

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1055 Session of
1997

INTRODUCED BY MICOZZIE, SATHER, COLAIZZO, MELIO, COLAFELLA,
NICKOL, GODSHALL, BAKER, SEMMEL, BATTISTO, ITKIN, YOUNGBLOOD,
SERAFINI AND RAMOS, MARCH 25, 1997

AS REPORTED FROM COMMITTEE ON INSURANCE, HOUSE OF
REPRESENTATIVES, AS AMENDED, APRIL 16, 1997

AN ACT

1 Amending the act of May 17, 1921 (P.L.789, No.285), entitled, as
2 amended, "An act relating to insurance; establishing an
3 insurance department; and amending, revising, and
4 consolidating the law relating to the licensing,
5 qualification, regulation, examination, suspension, and
6 dissolution of insurance companies, Lloyds associations,
7 reciprocal and inter-insurance exchanges, and certain
8 societies and orders, the examination and regulation of fire
9 insurance rating bureaus, and the licensing and regulation of
10 insurance agents and brokers; the service of legal process
11 upon foreign insurance companies, associations or exchanges;
12 providing penalties, and repealing existing laws," providing
13 for risk-based capital requirements.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. The act of May 17, 1921 (P.L.789, No.285), known
17 as The Insurance Department Act of 1921, is amended by adding an
18 article to read:

ARTICLE V-ARISK-BASED CAPITAL REQUIREMENTS

21 Section 501-A. Definitions.

22 The following words and phrases when used in this article

1 shall have, unless the context clearly indicates otherwise, the
2 meanings given to them in this section.

3 "Adjusted RBC report" means an RBC report that has been
4 recalculated by the Insurance Commissioner in accordance with
5 section 502-A(c).

6 "Authorized control level event" means one or more of the
7 following events:

8 (1) The filing of an RBC report by the insurer which
9 indicates that the insurer's total adjusted capital is greater
10 than or equal to its mandatory control level RBC but less than
11 its authorized control level RBC.

12 (2) The notification by the Insurance Commissioner to the
13 insurer of an adjusted RBC report that indicates the event in
14 paragraph (1).

15 (3) The failure of the insurer to respond, in a manner
16 satisfactory to the Insurance Commissioner, to a corrective
17 order, provided the insurer has not challenged the corrective
18 order under section 510-A.

19 (4) If the insurer has challenged a corrective order under
20 section 510-A and the Insurance Commissioner has, after a
21 hearing, rejected the challenge or modified the corrective
22 order, the failure of the insurer to respond, in a manner
23 satisfactory to the Insurance Commissioner, to the corrective
24 order subsequent to rejection or modification by the Insurance
25 Commissioner.

26 "Commissioner" means the Insurance Commissioner of the
27 Commonwealth.

28 "Company action level event" means one or more of the
29 following events:

30 (1) The filing of an RBC report by an insurer that indicates

1 that:

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

5 (ii) if a life or health insurer, the insurer has total
6 adjusted capital that is greater than or equal to its company
7 action level RBC but less than the product of its authorized
8 control level RBC and 2.5 and has a negative trend.

9 (2) The notification by the Insurance Commissioner to the
10 insurer of an adjusted RBC report that indicates an event in
11 paragraph (1).

12 "Corrective order" means an order issued by the Insurance
13 Commissioner specifying corrective actions that the Insurance
14 Commissioner has determined are required under section 507-A(b).

15 "Department" means the Insurance Department of the
16 Commonwealth.

17 "Domestic insurer" means an insurer that is incorporated or
18 organized under the laws of this Commonwealth.

19 "Foreign insurer" means an insurer that is licensed by the
20 Insurance Department to do business in this Commonwealth and
21 incorporated or organized under the laws of a jurisdiction other
22 than this Commonwealth.

23 "Insurer" means life or health insurers and property or
24 casualty insurers.

25 "Life or health insurer" means a stock or mutual insurance
26 company, association or exchange licensed by the Insurance
27 Department to transact life or accident and health insurance
28 coverages or both.

29 "Mandatory control level event" means one or more of the
30 following events:

1 (1) The filing of an RBC report which indicates that the
2 insurer's total adjusted capital is less than its mandatory
3 control level RBC.

4 (2) Notification by the insurance commissioner to the
5 insurer of an adjusted RBC report that indicates the event in
6 paragraph (1).

7 "NAIC" means the National Association of Insurance
8 Commissioners or successor organization.

9 "Negative trend" means, with respect to a life or health
10 insurer, a decrease over a period of time, as determined in
11 accordance with the Trend Test Calculation included in the RBC
12 instructions.

13 "Property or casualty insurer" means a stock or mutual
14 insurance company, association or exchange licensed by the
15 Insurance Department to transact property or casualty insurance
16 coverages or both.

17 "RBC" means risk-based capital.

18 "RBC instructions" means the RBC report, including RBC
19 instructions and formula adopted by the NAIC as required by the
20 Insurance Commissioner under section 320(a)(2) of the act of May
21 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law
22 of 1921."

23 "RBC level" means an insurer's company action level RBC,
24 regulatory action level RBC, authorized control level RBC or
25 mandatory control level RBC where:

26 (1) "Company action level RBC" means the product of 2.0 and
27 the authorized control level RBC.

28 (2) "Regulatory action level RBC" means the product of 1.5
29 and the authorized control level RBC.

30 (3) "Authorized control level RBC" means the amount of an

insurer's authorized control level RBC calculated under the RBC formula in accordance with the RBC instructions.

(4) "Mandatory control level RBC" means the product of .70 and the authorized control level RBC.

"RBC plan" means a comprehensive financial plan containing the elements specified in section 506-A(a).

"RBC report" means the report required under sections 502-A and 503-A of this article.

"Regulatory action level event" means one or more of the following events:

(1) The filing of an RBC report by the insurer that indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC.

(2) The notification by the Insurance Commissioner to an insurer of an adjusted RBC report that indicates the event in paragraph (1).

(3) The failure of the insurer to file an RBC report by the date required under this article unless the insurer has provided an explanation for the failure that is satisfactory to the Insurance Commissioner and has cured the failure within ten days after the date the report is required to be filed under this article.

(4) The failure of the insurer to submit an RBC plan or revised RBC plan to the Insurance Commissioner within the time period set forth in section 506-A(b) and (d).

(5) Notification by the Insurance Commissioner to the insurer that:

(i) the RBC plan or revised RBC plan submitted by the insurer is in the judgment of the Insurance Commissioner

1 unsatisfactory; and

2 (ii) the notification constitutes a regulatory action level
3 event with respect to the insurer.

4 (6) Notification by the Insurance Commissioner to the
5 insurer that the insurer has failed to adhere to its RBC plan or
6 revised RBC plan, but only if the failure has a substantial
7 adverse effect on the ability of the insurer to eliminate the
8 company action level event in accordance with its RBC plan or
9 revised RBC plan and the Insurance Commissioner has so stated in
10 the notification.

11 "Revised RBC plan" means an RBC plan that has been rejected
12 by the Insurance Commissioner and revised by the insurer, with
13 or without the Insurance Commissioner's recommendation.

14 "Total adjusted capital" means the sum of:

15 (1) an insurer's statutory capital and surplus as determined
16 in accordance with the statutory accounting applicable to its
17 annual financial statements filed with the Insurance Department;
18 and

19 (2) other items as the RBC instructions may provide.

20 Section 502-A. RBC Reports Required; Domestic Insurers.--(a)
21 Every domestic insurer shall, on or prior to each March 1,
22 prepare and submit to the commissioner and to the NAIC a report
23 of its RBC levels as of the end of the calendar year just ended,
24 in a form and containing the information required by the RBC
25 instructions.

26 (b) In addition, every domestic insurer shall file its RBC
27 report with the chief insurance regulatory official in any
28 jurisdiction in which the insurer is authorized to do business,
29 if the chief insurance regulatory official of the jurisdiction
30 has notified the insurer of its request in writing, in which

1 case the insurer shall file its RBC report not later than the
2 later of:

3 (1) the date instructed by the chief insurance regulatory
4 official of the jurisdiction requesting the filing; or

5 (2) March 1 of the year following the end of the calendar
6 year for which the report is requested.

7 (c) If a domestic insurer files an RBC report that, in the
8 judgment of the commissioner, is inaccurate, the commissioner
9 shall recalculate the RBC report to correct the inaccuracy and
10 shall notify the insurer of the amount of the recalculation. The
11 notice shall contain a statement of the reason for the
12 recalculation. If, within thirty days after the notification
13 from the commissioner, the insurer fails to prepare and submit
14 to the commissioner and to the NAIC an adjusted RBC report to
15 correct the inaccuracy in accordance with the commissioner's
16 notification, the commissioner may enter an order calling for an
17 investigatory hearing with no less than twenty days' notice to
18 the insurer for purposes of obtaining additional documentation,
19 data, information and testimony. Following the hearing, the
20 commissioner shall issue a final order accepting the RBC report
21 as filed or the adjusted RBC report as initially recalculated or
22 with other corrections.

23 Section 503-A. RBC Requirements; Foreign Insurers.--(a) A
24 foreign insurer shall, upon the written request of the
25 commissioner, submit to the commissioner an RBC report as of the
26 end of the calendar year just ended no later than the later of:

27 (1) the date an RBC report would be required to be filed by
28 a domestic insurer under this article; or

29 (2) fifteen days after the request is received by the
30 foreign insurer.

1 (b) A foreign insurer shall, upon the written request of the
2 commissioner, submit to the commissioner a copy of an RBC plan
3 that is filed with the chief insurance regulatory official of
4 any other jurisdiction, within fifteen days after receiving the
5 request from the commissioner.

6 (c) In the event of a company action level event, regulatory
7 action level event or authorized control level event with
8 respect to a foreign insurer as determined under the RBC statute
9 applicable in the jurisdiction of domicile of the insurer, or,
10 if no RBC statute is in force in that jurisdiction, under the
11 provisions of this article, if the chief insurance regulatory
12 official of the jurisdiction of domicile of the foreign insurer
13 fails to require the foreign insurer to file an RBC plan in the
14 manner specified under that state's RBC statute, or if no RBC
15 statute is in force in that jurisdiction, under this article,
16 the commissioner may require the foreign insurer to file an RBC
17 plan with the commissioner. The failure of the foreign insurer
18 to file an RBC plan with the commissioner under this section
19 shall be grounds to order the insurer to cease and desist from
20 writing new insurance business in this Commonwealth. The
21 commissioner shall give written notice to the foreign insurer,
22 stating specifically the nature of the grounds for the order and
23 fixing a time and place, at least ten days thereafter, when a
24 hearing before the commissioner regarding the matter shall be
25 held.

26 (d) In the event of a mandatory control level event with
27 respect to a foreign insurer, if no domiciliary receiver has
28 been appointed with respect to the foreign insurer under the
29 rehabilitation and liquidation statute applicable in the
30 jurisdiction of domicile of the foreign insurer, the

commissioner may make application to the Commonwealth Court under sections 553 and 554, and the occurrence of the mandatory control level event shall be considered adequate grounds for the application under sections 553(a) and 554(a).

Section 504-A. Calculation of RBC Relating to Life or Health Insurers.--(a) A life or health insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions.

(b) The formula shall take into account and may adjust for the covariance between the following risks determined in each case by applying the factors in the manner set forth in the RBC instructions:

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

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

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

(4) All other business risks and other relevant risks as set forth in the RBC instructions.

Section 505-A. Calculation of RBC Relating to Property or Casualty Insurers.--(a) A property or casualty insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions.

(b) The formula shall take into account and may adjust for the covariance between the following risks determined in each case by applying the factors in the manner set forth in the RBC instructions:

(1) Asset risk.

(2) Credit risk.

(3) Underwriting risk.

1 (4) All other business risks and other relevant risks as are
2 set forth in the RBC instructions.

3 Section 506-A. Company Action Level Event.--(a) In the
4 event of a company action level event, the insurer shall prepare
5 and submit to the commissioner an RBC plan that shall include,
6 at a minimum, all of the following:

7 (1) Identification of the conditions that contribute to the
8 company action level event.

9 (2) Proposals of corrective actions that the insurer intends
10 to take and that would be expected to result in the elimination
11 of the company action level event.

12 (3) Projections of the insurer's financial results for the
13 current year and at least the four succeeding years, both in the
14 absence of proposed corrective actions and giving effect to the
15 proposed corrective actions, including projections of statutory
16 operating income, net income, capital and surplus. Projections
17 for both new and renewal business may include separate
18 projections for each major line of business and separately
19 identify each significant income, expense and benefit component.

20 (4) Identification of the key assumptions impacting the
21 insurer's projections and the sensitivity of the projections to
22 the assumptions.

23 (5) Identification of the quality of and problems associated
24 with the insurer's business, including, but not limited to, its
25 assets, anticipated business growth and associated surplus
26 strain, extraordinary exposure to risk, mix of business and use
27 of reinsurance, if any, in each case.

28 (b) The RBC plan required under this section shall be
29 submitted within forty-five days after the occurrence of the
30 company action level event.

1 (c) Within sixty days after the submission by an insurer of
2 an RBC plan to the commissioner, the commissioner shall notify
3 the insurer whether the RBC plan shall be implemented or whether
4 the RBC plan is, in the judgment of the commissioner,
5 unsatisfactory. If the commissioner determines the RBC plan is
6 unsatisfactory, the notification to the insurer shall set forth
7 the reasons for the determination and may set forth proposed
8 revisions that will render the RBC plan satisfactory in the
9 judgment of the commissioner.

10 (d) Upon notification from the commissioner of a
11 determination that the RBC plan is unsatisfactory, the insurer
12 shall prepare a revised RBC plan, which may incorporate by
13 reference any revisions proposed by the commissioner and, unless
14 the commissioner has taken action under subsection (e), shall
15 submit the revised RBC plan to the commissioner within forty-
16 five days after the notification from the commissioner.

17 (e) In the event of a notification by the commissioner to an
18 insurer that the insurer's RBC plan or revised RBC plan is
19 unsatisfactory, the commissioner may specify in the notification
20 that the notification constitutes a regulatory action level
21 event or take action as necessary to place the insurer under
22 regulatory control under Article V.

23 (f) Every domestic insurer that files an RBC plan or revised
24 RBC plan with the commissioner shall file a copy of the RBC plan
25 or revised RBC plan with the chief insurance regulatory official
26 in any jurisdiction in which the insurer is authorized to do
27 business if:

28 (1) The jurisdiction has an RBC provision substantially
29 similar to section 512-A(a) and (b).

30 (2) The chief insurance regulatory official of that

jurisdiction has notified the insurer of his request for the filing in writing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that jurisdiction no later than the later of:

(i) fifteen days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the jurisdiction; or

(ii) the date on which the RBC plan or revised RBC plan is filed under this section.

Section 507-A. Regulatory Action Level Event.--(a) In the event of a regulatory action level event, the commissioner:

(1) may require the insurer to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(2) shall perform an examination under Article IX or analysis as the commissioner deems necessary of the assets, liabilities and operations of the insurer, including, if applicable, a review of its RBC plan or revised RBC plan; and

(3) subsequent to an examination or analysis performed under paragraph (2), shall issue an order specifying corrective actions as the commissioner shall determine are required.

(b) In determining corrective actions, the commissioner may take into account factors as the commissioner deems relevant with respect to the insurer based upon the commissioner's examination or analysis of the assets, liabilities and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC instructions.

(c) The RBC plan or revised RBC plan required under this section shall be submitted within forty-five days after the occurrence of the regulatory action level event.

(d) The commissioner may retain actuaries, investment

experts, attorneys, appraisers, certified public accountants and other professionals and specialists as may be necessary in the judgment of the commissioner to review the insurer's RBC plan or revised RBC plan, examine or analyze the assets, liabilities and operations of the insurer and formulate the corrective order with respect to the insurer. The fees, costs and expenses relating to professionals and specialists retained under this section shall be charged to and paid by the affected insurer or other party as directed by the commissioner.

Section 508-A. Authorized Control Level Event.--In the event of an authorized control level event with respect to an insurer, the commissioner shall:

(1) Take such actions as are required under section 507-A regarding an insurer with respect to which a regulatory action level event has occurred.

(2) If the commissioner deems it to be in the best interests of the policyholders and creditors of the insurer and of the public, take actions necessary to cause the insurer to be placed under regulatory control under Article V. In the event the commissioner takes action under Article V, the authorized control level event shall be deemed sufficient grounds for the commissioner to take that action.

Section 509-A. Mandatory Control Level Event.--In the event of a mandatory control level event:

(1) With respect to a life or health insurer, the commissioner shall take actions necessary to place the insurer under regulatory control under sections 512 through 563. The mandatory control level event shall be deemed sufficient grounds for the commissioner to take action under section 514; however, the commissioner may forego action for up to ninety days after

the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.

(2) With respect to a property or casualty insurer, the commissioner shall take actions necessary to place the insurer under regulatory control under sections 512 through 563 or, in the case of an insurer that is writing no business, may allow the insurer to run off its existing business under the supervision of the commissioner. In either event, the mandatory control level event shall be deemed sufficient grounds for the commissioner to take action under section 514; however, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.

Section 510-A. Hearings.--(a) The insurer shall have the right to a confidential departmental hearing at which the insurer may challenge a determination or action by the commissioner upon one or more of the following events:

(1) Issuance of a final order by the commissioner accepting an adjusted RBC report under section 502-A(c).

(2) Notification to an insurer by the commissioner of a corrective order with respect to the insurer.

(b) The insurer shall notify the commissioner of the insurer's request for a hearing under this section within five days after the action or notification by the commissioner under subsection (a). Upon receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing, which date shall be no less than ten days nor more than thirty days after the date of the insurer's request.

~~(c) All testimony at hearings under this section shall be
stenographically recorded, and a full and complete record shall
be kept of the proceedings.~~

Section 511-A. Notices.--(a) Notices by the commissioner to
an insurer which may result in regulatory action under this
article shall be effective upon dispatch if transmitted by
certified mail or any other form of delivery that insures
signature upon receipt.

(b) Notices by the commissioner to an insurer transmitted by
a form of delivery other than that provided in subsection (a)
shall be effective upon the insurer's receipt of the notice.

Section 512-A. Confidentiality; Prohibition on
Announcements; Prohibition on Use in Ratemaking.--(a) RBC
reports, to the extent the information therein is not required
to be set forth in a publicly available annual statement
schedule, and RBC plans, including the results or report of any
examination or analysis of an insurer performed under this
article, and any corrective order issued by the commissioner
pursuant to examination or analysis with respect to a domestic
insurer or foreign insurer that are filed with the commissioner
constitute information that may be damaging to the insurer if
made available to its competitors and, therefore, shall be kept
confidential by the commissioner.

(b) Information described in subsection (a) shall be given
confidential treatment, may not be subject to subpoena by any
Federal, state or other jurisdiction and may not be made public
by the commissioner or any other person, except to chief
~~insurance regulatory officials of INSURANCE OR OTHER REGULATORY~~
~~OFFICIALS OF THIS OR other jurisdictions, without the prior~~
written consent of the insurer to which the information

~~pertains, unless the commissioner determines that the interest
of policyholders, shareholders or the public would be served by
the publication of all or any part of the information related to
the transaction. Prior to publication, the commissioner shall
notify the affected insurer of the right to request a
confidential review by the commissioner or the commissioner's
designee. At the review, the affected insurer shall have an
opportunity to demonstrate why the transaction and related
information should remain confidential. After the review, the
commissioner may order some, all or none of the information
related to the transaction to be made public TO MAKE THE
INFORMATION PUBLIC FOR PURPOSES OF ACTIONS TAKEN BY THE
COMMISSIONER UNDER ARTICLE V.~~

(c) The comparison of an insurer's total adjusted capital to
any of its RBC levels is a regulatory tool that may indicate the
need for possible corrective action with respect to the insurer
and is not intended as a means to rank insurers generally.
Therefore, except as otherwise required under the provisions of
this article, the making, publishing, disseminating, circulating
or placing before the public or causing, directly or indirectly,
to be 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 a radio or television station, or in any other way, an
advertisement, announcement or statement containing an
assertion, representation or statement with regard to the RBC
levels of an insurer or of a component derived in the
calculation, by an insurer, agent, broker or other person would
be misleading and is prohibited, provided, however, that if a
materially false statement with respect to the comparison

1 regarding an insurer's total adjusted capital to its RBC levels
2 or an inappropriate comparison of any other amount to the
3 insurer's RBC levels is published in a written publication and
4 the insurer is able to demonstrate to the commissioner with
5 substantial proof the falsity or inappropriateness of the
6 statement, the insurer may publish an announcement in a written
7 publication if the sole purpose of the announcement is to rebut
8 the materially false or inappropriate statement.

9 (d) The RBC instructions, RBC reports, adjusted RBC reports,
10 RBC plans and revised RBC plans are intended solely for use by
11 the commissioner in monitoring the solvency of insurers and the
12 need for possible corrective action with respect to insurers and
13 shall not be used by the commissioner for ratemaking nor
14 considered or introduced as evidence in any rate proceeding nor
15 used by the commissioner to calculate or derive any elements of
16 an appropriate premium level or rate of return for any line of
17 insurance which an insurer or any affiliate is authorized to
18 write.

19 Section 513-A. Exemptions.--(a) The following insurers are
20 exempt from this article:

21 (1) Monoline mortgage guaranty insurers.

22 (2) Financial guaranty insurers.

23 (3) Title insurers.

24 (b) A domestic property or casualty insurer that meets all
25 of the following conditions is exempt from this article unless
26 the commissioner makes a specific finding that application of
27 this article to the insurer is necessary for the commissioner to
28 carry out statutory responsibilities:

29 (1) Writes direct business only in this Commonwealth.

30 (2) Writes direct annual premiums of ten million dollars

1 (\$10,000,000) or less or such higher amount as the commissioner
2 may order in five-year intervals as necessary to reflect the
3 impact of inflationary factors.

4 (3) Assumes no reinsurance in excess of five per centum of
5 direct premium written except for assumed reinsurance of
6 business directly written in this Commonwealth if the assuming
7 insurer's total annual net written premium, direct plus assumed
8 minus ceded, is ten million dollars (\$10,000,000) or less.

9 Section 514-A. Supplemental Provisions; Rules.--(a) The
10 provisions of this article are supplemental to any other
11 provisions of the laws of this Commonwealth and shall not
12 preclude or limit any other powers or duties of the commissioner
13 under those laws, including, but not limited to, Article V and
14 31 Pa.C.S., PA. CODE Ch. 160 (relating to standards to define <—
15 insurers deemed to be in hazardous financial condition).

16 (b) The commissioner may adopt regulations necessary for the
17 implementation of this article.

18 Section 515-A. Additional Penalties.--An insurer that fails
19 to file an RBC report or adjusted RBC report within the time
20 required under this article shall, in addition to any other
21 penalties provided by law, forfeit a sum not to exceed two
22 hundred dollars (\$200) for each day during which the insurer
23 fails to file.

24 Section 2. This act shall take effect immediately.