

**31A-27a-207 Grounds for rehabilitation or liquidation.**

- (1) The commissioner may file in the Third District Court for Salt Lake County a petition with respect to an insurer domiciled in this state or an unauthorized insurer for an order of rehabilitation or liquidation on any one or more of the following grounds:
  - (a) the insurer is impaired;
  - (b) the insurer is insolvent;
  - (c) subject to Subsection (2), the insurer is about to become insolvent;
  - (d)
    - (i) the insurer neglects or refuses to comply with an order of the commissioner to make good within the time prescribed by law any deficiency;
    - (ii) if a stock company, if its capital and minimum required surplus is impaired; or
    - (iii) if a company other than a stock company, if its surplus is impaired;
  - (e) the insurer, its parent company, its subsidiary, or its affiliate:
    - (i) converts, wastes, or conceals property of the insurer; or
    - (ii) otherwise improperly disposes of, dissipates, uses, releases, transfers, sells, assigns, hypothecates, or removes the property of the insurer;
  - (f) the insurer is in such condition that the insurer could not meet the requirements for organization and authorization as required by law, except as to the amount of:
    - (i) the original surplus required of a stock company under Sections 31A-5-211 and 31A-8-209; and
    - (ii) the surplus required of a company other than a stock company in excess of the minimum surplus required to be maintained;
  - (g) the insurer, its parent company, its subsidiary, or its affiliate:
    - (i) conceals, removes, alters, destroys, or fails to establish and maintain records and other pertinent material adequate for the determination of the financial condition of the insurer by examination under Section 31A-2-203; or
    - (ii) fails to properly administer claims or maintain claims records that are adequate for the determination of its outstanding claims liability;
  - (h) at any time after the issuance of an order under Subsection 31A-2-201(4), or at the time of instituting a proceeding under this chapter, it appears to the commissioner that upon good cause shown, it is not in the best interest of the policyholders, creditors, or the public to proceed with the conduct of the business of the insurer;
  - (i) the insurer is in such condition that the further transaction of business would be hazardous financially, according to Subsection 31A-17-609(3) or otherwise, to its policyholders, creditors, or the public;
  - (j) there is reasonable cause to believe that:
    - (i) there has been:
      - (A) embezzlement from the insurer;
      - (B) wrongful sequestration or diversion of the insurer's property;
      - (C) forgery or fraud affecting the insurer; or
      - (D) other illegal conduct in, by, or with respect to the insurer; and
    - (ii) the act described in Subsection (1)(j)(i) if established would endanger assets in an amount threatening the solvency of the insurer;
  - (k) control of the insurer is in a person who is:
    - (i) dishonest;
    - (ii) untrustworthy; or
    - (iii) so lacking in insurance company managerial experience or capability as to be hazardous to policyholders, creditors, or the public;

- (l) if:
  - (i) a person who in fact has executive authority in the insurer, whether an officer, manager, general agent, director, trustee, employee, shareholder, or other person:
    - (A) refuses to be examined under oath by the commissioner concerning the insurer's affairs, whether in this state or elsewhere; or
    - (B) if examined under oath, refuses to divulge pertinent information reasonably known to the person; and
  - (ii) after reasonable notice of the facts described in Subsection (1)(l)(i), the insurer fails promptly and effectively to terminate:
    - (A) the employment or status of the person; and
    - (B) all of the person's influence on management;
- (m) after demand by the commissioner under Section 31A-2-203 or under this chapter, the insurer fails to promptly make available for examination:
  - (i) any of its own property, accounts, or records; or
  - (ii) so far as it pertains to the insurer, property, accounts, or records of:
    - (A) a subsidiary or related company within the control of the insurer; or
    - (B) a person having executive authority in the insurer;
- (n) without first obtaining the written consent of the commissioner, the insurer:
  - (i) transfers, or attempts to transfer, in a manner contrary to Section 31A-5-508 or 31A-16-103, substantially its entire property or business; or
  - (ii) enters into a transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person;
- (o) the insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator, sequestrator, or similar fiduciary of the insurer or its property otherwise than as authorized under the insurance laws of this state;
- (p) within the previous five years the insurer willfully and continuously violates:
  - (i) its charter or articles of incorporation;
  - (ii) its bylaws;
  - (iii) an insurance law of this state; or
  - (iv) a valid order of the commissioner;
- (q) the insurer fails to pay within 60 days after the due date:
  - (i)
    - (A) an obligation to any state or any subdivision of a state; or
    - (B) a judgment entered in any state, if the court in which the judgment is entered has jurisdiction over the subject matter; and
  - (ii) except that nonpayment is not a ground until 60 days after a good faith effort by the insurer to contest the obligation has been terminated, whether it is before the commissioner or in the courts;
- (r) the insurer systematically:
  - (i) engages in the practice of:
    - (A) reaching settlements with and obtaining releases from claimants; and
    - (B) unreasonably delaying payment, or failing to pay the agreed-upon settlements; or
  - (ii) attempts to compromise with claimants or other creditors on the ground that it is financially unable to pay its claims or obligations in full;
- (s) the insurer fails to file its annual report or other financial report required by statute within the time allowed by law;

- (t) the board of directors or the holders of a majority of the shares entitled to vote, or a majority of those individuals entitled to the control of those entities specified in Section 31A-27a-104, request or consent to rehabilitation or liquidation under this chapter;
  - (u)
    - (i) the insurer does not comply with its domiciliary state's requirements for issuance to it of a certificate of authority; or
    - (ii) the insurer's certificate of authority is revoked by its state of domicile; or
  - (v) when authorized by Chapter 17, Part 6, Risk-Based Capital.
- (2) For purposes of this section, an insurer is about to become insolvent if it is reasonably anticipated that the insurer will not have liquid assets to meet its current obligations for the next 90 days.

Enacted by Chapter 309, 2007 General Session