

# VIRGINIA ACTS OF ASSEMBLY -- 2012 SESSION

## CHAPTER 156

*An Act to amend and reenact §§ 38.2-4123, 38.2-5500, 38.2-5501, and 38.2-5503 of the Code of Virginia, relating to the Risk-Based Capital Act.*

[S 120]

Approved March 7, 2012

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 38.2-4123, 38.2-5500, 38.2-5501, and 38.2-5503 of the Code of Virginia are amended and reenacted as follows:**

§ 38.2-4123. Exemptions.

Except as herein provided, societies shall be governed by this chapter and §§ 38.2-100 through 38.2-134, Chapters 2 (§ 38.2-200 *et seq.*) through 9 (§ 38.2-900 *et seq.*), §§ 38.2-1300 through 38.2-1315, 38.2-1315.1, and 38.2-1317 through 38.2-1340, Chapters 14 (§ 38.2-1400 *et seq.*), 15 (§ 38.2-1500 *et seq.*), and 18 (§ 38.2-1800 *et seq.*), §§ 38.2-3100 through 38.2-3125, 38.2-3127.1, and 38.2-3300 through 38.2-3317, Chapter 34 (§ 38.2-3400 *et seq.*), §§ 38.2-3500 through 38.2-3520, Chapter 36 (§ 38.2-3600 *et seq.*), and Chapter 52 (§ 38.2-5200 *et seq.*), and Chapter 55 (§ 38.2-5500 *et seq.*), and shall be exempt from all other provisions of this title unless expressly designated therein, or unless they are specifically made applicable by this chapter.

§ 38.2-5500. Applicability.

The provisions of this chapter shall be known as The Risk-Based Capital Act and may be referred to herein as "the Act." The Act shall apply to all persons licensed in this Commonwealth to transact an insurance business pursuant to provisions in Chapter 10 (§ 38.2-1000 *et seq.*), 11 (§ 38.2-1100 *et seq.*), 12 (§ 38.2-1200 *et seq.*), 25 (§ 38.2-2500 *et seq.*), 41 (§ 38.2-4100 *et seq.*), 42 (§ 38.2-4200 *et seq.*), 43 (§ 38.2-4300 *et seq.*), or 45 (§ 38.2-4500 *et seq.*).

§ 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 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.*) or Chapter 41 (§ 38.2-4100 *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.*) or Chapter 41 (§ 38.2-4100 *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 or a fraternal benefit society, 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.

"RBC" means risk-based capital.

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

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

1. "Company Action Level RBC" means, with respect to any licensee, the product of 2.0 and its Authorized Control Level RBC;
2. "Regulatory Action Level RBC" means the product of 1.5 and its Authorized Control Level RBC;
3. "Authorized Control Level RBC" means the number determined under the risk-based capital formula in accordance with the RBC Instructions;
4. "Mandatory Control Level RBC" means the product of 0.70 and the Authorized Control Level RBC.

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

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

"Total Adjusted Capital" means the sum of:

1. A licensee's statutory capital and surplus as determined in accordance with statutory accounting applicable to the annual financial statements required to be filed under § 38.2-1300; and
2. Such other items, if any, as the RBC Instructions may provide.

§ 38.2-5503. Company Action Level Event.

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

1. The filing of an RBC Report by a licensee which indicates that:
  - a. The licensee'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 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 2.5 and has a negative trend; or
  - c. If a property and casualty insurer, the insurer has Total Adjusted Capital that is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 3.0 and triggers the trend test determined in accordance with the Trend Test Calculation included in the Property and Casualty RBC instructions; or
  - d. *If a health organization, the health organization has Total Adjusted Capital that is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 3.0 and triggers the trend test determined in accordance with the Trend Test Calculation included in the Health RBC instructions;*
2. The notification by the Commission to the licensee of an Adjusted RBC Report that indicates the event in subdivision A 1 a, provided the licensee does not challenge the Adjusted RBC Report under § 38.2-5507; or
3. If, pursuant to § 38.2-5507, the licensee challenges an Adjusted RBC Report that indicates the event in subdivision A 1 a, the notification by the Commission to the licensee that the Commission has, after a hearing, rejected the licensee's challenge.

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

1. Identify the conditions in the licensee which contribute to the Company Action Level Event;
2. Contain proposals of corrective actions which the licensee intends to take and would be expected to result in the elimination of the Company Action Level Event;
3. Provide projections of the licensee's financial results in the current year and for at least the four succeeding years if the licensee is a life and health insurer or a property and casualty insurer, or at least two succeeding years if the licensee is a health organization, both in the absence of proposed corrective

actions and giving effect to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, capital and surplus, and RBC levels. If appropriate, the projections for both new and renewal business shall 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 licensee's projections and the sensitivity of the projections to the assumptions; and

5. Identify the quality of, and problems associated with, the licensee'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 licensee challenges an Adjusted RBC Report pursuant to § 38.2-5507, within forty-five days after notification to the licensee that the Commission has, after a hearing, rejected the licensee's challenge.

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.