

IC 27-9-2

Chapter 2. Summary Proceedings

IC 27-9-2-1

Practices or condition of domestic insurers requiring control or supervision

Sec. 1. (a) Whenever the commissioner has reasonable cause to believe, and determines, after a hearing held under IC 4-21.5-3, that any domestic insurer has committed or engaged in, or is about to commit or engage in, any act, practice, or transaction that would subject it to a delinquency proceeding under IC 27-9-3-1 or IC 27-9-3-6, the commissioner may make and serve upon the insurer and any other persons involved, any orders reasonably necessary to correct, eliminate, or remedy that conduct, condition, or ground.

(b) If the commissioner has reasonable cause to believe that any domestic insurer is in such condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, or if that domestic insurer gives its consent, the commissioner shall upon his determination issue an order:

- (1) notifying the insurer of his determination; and
- (2) providing the insurer with a written list of the commissioner's requirements to correct its business practices.

(c) If the commissioner makes a determination to supervise an insurer subject to an order under subsection (a) or (b), the commissioner shall notify the insurer that it is under the supervision of the commissioner. If the insurer is a reorganized insurer under IC 27-14, the commissioner may also determine to supervise the mutual insurance holding company that is affiliated with the reorganized insurer, regardless of whether another basis exists for supervising the mutual insurance holding company. If the commissioner makes a determination to supervise a mutual insurance holding company, the commissioner shall notify the mutual insurance holding company that it is under the supervision of the commissioner.

(d) During the period of supervision, the commissioner may appoint a supervisor to supervise the insurer. The order appointing a supervisor must direct the supervisor to enforce orders issued under subsection (a) or (b). The order may also provide that the insurer may not do any of the following things, during the period of supervision, without the prior approval of the commissioner or his supervisor:

- (1) Dispose of, convey, or encumber any of its assets or its business in force.
- (2) Withdraw funds from any of its bank accounts.
- (3) Lend any of its funds.
- (4) Invest any of its funds.
- (5) Transfer any of its property.
- (6) Incur any debt, obligation, or liability.
- (7) Merge or consolidate with another company.

(8) Enter into any new reinsurance contract or agreement.

(9) Restrict the writing of new business on the renewal of existing business.

(e) Any insurer subject to an order under this section must comply with the lawful requirements of the commissioner and, if placed under supervision, has sixty (60) days from the date the supervision order is served within which to comply with the requirements of the commissioner. In the event of the insurer's failure to comply within those time requirements, the commissioner may institute proceedings under IC 27-9-3-1 or IC 27-9-3-6 to have a rehabilitator or liquidator appointed, or extend the period of supervision.

(f) During the period of supervision, the insurer may request the commissioner to review any action taken or proposed to be taken by the supervisor, specifying the reason the action complained of is believed not to be in the best interest of the insurer.

(g) If a person violates a supervision order issued under this section, he is civilly liable up to ten thousand dollars (\$10,000).

(h) The commissioner may apply for and the Marion County circuit court may grant, under IC 4-21.5-6, orders as are necessary and proper to enforce a supervision order.

(i) In the event that a person subject to this article knowingly violates any valid order of the commissioner issued under this section and, as a result of that violation, the net worth of the insurer is reduced or the insurer suffers loss it would not otherwise have suffered, that person is personally liable to the insurer for the amount of that reduction or loss. The commissioner or supervisor is authorized to bring an action on behalf of the insurer in the Marion County circuit court to recover the amount of the reduction or loss together with any costs.

As added by Acts 1979, P.L.255, SEC.1. Amended by P.L.7-1987, SEC.155; P.L.5-2000, SEC.2.

IC 27-9-2-2

Petition; orders

Sec. 2. (a) The commissioner may file in the Marion County circuit court a petition alleging, with respect to a domestic insurer:

(1) that there exist grounds that justify a court order for a formal delinquency proceeding against the insurer under IC 27-9;

(2) that the interests of policyholders, creditors, or the public will be endangered by delay; and

(3) other matters the commissioner considers necessary.

(b) Upon a filing under subsection (a), the Marion County circuit court may issue, ex parte, and without a hearing, the requested order that must:

(1) Direct the commissioner to take possession and control any part of the property, books, accounts, documents, and other records of an insurer.

(2) Direct the commissioner to take possession of the premises

occupied by the insurer for transaction of its business.

(3) Until further order of the Marion County circuit court, enjoin the insurer and its officers, managers, agents, and employees from disposition of its property and from transaction of its business except with the written consent of the commissioner.

(c) The Marion County circuit court shall specify the order's duration, which shall be such time as the court considers necessary for the commissioner to determine the condition of the insurer. On motion of either party or on its own motion, the Marion County circuit court may hold hearings as it considers desirable after giving notice as it considers appropriate, and may extend, shorten, or modify the terms of the seizure order. The Marion County circuit court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under IC 27-9 after having had a reasonable opportunity to do so. An order of the Marion County circuit court under a formal proceeding under IC 27-9 shall ipso facto vacate the seizure order.

(d) Entry of a seizure order under this section does not constitute an anticipatory breach of any contract of the insurer.

(e) An insurer subject to an ex parte order under this section may petition the Marion County circuit court at any time after the issuance of the order for a hearing and review of the order. The Marion County circuit court shall hold a hearing and review not more than fifteen (15) days after the request. A hearing under this subsection may be held privately in chambers, and the hearing must be held in chambers if the petitioning insurer requests it.

(f) If, at any time after the issuance of an order, it appears to the Marion County circuit court that any person whose interest is or will be substantially affected by the order did not appear at the hearing and has not been served, the Marion County circuit court may order notice to be given to that person. An order that notice be given does not stay the effect of any order previously issued by the court.

As added by Acts 1979, P.L.255, SEC.1.

IC 27-9-2-3

Confidential nature of records and documents

Sec. 3. In all proceedings and judicial reviews of those proceedings under sections 1 and 2 of this chapter, all records of the insurer, other documents, and all insurance department files, and court records and papers, so far as they concern or are a part of the record of the proceedings, shall remain confidential except as is necessary to obtain compliance with those proceedings or judicial reviews, unless and until the Marion County circuit court, after hearing arguments from the parties in chambers, shall order otherwise, or unless the insurer requests that the matter be made public. Until the Marion County circuit court issues an order, all papers filed with the clerk of the Marion County circuit court must

be held by him in a confidential file.
As added by Acts 1979, P.L.255, SEC.1.