

**SUBCHAPTER A. HAZARDOUS CONDITIONS AND
REMEDY OF HAZARDOUS CONDITONS
28 TAC §8.3**

1. INTRODUCTION. The Texas Department of Insurance proposes amendments to the title of 28 TEX. ADMIN. CODE Chapter 8 and amendments to §8.3, concerning hazardous conditions for insurers.

The proposed amendment to the title of chapter 8 is the result of a reorganization of the department that resulted in the Early Warning System being eliminated as a separate area of the Financial Regulation Division and incorporated into Financial Analysis. The amendments to §8.3 are necessary to update hazardous conditions and to make §8.3 consistent with the National Association of Insurance Commissioners Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition. The hazardous conditions enumerated in §8.3(a) do not conclusively indicate that an insurer is in hazardous condition. One or more of the conditions set forth in §8.3(a) can exist in an insurer which is in satisfactory condition. However, one or more of these conditions has often been found in an insurer which is unable to perform its obligations to its policyholders, claimants, creditors, and shareholders or has required the commissioner of insurance to initiate regulatory action to protect policyholders, claimants, creditors, and shareholders.

The proposed amendments include deleting "Early Warning System For" from the title of chapter 8, adding "and Remedy of Hazardous Conditions" to the title of §8.3, adding subsection (a) to the enumerated items in §8.3, adding to or clarifying the hazardous conditions in subsection (a), and adding new subsections (b) and (c). More

specifically, §8.3(1) is redesignated as §8.3(a)(1). Section 8.3(2) is redesignated as §8.3(a)(2) and amended to add “releases false or misleading financial information to lending institutions or the general public; or makes a false or misleading entry or omits an entry of material amount in the insurer’s books;” as a hazardous condition. Section 8.3(3) is redesignated as §8.3(a)(4) and “grant authorization to” and “to grant such authorization” have been deleted. New §8.3(a)(3) adds “an insurer that fails to respond to inquiries related to the condition of the insurer or furnishes false and misleading information concerning an inquiry;” as a hazardous condition. Section 8.3(4) is redesignated as §8.3(a)(5) and amended to replace “%” with “percent” and replace “of” with “or” to correct a typographical error. Section 8.3(5) is redesignated as 8.3(a)(6) and amended to replace “%” with “percent”. Section 8.3(6) is redesignated as §8.3(a)(7) and amended to delete “in the Insurance Regulatory Information System” and to add “or the insurer’s financial condition is otherwise hazardous as identified in the financial analysis tools and reports of the National Association of Insurance Commissioners;” to the list of hazardous conditions. Section 8.3(7) is redesignated as §8.3(a)(9) and amended to replace “%” with “percent”. Section 8.3(8) is redesignated as §8.3(a)(12). New §8.3(a)(8) is added, which provides, “adverse findings are reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports, or summaries of an insurer;” to the list of hazardous conditions. Section 8.3(9) is redesignated as §8.3(a)(15) and amended to replace “%” with “percent”. Section 8.3(10) is redesignated as §8.3(a)(19), amended to add “without the commissioner’s prior written approval”, and amended to replace “%” with “percent”.

New §8.3(a)(10) adds “an insurer’s operating loss in the last 12 month period or any shorter period of time, including net capital gain or loss, change in non-admitted assets and cash dividends paid to shareholders, is greater than 50 percent of the insurer’s remaining surplus in excess of the minimum required;” to the list of hazardous conditions. Section 8.3(11) is redesignated as §8.3(a)(20), amended to replace “%” with “percent”, amended to make “insurers” possessive, and amended to add “or a reinsurer does not have the ability to perform and the insurer’s reinsurance program does not provide sufficient protection for the insurer’s remaining surplus, after taking into account the insurer’s cash flow, the classes of business written, and the financial condition of the reinsurer; or the reinsurer is insolvent or threatened with insolvency or delinquent in payment of its monetary or other obligations and which, in the opinion of the commissioner, may affect the solvency of the insurer” as a hazardous condition. New §8.3(a)(11) is added to the list of hazardous conditions and provides that “an insurer’s operating loss in the last 12 month period or any shorter period of time, excluding net capital gains, is greater than 20 percent of the insurer’s remaining surplus in excess of the minimum required;” as a hazardous condition. Section 8.3(12) is deleted because it is redundant with redesignated and amended §8.3(a)(19). Section 8.3(13) is redesignated as §8.3(a)(22), amended to delete “an affiliate or subsidiary of an”, amended to add “any entity within the”, amended to make “insurer” possessive, amended to add “insurance holding company system”, and amended to add “is solvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations and which, in the opinion of the commissioner, may affect the solvency of the insurer”

as a hazardous condition. New §8.3(a)(13) provides that “an insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;” as a hazardous condition. Section 8.3(14) is redesignated as §8.3(a)(24) and amended to replace “%” with “percent” throughout the section. New §8.3(a)(14) adds “an insurer has experienced, or will experience in the foreseeable future, cash flow or liquidity problems;” as a hazardous condition. Section 8.3(15) is redesignated as §8.3(a)(25) and amended to replace “%” with “percent”. Section 8.3(16) is redesignated as §8.3(a)(26). New §8.3(a)(16) adds “contingent liabilities, pledges, or guaranties which, either individually or collectively, involve a total amount which, in the opinion of the commissioner, may affect the solvency of the insurer;” as a hazardous condition. Section 8.3(17) is redesignated as §8.3(a)(27). Section 8.3(17)(A) is redesignated as §8.3(a)(27)(A) and “Chapter 803” has been added and “Article 1.28” has been deleted to correct the citation due to recodification. Section 8.3(17)(B) is redesignated as §8.3(a)(27)(B) and §8.3(17)(C) is redesignated as §8.3(a)(27)(C). New §8.3(a)(17) adds “an insurer has not made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to the reserves and related actuarial items, including but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts;” as a hazardous condition. Section 8.3(18) is redesignated as §8.3(a)(28), amended to replace “%” with “percent”, and amended to delete “an”. New

§8.3(a)(18) adds “management establishes reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, sound actuarial principles and standards of practice, or persistently engages in material under-reserving that results in adverse development;” as a hazardous condition. Section 8.3(19) is redesignated as §8.3(a)(29) and amended to replace “%” with “percent”. Section 8.3(20) is redesignated as §8.3(a)(30), amended to add “an insurer has transactions among affiliates, subsidiaries, or controlling persons for which the insurer receives assets or capital gains that do not provide sufficient value, liquidity, or diversity to assure the insurer’s ability to meet its outstanding obligations as they mature or”, amended to delete “an agreement exists, written” and “otherwise”, and amended to make “requires” singular. Section 8.3(21) is redesignated as §8.3(a)(31) and amended to add “including officers, directors, or any other person who directly or indirectly controls the operation of an insurer” and “fitness” and “reputation”. New §8.3(a)(21) adds “in the opinion of the commissioner, the age and collectability of the insurer’s receivables may affect the solvency of the insurer;” as a hazardous condition. Section 8.3(22) is redesignated as §8.3(a)(32) and amended to add “including but not limited to, failing to meet financial and holding company filing requirements, in the absence of a reason satisfactory to the commissioner”. Section 8.3(23) is redesignated as §8.3(a)(33), amended to add “or an affiliate”, amended to delete “with”, amended to and “entered into between the insurer”, and amended to delete “an”. New §8.3(a)(23) has been added and provides “an entity conducting business with an insurer is delinquent in the transmitting to, or payment of, net premiums to the insurer;” as a

hazardous condition. Section 8.3(24) is redesignated as §8.3(a)(34) and amended to replace “%” with “percent”. Section 8.3(25) is redesignated to §8.3(a)(35) and amended to replace “%” with “percent”. Section 8.3(26) is redesignated as §8.3(a)(36). Section 8.3(27) is redesignated as §8.3(a)(37). Section 8.3(28) is redesignated to §8.3(a)(38), “Chapters 422 and 423” are added, and “Article 21.39-A or Article 21.39-B” are deleted to correct the citation due to recodification. Section 8.3(29) is redesignated as §8.3(a)(39). Section 8.3(30) is redesignated as §8.3(a)(40).

New §8.3(b) has been added and provides that, for purposes of making a determination of an insurer’s financial condition under this section, the commissioner may take action, including: (1) disregard any 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 including disallowance to asset values attributable to investments or transactions consistent with the NAIC Accounting Policies and Procedures Manual, state laws and regulations; (3) refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; and (4) increase the insurer’s liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12 month period.

New §8.3(c) is added and provides that, if the commissioner determines that the continued operation of the insurer licensed to transact business in this state may be

hazardous to its policyholders, creditors, or the general public, the commissioner may take any action the commissioner considers reasonably necessary to remedy the hazardous condition, including but not limited to, those actions set forth in Insurance Code §404.003(c) and the following additional actions: (1) require the insurer to reduce, suspend, or limit the volume of business being renewed; (2) suspend or limit the declaration and payment of dividends by an insurer to its stockholders or to its policyholders; (3) require the insurer to file reports, in the form acceptable to the commissioner, concerning the market value of an insurer's assets; (4) require the insurer to limit or withdraw from certain investments or discontinue certain investment practices, to the extent the commissioner deems necessary; (5) require the insurer to file, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners, or in a format acceptable to the commissioner; (6) require the insurer to provide a business plan to the commissioner, in order to continue to transact business in this State; (7) adjust rates for any non-life insurance product written by the insurer that the commissioner considers necessary to improve the financial condition of the insurer, notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustment; (8) document the adequacy of premium rates in relation to the risks insured; and (9) correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the commissioner.

2. FISCAL NOTE. Danny Saenz, deputy commissioner, Financial Regulation Division, has determined that, for each year of the first five years the proposed amended section will be in effect, there will be no fiscal impact to state and local governments as a result of the administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Mr. Saenz also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the proposal is that the department will be able to more effectively review and monitor the operations and financial condition of insurers and implement the most effective action to cure the hazardous financial condition of insurers. The amended and new sections will enable the department to administer appropriate and proactive regulatory actions to protect policyholders, creditors, and the general public against insurers whose financial condition may potentially be hazardous. There is no anticipated economic cost to persons who are required to comply with the amended and new sections as proposed. The amended and new sections establish uniform standards and criteria for early warning that the continued operation of an insurer might be hazardous to the insurer's policyholders, creditors, or to the public and establish standards for evaluating the financial condition of an insurer consistent with the legislative intent set forth in Chapter 404 of the Insurance Code.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

FOR SMALL AND MICRO BUSINESSES. Government Code §2006.002(c) requires that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(2) defines “small business” as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than \$6 million in annual gross receipts. Government Code §2006.001(1) defines “micro business” similarly to “small business” but specifies that such a business may not have more than 20 employees. Government Code §2006.002(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined in the Government Code §2006.002(b) - (d) for small businesses.

As required by Government Code §2006.002(c), the department has determined that the proposed amendments to §8.3 do not create any new, incremental costs for insurers, regardless of the size of the insurers, that are subject to the existing requirements of §8.3. The amendments to §8.3(a) clarify existing conditions and list additional conditions that the commissioner may consider in determining whether an insurer may be in hazardous financial condition. Additionally, the new §8.3(b) lists factors that the commissioner may consider in making a determination that an insurer is in hazardous financial condition. The new §8.3(b) does not place any requirements on

an insurer, but rather provides notice to an insurer of the factors the commissioner may take into consideration in making a determination that an insurer may be in hazardous financial condition.

New §8.3(c) lists additional actions the commissioner may take if the commissioner determines that an insurer may be in hazardous financial condition. Insurance Code §404.003(c) permits the commissioner to take any action the commissioner considers reasonably necessary to remedy an insurer's hazardous financial condition, including but not limited to, those actions set forth in Insurance Code §404.003. The new §8.3(c) gives an insurer notice of other types of actions the commissioner may consider to remedy the hazardous financial condition of an insurer in addition to those set forth in Insurance Code §404.003.

As required by Government Code §2006.002(c), the department has determined that approximately 50 to 100 insurers are small or micro-business insurers specified in §8.3, including, but not limited to, domestic and foreign insurers, are small or micro-business insurers that will be required to comply with the requirements in §8.3. These small or micro business insurers will not incur any additional costs in complying with the amendments to §8.3. Also, as required by Government Code §2006.002(c), the department has determined that, because there are no additional costs in complying with the amendments to §8.3, there is no adverse economic effect on the approximately 50 to 100 small or micro business insurers.

An agency is required to prepare a regulatory flexibility analysis, in addition to an economic impact statement, that includes the agency's consideration of alternative

methods of achieving the purpose of the proposed rule before adopting a rule that may have an adverse economic effect on small or micro businesses under Government Code §2006.002(c). The department is not required to consider alternative methods of achieving the purpose of these requirements in the proposed rule because the department has determined that no costs will be incurred by insurers in complying with these amendments.

5. TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. This proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. Written comments on the proposal must be submitted no later than 5:00 p.m. on July 23, 2012, to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Danny Saenz, Deputy Commissioner, Financial Regulation Division, Mail Code 305-2A, P. O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104, before the

close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

7. STATUTORY AUTHORITY. The amendments are proposed under Insurance Code §§404.003(a), 404.003(c), 404.003(d), 404.005, 404.006, and 36.001. Section 404.003(a) provides that if the financial condition of an insurer, when reviewed as provided by §404.003(b) indicates a condition that might make the insurer's continued operation hazardous to the insurer's policyholders or creditors or the public, the commissioner may, after notice and hearing, order the insurer to take action reasonably necessary to remedy the condition. Section 404.003(c) provides that in an order issued under §404.003(a), the commissioner may take any action the commissioner considers reasonably necessary to remedy the condition described in §404.003(a), including those actions identified in §404.004(c). Section 404.003(d) states that the commissioner may use the remedies available under §404.003(c) in conjunction with the provisions of Insurance Code Chapter 83, if the commissioner determines that the financial condition of the insurer is hazardous and can be reasonably expected to cause significant and imminent harm to the insurer's policyholders or the public. Section 404.005 provides that the commissioner may, by rule, establish uniform standards and criteria for early warning that the continued operation of an insurer might be hazardous to the insurer's policyholders or creditors or the public and establish standards for evaluating the financial condition of an insurer. Standards established by the commissioner under §404.005 must be consistent with the purposes of §404.003. Section 404.006 provides

that the commissioner may enter into an agreement with the insurance regulatory authority of another jurisdiction concerning the management, volume of business, expenses of operation, plans for reinsurance, rehabilitation, or reorganization, and method of operations of, and type of risks to be insured by an insurer that is licensed in the other jurisdiction and considered to be in a hazardous financial condition or in need of a specific remedy that may be imposed by the commissioner and the insurance regulatory authority of the other jurisdiction. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under this code and other laws of this state.

8. CROSS REFERENCE TO STATUTES. The following statutes are affected by this proposal:

<u>Rule</u>	<u>Statute</u>
§8.3	Insurance Code §§404.003, 404.004, 404.005, 404.006, 822.054, 822.201-822.203, 822.205, 822.210-822.212, 841.054, 841.201, 841.204, 841.205, 841.207, 884.206, 884.308, 884.309, and Chapters 83 and 841, Subchapter G

9. TEXT.

§8.3. Hazardous Conditions and Remedy of Hazardous Conditions

(a) An insurer may be found to be in hazardous condition when one or more of the following conditions are found to exist by the commissioner:

(1) an insurer does not file a financial statement within the time required by the Insurance Code, or as requested by the agency;

(2) an insurer files financial information which is false or misleading; releases false or misleading financial information to lending institutions or the general public; or makes a false or misleading entry or omits an entry of material amount in the insurer's books;

(3) an insurer fails to respond to inquiries related to the condition of the insurer or furnishes false and misleading information concerning an inquiry;

(4)~~(3)~~ an insurer does not ~~[grant authorization to]~~amend its financial statement when requested by the agency~~[to grant such authorization]~~;

(5)~~(4)~~ an insurer overstates its surplus by 25 percent~~[%]~~ or~~[of]~~ more;

(6)~~(5)~~ an insurer's unassigned surplus has a deficit which is in excess of 20 percent~~[%]~~ of surplus;

(7)~~(6)~~ an insurer's financial ratios are outside the acceptable ranges as established by the National Association of Insurance Commissioners ~~[in the Insurance Regulatory Information System]~~ or the insurer's financial condition is otherwise hazardous as identified in the financial analysis tools and reports of the National Association of Insurance Commissioners;

(8) adverse findings are reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports, or summaries of an insurer;

(9) ~~[(7)]~~ the net reduction (excluding net income and change in paid-in capital and change in paid-in or contributed surplus) to the insurer's surplus is greater than 25 percent~~[%]~~ of beginning surplus on the insurer's annual financial statements;

(10) an insurer's operating loss in the last 12 month period or any shorter period of time, including net capital gain or loss, change in non-admitted assets and cash dividends paid to shareholders, is greater than 50 percent of the insurer's remaining surplus in excess of the minimum required;

(11) an insurer's operating loss in the last 12 month period or any shorter period of time, excluding net capital gains, is greater than 20 percent of the insurer's remaining surplus in excess of the minimum required;

(12)~~[(8)]~~ a projection by the agency of an insurer's current financial condition indicates that the sum of its paid-in capital, paid-in surplus, and contributed surplus will be reduced within the next 12 months;

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

(14) an insurer has experienced, or will experience in the foreseeable future, cash flow or liquidity problems;

(15) ~~[(9)]~~ an insurer's aggregate net retained risk, direct or assumed, under any one insurance policy or certificate of insurance under a group policy, is more than 10 percent~~[%]~~ of the insurer's surplus, except where otherwise permitted by law;

(16) contingent liabilities, pledges, or guaranties which, either individually or collectively, involve a total amount which, in the opinion of the commissioner, may affect the solvency of the insurer;

(17) an insurer has not made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to the reserves and related actuarial items, including but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts;

(18) management establishes reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, sound actuarial principles and standards of practice, or persistently engages in material under-reserving that results in adverse development;

(19) [(40)] an insurer's reserves for losses and loss adjustment expenses are discounted more than 10 percent[%] of surplus without the commissioner's prior written approval;

(20) [(44)] an insurer has reinsurance reserve credits, recoverables, or receivables which are disputed by the reinsurer, or are due and payable and remain unpaid, and such reinsurance credits, recoverables, and receivables are more than 10 percent[%] of an ~~[insurers]~~ insurer's surplus; or a reinsurer does not have the ability to perform and the insurer's reinsurance program does not provide sufficient protection for

the insurer's remaining surplus, after taking into account the insurer's cash flow, the classes of business written, and the financial condition of the reinsurer; or the reinsurer is insolvent or threatened with insolvency or delinquent in payment of its monetary or other obligations and which, in the opinion of the commissioner, may affect the solvency of the insurer;

~~[(12) an insurer has reinsurance reserve credits, recoverables, or receivables due from insurance companies in receivership, and such are either more than 10% of surplus or more than 5.0% of admitted assets;]~~

(21) in the opinion of the commissioner, the age and collectability of the insurer's receivables may affect the solvency of the insurer;

(22) [(13)] any entity within the insurer's [an affiliate or subsidiary of an insurer] insurance holding company system is unable to pay its obligations as they become due and payable, is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations and which, in the opinion of the commissioner, may affect the solvency of the insurer;

(23) an entity conducting business with the insurer is delinquent in the transmitting to, or payment of, net premiums to the insurer;

(24) [(14)] a life, accident, and health insurer has premium writings which result in surplus being less than 5[-0] percent[%] of the aggregate general account reserves for the life insurance in force plus 25 percent[%] of the net annualized accident and health premium writings;

(25) ~~[(15)]~~ a property and casualty insurer has net premium writings which, if annualized, would be an amount more than 300 percent~~[%]~~ of surplus;

(26) ~~[(16)]~~ an insurer consistently issues subordinate premium or surplus debentures to finance its operations;

(27) ~~[(17)]~~ an insurer does not maintain books and records sufficient to permit examiners to determine the financial condition of the insurer, examples of which include, but are not limited to:

(A) books and records of a domestic insurer maintained outside the State of Texas in violation of the Insurance Code Chapter 803 ~~[, Article 1.28]~~;

(B) person(s) responsible for generating or maintaining books of original entry for a domestic insurer are officed outside the State of Texas; or

(C) an insurer moves, or maintains, the location of the books and records necessary to conduct an examination without notifying the agency of such location;

(28) ~~[(18)]~~ an insurer has reinsurance agreements affecting 20 percent~~[%]~~ or more of the insurer's gross written premiums, direct or assumed, and the assuming insurers are not licensed to do~~[an]~~ insurance business in the State of Texas;

(29) ~~[(19)]~~ an insurer has reinsurance credits taken or assets claimed on which there are not complete evidence of reinsurance agreements with insurers, signed by the reinsurer, and which are more than 10 percent~~[%]~~ of surplus;

(30) ~~[(20)]~~ an insurer has transactions among affiliates, subsidiaries, or controlling persons for which the insurer receives assets or capital gains that do not

provide sufficient value, liquidity, or diversity to assure the insurer's ability to meet its outstanding obligations as they mature, or ~~[an agreement exists, written or otherwise,]~~
which require[s] all surplus funds which are in excess of an insurer's statutory minimum capital and surplus, or equivalent, to be distributed;

(31) ~~[(24)]~~ an insurer's management, including officers, directors, or any other person who directly or indirectly controls the operation of an insurer, does not have the experience, competence, fitness, reputation, or trustworthiness to operate the insurer in a safe and sound manner;

(32) ~~[(22)]~~ an insurer's management engages in unlawful transactions, including but not limited to, failing to meet financial and holding company filing requirements, in the absence of a reason satisfactory to the commissioner;

(33) ~~[(23)]~~ an insurer or an affiliate does not comply with the terms of an agreement ~~[with]~~ entered into between the insurer and ~~[an]~~ affiliate;

(34) ~~[(24)]~~ the administration of an insurer's business is delegated to a person who, directly or indirectly, produces more than 25 percent~~[%]~~ of the insurer's gross written premiums, or an insurer delegates an insurance function necessary to the insurer's survival without adequate controls and/or which creates a conflict of interest;

(35) ~~[(25)]~~ one person, other than a fulltime, salaried employee, controls production of more than 10 percent~~[%]~~ of the gross written premiums of an insurer;

(36) ~~[(26)]~~ an insurer has a pattern of not settling valid claims within a reasonable time after due proofs of loss have been received;

(37) ~~[(27)]~~ an insurer does not follow a policy on rating and underwriting standards appropriate to the risk;

(38) ~~[(28)]~~ an insurer violates the Insurance Code Chapters 422 and 423 ~~[, Article 21.39-A or Article 21.39-B]~~;

(39) ~~[(29)]~~ a final administrative or judicial order, initiated by an insurance regulatory agency of another state, is issued against an insurer;

(40) ~~[(30)]~~ an insurer is in any condition that the commissioner of insurance finds to present a hazard to policyholders, creditors, or the general public.

(b) For purposes of making a determination of an insurer's financial condition under this section, the commissioner may take action, including:

(1) disregard any 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 including disallowance to asset values attributable to investments or transactions consistent with the NAIC Accounting Policies and Procedures Manual, state laws and regulations;

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

(4) increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the

insurer will be called upon to meet the obligation undertaken within the next twelve-month period.

(c) If the commissioner determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to its policyholders, creditors, or the general public, then the commissioner may take any action the commissioner considers reasonably necessary to remedy the hazardous condition, including but not limited to, those actions set forth in Insurance Code §404.003(c) and the following additional actions:

(1) require the insurer to reduce, suspend, or limit the volume of business being renewed;

(2) suspend or limit the declaration and payment of dividends by an insurer to its stockholders or to its policyholders;

(3) require the insurer to file reports, in the form acceptable to the commissioner, concerning the market value of an insurer's assets;

(4) require the insurer to limit or withdraw from certain investments or discontinue certain investment practices, to the extent the commissioner deems necessary;

(5) require the insurer to file, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners, or in a format acceptable to the commissioner;

(6) require the insurer to provide a business plan to the commissioner, in order to continue to transact business in this state;

(7) adjust rates for any non-life insurance product written by the insurer that the commissioner considers necessary to improve the financial condition of the insurer, notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustment;

(8) document the adequacy of premium rates in relation to the risks insured; and

(9) correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the commissioner.