

RAA

REINSURANCE
ASSOCIATION
OF AMERICA

STATEMENT

STATEMENT IN OPPOSITION TO SB 74

Hearing Before the New Hampshire Senate
Banks and Insurance Committee

February 1, 2005

Marsha A. Cohen, CPCU, ARe
Senior Vice President, State Relations and Education

Matthew T. Wulf
Associate Vice President & Legal Counsel

1301 Pennsylvania Ave., N.W.
Suite 900
Washington, D.C. 20004-1701
202/638-3690
www.reinsurance.org

Statement of the Reinsurance Association of America in Opposition to SB 74 - Sections 4 and 5

The Reinsurance Association of America (RAA) appreciates the opportunity to offer comments on SB 74. Our comments respectfully address concerns with the proposed amendments in Sections 4 and 5 - Insurers Rehabilitation and Liquidation.

The Reinsurance Association of America (RAA) is a national trade association representing organizations that specialize in reinsurance. Our members are diverse, including large and small, broker and direct, U.S. companies and subsidiaries of foreign companies. Our affiliate membership includes reinsurance brokerage companies and life reinsurers. The RAA represents its members' interests in reinsurance legislative and regulatory issues in all US jurisdictions: before the National Association of Insurance Commissioners (NAIC); before the National Conference of Insurance Legislators (NCOIL); before the US Congress and the Executive Branch; and in various international forums. As a result we are familiar with the common regulatory and legislative practices in the US.

SB 74 is not only a technical bill as it is referred to in the preamble. It proposes to make very substantive changes to current law that may have a detrimental impact on the insurance market in New Hampshire.

Amendments to Sections 4 and 5 will result in the creation of New Hampshire specific deviations from standard insolvency laws throughout the US.

Amendments to SB 74 Section 4 - Insurers Rehabilitation and Liquidation. 402-C: 36 Liability of the Insurer

We oppose the proposed amendments to RSA 402-C: 36 Liability of the Insurer for the following reasons:

1. The addition of the citation "Subject to RSA 402-C: 34" is redundant and unnecessarily confuses the operation of two independent statutory provisions. "Subject to RSA 402-C: 34" references the setoff law. The effect of this amendment is to make the amount due the liquidator subject to setoff, which it already is by operation of current law. The amendment is redundant and confusing.
2. We see no reason to change the "unless" to "where" as it is clear the way it is currently drafted.
3. We oppose deleting the phrase "directly to the ceding insurer or to its domiciliary liquidator or receiver". It is important to maintain language that addresses to

whom the reinsurance proceeds get paid; otherwise you state the exception without stating the rule.

We do agree that RSA 402-C: 36 could be amended to make its meaning clearer.

We recommend redrafting the introductory paragraph of RSA 402-C: 36 to read as stated below. The language that we are suggesting would bring New Hampshire law into conformity with the laws in the majority of the states. (Additions are underscored).

“The amount recoverable by the liquidator from a reinsurer shall not be reduced as a result of delinquency proceedings unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance shall be payable by the assuming insurer on the basis of the claims allowed against the ceding insurer in the insolvency proceedings, under contract or contracts reinsured without diminution because of the insolvency of the ceding insurer. Such payments shall be made directly to the ceding insurer or to its domiciliary liquidator or receiver except:”

Amendments to SB 74 Section 5 - Insurers Rehabilitation and Liquidation; RSA 402-C: 44 Order of Distribution

The amendments propose to amend the priority of distribution section of New Hampshire law to alter the current order of distribution of claims from the estate and create deviations from the laws in all other states in the US.

Priority of distribution laws as currently stated in RSA 402-C: 44 have been adopted in all states and they are based on requirements established by the NAIC Insurers Rehabilitation and Liquidation Model Act.

The issues inherent in determining the priority of payment in liquidation have been fully debated and agreed to by all interested parties including receivers, guaranty funds and all members of the insurance industry. The current laws across the country represent this understanding.

The proposed amendments attempt to make New Hampshire's law stand alone in allowing receivers to pay claimants outside the well-established priority of distribution statute.

The RAA opposes the proposed amendments to RSA 402-C: 44 Order of Distribution for the following reasons:

1. The proposed amendment creates the opportunity for receivers to create preferences or side deals with one class of claimants to the detriment of others. Former management in particular could argue that their actions in cooperating with the liquidation proceeding "assisted or resulted in the collection or recovery of assets or property" and therefore were entitled to "payments as administrative costs". This will result in increased litigation, ultimately increasing costs to the consumer.
2. This same proposal was recently (January 13, 2005) brought before the NAIC Model Act Revision Group (MARG) that is tasked with redrafting the NAIC Insurers Rehabilitation and Liquidation Model Act. It was rejected as unnecessary and potentially dangerous to receivers if used improperly by company officers and directors.
3. Use of the provision would invite delays and inequitable treatment of claimants, excessive legal fees, and is contrary to the indemnity nature of the reinsurance contract.
4. Allowing the liquidator to offer incentives to claimants to file claims by paying them directly from reinsurance proceeds would undercut the receivership process adopted in New Hampshire.
 - Although the provision allows the liquidator to receive all reinsurance proceeds and in turn pay monies out through the estate, the consequential effect is a direct payment of reinsurance proceeds to certain cedents to the detriment of others in the same class.
5. The effect of such a statutory provision could be an interpretation allowing the unilateral modification of contract rights without consent.
6. The provision could allow a receiver to guarantee up-front money to claimants in an insurance receivership. This action not only provides incentives for filing valid claims, but also creates incentives for individuals to file claims that do not exist and other forms of insurance fraud.

Conclusion

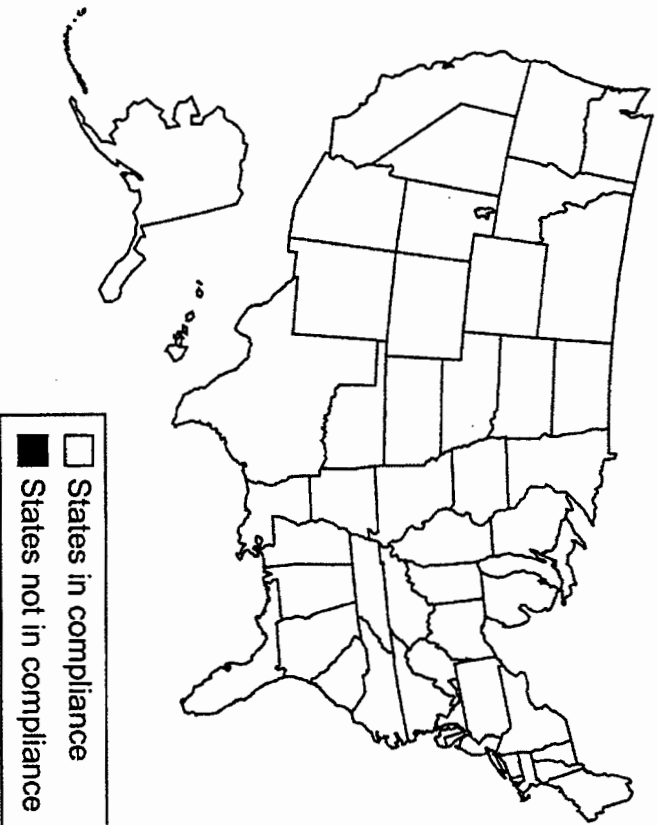
The RAA opposes the proposed amendments in SB 74 Sections 4 and 5 for the above stated reasons and recommends that they be stripped from the legislation.

The Reinsurance Association of America respectfully submits these comments and we look forward to working with you on these very important issues.

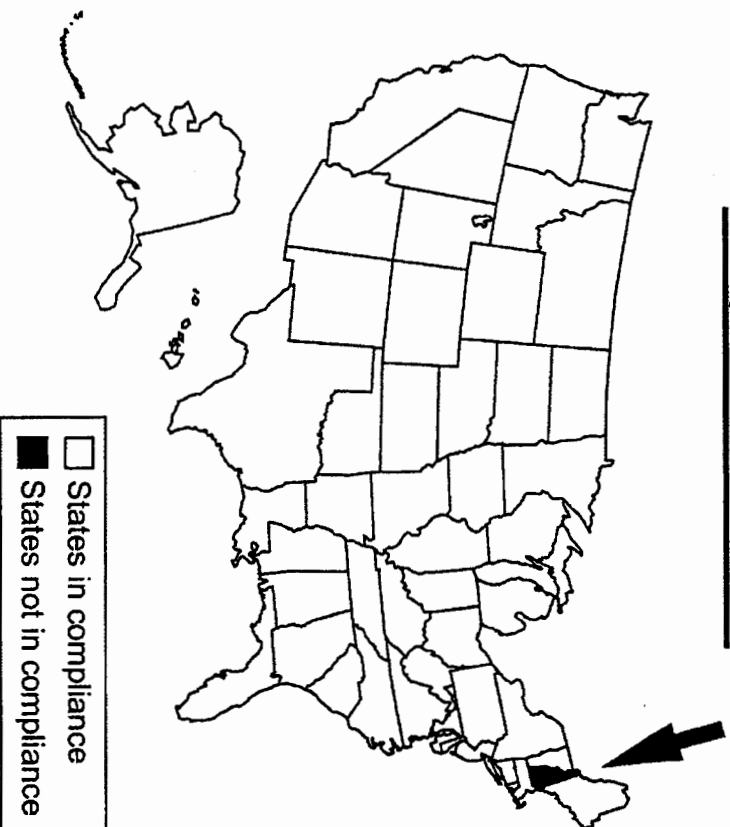
States NOT in Compliance

with the Priority of Distribution Provisions in the
NAIC Insurers' Rehabilitation and Liquidation Model Act

Current



Proposed SB 74



Only New Hampshire
will not be in compliance

