

1995 RECONVENED SESSION

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SB724ER

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 38.2-135 of the Code of Virginia and to amend the Code of Virginia by adding in Title 38.2 a chapter numbered 54, consisting of sections numbered 38.2-5400 through 38.2-5414, relating to establishing the Risk-Based Capital Act for Insurers.

[S 724]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-135 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 38.2 a chapter numbered 54, consisting of sections numbered 38.2-5400 through 38.2-5414, as follows:

§ 38.2-135. Classes of insurance companies may be licensed to write.

Except as otherwise provided in this title and subject to any conditions and restrictions imposed therein, any insurer licensed to transact the business of insurance in this Commonwealth, other than life insurers and title insurers, may be licensed to write one or more of the classes of insurance enumerated in Article 2 (§ 38.2-101 et seq.) of this chapter that it is authorized under its charter to write, except life insurance, industrial life insurance, credit life insurance, variable life insurance, modified guaranteed life insurance, annuities, variable annuities, modified guaranteed annuities, and title insurance. An insurer licensed to write life insurance shall not be licensed to write any additional class of insurance except modified guaranteed life insurance, variable life insurance, annuities, modified guaranteed annuities, variable annuities, credit life insurance, credit accident and sickness insurance, accident and sickness insurance, and industrial life insurance; ~~and legal services insurance~~. An insurer licensed to write title insurance shall not be licensed to write any additional class of insurance. However, any life insurer that has been licensed to write and has been actively engaged in writing life insurance and any additional class of insurance set out in Article 2 (§ 38.2-101 et seq.) of this chapter continuously during a period of twenty years immediately preceding July 1, 1952, may continue to be licensed to write those classes of insurance. No company shall write any class of insurance unless it has a current annual license from the Commission to do so.

CHAPTER 54.

RISK-BASED CAPITAL ACT FOR INSURERS.

§ 38.2-5400. *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 licensed in this Commonwealth to transact the business of insurance 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.).

§ 38.2-5401. *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 § 38.2-5402.

"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 for the purpose of liquidating, rehabilitating, reorganizing or conserving an insurer pursuant to the provisions of Chapter 15 (§ 38.2-1500 et seq.).

"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.).

"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.).

"Life and health insurer" and "life or health insurer" mean 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.

"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"

57 included in the RBC Instructions.

58 "Property and casualty insurer" means any domestic insurer or foreign insurer which is authorized
 59 under any chapter of this title to write any class of insurance except a class of life insurance or
 60 annuities, provided that "property and casualty insurer" shall not include monoline mortgage guaranty
 61 insurers, financial guaranty insurers and title insurers, nor shall it include any insurer which is
 62 authorized to write a class of insurance set forth in §§ 38.2-110 through 38.2-132 but is writing only
 63 accident and sickness insurance.

64 "RBC" means risk-based capital.

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

68 "RBC Level" means an insurer's Company Action Level RBC, Regulatory Action Level RBC,
 69 Authorized Control Level RBC, or Mandatory Control Level RBC where:

70 1. "Company Action Level RBC" means, with respect to any insurer, the product of 2.0 and its
 71 Authorized Control Level RBC;

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

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

75 4. "Mandatory Control Level RBC" means the product of 0.70 and the Authorized Control Level
 76 RBC.

77 "RBC Plan" means a comprehensive financial plan containing the elements specified in subsection B
 78 of § 38.2-5403. If the Commission rejects the RBC Plan, and it is revised by the insurer, with or without
 79 the Commission's recommendation, the plan shall be called the "Revised RBC Plan."

80 "RBC Report" means the report required in § 38.2-5402.

81 "Total Adjusted Capital" means the sum of:

82 1. An insurer's statutory capital and surplus as determined in accordance with statutory accounting
 83 applicable to the annual financial statements required to be filed under § 38.2-1300; and

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

85 § 38.2-5402. RBC Reports.

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

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

91 2. With the insurance commissioner in any state in which the insurer is authorized to do business, if
 92 the insurance commissioner has notified the insurer of its request in writing, in which case, the insurer
 93 shall file its RBC Report not later than the later of:

94 a. Fifteen days from the receipt of notice to file its RBC Report with that state; or

95 b. The filing date.

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

99 1. The risk with respect to the insurer's assets;

100 2. The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

101 3. The interest rate risk with respect to the insurer's business; and

102 4. All other business risks and such other relevant risks as are set forth in the RBC Instructions.

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

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

108 1. Asset risk;

109 2. Credit risk;

110 3. Underwriting risk; and

111 4. All other business risks and such other relevant risks as are set forth in the RBC Instructions.

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

114 D. An excess of capital over the amount produced by the risk-based capital requirements contained
 115 in this Act and the formulas, schedules and instructions referred to in this Act is desirable in the
 116 business of insurance. Accordingly, insurers should seek to maintain capital above the RBC levels
 117 required by this Act. Additional capital is used and useful in the insurance business and helps to secure

an insurer 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. If a domestic insurer 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 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."

§ 38.2-5403. 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 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; 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 of an Adjusted RBC Report that indicates the event in subdivision A 1 a or A 1 b, provided the insurer does not challenge the Adjusted RBC Report under § 38.2-5407; or

3. If, pursuant to § 38.2-5407, the insurer 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 that the Commission 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 Commission an RBC Plan which shall:

1. Identify the conditions in the insurer 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, 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 surplus. 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 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 § 38.2-5407, within forty-five days after notification to the insurer that the Commission 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 Commission, the Commission shall notify the insurer 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 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 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 challenges the notification from the Commission under § 38.2-5407, within forty-five days after a notification to the insurer that the Commission has, after a hearing, rejected the insurer's challenge.

E. In the event of a notification by the Commission to an insurer that the insurer's RBC Plan or Revised RBC Plan is unsatisfactory, the Commission may at the Commission's discretion, subject to the insurer's right to a hearing under § 38.2-5407, 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 Commission 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. Such state has an RBC provision substantially similar to subsection A of § 38.2-5408; 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 subsection C of § 38.2-5404. § 38.2-5404. Regulatory Action Level Event.

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

1. The filing of an RBC Report by the insurer which indicates that the insurer'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 of an Adjusted RBC Report that indicates the event in subdivision A 1, provided the insurer does not challenge the Adjusted RBC Report under § 38.2-5407;

3. If, pursuant to § 38.2-5407, the insurer challenges an Adjusted RBC Report that indicates the event in subdivision A 1, the notification by the Commission to the insurer that the Commission has, after a hearing, rejected the insurer's challenge;

4. The failure of the insurer to file an RBC Report by the filing date, unless the insurer 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 to submit an RBC Plan to the Commission within the time period set forth in subsection C of § 38.2-5403;

6. Notification by the Commission to the insurer that:

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

b. Such notification constitutes a Regulatory Action Level Event with respect to the insurer, provided the insurer has not challenged the determination under § 38.2-5407;

7. If, pursuant to § 38.2-5407, the insurer challenges a determination by the Commission under subdivision A 6, the notification by the Commission to the insurer that the Commission has, after a hearing, rejected such challenge;

8. Notification by the Commission to the insurer that the insurer 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 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 has not challenged the determination under § 38.2-5407; or

9. If, pursuant to § 38.2-5407, the insurer challenges a determination by the Commission under subdivision A 8, the notification by the Commission to the insurer 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 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 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 based upon the Commission's examination or analysis of the assets, liabilities and operations of the insurer, 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 challenges an Adjusted RBC Report pursuant to § 38.2-5407 and the challenge is not frivolous in the judgment of the Commission, within forty-five days after the notification to the insurer that the Commission has, after a hearing, rejected the insurer's challenge; or

3. If the insurer challenges a Revised RBC Plan under § 38.2-5407 and the challenge is not frivolous in the judgment of the Commission, within forty-five days after notification to the insurer that the Commission has, after a hearing, rejected the insurer'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 RBC Plan or Revised RBC Plan, examine or analyze the assets, liabilities and operations of the insurer and formulate the corrective order with respect to the insurer. The fees, costs and expenses relating to consultants shall be borne by the affected insurer or such other party as directed by the Commission.

§ 38.2-5405. 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 which indicates that the insurer'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 of an Adjusted RBC Report that indicates the event in subdivision A 1, provided the insurer does not challenge the Adjusted RBC Report under § 38.2-5407;

3. If, pursuant to § 38.2-5407, the insurer challenges an Adjusted RBC Report that indicates the event in subdivision A 1, the notification by the Commission to the insurer that the Commission has, after a hearing, rejected the insurer's challenge;

4. The failure of the insurer to respond, in a manner satisfactory to the Commission, to a corrective order, provided the insurer has not challenged the corrective order under § 38.2-5407; or

5. If the insurer has challenged a corrective order under § 38.2-5407 and the Commission has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer 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, the Commission shall:

1. Take such actions as are required under § 38.2-5404 regarding an insurer 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 and of the public, take such actions as are necessary to cause the insurer 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 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 shall be entitled to such protections as are afforded to insurers under the appropriate provisions of this title pertaining to summary proceedings.

§ 38.2-5406. 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 Total Adjusted Capital is less than its Mandatory Control Level RBC;

2. The notification by the Commission to the insurer of an Adjusted RBC Report that indicates the event in subdivision A 1, provided the insurer does not challenge the Adjusted RBC Report under § 38.2-5407; or

3. If, pursuant to § 38.2-5407, the insurer challenges an Adjusted RBC Report that indicates the event in subdivision A 1, notification by the Commission to the insurer that the Commission has, after a hearing, rejected the insurer's challenge.

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

1. With respect to a life or 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 a 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.

§ 38.2-5407. Hearings.

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

1. Notification to an insurer by the Commission of an Adjusted RBC Report;

2. Notification to an insurer by the Commission that (i) the insurer's RBC Plan or Revised RBC Plan is unsatisfactory and (ii) such notification constitutes a Regulatory Action Level Event with respect to such insurer;

3. Notification to an insurer by the Commission that the insurer 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 to eliminate the Company Action Level Event with respect to the insurer in accordance with its RBC Plan or Revised RBC Plan; or

4. Notification to an insurer by the Commission of a Corrective Order with respect to the insurer.

B. The insurer 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 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 request.

§ 38.2-5408. 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 or foreign insurer, constitute information that might be damaging to the insurer 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 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 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, and is not intended as a means to rank insurers 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 relative to other insurers 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 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 Total Adjusted Capital to its RBC Levels, or any of them, or a misleading comparison of any other amount to the insurer's RBC Levels is published in any written publication and the insurer 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 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 and the need for possible corrective action with respect to insurers 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 or any affiliate is authorized to write.

§ 38.2-5409. 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 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.

§ 38.2-5410. Foreign insurers.

A. Any foreign insurer 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 under this Act; or

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

Any foreign insurer 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 as determined under the RBC statute applicable in the state of domicile of the insurer, 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 fails to require the foreign insurer 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 § 38.2-5403 hereof, the Commission may require the foreign insurer to file an RBC Plan with the Commission. In such event, the failure of the foreign insurer to file an RBC Plan with the Commission shall be grounds to order the insurer 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, if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the Commission may deem such insurer 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 the occurrence of the Mandatory Control Level Event shall be considered adequate grounds for the application for such action.

§ 38.2-5411. Immunity.

There shall be no liability on the part of, and no cause of action shall arise against, the Commission, the Commissioner of Insurance, or any of the Commission's employees or agents, acting in good faith, for any action taken by them in the performance of their powers and duties under this Act.

§ 38.2-5412. Severability clause.

If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect the provisions or applications of this Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are severable.

§ 38.2-5413. Notices.

All notices by the Commission to an insurer 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 receipt of such notice.

§ 38.2-5414. Phase-in provision.

For RBC Reports required to be filed by insurers with respect to 1994, the following requirements shall apply in lieu of the provisions of §§ 38.2-5403, 38.2-5404, 38.2-5405 and 38.2-5406:

1. In the event of a Company Action Level Event with respect to a domestic insurer, the Commission shall take no regulatory action hereunder.

2. In the event of a Regulatory Action Level Event under subdivision A 1, A 2 or A 3 of § 38.2-5404, the Commission shall take the actions required under § 38.2-5403.

3. In the event of a Regulatory Action Level Event under subdivision 4, 5, 6, 7, 8 or 9 of subsection A of § 38.2-5404 or an Authorized Control Level Event, the Commission shall take the actions required under § 38.2-5404 with respect to the insurer.

4. In the event of a Mandatory Control Level Event with respect to an insurer, the Commission shall

423 *take the actions required under § 38.2-5405 with respect to the insurer.*