

(B) FINANCIAL CONDITION.

IN DETERMINING WHETHER THE FINANCIAL CONDITION OF AN AUTHORIZED INSURER WOULD CAUSE ITS CONTINUED OPERATION IN THE STATE TO BE HAZARDOUS TO POLICYHOLDERS OR CREDITORS OF THE AUTHORIZED INSURER OR THE GENERAL PUBLIC, THE COMMISSIONER MAY:

(1) DISREGARD A CREDIT OR AMOUNT RECEIVABLE RESULTING FROM TRANSACTIONS WITH A REINSURER THAT IS INSOLVENT, IMPAIRED, OR OTHERWISE SUBJECT TO A DELINQUENCY PROCEEDING;

(2) MAKE APPROPRIATE ADJUSTMENTS TO ASSET VALUES ATTRIBUTABLE TO INVESTMENTS IN OR TRANSACTIONS WITH PARENTS, SUBSIDIARIES, OR AFFILIATES OF THE AUTHORIZED INSURER;

(3) REFUSE TO RECOGNIZE THE STATED VALUE OF ACCOUNTS RECEIVABLE IF THE ABILITY TO COLLECT THE RECEIVABLES IS HIGHLY SPECULATIVE BECAUSE OF THE AGE OF THE ACCOUNT OR FINANCIAL CONDITION OF THE DEBTOR; OR

(4) INCREASE THE LIABILITY OF THE AUTHORIZED INSURER IN AN AMOUNT EQUAL TO ANY CONTINGENT LIABILITY, PLEDGE, OR GUARANTEE NOT OTHERWISE INCLUDED IN THE STATEMENT OF LIABILITY IF THERE IS A SUBSTANTIAL RISK THAT THE AUTHORIZED INSURER WILL HAVE TO DISCHARGE THE LIABILITY, PLEDGE, OR GUARANTEE WITHIN THE NEXT 12-MONTH PERIOD.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 48A, § 131B.

The Insurance Article Review Committee notes, for consideration by the General Assembly, that subsection (a)(3) of this section is revised to clarify that the Commissioner may consider four ratios and that any one of those four ratios could be considered to lead to an impairment of capital and surplus. Those four ratios are: 1) commission expense to annual premium and net investment income; 2) general insurance expense to annual premium and net investment income; 3) benefits under policies to annual premium and net investment income; and 4) reserve increases to annual premium and net investment income. The absence of a comma in one instance and the placement of an extraneous comma in another instance in former Art. 48A, § 131B(a)(3) created an ambiguity as to calculation of the ratios and consideration of an impairment.

The Committee further notes, for consideration by the General Assembly, that references in subsection (a)(9) and (11) to a "controlling person of the authorized insurer" and a "person that has direct or indirect control over operation", respectively, are vague because there is no definitive determination of the identity of those persons.

Subsection (a)(12) of this section is revised to allow the Commissioner, in determining whether a hazardous condition exists, to consider a response to an inquiry that is either "false or misleading" rather than both "false and