

1 SB126
2 127560-4
3 By Senator Blackwell
4 RFD: Banking and Insurance
5 First Read: 05-FEB-13

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8 SYNOPSIS: Under existing law, an insurer is required
9 to maintain certain minimal levels of unimpaired
10 capital to be authorized to transact business in
11 this state and is required to meet certain other
12 requirements based on the amount of risk taken. A
13 life and health insurer is subject to a company
14 action level event when the risk-based capital
15 report indicates certain levels.

16 This bill would change the level at which
17 the risk based capital (RBC) trend test for life
18 and health insurance companies could be triggered
19 from 2.5 times the authorized control level RBC
20 amount to 3.0 times the authorized control level
21 amount.

22 This bill would also subject property and
23 casualty insurers to a company action level event
24 when the risk-based capital report indicates
25 certain specified levels. The bill would also
26 correct an error in citation and make clarifying
27 nonsubstantive changes.

1
2 A BILL
3 TO BE ENTITLED
4 AN ACT
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6 Relating to insurance; to amend Sections 27-2B-2,
7 27-2B-3, and 27-2B-4 of the Code of Alabama 1975, to increase
8 the level at which the risk based trend test for life and
9 health insurance companies could be required; and to provide
10 that a property and casualty insurer would be subject to a
11 company action level event when its risk-based capital report
12 indicates certain specified levels.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Sections 27-2B-2, 27-2B-3, and 27-2B-4,
15 Code of Alabama 1975, are amended to read as follows:

16 "§27-2B-2.

17 "As used in this chapter, these terms shall have the
18 following meanings:

19 "(1) ADJUSTED RBC REPORT. An RBC report which has
20 been adjusted by the commissioner in accordance with
21 subsection ~~(c)~~ (e) of Section 27-2B-3.

22 "(2) CORRECTIVE ORDER. An order issued by the
23 commissioner specifying corrective actions which the
24 commissioner has determined are required.

25 "(3) DOMESTIC INSURER. Any insurance company
26 domiciled in this state.

1 "(4) FOREIGN INSURER. Any insurance company which is
2 licensed to do business in this state but not domiciled in
3 this state.

4 "(5) LIFE OR HEALTH INSURER. Any insurance company
5 licensed to do business in this state and authorized to
6 transact life and/or disability insurance, including a
7 property and casualty insurer writing only disability
8 insurance, but shall not include fraternal benefit societies,
9 health care service corporations, dental service
10 organizations, health maintenance organizations, dental plan
11 organizations or mutual aid associations.

12 "(6) NAIC. The National Association of Insurance
13 Commissioners.

14 "(7) NEGATIVE TREND. With respect to a life or
15 health insurer, a negative trend over a period of time, as
16 determined in accordance with the trend test calculation
17 included in the RBC instructions.

18 "(8) PROPERTY AND CASUALTY INSURER. Any insurance
19 company licensed to do business in this state and authorized
20 to transact property, marine, casualty and/or surety
21 insurance, but shall not include monoline mortgage guaranty
22 insurers, financial guaranty insurers and title insurers.

23 "(9) RBC. Risk-based capital.

24 "(10) RBC INSTRUCTIONS. The RBC report including
25 risk-based capital instructions adopted by the NAIC, as the
26 RBC instructions may be amended by the NAIC from time to time
27 in accordance with the procedures adopted by the NAIC.

1 "(11) RBC LEVEL. An insurer's company action level
2 RBC, regulatory action level RBC, authorized control level
3 RBC, or mandatory control level RBC where:

4 "a. "Company action level RBC" means, with respect
5 to any insurer, the product of 2.0 and its authorized control
6 level RBC.

7 "b. "Regulatory action level RBC" means the product
8 of 1.5 and its authorized control level RBC.

9 "c. "Authorized control level RBC" means the number
10 determined under the risk-based capital formula in accordance
11 with the RBC instructions.

12 "d. "Mandatory control level RBC" means the product
13 of .70 and the authorized control level RBC.

14 "(12) RBC PLAN. A comprehensive financial plan
15 containing the elements specified in subsection (b) of Section
16 27-2B-4. If the commissioner rejects the RBC plan, and it is
17 revised by the insurer, with or without the commissioner's
18 recommendation, the plan shall be called the revised RBC plan.

19 "(13) RBC REPORT. The report required in Section
20 27-2B-3.

21 "(14) STATUTORY CAPITAL AND SURPLUS. The combination
22 of capital and surplus. As used in this definition, these
23 terms shall have the following meanings:

24 "a. Capital. At any particular time, the sum of (i)
25 the par value of all shares of the insurer having a par value
26 that have been issued, (ii) the amount of consideration
27 received by the insurer for all shares of the insurer without

1 par value that have been issued, except any part of the
2 consideration therefor as may have been allocated to surplus
3 in a manner permitted by law, and (iii) any amounts not
4 included in clauses (i) and (ii) of this subdivision as have
5 been transferred to capital of the insurer, whether upon the
6 issue of shares as a share dividend or otherwise, minus all
7 reductions from the sum as have been affected in a manner
8 permitted by law.

9 "b. Surplus. The excess of the net admitted assets
10 of an insurer over its capital. As used in this definition,
11 "net admitted assets" means the excess of admitted assets of
12 an insurer over its liabilities.

13 "(15) TOTAL ADJUSTED CAPITAL. The sum of:

14 "a. An insurer's statutory capital and surplus.

15 "b. Other items, if any, as the RBC instructions may
16 provide.

17 "§27-2B-3.

18 "(a) Every domestic insurer shall, on or prior to
19 each March 1 (the "filing date"), prepare and submit to the
20 commissioner a report of its RBC levels as of the end of the
21 calendar year just ended, in a form and containing information
22 as is required by the RBC instructions. In addition, every
23 domestic insurer shall file its RBC report with:

24 "(1) The NAIC according to the RBC instructions.

25 "(2) The insurance commissioner in any state in
26 which the insurer is authorized to do business, if the
27 insurance commissioner has notified the insurer of its request

1 in writing, in which case the insurer shall file its RBC
2 report not later than the later of either of the following:

3 "a. Fifteen days from the receipt of notice to file
4 its RBC report with that state.

5 "b. The filing date.

6 "(b) A life and health insurer's RBC shall be
7 determined in accordance with the formula set forth in the RBC
8 instructions. The formula shall take into account, and may
9 adjust for the covariance between, the following factors
10 determined in each case by applying the factors in the manner
11 set forth in the RBC instructions:

12 "(1) The risk with respect to the insurer's assets.

13 "(2) The risk of adverse insurance experience with
14 respect to the insurer's liabilities and obligations.

15 "(3) The interest rate risk with respect to the
16 insurer's business.

17 "(4) All other business risks and other relevant
18 risks as are set forth in the RBC instructions. Subdivisions
19 (1) to (4), inclusive, shall be determined in each case by
20 applying the factors in the manner set forth in the RBC
21 instructions.

22 "(c) A property and casualty insurer's RBC shall be
23 determined in accordance with the formula set forth in the RBC
24 instructions. The formula shall take into account, and may
25 adjust for the covariance between, the following factors
26 determined in each case by applying the factors in the manner
27 set forth in the RBC instructions:

1 "(1) Asset risk.

2 "(2) Credit risk.

3 "(3) Underwriting risk.

4 "(4) All other business risks and other relevant
5 risks as are set forth in the RBC instructions. Subdivisions
6 (1) to (4), inclusive, shall be determined by applying the
7 factors in the manner set forth in the RBC instructions.

8 "(d) An excess of capital over the amount produced
9 by the risk-based capital requirements contained in this
10 chapter and the formulas, schedules, and instructions
11 referenced in this chapter is desirable in the business of
12 insurance. Accordingly, insurers should seek to maintain
13 capital above the RBC levels required by this chapter.
14 Additional capital is used and useful in the insurance
15 business and helps to secure an insurer against various risks
16 inherent in or affecting the business of insurance and not
17 accounted for or only partially measured by the risk-based
18 capital requirements contained in this chapter.

19 "(e) If a domestic insurer files an RBC report which
20 in the judgment of the commissioner is inaccurate, then the
21 commissioner shall adjust the RBC report to correct the
22 inaccuracy and shall notify the insurer of the adjustment. The
23 notice shall contain a statement of the reason for the
24 adjustment. An RBC report as so adjusted is referred to as an
25 "adjusted RBC report."

26 "§27-2B-4.

1 "(a) "Company action level event" means any of the
2 following events:

3 "(1) The filing of an RBC report by an insurer which
4 indicates ~~either~~ any of the following:

5 "a. The insurer's total adjusted capital is greater
6 than or equal to its regulatory action level RBC, but less
7 than its company action level RBC.

8 "b. If a life or health insurer, the insurer has
9 total adjusted capital which is greater than or equal to its
10 company action level RBC but less than the product of its
11 authorized control level RBC and ~~2.5~~ 3.0 and has a negative
12 trend.

13 "c. If a property and casualty insurer, the insurer
14 has total adjusted capital which is greater than or equal to
15 its company action level RBC, but less than the product of its
16 authorized control level RBC and 3.0, and triggers the trend
17 test determined in accordance with the trend test calculation
18 included in the property and casualty RBC instructions.

19 "(2) The notification by the commissioner to the
20 insurer of an adjusted RBC report that indicates an event in
21 subdivision (1) of this subsection, provided the insurer does
22 not challenge the adjusted RBC report under Section 27-2B-8.

23 "(3) If, pursuant to Section 27-2B-8, an insurer
24 challenges an adjusted RBC report that indicates the event in
25 subdivision (1) of this subsection, the notification by the
26 commissioner to the insurer that the commissioner has, after a
27 hearing, rejected the insurer's challenge.

1 "(b) In the event of a company action level event,
2 the insurer shall prepare and submit to the commissioner an
3 RBC plan which shall include all of the following:

4 "(1) Identify the conditions which contribute to the
5 company action level event.

6 "(2) Contain proposals of corrective actions which
7 the insurer intends to take and would be expected to result in
8 the elimination of the company action level event.

9 "(3) Provide projections of the insurer's financial
10 results in the current year and at least the four succeeding
11 years, both in the absence of proposed corrective actions and
12 giving effect to the proposed corrective actions, including
13 projections of statutory operating income, net income,
14 capital, or surplus. The projections for both new and renewal
15 business may include separate projections for each major line
16 of business and separately identify each significant income,
17 expense, and benefit component.

18 "(4) Identify the key assumptions impacting the
19 insurer's projections and the sensitivity of the projections
20 to the assumptions.

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

26 "(c) The RBC plan shall be submitted as follows:

1 "(1) Within 45 days of the company action level
2 event.

3 "(2) If the insurer challenges an adjusted RBC
4 report pursuant to Section 27-2B-8, within 45 days after
5 notification to the insurer that the commissioner has, after a
6 hearing, rejected the insurer's challenge.

7 "(d) Within 60 days after the submission by an
8 insurer of an RBC plan to the commissioner, the commissioner
9 shall notify the insurer whether the RBC plan shall be
10 implemented or is, in the judgment of the commissioner,
11 unsatisfactory. If the commissioner determines the RBC plan is
12 unsatisfactory, the notification to the insurer shall set
13 forth the reasons for the determination, and may set forth
14 proposed revisions which will render the RBC plan
15 satisfactory, in the judgment of the commissioner. Upon
16 notification from the commissioner, the insurer shall prepare
17 a revised RBC plan, which may incorporate by reference any
18 revisions proposed by the commissioner, and shall submit the
19 revised RBC plan to the commissioner as follows:

20 "(1) Within 45 days after the notification from the
21 commissioner.

22 "(2) If the insurer challenges the notification from
23 the commissioner under Section 27-2B-8, within 45 days after a
24 notification to the insurer that the commissioner has, after a
25 hearing, rejected the insurer's challenge.

26 "(e) In the event of a notification by the
27 commissioner to an insurer that the insurer's RBC plan or

1 revised RBC plan is unsatisfactory, the commissioner may, at
2 the commissioner's discretion, subject to the insurer's right
3 to a hearing under Section 27-2B-8, specify in the
4 notification that the notification constitutes a regulatory
5 action level event.

6 "(f) Every domestic insurer that files an RBC plan
7 or revised RBC plan with the commissioner shall file a copy of
8 the RBC plan or revised RBC plan with the insurance
9 commissioner in any state in which the insurer is authorized
10 to do business if:

11 "(1) The state has an RBC provision substantially
12 similar to subsection (a) of Section 27-2B-9.

13 "(2) The insurance commissioner of that state has
14 notified the insurer of its request for the filing in writing,
15 in which case the insurer shall file a copy of the RBC plan or
16 revised RBC plan in that state no later than the later of
17 either of the following:

18 "a. Fifteen days after the receipt of notice to file
19 a copy of its RBC plan or revised RBC plan with the state.

20 "b. The date on which the RBC plan or revised RBC
21 plan is filed under subsections (c) and (d) of this section."

22 Section 2. This act shall become effective
23 immediately following its passage and approval by the
24 Governor, or its otherwise becoming law.