



# Senate

General Assembly

**File No. 247**

January Session, 2005

Substitute Senate Bill No. 1301

*Senate, April 11, 2005*

The Committee on Insurance and Real Estate reported through SEN. CRISCO of the 17th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## **AN ACT CONCERNING THE VOLUNTARY RESTRUCTURING OF INSURERS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2005*) As used in sections 1 to  
2 20, inclusive, of this act:

3 (1) "Applicant" means an insurer that is or becomes domiciled in  
4 this state with the intention of filing a petition under section 4 of this  
5 act together with any person that is part of an insurance holding  
6 company system with the insurer;

7 (2) "Assessment deficit" or "assessment surplus" means the  
8 difference between the estimated assessment paid by the applicant for  
9 any year and:

10 (A) The applicant's actual proportionate share of regulatory  
11 expenditure for the previous year if the applicant was domiciled in this  
12 state on March fifteenth of the previous year; or

13 (B) The actual redomestication expenditure for the previous year  
14 attributable to the applicant if the applicant was not domiciled in this  
15 state on March fifteenth of the previous year;

16 (3) "Commissioner" means the Insurance Commissioner;

17 (4) "Claim" means the right to payment, whether or not such right is  
18 reduced to judgment, liquidated, unliquidated, fixed, contingent,  
19 matured, unmatured, disputed, undisputed, legal, equitable, secured,  
20 or unsecured, including claims based on incurred but unreported  
21 losses, or a right to an equitable remedy for breach of performance if  
22 such breach gives rise to a right to payment, whether or not such right  
23 to an equitable remedy is reduced to judgment, fixed, contingent,  
24 matured, unmatured, disputed, undisputed, secured, or unsecured;

25 (5) "Interest" means an equity security of the applicant;

26 (6) "Department" means the Insurance Department;

27 (7) "Equity security holder" means the holder of an equity security  
28 of the applicant;

29 (8) "Guaranty association" means a guaranty association, as defined  
30 in section 38a-905 of the general statutes, or foreign guaranty  
31 association, as defined in section 38a-905 of the general statutes, that is  
32 potentially obligated with respect to the applicant's policies;

33 (9) "Insurer" means insurer, as defined in section 38a-1 of the  
34 general statutes;

35 (10) "Party in interest" means any person that has a claim against the  
36 applicant or any policyholder;

37 (11) "Person" means person, as defined in section 38a-1 of the  
38 general statutes;

39 (12) "Policy" means a contract of insurance or a contract of  
40 reinsurance;

41 (13) "Policyholder" means an insured or a reinsured of the applicant;

42 (14) "Proportionate share" means, for a particular applicant as of  
43 December thirty-first of the previous year, the ratio of:

44 (A) The gross assets of that applicant; to

45 (B) The gross assets of all applicants, other than those that were not  
46 domiciled in this state on March fifteenth of that calendar year;

47 (15) "Redomestication expenditure" means, for any calendar year:

48 (A) The amount that the department's expenditures attributable to  
49 the regulation of applicants increases as a result of any applicant  
50 redomiciling to this state on or after March fifteenth of that year; less

51 (B) Filing fees, examination costs, and any other fees in relation to  
52 insurance regulation in this state paid to this state by applicants that  
53 redomiciled to this state on or after March fifteenth of that year, but  
54 excluding any premium taxes;

55 (16) "Regulatory expenditure" means, for any calendar year:

56 (A) The amount of the department's expenditures attributable to the  
57 regulation of applicants domiciled in this state on March fifteenth of  
58 that year; less

59 (B) Filing fees, examination costs, and any other fees in relation to  
60 insurance regulation in this state paid to this state by applicants  
61 domiciled in this state on March fifteenth of that year, but excluding  
62 any premium taxes.

63 Sec. 2. (NEW) (*Effective October 1, 2005*) (a) A court that considers  
64 petitions brought under sections 1 to 20, inclusive, of this act shall have  
65 the same jurisdiction as a court under chapter 704c of the general  
66 statutes. Venue for such petitions shall be in the judicial district of New  
67 Britain.

68 (b) The court may issue any order, process or judgment that is

69 necessary or appropriate to carry out the provisions of sections 1 to 20,  
70 inclusive, of this act. No provision of sections 1 to 20, inclusive, of this  
71 act providing for the raising of an issue by a party in interest shall be  
72 construed to preclude the court from, on its own motion, taking any  
73 action or making any determination necessary or appropriate to  
74 enforce or implement court orders or rules, or to prevent an abuse of  
75 process.

76 Sec. 3. (NEW) (*Effective October 1, 2005*) (a) The applicant shall  
77 provide any notice required under any provision of sections 1 to 20,  
78 inclusive, of this act in accordance with the regulations adopted by the  
79 commissioner pursuant to section 20 of this act or in accordance with  
80 an order of the court.

81 (b) If notice is given in accordance with this section, any orders  
82 under sections 1 to 20, inclusive, of this act shall be conclusive with  
83 respect to all persons, regardless of whether they received notice.

84 Sec. 4. (NEW) (*Effective October 1, 2005*) An applicant may  
85 commence a case under sections 1 to 20, inclusive, of this act by filing a  
86 petition with the court. The applicant shall file a plan with the petition.  
87 No petition or plan shall be filed without the consent of the Insurance  
88 Commissioner.

89 Sec. 5. (NEW) (*Effective October 1, 2005*) (a) Except as provided in  
90 subsection (b) of this section, a plan may place a claim or an interest in  
91 a particular class only if such claim or interest is substantially similar  
92 to the other claims or interests in such class.

93 (b) A class may not contain claims which would be in different  
94 classes under chapter 704c of the general statutes. A class may consist  
95 solely of (1) claims under reinsurance agreements, (2) claims of  
96 commercial creditors, or (3) claims of policyholders under policies that  
97 are not covered by guaranty associations.

98 (c) A plan may designate a separate class of claims consisting only  
99 of every unsecured claim that is less than or reduced to an amount that

100 the court approves as reasonable and necessary for administrative  
101 convenience.

102       Sec. 6. (NEW) (*Effective October 1, 2005*) (a) Notwithstanding any  
103 provision of law, a plan shall:

104       (1) Designate, subject to section 5 of this act, classes of claims and  
105 interests;

106       (2) Specify any class of claims or interests that is not impaired under  
107 the plan;

108       (3) Specify the treatment of any class of claims or interests that is  
109 impaired under the plan;

110       (4) Provide the same treatment for each claim or interest of a  
111 particular class, unless the holder of a particular claim or interest  
112 agrees to a less favorable treatment of such particular claim or interest;

113       (5) Provide adequate means for the plan's implementation such as:

114       (A) Retention by the applicant of all or any part of the property of  
115 the applicant;

116       (B) Transfer of all or any part of the property, or assumption of any  
117 liabilities, of the applicant to one or more entities, whether or not  
118 organized before or after the confirmation of such plan;

119       (C) Merger or consolidation of the applicant with one or more  
120 persons;

121       (D) Sale of all or any part of the property of the applicant either  
122 subject to or free of any lien, or the distribution of all or any part of the  
123 property of the applicant among those having an interest in such  
124 property of the applicant;

125       (E) Satisfaction of any lien;

126       (F) Cancellation or modification of any indenture or similar

127 instrument;

128 (G) Curing or waiving of any default;

129 (H) Extension of a maturity date or a change in an interest rate or  
130 other term of outstanding securities or policies;

131 (I) Amendment of the applicant's charter; or

132 (J) Issuance of securities of the applicant, or of any entity acting  
133 pursuant to subparagraph (B) or (C) of subdivision (5) of this  
134 subsection, for cash, for property, for existing securities, or in exchange  
135 for claims or interests, or for any other appropriate purpose;

136 (6) Provide for the inclusion in the charter of the applicant, or of any  
137 corporation acting pursuant to subparagraph (B) or (C) of subdivision  
138 (5) of this subsection, of a provision prohibiting the issuance of  
139 nonvoting equity securities, and providing, as to the several classes of  
140 securities possessing voting power, an appropriate distribution of such  
141 power among such classes, including, in the case of any class of equity  
142 securities having a preference over another class of equity securities  
143 with respect to dividends, adequate provisions for the election of  
144 directors representing such preferred class in the event of default in  
145 the payment of such dividends; and

146 (7) Contain only provisions that are consistent with the interests of  
147 creditors and equity security holders and with public policy with  
148 respect to the manner of selection of any officer, director or trustee  
149 under the plan and any successor to such officer, director or trustee.

150 (b) A plan may:

151 (1) Notwithstanding any other provision of this subsection, impair  
152 or leave unimpaired any class of interests or secured or unsecured  
153 claims;

154 (2) Subject to section 17 of this act, provide for the assumption,  
155 rejection or assignment of any executory contract or unexpired lease of

156 the applicant not previously rejected under section 17 of this act;

157 (3) Provide for:

158 (A) The settlement or adjustment of any claim or interest belonging  
159 to the applicant; or

160 (B) The retention and enforcement by the applicant or by a  
161 representative of the applicant appointed for such purpose of any such  
162 claim or interest;

163 (4) Provide for the sale of all or substantially all of the property of  
164 the applicant, and the distribution of the proceeds of such sale among  
165 holders of claims or interests;

166 (5) Provide for the transfer of claims to another insurer provided the  
167 transferee is unconditionally obligated to pay all or a percentage of  
168 each claim in accordance with the policies issued by the applicant.  
169 Claims may be adjusted and compromised by the transferee.  
170 Satisfaction of a claim by payment of a percentage of the amount of  
171 such claim pursuant to a plan shall have the same effect as if the claim  
172 had been paid in full. The transferee may adjust claims in the ordinary  
173 course of its business and shall have the right to dispute such claims in  
174 good faith, including the initiation or defense of legal actions with  
175 respect to such claims;

176 (6) Provide for the transfer of rights to payment under ceding  
177 reinsurance agreements to any person. Such transferee shall have the  
178 right to collect and enforce collection of such reinsurance for the  
179 amount payable to the ceding insurer without diminution because of  
180 insolvency or because the applicant has failed to pay all or a portion of  
181 the claim based on the amounts paid or allowed pursuant to section 18  
182 of this act. The transfer of such rights shall not give rise to any defense  
183 regarding the reinsurer's obligations under the reinsurance agreement  
184 regardless of whether such agreement or other applicable law  
185 prohibits the transfer of rights under the reinsurance agreement.  
186 Except as provided in this subsection, any transfer of rights pursuant

187 to this subdivision shall not impair any rights or defenses of the  
188 reinsurer which existed prior to the transfer or would have existed in  
189 the absence of the transfer. Except as otherwise provided in this  
190 subsection, any transfer of rights pursuant to this subdivision shall not  
191 relieve the transferee or the applicant from obligations owed to the  
192 reinsurer pursuant to the reinsurance or other agreement;

193 (7) Include any other appropriate provision not inconsistent with  
194 the applicable provisions of sections 1 to 20, inclusive, of this act.

195 Sec. 7. (NEW) (*Effective October 1, 2005*) A class of claims or interests  
196 is impaired under a plan unless, with respect to each claim or interest  
197 of such class, the plan:

198 (1) Leaves unaltered the legal, equitable and contractual rights to  
199 which such claim or interest entitles the holder of such claim or  
200 interest; or

201 (2) Notwithstanding any contractual provision or applicable law  
202 that entitles the holder of such claim or interest to demand or receive  
203 accelerated payment of such claim or interest after the occurrence of a  
204 default, the plan:

205 (A) Cures any such default that occurred before or after the  
206 commencement of the case under sections 1 to 20, inclusive, of this act,  
207 other than a default of a kind specified in subsection (c) of section 17 of  
208 this act;

209 (B) Reinstates the maturity of such claim or interest as such maturity  
210 existed before such default;

211 (C) Compensates the holder of such claim or interest for any  
212 damages incurred as a result of any reasonable reliance by such holder  
213 on such contractual provision or such applicable law; and

214 (D) Does not otherwise alter the legal, equitable or contractual rights  
215 to which such claim or interest entitles the holder of such claim or  
216 interest.

217       Sec. 8. (NEW) (*Effective October 1, 2005*) An acceptance or rejection of  
218 a plan may not be solicited after the filing of a petition from a holder of  
219 a claim or interest with respect to such claim or interest, unless, at the  
220 time of or before such solicitation, there is transmitted to such holder  
221 the plan or a summary of the plan and a written disclosure statement  
222 approved by the Insurance Commissioner as containing adequate  
223 information. As used in this section, "adequate information" means  
224 information of a kind, and in sufficient detail, as far as is reasonably  
225 practicable in light of the nature and history of the applicant and the  
226 condition of the applicant's books and records, that the commissioner  
227 determines would enable the holder of an impaired claim or interest to  
228 make an informed judgment about the plan.

229       Sec. 9. (NEW) (*Effective October 1, 2005*) (a) The holder of a claim or  
230 interest may accept or reject a plan. If the United States is a creditor or  
231 equity security holder, the Secretary of the Treasury may accept or  
232 reject the plan on behalf of the United States. Where the holder of a  
233 policy and the holder of a claim against the insured covered by the  
234 policy both seek to accept or reject a plan, the holder of the policy shall  
235 be entitled to accept or reject the plan unless the court, upon motion of  
236 the holder of the claim against the insured, determines that the holder  
237 of the policy is not able to pay the claim from its own assets or from  
238 other insurance.

239       (b) For the purposes of subsections (c) and (d) of this section, a  
240 holder of a claim or interest that has accepted or rejected the plan  
241 before the commencement of the case under sections 1 to 20, inclusive,  
242 of this act is deemed to have accepted or rejected such plan, as the case  
243 may be, if:

244       (1) The solicitation of such acceptance or rejection was in  
245 compliance with other applicable law, rule or regulation governing the  
246 adequacy of disclosure in connection with such solicitation; or

247       (2) If there is not any such law, rule or regulation, such acceptance  
248 or rejection was solicited after disclosure to such holder of adequate  
249 information, as defined in section 8 of this act.

250 (c) A class of claims has accepted a plan if such plan has been  
251 accepted by creditors, other than any entity designated under  
252 subsection (e) of this section, that hold at least two-thirds in amount  
253 and more than one-half in number of the claims of such class held by  
254 creditors, other than any entity designated under subsection (e) of this  
255 section, that have accepted or rejected such plan.

256 (d) A class of interests has accepted a plan if such plan has been  
257 accepted by holders of such interests, other than any entity designated  
258 under subsection (e) of this section, that hold at least two-thirds in  
259 amount of the allowed interests of such class held by holders of such  
260 interests, other than any entity designated under subsection (e) of this  
261 section, that have accepted or rejected such plan.

262 (e) On request of a party in interest, and after notice and a hearing,  
263 the court may designate any entity whose acceptance or rejection of  
264 such plan was not in good faith, or was not solicited or procured in  
265 good faith or in accordance with the provisions of sections 1 to 20,  
266 inclusive, of this act.

267 (f) Notwithstanding any other provision of this section, a class that  
268 is not impaired under a plan, and each holder of a claim or interest of  
269 such class, are conclusively presumed to have accepted the plan and  
270 solicitation of acceptances with respect to such class from the holders  
271 of claims or interests of such class is not required.

272 (g) Notwithstanding any other provision of this section, a class is  
273 deemed not to have accepted a plan if such plan provides that the  
274 claims or interests of such class do not entitle the holders of such  
275 claims or interests to receive or retain any property under the plan on  
276 account of such claims or interests.

277 (h) Unless otherwise ordered by the court for cause shown, the  
278 amount of any claim under a policy or reinsurance agreement shall be  
279 the greater of the applicant's reserves with respect to such policy or  
280 reinsurance agreement or the premium paid by the creditor to the  
281 applicant. Either the applicant or any creditor under a policy or

282 reinsurance agreement may request a determination of a claim for  
283 purposes of voting under this section. A determination of a creditor's  
284 claim under this section shall not be binding on the applicant or the  
285 creditor for any other purpose.

286       Sec. 10. (NEW) (*Effective October 1, 2005*) (a) The applicant may, with  
287 the consent of the Insurance Commissioner, modify a plan at any time  
288 before confirmation, but may not modify such plan so that such plan  
289 as modified fails to meet the requirements of sections 5 and 6 of this  
290 act. After the applicant of a plan files a modification of such plan with  
291 the court, the plan as modified becomes the plan.

292       (b) The applicant may, with the consent of the commissioner,  
293 modify a plan at any time after confirmation of such plan and before  
294 substantial consummation of such plan, but may not modify such plan  
295 so that such plan as modified fails to meet the requirements of sections  
296 5 and 6 of this act. Such plan as modified under this subsection  
297 becomes the plan only if circumstances warrant such modification and  
298 the court, after notice, confirms such plan as modified under section 11  
299 of this act.

300       (c) The proponent of a modification shall comply with section 9 of  
301 this act with respect to the plan as modified.

302       (d) Any holder of a claim or interest that has accepted or rejected a  
303 plan is deemed to have accepted or rejected, as the case may be, such  
304 plan as modified, unless, within the time fixed by the court, such  
305 holder changes such holder's previous acceptance or rejection.

306       Sec. 11. (NEW) (*Effective October 1, 2005*) After notice, the court shall  
307 hold a hearing on confirmation of a plan at which a party in interest  
308 may object to confirmation of a plan.

309       Sec. 12. (NEW) (*Effective October 1, 2005*) The court shall confirm a  
310 plan only if the following requirements are met:

311       (1) The plan complies with the applicable provisions of sections 1 to  
312 20, inclusive, of this act.

313 (2) The applicant complies with the applicable provisions of sections  
314 1 to 20, inclusive, of this act.

315 (3) The plan has been proposed in good faith and not by any means  
316 prohibited by law.

317 (4) Any payment made or to be made by the applicant or by a  
318 person issuing securities or acquiring property under the plan for  
319 services, transaction fees or costs and expenses in or related to the case,  
320 or related to the plan and incident to the case, has been approved by,  
321 or is subject to the approval of, the court as reasonable.

322 (5) The applicant has disclosed the identity and affiliations of any  
323 individual proposed to serve, after confirmation of the plan, as a  
324 director, officer, or voting trustee of the applicant, an affiliate of the  
325 applicant participating in a joint plan with the applicant or a successor  
326 to the applicant under the plan and:

327 (A) The appointment to, or continuance in, such office of such  
328 individual, is consistent with the interests of creditors and equity  
329 security holders and with public policy; and

330 (B) The proponent of the plan has disclosed the identity of any  
331 insider that will be employed or retained by the reorganized applicant,  
332 and the nature of any compensation for such insider.

333 (6) The commissioner has approved the plan.

334 (7) With respect to each impaired class of claims or interests, each  
335 holder of a claim or interest of such class:

336 (A) Has accepted the plan; or

337 (B) Will receive or retain under the plan on account of such claim or  
338 interest property of a value, as of the effective date of the plan, that is  
339 not less than the amount that such holder would so receive or retain if  
340 the applicant were liquidated under title 38a of the general statutes on  
341 such date.

342 (8) With respect to each class of claims or interests:

343 (A) Such class has accepted the plan; or

344 (B) Such class is not impaired under the plan.

345 (9) Except to the extent that the holder of a particular claim has  
346 agreed to a different treatment of such claim, the plan provides that all  
347 expenses of the administration of the case are paid in full in cash.

348 (10) If a class of claims is impaired under the plan, at least one class  
349 of claims that is impaired under the plan has accepted the plan,  
350 determined without including any acceptance of the plan by any  
351 insider.

352 (11) Confirmation of the plan is not likely to be followed by the  
353 liquidation, or the need for further financial reorganization, of the  
354 applicant or any successor to the applicant under the plan, unless such  
355 liquidation or reorganization is proposed in the plan.

356 (12) All fees payable under sections 1 to 20, inclusive, of this act, as  
357 determined by the Insurance Commissioner at the hearing on  
358 confirmation of the plan, have been paid or the plan provides for the  
359 payment of all such fees on the effective date of the plan.

360 (13) If the applicable requirements of this section, except those in  
361 subdivision (8) of this subsection, are met with respect to a plan, the  
362 court, on request of the proponent of the plan, shall confirm the plan if  
363 the plan does not discriminate unfairly, and is fair and equitable, with  
364 respect to each class of claims or interests that is impaired under, and  
365 has not accepted, the plan.

366 (14) For the purpose of this subsection, the condition that a plan be  
367 fair and equitable with respect to a class includes the following  
368 requirements: With respect to a class of secured claims, the plan  
369 provides:

370 (A) That the holders of such claims retain the liens securing such

371 claims, whether or not the property subject to such liens is retained by  
372 the applicant or transferred to another entity, to the extent of the  
373 allowed amount of such claims; and

374 (B) That each holder of a claim of such class receive on account of  
375 such claim deferred cash payments totaling at least the allowed  
376 amount of such claim, of a value, as of the effective date of the plan, of  
377 at least the value of such holder's interest in the applicant's interest in  
378 such property;

379 (C) For the sale of any property that is subject to the liens securing  
380 such claims, free and clear of such liens, with such liens to attach to the  
381 proceeds of such sale, and the treatment of such liens on proceeds  
382 under subparagraph (A) or (B) of this subdivision; or

383 (D) For the realization by such holders of the undisputed equivalent  
384 of such claims.

385 (15) With respect to a class of unsecured claims:

386 (A) The plan provides that each holder of a claim of such class  
387 receive or retain on account of such claim property of a value, as of the  
388 effective date of the plan, equal to the allowed amount of such claim;  
389 or

390 (B) The holder of any claim or interest that is junior to the claims of  
391 such class will not receive or retain under the plan on account of such  
392 junior claim or interest any property.

393 (16) With respect to a class of interests:

394 (A) The plan provides that each holder of an interest of such class  
395 receive or retain on account of such interest property of a value, as of  
396 the effective date of the plan, equal to the greatest of the allowed  
397 amount of any fixed liquidation preference to which such holder is  
398 entitled, any fixed redemption price to which such holder is entitled,  
399 or the value of such interest; or

400 (B) The holder of any interest that is junior to the interests of such  
401 class will not receive or retain under the plan on account of such junior  
402 interest any property.

403 Sec. 13. (NEW) (*Effective October 1, 2005*) (a) The provisions of a  
404 confirmed plan shall bind the applicant, any entity issuing securities  
405 under the plan, any entity acquiring property under the plan and any  
406 creditor or equity security holder whether or not the claim or interest  
407 of such creditor or equity security holder is impaired under the plan  
408 and whether or not such creditor or equity security holder or general  
409 partner has accepted the plan.

410 (b) Except as otherwise provided in the plan or the order confirming  
411 the plan, the confirmation of a plan vests all of the property of the  
412 applicant in the applicant.

413 (c) Except as otherwise provided in the plan or in the order  
414 confirming the plan, after confirmation of a plan, the property dealt  
415 with by the plan is free and clear of all claims and interests of creditors  
416 and equity security holders in the applicant.

417 (d) Except as otherwise provided in this subsection, in the plan or in  
418 the order confirming the plan, the confirmation of a plan:

419 (1) Discharges the applicant from any debt that arose before the date  
420 of such confirmation, and any debt under a policy entered into or  
421 issued before the date of such confirmation, whether or not (A) the  
422 holder of a claim asserts such claim under sections 1 to 20, inclusive, of  
423 this act; or (B) the holder of such claim has accepted the plan; and

424 (2) Terminates all rights and interests of equity security holders  
425 provided for by the plan.

426 Sec. 14. (NEW) (*Effective October 1, 2005*) (a) Notwithstanding any  
427 provision of law relating to financial condition, the applicant and any  
428 entity organized or to be organized for the purpose of carrying out the  
429 plan shall carry out the plan and shall comply with any orders of the  
430 court.

431 (b) The court may direct the applicant and any other necessary party  
432 to execute or deliver or to join in the execution or delivery of any  
433 instrument required to effect a transfer of property dealt with by a  
434 confirmed plan, and to perform any other act, including the  
435 satisfaction of any lien, that is necessary for the consummation of the  
436 plan.

437 Sec. 15. (NEW) (*Effective October 1, 2005*) If a plan requires  
438 presentment or surrender of a security or the performance of any other  
439 act as a condition to participation in distribution under the plan, such  
440 action shall be taken not later than five years after the date of the entry  
441 of the order of confirmation. Any entity that has not within such time  
442 presented or surrendered such entity's security or taken any such other  
443 action that the plan requires may not participate in distribution under  
444 the plan.

445 Sec. 16. (NEW) (*Effective October 1, 2005*) On request of a party in  
446 interest at any time not later than one hundred eighty days after the  
447 date of the entry of the order of confirmation, and after notice and a  
448 hearing, the court may revoke such order only if such order was  
449 procured by fraud. An order under this section revoking an order of  
450 confirmation shall:

451 (1) Contain such provisions as are necessary to protect any entity  
452 acquiring rights in good faith reliance on the order of confirmation;  
453 and

454 (2) Revoke the discharge of the applicant.

455 Sec. 17. (NEW) (*Effective October 1, 2005*) (a) Except as provided in  
456 subsection (d) of this section, the applicant, subject to the court's  
457 approval, may assume or reject any executory contract or unexpired  
458 lease of the applicant. Executory contracts shall include policies which  
459 are, at the time of assumption or rejection, within the period of  
460 coverage.

461 (b) If there has been a default in an executory contract or unexpired

462 lease of the applicant, the applicant may not assume such contract or  
463 lease unless, at the time of assumption of such contract or lease, the  
464 applicant:

465 (1) Cures, or provides adequate assurance that the applicant will  
466 promptly cure, such default;

467 (2) Compensates, or provides adequate assurance that the applicant  
468 will promptly compensate, a party other than the applicant to such  
469 contract or lease, for any actual pecuniary loss to such party resulting  
470 from such default; and

471 (3) Provides adequate assurance of future performance under such  
472 contract or lease.

473 (c) Subsection (b) of this section shall not apply to a default that is a  
474 breach of a provision relating to:

475 (1) The insolvency or financial condition of the applicant at any time  
476 before the closing of the case;

477 (2) The commencement of a case under sections 1 to 20, inclusive, of  
478 this act; or

479 (3) The satisfaction of any penalty rate or provision relating to a  
480 default arising from any failure of the applicant to perform  
481 nonmonetary obligations under the executory contract or unexpired  
482 lease.

483 (d) (1) The applicant may not assume or assign any executory  
484 contract or unexpired lease of the applicant, whether or not such  
485 contract or lease prohibits or restricts assignment of rights or  
486 delegation of duties, if:

487 (A) Applicable law excuses a party to such contract or lease, other  
488 than the applicant, from accepting performance from or rendering  
489 performance to an entity other than the applicant, whether or not such  
490 contract or lease prohibits or restricts assignment of rights or

491 delegation of duties; and

492 (B) Such party does not consent to such assumption or assignment;  
493 or

494 (C) Such contract is a contract to make a loan, or extend other debt  
495 financing or financial accommodations, to or for the benefit of the  
496 applicant, or to issue a security of the applicant.

497 (2) The limitations in subdivision (1) of this subsection shall not  
498 impair the applicant's right to assume executory contracts that are  
499 policies or reinsurance agreements.

500 (e) Except as provided in subsection (d) of this section,  
501 notwithstanding a provision in an executory contract or unexpired  
502 lease of the applicant, or in applicable law, that prohibits, restricts or  
503 conditions the assignment of such contract or lease, the applicant may  
504 assign such contract or lease, except that the applicant may not assign  
505 a reinsurance agreement under this section if such assignment would  
506 result in such reinsurance agreement covering policies that were  
507 issued by any person other than the applicant.

508 (f) The applicant may assign an executory contract or unexpired  
509 lease of the applicant only if:

510 (1) The applicant assumes such contract or lease in accordance with  
511 the provisions of this section; and

512 (2) Adequate assurance of future performance by the assignee of  
513 such contract or lease is provided, whether or not there has been a  
514 default in such contract or lease.

515 (g) Notwithstanding a provision in an executory contract or  
516 unexpired lease of the applicant, or in applicable law that terminates or  
517 modifies, or permits a party other than the applicant to terminate or  
518 modify, such contract or lease or a right or obligation under such  
519 contract or lease on account of an assignment of such contract or lease,  
520 such contract, lease, right or obligation may not be terminated or

521 modified under such provisions because of the assumption or  
522 assignment of such contract or lease by the trustee.

523 (h) The rejection of an executory contract or unexpired lease of the  
524 applicant constitutes a breach of such contract or lease.

525 (i) Assignment by the applicant to an entity of a contract of lease  
526 assumed under this section relieves the applicant from any liability for  
527 any breach of such contract or lease occurring after such assignment.

528 Sec. 18. (NEW) (*Effective October 1, 2005*) (a) After the filing of a  
529 petition under section 4 of this act and before confirmation of a plan,  
530 the applicant shall notify each creditor whose claim is impaired under  
531 the plan of the amount which the applicant proposes to use as a basis  
532 for making a distribution under the plan. Such amount may, if the plan  
533 so provides, include an estimate of amounts that the applicant may  
534 become obligated to pay to or on behalf of such creditor in the future.  
535 Any estimate shall not provide a basis for submitting a claim to a  
536 reinsurer under a reinsurance agreement.

537 (b) If a creditor disputes the amount proposed by the applicant in  
538 such notice, the creditor may request a hearing as to the valid amount  
539 of such claim and the best estimate of amounts that may be owed in  
540 the future. In any such hearing, the creditor shall have the burden of  
541 proof as to such amount.

542 Sec. 19. (NEW) (*Effective October 1, 2005*) (a) (1) Upon application to  
543 the department for redomestication for the purpose of filing a petition  
544 under sections 1 to 20, inclusive, of this act, the applicant shall pay a  
545 fee to the department in the amount of one hundred twenty-five  
546 thousand dollars or such lesser amount as the Insurance  
547 Commissioner deems adequate for appropriate and thorough review  
548 of the application.

549 (2) Subsequent to the filing of an application for redomestication,  
550 the applicant shall reimburse the Insurance Department for all legal,  
551 actuarial, accounting and other professional fees and all other fees and

552 expenses incurred by the department in connection with the  
553 application.

554 (b) (1) Every March fifteenth, the commissioner shall assess each  
555 applicant an amount equal to the greater of: (A) One thousand dollars,  
556 or (B) the sum of that applicant's proportionate share of estimated  
557 regulatory expenditure for that calendar year and that applicant's  
558 assessment deficit, less its assessment surplus.

559 (2) The calculation of the assessment surplus or deficit shall reflect  
560 the total cost of any examinations, which shall be borne by the  
561 companies so examined, and shall include the following expenses:

562 (A) One hundred fifty per cent of the total salaries and benefits paid  
563 to the examining personnel of the department engaged in those  
564 examinations, including, but not limited to, examiners, actuaries,  
565 attorneys, managers and paraprofessionals, less any salary  
566 reimbursements;

567 (B) All reasonable technology costs related to the examination  
568 process. Technology costs shall include the actual cost of software and  
569 hardware utilized in the examination process and the cost of training  
570 examination personnel in the proper use of the software or hardware;

571 (C) All necessary and reasonable education and training costs  
572 incurred by the state to maintain the proficiency and competence of the  
573 examining personnel.

574 (3) Each applicant shall pay the assessment to the department on or  
575 before the following fifteenth day of April.

576 (4) An insurer that redomiciles to this state after March fifteenth of  
577 any year and that qualifies as an applicant upon redomestication shall  
578 pay an assessment equal to the commissioner's estimate of  
579 redomestication expenditure attributable to that applicant.

580 (5) All revenues collected pursuant to this section shall be deposited  
581 in the Insurance Fund established in section 38a-52a of the general

582 statutes. Such assessment shall be in addition to any taxes and fees  
583 otherwise payable to the state.

584 (c) Except with respect to policy renewals required by law or  
585 contract, no applicant shall be subject to any assessment or assignment  
586 in connection with any residual market, fair plan or assigned-risk plan  
587 mechanisms in this state.

588 Sec. 20. (NEW) (*Effective October 1, 2005*) The Insurance  
589 Commissioner may adopt regulations, in accordance with chapter 54  
590 of the general statutes, to implement sections 1 to 19, inclusive, of this  
591 act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2005</i>	New section
Sec. 2	<i>October 1, 2005</i>	New section
Sec. 3	<i>October 1, 2005</i>	New section
Sec. 4	<i>October 1, 2005</i>	New section
Sec. 5	<i>October 1, 2005</i>	New section
Sec. 6	<i>October 1, 2005</i>	New section
Sec. 7	<i>October 1, 2005</i>	New section
Sec. 8	<i>October 1, 2005</i>	New section
Sec. 9	<i>October 1, 2005</i>	New section
Sec. 10	<i>October 1, 2005</i>	New section
Sec. 11	<i>October 1, 2005</i>	New section
Sec. 12	<i>October 1, 2005</i>	New section
Sec. 13	<i>October 1, 2005</i>	New section
Sec. 14	<i>October 1, 2005</i>	New section
Sec. 15	<i>October 1, 2005</i>	New section
Sec. 16	<i>October 1, 2005</i>	New section
Sec. 17	<i>October 1, 2005</i>	New section
Sec. 18	<i>October 1, 2005</i>	New section
Sec. 19	<i>October 1, 2005</i>	New section
Sec. 20	<i>October 1, 2005</i>	New section

**INS**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

## **OFA Fiscal Note**

### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 06 \$</b>	<b>FY 07 \$</b>
Insurance Dept.	IF - Cost/Revenue	Minimal	Minimal
Insurance Dept.	GF - Revenue Gain	Potential Minimal	Potential Minimal
Judicial Dept.	GF - None	None	None

Note: IF=Insurance Fund; GF=General Fund

### **Municipal Impact:** None

### **Explanation**

This bill permits an insurance company to restructure its financial obligations and organization, subject to specified requirements, including court permission. The bill also permits an insurer domiciled outside of Connecticut to apply to the insurance commissioner for “redomestication” to Connecticut in order to file a restructuring petition and plan.

### **Company Redomestication**

Under the bill, the applicant must pay the department a redomestication request fee of \$125,000, or any lesser amount that the insurance commissioner deems adequate for an appropriate and thorough application review. To the extent that companies in another jurisdiction apply for redomestication, this would result in a revenue gain.

The bill also requires the applicant to reimburse the department for various fees and expenses incurred in connection with the application. Under the bill, the Insurance Commissioner, every March 15, is to assess each applicant the greater of (1) \$1,000 or (2) the sum of the applicant's proportionate share of estimated regulatory expenditure

for that calendar year and that applicant's assessment deficit, less its assessment surplus. To the extent that the Department of Insurance incurs costs related to the bill, the industry would reimburse the department.

### **Restructuring Plan Review**

Requiring the Superior Court in the Judicial District of New Britain to review any insurance company's restructuring plan as provided for in the bill would result in a workload increase to the Judicial Department. It is anticipated that said increase could be accommodated without requiring additional appropriations.

The bill makes other various changes, none of which have a fiscal impact.

**OLR Bill Analysis**

sSB 1301

***AN ACT CONCERNING THE VOLUNTARY RESTRUCTURING OF INSURERS*****SUMMARY:**

This bill permits an insurance company to restructure its financial obligations and organization, subject to specified requirements, including court permission. With the insurance commissioner's approval, an insurer can petition the New Britain Superior Court for permission to restructure. By law, an insurer that is insolvent or impaired is subject to receivership, including rehabilitation and liquidation. The restructuring permitted under this bill would permit certain companies (including financially distressed companies) to wind up or dispose of their business without the need for receivership.

The bill authorizes the court to review an insurer's restructuring plan and, if certain conditions specified under the bill are met, requires the court to approve it. The plan must identify classes of creditors and equity security holders who have a right to vote to accept or reject the plan if it impairs their rights. A plan can provide for a merger or consolidation with another entity, a sale of property, or a transfer of policies, among other options. The bill also permits an insurer to modify a plan under certain circumstances.

The bill also permits an insurer domiciled outside of Connecticut to apply to the insurance commissioner for "redomestication" to Connecticut in order to file a restructuring petition and plan. It establishes application fees and, for companies that redomesticate, annual assessments. Fees and assessments are deposited to the Insurance Fund.

The bill authorizes the insurance commissioner to adopt regulations.

EFFECTIVE DATE: October 1, 2005

**APPLICANT (§ 1)**

The bill authorizes “applicants” to file for restructuring. Under the bill, an “applicant” is an insurance company that (1) (a) is domiciled in Connecticut or (b) becomes domiciled in Connecticut with the intention of filing a petition to restructure under the bill and (2) any person or entity that is part of an insurance holding company system with the insurer. (An insurer’s domicile refers to the state, territory, or country under whose laws it is organized and operates.)

## **COURT JURISDICTION AND VENUE (§ 2)**

The bill requires that petitions be filed in New Britain Superior Court. The court is granted the same jurisdiction in such cases that is currently enjoyed by Hartford Superior Court under Connecticut’s Insurers Rehabilitation and Liquidation Act (see BACKGROUND).

The court is authorized to issue any order, process, or judgment that is necessary or appropriate to carry out the bill’s provisions. The court can, on its own motion, take any action or make any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

## **NOTICE OF RESTRUCTURING (§ 3)**

The applicant must provide any notice required under the bill in accordance with any (1) regulations the insurance commissioner adopts or (2) court order. The bill specifies that if notice is given as required, any orders under the bill (apparently referring to court orders made relating to an applicant’s restructuring plan) are conclusive with respect to all persons, regardless of whether they received notice.

## **COURT PETITION (§ 4)**

The bill permits, with the insurance commissioner’s approval, an applicant to petition the court and requires him to file a plan with the petition (see COMMENT).

## **CLAIM CLASSIFICATION (§ 5)**

The bill sets out rules for determining classes of claims and interests under a plan. In order to be in a particular class, claims and interests must be substantially similar. A class cannot include claims that would be in different classes under the Insurers Rehabilitation and

Liquidation Act. The bill allows a class to consist solely of claims (1) under reinsurance agreements, (2) of commercial creditors, (3) of policyholders under policies not covered by guaranty associations (insolvency funds), and (4) unsecured for less than, or reduced to, an amount that the court approves as reasonable and necessary for administrative convenience.

The bill defines a "claim" as a right to (1) payment, including payment for incurred but unreported losses, or (2) an equitable remedy for a performance breach, if the breach gives rise to a right to payment. It defines an "interest" as an equity security (a stock or other document signifying an ownership interest) of the insurer.

## **PLAN ELEMENTS (§ 6)**

### ***Required Elements***

The bill requires a restructuring plan to:

1. designate classes of claims and interests;
2. specify classes of claims or interests left unimpaired;
3. specify how classes of impaired claims or interests will be treated;
4. treat each claim or interest within a class the same, unless a claim or interest holder agrees to a less favorable treatment;
5. provide adequate means for the plan's implementation;
6. require the applicant's (or a plan-created corporation's) charter to (a) prohibit the issuance of nonvoting equity securities and (b) provide an appropriate distribution of voting power, including adequate provisions for electing directors representing any preferred class in the event of default in the payment of dividends; and
7. contain provisions consistent with creditors' and equity security holders' interests and public policy concerning the way officers, directors, or trustees are selected.

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**Adequate Means of Plan Implementation**

The bill specifies that a plan can be implemented by:

1. the applicant's retention of his property;
2. transferring applicant property to, or assumption of his liabilities by, one or more entities, whether organized before or after the court confirms the plan;
3. merging or consolidating the applicant with one or more persons or entities;
4. selling the applicant's property, whether subject to a lien or not, or distributing his property among those with an interest in it;
5. satisfying a lien;
6. canceling or modifying an indenture (a written agreement between a bond issuer and a bond holder) or similar document;
7. curing or waiving a default;
8. extending a maturity date or changing an interest rate or other term of outstanding securities or insurance policies;
9. amending the applicant's charter; or
10. issuing securities of the applicant or any entity (a) involved in a merger or consolidation with the applicant, (b) accepting any of the applicant's property, or (c) assuming any of its liabilities.

**Other Elements Permitted**

The bill permits a plan to include any other appropriate provision not inconsistent with the bill, including one that:

1. impairs or leaves unimpaired any class of interests or secured or unsecured claims;
2. provides for the assumption, rejection, or assignment of any executory contract (a contract under which something remains

to be done by one or more of the applicants) or unexpired lease of the applicant;

3. provides for (a) the settlement or adjustment of the applicant's claim or interest against third parties or (b) the retention and enforcement of any claim or interest by the applicant or his appointed representative;
4. provides for the sale of all, or substantially all, of the applicant's property and the distribution of sale proceeds among claim or interest holders;
5. provides for the transfer to any person or entity of the right to payment under reinsurance agreements; and
6. provides for the transfer of claims to another insurer if the transferee must pay all or a percentage of each claim in accordance with the policies issued by the applicant. (The transferee can adjust and compromise claims. Satisfying a claim by paying a percentage of the claim amount according to a plan has the same effect as if the claim had been paid in full. The transferee may adjust claims in the ordinary course of its business and has the right to dispute such claims in good faith, including the initiation or defense of legal actions regarding such claims.)

### ***Reinsurance Agreements***

Under the bill, an applicant can transfer its rights and interests under reinsurance agreements. Transferees (those to whom rights to payment under reinsurance agreements are transferred) have the right to collect and enforce collection of reinsurance for the amount payable to the ceding insurer (the original insurer that purchases reinsurance) without diminution because of (a) insolvency or (b) the applicant's payment of only a percentage of a reinsured claim based on a confirmed plan's provisions.

The transfer of these rights do not create a defense regarding the reinsurer's obligations under the reinsurance agreement, regardless of whether another law or the agreement prohibits the transfer of rights under the agreement. A transfer of these rights does not impair any reinsurer rights or defenses that existed before the transfer or would

have existed in the absence of the transfer. Any transfer of rights under the bill does not relieve the transferee or the applicant from obligations owed to the reinsurer under the reinsurance or other agreement.

### **IMPAIRED CLAIM (§ 7)**

Under the bill, a class of claims or interests is not impaired if the plan does not change the legal, equitable, and contractual rights to which each claim or interest entitles its holder.

Under the bill, a class of claims or interests is also not impaired if, regardless of any law or contractual provision giving a right to accelerated payment after a default, the plan:

1. cures the default (other than defaults that relate to (a) the applicant's insolvency or financial condition, (b) starting a case under this bill, or (c) satisfying any penalty relating to a nonmonetary performance default under an executory contract or unexpired lease);
2. reinstates the maturity of the claim or interest as it existed before the default;
3. compensates the claim or interest holder for any damages incurred because he reasonably relied on the law or contractual provision; and
4. does not otherwise alter the legal, equitable, or contractual rights to which each claim or interest entitles its holder.

### **SOLICITATION OF PLAN ACCEPTANCE OR REJECTION (§ 8)**

The bill prohibits soliciting a claim or interest holder to accept or reject a plan after the petition has been filed unless the solicitor first or simultaneously provides the holder a plan summary and written disclosure statement approved by the insurance commissioner as containing adequate information.

Under the bill, "adequate information" means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the applicant's nature and history and the condition of its books and records, that the commissioner determines permits the claim or interest

holder to make an informed judgment about the plan.

### **ACCEPTANCE OR REJECTION OF PLAN (§ 9)**

The bill authorizes a claim or interest holder to accept or reject a plan. If the United States is a creditor or equity security holder, the secretary of the treasury can accept or reject the plan for the United States.

Where a policyholder and a claim holder covered by the policy both seek to accept or reject a plan, the policyholder can accept or reject it unless the court, upon the claim holder's motion, determines that the policyholder cannot pay the claim from its own assets or other insurance.

A claim or interest holder that has accepted or rejected the plan before the case was commenced under this bill is deemed to have accepted or rejected it, as the case may be, if:

1. the acceptance or rejection solicitation was in compliance with other legal disclosure adequacy requirements; or
2. if there is not such a requirement, the acceptance or rejection was solicited after disclosure to the holder of adequate information, as defined in this bill.

Under the bill, a class of claims accepts a plan if creditors who hold at least two-thirds in amount and more than one-half in number of the claims of the class accept it. A class of interests accepts a plan if interest holders holding at least two-thirds of the allowed interests of the class accept it.

Under the bill, a party with an interest in the case can ask the court to determine if an entity acted in bad faith when it voted to accept or reject the plan. A party that the court determines acted in bad faith cannot be counted when determining if the required vote is met.

The bill establishes a conclusive presumption that an unimpaired class of claims or interests, and each holder in the class, has accepted the plan. Thus, solicitation of acceptance is not required.

A class is deemed not to have accepted a plan if it provides that its claims or interests do not entitle the claim or interest holders to receive

or retain any property under the plan of the claims or interests.

Under the bill, unless a court otherwise orders it, the amount of any claim under an insurance policy or reinsurance agreement is the greater of (1) the applicant's reserves with respect to the policy or agreement or (2) the premium paid by the creditor to the applicant. Either the applicant or a creditor under a policy or agreement can ask for a determination of the claim amount for purposes of voting to accept or reject a plan. A determination of a creditor's claim is not binding on the applicant or the creditor for any other purpose.

### **PLAN MODIFICATION (§ 10)**

The bill authorizes an applicant, with the insurance commissioner's approval, to modify a plan at any time before the court confirms it, as long as it continues to meet the bill's requirements. After the applicant files a plan modification with the court, it becomes the plan.

The applicant can also, with the commissioner's approval, modify a plan at any time after the court confirms the plan and before substantial performance of it, as long as it continues to meet the bill's requirements. The modified plan becomes the plan only if circumstances warrant it and the court, after notice, confirms it.

Any claim or interest holder that has accepted or rejected a plan is deemed to have accepted or rejected it as modified, unless, within a time set by the court, he changes his previous acceptance or rejection.

### **PLAN CONFIRMATION HEARING (§ 11)**

After notice, the court must hold a hearing on the plan confirmation, at which a party in interest can object to the confirmation.

### **REQUIREMENTS FOR CONFIRMING A PLAN (§ 12)**

#### ***Required Elements***

The bill allows a court to confirm a plan only if the plan and the applicant comply with the bill, and:

1. the plan is proposed in good faith and not by any illegal means;
2. the court finds reasonable any payment made, or to be made, by

- the applicant or a person issuing securities or acquiring property under the plan;
3. the applicant has disclosed the identity and affiliations of anyone proposed to serve as a director, officer, or voting trustee of it, an affiliate participating in a joint plan with it, or a successor under the plan and (a) the appointment to, or continuance in, the office, is consistent with the creditors' and equity security holders' interests and public policy, and (b) the plan's proponent has disclosed the identity of any insider to be employed or retained by the reorganized applicant, and the nature of his compensation;
  4. the commissioner approved the plan;
  5. with respect to each impaired class of claims or interests, each claim or interest holder (a) accepted the plan, or (b) receives or retains under the plan property valued at not less than he would receive or retain if the applicant were liquidated;
  6. each class of claims or interests has accepted the plan or is unimpaired under the plan;
  7. except to the extent that a claim holder has agreed to a different treatment of his claim, the plan provides that all administration expenses are paid in full in cash;
  8. if a class of claims is impaired under the plan, at least one class of claims that is impaired has accepted it, without considering any plan acceptance by an insider;
  9. plan confirmation is not likely to be followed by liquidation, or the need for further financial reorganization, of the applicant or any successor, unless such liquidation or reorganization is proposed in the plan; and
  10. all fees payable under the bill as determined by the insurance commissioner at the confirmation hearing have been paid, or the plan provides for payment by its effective date.

If the applicable requirements of this section, except those in number 8 above, are met with respect to a plan, the court, on the

plan proponent's request, must confirm the plan if it does not discriminate unfairly and is fair and equitable with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

### ***Fair and Equitable Condition***

*Secured Claims.* The "fair and equitable" condition includes that, with respect to a class of secured claims, the plan must provide:

1. that the claim holders retain the liens securing them, whether or not the applicant retains the property subject to the liens or it is transferred to another entity, to the extent of the allowed amount of such claims; and
2. that each claim holder receive deferred cash payments totaling at least the allowed amount of the claims, of a value on the plan's effective date, of at least the value of his interest in the applicant's interest in the property;
3. for the sale of any property subject to the liens securing the claims, free and clear of those liens, with the liens attaching to the sale proceeds; or
4. for the realization by the holders of the undisputed equivalent of the claims.

*Unsecured Claims.* The "fair and equitable" condition includes that, with respect to a class of unsecured claims:

1. the plan must provide that each claim holder receive property of a value equal to the allowed amount of the claim; or
2. the holder of any claim or interest that is junior to the claims of the class cannot receive or retain any property under the plan.

*Class of Interests.* The "fair and equitable" condition includes that, with respect to a class of interests:

1. the plan must provide that each holder of an interest of the class receive or retain property of a value, on the plan's effective date, equal to the greatest of the allowed amount of any fixed

liquidation preference to which the holder is entitled, any fixed redemption price to which the holder is entitled, or the value of the interest; or

2. the holder of any interest that is junior to the interests of the class will not receive or retain any property under the plan.

### **EFFECTS OF PLAN CONFIRMATION (§ 13)**

A confirmed plan binds (1) the applicant, (2) any entity issuing securities under the plan, (3) any entity acquiring property under the plan, and (4) any creditor or equity security holder whether or not his claim or interest is impaired under the plan and whether or not the creditor or equity security holder or general partner has accepted the plan.

A confirmed plan (1) vests all of the applicant's property in the applicant and (2) makes the property dealt with by the plan free and clear of all creditors' and equity security holders' claims and interests in the applicant.

In addition and unless the plan or the confirmation order specifies differently, plan confirmation:

1. discharges any of the applicant's debt that was incurred before the confirmation and any debt under a policy entered into or issued before confirmation, whether or not the claim holder (a) asserts the claim under this bill or (b) accepted the plan; and
2. terminates all plan-provided rights and interests of equity security holders.

### **PLAN PERFORMANCE (§ 14)**

The bill requires the applicant and any entity organized under the plan to carry out the plan and comply with any court orders. The court is authorized to direct the applicant and any other party to (1) execute or deliver any instrument needed to transfer property under the plan and (2) perform any other action needed to carry out the plan.

### **BAR TO PLAN PARTICIPATION (§ 15)**

Any entity that does not surrender securities or take other action as required under the plan within five years of plan confirmation is prohibited from receiving a distribution under the plan.

### **PLAN CONFIRMATION REVOCATION (§ 16)**

The bill authorizes the court, at a party in interest's request within 180 days after confirmation and after notice and a hearing, to revoke a confirmation order if it was fraudulently obtained. A revocation order must (1) include provisions needed to protect any entity acquiring rights in good faith reliance on the confirmation and (2) revoke the debt discharge of the applicant.

### **EXECUTORY CONTRACTS (§ 17)**

An applicant must obtain court approval to assume or reject an executory contract or unexpired lease. Executory contracts include insurance or reinsurance policies in effect at the time.

If the executory contract or unexpired lease is in default, the applicant is prohibited from assuming it unless he (1) cures the default, (2) compensates anyone for pecuniary losses caused by the default, and (3) gives adequate assurance of future compliance with the contract or lease. Regardless, the applicant cannot assume a contract or lease if the default relates to the (1) the applicant's insolvency or financial condition, (2) start of a case under this bill, or (3) satisfaction of any penalty relating to a non-monetary performance default.

Under the bill, an applicant cannot assume or assign a contract or lease if:

1. applicable law excuses a non-applicant party to it from accepting performance from, or rendering performance to, a non-applicant entity, whether or not the contract or lease limits assignment of rights or delegation of duties, and
2. (a) the party does not agree to the assumption or assignment or (b) the contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the applicant, or to issue a security of the applicant.

An applicant can assume insurance policies and reinsurance

agreements. But an applicant cannot assign a reinsurance agreement if it causes the reinsurance agreement to cover policies that were issued by anyone other than the applicant.

An applicant can assign a contract or lease only if (1) he assumes it in accordance with this bill and (2) the assignee gives adequate assurance of future performance under the contract or lease.

The contract or lease, or any associated right or obligation, cannot be terminated or modified because of its assumption or assignment.

Rejecting a contract or lease constitutes a breach of it. The applicant is not liable for any contract or lease breach made after his assignment of the contract or lease.

### **CREDITOR NOTIFICATION (§ 18)**

After the filing of a court petition and before the court confirms a plan, the applicant must notify each creditor who holds an impaired claim of the amount he proposes to use as a basis for making a distribution under the plan. The amount can include an estimate of how much the applicant will become obligated to pay to, or on behalf of, the creditor in the future. An estimate cannot be used as a basis for submitting a reinsurance claim.

If a creditor disputes the applicant's proposed amount, he can request a hearing to determine a valid amount and an estimate of amounts owed in the future. The creditor has the burden of proof in the hearing.

### **COMPANY REDOMESTICATION (§ 19)**

The bill permits companies domiciled in another jurisdiction to apply to the insurance commissioner for redomestication to Connecticut in order to file a petition to restructure under the bill.

### ***Application and Fees***

The applicant must pay the department a redomestication request fee of \$125,000, or any lesser amount that the insurance commissioner deems adequate for an appropriate and thorough application review.

The bill also requires the applicant to reimburse the department for all

(1) legal, actuarial, and accounting fees; (2) other professional fees; and (3) other fees and expenses the department incurs in connection with the application.

### ***Annual Assessment***

The bill requires the commissioner, every March 15, to assess each applicant the greater of (1) \$1,000 or (2) the sum of the applicant's proportionate share of estimated regulatory expenditure for that calendar year and that applicant's assessment deficit, less its assessment surplus (see COMMENT).

The calculation of the assessment surplus or deficit must reflect the total cost of any examinations, which are paid by the examined companies, and include the following expenses:

1. 150% of the total salaries and benefits paid to the department's personnel involved in the examinations, including examiners, actuaries, attorneys, managers, and paraprofessionals, minus any salary reimbursements;
2. all reasonable examination-related technology costs, including the actual cost of examination software and hardware and the cost of training examination personnel to use it; and
3. all necessary and reasonable education and training costs incurred by the state to maintain the examining personnel's proficiency and competence.

Each applicant must pay the assessment to the department on or before the next April 15.

An insurer that redomesticates after March 15 of any year and that qualifies as an applicant upon its redomestication must pay an assessment equal to the commissioner's estimate of redomestication expenditure attributable to that applicant.

All assessments collected are deposited in the Insurance Fund and are in addition to any taxes and fees otherwise payable to the state.

Except with respect to policy renewals required by law or contract, no applicant is subject to any assessment or assignment in connection

with any residual market, fair plan, or assigned-risk plan mechanisms in Connecticut.

## **REGULATIONS (§ 20)**

The bill authorizes the insurance commissioner to adopt regulations to implement the bill.

## **BACKGROUND**

### ***Insurers Rehabilitation and Liquidation Act***

Connecticut's Insurers Rehabilitation and Liquidation Act protects the interests of policyholders, claimants, creditors, and the general public in the event of an insurance company or HMO insolvency. It gives the insurance commissioner broad authority to monitor the financial condition of insurers and place troubled companies under administrative supervision or, with court approval, receivership (rehabilitation or liquidation) (CGS § 38a-903, *et seq.*).

## **COMMENT**

### ***Section 4: Petition and Plan***

Although Section 4 of the bill allows applicants to petition the court and file a plan, the bill does not clearly indicate for what purpose. Apparently, the applicant is petitioning to voluntarily restructure its financial obligations and organization as an alternative to receivership or to prevent being in the position where receivership might become necessary.

### ***Section 19: Assessment***

Section 19 relates generally to companies redomesticating. It also requires the commissioner to annually assess applicants. Because of the use of "applicant," it is unclear whether the assessment applies to redomesticated companies only or all companies petitioning to restructure.

## **COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable Substitute  
Yea 16 Nay 0