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COMMITTEE REPORT

April 3, 2014

**S. 908**

Introduced by Senator Hayes

S. Printed 4/3/14--H.

Read the first time March 25, 2014.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 908) to amend Section 38‑9‑310, Code of Laws of South Carolina, 1976, relating to definitions concerning risk‑based capital, so as to revise existing definitions, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

WILLIAM E. SANDIFER III for Committee.

**A** **BILL**

TO AMEND SECTION 38‑9‑310, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS CONCERNING RISK‑BASED CAPITAL, SO AS TO REVISE EXISTING DEFINITIONS AND DEFINE ADDITIONAL TERMS; TO AMEND SECTION 38‑9‑320, RELATING TO PREPARING AND SUBMITTING A RISK‑BASED CAPITAL REPORT, SO AS TO PROVIDE FOR DETERMINING A HEALTH ORGANIZATION’S RISK‑BASED CAPITAL REPORT AND TO PROVIDE THAT EACH RISK FOR A LIFE AND HEALTH INSURER, PROPERTY AND CASUALTY INSURER, AND A HEALTH ORGANIZATION MUST BE DETERMINED IN A CERTAIN MANNER; TO AMEND SECTION 38‑9‑330, AS AMENDED, RELATING TO COMPANY ACTION LEVEL EVENTS, SO AS TO ADD AN ADDITIONAL EVENT CONCERNING A HEALTH ORGANIZATION, AMONG OTHER THINGS; TO AMEND SECTION 38‑9‑360, RELATING TO THE ROLE OF THE DIRECTOR OF THE DEPARTMENT OF INSURANCE WHEN A MANDATORY CONTROL LEVEL EVENT OCCURS, SO AS TO ADD PROVISIONS CONCERNING HEALTH ORGANIZATIONS; TO AMEND SECTION 38‑9‑370, RELATING TO HEARINGS AVAILABLE TO A LICENSEE TO CHALLENGE A DETERMINATION OR ACTION BY THE DIRECTOR IN RESPONSE TO A MANDATORY CONTROL LEVEL EVENT, SO AS TO PROVIDE A LICENSEE MAY HAVE THE HEARING CONFIDENTIALLY, ON THE RECORD, AND BEFORE THE DIRECTOR UPON PROVISION OF CERTAIN NOTICE, AND TO PROVIDE THE DIRECTOR SHALL SET A DATE FOR THE HEARING IN A CERTAIN MANNER; TO AMEND SECTION 38‑9‑380, RELATING TO THE CONFIDENTIALITY OF RISK‑BASED CAPITAL REPORTS AND ADJUSTED RISK‑BASED CAPITAL REPORTS, SO AS TO PROVIDE CIRCUMSTANCES IN WHICH THE DIRECTOR MAY SHARE, RECEIVE, AND USE CERTAIN RELATED INFORMATION THAT IS CONFIDENTIAL AND PRIVILEGED; TO AMEND SECTION 38‑9‑430, RELATING TO EXEMPTIONS FROM REPORTING REQUIREMENTS, SO AS TO ADD PROVISIONS CONCERNING DOMESTIC HEALTH ORGANIZATIONS; AND TO AMEND SECTION 38‑9‑340, SECTION 38‑9‑350, SECTION 38‑9‑365, SECTION 38‑9‑390, SECTION 38‑9‑400, SECTION 38‑9‑440, AND SECTION 38‑9‑460, ALL RELATING TO CAPITAL, SURPLUS, RESERVES, AND OTHER FINANCIAL MATTERS, SO AS TO MAKE CONFORMING CHANGES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 38‑9‑310 of the 1976 Code is amended to read:

“Section 38‑9‑310. (1) ‘Adjusted RBC Report’ means a risk based capital report which has been adjusted by the director in accordance with Section 38‑9‑320~~(E)~~(F).

(2) ‘Capital and surplus’ or ‘capital’ except when used in the term ‘risk‑based capital’ or ‘adjusted capital’, means net worth of a health maintenance organization as defined in Section 38‑33‑100 and, for all other licensees, means surplus to policyholders as defined in Section 38‑1‑20.

(~~2~~3) ‘Corrective order’ means an order issued by the director specifying corrective actions which the director has determined are required.

(4) ‘Domestic health organization’ means any health organization domiciled in this State.

(~~3~~5) ‘Domestic insurer’ means ~~any~~ an insurer domiciled in this State.

(6) ‘Domestic licensee’ means and includes a domestic insurer and a domestic health organization.

(7) ‘Foreign health organization’ means any health organization not domiciled in this State which is licensed in this State.

(~~4~~8) ‘Foreign insurer’ means ~~any~~ an insurer which is licensed to transact business within this State, but which is not domiciled in this State.

(9) ‘Foreign licensee’ means and includes a foreign insurer and a foreign health organization.

(10) ‘Health organization’ means an insurer which is required to use the NAIC’s Annual Statement Blank‑Health pursuant to the NAIC Annual Statement Instructions‑Health and to file it as prescribed by Section 38‑13‑80 or a health maintenance organization as defined in Section 38‑33‑20, which is required to use the NAIC’s Annual Statement Blank‑Health pursuant to the NAIC Annual Statement Instructions‑Health and to file it as prescribed by Section 38‑33‑90.

(11) ‘Licensee’ means and includes a life and health insurer, a property and casualty insurer, and a health organization.

(12) ‘Life and health insurer’ means an insurer licensed to transact life and health insurance in this State and any licensed property and casualty insurer writing only accident and health insurance.

(~~5~~13) ‘NAIC’ means the National Association of Insurance Commissioners.

(14) ‘Negative trend’ means a negative trend over a period of time, as determined in accordance with the Trend Test Calculation included within the NAIC RBC Instructions.

~~(6)~~ ~~‘Life and health insurer’ means any insurer licensed to transact life and health insurance, or both, in this State and any licensed property and casualty insurer writing only accident and health insurance.~~

(~~7~~15) ‘Property and casualty insurer’ means ~~any~~ an insurer licensed to transact property and casualty insurance in this State. A ‘property and casualty insurer’ does not include monoline mortgage guaranty insurers, financial guaranty insurers, or title insurers.

(16) ‘RBC’ means risk‑based capital.

~~(8)~~ ~~‘Negative trend’ means, with respect to a life and health insurer, negative trend over a period of time, as determined in accordance with the Trend Test Calculation included within the RBC Instructions.~~

(~~9~~17) ‘RBC Instructions’ means the ~~risk based~~ risk‑based capital report including RBC Instructions adopted and amended by the NAIC.

(~~10~~18) ‘RBC Level’ means ~~an insurer’s~~ a licensee’s Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory Control Level RBC:

(a) ‘Company Action Level RBC’ means the product of 2.0 and its Authorized Control Level RBC;

(b) ‘Regulatory Action Level RBC’ means the Product of 1.5 and its Authorized Control Level RBC;

(c) ‘Authorized Control Level RBC’ means the number determined by the RBC formula in accordance with the RBC Instructions; and

(d) ‘Mandatory Control Level RBC’ means the product of .70 and the Authorized Control Level RBC.

(~~11~~19) ‘RBC Plan’ means a comprehensive financial plan filed by ~~an insurer~~ a licensee containing the elements specified within Section 38‑9‑330(B). If the director rejects the RBC Plan and it is revised by the ~~insurer~~ licensee, with or without the director’s recommendation, then that plan must be called the ‘Revised RBC Plan’.

(~~12~~20) ‘RBC Report’ means the report required by Section 38‑9‑320.

(~~13~~21) ‘Total Adjusted Capital’ means the sum of ~~an insurer’s~~ a licensee’s statutory capital and surplus and any other items provided in the RBC Instructions.”

SECTION 2. Section 38‑9‑320 of the 1976 Code is amended to read:

“Section 38‑9‑320. (A) Every domestic ~~insurer~~ licensee must, on or before each March ~~1~~ first filing date, prepare and submit to the director an RBC Report of its RBC Levels as of the end of the preceding calendar year. That RBC Report must be filed in a form and must contain such information required by the RBC Instructions. In addition, every domestic ~~insurer~~ licensee must file its RBC Report:

(1) with the NAIC in accordance with the RBC Instructions; and

(2) with the chief insurance regulatory officer in ~~any~~ a state in which the ~~insurer~~ licensee is authorized to transact business, if that chief insurance regulatory officer has notified the ~~insurer~~ licensee in writing. The i~~nsurer~~ licensee must file its RBC Report with that chief insurance regulatory officer no later than fifteen days from its receipt of notice to file or the March ~~1~~ first filing date.

(B)(1) A life and health insurer’s RBC must be determined in accordance with the formula detailed in the RBC Instructions. The formula must be determined in each case by applying the factors in the manner detailed in the RBC Instructions and must take into account, and may adjust for the covariance between:

(~~1~~a) risk with respect to assets;

(~~2~~b) risk of adverse insurance experience with respect to liabilities and obligations;

(~~3~~c) interest rate risk with respect to the insurer’s business; and

(~~4~~d) all other business risks and other relevant risks in the RBC Instructions.

(2) Each risk must be determined in each case by applying the factors in the manner set forth in the RBC Instructions.

(C)(1) A property and casualty insurer’s RBC must be determined by applying the factors in the manner detailed in the RBC Instructions and must be determined in accordance with the formula detailed in the RBC Instructions. The formula must take into account, and may adjust for the covariance between:

(~~1~~a) asset risk;

(~~2~~b) credit risk;

(~~3~~c) underwriting risk; and

(~~4~~d) all other business risks and other relevant risks in the RBC Instructions.

(2) Each risk must be determined in each case by applying the factors in the manner set forth in the RBC Instructions.

(D)(1) A health organization’s RBC must be determined by applying the factors in the manner detailed in the RBC Instructions and must be determined in accordance with the formula detailed in the RBC Instructions. The formula must be taken into account, and may adjust for the covariance between:

(a) asset risk;

(b) credit risk;

(c) underwriting risk; and

(d) all other business risks and other relevant risks in the RBC Instructions.

(2) Each risk must be determined in each case by applying the factors in the manner set forth in the RBC Instructions.

(~~D~~E) An excess of capital over the amount produced by the RBC requirements, formulas, schedules, and instructions contained in this article is desirable. ~~Insurers~~ Licensees should seek to maintain capital above the required RBC levels. Additional capital is used and is useful in securing ~~an insurer~~ a licensee against various risks inherent in or affecting the business of insurance and not accounted for, or which only may be partially measured, by the RBC requirements contained in this article.

(~~E~~F) If a domestic ~~insurer~~ licensee files an RBC Report which, in the judgment of the director, is inaccurate, then the director must adjust the RBC Report to correct the inaccuracy and must notify the domestic ~~insurer~~ licensee in writing of the adjustment. The notice must include the reasons for the adjustment.”

SECTION 3. Section 38‑9‑330 of the 1976 Code, as last amended by Act 27 of 2009, is further amended to read:

“Section 38‑9‑330. (A) A ‘Company Action Level Event’ includes any of the following events:

(1) filing of an RBC Report which indicates that Total Adjusted Capital is greater than, or equal to, Regulatory Action Level RBC, but is less than Company Action Level RBC;

(2) filing of an RBC Report which indicates that a life and health insurer has Total Adjusted Capital which is greater than, or equal to, its Company Action Level RBC, but is less than the product of its Authorized Control Level RBC and 2.5 and has a negative trend;

(3) filing of an RBC Report which indicates that a property and casualty insurer has Total Adjusted Capital which is greater than, or equal to, its Company Action Level RBC, but is less than the product of its Authorized Control Level RBC and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the NAIC Property and Casualty RBC instructions; ~~or~~

(4) filing of an RBC Report which indicates that a health organization has Total Adjusted Capital which is greater than, or equal to, its Company Action Level RBC, but less than the product of its Authorized Control Level RBC and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the NAIC Health RBC instructions; or

(~~4~~5) issuance of an Adjusted RBC Report that indicates the event in item (1), (2), ~~or~~ (3), or (4) of this subsection, provided that the ~~insurer~~ licensee does not challenge the Adjusted RBC Report pursuant to Section 38‑9‑370. If the ~~insurer~~ licensee challenges an Adjusted RBC Report, then the Company Action Level Event occurs upon notification that an administrative law judge has rejected the challenge.

(B) In the event of a Company Action Level Event, the ~~insurer~~ licensee must prepare and submit to the director an RBC Plan which must:

(1) identify the conditions which contributed to the Company Action Level Event;

(2) include proposals for corrective actions which will result in the elimination of the Company Action Level Event;

(3) provide projections of the ~~insurer’s~~ licensee’s financial results for the current year and for at least the ~~next~~ four succeeding years if the licensee is a life and death insurer or a property and casualty insurer, or at least two succeeding years if the licensee is a health organization. The projections must consider both the absence of proposed corrective actions and the proposed corrective actions. The projections must include projections of statutory balance sheets, operating income, net income, capital~~,~~ and surplus, and RBC levels. The projections both for new and for renewal business may include separate projections for each major line of business and may separately identify each income, expense, and benefit component;

(4) identify key assumptions impacting upon the projections and detail the sensitivity of the projections to the assumptions; and

(5) identify the quality of, and any problems associated with, the ~~insurer’s~~ licensee’s business including, but not limited to, assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

(C) The RBC Plan must be submitted within forty‑five days of the Company Action Level Event. If the ~~insurer~~ licensee challenges an Adjusted RBC Report pursuant to Section 38‑9‑370, then the RBC Plan must be submitted within forty‑five days after notification that an administrative law judge has rejected the challenge.

(D) Within sixty days after the submission of an RBC Plan, the director must notify the ~~insurer~~ licensee stating whether the RBC Plan may be implemented or if the RBC Plan is unsatisfactory. If the director determines that the RBC Plan is unsatisfactory, then notification must set forth the reasons for that determination. The notification may set forth proposed revisions which will render the RBC Plan satisfactory. Upon receipt of notification, the ~~insurer~~ licensee must prepare a Revised RBC Plan which may incorporate by reference any revisions proposed by the director. That Revised RBC Plan must be submitted to the director within forty‑five days after the date of notification. If the ~~insurer~~ licensee challenges the notification under Section 38‑9‑370, then the Revised RBC Plan must be submitted within forty‑five days after notification that an administrative law judge has rejected the challenge.

(E) If the director notifies ~~an insurer~~ a licensee that its RBC Plan or its Revised RBC Plan is unsatisfactory, then the director, subject to the ~~insurer’s~~ licensee’s right to a public hearing pursuant to Section 38‑9‑370, may specify within the notification that it constitutes a Regulatory Action Level Event.

(F) Every domestic ~~insurer~~ licensee that files an RBC Plan or Revised RBC Plan with the director must also file a copy of the RBC Plan or Revised RBC Plan with the chief insurance regulatory officer in any state in which that ~~insurer~~ licensee is licensed to transact business if that state has RBC provisions substantially similar to Section 38‑9‑380, Section 38‑9‑390, and Section 38‑9‑400, and if that chief insurance regulatory officer has requested the filing in writing. The ~~insurer~~ licensee must file a copy of the RBC Plan or Revised RBC Plan in that state no later than fifteen days after its receipt of the request to file or the date on which the RBC Plan or Revised RBC Plan is filed under Section 38‑9‑330(C) and (D).”

SECTION 4. Section 38‑9‑340 of the 1976 Code is amended to read:

“Section 38‑9‑340. (A) A ‘Regulatory Action Level Event’ includes any one of the following events:

(1) filing of an RBC Report which indicates that Total Adjusted Capital is greater than, or equal to, Authorized Control Level RBC, but is less than Regulatory Action Level RBC;

(2) issuance of an Adjusted RBC Report that indicates the event in Section 38‑9‑340(A)(1), provided that the ~~insurer~~ licensee does not challenge that Adjusted RBC Report pursuant to Section 38‑9‑370. If the ~~insurer~~ licensee challenges an Adjusted RBC Report, then the Regulatory Action Level Event occurs upon notification that an administrative law judge has rejected the challenge;

(3) failure to file an RBC Report by the March ~~1~~ first filing date, unless the ~~insurer~~ licensee has filed an explanation for ~~such~~ this failure ~~which~~ that is satisfactory to the director and has cured the failure within ten days after the March ~~1~~ first filing date;

(4) failure to timely submit an RBC Plan or Revised RBC Plan to the director;

(5) notification that the RBC Plan or Revised RBC Plan is, in the judgment of the director, unsatisfactory and that the notification constitutes a Regulatory Action Level Event, provided that the ~~insurer~~ licensee does not challenge the determination under Section 38‑9‑370. If the ~~insurer~~ licensee challenges a determination, then the Regulatory Action Level Event occurs upon notification that an administrative law judge has rejected the challenge;

(6) notification by the director that the ~~insurer~~ licensee has failed to adhere to its RBC Plan or its Revised RBC Plan. However, notification must conclude that the failure has had substantial adverse effect upon the ability of the ~~insurer~~ licensee to eliminate the Company Action Level Event in accordance with its RBC Plan or Revised RBC Plan, provided that the ~~insurer~~ licensee has not challenged the determination pursuant to Section 38‑9‑370. If the ~~insurer~~ licensee challenges a determination, then the Regulatory Action Level Event occurs upon notification that an administrative law judge has rejected the challenge.

(B) In the event of a Regulatory Action Level Event, the director must:

(1) require the ~~insurer~~ licensee to prepare and submit an RBC Plan or a Revised RBC Plan;

(2) perform an examination or an analysis of the assets, liabilities, and operations of the ~~insurer~~ licensee, including a review of the ~~insurer’s~~ licensee’s RBC Plan or its Revised RBC Plan; and

(3) issue a Corrective Order detailing corrective actions which the director determines are required.

(C) In determining corrective actions, the director may take into account factors which he considers relevant based upon his examination or analysis. Those factors may include, but must not be limited to, the results of any sensitivity tests undertaken pursuant to the RBC Instructions.

(D) The RBC Plan or Revised RBC Plan must be submitted within forty‑five days after the occurrence of the Regulatory Action Level Event. If the ~~insurer~~ licensee challenges an Adjusted RBC Report or a Revised RBC Plan pursuant to Section 38‑9‑370, then the RBC Plan or Revised RBC Plan must be submitted within forty‑five days after notification that an administrative law judge has rejected the challenge.”

SECTION 5. Section 38‑9‑350 of the 1976 Code is amended to read:

“Section 38‑9‑350. (A) An ‘Authorized Control Level Event’ includes any of the following events:

(1) filing of an RBC Report which indicates that ~~an insurer’s~~ a licensee’s Total Adjusted Capital is greater than, or equal to, its Mandatory Control Level RBC, but is less than its Authorized Control Level RBC;

(2) issuance of an Adjusted RBC Report that indicates the event in Section 38‑9‑350(A)(1), provided that the ~~insurer~~ licensee does not challenge that Adjusted RBC Report pursuant to Section 38‑9‑370. If the ~~insurer~~ licensee challenges that Adjusted RBC Report, then the Authorized Control Level Event occurs upon notification that an administrative law judge has rejected the challenge; or

(3) the failure of ~~an insurer~~ a licensee to respond to a Corrective Order in a manner satisfactory to the director, provided the ~~insurer~~ licensee has not challenged the Corrective Order pursuant to Section 38‑9‑370. If the ~~insurer~~ licensee has challenged a Corrective Order and an administrative law judge has rejected the challenge or has modified the Corrective Order, then the Authorized Control Level Event occurs upon the failure of the ~~insurer~~ licensee to respond to that Corrective Order in a manner satisfactory to the director.

(B) In the event of an Authorized Control Level Event, the director may take action pursuant to Section 38‑9‑340 or, if the director considers it to be in the best interests of the policyholders and creditors of the ~~insurer~~ licensee and of the public, he may take action necessary to place the ~~insurer~~ licensee under regulatory control pursuant to Section 38‑26‑10, et seq., or to Section 38‑27‑10, et seq. The Authorized Control Level Event is sufficient grounds for the director to take that action, and the director has the rights, powers, and duties detailed within those provisions of law. If the director takes action, then the ~~insurer~~ licensee is entitled to the protections ~~which~~ that are afforded under those provisions pertaining to summary proceedings.”

SECTION 6. Section 38‑9‑360 of the 1976 Code is amended to read:

“Section 38‑9‑360. (A) A ‘Mandatory Control Level Event’ includes any one of the following events:

(1) filing of an RBC Report which indicates that the ~~insurer’s~~ licensee’s Total Adjusted Capital is less than its Mandatory Control Level RBC;

(2) notification of an Adjusted RBC Report pursuant to Section 38‑9‑360(A)(1), provided the ~~insurer~~ licensee does not challenge that Adjusted RBC Report pursuant to Section 38‑9‑370. If the ~~insurer~~ licensee challenges an Adjusted RBC Report notification, then the Mandatory Control Event Level occurs upon notification that an administrative law judge has rejected the challenge.

(B) In the event of a Mandatory Control Level Event:

(1) For a life and health insurer, the director must take action necessary to place the insurer under regulatory control pursuant to Section 38‑26‑10, et seq., or Section 38‑27‑10, et seq. The Mandatory Control Level Event is sufficient grounds for the director to take that action, and the director has the rights, powers, and duties detailed within those provisions of law. If the director takes action, then the insurer is entitled to the protections afforded under those provisions pertaining to summary proceedings. The director, in his discretion, may forego action for up to ninety days after the Mandatory Control Level Event if the director finds that there is a reasonable expectation that the Mandatory Control Level Event will be eliminated within that period.

(2) For a property and casualty insurer, the director must take action necessary to place the insurer under regulatory control pursuant to Section 38‑26‑10, et seq., or Section 38‑27‑10, et seq. If the insurer is not writing business and is running off its existing business, then the director may allow the insurer to continue its run‑off under his supervision. The Mandatory Control Level Event is sufficient grounds for the director to take either action, and the director has the rights, powers, and duties detailed within those provisions. If the director takes action, then the insurer is entitled to the protections afforded under those provisions pertaining to summary proceedings. The director, in his discretion, may forego action for up to ninety days after the Mandatory Control Level Event if the director finds that there is a reasonable expectation that the Mandatory Control Level Event will be eliminated within that period.

(3) For a health organization, the director must take action necessary to place the health organization under regulatory control pursuant to Section 38‑26‑10, et seq., or Section 38‑27‑10, et seq. In that event, the Mandatory Control Level Event must be considered an indication of a hazardous financial condition which serves as sufficient grounds for the director to commence delinquency proceedings, and the receiver appointed in conjunction with the proceedings has the rights, powers, and duties with respect to the licensee as are set forth in Section 38‑26‑10, et seq., or Section 38‑27‑10, et seq., or an order of liquidation, rehabilitation, or conservation entered under it. If the director takes action, then the health organization is entitled to the protections afforded under those provisions pertaining to summary proceedings. The director, in his discretion, may forego action for up to ninety days after the Mandatory Control Level Event if the director finds that there is a reasonable expectation that the Mandatory Control Level Event will be eliminated within that period.”

SECTION 7. Section 38‑9‑365 of the 1976 Code is amended to read:

“Section 38‑9‑365. The director may retain actuaries, investment experts, attorneys, and ~~any other~~ other consultants whom he considers necessary to enforce the provisions of this article. The fees, costs, and expenses of those actuaries, experts, attorneys, and other consultants must be borne by the affected ~~insurer~~ licensee or other related or affiliated parties as required by the director.”

SECTION 8. Section 38‑9‑370 of the 1976 Code is amended to read:

“Section 38‑9‑370. ~~In all instances within this article in which an insurer has the right to challenge any determination or any action by a public hearing before an administrative law judge, the insurer must notify the director of its request for a public hearing within ten days after notification. Upon receipt of the insurer’s request for a public hearing, the director must transmit the notice to the administrative law judge division. The date of the public hearing scheduled by the administrative law judge must be no less than ten nor more than thirty days after the date of the insurer’s request.~~ (A) A licensee has the right to a confidential hearing, on a record before the director, at which the licensee may challenge a determination or action by the director, upon notification to a licensee by the director:

(1) of an Adjusted RBC Report;

(2) that the licensee’s RBC Plan or Revised RBC Plan is unsatisfactory, and that this notification constitutes a Regulatory Action Level Event with respect to the licensee;

(3) that the licensee has failed to adhere to its RBC Plan or Revised RBC Plan and that this failure has a substantial adverse effect on the ability of the licensee to eliminate the Company Action Level Event with respect to the licensee in accordance with its RBC Plan or Revised RBC Plan; or

(4) of a corrective order with respect to the licensee.

(B) The licensee shall notify the director of its request for a hearing within five days after the notification by the director pursuant to subsection (A). Upon receipt of the licensee’s request for a hearing, the director shall set a date for the hearing, which must be no less than ten days nor more than thirty days after the date of the licensee’s request.”

SECTION 9. Section 38‑9‑380 of the 1976 Code is amended to read:

“Section 38‑9‑380. (A) All RBC Reports and Adjusted RBC Reports, to the extent the information contained within them is not required to be set forth in a publicly available annual statement schedule; all RBC Plans, including the results or report of ~~any~~ an examination or analysis of a licensee performed pursuant to this article; and ~~any~~ a Corrective Order issued by the director ~~include~~, including information that will be damaging to ~~an insurer~~ a licensee if any of them are made available to the ~~insurer’s~~ licensee’s competitors~~. Therefore, such reports, plans, and orders~~, must be kept confidential~~. This information~~, by law, must not be made public, and ~~is~~ are not subject to subpoena. The director may use ~~such~~ these reports, plans, and orders for enforcement actions either pursuant to this article or pursuant to ~~any other~~ another insurance law of this State.

(B) Neither the director nor a person who received documents, materials, or other information while acting under the authority of the director can be permitted or required to testify in a private civil action concerning confidential documents, materials, or information subject to subsection (A).

(C) The director may:

(1) share documents, materials, or other information, including the confidential and privileged documents, materials or information subject to subsection (A), with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(2) receive documents, materials, or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(3) enter into agreements governing sharing and use of information consistent with this subsection.”

SECTION 10. Section 38‑9‑390 of the 1976 Code is amended to read:

“Section 38‑9‑390. (A) The comparison of ~~an insurer’s~~ a licensee’s Total Adjusted Capital to any of its RBC Levels is a regulatory tool for corrective action. It is not intended as a means to rank ~~insurers~~ licensees. Therefore, except as otherwise specifically required under the provisions of this article, the making, publishing, disseminating, circulating, or placing before the public, or, causing to be directly or indirectly made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over ~~any~~ a radio or television station, or in ~~any other~~ another way, an advertisement, announcement, or statement containing an assertion or representation with regard to the RBC Levels of ~~any insurer~~ a licensee or of ~~any~~ a component derived in the calculations by ~~any insurer~~ a licensee or agent engaged in the business of insurance is considered misleading and is prohibited.

(B) If ~~any~~ a materially false or inappropriate comparison of ~~an insurer’s~~ a licensee’s Total Adjusted Capital to its RBC Levels or any RBC Level is published in any written publication and the ~~insurer~~ licensee is able to demonstrate with substantial proof the falsity or the inappropriateness of ~~such~~ the statement to the director, then the ~~insurer~~ licensee may publish an announcement approved by the director in that written publication solely to rebut the materially false or inappropriate statement.”

SECTION 11. Section 38‑9‑400 of the 1976 Code is amended to read:

“Section 38‑9‑400. RBC Instructions, RBC Reports, Adjusted RBC Reports, RBC Plans, and Revised RBC Plans are intended only for use by the director in monitoring the solvency of ~~insurers~~ licensees and in monitoring the need for corrective action. They must not be used for ratemaking, considered, or introduced as evidence in ~~any~~ a ratemaking proceeding, or used to calculate or to derive ~~any elements~~ an element of an appropriate premium level or rate of return for ~~any~~ a line of insurance ~~which an insurer~~ that a licensee, an affiliated ~~insurer~~ licensee, or a subsidiary insurer underwrites.”

SECTION 12. Section 38‑9‑430 of the 1976 Code is amended to read:

“Section 38‑9‑430. The director may exempt from the application of this article:

(1) ~~any~~ a domestic property and casualty insurer ~~which~~ that:

(~~1~~a) ~~except for the reinsurance allowed by item (3) of this section, underwrites~~ writes direct business only in this State;

(~~2~~b) ~~underwrites~~ writes direct annual written premiums of ~~$2,000,000.00~~ two million dollars or less; and

(~~3~~c) assumes no reinsurance in excess of five percent of its direct written premium; and

(2) a domestic health organization that:

(a) writes direct business only in this State;

(b) assumes no reinsurance in excess of five percent of direct premium written; and

(c) writes direct annual premiums of one million dollars or less.”

SECTION 13. Section 38‑9‑440 of the 1976 Code is amended to read:

“Section 38‑9‑440. (A) A foreign ~~insurer~~ licensee, upon written request by the director, must submit an RBC Report as of the end of the preceding calendar year not later than the date that an RBC Report would be required to be filed by a domestic ~~insurer~~ licensee under this article or fifteen days after that request is received by the foreign ~~insurer~~ licensee. In addition, ~~any~~ a foreign ~~insurer~~ licensee, upon written request by the director, must promptly submit a copy of ~~any~~ an RBC document that has been filed with the chief insurance regulatory officer of ~~any other~~ another state.

(B) In the event of a Company Action Level Event, Regulatory Action Level Event, or Authorized Control Level Event by a foreign ~~insurer~~ licensee as determined under the RBC Laws in its state of domicile or, if no RBC Laws are in force in that state, as determined under the provisions of this article, if the chief insurance regulatory officer of the state of domicile of that foreign ~~insurer~~ licensee fails to require the foreign ~~insurer~~ licensee to file an RBC Plan in the manner specified under that state’s RBC Laws or, if no RBC statute is in force in that state, under Section 38‑9‑330, then the director may require the foreign ~~insurer~~ licensee to file an RBC Plan. The failure of the foreign ~~insurer~~ licensee to file an RBC Plan with the director is grounds for the director to order the foreign ~~insurer~~ licensee to cease and desist from writing new insurance business in this State.

(C) In the event of a Mandatory Control Level Event by a foreign ~~insurer~~ licensee, if no domiciliary receiver has been appointed for the foreign ~~insurer~~ licensee under the rehabilitation and liquidation laws of its state of domicile, then the director may petition the circuit court pursuant to Section 38‑27‑910, et seq., for the liquidation of its property in this State. The occurrence of the Mandatory Control Level Event must be considered grounds for the petition.”

SECTION 14. Section 38‑9‑460 of the 1976 Code is amended to read:

“Section 38‑9‑460. All notices by the director which may result in regulatory action under this article must be transmitted by registered or certified mail. Those notices are effective upon the ~~insurer’s~~ licensee’s receipt.”

SECTION 15. (A) Article 5, Chapter 9, Title 38, designated ‘Risk Based Capital’ is redesignated ‘Risk‑Based Capital’.

(B) Sections 38‑9‑400, 38‑9‑410, 38‑9‑420, 38‑9‑430, 38‑9‑440, 38‑9‑450, and 38‑9‑460 of the 1976 Code, which are designated as Article 5, Chapter 9, Title 38, are redesignated as part of Article 3, Chapter 9, Title 38, and Article 5, Chapter 9, Title 38 is deleted.

SECTION 16. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 17. This act takes effect January 1, 2015.

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