLDERS.

(b) EACH YEAR THE DIVISION SHALL REVIEW THE ORDINARY SHAREHOLDER DIVIDENDS PAID BY DOMESTIC INSURERS TO DETERMINE WHETHER SUCH DIVIDENDS ARE REASONABLE. IN CONDUCTING SUCH REVIEW THE DIVISION SHALL CONSIDER:

(I) THE ADEQUACY OF THE LEVEL OF SURPLUS AS REGARDS POLICYHOLDERS REMAINING AFTER THE DIVIDEND PAYMENT OR PAYMENTS; AND

(II) THE QUALITY OF THE INSURER'S EARNINGS AND THE EXTENT TO WHICH THE REPORTED EARNINGS INCLUDE EXTRAORDINARY ITEMS, SUCH AS SURPLUS RELIEF REINSURANCE TRANSACTIONS.

(c) THE DIVISION, CONSISTENT WITH THE STANDARDS IN PARAGRAPH (a) OF THIS SUBSECTION (2), MAY PROMULGATE RULES DEFINING WHEN A INSURER'S SURPLUS AS REGARDS POLICYHOLDERS IS NOT REASONABLE AND ADEQUATE. THE DIVISION MAY ALSO PROMULGATE RULES THAT LIMIT OR DISALLOW THE PAYMENT OF SHAREHOLDER DIVIDENDS WHENEVER IT DETERMINES THAT AN INSURER IS FINANCIALLY DISTRESSED OR TROUBLED.

(d) SHAREHOLDER DIVIDENDS SHALL BE DECLARED OR PAID ONLY FROM EARNED SURPLUS, UNLESS THE DIVISION APPROVES THE DIVIDEND PRIOR TO PAYMENT. FOR PURPOSES OF THIS PARAGRAPH (d), "EARNED SURPLUS" EXCLUDES SURPLUS ARISING FROM UNREALIZED CAPITAL GAINS OR A REVALUATION OF ASSETS.

(3) No insurer subject to registration under section 10-3-804 shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment or the commissioner has approved such payment within such thirty-day period. For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the ~~lesser~~ GREATER of ten percent of such insurer's surplus as regards policyholders as of December 31 next preceding, or the net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if such insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending December 31 next preceding but shall not include pro rata distributions of any class of the insurer's own securities. ~~In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.~~ Any other provision of law to the contrary notwithstanding, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration confers no rights upon shareholders until the commissioner has approved the payment of such dividend or distribution or the commissioner has not disapproved such payment within the thirty-day period referred to in this subsection (3).

(4.5) ANY DOMESTIC INSURER THAT IS A MEMBER OF AN INSURANCE HOLDING COMPANY SYSTEM AND DECLARES A SHAREHOLDER DIVIDEND SHALL REPORT SUCH DECLARATION TO THE DIVISION WITHIN FIVE DAYS THEREAFTER AND AT LEAST TEN BUSINESS DAYS BEFORE THE PAYMENT. IF THE DIVISION, APPLYING THE CRITERIA IN PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION, DETERMINES THAT THE INSURER'S SURPLUS AS REGARDS POLICYHOLDERS IS NOT REASONABLE IN RELATION TO THE INSURER'S OUTSTANDING LIABILITIES AND ADEQUATE TO ITS FINANCIAL NEEDS, IT MAY, PRIOR TO THE EXPIRATION OF THE TEN-DAY PERIOD DESCRIBED IN THIS SUBSECTION (4.5), ENTER AN ORDER PROHIBITING THE PAYMENT OF THE DIVIDEND. AT THE REQUEST OF THE INSURER THE DIVISION SHALL PROMPTLY SET THE MATTER FOR HEARING. THE COMMISSIONER SHALL ENTER A FINAL ORDER WITHIN THIRTY DAYS OF COMPLETION OF THE HEARING. ANY ORDER PROHIBITING THE PAYMENT OF A DIVIDEND SHALL REMAIN IN EFFECT PENDING ENTRY OF A FINAL ORDER BY THE COMMISSIONER. THE DIVISION MAY, TAKING INTO CONSIDERATION THE FACTORS SET FORTH IN PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION, PROMULGATE RULES CONCERNING THE REPORTING OF PROPOSED DIVIDENDS AND THE CONDUCT OF HEARINGS PERTAINING THERETO.

SECTION 2. 10-5-108 (1) (c), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

10-5-108. Placement of surplus line insurance. (1) (c) In addition, an alien insurer, as defined in section 10-3-301 (1), must have in force in the United States IN an irrevocable trust account in a qualified United States financial institution, for the benefit of United States policyholders an amount not less than two million five

hundred thousand dollars and consisting of eligible investments, WHICH MAY INCLUDE LETTERS OF CREDIT IN A FORM ACCEPTABLE TO THE COMMISSIONER, for the capital and statutory reserves of licensed insurers and must maintain status on the current national association of insurance commissioners' nonadmitted insurers quarterly listing. In the case of a Lloyd's plan or other similar unincorporated group of individual insurers, such alien insurer shall maintain a trust fund of not less than fifty million dollars as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group.

SECTION 3. Effective date. This act shall take effect upon passage; except that section 1 of this act shall take effect October 30, 1993.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 26, 1993