

INSURANCE CODE

TITLE 4. REGULATION OF SOLVENCY

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 404. FINANCIAL CONDITION

SUBCHAPTER A. HAZARDOUS FINANCIAL CONDITION

Sec. 404.001. DEFINITION. In this subchapter, "insurer" includes:

- (1) a capital stock insurance company;
- (2) a reciprocal or interinsurance exchange;
- (3) a Lloyd's plan;
- (4) a fraternal benefit society;
- (5) a mutual company, including a mutual assessment company;
- (6) a statewide mutual assessment company;
- (7) a local mutual aid association;
- (8) a burial association;
- (9) a county mutual insurance company;
- (10) a farm mutual insurance company;
- (11) a fidelity, guaranty, or surety company;
- (12) a title insurance company;
- (13) a stipulated premium company;
- (14) a group hospital service corporation;
- (15) a health maintenance organization;
- (16) a risk retention group; and
- (17) any other organization or person engaged in the business of insurance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 404.002. APPLICABILITY OF SUBCHAPTER. This subchapter applies to a person or organization engaged in the business of insurance without regard to whether the person or organization is listed in Section 404.001, unless another statute specifically cites this subchapter and exempts the person or organization from this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 404.003. ORDER TO REMEDY CONDITION. (a) If the financial condition of an insurer, when reviewed as provided by Subsection (b), indicates a condition that might make the insurer's continued operation hazardous to the insurer's policyholders or creditors or to the public, the commissioner may, after notice and hearing, order the insurer to take action reasonably necessary to remedy the condition.

(b) The insurer's financial condition must be reviewed under Subsection (a) in conjunction with one or more of the following:

- (1) the kinds and nature of risks insured;
- (2) the loss experience and ownership of the insurer;
- (3) the ratio of total annual premium and net investment income to commission expenses, general insurance expenses, policy benefits paid, and required policy reserve increases;
- (4) the insurer's method of operation, affiliations, or investments;
- (5) any contracts that lead or may lead to contingent liability; or
- (6) agreements in respect to guaranty and surety.

(c) In an order issued under Subsection (a), the commissioner may take any action the commissioner considers reasonably necessary to remedy the condition described by Subsection (a), including:

- (1) requiring an insurer to:
 - (A) reduce the total amount of present and potential liability for policy benefits by reinsurance;
 - (B) reduce the volume of new business accepted;
 - (C) suspend or limit writing new business for a period;
 - (D) reduce general insurance and commission expenses by specified methods; or
 - (E) increase the insurer's capital and surplus by

contribution; or

(2) suspending or canceling the insurer's certificate of authority.

(d) The commissioner may use the remedies available under Subsection (c) in conjunction with the provisions of Chapter 83 if the commissioner determines that the financial condition of the insurer is hazardous and can be reasonably expected to cause significant and imminent harm to the insurer's policyholders or the public.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 404.004. CONSTRUCTION WITH LAW RELATING TO CAPITAL AND SURPLUS. The commissioner's authority under Section 404.003 to require an increase in an insurer's capital and surplus by contribution, and any capital and surplus requirements imposed by the commissioner under that section, prevail over:

(1) the capital and surplus requirements of:

(A) Sections 822.054, 822.201-822.203, 822.205, 822.210-822.212, 841.054, 841.201, 841.204, 841.205, 841.207, 884.206, 884.308, and 884.309; and

(B) Subchapter G, Chapter 841;

(2) any other provision of this code or other law establishing capital and surplus requirements for insurers; and

(3) any rule adopted under a law described by Subdivision (1) or (2).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 404.005. STANDARDS AND CRITERIA FOR EARLY WARNING. (a) The commissioner by rule may:

(1) establish uniform standards and criteria for early warning that the continued operation of an insurer might be hazardous to the insurer's policyholders or creditors or to the public; and

(2) establish standards for evaluating the financial condition of an insurer.

(b) Standards established by the commissioner under this section must be consistent with the purposes of Section 404.003. Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 404.006. AGREEMENT WITH ANOTHER JURISDICTION. The commissioner may enter into an agreement with the insurance regulatory authority of another jurisdiction concerning the management, volume of business, expenses of operation, plans for reinsurance, rehabilitation, or reorganization, and method of operations of, and type of risks to be insured by, an insurer that is:

(1) licensed in the other jurisdiction; and

(2) considered to be in a hazardous financial condition or in need of a specific remedy that may be imposed by the commissioner and the insurance regulatory authority of the other jurisdiction.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER B. IMPAIRMENT OF STOCK OR SURPLUS

Sec. 404.051. IMPAIRMENT PROHIBITED. (a) The impairment of the capital stock of a stock insurance company is prohibited.

(b) Impairment of the following surpluses in excess of that provided by Section 404.053 is prohibited:

(1) the surplus of a stock insurance company; or

(2) the minimum required aggregate surplus of a:

(A) mutual company;

(B) Lloyd's plan; or

(C) reciprocal or interinsurance exchange.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 404.052. DETERMINATION OF IMPAIRMENT. (a) When determining under this subchapter whether the surplus or the minimum required aggregate surplus of an insurer is impaired, the

commissioner shall charge against the insurer:

(1) the reinsurance reserve required by the laws of this state; and

(2) all other debts and claims against the insurer.

(b) This section does not apply to a life insurance company. Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 404.053. REMEDY FOR IMPAIRMENT. (a) The commissioner shall order an insurer to remedy an impairment of the insurer's surplus, aggregate surplus, or aggregate of guaranty fund and surplus, as applicable, by bringing the surplus to an acceptable level specified by the commissioner, or to cease engaging in business in this state, if the commissioner determines that:

(1) the surplus required by Section 822.054, 822.202, 822.203, 822.205, 822.210, 822.211, or 822.212 of a stock insurance company engaged in the kind of insurance business described by the company's certificate of authority:

(A) is impaired by more than 50 percent; or

(B) is less than the minimum level of surplus required by risk-based capital and surplus rules adopted by the commissioner; or

(2) the required aggregate of guaranty fund and surplus of a Lloyd's plan, or the required aggregate surplus of a reciprocal or interinsurance exchange or of a mutual company, other than a life insurance company, engaged in the kind of insurance business described by the insurer's certificate of authority:

(A) is impaired by more than 25 percent; or

(B) is less than the minimum level of surplus required by risk-based capital and surplus rules adopted by the commissioner.

(b) After issuing an order described by Subsection (a), the commissioner shall immediately institute any proceeding necessary to determine what further actions the commissioner will take in relation to the matter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.