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INSURANCE

Risk-Based Capital: Provide for the Computation of Risk-Based Capital Levels for Insurers and the Submission of Risk-Based Capital Reports by Insurers; Provide for the Authority of the Commissioner of Insurance to Take Action; Provide Immunity from Civil Action to Receivers

CODE SECTIONS: O.C.G.A. §§ 33-37-8.1, 33-56-1 to -13 (new)
BILL NUMBER: HB 838
ACT NUMBER: 912
GEORGIA LAWS: 1996 Ga. Laws 928
SUMMARY: The Act establishes variable risk-based capital levels for insurers and provides for the submission of reports of risk-based capital levels to the Commissioner of Insurance. The Act also authorizes the Commissioner of Insurance to take actions to ensure the solvency of insurers based upon information received in the reports. The Act also provides for personal and official immunity from civil suit for receivers for all actions not involving willful misconduct arising out of their duties or employment.
EFFECTIVE DATE: April 15, 1996, O.C.G.A. § 33-37-8.1;¹ July 1, 1996, §§ 33-56-1 to -13

History

Risk-based capital refers to capital that insurers hold in reserve to cover potential claims.² Previously, Georgia insurers' risk-based capital levels did not necessarily correspond directly with the riskiness of the policies insured.³ In an attempt to remedy this situation and to provide state insurance regulators with a powerful new tool with which to protect insurance consumers from the financial problems of insurers, Representative Ronnie Culbreth introduced HB 838.⁴

The National Association of Insurance Commissioners (NAIC) is the governing body that establishes state insurance accreditation standards

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1. This portion of the Act became effective upon approval by the Governor.
 2. See Telephone Interview with Rep. Ronnie Culbreth, House District No. 132 (Apr. 18, 1996) [hereinafter Culbreth Interview].
 3. *Id.*
 4. Telephone Interview with Dan Champlin, Legislative Liaison, Georgia Department of Insurance (Apr. 18, 1996) [hereinafter Champlin Interview].

and proposes model requirements and regulatory standards.⁵ In 1993, after years of consideration, the NAIC adopted a risk-based capital formula and model law.⁶ HB 838 was based substantially on the NAIC model law.⁷ The bill was initially introduced in the 1995 General Assembly session in order to give interested parties an opportunity to study the bill and to voice concerns.⁸

Additionally, Georgia law did not provide official immunity for receivers conducting delinquency proceedings on behalf of insurers.⁹ HB 841 was introduced to correct this situation and to protect receivers operating in the scope of their official duties from liability.¹⁰ Due to calendar limitations, HB 841 was incorporated into HB 838 before the General Assembly voted on HB 838.¹¹

HB 838

The Act amends the Code by creating a new chapter 56¹² to title 33.¹³ According to Representative Culbreth, the Act's main purpose is to ensure that insurers' risk-capital levels reflect a rational relationship with the riskiness of the policies that are insured.¹⁴ The Act provides "trigger points"¹⁵ by which regulatory bodies can gauge the strength of insurers and assess the need for state regulatory intervention.¹⁶ Also, Ray Farmer of the Southeastern Division of the American Insurance Association indicated that the Act will enhance uniformity of insurance regulations throughout the country, thereby easing the compliance difficulties that insurers face.¹⁷

5. *Id.*

6. Thomas Ressler, *RBC is Finally Final; Industry Has to Adapt*, 3 INS. REGULATOR 47 (1993).

7. Culbreth Interview, *supra* note 2.

8. *Id.*

9. Champlin Interview, *supra* note 4.

10. *Id.*

11. Culbreth Interview, *supra* note 2.

12. O.C.G.A. §§ 33-56-1 to -13 (1996). HB 838 as introduced provided for the creation of a new chapter 54 to the Code. HB 838, as introduced, 1996 Ga. Gen. Assem. However, the Act amended the Code by creating a new chapter 56, as other bills had passed creating additional chapters in the interim period between introduction and passage. Culbreth Interview, *supra* note 2.

13. O.C.G.A. §§ 33-56-1 to -13 (1996).

14. Culbreth Interview, *supra* note 2.

15. Champlin Interview, *supra* note 4.

16. *Id.*

17. Telephone Interview with Ray Farmer, American Insurance Association (May 6, 1996) [hereinafter Farmer Interview]. This interview was prompted by a suggestion from Dan Champlin, Legislative Liaison, Georgia Department of Insurance. See Champlin Interview, *supra* note 4.

Definitions/Risk-Based Capital Reporting

Code section 33-56-1 provides definitions for the relevant terms used in the Act, and is unchanged from the bill as introduced.¹⁸ Code section 33-56-2 provides that all domestic insurers shall submit to the Commissioner of Insurance an annual report of risk-based capital levels.¹⁹ The report must also be submitted to the NAIC and to any other state in which the insurer does business.²⁰ According to Mr. Farmer, this is a positive step toward establishing the desired national uniformity of regulatory standards.²¹ Additionally, the section contains provisions for calculating the risk-based capital level and provides definitions of “company” and “regulatory” action levels, as well as “authorized” and “mandatory” control level risk-based capital.²² These calculations indicate the “trigger points” which activate either company or Commission intervention to ensure solvency.²³ This intervention can range from suggesting revisions to an insurer’s operating procedures to assuming complete regulatory control of the insurer.²⁴ Finally, the section authorizes intervention by the Commissioner in the event that the report is inaccurate.²⁵

Action Level and Control Level Events

Code sections 33-56-3 through -6 define the specific procedures that the insurer and the Insurance Commission will utilize in the event the risk-based capital levels specified in Code section 33-56-2 are not attained.²⁶ These sections establish varying levels of Commission intervention, depending on the category of “event” that occurs.²⁷ The regulatory intervention ranges in severity from merely approving a company-drafted plan for improving risk-based capital levels to assuming complete regulatory control of the insurer’s operations.²⁸ Mr. Farmer indicated that this multi-level scheme is an effective method for gauging the strength of insurers, as well as providing early warning of

18. Compare O.C.G.A. § 33-56-1 (1996) with HB 838, as introduced, 1996 Ga. Gen. Assem.

19. O.C.G.A. § 33-56-2 (1996).

20. *Id.*

21. Farmer Interview, *supra* note 17.

22. O.C.G.A. § 33-56-1 (1996).

23. Champlin Interview, *supra* note 4.

24. *Id.*

25. O.C.G.A. § 33-56-2 (1996).

26. *Id.* §§ 33-56-3 to -6.

27. *Id.*

28. Farmer Interview, *supra* note 17.

potential problems to both company management and state regulatory authorities.²⁹

Confidentiality

Code section 33-56-8 provides that the risk-based capital reports are strictly confidential, as are any corrective measures taken by the Commissioner as a result of information contained therein.³⁰ Additionally, the section indicates that the reports are to be used solely for ensuring the solvency of the insurers, and are not to be used to rank insurers generally, nor are they to be used in the rate-making process.³¹

Exemptions/Effect on Foreign Insurers

Code section 33-56-9 provides for exemptions for domestic property and casualty insurers that meet certain requirements.³² Code section 33-56-10 allows the Commissioner to prohibit a foreign insurer from writing new insurance business in Georgia should the foreign insurer fail to file a risk-based capital report either in Georgia or in the state of the foreign insurer's domicile.³³

Immunity for Receivers

The Act was mostly unchanged from the introduced version of HB 838.³⁴ However, the original version did not contain a provision regarding immunity for receivers.³⁵ This portion was proposed by the Georgia Department of Insurance and originally introduced as HB 841.³⁶ The Senate Insurance and Labor Committee amended HB 838 by attaching the former HB 841 to ensure its passage prior to the expiration of the 1996 session.³⁷ The provision forms Section 2 of the Act and creates a new Code section 33-37-8.1³⁸ This added provision grants official immunity for insurance receivers should their conduct lead to loss or damage, so long as their conduct is not intentional or

29. *Id.*

30. O.C.G.A. § 33-56-8(a) (1996).

31. *Id.* § 33-56-8(b) to (c).

32. *Id.* § 33-56-9(c).

33. *Id.* § 33-56-10(c).

34. Culbreth Interview, *supra* note 2. Compare O.C.G.A. §§ 33-56-1 to -13 (1996) with HB 838, as introduced, 1996 Ga. Gen. Assem.

35. See HB 838, as introduced, 1996 Ga. Gen. Assem.

36. Champlin Interview, *supra* note 4; see HB 841, as introduced, 1996 Ga. Gen. Assem.

37. HB 838 (SCS), 1996 Ga. Gen. Assem.; Culbreth Interview, *supra* note 2.

38. 1996 Ga. Laws 928, § 3, at 941 (codified at O.C.G.A. § 33-37-8.1 (1996)).

willful and wanton.³⁹ Representative Culbreth noted that the inclusion of the former HB 841 had no real impact on either the passage of the Act or its effectiveness.⁴⁰

Conrad D. Brooks

39. O.C.G.A. § 33-37-8.1(a) to (b) (1996).

40. Culbreth Interview, *supra* note 2. The bill passed with virtually no opposition. *Id.*