

1 ENROLLED

2 COMMITTEE SUBSTITUTE

3 FOR

4 H. B. 2819

5 (By Delegates Guthrie, Hartman, Ashley and Walters)

6  
7 [Passed April 12, 2013; in effect ninety days from passage.]

8  
9 AN ACT to amend and reenact §33-31-16a of the Code of West  
10 Virginia, 1931, as amended; and to amend and reenact §33-40-3  
11 of said code, all relating to the financial oversight of  
12 entities regulated by the Insurance Commissioner; requiring  
13 captive insurance companies organized as risk retention groups  
14 to comply with risk-based capital for insurers' provisions and  
15 state rules; and incorporating a solvency trend test for  
16 property and casualty insurance companies.

17 *Be it enacted by the Legislature of West Virginia:*

18 That §33-31-16a of the Code of West Virginia, 1931, as  
19 amended, be amended and reenacted; and that §33-40-3 of said code  
20 be amended and reenacted, all to read as follows:

21 **ARTICLE 31. CAPTIVE INSURANCE.**

22 **§33-31-16a. Laws applicable; Risk Retention Groups.**

23 In addition to the applicable provisions of this article, any  
24 captive insurance company organized as a risk retention group is

1 subject to the following provisions of this chapter: section nine,  
2 article two (examination of insurers, agents, brokers and  
3 solicitors; access to books, records, etc.); section fourteen,  
4 article four (financial statement filings; annual and quarterly  
5 statements; required format; foreign insurers; agents of the  
6 commissioner); section fifteen-a, article four (credit for  
7 reinsurance; definitions; requirements; trust accounts; reductions  
8 from liability; security; effective date); article seven (assets  
9 and liabilities); article ten (rehabilitation and liquidation);  
10 article twenty-seven (insurance holding company systems); article  
11 thirty-three (annual audited financial report); article thirty-four  
12 (administrative supervision); article thirty-five (criminal  
13 sanctions for failure to report impairment); article thirty-six  
14 (Business Transacted with Producer Controlled Property/Casualty  
15 Insurer Act); article thirty-seven (managing general agents);  
16 article thirty-eight (Reinsurance Intermediary Act); article forty  
17 (risk-based capital for insurers); and article forty-one (Insurance  
18 Fraud Prevention Act), as well as any rules promulgated under those  
19 provisions in accordance with article three, chapter twenty-nine-a  
20 of this code, including any rule relating to property and casualty  
21 actuarial opinions.

22 **ARTICLE 40. RISK-BASED CAPITAL (RBC) FOR INSURERS.**

23 **§33-40-3. Company action level event.**

24 (a) "Company action level event" means any of the following

1 events:

2 (1) The filing of an RBC report by an insurer which indicates  
3 that:

4 (A) The insurer's total adjusted capital is greater than or  
5 equal to its regulatory action level RBC, but less than its company  
6 action level RBC;

7 (B) If a life and/or health insurer, the insurer has total  
8 adjusted capital which is greater than or equal to its company  
9 action level RBC, but less than the product of its authorized  
10 control level RBC and two and one-half and has a negative trend; or

11 (C) If a property and casualty insurer, the insurer has total  
12 adjusted capital which is greater than or equal to its company  
13 action level RBC, but less than the product of its authorized  
14 control level RBC and three and triggers the trend test determined  
15 in accordance with the trend test calculation included in the  
16 property and casualty RBC instructions;

17 (2) The notification by the commissioner to the insurer of an  
18 adjusted RBC report that indicates an event in subdivision (1) of  
19 this subsection, provided the insurer does not challenge the  
20 adjusted RBC report under section seven of this article; or

21 (3) If, pursuant to section seven of this article, an insurer  
22 challenges an adjusted RBC report that indicates the event in  
23 subdivision (1) of this subsection, the notification by the  
24 commissioner to the insurer that the commissioner has, after a

1 hearing, rejected the insurer's challenge.

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

5 (1) Identify the conditions which contribute to the company  
6 action level event;

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

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

20 (4) Identify the key assumptions impacting the insurer's  
21 projections and the sensitivity of the projections to the  
22 assumptions; and

23 (5) Identify the quality of, and problems associated with, the  
24 insurer's business, including, but not limited to, its assets,

1 anticipated business growth and associated surplus strain,  
2 extraordinary exposure to risk, mix of business and use of  
3 reinsurance, if any, in each case.

4 (c) The RBC plan shall be submitted:

5 (1) Within forty-five days of the company action level event;

6 or

7 (2) If the insurer challenges an adjusted RBC report pursuant  
8 to section seven of this article, within forty-five days after  
9 notification to the insurer that the commissioner has, after a  
10 hearing, rejected the insurer's challenge.

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

23 (1) Within forty-five days after the notification from the  
24 commissioner; or

1 (2) If the insurer challenges the notification from the  
2 commissioner under section seven of this article, within forty-five  
3 days after a notification to the insurer that the commissioner has,  
4 after a hearing, rejected the insurer's challenge.

5 (e) In the event of a notification by the commissioner to an  
6 insurer that the insurer's RBC plan or revised RBC plan is  
7 unsatisfactory, the commissioner may, at the commissioner's  
8 discretion, subject to the insurer's right to a hearing under  
9 section seven of this article, specify in the notification that the  
10 notification constitutes a regulatory action level event.

11 (f) Every domestic insurer that files an RBC plan or revised  
12 RBC plan with the commissioner shall file a copy of the RBC plan or  
13 revised RBC plan with the Insurance Commissioner in any state in  
14 which the insurer is authorized to do business if:

15 (1) The state has an RBC provision substantially similar to  
16 subsection (a), section eight of this article; and

17 (2) The Insurance Commissioner of that state has notified the  
18 insurer of its request for the filing in writing, in which case the  
19 insurer shall file a copy of the RBC plan or revised RBC plan in  
20 that state no later than the later of:

21 (A) Fifteen days after the receipt of notice to file a copy of  
22 its RBC plan or revised RBC plan with the state; or

23 (B) The date on which the RBC plan or revised RBC plan is  
24 filed under subsections (c) and (d) of this section.