

HB 230 – AS INTRODUCED

2013 SESSION

13-0343
01/09

HOUSE BILL **230**

AN ACT relative to administrative supervision of insurers.

SPONSORS: Rep. Butler, Carr 7; Rep. John Hunt, Ches 11; Rep. Flanders, Belk 3

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill authorizes the insurance commissioner to administratively supervise an insurer under certain circumstances.

This bill is a request of the insurance department.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT relative to administrative supervision of insurers.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Chapter; Administrative Supervision of Insurers. Amend RSA by inserting after chapter
2 402-K the following new chapter:

3 CHAPTER 402-L

4 ADMINISTRATIVE SUPERVISION OF INSURERS

5 402-L:1 Definitions. In this chapter:

6 I. "Commissioner" means the New Hampshire insurance commissioner.

7 II. "Consent" means agreement to administrative supervision by the insurer.

8 III. "Department" means the New Hampshire insurance department.

9 IV. "Exceeded its powers" means any of the following conditions:

10 (a) The insurer has refused to permit examination of its books, papers, accounts, records,
11 or affairs by the commissioner, his or her deputies, employees, or duly commissioned examiners;

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

14 (c) The insurer has failed to promptly comply with the applicable financial reporting
15 statutes or rules and departmental requests relating thereto;

16 (d) The insurer has neglected or refused to observe an order of the commissioner to make
17 good, within the time prescribed by law, any prohibited deficiency in its capital, capital stock, or
18 surplus;

19 (e) The insurer is continuing to transact insurance or write business after its license has
20 been revoked or suspended by the commissioner;

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

24 (1) Totally reinsured its entire outstanding business; or

25 (2) Merged or consolidated substantially its entire property or business with another
26 insurer;

27 (g) The insurer engaged in any transaction in which it is not authorized to engage under
28 the laws of this state; or

29 (h) The insurer refused to comply with a lawful order of the commissioner.

30 V. "Insurer" means and includes every person engaged as indemnitor, surety, or contractor
31 in the business of entering into contracts of insurance or of annuities as limited to:

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1 (a) Any insurer who is doing an insurance business, or has transacted insurance in this
2 state, and against whom claims arising from that transaction may exist now or in the future.

3 (b) Any fraternal benefit society which is subject to the provisions of RSA 418.

4 (c) Any other insurer that is subject to the authority of the commissioner under Title
5 XXXVII.

6 402-L:2 Applicability.

7 I. The provisions of this chapter shall apply to:

8 (a) All domestic insurers; and

9 (b) Any other insurer doing business in this state whose state of domicile has asked the
10 commissioner to apply the provisions of this chapter as regards such insurer.

11 402-L:3 Notice to Comply with Written Requirements of Commissioner; Noncompliance;
12 Administrative Supervision.

13 I. An insurer may be subject to administrative supervision by the commissioner if upon
14 examination or at any other time it appears in the commissioner's discretion that:

15 (a) The insurer's condition renders the continuance of its business hazardous to the
16 public or to its insureds;

17 (b) The insurer has or appears to have exceeded its powers granted under its certificate
18 of authority and applicable law;

19 (c) The insurer has failed to comply with applicable provisions of the insurance code;

20 (d) The business of the insurer is being conducted fraudulently; or

21 (e) The insurer gives its consent.

22 II. If the commissioner determines that the conditions set forth in paragraph I exist, the
23 commissioner shall:

24 (a) Notify the insurer of his or her determination;

25 (b) Furnish to the insurer a written list of the requirements to abate this determination;
26 and

27 (c) Notify the insurer that it is under the supervision of the commissioner and that the
28 commissioner is applying and effectuating the provisions of this chapter. Action by the
29 commissioner shall be subject to review pursuant to rules adopted pursuant to RSA 541-A.

30 III. If placed under administrative supervision, the insurer shall have 60 days, or another
31 period of time as designated by the commissioner, to comply with the requirements of the
32 commissioner subject to the provisions of this chapter.

33 IV. If it is determined after notice and hearing that the conditions giving rise to the
34 supervision still exist at the end of the supervision period specified in paragraph III, the
35 commissioner may extend the period.

36 V. If it is determined that none of the conditions giving rise to the supervision exist, the
37 commissioner shall release the insurer from supervision.

1 402-L:4 Confidentiality of Certain Proceedings and Records.

2 I. Notwithstanding any other provision of law and except as set forth in this section,
3 proceedings, hearings, notices, correspondence, reports, records, and other information in the
4 possession of the commissioner or the department relating to the supervision of any insurer are
5 confidential and shall not be subject to RSA 91-A, subpoena, or discovery, or admissible in evidence
6 in any private civil action. However, the commissioner is authorized to use the documents,
7 materials, or other information in the furtherance of any regulatory or legal action brought as part of
8 the commissioner’s official duties.

9 II. The personnel of the department shall have access to these proceedings, hearings,
10 notices, correspondence, reports, records, or information as permitted by the commissioner. Neither
11 the commissioner nor any person who received documents, materials, or other information while
12 acting under the authority of the commissioner shall be permitted or required to testify in any
13 private civil action concerning any confidential documents, materials, or information subject to
14 paragraph I.

15 III. The commissioner may share the notices, correspondence, reports, records, or
16 information with other state, federal, and international regulatory agencies, with the National
17 Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal,
18 and international law enforcement authorities, if the commissioner determines that the disclosure is
19 necessary or proper for the enforcement of the laws of this or another state of the United States, and
20 provided that the recipient agrees to maintain the confidentiality of the documents, material, or
21 other information. No waiver of any applicable privilege or claim of confidentiality shall occur as a
22 result of the sharing of documents, materials, or other information pursuant to this paragraph.

23 IV. The commissioner may open the proceedings or hearings or make public the notices,
24 correspondence, reports, records, or other information if the commissioner deems that it is in the
25 best interest of the public or in the best interest of the insurer, its insureds, creditors or the general
26 public.

27 V. This section shall not apply to hearings, notices, correspondence, reports, records, or other
28 information obtained upon the appointment of a receiver for the insurer by a court of competent
29 jurisdiction.

30 402-L:5 Prohibited Acts During Period of Supervision. During the period of supervision, the
31 commissioner or the commissioner’s designated appointee shall serve as the administrative
32 supervisor. The commissioner may provide that the insurer may not do any of the following things
33 during the period of supervision, without the prior approval of the commissioner or the appointed
34 supervisor:

35 I. Dispose of, convey, or encumber any of its assets or its business in force.

36 II. Withdraw any of its bank accounts.

37 III. Lend any of its funds.

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1 IV. Invest any of its funds.

2 V. Transfer any of its property.

3 VI. Incur any debt, obligation, or liability.

4 VII. Merge or consolidate with another company.

5 VIII. Approve new premiums or renew any policies.

6 IX. Enter into any new reinsurance contract or treaty.

7 X. Terminate, surrender, forfeit, convert, or lapse any insurance policy, certificate, or
8 contract, except for nonpayment of premiums due.

9 XI. Release, pay or refund premium deposits, accrued cash or loan values, unearned
10 premiums, or other reserves on any insurance policy, certificate, or contract.

11 XII. Make any material change in management.

12 XIII. Increase salaries and benefits of officers or directors or the preferential payment of
13 bonuses, dividends or other payments deemed preferential.

14 402-L:6 Review and Stay of Action. During the period of supervision the insurer may contest an
15 action taken or proposed to be taken by the supervisor specifying the manner wherein the action
16 being complained of would not result in improving the condition of the insurer. Denial of the
17 insurer's request upon reconsideration entitles the insurer to request a proceeding under RSA 541-A.

18 402-L:7 Administrative Election of Proceedings. Nothing contained in this chapter shall
19 preclude the commissioner from initiating judicial proceedings to place an insurer in conservation,
20 rehabilitation, or liquidation proceedings or other delinquency proceedings, however designated
21 under the laws of this state, regardless of whether the commissioner has previously initiated
22 administrative supervision proceedings under this chapter against the insurer.

23 402-L:8 Rules. The commissioner may adopt rules necessary for the implementation of this
24 chapter.

25 402-L:9 Other Laws; Conflicts; Meetings Between the Commissioner and the Supervisor.
26 Notwithstanding any other provision of law, the commissioner may meet with a supervisor
27 appointed under this chapter and with the attorney or other representative of the supervisor,
28 without the presence of any other person, at the time of any proceeding or during the pendency of
29 any proceeding held under authority of this chapter to carry out the commissioner's duties under this
30 chapter or for the supervisor to carry out his or her duties under this chapter.

31 402-L:10 Immunity. There shall be no liability on the part of, and no cause of action of any
32 nature shall arise against, the insurance commissioner or the department or its employees or agents,
33 including the administrative supervisor, for any action taken by them in the performance of their
34 powers and duties under this chapter. The administrative supervisor shall be considered a state
35 official for the purpose of defense and indemnification under RSA 99-D.

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1 402-L:11 Costs and Related Expenses. The commissioner may retain outside consultants and
2 counsel for the conduct of the administrative supervision, the cost of which shall be borne by the
3 company which is the subject of supervision as provided in RSA 400-A:37, III(d).

4 2 Effective Date. This act shall take effect 60 days after its passage.