

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 4043**

BY DELEGATES WESTFALL, MCCUSKEY, B. WHITE, FRICH,

WAXMAN, SHOTT, ATKINSON AND STANSBURY

BY REQUEST OF THE INSURANCE COMMISSIONER

[Introduced January 18, 2016; referred to the  
committee on Banking and Insurance then Finance.]

1 A BILL to amend and reenact §33-40-3 of the Code of West Virginia, 1931, as amended, relating  
2 to adjusting the risk-based capital trend test for life and health insurers.

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

1 That §33-40-3 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted to read as follows:

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

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

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

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

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

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

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

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

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

19 (b) In the event of a company action level event, the insurer shall prepare and submit to

20 the commissioner an RBC plan which shall:

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

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

24 (3) Provide projections of the insurer's financial results in the current year and at least the  
25 four succeeding years or, in the case of an HMO, in the current year and at least the two  
26 succeeding years, both in the absence of proposed corrective actions and giving effect to the  
27 proposed corrective actions, including projections of statutory operating income, net income,  
28 capital and/or surplus. (The projections for both new and renewal business may include separate  
29 projections for each major line of business and separately identify each significant income,  
30 expense and benefit component);

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

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

36 (c) The RBC plan shall be submitted:

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

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

41 (d) Within sixty days after the submission by an insurer of an RBC plan to the  
42 commissioner, the commissioner shall notify the insurer whether the RBC plan may be  
43 implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner  
44 determines the RBC plan is unsatisfactory, the notification to the insurer shall set forth the reasons  
45 for the determination and may set forth proposed revisions which will render the RBC plan

46 satisfactory in the judgment of the commissioner. Upon notification from the commissioner, the  
47 insurer shall prepare a revised RBC plan, which may incorporate by reference any revisions  
48 proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to change the definition of a company action level event to change the trend test, for a life and/or health insurer, to three from two and one-half percent.

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