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SENATE BILL NO. 1317

Offered January 10, 2007

A *BILL to amend and reenact §§ 38.2-5501 and 38.2-5503 of the Code of Virginia, relating to insurance; risk-base capital calculations.*

Patron—Colgan

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That §§ 38.2-5501 and 38.2-5503 of the Code of Virginia are amended and reenacted as follows:**

§ 38.2-5501. Definitions.

As used in this chapter, the following terms shall have the following meanings:

"Adjusted RBC Report" means an RBC report which has been adjusted by the Commission in accordance with subsection *E F* of § 38.2-5502.

"Capital and surplus" or "capital," except when used in the term "risk-based capital" or "adjusted capital," means net worth of a health maintenance organization and, for all other licensees, means surplus to policyholders.

"Corrective Order" means an order issued by the Commission specifying corrective actions which the Commission has determined are required.

"Delinquency proceeding" means any proceeding commenced against a licensee for the purpose of liquidating, rehabilitating, reorganizing or conserving a licensee pursuant to the provisions of Chapter 15 (§ 38.2-1500 et seq.).

"Domestic health organization" means a health organization domiciled in this Commonwealth.

"Domestic insurer" means any domestic company which has obtained a license to engage in insurance transactions in this Commonwealth in accordance with the applicable provisions of Chapter 10 (§ 38.2-1000 et seq.).

"Domestic licensee" means and includes a domestic insurer and a domestic health organization.

"Foreign health organization" means a health organization not domiciled in this Commonwealth which is licensed to do business in this Commonwealth.

"Foreign insurer" means any company not domiciled in this Commonwealth which has obtained a license to engage in insurance transactions in this Commonwealth in accordance with the applicable provisions in Chapter 10 (§ 38.2-1000 et seq.).

"Foreign licensee" means and includes a foreign insurer and a foreign health organization.

"Health organization" means an insurer which is required by the Commission to use the NAIC's Health Annual Statement blank when filing the annual statement prescribed by § 38.2-1300, or a corporation licensed pursuant to Chapter 42 (§ 38.2-4200 et seq.) of this title operating a health or hospital services plan in this Commonwealth, or a health maintenance organization or limited health maintenance organization licensed pursuant to Chapter 43 (§ 38.2-4300 et seq.) of this title, or a corporation licensed pursuant to Chapter 45 (§ 38.2-4500 et seq.) of this title and operating a dental or optometric services plan in this Commonwealth.

"Licensee" means and includes a life and health insurer, a property and casualty insurer, and a health organization.

"Life and health insurer" means any domestic insurer or foreign insurer, whether known as a life insurer or a property and casualty insurer or a reciprocal, which is authorized to write any class of life insurance, annuities, or accident and sickness insurance, and is not writing a class of insurance set forth in §§ 38.2-110 through 38.2-132, provided that "life and health insurer" shall not include any insurer which is required by the Commission to use the NAIC's Health Annual Statement blank when filing the annual statement prescribed by § 38.2-1300.

"NAIC" means the National Association of Insurance Commissioners.

"Negative Trend," with respect to a life and health insurer, means a negative trend over a period of time, as determined in accordance with the "Trend Test Calculation" included in the *Life* RBC Instructions.

"Property and casualty insurer" means any domestic insurer or foreign insurer which is authorized under any chapter of this title to write any class of insurance except a class of life insurance or annuities, provided that "property and casualty insurer" shall not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers, nor shall it include any insurer which is required by the Commission to use the NAIC's Health Annual Statement blank when filing the annual statement prescribed by § 38.2-1300.

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59 "RBC" means risk-based capital.

60 "RBC Instructions" means the RBC Report including risk-based capital instructions adopted by the
61 NAIC, as such RBC Instructions may be amended by the NAIC from time to time in accordance with
62 the procedures adopted by the NAIC.

63 "RBC Level" means a licensee's Company Action Level RBC, Regulatory Action Level RBC,
64 Authorized Control Level RBC, or Mandatory Control Level RBC where:

65 1. "Company Action Level RBC" means, with respect to any licensee, the product of 2.0 and its
66 Authorized Control Level RBC;

67 2. "Regulatory Action Level RBC" means the product of 1.5 and its Authorized Control Level RBC;

68 3. "Authorized Control Level RBC" means the number determined under the risk-based capital
69 formula in accordance with the RBC Instructions;

70 4. "Mandatory Control Level RBC" means the product of 0.70 and the Authorized Control Level
71 RBC.

72 "RBC Plan" means a comprehensive financial plan containing the elements specified in subsection B
73 of § 38.2-5503. If the Commission rejects the RBC Plan, and it is revised by the licensee, with or
74 without the Commission's recommendation, the plan shall be called the "Revised RBC Plan."

75 "RBC Report" means the report required in § 38.2-5502.

76 "Total Adjusted Capital" means the sum of:

77 1. A licensee's statutory capital and surplus as determined in accordance with statutory accounting
78 applicable to the annual financial statements required to be filed under § 38.2-1300; and

79 2. Such other items, if any, as the RBC Instructions may provide.

80 § 38.2-5503. Company Action Level Event.

81 A. "Company Action Level Event" means any of the following events:

82 1. The filing of an RBC Report by a licensee which indicates that:

83 a. The licensee's Total Adjusted Capital is greater than or equal to its Regulatory Action Level RBC
84 but less than its Company Action Level RBC; or

85 b. If a life and health insurer, the insurer has Total Adjusted Capital which is greater than or equal to
86 its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 2.5
87 and has a negative trend; or

88 c. If a property and casualty insurer, the insurer has Total Adjusted Capital that is greater than or
89 equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC
90 and 3.0 and triggers the trend test determined in accordance with the Trend Test Calculation included
91 in the Property and Casualty RBC instructions;

92 2. The notification by the Commission to the licensee of an Adjusted RBC Report that indicates the
93 event in subdivision A 1 a ~~or A + B~~, provided the licensee does not challenge the Adjusted RBC Report
94 under § 38.2-5507; or

95 3. If, pursuant to § 38.2-5507, the licensee challenges an Adjusted RBC Report that indicates the
96 event in subdivision A 1 a ~~or A + B~~, the notification by the Commission to the licensee that the
97 Commission has, after a hearing, rejected the licensee's challenge.

98 B. In the event of a Company Action Level Event, the licensee shall prepare and submit to the
99 Commission an RBC Plan which shall:

100 1. Identify the conditions in the licensee which contribute to the Company Action Level Event;

101 2. Contain proposals of corrective actions which the licensee intends to take and would be expected
102 to result in the elimination of the Company Action Level Event;

103 3. Provide projections of the licensee's financial results in the current year and for at least the four
104 succeeding years if the licensee is a life and health insurer or a property and casualty insurer, or at least
105 two succeeding years if the licensee is a health organization, both in the absence of proposed corrective
106 actions and giving effect to the proposed corrective actions, including projections of statutory balance
107 sheets, operating income, net income, capital and surplus, and RBC levels. If appropriate, the projections
108 for both new and renewal business shall include separate projections for each major line of business and
109 separately identify each significant income, expense and benefit component;

110 4. Identify the key assumptions impacting the licensee's projections and the sensitivity of the
111 projections to the assumptions; and

112 5. Identify the quality of, and problems associated with, the licensee's business, including but not
113 limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to
114 risk, mix of business and use of reinsurance, if any, in each case.

115 C. The RBC Plan shall be submitted:

116 1. Within forty-five days of the Company Action Level Event; or

117 2. If the licensee challenges an Adjusted RBC Report pursuant to § 38.2-5507, within forty-five days
118 after notification to the licensee that the Commission has, after a hearing, rejected the licensee's
119 challenge.

120 D. Within sixty days after the submission by a licensee of an RBC Plan to the Commission, the

Commission shall notify the licensee whether the RBC Plan shall be implemented or is, in the judgment of the Commission, unsatisfactory. If the Commission determines the RBC Plan is unsatisfactory, the notification to the licensee 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 Commission. Upon notification from the Commission, the licensee shall prepare a Revised RBC Plan, which may incorporate by reference any revisions proposed by the Commission, and shall submit the Revised RBC Plan to the Commission:

1. Within forty-five days after the notification from the Commission; or

2. If the licensee challenges the notification from the Commission under § 38.2-5507, within forty-five days after a notification to the licensee that the Commission has, after a hearing, rejected the licensee's challenge.

E. In the event of a notification by the Commission to a licensee that the licensee's RBC Plan or Revised RBC Plan is unsatisfactory, the Commission may at the Commission's discretion, subject to the licensee's right to a hearing under § 38.2-5507, specify in the notification that the notification constitutes a Regulatory Action Level Event.

F. Every domestic licensee that files an RBC Plan or Revised RBC Plan with the Commission shall file a copy of the RBC Plan or Revised RBC Plan with the insurance commissioner in any state in which the licensee is authorized to do business if:

1. Such state has an RBC provision substantially similar to subsection A of § 38.2-5508; and

2. The insurance commissioner of that state has notified the licensee of its request for the filing in writing, in which case the licensee 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 subsection C of § 38.2-5504.