

COMMITTEE SUBSTITUTE

FOR

H. B. 2819

(BY DELEGATE(S) GUTHRIE, HARTMAN, ASHLEY AND WALTERS)

(Originating in the House Committee on the Judiciary)

[March 12, 2013]

A BILL to amend and reenact §33-31-16a of the Code of West Virginia, 1931, as amended; and to amend and reenact §33-40-3 of said code, all relating to the financial oversight of entities regulated by the Insurance Commissioner; requiring captive insurance companies organized as risk retention groups to comply with risk-based capital for insurers' provisions and state rules; and incorporating a solvency trend test for property and casualty insurance companies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 31. CAPTIVE INSURANCE.

§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
3 is subject to the following provisions of this chapter: section
4 nine, article two (examination of insurers, agents, brokers and
5 solicitors; access to books, records, etc.); section fourteen, article
6 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 and
11 liabilities); article ten (rehabilitation and liquidation); article
12 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~~

16 ~~hazardous financial condition~~); article thirty-five (criminal
17 sanctions for failure to report impairment); article thirty-six
18 (Business Transacted with Producer Controlled
19 Property/Casualty Insurer Act); article thirty-seven (managing
20 general agents); article thirty-eight (Reinsurance Intermediary
21 Act); article forty (risk-based capital for insurers); and article
22 forty-one (Insurance Fraud Prevention Act), ~~of this chapter and~~
23 as well as any rules promulgated ~~thereunder~~ under those
24 provisions in accordance with article three, chapter
25 twenty-nine-a of this code, including any rule relating to
26 property and casualty actuarial opinions.

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

§33-40-3. Company action level event.

1 (a) “Company action level event” means any of the
2 following events:

3 (1) The filing of an RBC report by an insurer which indicates
4 that:

5 (A) The insurer’s total adjusted capital is greater than or
6 equal to its regulatory action level RBC, but less than its
7 company action level RBC; ~~or~~

8 (B) If a life and/or health insurer, the insurer has total
9 adjusted capital which is greater than or equal to its company

10 action level RBC, but less than the product of its authorized
11 control level RBC and two and one-half and has a negative
12 trend; or

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

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

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

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

31 (1) Identify the conditions which contribute to the company
32 action level event;

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

36 (3) Provide projections of the insurer's financial results in
37 the current year and at least the four succeeding years or, in the
38 case of an HMO, in the current year and at least the two
39 succeeding years, both in the absence of proposed corrective
40 actions and giving effect to the proposed corrective actions,
41 including projections of statutory operating income, net income,
42 capital and/or surplus. (The projections for both new and renewal
43 business may include separate projections for each major line of
44 business and separately identify each significant income,
45 expense and benefit component);

46 (4) Identify the key assumptions impacting the insurer's
47 projections and the sensitivity of the projections to the
48 assumptions; and

49 (5) Identify the quality of, and problems associated with, the
50 insurer's business, including, but not limited to, its assets,
51 anticipated business growth and associated surplus strain,

52 extraordinary exposure to risk, mix of business and use of
53 reinsurance, if any, in each case.

54 (c) The RBC plan shall be submitted:

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

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

61 (d) Within sixty days after the submission by an insurer of
62 an RBC plan to the commissioner, the commissioner shall notify
63 the insurer whether the RBC plan may be implemented or is, in
64 the judgment of the commissioner, unsatisfactory. If the
65 commissioner determines the RBC plan is unsatisfactory, the
66 notification to the insurer shall set forth the reasons for the
67 determination and may set forth proposed revisions which will
68 render the RBC plan satisfactory in the judgment of the
69 commissioner. Upon notification from the commissioner, the
70 insurer shall prepare a revised RBC plan, which may incorporate
71 by reference any revisions proposed by the commissioner, and
72 shall submit the revised RBC plan to the commissioner:

73 (1) Within forty-five days after the notification from the
74 commissioner; or

75 (2) If the insurer challenges the notification from the
76 commissioner under section seven of this article, within
77 forty-five days after a notification to the insurer that the
78 commissioner has, after a hearing, rejected the insurer's
79 challenge.

80 (e) In the event of a notification by the commissioner to an
81 insurer that the insurer's RBC plan or revised RBC plan is
82 unsatisfactory, the commissioner may, at the commissioner's
83 discretion, subject to the insurer's right to a hearing under
84 section seven of this article, specify in the notification that the
85 notification constitutes a regulatory action level event.

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

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

92 (2) The Insurance Commissioner of that state has notified
93 the insurer of its request for the filing in writing, in which case

94 the insurer shall file a copy of the RBC plan or revised RBC plan

95 in that state no later than the later of:

96 ~~(i)~~ (A) Fifteen days after the receipt of notice to file a copy

97 of its RBC plan or revised RBC plan with the state; or

98 ~~(ii)~~ (B) The date on which the RBC plan or revised RBC

99 plan is filed under subsections (c) and (d) of this section.