

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 666*

Short Title: Insurer Risk-Based Capital.

(Public)

Sponsors: Representative B. Miller.

Referred to: Insurance.

March 29, 1993

A BILL TO BE ENTITLED

AN ACT TO ADOPT THE MODEL ACT OF THE NATIONAL ASSOCIATION OF
INSURANCE COMMISSIONERS FOR RISK-BASED CAPITAL
REQUIREMENTS FOR LIFE AND HEALTH INSURANCE COMPANIES.

The General Assembly of North Carolina enacts:

Section 1. Article 12 of Chapter 58 of the General Statutes is amended by
adding the following sections:

"§ 58-12-2. Definitions.

As used in this Article, the following terms have the following meanings:

- (1) Adjusted Risk-Based Capital Report. – A risk-based capital report that has been adjusted by the Commissioner under G.S. 58-12-6(c).
- (2) Corrective Order. – An order issued by the Commissioner specifying corrective actions that the Commissioner has determined are required.
- (3) Domestic Insurer. – Any life or health insurance company organized in this State under Article 7 of this Chapter.
- (4) Foreign Insurer. – Any life or health insurance company that is admitted to do business in this State under Article 16 of this Chapter but is not domiciled in this State.
- (5) Negative Trend. – A negative trend over a period of time, as determined in accordance with the 'Trend Test Calculation' included in the risk-based capital instructions.
- (6) Risk-Based Capital Instructions. – The risk-based capital report including risk-based capital instructions adopted by the National Association of Insurance Commissioners, as those risk-based capital

1 instructions may be amended by the National Association of Insurance
2 Commissioners from time to time in accordance with the procedures
3 adopted by the National Association of Insurance Commissioners.

4 (7) Risk-Based Capital Level. – An insurer's company action level risk-
5 based capital regulatory action level risk-based capital authorized
6 control level risk-based capital or mandatory control level risk-based
7 capital where:

8 a. 'Company Action Level Risk-Based Capital' means, with
9 respect to any insurer, the product of 2.0 and its authorized
10 control level risk-based capital.

11 b. 'Regulatory Action Level Risk-Based Capital' means the
12 product of 1.5 and its authorized control level risk-based
13 capital.

14 c. 'Authorized Control Level Risk-Based Capital' means the
15 number determined under the risk-based capital formula in
16 accordance with the risk-based capital instructions.

17 d. 'Mandatory Control Level Risk-Based Capital' means the
18 product of .70 and the authorized control level risk-based
19 capital.

20 (8) Risk-Based Capital Plan. – A comprehensive financial plan containing
21 the elements specified in G.S. 58-12-11(b). If the Commissioner
22 rejects the risk-based capital plan, and it is revised by the insurer, with
23 or without the Commissioner's recommendation, the plan shall be
24 called the 'Revised Risk-Based Capital Plan'.

25 (9) Risk-Based Capital Report. – The report required in G.S. 58-12-6.

26 (10) Total Adjusted Capital. – The sum of:

27 a. An insurer's statutory capital and surplus; and

28 b. Such other items, if any, as the risk-based capital instructions
29 may provide.

30 **§ 58-12-6. Risk-Based Capital Reports.**

31 (a) Every domestic insurer shall, on or before each March 15 (the 'filing date'),
32 prepare and submit to the Commissioner a report of its risk-based capital levels as of the
33 end of the calendar year just ended, in a form and containing such information as is
34 required by the risk-based capital instructions. In addition, every domestic insurer shall
35 file its risk-based capital report:

36 (1) With the National Association of Insurance Commissioners in
37 accordance with the risk-based capital instructions; and

38 (2) With the insurance regulator in any state in which the insurer is
39 authorized to do business, if the Commissioner has notified the insurer
40 of its request in writing, in which case the insurer shall file its risk-
41 based capital report not later than the later of:

42 a. Fifteen days after the receipt of notice to file its risk-based
43 capital report with that state; or

44 b. The filing date.

1 (b) An insurer's risk-based capital shall be determined in accordance with the
2 formula set forth in the risk-based instructions. The formula shall take into account
3 (and may adjust for the covariance between):

- 4 (1) The risk with respect to the insurer's assets;
- 5 (2) The risk of adverse insurance experience with respect to the insurer's
6 liabilities and obligations;
- 7 (3) The interest rate risk with respect to the insurer's business; and
- 8 (4) All other business risks and such other relevant risks as are set forth in
9 the risk-based capital instructions.

10 These risks shall be determined in each case by applying the factors in the manner set
11 forth in the risk-based capital instructions.

12 (c) If a domestic insurer files a risk-based capital report that in the judgment of
13 the Commissioner is inaccurate, the Commissioner shall adjust the risk-based capital
14 report to correct the inaccuracy and shall notify the insurer of the adjustment. The
15 notice shall contain a statement of the reason for the adjustment. A risk-based capital
16 report as adjusted is referred to as an 'adjusted risk-based capital report'.

17 **"§ 58-12-11. Company Action Level Event.**

18 (a) 'Company Action Level Event' means any of the following events:

- 19 (1) The filing of a risk-based capital report by an insurer that indicates
20 that:
 - 21 a. The insurer's total adjusted capital is greater than or equal to its
22 regulatory action level risk-based capital but less than its
23 company action level risk-based capital; or
 - 24 b. The insurer has total adjusted capital that is greater than or
25 equal to its company action level risk-based capital but less than
26 the product of its authorized control level risk-based capital and
27 2.5 and has a negative trend.
- 28 (2) The notification by the Commissioner to the insurer of an adjusted
29 risk-based capital report that indicates the event in sub-subdivision
30 (1)a. or b. of this subsection if the insurer does not challenge the
31 adjusted risk-based capital report under G.S. 58-12-30.
- 32 (3) If the insurer challenges an adjusted risk-based capital report that
33 indicates the event in sub-subdivision (1)a. or b. of this subsection
34 under G.S. 58-12-30, the notification by the Commissioner to the
35 insurer that the Commissioner has rejected the insurer's challenge.

36 (b) In the event of a company action level event, the insurer shall prepare and
37 submit to the Commissioner a comprehensive financial plan that:

- 38 (1) Identifies the conditions in the insurer that contribute to the company
39 action level event.
- 40 (2) Contains proposals of corrective actions that the insurer intends to take
41 and would be expected to result in the elimination of the company
42 action level event.
- 43 (3) Provides projections of the insurer's financial results in the current year
44 and at least the four succeeding years, both in the absence of proposed

1 corrective actions and giving effect to the proposed corrective actions,
2 including projections of statutory operating income, net income,
3 capital, or surplus (the projections for both new and renewal business
4 should include separate projections for each major line of business and
5 separately identify each significant income, expense, and benefit
6 component).

7 (4) Identifies the key assumptions affecting the insurer's projections and
8 the sensitivity of the projections to the assumptions.

9 (5) Identifies the quality of, and problems associated with, the insurer's
10 business, including its assets, anticipated business growth and
11 associated surplus strain, extraordinary exposure to risk, mix of
12 business, and use of reinsurance in each case, if any.

13 (c) The risk-based capital plan shall be submitted:

14 (1) Within 45 days after the company action level event; or

15 (2) If the insurer challenges an adjusted risk-based capital report pursuant
16 to G.S. 58-12-30, within 45 days after notification to the insurer that
17 the Commissioner has rejected the insurer's challenge.

18 (d) Within 60 days after the submittal by an insurer of a risk-based capital plan to
19 the Commissioner, the Commissioner shall notify the insurer whether the risk-based
20 capital plan shall be implemented or is, in the judgment of the Commissioner,
21 unsatisfactory. If the Commissioner determines the risk-based capital plan is
22 unsatisfactory, the notification to the insurer shall set forth the reasons for the
23 determination, and may set forth proposed revisions that will render the risk-based
24 capital plan satisfactory, in the judgment of the Commissioner. Upon notification from
25 the Commissioner, the insurer shall prepare a revised risk-based capital plan, which may
26 incorporate by reference any revisions proposed by the Commissioner, and shall submit
27 the revised risk-based capital plan to the Commissioner:

28 (1) Within 45 days after notification from the Commissioner; or

29 (2) If the insurer challenges the notification from the Commissioner under
30 G.S. 58-12-30, within 45 days after a notification to the insurer that the
31 Commissioner has rejected the insurer's challenge.

32 (e) In the event of a notification by the Commissioner to an insurer that the
33 insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the
34 Commissioner may, subject to the insurer's right to a hearing under G.S. 58-12-30,
35 specify in the notification that the notification constitutes a regulatory action level
36 event.

37 (f) Every domestic insurer that files a risk-based capital plan or revised risk-
38 based capital plan with the Commissioner shall file a copy of the risk-based capital plan
39 or revised risk-based capital plan with the insurance regulator in any state in which the
40 insurer is authorized to do business if:

41 (1) That state has a risk-based capital provision substantially similar to
42 G.S. 58-12-21(a); and

43 (2) The insurance regulator of that state has notified the insurer of its
44 request for the filing in writing, in which case the insurer shall file a

1 copy of the risk-based capital plan or revised risk-based capital plan in
2 that state no later than the later of:

3 a. Fifteen days after the receipt of notice to file a copy of its risk-
4 based capital plan or revised risk-based capital plan with the
5 state; or

6 b. The date on which the risk-based capital plan or revised risk-
7 based capital plan is filed under G.S. 58-12-30(c).

8 **"§ 58-12-16. Regulatory Action Level Event.**

9 (a) 'Regulatory Action Level Event' means, with respect to any insurer, any of
10 the following events:

11 (1) The filing of a risk-based capital plan report by the insurer that
12 indicates that the insurer's total adjusted capital is greater than or equal
13 to its authorized control level risk-based capital but less than its
14 regulatory action level risk-based capital.

15 (2) The notification by the Commissioner to an insurer of an adjusted risk-
16 based capital report that indicates the event in subdivision (1) of this
17 subsection, if the insurer does not challenge the adjusted risk-based
18 capital report under G.S. 58-12-30.

19 (3) If the insurer challenges an adjusted risk-based capital report that
20 indicates the event in subdivision (1) of this subsection under G.S. 58-
21 12-30, the notification by the Commissioner to the insurer that the
22 Commissioner has rejected the insurer's challenge.

23 (4) The failure of the insurer to file a risk-based capital report by the filing
24 date, unless the insurer has provided an explanation for the failure that
25 is satisfactory to the Commissioner and has cured the failure within 10
26 days after the filing date.

27 (5) The failure of the insurer to submit a risk-based capital plan to the
28 Commissioner within the time period set forth in G.S. 58-12-11(c).

29 (6) Notification by the Commissioner to the insurer that:

30 a. The risk-based capital plan or revised risk-based capital plan
31 submitted by the insurer is, in the judgment of the
32 Commissioner, unsatisfactory; and

33 b. The notification constitutes a regulatory action level event with
34 respect to the insurer, provided the insurer has not challenged
35 the determination under G.S. 58-12-30.

36 (7) If the insurer challenges a determination by the Commissioner under
37 subdivision (6) of this subsection pursuant to G.S. 58-12-30, the
38 notification by the Commissioner to the insurer that the Commissioner
39 has rejected the challenge.

40 (8) Notification by the Commissioner to the insurer that the insurer has
41 failed to adhere to its risk-based capital plan or revised risk-based
42 capital plan; but only if the failure has a substantial adverse effect on
43 the ability of the insurer to eliminate the regulatory action level event
44 in accordance with its risk-based capital plan or revised risk-based

1 capital plan and the Commissioner has so stated in the notification,
2 provided the insurer has not challenged the determination under G.S.
3 58-12-30.

4 (9) If the insurer challenges a determination by the Commissioner under
5 subdivision (8) of this subsection pursuant to G.S. 58-12-30, the
6 notification by the Commissioner to the insurer that the Commissioner
7 has rejected the challenge (unless the failure of the insurer to adhere to
8 its risk-based capital plan or revised risk-based capital plan has no
9 substantial adverse effect on the ability of the insurer to eliminate the
10 regulatory action level event with respect to the insurer).

11 (b) In the event of a regulatory action level event the Commissioner shall:

12 (1) Require the insurer to prepare and submit a risk-based capital plan or,
13 if applicable, a revised risk-based capital plan.

14 (2) Perform such examination or analysis, as the Commissioner deems
15 necessary, of the assets, liabilities, and operations of the insurer,
16 including a review of its risk-based capital plan or revised risk-based
17 capital plan.

18 (3) After the examination or analysis, issue an order specifying such
19 corrective actions as the Commissioner shall determine are required (a
20 'Corrective Order').

21 (c) In determining corrective actions, the Commissioner may take into account
22 such factors as are deemed relevant with respect to the insurer based upon the
23 Commissioner's examination or analysis of the assets, liabilities, and operations of the
24 insurer, including, but not limited to, the results of any sensitivity tests undertaken
25 pursuant to risk-based capital instructions. The risk-based capital plan or revised risk-
26 based capital plan shall be submitted:

27 (1) Within 45 days after the occurrence of the regulatory action level
28 event;

29 (2) If the insurer challenges an adjusted risk-based capital report pursuant
30 to G.S. 58-12-30 and the challenge is not in the judgment of the
31 Commissioner frivolous, within 45 days after the notification to the
32 insurer that the Commissioner has, after a hearing, rejected the
33 insurer's challenge; or

34 (3) If the insurer challenges a revised risk-based capital plan under G.S.
35 58-12-30, within 45 days after notification to the insurer that the
36 Commissioner has rejected the challenge.

37 (d) The Commissioner may retain actuaries and investment experts and other
38 consultants as may be necessary in the judgment of the Commissioner to review the
39 insurer's risk-based capital plan or revised risk-based capital plan, examine or analyze
40 the assets, liabilities, and operations of the insurer and formulate the Corrective Order
41 with respect to the insurer. The fees, costs, and expenses relating to consultants shall be
42 borne by the affected insurer or such other party as directed by the Commissioner.

43 **"§ 58-12-21. Authorized Control Level Event.**

44 (a) 'Authorized Control Level Event' means any of the following events:

- 1 (1) The filing of a risk-based capital report by the insurer that indicates
2 that the insurer's total adjusted capital is greater than or equal to its
3 mandatory control level risk-based capital but less than its authorized
4 control level risk-based capital.
- 5 (2) The notification by the Commissioner to the insurer of an adjusted
6 risk-based capital report that indicates the event in subdivision (1) of
7 this subsection if the insurer does not challenge the adjusted risk-based
8 capital report under G.S. 58-12-30.
- 9 (3) If the insurer challenges an adjusted risk-based capital report that
10 indicates the event in subdivision (1) of this subsection under G.S. 58-
11 12-30, notification by the Commissioner to the insurer that the
12 Commissioner has rejected the challenge.
- 13 (4) The failure of the insurer to respond, in a manner satisfactory to the
14 Commissioner, to a Corrective Order if the insurer has not challenged
15 the Corrective Order under G.S. 58-12-30.
- 16 (5) If the insurer has challenged a Corrective Order under G.S. 58-12-30
17 and the Commissioner has rejected the challenge or modified the
18 Corrective Order, the failure of the insurer to respond, in a manner
19 satisfactory to the Commissioner, to the Corrective Order after the
20 rejection or modification by the Commissioner.

21 (b) In the event of an authorized control level event with respect to an insurer, the
22 Commissioner shall:

- 23 (1) Take such actions as are required under G.S. 58-12-30 regarding an
24 insurer with respect to which a regulatory action level Event has
25 occurred; or
- 26 (2) If the Commissioner deems it to be in the best interests of the
27 policyholders and creditors of the insurer and of the public, take such
28 actions as are necessary to cause the insurer to be placed under
29 regulatory control under Article 30 of this Chapter. If the
30 Commissioner takes such actions, the authorized control level event
31 shall be deemed sufficient grounds for the Commissioner to take
32 action under Article 30 of this Chapter, and the Commissioner shall
33 have the rights, powers, and duties with respect to the insurer as are set
34 forth in Article 30 of this Chapter. If the Commissioner takes actions
35 under this subdivision pursuant to an adjusted risk-based capital report,
36 the insurer shall be entitled to such protections as are afforded to
37 insurers under the provisions of Article 30 of this Chapter pertaining to
38 summary proceedings.

39 **"§ 58-12-25. Mandatory Control Level Event.**

40 (a) 'Mandatory Control Level Event' means any of the following events:

- 41 (1) The filing of a risk-based capital report that indicates that the insurer's
42 total adjusted capital is less than its mandatory control level risk-based
43 capital.

1 (2) Notification by the Commissioner to the insurer of an adjusted risk-
2 based capital report that indicates the event in subdivision (1) of this
3 subsection if the insurer does not challenge the adjusted risk-based
4 capital report under G.S. 58-12-30.

5 (3) If the insurer challenges an adjusted risk-based capital report that
6 indicates the event in subdivision (1) of this subsection under G.S. 58-
7 12-30, notification by the Commissioner to the insurer that the
8 Commissioner has rejected the challenge.

9 (b) In the event of a Mandatory Control Level Event, the Commissioner shall
10 take actions as are necessary to cause the insurer to be placed under regulatory control
11 under Article 30 of this Chapter. The Mandatory Control Level Event is sufficient
12 grounds for the Commissioner to take action under Article 30 of this Chapter, and the
13 Commissioner shall have the rights, powers, and duties with respect to the insurer as are
14 set forth in Article 30 of this Chapter. If the Commissioner takes actions pursuant to an
15 adjusted risk-based capital report, the insurer shall be entitled to such protections as are
16 afforded to insurers under the provisions of Article 30 of this Chapter pertaining to
17 summary proceedings. Notwithstanding any of the foregoing, the Commissioner may
18 forego action for up to 90 days after the Mandatory Control Level Event if the
19 Commissioner finds there is a reasonable expectation that the Mandatory Control Level
20 Event may be eliminated within the 90-day period.

21 **"§ 58-12-30. Hearings.**

22 Upon (i) notification to an insurer by the Commissioner of an adjusted risk-based
23 capital report; or (ii) notification to an insurer by the Commissioner that the insurer's
24 risk-based capital plan or revised risk-based capital plan is unsatisfactory, and the
25 notification constitutes a regulatory action level Event with respect to the insurer; or (iii)
26 notification to any insurer by the Commissioner that the insurer has failed to adhere to
27 its risk-based capital plan or revised risk-based capital plan and that the failure has a
28 substantial adverse effect on the ability of the insurer to eliminate the company action
29 level event with respect to the insurer in accordance with its risk-based capital plan or
30 revised risk-based capital plan; or (iv) notification to an insurer by the Commissioner of
31 a Corrective Order with respect to the insurer, the insurer has a right to a hearing, at
32 which the insurer may challenge any determination or action by the Commissioner. The
33 insurer shall notify the Commissioner of its request for a hearing within five days after
34 the notification by the Commissioner under this section. Upon receipt of the insurer's
35 request for a hearing, the Commissioner shall set a date for the hearing, which date shall
36 be no less than 10 days nor more than 30 days after the date of the insurer's request.

37 **"§ 58-12-35. Confidentiality and prohibition on announcements.**

38 (a) All risk-based capital reports, to the extent the information therein is not
39 required to be set forth in a publicly available annual statement schedule, and the risk-
40 based capital plans, including the results or report of any examination or analysis of an
41 insurer performed pursuant hereto and any Corrective Order issued by the
42 Commissioner pursuant to examination or analysis, with respect to any domestic insurer
43 or foreign insurer that are filed with the Commissioner constitute information that shall
44 be kept confidential by the Commissioner. This information shall not be made public or

1 be subject to subpoena, other than by the Commissioner, and then only for the purpose
2 of enforcement actions taken by the Commissioner under this Article or any other
3 provision of this Chapter.

4 (b) The General Assembly finds that the comparison of an insurer's total adjusted
5 capital to any of its risk-based capital levels is a regulatory tool that may indicate the
6 need for possible corrective action with respect to the insurer, and is not intended as a
7 means to rank insurers generally. Therefore, except as otherwise required under this
8 Article, the making, publishing, disseminating, circulating, or placing before the public,
9 or causing, directly or indirectly, to be made, published, disseminated, circulated, or
10 placed before the public, in a newspaper, magazine, or other publication, or in the form
11 of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or
12 in any other way, an advertisement, announcement, or statement containing an
13 assertion, representation, or statement with regard to the risk-based capital levels of any
14 insurer, or of any component derived in the calculation, by any insurer, agent, broker, or
15 other person engaged in any manner in the insurance business is prohibited; provided,
16 however, that if any materially false statement with respect to the comparison regarding
17 an insurer's total adjusted capital to its risk-based capital levels (or any of them) or an
18 inappropriate comparison of any other amount to the insurers' risk-based capital levels
19 is published in any written publication and the insurer is able to demonstrate to the
20 Commissioner with substantial proof the falsity of the statement, or the
21 inappropriateness, as the case may be, then the insurer may publish an announcement in
22 a written publication if the sole purpose of the announcement is to rebut the materially
23 false statement.

24 **"§ 58-12-40. Supplemental provisions.**

25 The provisions of this Article are supplemental to any other provisions of the laws of
26 this State, and do not preclude or limit any other powers or duties of the Commissioner
27 under those laws, including Article 30 of this Chapter.

28 **"§ 58-12-45. Foreign insurers.**

29 (a) Any foreign insurer shall, upon written request of the Commissioner, submit
30 to the Commissioner a risk-based capital report as of the end of the calendar year just
31 ended the later of:

32 (1) The date a risk-based capital report would be required to be filed by a
33 domestic insurer under this Article; or

34 (2) Fifteen days after the request is received by the foreign insurer.

35 Any foreign insurer shall, at the written request of the Commissioner, promptly submit
36 to the Commissioner a copy of any risk-based capital plan that is filed with the
37 insurance regulator of any other state.

38 (b) In the event of a company action level event or regulatory action level Event
39 with respect to any foreign insurer as determined under the risk-based capital statute
40 applicable in the state of domicile of the insurer or, if no risk-based capital provision is
41 in force in that state, under the provisions of this Article; if the insurance regulator of
42 the state of domicile of the foreign insurer fails to require the foreign insurer to file a
43 risk-based capital plan in the manner specified under the risk-based capital statute or, if
44 no risk-based capital provision is in force in that state, under G.S. 58-12-11, the

1 Commissioner may require the foreign insurer to file a risk-based capital plan with the
2 Commissioner. In that event, the failure of the foreign insurer to file a risk-based
3 capital plan with the Commissioner is grounds to order the insurer to cease and desist
4 from writing new insurance business in this State.

5 (c) In the event of a Mandatory Control Level Event with respect to any foreign
6 insurer, if no domiciliary receiver has been appointed with respect to the foreign insurer
7 under the rehabilitation or liquidation statutes of the state or domicile of the foreign
8 insurer, the Commissioner may make application to the Superior Court of Wake County
9 as permitted under Article 30 of this Chapter with respect to the liquidation of property
10 of foreign insurers found in this State; and the occurrence of the Mandatory Control
11 Level Event is an adequate ground for the application.

12 **"§ 58-12-50. Notices.**

13 All notices by the Commissioner to an insurer that may result in regulatory action
14 under this Article are effective upon dispatch if transmitted by registered or certified
15 mail; or in the case of any other transmission are effective upon the insurer's receipt of
16 the notice.

17 **"§ 58-12-55. Phase-in provision.**

18 For risk-based capital reports required to be filed with respect to 1994, the following
19 requirements apply in lieu of the provisions of G.S. 58-12-11:

- 20 (1) In the event of a company action level event with respect to a domestic
21 insurer, the Commissioner shall take no regulatory action hereunder.
22 (2) In the event of a regulatory action level Event under G.S. 58-12-
23 16(a)(1), (2) or (3) the Commissioner shall take the actions required
24 under G.S. 58-12-11.
25 (3) In the event of a regulatory action level Event under G.S. 58-12-
26 16(a)(4), (5), (6), (7), (8), or (9) or an authorized control level event,
27 the Commissioner shall take the actions required under G.S. 58-12-16
28 with respect to the insurer.
29 (4) In the event of a Mandatory Control Level Event with respect to an
30 insurer, the Commissioner shall take the actions required under G.S.
31 58-12-21 with respect to the insurer."

32 Sec. 2. The heading of Article 12 of Chapter 58 of the General Statutes reads
33 as rewritten:

34 **"ARTICLE 12.**

35 **~~"GUARANTY FUND FOR DOMESTIC COMPANIES.~~**

36 **"RISK-BASED CAPITAL REQUIREMENTS."**

37 Sec. 3. G.S. 58-12-1, 58-12-5, 58-12-10, 58-12-15, and 58-12-20 are
38 repealed.

39 Sec. 4. This act becomes effective January 1, 1995.