HOUSE BILL NO. HB0016

Insurance code-revisions.

Sponsored by: Joint Corporations, Elections and Political Subdivisions Interim Committee

A BILL

for

AN ACT relating to insurance; modifying provisions relating to maintaining NAIC accreditation and relating to financial solvency of insurers; authorizing premium rate adjustments by the commissioner; providing for judicial review of commissioner decisions; providing for consideration of protection of creditors in suspension or revocation of certificates of authority; providing guidelines for suspension and revocation of certificates of authority; adjusting risk based capital requirements for life, disability and health insurers; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 26-3-133 is created to read:

26-3-133. Judicial review.

Any order or decision of the commissioner pursuant to this title shall be subject to review in accordance with the Wyoming Administrative Procedure Act, W.S. 16-3-101 through 16-3-115, at the instance of any party to the proceedings whose interests are substantially affected.

Section 2. W.S. 26-3-116(c)(intro), (i), (ii), (iv), (vii) and by creating new paragraphs (xvi) through (xxi), 26-3-132(a)(ii), (b)(intro), by creating new paragraphs (x) through (xii), (c) and by creating a new subsection (e), 26-48-103(a)(i)(B), 26-48-202 by creating a new subsection (d), 26-48-203(a) by creating a new paragraph (ii) and by amending and renumbering paragraphs (ii) and (iii) as (iii) and (iv) and 26-48-208(e) are amended to read:

26-3-116. Suspension and revocation of certificate of authority; discretionary and special grounds.

(c) In determining whether the continued operation of any insurer transacting insurance business in this state is hazardous or injurious to policyholders, creditors or the

general public the commissioner may consider any of the following:

(i) Adverse findings reported in financial condition and market conduct examination reports, audit reports and actuarial opinions, reports or summaries;

(ii) The National Association of Insurance Commissioners' Insurance Regulatory Information System and its ~~related reports~~ other financial analysis solvency tools and reports;

(iv) ~~The value, liquidity and diversity of the insurer's asset portfolio under the current economic conditions to assure the company's ability to meet its outstanding~~ Whether the insurer has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations ~~as they mature~~ and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the

considerations anticipated to be received and retained under such policies and contracts;

(vii) Any affiliate's, subsidiary's, parent's, obligor's or reinsurer's insolvency, threatened insolvency or delinquency in payment of its monetary or other obligations and which in the opinion of the commissioner may affect the solvency of the insurer;

(xvi) Whether the insurer's operating loss in the last twelve (12) month period or any shorter period of time, excluding net capital gains, is greater than twenty percent (20%) of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

(xvii) Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the commissioner;

(xviii) Whether management has established reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, sound actuarial principles or standards of practice;

(xix) Whether management persistently engages in material underreserving that results in adverse development;

(xx) Whether transactions among affiliates, subsidiaries or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity or diversity to assure the insurer's ability to meet its outstanding obligations as they mature;

(xxi) Any other finding determined by the commissioner to be hazardous to the insurer's policyholders, creditors or general public.

26-3-132. Commissioner's authority.

(a) For the purposes of making a determination of an insurer's financial condition under this code, the commissioner may:

(ii) Make appropriate adjustments, including disallowance, to asset values attributable to investments

in or transactions with an insurer's parent company, subsidiaries or affiliates consistent with the NAIC Accounting Practices and Procedures Manual, state laws and regulations;

(b) If the commissioner determines that the continued operation of the insurer licensed to transact business in this state may be hazardous or injurious to ~~the~~ its policyholders, creditors or the general public, then the commissioner may, in addition to any other action permitted by this code, issue an order requiring the insurer to:

(x) Correct corporate governance practice deficiencies and adopt and utilize governance practices acceptable to the commissioner;

(xi) Provide a business plan to the commissioner in order to continue to transact business in the state;

(xii) Notwithstanding W.S. 26-14-102, 26-19-304, 26-21-109, 26-23-326 and 26-34-109, adjust rates for any nonlife insurance product written by the insurer that the commissioner considers necessary to improve the financial condition of the insurer.

(c) Any insurer subject to an order under subsection (b) of this section may request a hearing to review that order as provided in W.S. 26-2-125. The notice of hearing shall be served upon the insurer pursuant to W.S. 26-2-126. The notice of hearing shall state the time and place of hearing and the conduct, condition or grounds upon which the commissioner based the order. Unless mutually agreed between the commissioner and the insurer, the hearing shall occur not less than ten (10) days nor more than thirty (30) days after notice is served and shall be either in Laramie County or in some other place convenient to the parties designated by the commissioner. Notwithstanding any other provision of law, the commissioner shall hold all hearings under this subsection privately, unless the insurer requests a public hearing, in which case the hearing shall be public.

(e) If the insurer is a foreign insurer, the commissioner's order may be limited to the extent provided by statute.

26-48-103. Company action level event.

(a) "Company action level event" means any of the following events:

(i) The filing of an RBC report by an insurer which indicates any of the following:

(B) If a life or disability insurer, the insurer has total adjusted capital which is greater than or equal to its company action level RBC but less than the product of authorized control level RBC and ~~two and one half (2 1/2)~~ three (3), and has a negative trend; or

26-48-202. Risk-based capital reports.

(d) An excess of capital over the amount produced by the risk-based capital requirements contained in this article and the formulas, schedules and instructions referenced in this article is desirable in the business of health insurance. Accordingly, health organizations should seek to maintain capital above the RBC levels required by this article. Additional capital is used and useful in the insurance business and helps to secure a health organization against various risks inherent in, or affecting, the business of insurance and not accounted for

or only partially measured by the risk-based capital requirements contained in this article.

26-48-203. Company action level event.

(a) "Company action level event" means any of the following events:

(ii) If a health organization has total adjusted capital which is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and three (3) and triggers the trend test determined in accordance with the trend test calculation included in the health RBC instructions;

~~(ii)~~ (iii) Notification by the commissioner to the health organization of an adjusted RBC report that indicates an event in paragraph (i) or (ii) of this subsection, provided the health organization does not challenge the adjusted RBC report under W.S. 26-48-207; or

~~(iii)~~ (iv) If a health organization challenges an adjusted RBC report that indicates the event in paragraph (i) or (ii) of this subsection under W.S. 26-48-207, the

notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.

26-48-208. Confidentiality; prohibition on announcements; prohibition on use in ratemaking.

(e) The comparison of a health organization's total adjusted capital to any of its RBC levels is a regulatory tool which may indicate the need for corrective action with respect to the health organization and is not intended as a means to rank health organizations 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 any health organization, or of any component derived in the calculation, by any health organization, agent, broker

or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited, provided, however, that if any materially false statement with respect to the comparison regarding a health organization's total adjusted capital to its RBC levels or an inappropriate comparison of any other amount to the health organizations' RBC levels is published in any written publication and the health organization is able to demonstrate to the commissioner with substantial proof the falsity of the statement, or the inappropriateness, as the case may be, then the health organization may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

Section 3. W.S. 26-3-116(c)(iii) is repealed.

Section 4. This act is effective July 1, 2012.

(END)