

Senate Bill No. 328

(By Senators Tucker and Barnes)

 [Introduced February 20, 2013; referred to the Committee on
 Banking and Insurance; and then to the Committee on the
 Judiciary.]

A BILL to amend and reenact §33-31-16a of the Code of West Virginia, 1931, as amended; and to amend and reenact §33-40-3 of said code, all relating to the financial oversight of entities regulated by the Insurance Commissioner; requiring captive insurance companies organized as risk retention groups to comply with risk-based capital for insurers' provisions and a specific state rule; and incorporating a solvency trend test for property and casualty insurance companies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-16a. Same - Risk Retention Groups.

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

1 article three, chapter twenty-nine-a of this code, including
2 Property And Casualty Actuarial Opinion, 114 CSR 41A.

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

4 **§33-40-3. Company action level event.**

5 (a) "Company action level event" means any of the following
6 events:

7 (1) The filing of an RBC report by an insurer which indicates
8 that:

9 (A) The insurer's total adjusted capital is greater than or
10 equal to its regulatory action level RBC, but less than its company
11 action level RBC; ~~or~~

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

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

22 (2) The notification by the commissioner to the insurer of an
23 adjusted RBC report that indicates an event in subdivision (1) of

1 this subsection, provided the insurer does not challenge the
2 adjusted RBC report under section seven of this article; or

3 (3) If, pursuant to section seven of this article, an insurer
4 challenges an adjusted RBC report that indicates the event in
5 subdivision (1) of this subsection, the notification by the
6 commissioner to the insurer that the commissioner has, after a
7 hearing, rejected the insurer's challenge.

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

11 (1) Identify the conditions which contribute to the company
12 action level event;

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

16 (3) Provide projections of the insurer's financial results in
17 the current year and at least the four succeeding years or, in the
18 case of an HMO, in the current year and at least the two succeeding
19 years, both in the absence of proposed corrective actions and
20 giving effect to the proposed corrective actions, including
21 projections of statutory operating income, net income, capital
22 and/or surplus. (The projections for both new and renewal business
23 may include separate projections for each major line of business

1 and separately identify each significant income, expense and
2 benefit component);

3 (4) Identify the key assumptions impacting the insurer's
4 projections and the sensitivity of the projections to the
5 assumptions; and

6 (5) Identify the quality of, and problems associated with, the
7 insurer's business, including, but not limited to, its assets,
8 anticipated business growth and associated surplus strain,
9 extraordinary exposure to risk, mix of business and use of
10 reinsurance, if any, in each case.

11 (c) The RBC plan shall be submitted:

12 (1) Within forty-five days of the company action level event;
13 or

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

18 (d) Within sixty days after the submission by an insurer of an
19 RBC plan to the commissioner, the commissioner shall notify the
20 insurer whether the RBC plan may be implemented or is, in the
21 judgment of the commissioner, unsatisfactory. If the commissioner
22 determines the RBC plan is unsatisfactory, the notification to the
23 insurer shall set forth the reasons for the determination and may

1 set forth proposed revisions which will render the RBC plan
2 satisfactory in the judgment of the commissioner. Upon
3 notification from the commissioner, the insurer shall prepare a
4 revised RBC plan, which may incorporate by reference any revisions
5 proposed by the commissioner, and shall submit the revised RBC plan
6 to the commissioner:

7 (1) Within forty-five days after the notification from the
8 commissioner; or

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

13 (e) In the event of a notification by the commissioner to an
14 insurer that the insurer's RBC plan or revised RBC plan is
15 unsatisfactory, the commissioner may, at the commissioner's
16 discretion, subject to the insurer's right to a hearing under
17 section seven of this article, specify in the notification that the
18 notification constitutes a regulatory action level event.

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

23 (1) The state has an RBC provision substantially similar to

1 subsection (a), section eight of this article; and

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

6 ~~(i)~~ (A) Fifteen days after the receipt of notice to file a
7 copy of its RBC plan or revised RBC plan with the state; or

8 ~~(ii)~~ (B) The date on which the RBC plan or revised RBC plan is
9 filed under subsections (c) and (d) of this section.

NOTE: The purpose of this bill is to ensure that the laws of West Virginia satisfy the accreditation standards of the National Association of Insurance Commissioners (NAIC). More specifically, this bill amends the insurance code with respect to risk-based capital and captive insurance companies organized as risk retention groups.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.