

1 SB498
2 127560-2
3 By Senator Blackwell
4 RFD: Banking and Insurance
5 First Read: 10-APR-12

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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 also subject property and
17 casualty insurers to a company action level event
18 when the risk-based capital report indicates
19 certain specified levels. The bill would also
20 correct an error in citation and make clarifying
21 nonsubstantive changes.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
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1 Relating to insurance; to amend Sections 27-2B-2,
2 27-2B-3, and 27-2B-4 of the Code of Alabama 1975, to provide
3 that a property and casualty insurer would be subject to a
4 company action level event when its risk-based capital report
5 indicates certain specified levels.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

9 "§27-2B-2.

10 "As used in this chapter, these terms shall have the
11 following meanings:

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

15 "(2) CORRECTIVE ORDER. An order issued by the
16 commissioner specifying corrective actions which the
17 commissioner has determined are required.

18 "(3) DOMESTIC INSURER. Any insurance company
19 domiciled in this state.

20 "(4) FOREIGN INSURER. Any insurance company which is
21 licensed to do business in this state but not domiciled in
22 this state.

23 "(5) LIFE OR HEALTH INSURER. Any insurance company
24 licensed to do business in this state and authorized to
25 transact life and/or disability insurance, including a
26 property and casualty insurer writing only disability

1 insurance, but shall not include fraternal benefit societies,
2 health care service corporations, dental service
3 organizations, health maintenance organizations, dental plan
4 organizations or mutual aid associations.

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

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

11 "(8) PROPERTY AND CASUALTY INSURER. Any insurance
12 company licensed to do business in this state and authorized
13 to transact property, marine, casualty and/or surety
14 insurance, but shall not include monoline mortgage guaranty
15 insurers, financial guaranty insurers and title insurers.

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

17 "(10) RBC INSTRUCTIONS. The RBC report including
18 risk-based capital instructions adopted by the NAIC, as the
19 RBC instructions may be amended by the NAIC from time to time
20 in accordance with the procedures adopted by the NAIC.

21 "(11) RBC LEVEL. An insurer's company action level
22 RBC, regulatory action level RBC, authorized control level
23 RBC, or mandatory control level RBC where:

24 "a. "Company action level RBC" means, with respect
25 to any insurer, the product of 2.0 and its authorized control
26 level RBC.

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

3 "c. "Authorized control level RBC" means the number
4 determined under the risk-based capital formula in accordance
5 with the RBC instructions.

6 "d. "Mandatory control level RBC" means the product
7 of .70 and the authorized control level RBC.

8 "(12) RBC PLAN. A comprehensive financial plan
9 containing the elements specified in subsection (b) of Section
10 27-2B-4. If the commissioner rejects the RBC plan, and it is
11 revised by the insurer, with or without the commissioner's
12 recommendation, the plan shall be called the revised RBC plan.

13 "(13) RBC REPORT. The report required in Section
14 27-2B-3.

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

18 "a. Capital. At any particular time, the sum of (i)
19 the par value of all shares of the insurer having a par value
20 that have been issued, (ii) the amount of consideration
21 received by the insurer for all shares of the insurer without
22 par value that have been issued, except any part of the
23 consideration therefor as may have been allocated to surplus
24 in a manner permitted by law, and (iii) any amounts not
25 included in clauses (i) and (ii) of this subdivision as have
26 been transferred to capital of the insurer, whether upon the

1 issue of shares as a share dividend or otherwise, minus all
2 reductions from the sum as have been affected in a manner
3 permitted by law.

4 "b. Surplus. The excess of the net admitted assets
5 of an insurer over its capital. As used in this definition,
6 "net admitted assets" means the excess of admitted assets of
7 an insurer over its liabilities.

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

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

10 "b. Other items, if any, as the RBC instructions may
11 provide.

12 "§27-2B-3.

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

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

20 "(2) The insurance commissioner in any state in
21 which the insurer is authorized to do business, if the
22 insurance commissioner has notified the insurer of its request
23 in writing, in which case the insurer shall file its RBC
24 report not later than the later of either of the following:

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

1 "b. The filing date.

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

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

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

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

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

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

24 "(1) Asset risk.

25 "(2) Credit risk.

26 "(3) Underwriting risk.

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

5 "(d) An excess of capital over the amount produced
6 by the risk-based capital requirements contained in this
7 chapter and the formulas, schedules, and instructions
8 referenced in this chapter is desirable in the business of
9 insurance. Accordingly, insurers should seek to maintain
10 capital above the RBC levels required by this chapter.

11 Additional capital is used and useful in the insurance
12 business and helps to secure an insurer against various risks
13 inherent in or affecting the business of insurance and not
14 accounted for or only partially measured by the risk-based
15 capital requirements contained in this chapter.

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

23 "§27-2B-4.

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

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

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

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

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

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

20 "(3) If, pursuant to Section 27-2B-8, an insurer
21 challenges an adjusted RBC report that indicates the event in
22 subdivision (1) of this subsection, the notification by the
23 commissioner to the insurer that the commissioner has, after a
24 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.

1 "(e) In the event of a notification by the
2 commissioner to an insurer that the insurer's RBC plan or
3 revised RBC plan is unsatisfactory, the commissioner may, at
4 the commissioner's discretion, subject to the insurer's right
5 to a hearing under Section 27-2B-8, specify in the
6 notification that the notification constitutes a regulatory
7 action level event.

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

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

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

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

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

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

