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CHAPTER 26.

ADMINISTRATIVE SUPERVISION OF INSURERS ACT

**SECTION 38‑26‑10.** Short title.

This chapter may be cited as the "Administrative Supervision of Insurers Act".

HISTORY: 1991 Act No. 13, Section 3; 1993 Act No. 181, Section 608.

**SECTION 38‑26‑20.** Definitions.

As used in this chapter:

(1) "Insurer" means a person who has done, purports to do, is going to do, or is licensed to do an insurance business and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization, supervision, or conservation by the department, or similar entity, of a state. For purposes of this chapter, other persons included under Section 38‑27‑40 are considered insurers.

(2) "Exceed its powers" means the following conditions:

(a) The insurer has refused to permit examination of its books, papers, accounts, records, or affairs by the director or his deputies, designees, employees, or commissioned examiners.

(b) A domestic insurer unlawfully has removed from this State books, papers, accounts, or records necessary for an examination of the insurer.

(c) The insurer has failed to comply promptly with the applicable financial reporting statutes or regulations and related departmental requests.

(d) The insurer has neglected or refused to observe an order of the director or his designee to make good, within the time prescribed by law, prohibited deficiency in its capital, capital stock, or surplus.

(e) The insurer is continuing to transact insurance or write business after its license has been revoked or suspended by the director or his designee.

(f) The insurer, by contract or otherwise, unlawfully, in violation of an order of the director or his designee, or without first having obtained written approval of the director or his designee if approval is required by law has:

(i) totally reinsured its entire outstanding business; or

(ii) merged or consolidated substantially its entire property or business with another insurer.

(g) The insurer engaged in a transaction in which it is not authorized to engage under the laws of this State.

(h) The insurer refused to comply with a lawful order of the director or his designee.

(3) "Consent" means agreement to administrative supervision by the insurer.

HISTORY: 1991 Act No. 13, Section 3; 1993 Act No. 181, Section 608.

**SECTION 38‑26‑30.** Insurers to which chapter applies.

The provisions of this chapter apply to:

(1) domestic insurers;

(2) an insurer doing business in this State whose state of domicile has asked the director or his designee to apply the provisions of this chapter as regards the insurer.

HISTORY: 1991 Act No. 13, Section 3; 1993 Act No. 181, Section 608.

**SECTION 38‑26‑40.** Conditions warranting supervision; notification.

(A) An insurer may be subject to administrative supervision by the department if upon examination or at another time it appears in the discretion of the director or his designee that one or more of the following circumstances exist:

(1) The insurer's condition renders the continuance of its business hazardous to the public or to its insureds.

(2) The insurer has exceeded its powers granted under its certificate of authority and applicable law.

(3) The insurer has failed to comply with a provision of the insurance laws of this State.

(4) The business of the insurer is being conducted fraudulently.

(5) The insurer gives its consent.

(B) If the director or his designee determines that one or more of the conditions set forth in subsection (A) exist, he shall:

(1) notify the insurer of his determination;

(2) furnish to the insurer a written list of the requirements to abate this determination;

(3) notify the insurer that it is under the supervision of the department and that the director or his designee is applying the provisions of the chapter. Action by the director or his designee is subject to review pursuant to related regulations and the Administrative Procedures Act.

(C) If placed under administrative supervision, the insurer has sixty days or another period of time designated by the director or his designee to comply with the requirements of the department subject to the provisions of this chapter.

(D) If it is determined after notice and hearing that the conditions giving rise to the supervision still exist at the end of the supervision period, the director or his designee may extend the period or may initiate proceedings under Chapter 27 of this title.

(E) If it is determined that none of the conditions giving rise to the supervision exist, the director or his designee shall release the insurer from supervision.

HISTORY: 1991 Act No. 13, Section 3; 1993 Act No. 181, Section 608.

**SECTION 38‑26‑50.** Proceedings, hearings, notices, correspondence, reports and records.

(A) Proceedings, hearings, notices, correspondence, reports, records, and other information in the possession of the director, his designee, or the Department of Insurance relating to the supervision of an insurer are confidential except as provided by this section.

(B) Department personnel have access to the proceedings, hearings, notices, correspondence, reports, records, and other information permitted by the director or his designee.

(C) The director or his designee may open the proceedings or hearings or disclose notices, correspondence, reports, records, or other information to a department, agency, or instrumentality of this or another state or of the United States if the director or his designee determines that the disclosure is necessary or proper for the enforcement of the laws of this or another state or the United States.

(D) The director or his designee may open the proceedings or hearings or make public notices, correspondence, reports, records, or other information if the director or his designee determines that it is in the best interest of the public or in the best interest of the insurer, its insureds, its creditors, or the general public.

(E) This section does not apply to hearings, notices, correspondence, reports, records, or other information obtained after the appointment of a receiver for the insurer by a court of competent jurisdiction.

HISTORY: 1991 Act No. 13, Section 3; 1993 Act No. 181, Section 608.

**SECTION 38‑26‑60.** Supervision by director or designee; acts prohibited or regulated as to supervised insurer

During the period of supervision, the director or his designated appointee shall serve as the administrative supervisor. The director or his designee may provide, after notice to the insurer, that the insurer may not do any of the following things during supervision without the prior approval of the director or his appointed supervisor:

(1) dispose of, convey, or encumber its assets or its business in force;

(2) withdraw its bank accounts;

(3) lend its funds;

(4) invest its funds;

(5) transfer its property;

(6) incur debt, obligation, or liability;

(7) merge or consolidate with another company;

(8) approve new premiums or renew policies;

(9) enter into a new reinsurance contract or treaty;

(10) terminate, surrender, forfeit, convert, or lapse an insurance policy, a certificate, or a contract, except for nonpayment of premiums due;

(11) release, pay, or refund premium deposits, accrued cash or loan values, unearned premiums, or other reserves on an insurance policy, certificate, or contract;

(12) make a material change in management;

(13) increase salaries and benefits of officers or directors or the preferential payment of bonuses, dividends, or other preferential payments.

HISTORY: 1991 Act No. 13, Section 3; 1993 Act No. 181, Section 608.

**SECTION 38‑26‑70.** Contest of supervisor's action; right of review.

During supervision the insurer may contest an action taken or proposed to be taken by the supervisor specifying the manner in which the action being complained of would not result in improving the condition of the insurer. Denial of the insurer's request upon reconsideration entitles the insurer to review under related regulation and the Administrative Procedures Act.

HISTORY: 1991 Act No. 13, Section 3; 1993 Act No. 181, Section 608.

**SECTION 38‑26‑80.** Other proceedings not precluded.

Nothing in this chapter precludes the director or his designee from initiating judicial proceedings to place an insurer in conservation, rehabilitation, or liquidation or other delinquency proceedings, however designated under the laws of this State, regardless of whether the director or his designee previously has initiated administrative supervision proceedings under this chapter against the insurer.

HISTORY: 1991 Act No. 13, Section 3; 1993 Act No. 181, Section 608.

**SECTION 38‑26‑90.** Meeting of director with supervisor.

The director or his designee may meet with a supervisor appointed under this chapter and with his attorney or other representative without the presence of another person at the time of or during a proceeding held under authority of this chapter to carry out the duties of the director or his designee or for the supervisor to carry out his duties under this chapter.

HISTORY: 1991 Act No. 13, Section 3; 1993 Act No. 181, Section 608.

**SECTION 38‑26‑100.** No liability of Department or director.

There is no liability on the part of, and no cause of action may arise against, the director, his designee, or the Department of Insurance or its employees or agents for action taken by them in the performance of their powers and duties under this chapter.

HISTORY: 1991 Act No. 13, Section 3; 1993 Act No. 181, Section 608.

**SECTION 38‑26‑110.** Power to promulgate regulations.

The department may promulgate regulations necessary for the implementation of this chapter.

HISTORY: 1991 Act No. 13, Section 3; 1993 Act No. 181, Section 608.

UNITED STATES SUPREME COURT

Validity, construction and application of McCarran‑Ferguson Act (15 USCA Sections 1011‑1015), dealing with regulation of insurance business by state or federal law. 21 L Ed 2d 931.