

2 **HB 2549 - H AMD 827 ADOPTED 2-11-98**

3 By Representative L. Thomas

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** The definitions in this section apply
8 throughout sections 1 through 14 of this act unless the context clearly
9 requires otherwise.

10 (1) "Adjusted RBC report" means an RBC report that has been
11 adjusted by the commissioner in accordance with section 2(4) of this
12 act.

13 (2) "Corrective order" means an order issued by the commissioner
14 specifying corrective actions that the commissioner has determined are
15 required.

16 (3) "Domestic carrier" means any carrier domiciled in this state,
17 or any person or entity subject to chapter 48.42 RCW domiciled in this
18 state.

19 (4) "Foreign or alien carrier" means any carrier that is licensed
20 to do business in this state but is not domiciled in this state, or any
21 person or entity subject to chapter 48.42 RCW not domiciled in this
22 state.

23 (5) "NAIC" means the national association of insurance
24 commissioners.

25 (6) "Negative trend" means, with respect to a carrier, a negative
26 trend over a period of time, as determined in accordance with the
27 "trend test calculation" included in the RBC instructions.

28 (7) "RBC" means risk-based capital.

29 (8) "RBC instructions" means the RBC report including risk-based
30 capital instructions adopted by the NAIC, as such RBC instructions may
31 be amended by the NAIC from time to time in accordance with the
32 procedures adopted by the NAIC.

33 (9) "RBC level" means a carrier's company action level RBC,
34 regulatory action level RBC, authorized control level RBC, or mandatory
35 control level RBC where:

1 (a) "Company action level RBC" means, with respect to any carrier,
2 the product of 2.0 and its authorized control level RBC;

3 (b) "Regulatory action level RBC" means the product of 1.5 and its
4 authorized control level RBC;

5 (c) "Authorized control level RBC" means the number determined
6 under the risk-based capital formula in accordance with the RBC
7 instructions;

8 (d) "Mandatory control level RBC" means the product of .70 and the
9 authorized control level RBC.

10 (10) "RBC plan" means a comprehensive financial plan containing the
11 elements specified in section 3(2) of this act. If the commissioner
12 rejects the RBC plan, and it is revised by the carrier, with or without
13 the commissioner's recommendation, the plan shall be called the
14 "revised RBC plan."

15 (11) "RBC report" means the report required in section 2 of this
16 act.

17 (12) "Total adjusted capital" means the sum of:

18 (a) Either a carrier's statutory capital and surplus or net worth,
19 or both, as determined in accordance with statutory accounting
20 applicable to the annual financial statements required to be filed with
21 the commissioner; and

22 (b) Other items, if any, as the RBC instructions may provide.

23 NEW SECTION. **Sec. 2.** (1) Every domestic carrier shall, on or
24 prior to the filing date of March 1st, prepare and submit to the
25 commissioner a report of its RBC levels as of the end of the calendar
26 year just ended, in a form and containing such information as is
27 required by the RBC instructions. In addition, every domestic carrier
28 shall file its RBC report:

29 (a) With the NAIC in accordance with the RBC instructions; and

30 (b) With the insurance commissioner in any state in which the
31 carrier is authorized to do business, if the insurance commissioner has
32 notified the carrier of its request in writing, in which case the
33 carrier shall file its RBC report not later than the later of:

34 (i) Fifteen days from the receipt of notice to file its RBC report
35 with that state; or

36 (ii) The filing date.

1 (2) A carrier's RBC shall be determined in accordance with the
2 formula set forth in the RBC instructions. The formula shall take into
3 account (and may adjust for the covariance between):

4 (a) The risk with respect to the carrier's assets;

5 (b) The risk of adverse insurance experience with respect to the
6 carrier's liabilities and obligations;

7 (c) The interest rate risk with respect to the carrier's business;
8 and

9 (d) All other business risks and such other relevant risks as are
10 set forth in the RBC instructions; determined in each case by applying
11 the factors in the manner set forth in the RBC instructions.

12 (3) An excess of capital over the amount produced by the risk-based
13 capital requirements contained in sections 1 through 14 of this act and
14 the formulas, schedules, and instructions referenced in sections 1
15 through 14 of this act is desirable in the business of insurance.
16 Accordingly, carriers should seek to maintain capital above the RBC
17 levels required by sections 1 through 14 of this act. Additional
18 capital is used and useful in the insurance business and helps to
19 secure a carrier against various risks inherent in, or affecting, the
20 business of insurance and not accounted for or only partially measured
21 by the risk-based capital requirements contained in sections 1 through
22 14 of this act.

23 (4) If a domestic carrier files an RBC report that in the judgment
24 of the commissioner is inaccurate, then the commissioner shall adjust
25 the RBC report to correct the inaccuracy and shall notify the carrier
26 of the adjustment. The notice shall contain a statement of the reason
27 for the adjustment.

28 NEW SECTION. **Sec. 3.** (1) "Company action level event" means any
29 of the following events:

30 (a) The filing of an RBC report by a carrier which indicates that:

31 (i) The carrier's total adjusted capital is greater than or equal
32 to its regulatory action level RBC but less than its company action
33 level RBC; or

34 (ii) The carrier has total adjusted capital which is greater than
35 or equal to its company action level RBC but less than the product of
36 its authorized control level RBC and 2.5 and has a negative trend;

37 (b) The notification by the commissioner to the carrier of an
38 adjusted RBC report that indicates an event in (a) of this subsection,

1 provided the carrier does not challenge the adjusted RBC report under
2 section 7 of this act; or

3 (c) If, under section 7 of this act, a carrier challenges an
4 adjusted RBC report that indicates the event in (a) of this subsection,
5 the notification by the commissioner to the carrier that the
6 commissioner has, after a hearing, rejected the carrier's challenge.

7 (2) In the event of a company action level event, the carrier shall
8 prepare and submit to the commissioner an RBC plan that:

9 (a) Identifies the conditions that contribute to the company action
10 level event;

11 (b) Contains proposals of corrective actions that the carrier
12 intends to take and would be expected to result in the elimination of
13 the company action level event;

14 (c) Provides projections of the carrier's financial results in the
15 current year and at least the four succeeding years, both in the
16 absence of proposed corrective actions and giving effect to the
17 proposed corrective actions, including projections of statutory
18 operating income, net income, capital, surplus, capital and surplus,
19 and net worth. The projections for both new and renewal business might
20 include separate projections for each major line of business and
21 separately identify each significant income, expense, and benefit
22 component;

23 (d) Identifies the key assumptions impacting the carrier's
24 projections and the sensitivity of the projections to the assumptions;
25 and

26 (e) Identifies the quality of, and problems associated with, the
27 carrier's business, including but not limited to its assets,
28 anticipated business growth and associated surplus strain,
29 extraordinary exposure to risk, mix of business, and use of
30 reinsurance, if any, in each case.

31 (3) The RBC plan shall be submitted:

32 (a) Within forty-five days of the company action level event; or

33 (b) If the carrier challenges an adjusted RBC report under section
34 7 of this act, within forty-five days after notification to the carrier
35 that the commissioner has, after a hearing, rejected the carrier's
36 challenge.

37 (4) Within sixty days after the submission by a carrier of an RBC
38 plan to the commissioner, the commissioner shall notify the carrier
39 whether the RBC plan may be implemented or is, in the judgment of the

1 commissioner, unsatisfactory. If the commissioner determines the RBC
2 plan is unsatisfactory, the notification to the carrier shall set forth
3 the reasons for the determination, and may set forth proposed revisions
4 that will render the RBC plan satisfactory. Upon notification from the
5 commissioner, the carrier shall prepare a revised RBC plan, that may
6 incorporate by reference any revisions proposed by the commissioner,
7 and shall submit the revised RBC plan to the commissioner:

8 (a) Within forty-five days after the notification from the
9 commissioner; or

10 (b) If the carrier challenges the notification from the
11 commissioner under section 7 of this act, within forty-five days after
12 a notification to the carrier that the commissioner has, after a
13 hearing, rejected the carrier's challenge.

14 (5) In the event of a notification by the commissioner to a carrier
15 that the carrier's RBC plan or revised RBC plan is unsatisfactory, the
16 commissioner may, subject to the carrier's rights to a hearing under
17 section 7 of this act, specify in the notification that the
18 notification constitutes a regulatory action level event.

19 (6) Every domestic carrier that files an RBC plan or revised RBC
20 plan with the commissioner shall file a copy of the RBC plan or revised
21 RBC plan with the insurance commissioner in any state in which the
22 carrier is authorized to do business if:

23 (a) Such state has an RBC provision substantially similar to
24 section 8(1) of this act; and

25 (b) The insurance commissioner of that state has notified the
26 carrier of its request for the filing in writing, in which case the
27 carrier shall file a copy of the RBC plan or revised RBC plan in that
28 state no later than the later of:

29 (i) Fifteen days after the receipt of notice to file a copy of its
30 RBC plan or revised plan with the state; or

31 (ii) The date on which the RBC plan or revised RBC plan is filed
32 under subsections (3) and (4) of this section.

33 NEW SECTION. **Sec. 4.** (1) "Regulatory action level event" means,
34 with respect to any carrier, any of the following events:

35 (a) The filing of an RBC report by the carrier which indicates that
36 the carrier's total adjusted capital is greater than or equal to its
37 authorized control level RBC but less than its regulatory action level
38 RBC;

1 (b) The notification by the commissioner to a carrier of an
2 adjusted RBC report that indicates the event in (a) of this subsection,
3 provided the carrier does not challenge the adjusted RBC report under
4 section 7 of this act;

5 (c) If, under section 7 of this act, the carrier challenges an
6 adjusted RBC report that indicates the event in (a) of this subsection,
7 the notification by the commissioner to the carrier that the
8 commissioner has, after a hearing, rejected the carrier's challenge;

9 (d) The failure of the carrier to file an RBC report by the filing
10 date, unless the carrier has provided an explanation for such failure
11 that is satisfactory to the commissioner and has cured the failure
12 within ten days after the filing date;

13 (e) The failure of the carrier to submit an RBC plan to the
14 commissioner within the time period set forth in section 3(3) of this
15 act;

16 (f) Notification by the commissioner to the carrier that:

17 (i) The RBC plan or revised RBC plan submitted by the carrier is,
18 in the judgment of the commissioner, unsatisfactory; and

19 (ii) The notification constitutes a regulatory action level event
20 with respect to the carrier, provided the carrier has not challenged
21 the determination under section 7 of this act;

22 (g) If, under section 7 of this act, the carrier challenges a
23 determination by the commissioner under (f) of this subsection, the
24 notification by the commissioner to the carrier that the commissioner
25 has, after a hearing, rejected the challenge;

26 (h) Notification by the commissioner to the carrier that the
27 carrier has failed to adhere to its RBC plan or revised RBC plan, but
28 only if such failure has a substantial adverse effect on the ability of
29 the carrier to eliminate the company action level event in accordance
30 with its RBC plan or revised RBC plan and the commissioner has so
31 stated in the notification, provided the carrier has not challenged the
32 determination under section 7 of this act; or

33 (i) If, under section 7 of this act, the carrier challenges a
34 determination by the commissioner under (h) of this subsection, the
35 notification by the commissioner to the carrier that the commissioner
36 has, after a hearing, rejected the challenge.

37 (2) In the event of a regulatory action level event the
38 commissioner shall:

1 (a) Require the carrier to prepare and submit an RBC plan or, if
2 applicable, a revised RBC plan;

3 (b) Perform the examination or analysis the commissioner deems
4 necessary of the assets, liabilities, and operations of the carrier
5 including a review of its RBC plan or revised RBC plan; and

6 (c) Subsequent to the examination or analysis, issue an order
7 specifying those corrective actions the commissioner determines are
8 required.

9 (3) In determining corrective actions, the commissioner may take
10 into account those factors deemed relevant with respect to the carrier
11 based upon the commissioner's examination or analysis of the assets,
12 liabilities, and operations of the carrier, including, but not limited
13 to, the results of any sensitivity tests undertaken pursuant to the RBC
14 instructions. The RBC plan or revised RBC plan shall be submitted:

15 (a) Within forty-five days after the occurrence of the regulatory
16 action level event;

17 (b) If the carrier challenges an adjusted RBC report under section
18 7 of this act and the challenge is not frivolous in the judgment of the
19 commissioner within forty-five days after the notification to the
20 carrier that the commissioner has, after a hearing, rejected the
21 carrier's challenge; or

22 (c) If the carrier challenges a revised RBC plan under section 7 of
23 this act and the challenge is not frivolous in the judgment of the
24 commissioner, within forty-five days after the notification to the
25 carrier that the commissioner has, after a hearing, rejected the
26 carrier's challenge.

27 (4) The commissioner may retain actuaries and investment experts
28 and other consultants as may be necessary in the judgment of the
29 commissioner to review the carrier's RBC plan or revised RBC plan,
30 examine or analyze the assets, liabilities, and operations of the
31 carrier and formulate the corrective order with respect to the carrier.
32 The fees, costs, and expenses relating to consultants shall be borne by
33 the affected carrier or other party as directed by the commissioner.

34 NEW SECTION. **Sec. 5.** (1) "Authorized control level event" means
35 any of the following events:

36 (a) The filing of an RBC report by the carrier which indicates that
37 the carrier's total adjusted capital is greater than or equal to its

1 mandatory control level RBC but less than its authorized control level
2 RBC;

3 (b) The notification by the commissioner to the carrier of an
4 adjusted RBC report that indicates the event in (a) of this subsection,
5 provided the carrier does not challenge the adjusted RBC report under
6 section 7 of this act;

7 (c) If, under section 7 of this act, the carrier challenges an
8 adjusted RBC report that indicates the event in (a) of this subsection,
9 notification by the commissioner to the carrier that the commissioner
10 has, after a hearing, rejected the carrier's challenge;

11 (d) The failure of the carrier to respond, in a manner satisfactory
12 to the commissioner, to a corrective order, provided the carrier has
13 not challenged the corrective order under section 7 of this act; or

14 (e) If the carrier has challenged a corrective order under section
15 7 of this act and the commissioner has, after a hearing, rejected the
16 challenge or modified the corrective order, the failure of the carrier
17 to respond, in a manner satisfactory to the commissioner, to the
18 corrective order subsequent to rejection or modification by the
19 commissioner.

20 (2) In the event of an authorized control level event with respect
21 to a carrier, the commissioner shall:

22 (a) Take those actions required under section 4 of this act
23 regarding a carrier with respect to which a regulatory action level
24 event has occurred; or

25 (b) If the commissioner deems it to be in the best interests of
26 either the policyholders or subscribers, or both, and creditors of the
27 carrier and of the public, take those actions necessary to cause the
28 carrier to be placed under regulatory control under chapter 48.31 RCW.
29 In the event the commissioner takes such actions, the authorized
30 control level event is sufficient grounds for the commissioner to take
31 action under chapter 48.31 RCW, and the commissioner shall have the
32 rights, powers, and duties with respect to the carrier as are set forth
33 in chapter 48.31 RCW. In the event the commissioner takes actions
34 under this subsection (2)(b) pursuant to an adjusted RBC report, the
35 carrier is entitled to those protections afforded to carriers under the
36 provisions of RCW 48.31.121 pertaining to summary proceedings.

37 NEW SECTION. **Sec. 6.** (1) "Mandatory control level event" means
38 any of the following events:

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

3 (b) Notification by the commissioner to the carrier of an adjusted
4 RBC report that indicates the event in (a) of this subsection, provided
5 the carrier does not challenge the adjusted RBC report under section 7
6 of this act; or

7 (c) If, under section 7 of this act, the carrier challenges an
8 adjusted RBC report that indicates the event in (a) of this subsection,
9 notification by the commissioner to the carrier that the commissioner
10 has, after a hearing, rejected the carrier's challenge.

11 (2) In the event of a mandatory control level event, with respect
12 to a carrier, the commissioner shall take those actions necessary to
13 place the carrier under regulatory control under chapter 48.31 RCW. In
14 that event, the mandatory control level event is sufficient grounds for
15 the commissioner to take action under chapter 48.31 RCW, and the
16 commissioner shall have the rights, powers, and duties with respect to
17 the carrier as are set forth in chapter 48.31 RCW. If the commissioner
18 takes actions pursuant to an adjusted RBC report, the carrier is
19 entitled to the protections of RCW 48.31.121 pertaining to summary
20 proceedings. However, the commissioner may forego action for up to
21 ninety days after the mandatory control level event if the commissioner
22 finds there is a reasonable expectation that the mandatory control
23 level event may be eliminated within the ninety-day period.

24 NEW SECTION. **Sec. 7.** (1) Upon notification to a carrier by the
25 commissioner of any of the following, the carrier shall have the right
26 to a hearing, in accordance with chapters 48.04 and 34.05 RCW, at which
27 the carrier may challenge any determination or action by the
28 commissioner:

29 (a) Of an adjusted RBC report; or

30 (b)(i) That the carrier's RBC plan or revised RBC plan is
31 unsatisfactory; and

32 (ii) The notification constitutes a regulatory action level event
33 with respect to such carrier; or

34 (c) That the carrier has failed to adhere to its RBC plan or
35 revised RBC plan and that such failure has a substantial adverse effect
36 on the ability of the carrier to eliminate the company action level
37 event with respect to the carrier in accordance with its RBC plan or
38 revised RBC plan; or

1 (d) Of a corrective order with respect to the carrier.

2 (2) The carrier shall notify the commissioner of its request for a
3 hearing within five days after the notification by the commissioner
4 under this section. Upon receipt of the carrier's request for a
5 hearing, the commissioner shall set a date for the hearing. The date
6 shall be no less than ten nor more than thirty days after the date of
7 the carrier's request.

8 NEW SECTION. **Sec. 8.** (1) All RBC reports, to the extent the
9 information therein is not required to be set forth in a publicly
10 available annual statement schedule, and RBC plans, including the
11 results or report of any examination or analysis of a carrier and any
12 corrective order issued by the commissioner, with respect to any
13 domestic carrier or foreign carrier that are filed with the
14 commissioner constitute information that might be damaging to the
15 carrier if made available to its competitors, and therefore shall be
16 kept confidential by the commissioner. This information shall not be
17 made public or be subject to subpoena, other than by the commissioner
18 and then only for the purpose of enforcement actions taken by the
19 commissioner.

20 (2) The comparison of a carrier's total adjusted capital to any of
21 its RBC levels is a regulatory tool that may indicate the need for
22 possible corrective action with respect to the carrier, and is not a
23 means to rank carriers generally. Therefore, except as otherwise
24 required under the provisions of sections 1 through 14 of this act, the
25 making, publishing, disseminating, circulating, or placing before the
26 public, or causing, directly or indirectly, to be made, published,
27 disseminated, circulated, or placed before the public, in a newspaper,
28 magazine, or other publication, or in the form of a notice, circular,
29 pamphlet, letter, or poster, or over any radio or television station,
30 or in any other way, an advertisement, announcement, or statement
31 containing an assertion, representation, or statement with regard to
32 the RBC levels of any carrier, or of any component derived in the
33 calculation, by any carrier, agent, broker, or other person engaged in
34 any manner in the insurance business would be misleading and is
35 therefore prohibited. However, if any materially false statement with
36 respect to the comparison regarding a carrier's total adjusted capital
37 to its RBC levels (or any of them) or an inappropriate comparison of
38 any other amount to the carrier's RBC levels is published in any

1 written publication and the carrier is able to demonstrate to the
2 commissioner with substantial proof the falsity of such statement, or
3 the inappropriateness, as the case may be, then the carrier may publish
4 an announcement in a written publication if the sole purpose of the
5 announcement is to rebut the materially false statement.

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

15 NEW SECTION. **Sec. 9.** (1) The provisions of sections 1 through 14
16 of this act are supplemental to any other provisions of the laws and
17 rules of this state, and shall not preclude or limit any other powers
18 or duties of the commissioner under such laws and rules, including, but
19 not limited to, chapter 48.31 RCW.

20 (2) The commissioner may adopt reasonable rules necessary for the
21 implementation of sections 1 through 14 of this act.

22 NEW SECTION. **Sec. 10.** (1) Any foreign or alien carrier shall,
23 upon the written request of the commissioner, submit to the
24 commissioner an RBC report as of the end of the calendar year just
25 ended by the later of:

26 (a) The date an RBC report would be required to be filed by a
27 domestic carrier under sections 1 through 14 of this act; or

28 (b) Fifteen days after the request is received by the foreign or
29 alien carrier. Any foreign or alien carrier shall, at the written
30 request of the commissioner, promptly submit to the commissioner a copy
31 of any RBC plan that is filed with the insurance commissioner of any
32 other state.

33 (2) In the event of a company action level event, regulatory action
34 level event, or authorized control level event with respect to any
35 foreign or alien carrier as determined under the RBC statute applicable
36 in the state of domicile of the carrier or, if no RBC statute is in
37 force in that state, under the provisions of sections 1 through 14 of

1 this act, if the insurance commissioner of the state of domicile of the
2 foreign or alien carrier fails to require the foreign or alien carrier
3 to file an RBC plan in the manner specified under that state's RBC
4 statute or, if no RBC statute is in force in that state, under section
5 3 of this act, the commissioner may require the foreign or alien
6 carrier to file an RBC plan with the commissioner. In this event, the
7 failure of the foreign or alien carrier to file an RBC plan with the
8 commissioner is grounds to order the carrier to cease and desist from
9 writing new insurance business in this state.

10 (3) In the event of a mandatory control level event with respect to
11 any foreign or alien carrier, if no domiciliary receiver has been
12 appointed with respect to the foreign or alien carrier under the
13 rehabilitation and liquidation statute applicable in the state of
14 domicile of the foreign or alien carrier, the commissioner may apply
15 for an order under RCW 48.31.080 or 48.31.090 to conserve the assets
16 within this state of foreign or alien carriers, and the occurrence of
17 the mandatory control level event is considered adequate grounds for
18 the application.

19 NEW SECTION. **Sec. 11.** There is no liability on the part of, and
20 no cause of action shall arise against, the commissioner or insurance
21 department or its employees or agents for any action taken by them in
22 the performance of their powers and duties under sections 1 through 14
23 of this act.

24 NEW SECTION. **Sec. 12.** All notices by the commissioner to a
25 carrier that may result in regulatory action are effective upon
26 dispatch if transmitted by registered or certified mail, or in the case
27 of any other transmission, are effective upon the carrier's receipt of
28 such notice.

29 NEW SECTION. **Sec. 13.** For RBC reports to be filed by carriers
30 commencing operations after the effective date of this act, those
31 carriers shall calculate the initial RBC levels using financial
32 projections, considering managed care arrangements, for its first full
33 year in operation. Such projections, including the risk-based capital
34 requirement, must be included as part of a comprehensive business plan
35 that is submitted as part of the application for registration under RCW
36 48.44.040 and 48.46.030. The resulting RBC requirement shall be

1 reported in the first RBC report submitted under section 2 of this act.
2 For subsequent reports, the RBC results using actual financial data
3 shall be included.

4 NEW SECTION. **Sec. 14.** The first RBC report required under section
5 2 of this act shall be filed on or prior to March 1, 1999, for the 1998
6 calendar year.

7 **Sec. 15.** RCW 48.42.040 and 1983 c 36 s 4 are each amended to read
8 as follows:

9 Any person or entity unable to show that it is subject to the
10 jurisdiction and regulation of another agency of this state, any
11 subdivision thereof, or the federal government, shall be subject to all
12 appropriate provisions of this title regarding the conduct of its
13 business, including, but not limited to, sections 1 through 14 of this
14 act.

15 NEW SECTION. **Sec. 16.** Sections 1 through 14 of this act shall not
16 apply to a carrier which is subject to the provisions of RCW 48.05.430
17 through 48.05.490.

18 NEW SECTION. **Sec. 17.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 18.** Sections 1 through 14 and 16 of this act
23 are each added to chapter 48.43 RCW."

24 EFFECT: Subjects persons or entities that are similar to but not
25 licensed as health carriers to the risk-based capital provisions.
26 Clarifies that the first RBC report is due in 1999.

--- END ---