

1 SB268
2 127560-1
3 By Senator Blackwell
4 RFD: Banking and Insurance
5 First Read: 24-MAR-11

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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
27 insurance, but shall not include fraternal benefit societies,

1 health care service corporations, dental service
2 organizations, health maintenance organizations, dental plan
3 organizations or mutual aid associations.

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

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

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

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

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

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

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

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

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

4 "d. "Mandatory control level RBC" means the product
5 of .70 and the authorized control level RBC.

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

11 "(13) RBC REPORT. The report required in Section
12 27-2B-3.

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

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

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

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

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

7 "b. Other items, if any, as the RBC instructions may
8 provide.

9 "§27-2B-3.

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

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

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

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

24 "b. The filing date.

25 "(b) A life and health insurer's RBC shall be
26 determined in accordance with the formula set forth in the RBC
27 instructions. The formula shall take into account, and may

1 adjust for the covariance between, the following factors
2 determined in each case by applying the factors in the manner
3 set forth in the RBC instructions:

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

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

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

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

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

20 "(1) Asset risk.

21 "(2) Credit risk.

22 "(3) Underwriting risk.

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

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

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

19 "§27-2B-4.

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

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

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

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

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

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

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

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

23 "(1) Identify the conditions which contribute to the
24 company action level event.

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

1 "(3) Provide projections of the insurer's financial
2 results in the current year and at least the four succeeding
3 years, both in the absence of proposed corrective actions and
4 giving effect to the proposed corrective actions, including
5 projections of statutory operating income, net income,
6 capital, or surplus. The projections for both new and renewal
7 business may include separate projections for each major line
8 of business and separately identify each significant income,
9 expense, and benefit component.

10 "(4) Identify the key assumptions impacting the
11 insurer's projections and the sensitivity of the projections
12 to the assumptions.

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

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

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

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

25 "(d) Within 60 days after the submission by an
26 insurer of an RBC plan to the commissioner, the commissioner
27 shall notify the insurer whether the RBC plan shall be

1 implemented or is, in the judgment of the commissioner,
2 unsatisfactory. If the commissioner determines the RBC plan is
3 unsatisfactory, the notification to the insurer shall set
4 forth the reasons for the determination, and may set forth
5 proposed revisions which will render the RBC plan
6 satisfactory, in the judgment of the commissioner. Upon
7 notification from the commissioner, the insurer shall prepare
8 a revised RBC plan, which may incorporate by reference any
9 revisions proposed by the commissioner, and shall submit the
10 revised RBC plan to the commissioner as follows:

11 "(1) Within 45 days after the notification from the
12 commissioner.

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

17 "(e) In the event of a notification by the
18 commissioner to an insurer that the insurer's RBC plan or
19 revised RBC plan is unsatisfactory, the commissioner may, at
20 the commissioner's discretion, subject to the insurer's right
21 to a hearing under Section 27-2B-8, specify in the
22 notification that the notification constitutes a regulatory
23 action level event.

24 "(f) Every domestic insurer that files an RBC plan
25 or revised RBC plan with the commissioner shall file a copy of
26 the RBC plan or revised RBC plan with the insurance

1 commissioner in any state in which the insurer is authorized
2 to do business if:

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

5 "(2) The insurance commissioner of that state has
6 notified the insurer of its request for the filing in writing,
7 in which case the insurer shall file a copy of the RBC plan or
8 revised RBC plan in that state no later than the later of
9 either of the following:

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

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

14 Section 2. This act shall become effective January
15 1, 2012, following its passage and approval by the Governor,
16 or its otherwise becoming law.