

HOUSE BILL 92

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2000 Regular Session
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(PRE-FILED)

By: **Chairman, Economic Matters Committee (Departmental - Insurance Administration, Maryland)**

Requested: November 15, 1999

Introduced and read first time: January 12, 2000

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Health Insurance - Risk Based Capital Standards for Insurers**

3 FOR the purpose of requiring certain insurers to meet certain risk based capital
4 standards; requiring the Insurance Commissioner to take certain action against
5 certain insurers under certain circumstances; altering certain terms; defining
6 certain terms; and generally relating to risk based capital standards for
7 insurers.

8 BY renumbering
9 Article - Health - General
10 Section 19-710(e) through (s), respectively
11 to be Section 19-710(f) through (t), respectively
12 Annotated Code of Maryland
13 (1996 Replacement Volume and 1999 Supplement)

14 BY adding to
15 Article - Health - General
16 Section 19-710(e)
17 Annotated Code of Maryland
18 (1996 Replacement Volume and 1999 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article - Insurance
21 Section 4-301, 4-304, 4-308, and 4-311
22 Annotated Code of Maryland
23 (1997 Volume and 1999 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
25 MARYLAND, That Section(s) 19-710(e) through (s), respectively, of Article - Health -
26 General of the Annotated Code of Maryland be renumbered to be Section(s) 19-710(f)
27 through (t), respectively.

1 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
2 read as follows:

3 **Article - Health - General**

4 19-710.

5 (E) THE PROVISIONS OF TITLE 4, SUBTITLE 3 OF THE INSURANCE ARTICLE
6 (RISK BASED CAPITAL STANDARDS FOR INSURERS) APPLY TO HEALTH MAINTENANCE
7 ORGANIZATIONS IN THE SAME MANNER AS THEY APPLY TO INSURERS.

8 **Article - Insurance**

9 4-301.

10 (a) In this subtitle the following words have the meanings indicated.

11 (b) "Adjusted RBC report" means an RBC report that has been adjusted by the
12 Commissioner in accordance with § 4-303(b) of this subtitle.

13 (c) "Corrective order" means an order issued by the Commissioner that
14 specifies corrective actions that the Commissioner has determined are required.

15 (d) (1) "Domestic insurer" [has the meaning stated in § 1-101(o) of this
16 article.] MEANS AN INSURER:

17 (I) AS DEFINED IN SUBSECTION (H) OF THIS SECTION; AND

18 (II) THAT IS FORMED UNDER THE LAWS OF THIS STATE.

19 (2) "Domestic insurer" does not include the Maryland Automobile
20 Insurance Fund.

21 (e) "Filing date" means March 1 of any given year.

22 (f) "Foreign insurer" [has the meaning stated in § 1-101(p) of this article.]
23 MEANS AN INSURER:

24 (1) AS DEFINED IN SUBSECTION (H) OF THIS SECTION; AND

25 (2) THAT IS FORMED UNDER THE LAWS OF A JURISDICTION OTHER
26 THAN THIS STATE.

27 (G) (1) "HEALTH INSURER" MEANS AN INSURER THAT:

28 (I) IS AUTHORIZED TO WRITE HEALTH INSURANCE IN THE STATE;
29 AND

30 (II) RECEIVES THE MAJORITY OF ITS PREMIUM FROM THE SALE OF
31 HEALTH INSURANCE.

1 (2) "HEALTH INSURER" INCLUDES:

2 (I) A HEALTH MAINTENANCE ORGANIZATION OPERATING UNDER
3 A CERTIFICATE OF AUTHORITY ISSUED BY THE COMMISSIONER UNDER TITLE 19,
4 SUBTITLE 7 OF THE HEALTH - GENERAL ARTICLE;

5 (II) A NONPROFIT HEALTH SERVICE PLAN OPERATING UNDER
6 TITLE 14, SUBTITLE 1 OF THIS ARTICLE;

7 (III) A DENTAL PLAN OPERATING UNDER TITLE 14, SUBTITLE 4 OF
8 THIS ARTICLE; AND

9 (IV) A PROVIDER-SPONSORED ORGANIZATION OPERATING UNDER
10 TITLE 19, SUBTITLE 7A OF THE HEALTH - GENERAL ARTICLE.

11 (3) "HEALTH INSURER" DOES NOT INCLUDE A MANAGED CARE
12 ORGANIZATION OPERATING UNDER TITLE 15, SUBTITLE 1 OF THE HEALTH -
13 GENERAL ARTICLE.

14 (H) (1) "INSURER" MEANS AN INSURER OR OTHER ENTITY AUTHORIZED TO
15 ENGAGE IN THE INSURANCE BUSINESS IN THE STATE UNDER A CERTIFICATE OF
16 AUTHORITY ISSUED BY THE COMMISSIONER.

17 (2) "INSURER" INCLUDES:

18 (I) A HEALTH MAINTENANCE ORGANIZATION OPERATING UNDER
19 A CERTIFICATE OF AUTHORITY ISSUED BY THE COMMISSIONER UNDER TITLE 19,
20 SUBTITLE 7 OF THE HEALTH - GENERAL ARTICLE;

21 (II) A NONPROFIT HEALTH SERVICE PLAN OPERATING UNDER
22 TITLE 14, SUBTITLE 1 OF THIS ARTICLE;

23 (III) A DENTAL PLAN OPERATING UNDER TITLE 14, SUBTITLE 4 OF
24 THIS ARTICLE; AND

25 (IV) A PROVIDER-SPONSORED ORGANIZATION OPERATING UNDER
26 TITLE 19, SUBTITLE 7A OF THE HEALTH - GENERAL ARTICLE.

27 (3) "INSURER" DOES NOT INCLUDE:

28 (I) MONOLINE:

- 29 1. MORTGAGE GUARANTY INSURERS;
30 2. FINANCIAL GUARANTY INSURERS; OR
31 3. TITLE INSURERS; OR

32 (II) MANAGED CARE ORGANIZATIONS OPERATING UNDER TITLE 15,
33 SUBTITLE 1 OF THE HEALTH - GENERAL ARTICLE.

- 1 [(g)] (I) "Life insurer" means[:
2 (1)] an insurer THAT:
3 (1) IS authorized to write life insurance in the State [that is also
4 authorized to write health insurance in the State;
5 (2) an insurer authorized to write life insurance in the State; or
6 (3) a property and casualty insurer that writes only accident and health
7 insurance]; AND
8 (2) RECEIVES THE MAJORITY OF ITS PREMIUM FROM THE SALE OF LIFE
9 INSURANCE.
- 10 [(h)] (J) "NAIC" means the National Association of Insurance Commissioners.
- 11 [(i)] (1) "Property and casualty insurer" means an insurer authorized to write
12 property insurance or casualty insurance in the State.
13 (2) "Property and casualty insurer" does not include monoline:
14 (i) mortgage guaranty insurers;
15 (ii) financial guaranty insurers; or
16 (iii) title insurers.]
- 17 (K) (1) "PROPERTY AND CASUALTY INSURER" MEANS AN INSURER THAT:
18 (I) IS AUTHORIZED TO WRITE PROPERTY INSURANCE OR
19 CASUALTY INSURANCE IN THE STATE; AND
20 (II) RECEIVES THE MAJORITY OF ITS PREMIUM FROM THE SALE OF
21 PROPERTY INSURANCE OR CASUALTY INSURANCE.
22 (2) "PROPERTY AND CASUALTY INSURER" DOES NOT INCLUDE:
23 (I) A HEALTH MAINTENANCE ORGANIZATION OPERATING UNDER
24 A CERTIFICATE OF AUTHORITY ISSUED BY THE COMMISSIONER UNDER TITLE 19,
25 SUBTITLE 7 OF THE HEALTH - GENERAL ARTICLE;
26 (II) A NONPROFIT HEALTH SERVICE PLAN OPERATING UNDER
27 TITLE 14, SUBTITLE 1 OF THIS ARTICLE;
28 (III) A DENTAL PLAN OPERATING UNDER TITLE 14, SUBTITLE 4 OF
29 THIS ARTICLE;
30 (IV) A PROVIDER-SPONSORED ORGANIZATION OPERATING UNDER
31 TITLE 19, SUBTITLE 7A OF THE HEALTH - GENERAL ARTICLE; OR

1 (V) A MANAGED CARE ORGANIZATION OPERATING UNDER TITLE 15,
2 SUBTITLE 1 OF THE HEALTH - GENERAL ARTICLE.

3 [(j)] (L) "Negative trend" means, with respect to a life insurer or health
4 insurer, negative trend over a period of time, as determined in accordance with the
5 "trend test calculation" included in the RBC instructions.

6 [(k)] (M) "RBC instructions" means the risk based capital instructions
7 developed and adopted by the NAIC.

8 [(l)] (N) "RBC level" means an insurer's company action level RBC, regulatory
9 action level RBC, authorized control level RBC, or mandatory control level RBC if:

10 (1) "company action level RBC" means the product of 2.0 and the
11 authorized control level RBC;

12 (2) "regulatory action level RBC" means the product of 1.5 and the
13 authorized control level RBC;

14 (3) "authorized control level RBC" means the number determined under
15 the risk based capital formula in accordance with the RBC instructions; or

16 (4) "mandatory control level RBC" means the product of .70 and the
17 authorized control level RBC.

18 [(m)] (O) "RBC plan" means a comprehensive financial plan that contains the
19 elements specified in § 4-305(b) of this subtitle.

20 [(n)] (P) "RBC report" means a report prepared by a domestic insurer and
21 submitted to the Commissioner that details the domestic insurer's RBC levels as of
22 the end of the immediately preceding calendar year.

23 [(o)] (Q) "Revised RBC plan" means an RBC plan that has been:

24 (1) rejected by the Commissioner; and

25 (2) subsequently revised by the insurer, with or without the
26 Commissioner's recommendation.

27 [(p)] (R) "Total adjusted capital" means the sum of:

28 (1) an insurer's statutory capital and surplus as determined in
29 accordance with the statutory accounting principles applicable to the annual financial
30 statements required to be filed under [this article] STATE LAW AND REGULATIONS;
31 and

32 (2) any other items provided for in the RBC instructions.

1 4-304.

2 (a) (1) A life insurer's risk based capital shall be determined in accordance
3 with the formula set forth in the RBC instructions.

4 (2) By applying the factors in the manner set forth in the RBC
5 instructions, the formula shall take into account and may adjust for the covariance
6 between:

7 (i) the risk with respect to the life insurer's assets;

8 (ii) the risk of adverse insurance experience with respect to the life
9 insurer's liabilities and obligations;

10 (iii) the interest rate risk with respect to the life insurer's business;
11 and

12 (iv) all other business risks and other relevant risks as set forth in
13 the RBC instructions.

14 (b) (1) [A property and casualty] EXCEPT AS PROVIDED IN SUBSECTION (A)
15 OF THIS SECTION, AN insurer's risk based capital shall be determined in accordance
16 with the formula set forth in the RBC instructions.

17 (2) By applying the factors in the manner set forth in the RBC
18 instructions, the formula shall take into account and may adjust for the covariance
19 between:

20 (i) asset risk;

21 (ii) credit risk;

22 (iii) underwriting risk; and

23 (iv) all other business risks and other relevant risks as set forth in
24 the RBC instructions.

25 4-308.

26 (a) A mandatory control level event occurs when:

27 (1) an insurer files an RBC report that indicates that the insurer has
28 total adjusted capital that is less than its mandatory control level RBC;

29 (2) the Commissioner notifies the insurer of an adjusted RBC report that
30 indicates an event under item (1) of this subsection; or

31 (3) if an insurer requests a hearing to challenge an adjusted RBC report
32 that indicates the event under item (1) of this subsection, the Commissioner notifies
33 the insurer that the Commissioner, after a hearing, has rejected the insurer's
34 challenge.

1 (b) (1) In the case of a life insurer, if a mandatory control level event occurs
2 with respect to the life insurer, the Commissioner shall take any action that may be
3 necessary to place the life insurer under conservation, rehabilitation, or liquidation
4 under Title 9 of this article.

5 (2) In the case of a property and casualty insurer, if a mandatory control
6 level event occurs with respect to the property and casualty insurer, the
7 Commissioner:

8 (i) shall take any action that may be necessary to place the
9 property and casualty insurer under conservation, rehabilitation, or liquidation under
10 Title 9 of this article; or

11 (ii) in the case of a property and casualty insurer that is not writing
12 any new business and that is running off its existing business, may allow the property
13 and casualty insurer to continue its run-off under the supervision of the
14 Commissioner.

15 (3) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
16 PARAGRAPH, IN THE CASE OF A HEALTH INSURER, IF A MANDATORY CONTROL LEVEL
17 EVENT OCCURS WITH RESPECT TO THE HEALTH INSURER, THE COMMISSIONER
18 SHALL TAKE ANY ACTION THAT MAY BE NECESSARY TO PLACE THE HEALTH
19 INSURER UNDER CONSERVATION, REHABILITATION, OR LIQUIDATION UNDER TITLE
20 9 OF THIS ARTICLE.

21 (II) IN THE CASE OF A HEALTH MAINTENANCE ORGANIZATION, IF A
22 MANDATORY CONTROL LEVEL EVENT OCCURS WITH RESPECT TO THE HEALTH
23 MAINTENANCE ORGANIZATION, THE COMMISSIONER SHALL TAKE ACTION UNDER
24 TITLE 19 OF THE HEALTH - GENERAL ARTICLE.

25 (c) The Commissioner may delay action under subsection b of this section for
26 up to 90 days after the occurrence of the mandatory control level event if the
27 Commissioner finds there is a reasonable expectation that the mandatory control
28 level event may be eliminated within the 90-day period.

29 (d) (1) The Commissioner shall have the rights, powers, and duties under
30 Title 9 of this article needed to carry out the requirements of this section.

31 (2) If the Commissioner takes any action under Title 9 of this article
32 pursuant to an adjusted RBC report as provided in this section, the insurer shall be
33 entitled to the protections afforded to insurers under Title 9 of this article with regard
34 to summary proceedings.

35 4-311.

36 (a) The provisions of this Act are supplemental to other laws of the State, and
37 may not preclude or limit any other powers or duties of the Commissioner [under this
38 article], including Title 9 of this article AND TITLE 19 OF THE HEALTH - GENERAL
39 ARTICLE.

1 (b) The Commissioner may adopt regulations to carry out this subtitle.

2 (c) The Commissioner may exempt from the application of this Act any
3 domestic property and casualty insurer that:

4 (1) writes direct business only in the State;

5 (2) writes direct annual premiums of \$2,000,000 or less; and

6 (3) assumes no reinsurance in excess of 5% of direct premiums written.

7 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
8 effect July 1, 2000.