

1 **H. B. 2819**

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3 (By Delegates Guthrie, Hartman, Ashley and Walters)
4 [Introduced March 5, 2013; referred to the
5 Committee on Banking and Insurance then the Judiciary.]
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10 A BILL to amend and reenact §33-31-16a of the Code of West
11 Virginia, 1931, as amended; and to amend and reenact §33-40-3
12 of said code, all relating to the financial oversight of
13 entities regulated by the Insurance Commissioner; requiring
14 captive insurance companies organized as risk retention groups
15 to comply with risk-based capital for insurers' provisions and
16 a specific state rule; and incorporating a solvency trend test
17 for property and casualty insurance companies.

18 *Be it enacted by the Legislature of West Virginia:*

19 That §33-31-16a of the Code of West Virginia, 1931, as
20 amended, be amended and reenacted; and that §33-40-3 of said code
21 be amended and reenacted, all to read as follows:

22 **ARTICLE 31. CAPTIVE INSURANCE.**

23 **§33-31-16a. Laws applicable; Risk Retention Groups.**

1 In addition to the applicable provisions of this article, any
2 captive insurance company organized as a risk retention group is
3 subject to the following provisions of this chapter: section nine,
4 article two (examination of insurers, agents, brokers and
5 solicitors; access to books, records, etc.); section fourteen,
6 article four (financial statement filings; annual and quarterly
7 statements; required format; foreign insurers; agents of the
8 commissioner); section fifteen-a, article four (credit for
9 reinsurance; definitions; requirements; trust accounts; reductions
10 from liability; security; effective date); article seven (assets
11 and liabilities); article ten (rehabilitation and liquidation);
12 article twenty-seven (insurance holding company systems); article
13 thirty-three (annual audited financial report); article thirty-four
14 (administrative supervision); ~~article thirty-four-a (standards and~~
15 ~~commissioner's authority for companies deemed to be in hazardous~~
16 ~~financial condition)~~; article thirty-five (criminal sanctions for
17 failure to report impairment); article thirty-six (Business
18 Transacted with Producer Controlled Property/Casualty Insurer Act);
19 article thirty-seven (managing general agents); article
20 thirty-eight (Reinsurance Intermediary Act); article forty
21 (risk-based capital for insurers); and article forty-one (Insurance
22 Fraud Prevention Act), ~~of this chapter and~~ as well as any rules
23 promulgated ~~thereunder~~ under those provisions in accordance with
24 article three, chapter twenty-nine-a of this code, including

1 Property And Casualty Actuarial Opinion, 114 CSR 41A.

2 **ARTICLE 40. RISK-BASED CAPITAL (RBC) FOR INSURERS.**

3 **§33-40-3. Company action level event.**

4 (a) "Company action level event" means any of the following
5 events:

6 (1) The filing of an RBC report by an insurer which indicates
7 that:

8 (A) The insurer's total adjusted capital is greater than or
9 equal to its regulatory action level RBC, but less than its company
10 action level RBC; ~~or~~

11 (B) If a life and/or health insurer, the insurer has total
12 adjusted capital which is greater than or equal to its company
13 action level RBC, but less than the product of its authorized
14 control level RBC and two and one-half and has a negative trend; or

15 (C) If a property and casualty insurer, the insurer has total
16 adjusted capital which is greater than or equal to its company
17 action level RBC, but less than the product of its authorized
18 control level RBC and three and triggers the trend test determined
19 in accordance with the trend test calculation included in the
20 property and casualty RBC instructions;

21 (2) The notification by the commissioner to the insurer of an
22 adjusted RBC report that indicates an event in subdivision (1) of
23 this subsection, provided the insurer does not challenge the
24 adjusted RBC report under section seven of this article; or

1 (3) If, pursuant to section seven of this article, an insurer
2 challenges an adjusted RBC report that indicates the event in
3 subdivision (1) of this subsection, the notification by the
4 commissioner to the insurer that the commissioner has, after a
5 hearing, rejected the insurer's challenge.

6 (b) In the event of a company action level event, the insurer
7 shall prepare and submit to the commissioner an RBC plan which
8 shall:

9 (1) Identify the conditions which contribute to the company
10 action level event;

11 (2) Contain proposals of corrective actions which the insurer
12 intends to take and would be expected to result in the elimination
13 of the company action level event;

14 (3) Provide projections of the insurer's financial results in
15 the current year and at least the four succeeding years or, in the
16 case of an HMO, in the current year and at least the two succeeding
17 years, both in the absence of proposed corrective actions and
18 giving effect to the proposed corrective actions, including
19 projections of statutory operating income, net income, capital
20 and/or surplus. (The projections for both new and renewal business
21 may include separate projections for each major line of business
22 and separately identify each significant income, expense and
23 benefit component);

24 (4) Identify the key assumptions impacting the insurer's

1 projections and the sensitivity of the projections to the
2 assumptions; and

3 (5) Identify the quality of, and problems associated with, the
4 insurer's business, including, but not limited to, its assets,
5 anticipated business growth and associated surplus strain,
6 extraordinary exposure to risk, mix of business and use of
7 reinsurance, if any, in each case.

8 (c) The RBC plan shall be submitted:

9 (1) Within forty-five days of the company action level event;
10 or

11 (2) If the insurer challenges an adjusted RBC report pursuant
12 to section seven of this article, within forty-five days after
13 notification to the insurer that the commissioner has, after a
14 hearing, rejected the insurer's challenge.

15 (d) Within sixty days after the submission by an insurer of an
16 RBC plan to the commissioner, the commissioner shall notify the
17 insurer whether the RBC plan may be implemented or is, in the
18 judgment of the commissioner, unsatisfactory. If the commissioner
19 determines the RBC plan is unsatisfactory, the notification to the
20 insurer shall set forth the reasons for the determination and may
21 set forth proposed revisions which will render the RBC plan
22 satisfactory in the judgment of the commissioner. Upon
23 notification from the commissioner, the insurer shall prepare a
24 revised RBC plan, which may incorporate by reference any revisions

1 proposed by the commissioner, and shall submit the revised RBC plan
2 to the commissioner:

3 (1) Within forty-five days after the notification from the
4 commissioner; or

5 (2) If the insurer challenges the notification from the
6 commissioner under section seven of this article, within forty-five
7 days after a notification to the insurer that the commissioner has,
8 after a hearing, rejected the insurer's challenge.

9 (e) In the event of a notification by the commissioner to an
10 insurer that the insurer's RBC plan or revised RBC plan is
11 unsatisfactory, the commissioner may, at the commissioner's
12 discretion, subject to the insurer's right to a hearing under
13 section seven of this article, specify in the notification that the
14 notification constitutes a regulatory action level event.

15 (f) Every domestic insurer that files an RBC plan or revised
16 RBC plan with the commissioner shall file a copy of the RBC plan or
17 revised RBC plan with the Insurance Commissioner in any state in
18 which the insurer is authorized to do business if:

19 (1) The state has an RBC provision substantially similar to
20 subsection (a), section eight of this article; and

21 (2) The Insurance Commissioner of that state has notified the
22 insurer of its request for the filing in writing, in which case the
23 insurer shall file a copy of the RBC plan or revised RBC plan in
24 that state no later than the later of:

1 ~~(i)~~ (A) Fifteen days after the receipt of notice to file a
2 copy of its RBC plan or revised RBC plan with the state; or
3 ~~(ii)~~ (B) The date on which the RBC plan or revised RBC plan is
4 filed under subsections (c) and (d) of this section.

NOTE: The purpose of this bill is to ensure that the laws of West Virginia satisfy the accreditation standards of the National Association of Insurance Commissioners (NAIC). More specifically, this bill amends the insurance code with respect to risk-based capital and captive insurance companies organized as risk retention groups.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.