WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2013

ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 2819

(Delegate(s) Guthrie, Hartman, Ashley and Walters)

Passed April 12, 2013

In effect ninety days from passage.
AN ACT 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 captive insurance company organized as a risk retention group is subject to the following provisions of this chapter: section nine, article two (examination of insurers, agents, brokers and solicitors; access to books, records, etc.); section fourteen, article four (financial statement filings; annual and quarterly statements; required format; foreign insurers; agents of the commissioner); section fifteen-a, article four (credit for reinsurance: definitions; requirements; trust accounts; reductions from liability; security; effective date); article seven (assets and liabilities); article ten (rehabilitation and liquidation); article twenty-seven (insurance holding company systems); article thirty-three (annual audited financial report); article thirty-four (administrative supervision); article thirty-five (criminal sanctions for failure to report impairment); article thirty-six (Business Transacted with Producer Controlled Property/Casualty Insurer Act); article thirty-seven (managing general agents); article thirty-eight (Reinsurance Intermediary Act); article forty (risk-based capital for insurers); and article forty-one (Insurance Fraud Prevention Act), as well as any rules promulgated under those provisions in accordance with article three, chapter twenty-nine-a of this code, including any rule relating to 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 following events:

3 (1) The filing of an RBC report by an insurer which indicates that:
(A) The insurer’s total adjusted capital is greater than or equal to its regulatory action level RBC, but less than its company action level RBC;

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

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

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

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

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

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

(2) Contain proposals of corrective actions which the insurer intends to take and would be expected to result in the elimination of the company action level event;
(3) Provide projections of the insurer’s financial results in the current year and at least the four succeeding years or, in the case of an HMO, in the current year and at least the two succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital and/or surplus. (The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense and benefit component);

(4) Identify the key assumptions impacting the insurer’s projections and the sensitivity of the projections to the assumptions; and

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

c) The RBC plan shall be submitted:

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

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

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

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

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

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

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

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

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

(A) Fifteen days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the state; or
(B) The date on which the RBC plan or revised RBC plan is
filed under subsections (c) and (d) of this section.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Member, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within ___ is approved ___ this the ___ day of ___ April, 2013.
PRESENTED TO THE GOVERNOR

APR 25 2013

Time 11:40 am