

Legislative Bill Drafting Commission
14179-02-4

S. -----
 Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
 and when printed to be committed
 to the Committee on

----- A.
 Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
 Committee on

***INSURLA* *Department of Financial
 Services 5 R-1*
 (Relates to the administrative
 supervision of insurers deemed to be
 in a hazardous financial condition)**

 Ins. administrative supervision

AN ACT

to amend the insurance law, in
 relation to administrative super-
 vision

The People of the State of New
 York, represented in Senate and
 Assembly, do enact as follows:

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
 of this proposal:

s15 Addabbo	s34 Fernandez	s28 Krueger	s01 Palumbo	s42 Skoufis
s43 Ashby	s60 Gallivan	s24 Lanza	s21 Parker	s11 Stavisky
s36 Bailey	s12 Gianaris	s16 Liu	s19 Persaud	s45 Stec
s57 Borrello	s59 Gonzalez	s50 Mannion	s13 Ramos	s35 Stewart-
s46 Breslin	s26 Gounardes	s04 Martinez	s05 Rhoads	Cousins
s25 Brisport	s53 Griffo	s07 Martins	s33 Rivera	s44 Tedisco
s55 Brouk	s40 Harckham	s02 Mattera	s39 Rolison	s06 Thomas
s09 Canzoneri-	s54 Helming	s48 May	s61 Ryan	s49 Walczyk
Fitzpatrick	s41 Hinchey	s37 Mayer	s18 Salazar	s52 Webb
s17 Chu	s47 Hoylman-	s03 Murray	s10 Sanders	s38 Weber
s30 Cleare	Sigal	s20 Myrie	s23 Scarcella-	s08 Weik
s14 Comrie	s31 Jackson	s51 Oberacker	Spanton	
s56 Cooney	s27 Kavanagh	s58 O'Mara	s32 Sepulveda	
s22 Felder	s63 Kennedy	s62 Ortt	s29 Serrano	

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
 multi-sponsorship of this proposal:

a078 Alvarez	a047 Colton	a034 Gonzalez-	a137 Meeks	a016 Sillitti
a031 Anderson	a140 Conrad	Rojas	a017 Mikulin	a052 Simon
a121 Angelino	a032 Cook	a150 Goodell	a122 Miller	a075 Simone
a037 Ardila	a039 Cruz	a116 Gray	a051 Mitaynes	a114 Simpson
a035 Aubry	a043 Cunningham	a100 Gunther	a145 Morinello	a094 Slater
a120 Barclay	a021 Curran	a139 Hawley	a144 Norris	a005 Smith
a106 Barrett	a018 Darling	a083 Heastie	a045 Novakhov	a118 Smullen
a105 Beephan	a053 Davila	a028 Hevesi	a069 O'Donnell	a022 Solages
a107 Bendett	a072 De Los Santos	a128 Hunter	a091 Otis	a110 Steck
a082 Benedetto	a003 DeStefano	a029 Hyndman	a132 Palmesano	a010 Stern
a027 Berger	a070 Dickens	a079 Jackson	a088 Paulin	a127 Stirpe
a042 Bichotte	a054 Dilan	a104 Jacobson	a141 Peoples-	a102 Tague
Hermelyn	a081 Dinowitz	a011 Jean-Pierre	Stokes	a064 Tannousis
a117 Blankenbush	a147 DiPietro	a134 Jensen	a023 Pheffer	a086 Tapia
a015 Blumencranz	a009 Durso	a115 Jones	Amato	a071 Taylor
a073 Bores	a099 Eachus	a125 Kelles	a063 Pirozzolo	a001 Thiele
a098 Brabenec	a048 Eichenstein	a040 Kim	a089 Pretlow	a033 Vanel
a026 Braunstein	a074 Epstein	a013 Lavine	a019 Ra	a055 Walker
a138 Bronson	a109 Fahy	a065 Lee	a030 Raga	a143 Wallace
a046 Brook-Krasny	a061 Fall	a126 Lemondes	a038 Rajkumar	a112 Walsh
a020 Brown, E.	a008 Fitzpatrick	a095 Levenberg	a006 Ramos	a041 Weinstein
a012 Brown, K.	a004 Flood	a060 Lucas	a062 Reilly	a024 Weprin
a093 Burdick	a057 Forrest	a135 Lunsford	a087 Reyes	a059 Williams
a085 Burgos	a124 Friend	a123 Lupardo	a149 Rivera	a113 Woerner
a142 Burke	a050 Gallagher	a129 Magnarelli	a067 Rosenthal, L.	a080 Zaccaro
a119 Buttenschon	a131 Gallahan	a101 Maher	a025 Rozic	a096 Zebrowski
a133 Byrnes	a007 Gandolfo	a036 Mamdani	a111 Santabarbara	a056 Zinerman
a044 Carroll	a068 Gibbs	a130 Manktelow	a090 Sayegh	a077
a058 Chandler-	a002 Giglio, J.A.	a108 McDonald	a076 Seawright	
Waterman	a148 Giglio, J.M.	a014 McDonough	a084 Septimo	
a049 Chang	a066 Glick	a097 McGowan	a092 Shimsky	
a136 Clark		a146 McMahon	a103 Shrestha	

1) Single House Bill (introduced and printed separately in either or
 both houses). Uni-Bill (introduced simultaneously in both houses and printed
 as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2
 signed copies of bill and: in Assembly 2 copies of memorandum in support, in
 Senate 4 copies of memorandum in support (single house); or 4 signed copies
 of bill and 6 copies of memorandum in support (uni-bill).

1 Section 1. Legislative findings. In order to increase the authority of
2 the superintendent of financial services to respond to the harm posed by
3 impaired insurers in this state, the legislature finds that it is in the
4 best interest of the people of this state to enact an administrative
5 supervision statute. The superintendent of financial services has the
6 right and responsibility to enforce the insurance law and the authority
7 to seek redress against any person responsible for the impairment or
8 insolvency of the insurer, and nothing in this act is intended to
9 restrict or limit such right, responsibility, or authority.

10 § 2. The insurance law is amended by adding a new section 1125 to read
11 as follows:

12 § 1125. Administrative supervision. (a)(1) The superintendent may
13 issue an order placing a domestic insurer under administrative super-
14 vision if the superintendent determines that one or more of the condi-
15 tions set forth in subsection (b) of this section exists. Upon such a
16 determination, the superintendent shall furnish the insurer with a writ-
17 ten list of requirements to abate the condition or conditions within the
18 time specified in the order, which shall be sixty days or another period
19 of time as designated by the superintendent. The domestic insurer may
20 challenge the order by requesting an administrative hearing pursuant to
21 the adjudicatory proceeding rules in article three of the state adminis-
22 trative procedure act. Upon issuance of the order, the superintendent
23 shall advise such domestic insurer of its right to request a hearing
24 challenging the order pursuant to the adjudicatory proceeding rules in
25 article three of the state administrative procedure act and regulations
26 promulgated by the superintendent.

27 (2) If, at the end of the period specified in the order, the super-
28 intendent determines that the condition or conditions that gave rise to

1 the order still exists or exist, then administrative supervision shall
2 continue. The insurer may request a hearing to challenge the superinten-
3 dent's determination to continue administrative supervision.

4 (3) If the superintendent determines that the condition or conditions
5 that gave rise to administrative supervision no longer exists or exist,
6 then the superintendent shall release the insurer from supervision.

7 (b) (1) An insurer may be subject to administrative supervision by the
8 superintendent if upon examination or any other time it appears in the
9 superintendent's discretion that:

10 (A) The insurer's condition renders the continuance of its business
11 hazardous to the public or to its insureds;

12 (B) The insurer has or appears to have exceeded its powers, as that
13 term is defined in paragraph two of this subsection, granted under its
14 charter and applicable law;

15 (C) The insurer has failed to comply with the applicable provisions of
16 this chapter;

17 (D) The business of the insurer is being conducted fraudulently; or

18 (E) The insurer gives its consent.

19 (2) The term "exceeded its powers" means any one or more of the
20 following conditions:

21 (A) The insurer has refused to permit examination of its books,
22 papers, accounts, records or affairs by the superintendent or the super-
23 intendent's deputies, employees or duly commissioned examiners;

24 (B) A domestic insurer has unlawfully removed from this state books,
25 papers, accounts or records necessary for an examination of the insurer;

26 (C) The insurer has failed to promptly comply with the applicable
27 financial reporting statutes or rules and departmental requests relating
28 thereto;

1 (D) The insurer has neglected or refused to observe an order by the
2 superintendent to make good, within the time prescribed by law, any
3 prohibited deficiency in its capital, capital stock or surplus;

4 (E) The insurer is continuing to transact insurance or write business
5 after its license has been revoked or suspended by the superintendent;

6 (F) The insurer, by contract or otherwise, has unlawfully or has in
7 violation of an order of the superintendent or has without first having
8 obtained written approval of the superintendent if approval is required
9 by law: (i) totally reinsured its entire outstanding business; or (ii)
10 merged or consolidated substantially its entire property or business
11 with another insurer;

12 (G) The insurer engaged in any transaction in which it is not author-
13 ized to engage under the laws of this state; or

14 (H) The insurer refused to comply with a lawful order of the super-
15 intendent.

16 (3) The term "consent" means agreement to administrative supervision
17 by the insurer.

18 (c) During the period of supervision, the superintendent may prohibit
19 the insurer from engaging in any of the following activities without the
20 superintendent's prior approval:

21 (1) disposing of, conveying, or encumbering any of its assets or its
22 business in force;

23 (2) withdrawing any funds from its bank accounts;

24 (3) lending any of its funds;

25 (4) investing any of its funds;

26 (5) paying any claims;

27 (6) transferring any of its property;

28 (7) incurring any debt, obligation, or liability;

1 (8) merging or consolidating with another company;

2 (9) approving new premiums or renewing any policies;

3 (10) entering into any new reinsurance contract or treaty;

4 (11) terminating, surrendering, forfeiting, converting, or lapsing any
5 insurance policy, certificate, or contract, except for nonpayment of
6 premiums due;

7 (12) releasing, paying, or refunding premium deposits, accrued cash or
8 loan values, unearned premiums, or other reserves on any insurance poli-
9 cy, certificate, or contract;

10 (13) making any material change in management; or

11 (14) increasing salaries and benefits of officers or directors or the
12 payment of bonuses, dividends, or other payments.

13 (d) The superintendent may appoint as administrative supervisor, at
14 the insurer's expense, one or more persons not employed by any insurer
15 or interested in such insurer, except as a policyholder.

16 (e) During the period of administrative supervision, an insurer may
17 contest an action taken or proposed to be taken by the superintendent or
18 by the administrative supervisor on the grounds that the action or
19 proposed action would not result in improving the condition of the
20 insurer. Denial of the insurer's request upon reconsideration may be
21 challenged by the insurer by requesting an administrative hearing pursu-
22 ant to the adjudicatory proceeding rules in article three of the state
23 administrative procedure act.

24 (f) (1) The expenses of administrative supervision pursuant to this
25 section shall be borne and paid by the insurer so supervised.

26 (2) In the event that an insurer becomes subject to a proceeding under
27 article seventy-four of this chapter within one year of the superinten-
28 dent releasing the insurer from administrative supervision, all accrued

1 and outstanding expenses incurred in connection with administrative
2 supervision shall be treated as actual and necessary costs and expenses
3 of the administration of such proceeding under article seventy-four of
4 this chapter.

5 (g) (1) Notwithstanding any other section of law and except as set
6 forth in this section, proceedings, hearings, notices, correspondence,
7 reports, and other information in the possession of the superintendent
8 or department relating to the supervision of any insurer shall be confi-
9 dential and not subject to subpoena or public inspection under article
10 six of the public officers law or any other statute, and shall not be
11 subject to discovery or admissible in evidence in any private civil
12 action, except as provided in this section; provided, however, that the
13 superintendent is authorized to use the documents, materials, or other
14 information in the furtherance of any regulatory or legal action brought
15 as part of the superintendent's official duties.

16 (2) The superintendent may share the notices, correspondence, reports,
17 records, or information pursuant to section one hundred ten of this
18 chapter.

19 (3) The superintendent may open the proceedings or hearings or make
20 public the notices, correspondence, reports, records, or other informa-
21 tion if the superintendent deems that it is in the best interest of the
22 public or in the best interest of the insurer, its insureds, creditors,
23 or the general public.

24 (4) This subsection shall not apply to hearings, notices, correspond-
25 ence, reports, records, or other information obtained upon the appoint-
26 ment of a receiver for the insurer by a court of competent jurisdiction.

27 (h) Nothing in this section shall be construed as precluding the
28 superintendent from initiating judicial proceedings to place an insurer

1 in rehabilitation, liquidation, conservation, or dissolution
2 proceedings.

3 (i) Notwithstanding any other provision of law, the superintendent may
4 meet with a supervisor appointed under this section and with the attor-
5 ney or other representative of the supervisor, without the presence of
6 any other person, at the time of any proceeding or during the pendency
7 of any proceeding held under authority of this section to carry out the
8 superintendent's duties under this section or for the supervisor to
9 carry out the supervisor's duties under this section.

10 § 3. Subsection (a) of section 1309 of the insurance law is amended to
11 read as follows:

12 (a) Whenever the superintendent finds from a financial statement or
13 report on examination that an authorized insurer is unable to pay its
14 outstanding lawful obligations as they mature in the regular course of
15 business, as shown by an excess of required reserves and other liabil-
16 ities over admitted assets, or by its not having sufficient assets to
17 reinsure all outstanding risks with other solvent authorized assuming
18 insurers after paying all accrued claims owed, such insurer shall be
19 deemed insolvent and the superintendent may proceed against it pursuant
20 to the provisions of article seventy-four of this chapter or may place
21 the insurer under administrative supervision pursuant to section one
22 thousand one hundred twenty-five of this chapter.

23 § 4. Subsection (a) of section 1310 of the insurance law is amended to
24 read as follows:

25 (a) Whenever the superintendent finds from a financial statement, or a
26 report on examination, of any domestic stock insurer that [(i)] (1) the
27 admitted assets are less than the aggregate amount of its liabilities
28 and outstanding capital stock or [(ii)] (2) the admitted assets of any

1 such insurer [which] that is required to maintain a minimum surplus to
2 policyholders are less than the aggregate amount of its liabilities and
3 the amount of its minimum surplus to policyholders, [he] the superinten-
4 dent shall determine the amount of the impairment and order the insurer
5 to eliminate the impairment within such period as [he] the superinten-
6 dent designates, not more than ninety days from the service of the
7 order. [He] The superintendent may also order the insurer not to issue
8 any new policies while the impairment exists. If the impairment as
9 determined by the provisions of [item (i) hereof] paragraph one of this
10 subsection equals or exceeds twenty-five percent of the insurer's
11 outstanding capital stock, or as determined by the provisions of [item
12 (i) or (ii) hereof] paragraph one or two of this subsection is such that
13 the insurer does not have the minimum capital or minimum surplus to
14 policyholders required by this chapter, and if at the expiration of such
15 designated period, such insurer has not satisfied the superintendent
16 that such impairment has been eliminated, the superintendent may proceed
17 against the insurer pursuant to the provisions of article seventy-four
18 of this chapter on the ground that its condition is such that its
19 further transaction of business will be hazardous to its policyholders
20 or its creditors or the public or the superintendent may place the
21 insurer under administrative supervision pursuant to section one thou-
22 sand one hundred twenty-five of this chapter.

23 § 5. Subsection (c) of section 1311 of the insurance law is amended to
24 read as follows:

25 (c) If the impairment so determined is such that such insurer does not
26 have the minimum surplus required for item (iii) of subsection (a) here-
27 of, and if when such designated period expires the insurer has not
28 satisfied the superintendent that such impairment has been eliminated,

1 then the superintendent may proceed against such insurer pursuant to the
2 provisions of article seventy-four of this chapter on the ground that
3 its further transaction of business will be hazardous to its policyhold-
4 ers, its creditors or the public or the superintendent may place the
5 insurer under administrative supervisions pursuant to section one thou-
6 sand one hundred twenty-five of this chapter.

7 § 6. Paragraph 2 of subsection (c) of section 1312 of the insurance
8 law is amended to read as follows:

9 (2) If at the expiration of such designated period such insurer has
10 not satisfied the superintendent that such impairment has been elimi-
11 nated, the superintendent may proceed against such insurer pursuant to
12 the provisions of article seventy-four of this chapter as an insurer
13 whose condition is such that its further transaction of business in the
14 United States will be hazardous to its policyholders, its creditors or
15 the public in the United States or the superintendent may place the
16 insurer under administrative supervision pursuant to section one thou-
17 sand one hundred twenty-five of this chapter.

18 § 7. This act shall take effect immediately.

DFS #05-24

Memorandum

An ACT to amend the insurance law
in relation to administrative supervision

Purpose of the bill:

This bill would amend the Insurance Law to authorize the Superintendent of Financial Services (“Superintendent”) to issue an order placing a domestic insurer under administrative supervision.

Summary of provisions:

Section 1 of the bill would set forth legislative findings.

Section 2 would add a new Insurance Law § 1125 to permit the Superintendent to issue an order placing a domestic insurer under administrative supervision if the Superintendent determines that one or more of the conditions set forth in § 1125(b) exists.

Sections 3, 4, 5, and 6 would amend Insurance Law §§ 1309(a), 1310(a), 1311(c), and 1312(c), respectively, to permit the Superintendent to place an insurer under administrative supervision pursuant to new Insurance Law § 1125.

Section 7 would provide for an immediate effective date.

Justification:

Currently, the Superintendent is empowered to demand that a troubled insurer undertake remediation of financial or other conditions that threaten the insurer’s solvency. However, the responsibility to remediate relies on the insurer’s consent. In some instances, the greatest threat to solvency, financial turmoil, or compliance with New York law is the management, which may never give the Superintendent its consent. As a result, in such circumstances, the Superintendent is compelled to commence a rehabilitation or liquidation proceeding in court under Insurance Law Article 74. The Article 74 process - which is public - usually terminates the insurer’s operations and may result in delay and even harm to policyholders and the public. A process by which the Superintendent is permitted to take greater control of an insurer’s affairs would provide the degree of flexibility that is often necessary to avoid an Article 74 proceeding and the potential concomitant harm.

The National Association of Insurance Commissioners recognized the need for such flexibility and developed and published an “Administrative Supervision Model Act.” That model act explicitly grants an insurance commissioner the right at the commissioner’s discretion to install an administrative supervisor and limit the insurer’s ability to undertake certain activities. Once imposed, the insurer has the right to challenge the administrative supervision order at an administrative hearing subject to review and will be released from administrative supervision if the conditions that gave rise to the order no longer exist. According to the NAIC, approximately 21 states have adopted the Model Act, including California, Connecticut, Florida, Massachusetts, and New Jersey, and another approximately 11 states have enacted or

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adopted related legislation or regulations, including Delaware and Pennsylvania. This proposal provides the statutory changes for New York to do so too.

Prior legislative history:

S.8025 (2018)

Fiscal implications:

None.

Effective date:

Immediately.