

HOUSE _____ AMENDMENT NO. _____

Offered By

AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill No. 777,
Page 1, Section A, Line 3, by inserting after all of said line the following:

“375.539. 1. The director of the department of insurance, financial institutions and
professional registration may deem an insurance company to be in such financial condition that its
further transaction of business would be hazardous to policyholders, creditors, and the public, if
such company is a property or casualty insurer, or both a property and casualty insurer, which has
in force any policy with any single net retained risk larger than ten percent of that company's
capital and surplus as of the December thirty-first next preceding.

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

(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 other financial analysis solvency tools and reports;

(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

1 under such policies and contracts;

2 (4) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance
3 program provides sufficient protection for the insurer's remaining surplus after taking into account
4 the insurer's cash flow and the classes of business written as well as the financial condition of the
5 assuming reinsurer;

6 (5) Whether the insurer's operating loss in the last twelve-month period or any shorter
7 period of time, including but not limited to net capital gain or loss, change in non-admitted assets,
8 and cash dividends paid to shareholders, is greater than fifty percent of the insurer's remaining
9 surplus as regards to policyholders in excess of the minimum required;

10 (6) Whether the insurer's operating loss in the last twelve-month period or any shorter
11 period of time, excluding net capital gains, is greater than twenty percent of the insurer's
12 remaining surplus as regards to policyholders in excess of the minimum required;

13 (7) Whether a reinsurer, obligor, or any entity within the insurer's insurance holding
14 company system, is insolvent, threatened with insolvency or delinquent in payment of its
15 monetary or other obligations, and which in the opinion of the director may affect the solvency of
16 the insurer;

17 (8) Contingent liabilities, pledges, or guaranties which either individually or collectively
18 involve a total amount which in the opinion of the director may affect the solvency of the insurer;

19 (9) Whether any "controlling" person of an insurer is delinquent in the transmitting to, or
20 payment of, net premiums to the insurer. As used in this subdivision, the term "controlling" shall
21 have the same meaning assigned to it in subdivision (2) of section 382.010;

22 (10) The age and collectibility of receivables;

23 (11) Whether the management of an insurer, including officers, directors, or any other
24 person who directly or indirectly controls the operation of the insurer, fails to possess and
25 demonstrate the competence, fitness, and reputation deemed necessary to serve the insurer in such
26 position;

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

3 (13) Whether the insurer has failed to meet financial and holding company filing
4 requirements in the absence of a reason satisfactory to the director;

5 (14) Whether management of an insurer either has filed any false or misleading sworn
6 financial statement, or has released false or misleading financial statement to lending institutions
7 or to the general public, or has made a false or misleading entry, or has omitted an entry of
8 material amount in the books of the insurer;

9 (15) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate
10 financial and administrative capacity to meet its obligations in a timely manner;

11 (16) Whether the insurer has experienced or will experience in the foreseeable future cash
12 flow or liquidity problems;

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

16 (18) Whether management persistently engages in material under reserving that results in
17 adverse development;

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

21 (20) Any other finding determined by the director to be hazardous to the insurer's
22 policyholders, creditors, or general public.

23 3. For the purposes of making a determination of an insurer's financial condition under
24 this section, the director may:

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

1 (2) Make appropriate adjustments including disallowance to asset values attributable to
2 investments in or transactions with parents, subsidiaries, or affiliates consistent with the National
3 Association of Insurance Commissioners Accounting Policies and Procedures Manual, state laws
4 and regulations;

5 (3) Refuse to recognize the stated value of accounts receivable if the ability to collect
6 receivables is highly speculative in view of the age of the account or the financial condition of the
7 debtor;

8 (4) Increase the insurer's liability in an amount equal to any contingent liability, pledge, or
9 guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to
10 meet the obligation undertaken within the next twelve-month period.

11 4. If the director determines that the continued operation of the insurer licensed to transact
12 business in this state may be hazardous to its policyholders, creditors, or the general public, then
13 the director may, to the extent authorized by law and in accordance with any procedures required
14 by law, issue an order requiring the insurer to:

15 (1) Reduce the total amount of present and potential liability for policy benefits by
16 reinsurance;

17 (2) Reduce, suspend, or limit the volume of business being accepted or renewed;

18 (3) Reduce general insurance and commission expenses by specified methods;

19 (4) Increase the insurer's capital and surplus;

20 (5) Suspend or limit the declaration and payment of dividend by an insurer to its
21 stockholders or to its policyholders;

22 (6) File reports in a form acceptable to the director concerning the market value of an
23 insurer's assets;

24 (7) Limit or withdraw from certain investments or discontinue certain investment
25 practices to the extent the director deems necessary;

26 (8) Document the adequacy of premium rates in relation to the risks insured;

1 (9) File, in addition to regular annual statements, interim financial reports on the form
2 adopted by the National Association of Insurance Commissioners or in such format as
3 promulgated by the director;

4 (10) Correct corporate governance practice deficiencies, and adopt and utilize governance
5 practices acceptable to the director;

6 (11) Provide a business plan to the director in order to continue to transact business in the
7 state;

8 (12) Notwithstanding any other provision of law limiting the frequency or amount of
9 premium rate adjustments, adjust rates for any non-life insurance product written by the insurer
10 that the director considers necessary to improve the financial condition of the insurer.

11 5. An insurer subject to an order under subsection 4 of this section may request a hearing
12 before the director in accordance with the provisions of chapter 536. The notice of hearing shall
13 be served upon the insurer pursuant to section 536.067. The notice of hearing shall state the time
14 and place of hearing and the conduct, condition, or ground upon which the director based the
15 order. Unless mutually agreed between the director and the insurer, the hearing shall occur not
16 less than ten days nor more than thirty days after notice is served and shall be either in Cole
17 County or in some other place convenient to the parties designated by the director. The director
18 shall hold all hearings under this subsection privately, unless the insurer requests a public hearing,
19 in which case the hearing shall be public.

20 6. This section shall not be interpreted to limit the powers granted the director by any laws
21 or parts of laws of this state, nor shall this section be interpreted to supercede any laws or parts of
22 laws of this state, except that if the insurer is a foreign insurer, the director's order under
23 subsection 4 of this section may be limited to the extent expressly provided by any laws or parts of
24 laws of this state.

25 375.1255. 1. "Company action level event" means with respect to any insurer, any of the
26 following events:

(1) The filing of an RBC report by the insurer which indicates that:

(a) The insurer's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC; or

(b) If a life and health insurer, the insurer has total adjusted capital which is greater than or equal to its company action level RBC but less than the product of its authorized control level capital and 2.5, and has a negative trend;

(c) If a property and casualty insurer, the insurer has total adjusted capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the Property and Casualty RBC report instructions;

(2) The notification by the director to the insurer of an adjusted RBC report that indicates the event in paragraph (a) [or], (b), or (c) of subdivision (1) of this subsection, if the insurer does not challenge the adjusted RBC report pursuant to section 375.1265;

(3) If pursuant to section 375.1265 the insurer challenges an adjusted RBC report that indicates the event described in subdivision (1) of this subsection, the notification by the director to the insurer that the director has, after a hearing, rejected the insurer's challenge.

2. In the event of a company action level event the insurer shall prepare and submit to the director an RBC plan which shall:

(1) Identify the conditions in the insurer which contribute to the company action level event;

(2) Contain proposals of corrective actions which the insurer intends to take and would be expected to result in the elimination of the company action level event;

(3) Provide projections of the insurer's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital or surplus. The projections for both new and renewal business might include separate

1 projections for each major line of business and separately identify each significant income,
2 expense and benefit component;

3 (4) Identify the key assumptions impacting the insurer's projections and the sensitivity of
4 the projections to the assumptions; and

5 (5) Identify the quality of, and problems associated with, the insurer's business, including
6 but not limited to its assets, anticipated business growth and associated surplus strain,
7 extraordinary exposure to risk, mix of business and use of reinsurance in each case, if any.

8 3. The RBC plan shall be submitted:

9 (1) Within forty-five days of the company action level event; or

10 (2) If the insurer challenges an adjusted RBC report pursuant to section 375.1265 within
11 forty-five days after notification to the insurer that the director has, after a hearing, rejected the
12 insurer's challenge.

13 4. Within sixty days after the submission by an insurer of an RBC plan to the director, the
14 director shall notify the insurer whether the RBC plan shall be implemented or is, in the judgment
15 of the director, unsatisfactory. If the director determines the RBC plan is unsatisfactory, the
16 notification to the insurer shall set forth the reasons for the determination, and may set forth
17 proposed revisions which will render the RBC plan satisfactory, in the judgment of the director.
18 Upon notification from the director, the insurer shall prepare a revised RBC plan, which may
19 incorporate by reference any revisions proposed by the director, and shall submit the revised RBC
20 plan to the director:

21 (1) Within forty-five days after the notification from the director; or

22 (2) If the insurer challenges the notification from the director pursuant to section
23 375.1265, within forty-five days after a notification to the insurer that the director has, after a
24 hearing, rejected the insurer's challenge.

25 5. In the event of a notification by the director to an insurer that the insurer's RBC plan or
26 revised RBC plan is unsatisfactory, the director may at the director's discretion, subject to the

insurer's right to a hearing under section 375.1265, specify in the notification that the notification constitutes a regulatory action level event.

6. Every domestic insurer that files an RBC plan or revised RBC plan with the director shall file a copy of the RBC plan or revised RBC plan with the chief insurance regulatory official in any state in which the insurer is authorized to do business if:

(1) Such state has an RBC provision, substantially similar to subsection 1 of section 375.1267; and

(2) The chief insurance regulatory official of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

(a) Fifteen days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the state; or

(b) The date on which the RBC plan or revised RBC plan is filed under subsection 3 or 4 of this section.”; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.