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3 By Representative Hill
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ENROLLED, An Act,

Relating to insurance; to amend Sections 27-2B-2, 27-2B-3, and 27-2B-4 of the Code of Alabama 1975, to increase the level at which the risk based trend test for life and health insurance companies could be required; and to provide that a property and casualty insurer would be subject to a company action level event when its risk-based capital report indicates certain specified levels.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§27-2B-2.

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

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

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

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

1 "(4) FOREIGN INSURER. Any insurance company which is
2 licensed to do business in this state but not domiciled in
3 this state.

4 "(5) LIFE OR HEALTH INSURER. Any insurance company
5 licensed to do business in this state and authorized to
6 transact life and/or disability insurance, including a
7 property and casualty insurer writing only disability
8 insurance, but shall not include fraternal benefit societies,
9 health care service corporations, dental service
10 organizations, health maintenance organizations, dental plan
11 organizations or mutual aid associations.

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

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

18 "(8) PROPERTY AND CASUALTY INSURER. Any insurance
19 company licensed to do business in this state and authorized
20 to transact property, marine, casualty and/or surety
21 insurance, but shall not include monoline mortgage guaranty
22 insurers, financial guaranty insurers and title insurers.

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

24 "(10) RBC INSTRUCTIONS. The RBC report including
25 risk-based capital instructions adopted by the NAIC, as the

1 RBC instructions may be amended by the NAIC from time to time
2 in accordance with the procedures adopted by the NAIC.

3 "(11) RBC LEVEL. An insurer's company action level
4 RBC, regulatory action level RBC, authorized control level
5 RBC, or mandatory control level RBC where:

6 "a. "Company action level RBC" means, with respect
7 to any insurer, the product of 2.0 and its authorized control
8 level RBC.

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

11 "c. "Authorized control level RBC" means the number
12 determined under the risk-based capital formula in accordance
13 with the RBC instructions.

14 "d. "Mandatory control level RBC" means the product
15 of .70 and the authorized control level RBC.

16 "(12) RBC PLAN. A comprehensive financial plan
17 containing the elements specified in subsection (b) of Section
18 27-2B-4. If the commissioner rejects the RBC plan, and it is
19 revised by the insurer, with or without the commissioner's
20 recommendation, the plan shall be called the revised RBC plan.

21 "(13) RBC REPORT. The report required in Section
22 27-2B-3.

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

1 "a. Capital. At any particular time, the sum of (i)
2 the par value of all shares of the insurer having a par value
3 that have been issued, (ii) the amount of consideration
4 received by the insurer for all shares of the insurer without
5 par value that have been issued, except any part of the
6 consideration therefor as may have been allocated to surplus
7 in a manner permitted by law, and (iii) any amounts not
8 included in clauses (i) and (ii) of this subdivision as have
9 been transferred to capital of the insurer, whether upon the
10 issue of shares as a share dividend or otherwise, minus all
11 reductions from the sum as have been affected in a manner
12 permitted by law.

13 "b. Surplus. The excess of the net admitted assets
14 of an insurer over its capital. As used in this definition,
15 "net admitted assets" means the excess of admitted assets of
16 an insurer over its liabilities.

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

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

19 "b. Other items, if any, as the RBC instructions may
20 provide.

21 "§27-2B-3.

22 "(a) Every domestic insurer shall, on or prior to
23 each March 1 (the "filing date"), prepare and submit to the
24 commissioner a report of its RBC levels as of the end of the
25 calendar year just ended, in a form and containing information

1 as is required by the RBC instructions. In addition, every
2 domestic insurer shall file its RBC report with:

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

4 "(2) The insurance commissioner in any state in
5 which the insurer is authorized to do business, if the
6 insurance commissioner has notified the insurer of its request
7 in writing, in which case the insurer shall file its RBC
8 report not later than the later of either of the following:

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

11 "b. The filing date.

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

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

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

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

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 in each case by

1 applying the factors in the manner set forth in the RBC
 2 instructions.

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

9 "(1) Asset risk.

10 "(2) Credit risk.

11 "(3) Underwriting risk.

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

16 "(d) An excess of capital over the amount produced
 17 by the risk-based capital requirements contained in this
 18 chapter and the formulas, schedules, and instructions
 19 referenced in this chapter is desirable in the business of
 20 insurance. Accordingly, insurers should seek to maintain
 21 capital above the RBC levels required by this chapter.
 22 Additional capital is used and useful in the insurance
 23 business and helps to secure an insurer against various risks
 24 inherent in or affecting the business of insurance and not

1 accounted for or only partially measured by the risk-based
 2 capital requirements contained in this chapter.

3 "(e) If a domestic insurer files an RBC report which
 4 in the judgment of the commissioner is inaccurate, then the
 5 commissioner shall adjust the RBC report to correct the
 6 inaccuracy and shall notify the insurer of the adjustment. The
 7 notice shall contain a statement of the reason for the
 8 adjustment. An RBC report as so adjusted is referred to as an
 9 "adjusted RBC report."

10 "\$27-2B-4.

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

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

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

18 "b. If a life or health insurer, the insurer has
 19 total adjusted capital which is greater than or equal to its
 20 company action level RBC but less than the product of its
 21 authorized control level RBC and ~~2.5~~ 3.0 and has a negative
 22 trend.

23 "c. If a property and casualty insurer, the insurer
 24 has total adjusted capital which is greater than or equal to
 25 its company action level RBC, but less than the product of its

1 authorized control level RBC and 3.0, and triggers the trend
 2 test determined in accordance with the trend test calculation
 3 included in the property and casualty RBC instructions.

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

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

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

16 "(1) Identify the conditions which contribute to the
 17 company action level event.

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

21 "(3) Provide projections of the insurer's financial
 22 results in the current year and at least the four succeeding
 23 years, both in the absence of proposed corrective actions and
 24 giving effect to the proposed corrective actions, including
 25 projections of statutory operating income, net income,

1 capital, or surplus. The projections for both new and renewal
 2 business may include separate projections for each major line
 3 of business and separately identify each significant income,
 4 expense, and benefit component.

5 "(4) Identify the key assumptions impacting the
 6 insurer's projections and the sensitivity of the projections
 7 to the assumptions.

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

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

14 "(1) Within 45 days of the company action level
 15 event.

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

20 "(d) Within 60 days after the submission by an
 21 insurer of an RBC plan to the commissioner, the commissioner
 22 shall notify the insurer whether the RBC plan shall be
 23 implemented or is, in the judgment of the commissioner,
 24 unsatisfactory. If the commissioner determines the RBC plan is
 25 unsatisfactory, the notification to the insurer shall set

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

8 "(1) Within 45 days after the notification from the
9 commissioner.

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

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

21 "(f) Every domestic insurer that files an RBC plan
22 or revised RBC plan with the commissioner shall file a copy of
23 the RBC plan or revised RBC plan with the insurance
24 commissioner in any state in which the insurer is authorized
25 to do business if:

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

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

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

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

12 Section 2. This act shall become effective
13 immediately following its passage and approval by the
14 Governor, or its otherwise becoming law.

