



STATE OF CONNECTICUT

INSURANCE DEPARTMENT

Notice of Intent to Amend Regulations

In accordance with section 4-168(a) of the Connecticut General Statutes, notice is hereby given that the Insurance Commissioner, pursuant to the authority of sections 38a-8, 38a-71, 38a-72, 38a-256, 38a-620 and 38a-911 of the Connecticut General Statutes, proposes to amend a regulation defining standards and the Insurance Commissioner's authority for insurance companies deemed to be in a hazardous financial condition.

Statement of Purpose: To amend regulations that set forth standards and the Insurance Commissioner's authority for insurance companies deemed to be in a hazardous financial condition.

All interested persons are invited to submit written data, views, or arguments in connection with the proposed action within thirty days following publication of this notice in the Connecticut Law Journal to the State of Connecticut, Insurance Department, Attention: Jon E. Arsenault, Esq., P.O. Box 816, Hartford, CT 06142-0816.

Copies of the proposed regulation, small business impact statement and agency fiscal estimate of proposed regulation may be obtained by writing to the Insurance Department at the above address or by calling (860) 297-3804. One may view these documents and this notice by visiting the Insurance Department's internet web site at www.ct.gov/cid and clicking on "Proposed Regulations". Because the proposed regulation does not affect small businesses directly, no regulatory flexibility analysis for this proposed regulation is required pursuant to section 4-168a, as amended by Public Act 09-19.

A handwritten signature in blue ink, appearing to read "Thomas R. Sullivan".

Thomas R. Sullivan
Insurance Commissioner

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REGULATION
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SECTION 1

Standards on Hazardous Financial Condition

Section 1. Section 38a-8-103 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 38a-8-103. Standards

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

- (1) adverse findings reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports or summaries;
- (2) the National Association of Insurance Commissioners Insurance Regulatory Information System and its [related reports] other financial analysis solvency tools and reports;
- [(3) the ratios of commission expense, general insurance expense, policy benefits and reserve increases as to annual premium and net investment income which could lead to an impairment of capital and surplus;]
- (3) whether the insurer has made adequate 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, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts;
- [(4) the insurer's asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity or diversity to assure the company's ability to meet its outstanding obligations as they mature;]
- (4) [(5)] the ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the [company's] insurer's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;
- (5) [(6)] whether the insurer's operating loss in the last twelve 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 dividends paid to shareholders, is greater than [50] fifty percent (50%) of the [such] insurer's remaining surplus as regards policyholders in excess of the minimum required;
- (6) whether the insurer's operating loss in the last twelve-month period or any shorter period of time, excluding net capital gains, is greater than twenty percent (20%) of the insurer's remaining surplus as regards policyholders in excess of the minimum required;
- (7) whether [any affiliate, subsidiary or reinsurer] a reinsurer, obligor or any entity within the insurer's insurance holding company system, is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations, and which in the opinion of the Commissioner may 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) whether any [person controlling a substantial portion of the net written premiums] "controlling person" of an insurer is delinquent in the transmitting to, or payment of, [such] net premiums to the insurer;
- (10) the age and collectibility of receivables;

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(11) whether the 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 the competence, fitness and reputation deemed necessary to serve the insurer in such position;

(12) whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;

(13) whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the Commissioner;

(14) [(13)] whether management of an insurer either has filed any false or misleading sworn financial statement, or has released false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;

(15) [(14)] whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; [or]

(16) [(15)] whether the [company] insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems;

[(16) the failure of an insurer to file a financial statement when required in the absence of a reason satisfactory to the Commissioner;]

(17) whether management has established reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, sound actuarial principles and standards of practice;

(18) whether management persistently engages in material under reserving that results in adverse development;

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

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

Section 2. Section 38a-8-104 of the Regulations of Connecticut State Agencies is amended to read as follows:

Section 38a-8-104. Commissioner's authority

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

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

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

(3) 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; [or]

(4) 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 within the next 12-month period.

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- (b) If the Commissioner determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to [the] its policyholders, creditors or the general public, then the commissioner may, upon [his] a determination, issue an order requiring the insurer to:
- (1) reduce the total amount of present and potential liability for policy benefits by reinsurance;
 - (2) reduce, suspend or limit the volume of business being accepted or renewed;
 - (3) reduce general insurance and commission expenses by specified methods;
 - (4) increase the insurer's capital and surplus;
 - (5) suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;
 - (6) file reports in a form acceptable to the Commissioner concerning the market value of an insurer's assets;
 - (7) limit or withdraw from certain investments or discontinue certain investment practices to the extent the Commissioner deems necessary;
 - (8) document the adequacy of premium rates in relation to the risks insured; [or]
 - (9) file, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or [on] in such format as promulgated by the Commissioner; [.]
 - (10) correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the Commissioner;
 - (11) provide a business plan to the Commissioner in order to continue to transact business in the state;
 - (12) 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.

If the insurer is a foreign insurer the Commissioner's order may be limited to the extent provided by statute.

(c) An insurer subject to an order under Subsection (b) may request a hearing to review that order. The notice of hearing shall be served upon the insurer pursuant to the Rules of Practice of the Insurance Department. The notice of hearing shall state the time and place of hearing, and the conduct, condition or ground upon which the [Insurance] Commissioner based the order. Unless mutually agreed between the Commissioner and the insurer, the hearing shall occur not less than ten (10) days nor more than thirty (30) days after notice is served. The Commissioner shall hold all hearings under this subsection privately, unless the insurer requests a public hearing, in which case the hearing shall be public.

Statement of Purpose: To amend regulations that set forth standards and the Insurance Commissioner's authority for insurance companies deemed to be in a hazardous financial condition.

A. The problems, issues or circumstances that the regulation proposes to address.

On March 20, 1992, the Insurance Department adopted regulations concerning standards on hazardous financial condition that added sections 38a-8-1 to 38a-8-4, inclusive (renumbered on September 25, 1992 as sections 38a-8-101 to 38a-8-104) to the Regulations of Connecticut Agencies. These regulations were based on a model regulation adopted by the National Association of Insurance Commissioners (NAIC).

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In 2008, after extensive study by state insurance regulators, the NAIC made improvements to its model regulation and the Insurance Department now seeks to amend its regulations consistent with the revised NAIC model regulation. Doing so will promote effective financial surveillance of the insurance companies operating in Connecticut.

B. A summary of the main provisions of the regulation.

The revisions amend Sections 38a-8-103 and 38a-8-104 of the Regulations of Connecticut State Agencies. Section 38a-8-103 contains the standards considered by the Insurance Commissioner to determine whether the continued operation of any insurer transacting business in this state might be deemed to be in a hazardous financial condition. The amendments revise several existing standards and add several new standards. Section 38a-8-104 describes the Insurance Commissioner's authority in making a determination of the financial condition of an insurer and in issuing an order upon a determination of a hazardous financial condition. The amendments authorize the Commissioner to order the insurer to correct corporate governance practice deficiencies; provide a business plan to the Commissioner, and adjust rates for any non-life insurance product the insurer writes to improve its financial condition.

C. The legal effects of the regulation, including all ways that the regulation would change existing regulations or other laws.

No other laws or regulations will be affected.

CERTIFICATION

R-39 REV. 1/77

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Be it known that the foregoing:

Regulations Emergency Regulations

Are:

Adopted Amended as hereinabove stated Repealed

By the aforesaid agency pursuant to:

Sections 38a-8; 38a-71; 38a-72; 38a-256; 38a-620, and 38a-911 of the General Statutes.

Section _____ of the General Statutes.

Public Act No. ____ of the Public Acts.

After publication in the Connecticut Law Journal on, _____, 2010 of the notice of the proposal to:

Adopt Amend Repeal such regulations

(If applicable): And the holding of an advertised public hearing on _____ day of _____ 20 ____

WHEREFORE, the foregoing regulations are hereby:

Adopted Amended as hereinabove stated Repealed

Effective:

When filed with the Secretary of the State.

(OR)

In Witness Whereof:	DATE	SIGNED (<i>Head of Board, Agency or Commission</i>)	OFFICIAL TITLE, DULY AUTHORIZED INSURANCE COMMISSIONER
Approved by the Attorney General as to legal sufficiency In accordance with Sec. 4-169, as amended, C. G. S. :		SIGNED	OFFICIAL TITLE, DULY AUTHORIZED

Approved

Disapproved

Disapproved in part, (Indicate Section Numbers disapproved only)

Rejected without prejudice.

By the Legislative Regulation Review Committee in accordance With Sec. 4-170, as amended, of the General Statutes.	DATE	SIGNED (<i>Clerk of the Legislative Regulation Review Committee</i>)
Two certified copies received and filed, and one such copy forwarded to the Commission on Official Legal Publications In accordance with Section 4-172, as amended, of the General Statutes.		
DATE	SIGNED (<i>Secretary of the State.</i>)	BY

INSTRUCTION

1. One copy of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the Attorney General for his determination of legal sufficiency. Section 4-169 of the General Statutes.
2. Seventeen copies of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the standing Legislative Regulation Review Committee for its approval. Section 4-170 of the General Statutes.
3. Each regulation must be in the form intended for publication and must include the appropriate regulation section number and section heading. Section 4-172 of the General Statutes.
4. Indicate by "(NEW)" in heading if new regulation. Amended regulations must contain new language in capitol letters and deleted language in brackets. Section 4-170 of the General Statutes.

Small Business Impact Statement

Prior to adopting a new section or amendment, Section 4-168a of the Connecticut General Statutes (C.G.S.) requires that each state agency consider the effect of such action on small businesses as defined in C.G.S. Section 4-168a. When such regulatory action may have an adverse effect on small businesses, C.G.S. Section 4-168a directs the agency to consider regulatory requirements that will minimize the adverse impacts on small businesses if the addition of such requirements (1) will not interfere with the intended objectives of the regulatory action and (2) will allow the new section or amendment to remain consistent with public health, safety and welfare.

State Agency submitting proposed regulations: **INSURANCE DEPARTMENT**

Subject matter of Regulation: **Standards on Hazardous Financial Condition**

In accordance with C.G.S. Section 4-168a, staff analyzed the effect on small businesses of the proposed regulations and determined the following:

Check all appropriate boxes:

- The regulatory action will not have an effect on small businesses.
- The regulatory action will have an effect on small businesses, but will not have an adverse effect on such small businesses.
- The regulatory action may have an adverse effect on small businesses, and no alternative considered would be both as effective in achieving the purpose of the action and less burdensome to potentially effected small business. Alternatives considered include the following:
- (1) The establishment of less stringent compliance or reporting requirements for small businesses;
 - (2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
 - (3) The consolidation or simplification of compliance or reporting requirements for small businesses;
 - (4) The establishment of performance standards for small businesses to replace design or operational standards required in the new section or amendment; and
 - (5) The exemption of small businesses from all or any part of the requirements contained in the new section or amendment.
- The regulatory action will have an adverse effect on small businesses that cannot be minimized in a manner that is consistent with public health, safety and welfare.

Has the State agency listed above notified the Department of Economic and Community Development of its intent to take the proposed action and completed the Agency Fiscal Estimate of Proposed Regulations? **YES**

AGENCY FISCAL ESTIMATE OF PROPOSED REGULATION

Agency Submitting Regulation: Insurance Department Date: March 22, 2010

Subject Matter of Regulation: Standards on Hazardous Financial Condition

Regulation Section No.: § 38a-8-103 and § 38a-8-104 Statutory Authority: Conn. Gen. Stat. §§ 38a-8; 38a-71; 38a-72; 38a-256; 38a-620 and 38a-911

Other Agencies Effected: None

Effective Date Used In Cost Estimate: March 22, 2010

Estimate Prepared By: Jon Arsenault Telephone No.: 860.297.3811

ESTIMATE OF COST OR REVENUE IMPACT OF PROPOSED REGULATION

Agency: INSURANCE DEPARTMENT

Fund Affected: NONE

	First Year	Second Year	Full Operation
Number of Positions	0	0	0
Personal Services	0	0	0
Other Expenses	0	0	0
Equipment	0	0	0
Grants	0	0	0
Total State Cost or (Savings)	0	0	0
Estimated Revenue Gain or (Loss)	0	0	0
Total Net State Cost or (Savings)	0	0	0

Explanation of State Impact of Regulation: NO IMPACT

Explanation of Municipal Impact of Regulation: NO IMPACT

Explanation of Small Business Impact of Regulation: NO IMPACT

Is a regulatory flexibility analysis required pursuant to C.G.S. 4-168a? NO