

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 38.2-4214, 38.2-4319 as it is currently effective and as it may become effective, 38.2-4509, 38.2-5500 through 38.2-5510, and 38.2-5513 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 55 of Title 38.2 a section numbered 38.2-5515, relating to the Risk-Based Capital Act for Insurers; applicability to health organizations.

[S 54]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-4214, 38.2-4319 as it is currently effective and as it may become effective, 38.2-4509, 38.2-5500 through 38.2-5510, and 38.2-5513 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 55 of Title 38.2 a section numbered 38.2-5515, as follows:

§ 38.2-4214. Application of certain provisions of law.

No provision of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-200, 38.2-203, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225, 38.2-230, 38.2-232, 38.2-305, 38.2-316, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, 38.2-700 through 38.2-705, 38.2-900 through 38.2-904, 38.2-1017, 38.2-1018, 38.2-1038, 38.2-1040 through 38.2-1044, Articles 1 (§ 38.2-1300 et seq.) and 2 (§ 38.2-1306.2 et seq.) of Chapter 13, §§ 38.2-1312, 38.2-1314, 38.2-1317 through 38.2-1328, 38.2-1334, 38.2-1340, 38.2-1400 through 38.2-1444, 38.2-1800 through 38.2-1836, 38.2-3400, 38.2-3401, 38.2-3404, 38.2-3405, 38.2-3405.1, 38.2-3407.1 through 38.2-3407.6:1, 38.2-3407.9 through 38.2-3407.16, 38.2-3409, 38.2-3411 through 38.2-3419.1, 38.2-3430.1 through 38.2-3437, 38.2-3501, 38.2-3502, 38.2-3514.1, 38.2-3514.2, 38.2-3516 through 38.2-3520 as they apply to Medicare supplement policies, §§ 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3541, 38.2-3542, 38.2-3543.2, 38.2-3600 through 38.2-3607, ~~Chapter 53 (§ 38.2-5300 et seq.), Chapter 55 (§ 38.2-5500 et seq.), Chapter 58 (§ 38.2-5800 et seq.) and Chapter 59 (§ 38.2-5900 et seq.)~~ of this title shall apply to the operation of a plan.

§ 38.2-4319. (Effective until July 1, 2004) Statutory construction and relationship to other laws.

A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-200, 38.2-203, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225, 38.2-229, 38.2-232, 38.2-305, 38.2-316, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9 (§ 38.2-900 et seq.), §§ 38.2-1057, 38.2-1306.2 through 38.2-1309, Articles 4 (§ 38.2-1317 et seq.) and 5 (§ 38.2-1322 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.) and 2 (§ 38.2-1412 et seq.) of Chapter 14, §§ 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3405, 38.2-3405.1, 38.2-3407.2 through 38.2-3407.6:1, 38.2-3407.9 through 38.2-3407.16, 38.2-3411.2, 38.2-3412.1:01, 38.2-3414.1, 38.2-3418.1 through 38.2-3418.11, 38.2-3419.1, 38.2-3430.1 through 38.2-3437, 38.2-3500, 38.2-3514.1, 38.2-3514.2, §§ 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3542, 38.2-3543.2, ~~Chapter 53 (§ 38.2-5300 et seq.), Chapter 55 (§ 38.2-5500 et seq.), Chapter 58 (§ 38.2-5800 et seq.) and Chapter 59 (§ 38.2-5900 et seq.)~~ of this title shall be applicable to any health maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) of this title except with respect to the activities of its health maintenance organization.

B. Solicitation of enrollees by a licensed health maintenance organization or by its representatives shall not be construed to violate any provisions of law relating to solicitation or advertising by health professionals.

C. A licensed health maintenance organization shall not be deemed to be engaged in the unlawful practice of medicine. All health care providers associated with a health maintenance organization shall be subject to all provisions of law.

D. Notwithstanding the definition of an eligible employee as set forth in § 38.2-3431, a health maintenance organization providing health care plans pursuant to § 38.2-3431 shall not be required to offer coverage to or accept applications from an employee who does not reside within the health maintenance organization's service area.

§ 38.2-4319. (Effective July 1, 2004) Statutory construction and relationship to other laws.

A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-200, 38.2-203, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225,

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38.2-229, 38.2-232, 38.2-305, 38.2-316, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9 (§ 38.2-900 et seq.), §§ 38.2-1057, 38.2-1306.2 through 38.2-1309, Articles 4 (§ 38.2-1317 et seq.) and 5 (§ 38.2-1322 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.) and 2 (§ 38.2-1412 et seq.) of Chapter 14, §§ 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3405, 38.2-3405.1, 38.2-3407.2 through 38.2-3407.6:1, 38.2-3407.9 through 38.2-3407.16, 38.2-3411.2, 38.2-3414.1, 38.2-3418.1 through 38.2-3418.11, 38.2-3419.1, 38.2-3430.1 through 38.2-3437, 38.2-3500, 38.2-3514.1, 38.2-3514.2, §§ 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3542, 38.2-3543.2, ~~Chapter 53 (§ 38.2-5300 et seq.)~~, Chapter 55 (§ 38.2-5500 et seq.), Chapter 58 (§ 38.2-5800 et seq.) and Chapter 59 (§ 38.2-5900 et seq.) of this title shall be applicable to any health maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) of this title except with respect to the activities of its health maintenance organization.

B. Solicitation of enrollees by a licensed health maintenance organization or by its representatives shall not be construed to violate any provisions of law relating to solicitation or advertising by health professionals.

C. A licensed health maintenance organization shall not be deemed to be engaged in the unlawful practice of medicine. All health care providers associated with a health maintenance organization shall be subject to all provisions of law.

D. Notwithstanding the definition of an eligible employee as set forth in § 38.2-3431, a health maintenance organization providing health care plans pursuant to § 38.2-3431 shall not be required to offer coverage to or accept applications from an employee who does not reside within the health maintenance organization's service area.

§ 38.2-4509. Application of certain laws.

A. No provision of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-200, 38.2-203, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225, 38.2-229, 38.2-316, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, 38.2-900 through 38.2-904, 38.2-1038, 38.2-1040 through 38.2-1044, Articles 1 (§ 38.2-1300 et seq.) and 2 (§ 38.2-1306.2 et seq.) of Chapter 13, §§ 38.2-1312, 38.2-1314, Article 4 (§ 38.2-1317 et seq.) of Chapter 13, §§ 38.2-1400 through 38.2-1444, 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3404, 38.2-3405, 38.2-3407.10, 38.2-3407.13, 38.2-3407.14, 38.2-3407.15, 38.2-3415, 38.2-3541, 38.2-3600 through 38.2-3603, Chapter 55 (§ 38.2-5500 et seq.), Chapter 58 (§ 38.2-5800 et seq.) and Chapter 59 (§ 38.2-5900 et seq.) of this title shall apply to the operation of a plan.

B. The provisions of subsection A of § 38.2-322 shall apply to an optometric services plan. The provisions of subsection C of § 38.2-322 shall apply to a dental services plan.

C. The provisions of Article 1.2 (§ 32.1-137.7 et seq.) of Chapter 5 of Title 32.1 shall not apply to either an optometric or dental services plan.

CHAPTER 55.

RISK-BASED CAPITAL ACT FOR INSURERS.

§ 38.2-5500. Applicability.

The provisions of this chapter shall be known as The Risk-Based Capital Act ~~for Insurers~~ and may be referred to herein as "the Act." The Act shall apply to all ~~insurers~~ persons licensed in this Commonwealth to transact ~~the business of 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.) ~~or~~, 25 (§ 38.2-2500 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 E 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 ~~an insurer~~ a licensee for the purpose of liquidating, rehabilitating, reorganizing or conserving ~~an insurer~~ 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" and "life or 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 insurer, health insurer or~~ 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 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 ~~authorized to write a class of insurance set forth in §§ 38.2-110 through 38.2-132 but is writing only accident and sickness insurance~~ 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 ~~an insurer's~~ 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 ~~insurer 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 ~~insurer 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. ~~An insurer's~~ 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.

§ 38.2-5502. RBC Reports.

A. Every domestic ~~insurer licensee~~ shall, on or prior to each March 1, the "filing date," prepare and submit to the Commission a report of its RBC Levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC Instructions. In addition, every domestic ~~insurer licensee~~ shall file its RBC Report:

1. With the NAIC in accordance with the RBC Instructions; and

2. With the insurance commissioner in any state in which the ~~insurer licensee~~ is authorized to do

business, if the insurance commissioner has notified the ~~insurer~~ licensee of its request in writing, in which case, the ~~insurer~~ licensee shall file its RBC Report not later than the later of:

- a. Fifteen days from the receipt of notice to file its RBC Report with that state; or
- b. The filing date.

B. A life and health insurer's RBC shall be determined in accordance with the formula set forth in the RBC Instructions. The formula shall take into account, and may adjust for the covariance between, the following risks:

1. The risk with respect to the insurer's assets;
2. The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;
3. The interest rate risk with respect to the insurer's business; and
4. All other business risks and such other relevant risks as are set forth in the RBC Instructions.

Each risk shall be determined in each case by applying the factors in the manner set forth in the RBC Instructions.

C. A property and casualty insurer's RBC shall be determined in accordance with the formula set forth in the RBC Instructions. The formula shall take into account, and may adjust for the covariance between, the following risks:

1. Asset risk;
2. Credit risk;
3. Underwriting risk; and
4. All other business risks and such other relevant risks as are set forth in the RBC Instructions.

Each risk shall be determined in each case by applying the factors in the manner set forth in the RBC Instructions.

D. A health organization's RBC shall be determined in accordance with the formula set forth in the RBC Instructions. The formula shall take into account, and may adjust for the covariance between the following risks:

1. Asset risk;
2. Credit risk;
3. Underwriting risk; and
4. All other business risks and such other relevant risks as are set forth in the RBC Instructions.

Each risk shall be determined in each case by applying the factors in the manner set forth in the RBC instructions.

~~D.~~ E. An excess of capital over the amount produced by the risk-based capital requirements contained in this Act and the formulas, schedules and instructions referred to in this Act is desirable in the business of insurance. Accordingly, ~~insurers~~ licensees should seek to maintain capital above the RBC levels required by this Act. Additional capital is used and useful in the insurance business and helps to secure ~~an insurer~~ a licensee against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this Act.

E. F. If a domestic ~~insurer~~ licensee files an RBC Report which in the judgment of the Commission is inaccurate, then the Commission shall adjust the RBC Report to correct the inaccuracy and shall notify the ~~insurer~~ licensee of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC Report as so adjusted is referred to as an "Adjusted RBC Report."

§ 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 ~~an insurer~~ a licensee which indicates that:
 - a. The ~~insurer's~~ licensee's Total Adjusted Capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC; or

- 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;

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

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

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

1. Identify the conditions in the ~~insurer~~ licensee which contribute to the Company Action Level Event;
2. Contain proposals of corrective actions which the ~~insurer~~ licensee 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~~ 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 ~~insurer's~~ licensee's projections and the sensitivity of the projections to the assumptions; and

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

D. Within sixty days after the submission by ~~an insurer~~ a licensee of an RBC Plan to the Commission, the Commission shall notify the ~~insurer~~ 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 ~~insurer~~ 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 ~~insurer~~ 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 ~~insurer~~ licensee challenges the notification from the Commission under § 38.2-5507, within forty-five days after a notification to the ~~insurer~~ licensee that the Commission has, after a hearing, rejected the ~~insurer's~~ licensee's challenge.

E. In the event of a notification by the Commission to ~~an insurer~~ a licensee that the ~~insurer's~~ licensee's RBC Plan or Revised RBC Plan is unsatisfactory, the Commission may at the Commission's discretion, subject to the ~~insurer's~~ 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 ~~insurer~~ 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 ~~insurer~~ 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 ~~insurer~~ licensee of its request for the filing in writing, in which case the ~~insurer~~ 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.

§ 38.2-5504. Regulatory Action Level Event.

A. "Regulatory Action Level Event" means, with respect to any ~~insurer~~ licensee, any of the following events:

1. The filing of an RBC Report by the ~~insurer~~ licensee which indicates that the ~~insurer's~~ licensee's Total Adjusted Capital is greater than or equal to its Authorized Control Level RBC but less than its Regulatory Action Level RBC;

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

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

4. The failure of the ~~insurer~~ licensee to file an RBC Report by the filing date, unless the ~~insurer~~ licensee has provided an explanation for such failure which is satisfactory to the Commission and has cured the failure within ten days after the filing date;

5. The failure of the ~~insurer~~ licensee to submit an RBC Plan to the Commission within the time

period set forth in subsection C of § 38.2-5503;

6. Notification by the Commission to the ~~insurer~~ licensee that:

a. The RBC Plan or Revised RBC Plan submitted by the ~~insurer~~ licensee is, in the judgment of the Commission, unsatisfactory; and

b. Such notification constitutes a Regulatory Action Level Event with respect to the ~~insurer~~ licensee, provided the ~~insurer~~ licensee has not challenged the determination under § 38.2-5507;

7. If, pursuant to § 38.2-5507, the ~~insurer~~ licensee challenges a determination by the Commission under subdivision A 6, the notification by the Commission to the ~~insurer~~ licensee that the Commission has, after a hearing, rejected such challenge;

8. Notification by the Commission to the ~~insurer~~ licensee that the ~~insurer~~ licensee has failed to adhere to its RBC Plan or Revised RBC Plan, but only if such failure has a substantial adverse effect on the ability of the ~~insurer~~ licensee to eliminate the Company Action Level Event in accordance with its RBC Plan or Revised RBC Plan and the Commission has so stated in the notification, provided the ~~insurer~~ licensee has not challenged the determination under § 38.2-5507; or

9. If, pursuant to § 38.2-5507, the ~~insurer~~ licensee challenges a determination by the Commission under subdivision A 8, the notification by the Commission to the ~~insurer~~ licensee that the Commission has, after a hearing, rejected the challenge.

B. In the event of a Regulatory Action Level Event, the Commission shall:

1. Require the ~~insurer~~ licensee to prepare and submit an RBC Plan or, if applicable, a Revised RBC Plan;

2. Perform such examination or analysis as the Commission deems necessary of the assets, liabilities and operations of the ~~insurer~~ licensee including a review of its RBC Plan or Revised RBC Plan; and

3. Subsequent to the examination or analysis, issue a corrective order specifying such corrective actions as the Commission shall determine are required. In determining corrective actions, the Commission may take into account such factors as are deemed relevant with respect to the ~~insurer~~ licensee based upon the Commission's examination or analysis of the assets, liabilities and operations of the ~~insurer~~ licensee, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC Instructions.

C. The RBC Plan or Revised RBC Plan shall be submitted:

1. Within forty-five days after the occurrence of the Regulatory Action Level Event;

2. If the ~~insurer~~ licensee challenges an Adjusted RBC Report pursuant to § 38.2-5507 and the challenge is not frivolous in the judgment of the Commission, within forty-five days after the notification to the ~~insurer~~ licensee that the Commission has, after a hearing, rejected the ~~insurer's~~ licensee's challenge; or

3. If the ~~insurer~~ licensee challenges a Revised RBC Plan under § 38.2-5507 and the challenge is not frivolous in the judgment of the Commission, within forty-five days after notification to the ~~insurer~~ licensee that the Commission has, after a hearing, rejected the ~~insurer's~~ licensee's challenge.

D. The Commission may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the Commission to review the ~~insurer's~~ licensee's RBC Plan or Revised RBC Plan, examine or analyze the assets, liabilities and operations, including contractual relationships, of the ~~insurer~~ licensee and formulate the corrective order with respect to the ~~insurer~~ licensee. The fees, costs and expenses relating to consultants shall be borne by the affected ~~insurer~~ licensee or such other party as directed by the Commission.

§ 38.2-5505. Authorized Control Level Event.

A. "Authorized Control Level Event" means any of the following events:

1. The filing of an RBC Report by the ~~insurer~~ licensee which indicates that the ~~insurer's~~ licensee's Total Adjusted Capital is greater than or equal to its Mandatory Control Level RBC but less than its Authorized Control Level RBC;

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

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

4. The failure of the ~~insurer~~ licensee to respond, in a manner satisfactory to the Commission, to a corrective order, provided the ~~insurer~~ licensee has not challenged the corrective order under § 38.2-5507; or

5. If the ~~insurer~~ licensee has challenged a corrective order under § 38.2-5507 and the Commission has, after a hearing, rejected the challenge or modified the corrective order, the failure of the ~~insurer~~ licensee to respond, in a manner satisfactory to the Commission, to the corrective order subsequent to rejection or modification by the Commission.

B. In the event of an Authorized Control Level Event with respect to ~~an insurer~~ *a licensee*, the Commission shall:

1. Take such actions as are required under § 38.2-5504 regarding ~~an insurer~~ *a licensee* with respect to which a Regulatory Action Level Event has occurred; or

2. If the Commission deems it to be in the best interests of the policyholders and creditors of the ~~insurer licensee~~ and of the public, take such actions as are necessary to cause the ~~insurer licensee~~ to be placed under regulatory control under the provisions of Chapter 15 (§ 38.2-1500 et seq.). In the event the Commission takes such actions, the Authorized Control Level Event shall be deemed an indication of a hazardous financial condition which serves as sufficient grounds for the Commission to commence delinquency proceedings, and the receiver appointed in conjunction with such proceedings shall have the rights, powers and duties with respect to the ~~insurer licensee~~ as are set forth in Chapter 15 or any order of liquidation, rehabilitation or conservation entered pursuant thereto. In the event the Commission takes actions under this subdivision pursuant to an Adjusted RBC Report, the ~~insurer licensee~~ shall be entitled to such protections as are afforded to ~~insurers licensees~~ under the appropriate provisions of this title pertaining to summary proceedings.

§ 38.2-5506. Mandatory Control Level Event.

A. "Mandatory Control Level Event" means any of the following events:

1. The filing of an RBC Report which indicates that the ~~insurer's licensee's~~ Total Adjusted Capital is less than its Mandatory Control Level RBC;

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

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

B. In the event of a Mandatory Control Level Event:

1. With respect to a life ~~or~~ and health insurer, the Commission shall take actions as are necessary to place the insurer under regulatory control pursuant to the provisions of Chapter 15 (§ 38.2-1500 et seq.). In that event, the Mandatory Control Level Event shall be deemed an indication of a hazardous financial condition which serves as sufficient grounds for the Commission to commence delinquency proceedings, and the receiver appointed in conjunction with such proceedings, shall have the rights, powers and duties with respect to the insurer as are set forth in Chapter 15 or any order of liquidation, rehabilitation or conservation entered thereunder. If the Commission takes actions pursuant to an Adjusted RBC Report, the insurer shall be entitled to such protections as are afforded to insurers under the appropriate provisions of this title pertaining to summary proceedings. Notwithstanding any of the foregoing, the Commission may forego action for up to ninety days after the Mandatory Control Level Event if the Commission finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the ninety-day period.

2. With respect to a property and casualty insurer, the Commission shall take actions as are necessary to place the insurer under regulatory control pursuant to the provisions of Chapter 15, or, in the case of an insurer which is writing no business and which is running-off its existing business, may allow the insurer to continue to run-off under the supervision of the Commission. In either event, the Mandatory Control Level Event shall be deemed an indication of a hazardous financial condition which serves as sufficient grounds for the Commission to commence delinquency proceedings, and the receiver appointed in conjunction with such proceedings, shall have the rights, powers and duties with respect to the insurer as are set forth in Chapter 15 or any order of liquidation, rehabilitation, or conservation entered thereunder. If the Commission takes actions pursuant to an Adjusted RBC Report, the insurer shall be entitled to such protections as are afforded to insurers under the appropriate provisions of this title pertaining to summary proceedings. Notwithstanding any of the foregoing, the Commission may forego action for up to ninety days after the Mandatory Control Level Event if the Commission finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the ninety-day period.

3. *With respect to a health organization, the Commission shall take actions as are necessary to place the health organization under regulatory control pursuant to and in accordance with applicable provisions in Chapter 15 (§ 38.2-1500 et seq.) and §§ 38.2-4214.1, 38.2-4317, or § 38.2-4509.1 of this title. In that event, the Mandatory Control Level Event shall be deemed an indication of a hazardous financial condition which serves as sufficient grounds for the Commission to commence delinquency proceedings, and the receiver appointed in conjunction with such proceedings shall have the rights, powers and duties with respect to the licensee as are set forth in Chapter 15, or any order of liquidation, rehabilitation or conservation entered thereunder. If the Commission takes actions pursuant to an adjusted RBC Report, the health organization shall be entitled to such protections as are afforded*

to the licensee under the appropriate provisions of this title pertaining to summary proceedings. Notwithstanding any of the foregoing, the Commission may forego action for up to ninety days after the Mandatory Control Level Event if the Commission finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the ninety-day period.

§ 38.2-5507. Hearings.

A. ~~An insurer~~ A licensee shall have the right to a confidential hearing, on a record before the Commission, at which the ~~insurer~~ licensee may challenge any determination or action by the Commission, upon:

1. Notification to ~~an insurer~~ a licensee by the Commission of an Adjusted RBC Report;
2. Notification to ~~an insurer~~ a licensee by the Commission that (i) the ~~insurer's~~ licensee's RBC Plan or Revised RBC Plan is unsatisfactory and (ii) such notification constitutes a Regulatory Action Level Event with respect to such ~~insurer~~ licensee;
3. Notification to ~~an insurer~~ a licensee by the Commission that the ~~insure~~ licensee has failed to adhere to its RBC Plan or Revised RBC Plan and that such failure has a substantial adverse effect on the ability of the ~~insurer~~ licensee to eliminate the Company Action Level Event with respect to the ~~insurer~~ licensee in accordance with its RBC Plan or Revised RBC Plan; or
4. Notification to ~~an insurer~~ a licensee by the Commission of a Corrective Order with respect to the ~~insurer~~ licensee.

B. The ~~insurer~~ licensee shall notify the Commission of its request for a hearing within five days after the notification by the Commission under subdivision 1, 2, 3 or 4 of subsection A. Upon receipt of the ~~insurer's~~ licensee's request for a hearing, the Commission shall set a date for the hearing, which date shall be no less than ten nor more than thirty days after the date of the ~~insurer's~~ licensee's request.

§ 38.2-5508. Confidentiality; prohibition on announcements; prohibition on use in ratemaking.

A. All RBC Plans and RBC Reports, to the extent the information therein is not required to be set forth in a publicly available annual statement schedule, which are filed with the Commission with respect to any domestic ~~insurer~~ licensee or foreign ~~insurer~~ licensee, constitute information that might be damaging to the ~~insurer~~ licensee if made available to its competitors, and therefore shall be kept confidential by the Commission. This information shall not be made public nor shall it be subject to subpoena, other than by the Commission and then only for the purpose of enforcement actions taken by the Commission pursuant to this Act or any other provision of the insurance laws of this Commonwealth. As used in this subsection, RBC Reports and RBC Plans shall include the results or report of any examination or analysis of ~~an insurer~~ a licensee performed by the Commission pursuant to the provisions of this Act or by the insurance regulatory officials of another state pursuant to the provisions of a substantially similar risk-based capital statute.

B. The comparison of ~~an insurer's~~ a licensee's Total Adjusted Capital to any of its RBC Levels is a regulatory tool which may indicate the need for possible corrective action with respect to the ~~insurer~~ licensee, and is not intended as a means to rank ~~insurers~~ licensees generally. Therefore, except as otherwise required under the provisions of this Act, the making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement ranking any ~~insurer~~ licensee relative to other ~~insurers~~ licensees solely on the basis of comparisons between Total Adjusted Capital and RBC Levels or any component derived in the calculation of RBC Levels, by any ~~insurer~~ licensee, agent, broker or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited. If any materially false statement comparing ~~an insurer's~~ a licensee's Total Adjusted Capital to its RBC Levels, or any of them, or a misleading comparison of any other amount to the ~~insurer's~~ licensee's RBC Levels is published in any written publication and the ~~insurer~~ licensee is able to demonstrate to the Commission with substantial proof the falsity or misleading nature of such statement, as the case may be, then the ~~insurer~~ licensee may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false or misleading statement.

C. RBC Instructions, RBC Reports, Adjusted RBC Reports, RBC Plans and Revised RBC Plans are intended solely for use by the Commission in monitoring the solvency of ~~insurers~~ licensees and the need for possible corrective action with respect to ~~insurers~~ licensees and shall not be used by the Commission for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the Commission to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which ~~an insurer~~ a licensee or any affiliate is authorized to write.

§ 38.2-5509. Supplemental provisions; rules; exemption.

A. The provisions of this Act are supplemental to any other provisions of the laws of this Commonwealth, and shall not preclude or limit any other powers or duties of the Commission, the

Commissioner of Insurance, or any of the Commission's employees or agents under such laws, including, but not limited to, the provisions of §§ 38.2-1038 and 38.2-1040, or §§ 38.2-4316 A 7 and 38.2-4317, and Chapter 15 (§ 38.2-1500 et seq.) and any regulations issued thereunder.

B. The Commission may adopt reasonable rules necessary for the implementation of this Act.

C. The Commission may exempt from the application of this Act any domestic property and casualty insurer which:

1. Writes direct business only in this Commonwealth;
2. Writes direct annual premiums of \$2 million or less; and
3. Assumes no reinsurance in excess of five percent of direct premium written.

D. The Commission may exempt from the application of this Act an insurer organized and operating under the laws of this Commonwealth and licensed pursuant to the provisions of Chapter 25 (§ 38.2-2500 et seq.) of this title.

E. The Commission may exempt from the application of this Act a domestic health organization that writes direct business only in this Commonwealth and assumes no reinsurance in excess of five percent of direct premium written, and either (i) writes direct annual premiums of two million dollars or less for comprehensive medical coverages or (ii) is licensed pursuant to Chapter 45 and covers less than 2,000 lives. As used in this subsection, "comprehensive medical coverages" means contracts providing basic health care services and Medicare and Medicaid risk coverages or policies providing hospital, surgical, major medical, Medicare risk and Medicaid risk coverages. Medicare supplement need not be included and premiums for administrative services shall not be included.

§ 38.2-5510. Foreign licensees.

A. Any foreign ~~insurer~~ licensee shall, upon the written request of the Commission, submit to the Commission an RBC Report as of the end of the calendar year just ended not later than the later of:

1. The date an RBC Report would be required to be filed by a domestic ~~insurer~~ licensee under this Act; or

2. Fifteen days after the request is received by the foreign ~~insurer~~ licensee.

Any foreign ~~insurer~~ licensee shall, at the written request of the Commission, promptly submit to the Commission a copy of any RBC Plan that is filed with the insurance commissioner of any other state.

B. In the event of a Company Action Level Event, Regulatory Action Level Event or Authorized Control Level Event with respect to any foreign ~~insurer~~ licensee as determined under the RBC statute applicable in the state of domicile of the ~~insurer~~ licensee, or, if no RBC provision is in force in that state, under the provisions of this Act, if the insurance commissioner of the state of domicile of the foreign ~~insurer~~ licensee fails to require the foreign ~~insurer~~ licensee to file an RBC Plan in the manner specified under the RBC statute, or, if no RBC provision is in force in the state, under § 38.2-5503 hereof, the Commission may require the foreign ~~insurer~~ licensee to file an RBC Plan with the Commission. In such event, the failure of the foreign ~~insurer~~ licensee to file an RBC Plan with the Commission shall be grounds to order the ~~insurer~~ licensee to cease writing new insurance business in this Commonwealth or to suspend, revoke or refuse to issue a license pursuant to § 38.2-1040.

C. In the event of a Mandatory Control Level Event with respect to any foreign ~~insurer~~ licensee, if no domiciliary receiver has been appointed with respect to the foreign ~~insurer~~ licensee under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign ~~insurer~~ licensee, the Commission may deem such ~~insurer~~ licensee in a condition where any further transaction of business will be hazardous to its policyholders, creditors, members, subscribers, stockholders, or to the public, and an action may be instituted and conducted pursuant to the provisions of Chapter 15 (§ 38.2-1500 et seq.) and, if applicable, § 38.2-4214.1, § 38.2-4317, or § 38.2-4509.1, and the occurrence of the Mandatory Control Level Event shall be considered adequate grounds for the application for such action.

§ 38.2-5513. Notices.

All notices by the Commission to an ~~insurer~~ a licensee which may result in regulatory action hereunder shall be effective upon dispatch if transmitted by registered or certified mail, or in the case of any other transmission shall be effective upon the ~~insurer's~~ licensee's receipt of such notice.

§ 38.2-5515. Phase-in provisions for health maintenance organizations.

Effective July 1, 2000, the term "insurer" as used in this chapter shall be deemed to mean and include also a health maintenance organization licensed pursuant to Chapter 43 of this title and, for RBC reports required to be filed by such health maintenance organizations with respect to 1999 or 2000, the following requirements apply in lieu of the provisions of §§ 38.2-5503, 38.2-5504, 38.2-5505, and 38.2-5506:

1. In the event of a Company Action Level Event with respect to a domestic health maintenance organization, the Commission shall take no regulatory action under this Act.

2. In the event of a Regulatory Action Level Event under subdivision 1, 2 or 3 of subsection A of § 38.2-5504, the Commission shall take the actions required under § 38.2-5503.

3. In the event of a Regulatory Action Level Event under subdivisions 4 through 9 of subsection A of

545 § 38.2-5504 or an Authorized Control Level Event, the Commission shall take the actions required under
546 § 38.2-5504 with respect to the health maintenance organization.

547 4. In the event of a Mandatory Control Level Event with respect to a health maintenance
548 organization, the Commission shall take the actions required under § 38.2-5505 with respect to the
549 health maintenance organization.

550 **2. That the provisions of § 38.2-5515 of the Code of Virginia shall expire on January 1, 2001.**

551 **3. That the provisions of this act, except § 38.2-5515 of the Code of Virginia, shall become effective**
552 **on January 1, 2001.**