State of Arkansas *As Engrossed: S3/15/11*
88th General Assembly **A Bill**
Regular Session, 2011 HOUSE BILL 1806

By: Representative Hyde
By: Senator Teague

For An Act To Be Entitled

AN ACT TO ENACT THE STATE INSURANCE DEPARTMENT'S GENERAL OMNIBUS BILL; TO ALLOW NONDEPARTMENT PERSONNEL TO ACT AS AN INDEPENDENT HEARING OFFICER; TO SET MINIMUM LEVELS FOR EMPLOYEE STOP LOSS COVERAGE; TO REQUIRE AUDITED FINANCIAL STATEMENTS OF INSURERS; TO AMEND THE RISK-BASED CAPITAL LAWS FOR INSURERS AND HEALTH MAINTENANCE ORGANIZATIONS; TO ALLOW EMERGENCY CEASE AND DESIST ORDERS ON LICENSEES; TO REMOVE SPECIFIC CONTINUING EDUCATION REQUIREMENTS FROM THE ARKANSAS CODE; TO VOID NONRESIDENT PRODUCER LICENSES BY OPERATION OF LAW; TO ALLOW FOR ADDITIONAL GROUNDS FOR PRODUCER DISCIPLINE; TO ALLOW NOTICE AND RIGHT TO CURE TO ALL INSURERS; TO REQUIRE STOCK INSURERS TO FILE BYLAWS; TO APPLY RISK-BASED CAPITAL LAWS TO HEALTH AND MEDICAL SERVICE CORPORATIONS; TO REQUIRE PRIOR APPROVAL OF A MERGER OR ACQUISITION OF A HEALTH MAINTENANCE ORGANIZATION; TO REMOVE THE CAP ON REIMBURSEMENT FOR CHILDREN'S PREVENTATIVE HEALTH CARE; TO AMEND THE LAW REGARDING COORDINATION OF BENEFITS; AND FOR OTHER PURPOSES.

Subtitle

TO ENACT THE STATE INSURANCE DEPARTMENT'S GENERAL OMNIBUS BILL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 23-61-303 is amended to read as follows:

23-61-303. Hearing -- Generally.

(a) The Insurance Commissioner may hold hearings for any purpose within the scope of the ~~Arkansas Insurance Code deemed by him or her to be necessary~~ insurance laws of this state.

(b)(1) The commissioner shall hold a hearing if required by any provision or upon written demand for a hearing by a person aggrieved by any act, threatened act, or failure of the commissioner to act, or by any report, rule, regulation, or order of the commissioner, other than an order for the holding of a hearing, or an order on hearing or pursuant thereto.

(2) Any demand shall specify the grounds to be relied upon as a basis for the relief to be demanded at the hearing, and~~,~~ unless postponed by mutual consent~~,~~ the hearing shall be held within thirty (30) days after receipt by the commissioner of the demand.

(3) If the commissioner has a conflict or is otherwise unable to serve, the commissioner may appoint and compensate a person, including without limitation an attorney or retired judge, from outside the State Insurance Department to act as a hearing officer.

(c) Pending the hearing and decision thereon, the commissioner may suspend or postpone the effective date of the commissioner's previous action.

SECTION 2. Arkansas Code § 23-62-111 is amended to read as follows:

23-62-111. Employee benefit stop-loss insurance.

(a) As used in ~~the Arkansas Insurance Code~~ this subchapter, "employee benefit stop-loss insurance" ~~or "employee benefit excess loss insurance"~~ means coverage that insures an employer or an employer-sponsored health plan against the risk that:

(1) ~~Any one~~ One (1) claim will exceed a specific dollar amount; or

(2) The entire loss of a self-insurance plan will exceed a specific dollar amount.

(b) An insurer authorized to transact accident and health insurance business in this state may issue employee benefit stop-loss insurance in this state.

(c) ~~The Insurance Commissioner may promulgate rules to require~~

~~disclosures to policyholders by an insurance carrier providing employee benefit stop-loss insurance.~~ An insurer shall not issue an employee benefit stop-loss insurance policy that:

(1) Has an annual attachment point for claims incurred per individual that is less than twenty thousand dollars ($20,000);

(2) Has an annual aggregate attachment point for groups of fifty (50) or fewer that is lower than the greater of:

(A) Four thousand dollars ($4,000) multiplied by the number of group members;

(B) One hundred and twenty percent (120%) of expected claims; or

(C) Twenty thousand dollars ($20,000);

(3) Has an annual aggregate attachment point for groups of fifty-one (51) or more that is lower than one hundred ten percent (110%) of expected claims; or

(4) Provides for direct coverage of health care expenses of an individual.

(d) The Insurance Commissioner may adopt rules that carry out the requirements of this section, including without limitation rules that require:

(1) Additional standards for employee benefit stop-loss insurance policies; and

(2) Disclosures to policyholders by an insurance carrier providing employee benefit stop-loss insurance.

SECTION 3. Arkansas Code § 23-63-216(a), concerning filing of annual financial statements, is amended to read as follows:

(a)(1) Annually on or before March 1 or within any extension of time ~~which~~ that the Insurance Commissioner for good cause may have granted, each authorized insurer shall file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the December 31 preceding.

(2) The statement shall be the appropriate and most recent National Association of Insurance Commissioners':

(A) "Annual Statement Blank For Life And Accident And Health";

(B) "Property And Casualty Annual Statement Blank";

(C) "Title Insurance Annual Statement Blank";

(D) "Annual Statement Blank for Health" for use by hospital, medical, and dental service or indemnity corporations;

(E) "Fraternal Annual Statement Blank";

(F) "Annual Statement Blank for Health" for health insurers or health maintenance organizations and others; or

(G) Other National Association of Insurance Commissioners' convention blank as appropriate.

(3) The statement shall be prepared in accordance with the most recent and appropriate companion National Association of Insurance Commissioners' "Annual Statement Instructions" and follow those accounting practices and procedures prescribed by the most recent and appropriate companion National Association of Insurance Commissioners' Accounting Practices and Procedures Manual.

(4) Arkansas domestic insurers shall file the statement with the commissioner in hardcopy format.

(5) ~~Authorized foreign and alien insurers complying with subsection (b) of this section are deemed to have satisfied the requirement to file the statement with the commissioner~~ Each authorized insurer shall file an audited financial statement on or before June 1 of each year.

(6) Authorized foreign and alien insurers complying with subsection (b) of this section are deemed to have satisfied the requirement to file the statement with the commissioner.

(7) The commissioner ~~is authorized to~~ may allow a life insurer or property and casualty insurer whose insurance premiums and required statutory reserves for accident and health insurance constitute at least ninety-five percent (95%) of its total premium considerations or total statutory required reserves, respectively, to file the "Annual Statement Blank for Health" as its annual statement with the companion quarterly statement forms.

~~(7)(A)~~(8)(A) The National Association of Insurance Commissioners' annual statement convention blank shall be verified by the oath of the insurer's president or vice president and secretary or actuary as applicable or, if a reciprocal insurer, by the oath of its attorney in fact or its like officers if a corporation.

(B)(i) The statement of an alien insurer shall be verified by the oath of the insurer's United States manager or other officer authorized and shall relate only to its transactions and affairs in the United States unless the commissioner requires otherwise.

(ii) If the commissioner requires a statement as to the alien insurer's affairs throughout the world, the insurer shall file the statement with the commissioner as soon as reasonably possible.

(C) The commissioner may waive any requirement under this section for verification under oath.

~~(8)(A)~~(9)(A) The commissioner may refuse to continue the insurer's certificate of authority, as provided in § 23-63-211, or ~~in his or her discretion~~ may suspend or revoke the certificate of authority of an insurer failing to file its annual statement when due.

(B)(i) In addition, the insurer shall be subject to a penalty of one hundred dollars ($100) for each day of delinquency.

(ii) The penalty shall be collected by the commissioner, if necessary, by a civil suit brought by the commissioner in Pulaski County Circuit Court, unless the penalty is waived by the commissioner upon a showing by the insurer of good cause for its failure to file its report on or before the date due.

~~(9)~~(10) At the time of filing, the insurer shall pay the fee for filing its annual statement as prescribed by § 23-61-401.

~~(10)~~(11) In addition to information called for and furnished in connection with its annual statement, an insurer shall furnish to the commissioner as soon as reasonably possible such information with respect to any of its transactions or affairs as the commissioner ~~may from time to time request~~ requests in writing.

~~(11)(A)~~(12)(A) In accordance with the specifications applicable to annual financial statements, each authorized domestic insurer and health maintenance organization and hospital or medical service corporation, or other domestic licensee so directed by the State Insurance Department in writing shall also file with the commissioner a quarterly financial statement on a form prescribed by the commissioner~~,~~ not later than forty-five (45) days following the end of each of the first three (3) calendar quarters of each year, excepting the fourth quarter of each calendar year, which shall be reconciled in the annual financial statement.

(B) The filing specifications of this section for annual financial reports apply to quarterly financial reports.

SECTION 4. Arkansas Code Title 23, Chapter 63, Subchapter 13 is amended to read as follows:

23-63-1301. Title.

This subchapter shall be known and may be cited as the "Risk-Based Capital Act".

23-63-1302. Definitions.

As used in this subchapter~~, these terms shall have the following meanings~~:

~~A.~~(1) "Adjusted RBC Report" means ~~an RBC~~ a risk-based capital report ~~which~~ that has been adjusted by the Insurance Commissioner ~~in accordance with~~ under § 23-63-1303~~(E)~~(e)~~.~~;

~~B.~~(2) "Corrective order" means an order issued by the commissioner specifying corrective actions ~~which~~ that the commissioner has determined are ~~required.~~ needed;

~~C.~~(3) "Domestic insurer" means ~~any~~ an insurance company domiciled in this state~~.~~;

~~D.~~(4) "Foreign insurer" means ~~any~~ an insurance company ~~which is authorized to~~ that may do business in this state ~~pursuant to~~ under § 23-63-201 et seq. but is not domiciled in this state~~.~~;

~~E. "NAIC" means the National Association of Insurance Commissioners.~~

~~F.~~(5) "Life ~~and/or~~ or accident and health insurer" means:

(A) ~~any~~ An insurance company authorized to transact a life ~~and/or~~ or accident and health insurance business ~~pursuant to~~ under § 23-63-201 et seq.~~,~~; or

(B) An authorized property and casualty insurer writing only accident and health insurance;

(6) "NAIC" means the National Association of Insurance Commissioners;

~~G. "Property or casualty insurer" means any insurance company authorized to transact property or casualty insurance business pursuant to § 23-63-201 et seq., including farmers' mutual aid associations, and fraternal benefit societies, but shall not include monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers.~~

~~H.~~(7) "Negative trend" means, with respect to a life ~~and/or~~ or accident and health insurer, negative trend over a period ~~of time~~, as determined ~~in accordance with~~ according to the "Trend Test Calculation" included in the RBC Instructions~~.~~;

(8) "Property or casualty insurer" means:

(A) An insurance company authorized to transact property or casualty insurance business under § 23-63-201 et seq., including farmers' mutual aid associations and fraternal benefit societies.

(B) "Property or casualty insurer" does not include:

(i) Monoline mortgage guaranty insurers;

(ii) Financial guaranty insurers; or

(iii) Title insurers;

~~I.~~(9) ~~"RBC Instructions" means the RBC Report including risk-based capital instructions adopted by the NAIC, as such RBC Instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.~~ "RBC" means risk-based capital;

(10) "RBC Instructions" means the RBC Report including risk-based capital instructions adopted by the NAIC, as amended by the NAIC;

~~J.~~(11) "RBC Level" means an insurer's Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory Control Level RBC ~~where~~ when:

~~(1)~~(A) ~~"Company Action Level RBC" means, with respect to any insurer, the product of 2.0 and its Authorized Control Level RBC~~ "Authorized Control Level RBC" means the number determined under the risk-based capital formula according to the RBC Instructions;

~~(2)~~(B) ~~"Regulatory Action Level RBC" means the product of 1.5 and its Authorized Control Level RBC~~ "Company Action Level RBC" means, with respect to an insurer, the product of two (2) and its Authorized Control Level RBC;

~~(3)~~(C) ~~"Authorized Control Level RBC" means the number determined under the risk-based capital formula in accordance with the RBC Instructions~~ "Mandatory Control Level RBC" means the product of seven-tenths of one percent (0.7%) and the Authorized Control Level RBC;and

~~(4)~~(D) ~~"Mandatory Control Level RBC" means the product of .70 and the Authorized Control Level RBC.~~ "Regulatory Action Level RBC" means the product of one and five-tenths (1.5) and its Authorized Control Level

RBC;

~~K.~~(12) "RBC Plan" means a comprehensive financial plan containing the elements ~~specified~~ named in ~~§ 23-63-1304(B)~~ § 23-63-1304(b). If the commissioner rejects the RBC Plan~~,~~ and it is revised by the insurer~~,~~ with or without the commissioner's recommendation, the plan ~~shall be~~ is called the "Revised RBC Plan"~~.~~;

~~L.~~(13) "RBC Report" means the report required ~~in~~ under § 23-63-1303~~.~~; and

~~M.~~(14) "Total adjusted capital" means the sum of:

~~(1)~~(A) An insurer's statutory capital and surplus as determined ~~in accordance with~~ according to the statutory accounting applicable to the annual financial statements required ~~to be filed~~ under § 23-63-216; and

~~(2)~~(B) ~~Such other~~ Other items, if any, ~~as~~ that the RBC Instructions may provide.

~~N. "Commissioner" means the Insurance Commissioner for the State of Arkansas unless the context requires otherwise.~~

~~O. "RBC" means risk based capital.~~

23-63-1303. RBC Reports.

~~A.~~(a) ~~Every domestic insurer shall, on or prior to each March 1,~~ Annually on or before March 1, each domestic insurer shall prepare and submit to the Insurance Commissioner a report of its RBC Levels as of the end of the previous calendar year ~~just ended,~~ in a form and containing ~~such~~ the information as ~~is required~~ needed by the RBC Instructions. In addition, ~~every~~ each domestic insurer shall file its RBC Report:

(1) With the NAIC ~~in accordance with~~ according to the RBC Instructions; and

(2) With the insurance commissioner in ~~any~~ a state in which the insurer ~~is authorized to~~ may do business, if the insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its RBC Report ~~not later than~~ by the later of:

~~(a)~~(A) Fifteen (15) days from the receipt of notice to file its RBC Report with that state; or

~~(b)~~(B) The filing date.

~~B.~~(b) A life ~~and/or~~ or accident and health insurer's RBC ~~shall be~~ is determined ~~in accordance with~~ according to the formula ~~set forth~~ stated in

the RBC Instructions. The formula shall take into account and may adjust for the covariance ~~between~~ among the following factors determined in each case by applying the factors as stated in the RBC Instructions:

(1) The risk with respect to the insurer's assets;

(2) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(3) The interest rate risk with respect to the insurer's business; and

(4) ~~All other~~ Other business ~~risks~~ and ~~such other~~ relevant risks as ~~are set forth in the RBC Instructions;~~ determined in each case by applying the factors in the ~~manner~~ way ~~set forth~~ stated in the RBC Instructions.

~~C.~~(c) A property and casualty insurer's RBC ~~shall be~~ is determined ~~in accordance with~~ according to the formula ~~set forth~~ stated in the RBC Instructions. The formula ~~shall take into account and~~ may adjust for the covariance ~~between~~ among the following factors determined according to the formula stated in the RBC Instructions:

(1) Asset risk;

(2) Credit risk;

(3) Underwriting risk; and

(4) ~~All other~~ Other business ~~risks~~ and ~~such other~~ relevant risks as ~~are set forth~~ stated in the RBC Instructions~~; determined in each case by applying the factors in the manner set forth in the RBC Instructions~~.

~~D.~~(d) An excess of capital over the amount produced by the risk-based capital requirements contained in this subchapter and the formulas, schedules, and instructions referenced in this subchapter ~~is~~ are desirable in the business of insurance. ~~Accordingly, insurers~~ Insurers should seek to maintain capital above the RBC levels ~~required~~ needed by this subchapter. Additional capital is used and useful in the insurance business and helps to secure an insurer 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 subchapter.

~~E.~~(e) If a domestic insurer files an RBC Report ~~which~~ that in the judgment of the commissioner is inaccurate, ~~then~~ the commissioner shall adjust the RBC Report to correct the inaccuracy and ~~shall~~ notify the insurer of the adjustment. The notice shall contain a statement of the reason for

the adjustment. An RBC Report as so adjusted is referred to as an "Adjusted RBC Report".

23-63-1304. Company Action Level Event.

~~A.~~(a) As used in this subchapter, "Company Action Level Event" means any of the following events:

(1) The filing of an RBC Report by an insurer ~~which indicates that~~ that shows:

~~(a)~~(A) The insurer's ~~Total Adjusted Capital~~ total adjusted capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC; ~~or~~

~~(b)~~(B) If a life ~~and/or~~ or accident and health insurer, the insurer has ~~Total Adjusted Capital~~ total adjusted capital ~~which~~ that is ~~greater~~ more than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and ~~2.5~~ two and five-tenths (2.5) and has a negative trend; or

(C) For the year ending December 31, 2011, and each year following, if a property and casualty insurer has total adjusted capital that is more 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 according to the trend test calculation included in the Property and Casualty RBC Instructions;

(2) The notification by the Insurance Commissioner to the insurer of an Adjusted RBC Report that indicates an event in ~~paragraph (1)~~ subdivision (a)(1) of this ~~subsection~~ section, ~~provided~~ if the insurer does not challenge the Adjusted RBC Report under § 23-63-1308; or

(3) If~~, pursuant to~~ under § 23-63-1308~~,~~ an insurer challenges an Adjusted RBC Report that indicates the event in ~~paragraph (1)~~ subdivision (a)(1) of this ~~subsection~~ section, the notification by the commissioner to the insurer that the commissioner, after a hearing, has~~, after a hearing,~~ rejected the insurer's challenge.

~~B.~~(b) In the event of a Company Action Level Event, the insurer shall prepare and submit to the commissioner an RBC Plan ~~which~~ that shall:

(1) Identify the conditions ~~which~~ that contribute to the Company Action Level Event;

(2) Contain proposals of corrective actions ~~which~~ that the

insurer intends to take and would be expected to result in the elimination of the Company Action Level Event;

(3) Provide projections of the insurer's financial results in the current year and at least the four (4) succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, ~~and/or~~ and surplus. ~~(~~The projections for both new and renewal business ~~might~~ may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component~~.)~~;

(4) Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(5) Identify the quality of, and problems associated with, the insurer's business, including ~~but not limited to~~ without limitation its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

~~C.~~(c) The insurer shall submit the RBC Plan ~~shall be submitted~~:

(1) Within forty-five (45) days ~~of~~ after the Company Action Level Event; or

(2) If the insurer challenges an Adjusted RBC Report ~~pursuant to~~ under § 23-63-1308, within forty-five (45) days after notification to the insurer that the commissioner, after a hearing, has~~, after a hearing,~~ rejected the insurer's challenge.

~~D.~~(d) Within sixty (60) days after the submission by an insurer of an RBC Plan to the commissioner, the commissioner shall notify the insurer whether or not the RBC Plan ~~shall be~~ is implemented or is~~,~~ unsatisfactory in the judgment of the commissioner~~, unsatisfactory~~. If the commissioner determines the RBC Plan is unsatisfactory, the notification to the insurer shall ~~set forth~~ state the reasons for the determination~~,~~ and may ~~set forth~~ state proposed revisions ~~which will render~~ that shall make the RBC Plan satisfactory~~,~~ in the judgment of the commissioner. ~~Upon~~ On notification from the commissioner, the insurer shall prepare a Revised RBC Plan~~, which~~ that may incorporate by reference ~~any~~ revisions proposed by the commissioner~~,~~ and shall submit the Revised RBC Plan to the commissioner:

(1) Within forty-five (45) days after the notification from the

commissioner; or

(2) If the insurer challenges the notification from the commissioner under § 23-63-1308, within forty-five (45) days after a notification to the insurer that the commissioner, after a hearing, has~~, after a hearing,~~ rejected the insurer's challenge.

~~E.~~(e) In the event of a notification by the commissioner to an insurer that the insurer's RBC Plan or Revised RBC Plan is unsatisfactory, the commissioner ~~may at the commissioner's discretion~~, subject to the insurer's right to a hearing under § 23-63-1308, may specify in the notification that the notification constitutes a Regulatory Action Level Event.

~~F.~~(f) Every domestic insurer that files an RBC Plan or Revised RBC Plan with the commissioner shall file a copy of the RBC Plan or Revised RBC Plan with the insurance commissioner in ~~any~~ a state in which the insurer ~~is authorized to~~ may do business if:

(1) ~~Such~~ The state has an RBC provision substantially similar to ~~§ 23-63-1309(A)~~ § 23-63-1309(a); and

(2) The insurance commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the RBC Plan or Revised RBC Plan in that state ~~no later than~~ by the later of:

~~(a)~~(A) Fifteen (15) days after the receipt of notice to file a copy of its RBC Plan or Revised RBC Plan with the state; or

~~(b)~~(B) The date ~~on which~~ that the RBC Plan or Revised RBC Plan is filed under ~~§§ 23-63-1304(C) and 23-63-1304(D)~~ subsections (c) and (d) of this section.

23-63-1305. Regulatory Action Level Event.

~~A.~~(a) As used in this subchapter, "Regulatory Action Level Event" means, with respect to ~~any~~ an insurer, any of the following events:

(1) The filing of an RBC Report by the insurer ~~which indicates~~ that shows the insurer's ~~Total Adjusted Capital~~ total adjusted capital is ~~greater~~ more than or equal to its Authorized Control Level RBC but less than its Regulatory Action Level RBC;

(2) The notification by the Insurance Commissioner to an insurer of an Adjusted RBC Report that indicates the event in ~~paragraph (1)~~ subdivision (a)(1) of this section, ~~provided~~ if the insurer does not

challenge the Adjusted RBC Report under § 23-63-1308;

(3) If~~, pursuant to~~ under § 23-63-1308~~,~~ the insurer challenges an Adjusted RBC Report that indicates the event in ~~paragraph (1)~~ subdivision (a)(1) of this ~~subsection~~ section, the notification by the commissioner to the insurer that the commissioner, after a hearing, has~~, after a hearing,~~ rejected the insurer's challenge;

(4) The failure of the insurer to file an RBC Report by the filing date, unless the insurer has provided an explanation for ~~such~~ the failure ~~which~~ that is satisfactory to the commissioner and has cured the failure within ten (10) days after the filing date;

(5) The failure of the insurer to submit an RBC Plan to the commissioner within the time period ~~set forth~~ stated in ~~§ 23-63-1304(C)~~ § 23-63-1304(c);

(6) Notification by the commissioner to the insurer that:

~~(a)~~(A) The RBC Plan or ~~revised~~ Revised RBC Plan submitted by the insurer is~~, in the judgment of the commissioner,~~ unsatisfactory in the judgment of the commissioner; and

~~(b)~~(B) ~~Such~~ The notification constitutes a Regulatory Action Level Event with respect to the insurer~~, provided~~ if the insurer has not challenged the determination under § 23-63-1308;

(7) If~~, pursuant to~~ under § 23-63-1308~~,~~ the insurer challenges a determination by the commissioner under ~~paragraph (6)~~ subdivision (a)(6) of this section, the notification by the commissioner to the insurer that the commissioner, after a hearing, has~~, after a hearing,~~ rejected ~~such~~ the challenge;

(8) Notification by the commissioner to the insurer that the insurer has failed to adhere to its RBC Plan or Revised RBC Plan, but only if ~~such~~ the failure has a substantial adverse effect on the ability of the insurer to eliminate the Company Action Level Event ~~in accordance with~~ according to its RBC Plan or Revised RBC Plan and the commissioner has so stated in the notification~~,~~ ~~provided~~ if the insurer has not challenged the determination under § 23-63-1308; or

(9) If~~, pursuant to~~ under § 23-63-1308~~,~~ the insurer challenges a determination by the commissioner under ~~paragraph (8)~~ subdivision (a)(8) of this section, the notification by the commissioner to the insurer that the commissioner, after a hearing, has~~, after a hearing,~~ rejected the challenge.

~~B.~~(b) In the event of a Regulatory Action Level Event the commissioner shall:

(1) Require the insurer to prepare and submit an RBC Plan or, if applicable, a Revised RBC Plan;

(2) Perform ~~such~~ the examination or analysis as the commissioner ~~deems~~ considers necessary of the assets, liabilities, and operations of the insurer including a review of its RBC Plan or Revised RBC Plan; and

(3) ~~Subsequent to~~ After the examination or analysis, issue a ~~Corrective Order~~ corrective order specifying ~~such~~ the corrective actions as the commissioner shall determine are ~~required~~ needed.

~~C.~~(c)(1) In determining corrective actions, the commissioner may take into account ~~such~~ the factors ~~as are deemed~~ considered relevant with respect to the insurer based ~~upon~~ on the commissioner's examination or analysis of the assets, liabilities, and operations of the insurer, including~~, but not limited to,~~ without limitation the results of ~~any~~ sensitivity tests undertaken ~~pursuant to~~ under the RBC Instructions.

(2) The insurer shall submit the RBC Plan or Revised RBC Plan ~~shall be submitted~~:

~~(1)~~(A) Within forty-five (45) days after the occurrence of the Regulatory Action Level Event;

~~(2)~~(B) If the insurer challenges an Adjusted RBC Report ~~pursuant to~~ under § 23-63-1308 and the challenge is not frivolous in the judgment of the commissioner, within forty-five (45) days after the notification to the insurer that the commissioner ~~has, after a hearing,~~, after a hearing has rejected the insurer's challenge; or

~~(3)~~(C) If the insurer challenges a Revised RBC Plan ~~pursuant to~~ under § 23-63-1308 and the challenge is not frivolous in the judgment of the commissioner, within forty-five (45) days after the notification to the insurer that the commissioner, after a hearing, has~~, after a hearing,~~ rejected the insurer's challenge.

~~D.~~(d) The commissioner may ~~retain~~ keep actuaries and investment experts and other consultants as ~~may be~~ necessary in the judgment of the commissioner to review the insurer's RBC Plan or Revised RBC Plan, examine or analyze the assets, liabilities, and operations of the insurer, and ~~formulate~~ make the ~~Corrective Order~~ corrective order with respect to the insurer. The fees, costs, and expenses relating to consultants ~~shall be~~ are

borne by the affected insurer or ~~such~~ the other party as directed by the commissioner.

23-63-1306. Authorized Control Level Event.

~~A.~~(a) As used in this subchapter, "Authorized Control Level Event" means any of the following events:

(1) The filing of an RBC Report by the insurer ~~which~~ that ~~indicates that~~ shows the insurer's ~~Total Adjusted Capital~~ total adjusted capital is ~~greater~~ more than or equal to its Mandatory Control Level RBC but less than its Authorized Control Level RBC;

(2) The notification by the Insurance Commissioner to the insurer of an Adjusted RBC Report that indicates the event in ~~paragraph (1)~~ subdivision (a)(1) of this section, ~~provided~~ if the insurer does not challenge the Adjusted RBC Report under § 23-63-1308;

(3) If~~, pursuant to~~ under § 23-63-1308~~,~~ the insurer challenges an Adjusted RBC Report that indicates the event in ~~paragraph (1)~~ subdivision (a)(1) of this section, notification by the commissioner to the insurer that the commissioner, after a hearing, has~~, after a hearing,~~ rejected the insurer's challenge;

(4) The failure of the insurer to respond~~,~~ in a ~~manner~~ way satisfactory to the commissioner~~,~~ to a ~~Corrective Order~~ corrective order ~~(provided~~ if the insurer has not challenged the ~~Corrective Order~~ corrective order under § 23-63-1308~~)~~; or

(5) If the insurer has challenged a ~~Corrective Order~~ corrective order under § 23-63-1308 and the commissioner, after a hearing, has~~, after a hearing,~~ rejected the challenge or modified the ~~Corrective Order~~ corrective order, the failure of the insurer to respond, in a ~~manner~~ way satisfactory to the commissioner, to the ~~Corrective Order~~ corrective order ~~subsequent to~~ after rejection or modification by the commissioner.

~~B.~~(b) In the event of an Authorized Control Level Event with respect to an insurer, the commissioner shall:

(1) Take ~~such~~ the actions ~~as are~~ required under § 23-63-1305 regarding an insurer with respect to which a Regulatory Action Level Event has occurred; or

(2) If the commissioner ~~deems~~ considers it to be in the best interests of the policyholders and creditors of the insurer and of the

public, take ~~such~~ the actions ~~as are~~ necessary to cause the insurer to be placed under regulatory control ~~pursuant to~~ under § 23-68-101 et seq. In the event the commissioner takes ~~such~~ the actions, the Authorized Control Level Event ~~shall be deemed~~ is sufficient grounds for the commissioner to take action under § 23-68-101 et seq., and the commissioner shall have the rights, powers, and duties with respect to the insurer as ~~are set forth~~ stated in § 23-68-101 et seq. ~~In the event~~ If the commissioner takes ~~actions~~ action under this ~~paragraph pursuant to~~ section under an Adjusted RBC Report, the insurer ~~shall be~~ is entitled to ~~such~~ the protections ~~as are afforded~~ provided to insurers under ~~the provisions of~~ § 23-68-101 et seq. pertaining to summary proceedings.

23-63-1307. Mandatory Control Level Event.

~~A.~~(a) As used in this subchapter, "Mandatory Control Level Event" means any of the following events:

(1) The filing of an RBC Report ~~which indicates~~ that shows ~~that~~ the insurer's ~~Total Adjusted Capital~~ total adjusted capital is less than its Mandatory Control Level RBC;

(2) Notification by the Insurance Commissioner to the insurer of an Adjusted RBC Report that indicates the event in ~~paragraph (1)~~ subdivision (a)(1) of this section~~,~~ ~~provided~~ if the insurer does not challenge the Adjusted RBC Report under § 23-63-1308; or

(3) If~~, pursuant to~~ under § 23-63-1308~~,~~ the insurer challenges an Adjusted RBC Report that indicates the event in ~~paragraph (1)~~ subdivision (a)(1) of this section, notification by the commissioner to the insurer that the commissioner, after a hearing, has~~, after a hearing,~~ rejected the insurer's challenge.

~~B.~~(b) In the event of a Mandatory Control Level Event:

(1) With respect to a life insurer, the commissioner shall take ~~such~~ the actions ~~as are~~ necessary to place the insurer under regulatory control ~~pursuant to~~ under § 23-68-101 et seq. In that event, the Mandatory Control Level Event ~~shall be deemed~~ is sufficient grounds for the commissioner to take action under § 23-68-101 et seq., and the commissioner shall have the rights, powers, and duties ~~with respect~~ to the insurer ~~as are set forth~~ stated in § 23-68-101 et seq. If the commissioner takes action ~~pursuant to~~ under an Adjusted RBC Report, the insurer ~~shall be~~ is entitled to

the protections of § 23-68-101 et seq. pertaining to summary proceedings. ~~Notwithstanding any of the foregoing, the~~ The commissioner may forego action for up to ninety (90) days after the Mandatory Control Level Event if the commissioner finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the ~~ninety (90) day~~ ninety-day period~~.~~; and

(2) With respect to a property and casualty insurer, the commissioner shall take ~~such~~ the actions ~~as are~~ necessary to place the insurer under regulatory control ~~pursuant to~~ under § 23-68-101 et seq., or~~,~~ in the case of an insurer ~~which~~ that is writing no business and ~~which~~ is running-off its existing business, may allow the insurer to continue its ~~run-off~~ runoff under the supervision of the commissioner. In either event, the Mandatory Control Level Event ~~shall be deemed~~ is sufficient grounds for the commissioner to take action under § 23-68-101 et seq., and the commissioner shall have the rights, powers, and duties with respect to the insurer ~~as are set forth~~ stated in § 23-68-101 et seq. If the commissioner takes action ~~pursuant to~~ under an Adjusted RBC Report, the insurer ~~shall be~~ is entitled to the protections of § 23-68-101 et seq. pertaining to summary proceedings. ~~Notwithstanding any of the foregoing, the~~ The commissioner may forego action for up to ninety (90) days after the Mandatory Control Level Event if the commissioner finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the ~~ninety (90) day~~ ninety-day period.

23-63-1308. Hearings.

(a)(1) ~~Upon~~ If any of the ~~following~~ events listed in subsection (b) of this section occurs, the insurer shall have the right to a confidential ~~department~~ administrative hearing~~,~~ on ~~a~~ record, at which the insurer may challenge any determination or action by the Insurance Commissioner.

(2)(A) The insurer shall notify the commissioner of its request for a hearing within five (5) days after the notification by the commissioner under subsection ~~A, B, C or D~~ (b) of this section.

(B) ~~Upon~~ On receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing~~,~~. ~~which~~ The date shall be no less than ten (10) nor more than thirty (30) days after the date of the insurer's request~~:~~.

~~A.~~(b) Subsection (a) of this section applies if:

(1) ~~Notification to an insurer by the~~ The commissioner notifies an insurer of an Adjusted RBC Report; ~~or~~

~~B.~~(2) ~~Notification to an insurer by the~~ The commissioner notifies an insurer that:

~~1.~~(A) The insurer's RBC Plan or Revised RBC Plan is unsatisfactory; and

~~2.~~(B) ~~Such~~ The notification constitutes a Regulatory Action Level Event with respect to ~~such~~ the insurer; ~~or~~

~~C.~~(3) ~~Notification to any insurer by the~~ The commissioner notifies an insurer that the insurer has failed to adhere to its RBC Plan or Revised RBC Plan and that ~~such~~ the failure has a substantial adverse effect on the ability of the insurer to eliminate the Company Action Level Event with respect to the insurer ~~in accordance with~~ according to its RBC Plan or Revised RBC Plan; or

~~D.~~ (4) ~~Notification to an insurer by the~~ The commissioner notifies an insurer of a ~~Corrective Order~~ corrective order with respect to the insurer.

23-63-1309. Confidentiality -- Prohibition on announcements ~~prohibition~~ Prohibition on use in ratemaking.

~~A.~~(a) ~~All~~ The RBC Reports, to the extent the information ~~therein~~ in the RBC Reports is not ~~required~~ needed to be ~~set forth~~ stated in a publicly available annual statement schedule, and RBC Plans, including the results or report of ~~any~~ an examination or analysis of an insurer performed ~~pursuant hereto~~ under ~~and any~~ a ~~Corrective Order~~ corrective order issued by the Insurance Commissioner ~~pursuant to~~ under examination or analysis, with respect to ~~any~~ a domestic insurer or foreign insurer ~~which~~ that are filed with the commissioner, constitute information that ~~might~~ may be damaging to the insurer if made available to its competitors~~,~~ and ~~therefore shall be~~ is kept confidential by the commissioner. This information shall not be made public ~~and/or~~ or be subject to subpoena, or both, other than by the commissioner and then only ~~for the purpose of~~ to ~~enforcement~~ enforce actions taken by the commissioner ~~pursuant to~~ under this subchapter or ~~any~~ other ~~provision of the~~ insurance laws of this state.

~~B.~~(b)(1) It is the judgment of the ~~legislature~~ General Assembly that

the comparison of an insurer's ~~Total Adjusted Capital~~ total adjusted capital to ~~any of~~ its RBC Levels is a regulatory tool ~~which~~ that may ~~indicate~~ show the need for possible corrective action with respect to the insurer~~,~~ and is not intended as a means to rank insurers generally. ~~Therefore, except~~ Except as otherwise required under ~~the provisions of~~ this subchapter, the making, publishing, disseminating, circulating, or placing before the public~~,~~ or causing~~,~~ directly or indirectly to be made, published, ~~disseminated~~ distributed, 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 ~~any~~ 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~~ an insurer~~,~~ or of any component derived in the calculation~~,~~ by ~~any~~ an insurer, agent, broker, or other person engaged in any ~~manner~~ way in the insurance business would be misleading and is ~~therefore~~ prohibited~~; provided, however, that if~~.

(2) If ~~any~~ a materially false statement with respect to the comparison regarding an insurer's ~~Total Adjusted Capital~~ total adjusted capital to its RBC Levels or any of them or an inappropriate comparison of any other amount to the insurer's RBC Levels is published in ~~any~~ a written publication and the insurer ~~is able to~~ may demonstrate to the commissioner with substantial proof the falsity of ~~such~~ the statement~~,~~ or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

~~C.~~(c) It is the further judgment of the ~~legislature~~ General Assembly that the RBC Instructions, RBC Reports, Adjusted RBC Reports, RBC Plans, and Revised RBC Plans:

(1) ~~are~~ Are intended solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers; and

(2) ~~shall~~ Shall not be used by the commissioner:

(A) ~~for~~ For ratemaking nor considered or introduced as evidence in ~~any~~ a rate proceeding; or

(B) ~~nor used by the commissioner to calculate~~ To compute or derive ~~any~~ elements of an appropriate premium level or rate of return for

~~any~~ a line of insurance ~~which~~ that an insurer or ~~any~~ affiliate ~~is authorized to~~ may write.

23-63-1310. Supplemental provisions -- Rules -- Exemption.

~~A.~~(a) ~~The provisions of this subchapter are~~ This subchapter is supplemental to ~~any~~ other ~~provisions of the~~ laws of this state~~,~~ and ~~shall~~ does not preclude or limit ~~any~~ other powers or duties of the Insurance Commissioner under ~~such~~ those laws, including~~, but not limited to,~~ without limitation § 23-68-101 et seq.

~~B.~~(b) The commissioner may adopt reasonable rules necessary for the implementation of this subchapter.

~~C.~~(c) The commissioner may exempt from the application of this subchapter ~~any~~ a domestic property and casualty insurer licensed to do business in this state ~~which~~ that:

(1) Writes direct business only in this state; ~~and~~

(2) Writes direct annual premiums of ~~$2,000,000~~ two million dollars ($2,000,000) or less; and

(3) Assumes no reinsurance ~~in excess of~~ more than five percent (5%) of direct premium written.

~~D. The commissioner may exempt from the application of this subchapter any of the following entities:~~

~~(1) Hospital and/or medical service corporations;~~

~~(2) Fraternal benefit societies; or~~

~~(3) Farmer's mutual aid associations.~~

23-63-1311. Foreign insurers.

~~A.~~(a) ~~Any foreign insurer shall, upon~~ Upon the written request of the ~~commissioner~~ Insurance Commissioner, a foreign insurer shall~~,~~ submit to the ~~Insurance Commissioner~~ commissioner an RBC Report as of the end of the calendar year just ended the later of:

(1) The date an RBC Report would be required to be filed by a domestic insurer under this subchapter; or

(2) Fifteen (15) days after the request is received by the foreign insurer. Any foreign insurer shall, at the written request of the commissioner, promptly submit to the commissioner a copy of any RBC Plan that is filed with the insurance commissioner of any other state.

~~B.~~(b) In the event of a Company Action Level Event, Regulatory Action Level Event, or Authorized Control Level Event with respect to ~~any~~ a foreign insurer as determined under the RBC statute applicable in the state of domicile of the insurer or, if no RBC statute is in force in that state, under ~~the provisions of~~ this subchapter, if the insurance commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file an RBC Plan in the ~~manner~~ way ~~specified~~ named under that state's RBC statute or, if no RBC statute is in force in that state, under § 23-63-1304 ~~hereof~~, the commissioner may require the foreign insurer to file an RBC Plan with the commissioner. In ~~such~~ that event, the failure of the foreign insurer to file an RBC Plan with the commissioner ~~shall be~~ is grounds to order the insurer to cease and desist from writing new insurance business in this state.

~~C.~~(c) In the event of a Mandatory Control Level Event with respect to ~~any~~ a foreign insurer, if no domiciliary receiver has been appointed ~~with respect to~~ by the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the commissioner may ~~make application~~ apply to ~~the Circuit Court of~~ Pulaski County Circuit Court permitted under § 23-68-101 et seq. with respect to the liquidation of property of foreign insurers found in this state, and the occurrence of the Mandatory Control Level Event ~~shall be considered~~ is adequate grounds for the application.

23-63-1312. Immunity.

There ~~shall be~~ is no liability ~~on the part of~~ by~~,~~ and no cause of action shall arise against~~,~~ the Insurance Commissioner or the State Insurance Department or its employees or agents for ~~any~~ action taken by them in the performance of their powers and duties under this subchapter.

23-63-1313. ~~Rules and regulations~~ Authority of commissioner to adopt rules.

The Insurance Commissioner may adopt reasonable rules ~~and regulations~~ for the implementation and administration of ~~the provisions of~~ this subchapter.

23-63-1314. Penalties and liabilities.

(a) If the Insurance Commissioner ~~finds~~, after a hearing conducted ~~in accordance with~~ according to § 23-61-301 et seq. finds that ~~any~~ an insurer or a person has violated ~~any provision of~~ this subchapter, the commissioner may order:

(1) For each separate violation, a penalty ~~in an amount~~ of one thousand dollars ~~($1,000.00)~~ ($1,000) or~~,~~ if the commissioner has found willful misconduct or willful violation, a penalty of five thousand dollars ~~($5,000.00)~~ ($5,000); and

(2) Revocation or suspension of the insurer's or person's license.

(b) The decision~~, determination or order~~ of the commissioner ~~pursuant to~~ under subsection (a) of this section ~~shall be~~ is subject to judicial review ~~pursuant to~~ under § 23-61-307.

(c) ~~Nothing contained in this section shall~~ This section does not affect the right of the commissioner to impose ~~any~~ other penalties provided for in the insurance laws.

~~23-63-1315. Severability clause.~~

~~If any provision of this subchapter, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect the provisions or applications of this subchapter which can be given effect without the invalid provision or application, and to that end the provisions of this subchapter are severable.~~

23-63-1316. Notices.

All notices by the Insurance Commissioner to an insurer ~~which~~ that may result in regulatory action ~~hereunder~~ under this subchapter shall be effective ~~upon~~ on dispatch if transmitted by ~~registered or~~ certified mail, or in the case of any other transmission shall be effective ~~upon~~ on the insurer's receipt of ~~such~~ the notice.

SECTION 5. Arkansas Code Title 23, Chapter 63, Subchapter 15 is amended to read as follows:

23-63-1501. Definitions.

As used in this subchapter~~, these terms shall have the following meanings~~:

(1) "Adjusted RBC report" means an RBC report ~~which~~ that has been adjusted by the Insurance Commissioner in accordance with § 23-63-1502(d);

(2) "Corrective order" means an order issued by the commissioner specifying corrective actions ~~which~~ that the commissioner has determined are required;

(3) "Domestic health organization" means:

(A) ~~a~~ A health maintenance organization domiciled in this state, as established under § 23-76-107~~,~~; or

(B) ~~a~~ A hospital and medical service corporation as defined in § 23-75-101;

(4) "Foreign health organization" means a health organization ~~that is~~ licensed to do business in this state but is not domiciled in this state;

(5)(A) "Health organization" means a health maintenance organization, hospital and medical service corporation, limited health service organization, dental or vision plan, hospital, or a medical and dental indemnity or service corporation.

(B) ~~This definition~~ "Health organization" does not include:

(i) ~~an~~ An organization that is licensed as either a life and health insurer; or

(ii) ~~a~~ A property and casualty insurer ~~and~~ that is ~~otherwise~~ subject to ~~either~~ the life or property and casualty RBC requirements;

(6) "NAIC" means the National Association of Insurance Commissioners;

(7) "RBC instructions" means the RBC report including risk-based capital instructions adopted by ~~the National Association of Insurance Commissioners~~ NAIC, as these RBC instructions may be amended by ~~the National Association of Insurance Commissioners~~ NAIC ~~from time to time in accordance with~~ according to the procedures adopted by ~~the National Association of Insurance Commissioners~~ NAIC;

(8) "RBC level" means a health organization's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC ~~where~~ when:

~~(A) "Company action level RBC" means, with respect to any health organization, the product of 2.0 and its authorized control level RBC~~ "Authorized control level RBC" means the number determined under the risk-based capital formula according to the RBC instructions;

(B) "Company action level RBC" means, with respect to a health organization, the product of two (2) and its authorized control level RBC;

(C) "Mandatory control level RBC" means the product of ~~.70~~ seven-tenths (0.7) and the authorized control level RBC; and

~~(B)~~(D) "Regulatory action level RBC" means the product of ~~1.5~~ one and five-tenths (1.5) and its authorized control level RBC;

~~(C) "Authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions; and~~

(9) "RBC plan" means a comprehensive financial plan containing the elements specified in § 23-63-1503(b). If the commissioner rejects the RBC plan and it is revised by the health organization with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan";

(10) "RBC report" means the report required in § 23-63-1502; and

(11) "Total adjusted capital" means the sum of:

(A) A health organization's statutory capital and surplus, ~~i.e.,~~ such as net worth, as determined ~~in accordance with~~ according to the statutory accounting applicable to the annual financial statements required to be filed; and

(B) ~~Such other~~ Other items~~, if any, as~~ that the RBC instructions may provide.

23-63-1502. RBC reports.

(a)(1) On or ~~prior to~~ before each March 1, the "filing date", a domestic health organization shall prepare and submit to the Insurance Commissioner a report of its RBC levels as of the end of the calendar year just ended, in a form and containing ~~such~~ the information ~~as is~~ required by the RBC instructions.

(2) ~~In addition, a~~ A domestic health organization shall file its RBC report:

~~(1)~~(A) With the ~~National Association of Insurance Commissioners~~ NAIC ~~in accordance with~~ according to the RBC instructions; and

~~(2)~~(B) With the insurance commissioner in ~~any~~ a state in which the health organization is authorized to do business~~,~~ if the insurance commissioner has notified the health organization of its request in writing, in which case the health organization shall file its RBC report ~~not later than~~ by the later of:

~~(A)~~(i) Fifteen (15) days from the receipt of notice to file its RBC report with that state; or

~~(B)~~(ii) The filing date.

(b) A health organization's RBC ~~shall be~~ is determined ~~in accordance with~~ according to the formula ~~set forth~~ stated in the RBC instructions. The formula shall take the following into account~~,~~ and may adjust for the covariance between, determined in each case by applying the factors in the ~~manner set forth~~ way stated in the RBC instructions:

(1) Asset risk;

(2) Credit risk;

(3) Underwriting risk; and

(4) ~~All other~~ Other business risks and ~~such~~ other relevant risks as are ~~set forth~~ stated in the RBC instructions.

(c) An excess of capital, ~~i.e.,~~ including net worth, over the amount produced by the risk-based capital requirements contained in this subchapter and the formulas, schedules, and instructions referenced in this subchapter is desirable in the business of health insurance. Accordingly, health organizations should seek to maintain capital above the RBC levels required by this subchapter. 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 subchapter.

(d) If a domestic health organization files an RBC report that in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the health organization of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC report as ~~so~~ adjusted is referred to as an "adjusted RBC report".

23-63-1503. Company action level event.

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

(1) The filing of an RBC report by a health organization that indicates that the health organization's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC;

(2) For the year ending December 31, 2011, and each following year, if a health organization has total adjusted capital that:

(A) Is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and three (3.0); and

(B) The triggering of the trend test determined in accordance with the trend test calculation included in the health organization's RBC instructions;

~~(2)~~(3) ~~Notification~~ The notification by the Insurance Commissioner to the health organization of an adjusted RBC report that indicates an event in subdivision (a)(1) of this section, provided the health organization does not challenge the adjusted RBC report under § 23-63-1507; or

~~(3)~~(4) If~~, pursuant to~~ under § 23-63-1507~~,~~ a health organization challenges an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, the notification by the commissioner to the health organization that the commissioner ~~has, after a hearing,~~, after a hearing, has rejected the health organization's challenge.

(b) In the event of a company action level event, the health organization shall prepare and submit to the commissioner an RBC plan that shall:

(1) Identify the conditions that contribute to the company action level event;

(2) Contain proposals of corrective actions that the health organization intends to take and that would be expected to result in the elimination of the company action level event;

(3)(A) Provide projections of the health organization's financial results in the current year and at least the two (2) succeeding years, both in the absence of proposed corrective actions and giving effect

to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, capital and surplus, and RBC levels.

(B) The projections for ~~both~~ new and renewal business ~~might~~ may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(4) Identify the key assumptions impacting the health organization's projections and the sensitivity of the projections to the assumptions; and

(5) Identify the quality of, and problems associated with, the health organization's business, including~~, but not limited to,~~ without limitation its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance~~, if any,~~ in each case.

(c) The RBC plan shall be submitted:

(1) Within forty-five (45) days ~~of~~ after the company action level event; or

(2) If the health organization challenges an adjusted RBC report ~~pursuant to~~ under § 23-63-1507~~,~~ within forty-five (45) days after notification to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.

(d)(1) Within sixty (60) days after the submission by a health organization of an RBC plan to the commissioner, the commissioner shall notify the health organization ~~whether~~ if the RBC plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory.

(2) If the commissioner determines the RBC plan is unsatisfactory, the notification to the health organization shall ~~set forth~~ state the reasons for the determination~~,~~ and may ~~set forth~~ state proposed revisions which will render the RBC plan satisfactory, in the judgment of the commissioner.

(3) Upon notification from the commissioner, the health organization shall prepare a revised RBC plan~~,~~ ~~which~~ that may incorporate by reference ~~any~~ the revisions proposed by the commissioner~~,~~ and shall submit the revised RBC plan to the commissioner:

~~(1)~~(A) Within forty-five (45) days after the notification from the commissioner; or

~~(2)~~(B) If the health organization challenges the notification from the commissioner under § 23-63-1507~~,~~ within forty-five (45) days after a notification to the health organization that the commissioner ~~has, after a hearing,~~ , after a hearing, has rejected the health organization's challenge.

(e) In the event of a notification by the commissioner to a health organization that the health organization's RBC plan or revised RBC plan is unsatisfactory, the commissioner, ~~may at the commissioner's discretion,~~ subject to the health organization's right to a hearing under § 23-63-1507, may specify in the notification that the notification constitutes a regulatory action level event.

(f) ~~Every~~ Each domestic health organization that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state ~~in which~~ that the health organization is authorized to do business if:

(1) The state has an RBC provision substantially similar to § 23-63-1508(a); and

(2) The insurance commissioner of that state has notified the health organization of its request for the filing in writing, in which case the health organization shall file a copy of the RBC plan or revised RBC plan in that state ~~no later than~~ by the later of:

(A) Fifteen (15) days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the state; or

(B) The date ~~on which~~ that the RBC plan or revised RBC plan is filed under subsections (c) and (d) of this section.

23-63-1504. Regulatory action level event.

(a) "Regulatory action level event" means, with respect to a health organization, any of the following events:

(1) The filing of an RBC report by the health organization that indicates that the health organization's total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;

(2) ~~Notification~~ The notification by the Insurance Commissioner to a health organization of an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, provided the health organization does

not challenge the adjusted RBC report under § 23-63-1507;

(3) If~~,~~ ~~pursuant to~~ under § 23-63-1507, the health organization challenges an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, the notification by the commissioner to the health organization that the commissioner ~~has, after a hearing,~~ , after a hearing, has rejected the health organization's challenge;

(4) The failure of the health organization to file an RBC report by the filing date, unless the health organization has provided an explanation for the failure that is satisfactory to the commissioner and has cured the failure within ten (10) days after the filing date;

(5) The failure of the health organization to submit an RBC plan to the commissioner within the time ~~period set forth~~ stated in § 23-63-1503(c);

(6) ~~Notification~~ The notification by the commissioner to the health organization that:

(A) The RBC plan or revised RBC plan submitted by the health organization is, in the judgment of the commissioner, unsatisfactory; and

(B) Notification constitutes a regulatory action level event with respect to the health organization, provided the health organization has not challenged the determination under § 23-63-1507;

(7) If~~, pursuant to~~ under § 23-63-1507~~,~~ the health organization challenges a determination by the commissioner under subdivision (a)(6) of this section, the notification by the commissioner to the health organization that the commissioner ~~has, after a hearing,~~, after a hearing, has rejected the challenge;

(8) ~~Notification~~ The notification by the commissioner to the health organization that the health organization has failed to adhere to its RBC plan or revised RBC plan, but only if the failure has a substantial adverse effect on the ability of the health organization to eliminate the company action level event ~~in accordance with~~ according to its RBC plan or revised RBC plan and the commissioner has so stated in the notification, provided the health organization has not challenged the determination under § 23-63-1507; or

(9) If~~,~~ ~~pursuant to~~ under § 23-63-1507~~,~~ the health organization challenges a determination by the commissioner under subdivision (a)(8) of

this section, the notification by the commissioner to the health organization that the commissioner ~~has, after a hearing,~~ , after a hearing has rejected the challenge.

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

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

(2) Perform ~~such~~ an examination or analysis as the commissioner deems necessary of the assets, liabilities, and operations of the health organization including a review of its RBC plan or revised RBC plan; and

(3) ~~Subsequent to~~ After the examination or analysis, issue ~~an order, a "corrective order",~~ a corrective order specifying such corrective actions as the commissioner shall determine are required.

(c) In determining corrective actions, the commissioner may take into account factors the commissioner deems relevant with respect to the health organization based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the health organization, including~~, but not limited to,~~ without limitation the results of any sensitivity tests undertaken ~~pursuant to~~ under the RBC instructions. The RBC plan or revised RBC plan shall be submitted:

(1) Within forty-five (45) days after the occurrence of the regulatory action level event;

(2) If the health organization challenges an adjusted RBC report ~~pursuant to~~ under § 23-63-1507 and the challenge is not frivolous in the judgment of the commissioner, within forty-five (45) days after the notification to the health organization that the commissioner ~~has, after a hearing,~~, after a hearing has rejected the health organization's challenge; or

(3) If the health organization challenges a revised RBC plan ~~pursuant to~~ under § 23-63-1507 and the challenge is not frivolous in the judgment of the commissioner, within forty-five (45) days after the notification to the health organization that the commissioner ~~has, after a hearing,~~, after a hearing has rejected the health organization's challenge.

(d) The commissioner may retain actuaries, ~~and~~ investment experts, and other consultants as may be necessary in the judgment of the commissioner to review the health organization's RBC plan or revised RBC plan, examine or

analyze the assets, liabilities, and operations, including contractual relationships, of the health organization and formulate the corrective order with respect to the health organization. The fees, costs, and expenses relating to consultants shall be borne by the affected health organization or ~~such~~ the other party as directed by the commissioner.

23-63-1505. Authorized control level event.

(a) "Authorized control level event" means any of the following events:

(1) The filing of an RBC report by the health organization that indicates that the health organization's total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC;

(2) The notification by the Insurance Commissioner to the health organization of an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, provided the health organization does not challenge the adjusted RBC report under § 23-63-1507;

(3) If~~,~~ ~~pursuant to~~ under § 23-63-1507~~,~~ the health organization challenges an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, notification by the commissioner to the health organization that the commissioner ~~has, after a hearing,~~, after a hearing has rejected the health organization's challenge;

(4) The failure of the health organization to respond~~,~~ to a corrective order in a ~~manner~~ way satisfactory to the commissioner, ~~to a corrective order,~~ provided the health organization has not challenged the corrective order under § 23-63-1507; or

(5) If the health organization has challenged a corrective order under § 23-63-1507 and the commissioner ~~has, after a hearing,~~ , after a hearing has rejected the challenge or modified the corrective order, the failure of the health organization to respond~~,~~ to a corrective order in a ~~manner~~ way satisfactory to the commissioner, ~~to the corrective order subsequent to~~ after rejection or modification by the commissioner.

(b) In the event of an authorized control level event with respect to a health organization, the commissioner shall:

(1) Take ~~such~~ the actions as are required under § 23-63-1504 regarding a health organization with respect to which a regulatory action

level event has occurred; or

(2)(A) If the commissioner deems it to be in the best interests of the policyholders and creditors of the health organization and of the public, take such actions as are necessary to cause the health organization to be placed under regulatory control ~~under rehabilitation and liquidation.~~ under the Uniform Insurers Liquidation Act, § 23-68-101 et seq.

(B) ~~In the event the commissioner takes such actions, the~~ The authorized control level event ~~shall be deemed~~ is sufficient grounds for the commissioner to ~~take action under rehabilitation and liquidation, and the commissioner shall have~~ exercise the rights, powers, and duties with respect to the health organization ~~as are set forth in rehabilitation and liquidation.~~ under the Uniform Insurers Liquidation Act, § 23-68-101 et seq.

(C) ~~In the event~~ If the commissioner takes actions under this subdivision (b)(2) pursuant to an adjusted RBC report, the health organization shall be entitled to ~~such~~ the protections ~~as are~~ afforded to health organizations under ~~the provisions of rehabilitation and liquidation.~~ the Uniform Insurers Liquidation Act, § 23-68-101 et seq.

23-63-1506. Mandatory control level event.

(a) "Mandatory control level event" means any of the following events:

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

(2) ~~Notification~~ The notification by the Insurance Commissioner to the health organization of an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, provided the health organization does not challenge the adjusted RBC report under § 23-63-1507; or

(3) If~~,~~ ~~pursuant to~~ under § 23-63-1507~~,~~ the health organization challenges an adjusted RBC report that indicates the event in subdivision (a)(1) of this section, notification by the commissioner to the health organization that the commissioner ~~has, after a hearing,~~ , after a hearing has rejected the health organization's challenge.

(b) In the event of a mandatory control level event, the commissioner shall take ~~such~~ the actions as are necessary to place the health organization under regulatory control under ~~rehabilitation and liquidation.~~

the Uniform Insurers Liquidation Act, § 23-68-101 et seq. In that event, the mandatory control level event ~~shall be~~ is deemed sufficient grounds for the commissioner to take action under ~~rehabilitation and liquidation,~~ the Uniform Insurers Liquidation Act, § 23-68-101 et seq., and the commissioner shall have the rights, powers, and duties with respect to the health organization as are set forth in ~~rehabilitation and liquidation.~~ the Uniform Insurers Liquidation Act, § 23-68-101 et seq. Notwithstanding any ~~of the foregoing provisions~~ other law, the commissioner may forego action for up to ninety (90) days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated ~~within~~ not later than the ~~ninety-day~~ ninety-day period.

23-63-1507. Hearings.

~~Upon~~ On the occurrence of ~~any of~~ the following events the health organization shall have the right to a confidential departmental hearing, on a record, at which the health organization may challenge ~~any~~ a determination or action by the Insurance Commissioner. The health organization shall notify the commissioner of its request for a hearing within five (5) days after the notification by the commissioner under subdivisions ~~(1)-(4)~~ (1)-(4) of this section. ~~Upon~~ On receipt of the health organization's request for a hearing, the commissioner shall set a date for the hearing which shall be no less than ten (10) nor more than thirty (30) days after the date of the health organization's request. The events include:

(1) ~~Notification~~ The notification to a health organization by the commissioner of an adjusted RBC report;

(2) ~~Notification~~ The notification to a health organization by the commissioner that:

(A) The health organization's RBC plan or revised RBC plan is unsatisfactory; and

(B) ~~Notification~~ The notification constitutes a regulatory action level event with respect to the health organization;

(3) ~~Notification~~ The notification to a health organization by the commissioner that the health organization has failed to adhere to its RBC plan or revised RBC plan and that the failure has a substantial adverse effect on the ability of the health organization to eliminate the company

action level event with respect to the health organization ~~in accordance with~~ according to its RBC plan or revised RBC plan; or

(4) ~~Notification~~ The notification to a health organization by the commissioner of a corrective order with respect to the health organization.

23-63-1508. Confidentiality and prohibition on announcements — Prohibition on use in ratemaking.

(a) ~~All~~ An RBC ~~reports~~ report, to the extent the information is not required to be ~~set forth~~ stated in a publicly available annual statement schedule, and RBC plans, including the results or report of ~~any~~ an examination or analysis of a health organization performed ~~pursuant to~~ under this ~~statute~~ subchapter and ~~any~~ a corrective order issued by the Insurance Commissioner ~~pursuant to~~ under examination or analysis, with respect to a domestic health organization or foreign health organization that are filed with the commissioner constitute information that ~~might~~ may be damaging to the health organization if made available to its competitors and ~~therefore~~ shall be kept confidential by the commissioner. This information shall not be made public or be subject to subpoena other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner ~~pursuant to~~ under this subchapter or any other ~~provision of the~~ insurance laws of this state.

(b)(1) It is the judgment of the General Assembly that the comparison of a health organization's total adjusted capital to any of its RBC levels is a regulatory tool ~~which~~ that 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 subchapter, the~~ 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, of an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the RBC levels of ~~any~~ a health organization, or of ~~any~~ a component derived in the calculation, by ~~any~~ a

health organization, agent, broker, or other person engaged in any ~~manner~~ way in the insurance business would be misleading and is ~~therefore~~ prohibited.

(2) ~~Provided, however~~ However, ~~that if any~~ if a materially false statement with respect to the comparison regarding a health organization's total adjusted capital to its RBC levels, or any of them, or an inappropriate comparison of any other amount to the health organization's RBC levels is published in ~~any~~ a written publication and the health organization is able to demonstrate to the commissioner with substantial proof the falsity or inappropriateness 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.

(c) It is the further judgment of the General Assembly that the RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans are intended solely for use by the commissioner in monitoring the solvency of health organizations and the need for possible corrective action with respect to health organizations and shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in ~~any~~ a rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that a health organization or ~~any~~ an affiliate is authorized to write.

23-63-1509. Supplemental provisions — Rules — Exemption.

(a) The provisions of this subchapter are supplemental to ~~any~~ the other provisions of the laws of this state~~,~~ and shall not preclude or limit any other powers or duties of the Insurance Commissioner under ~~such~~ those laws.

(b) The commissioner may adopt reasonable rules necessary for the implementation of this subchapter.

(c) The commissioner may exempt from the application of this subchapter:

(1) ~~a~~ A domestic health organization that:

~~(1)~~(A) Writes direct business only in this state;

(B) Assumes no reinsurance in excess of five percent (5%)

of direct premium written; and

(C) Writes direct annual premiums for comprehensive medical business of two million dollars ($2,000,000) or less; or

(2) ~~Is~~ A domestic health organization that is a limited benefit health maintenance organization.

23-63-1510. Foreign health organizations.

(a)(1) ~~Upon~~ On the written request of the Insurance Commissioner, a foreign health organization shall submit to the commissioner an RBC report as of the end of the calendar year just ended ~~which~~ that is the later of:

(A) The date an RBC report would be required to be filed by a domestic health organization under this subchapter; or

(B) Fifteen (15) days after the request is received by the foreign health organization.

(2) At the written request of the commissioner, a foreign health organization shall promptly submit to the commissioner a copy of any RBC plan that is filed with the insurance commissioner of any other state.

(b) In the event of a company action level event, regulatory action level event, or authorized control level event with respect to a foreign health organization as determined under the RBC statute applicable in the state of domicile of the health organization or, if no RBC statute is in force in that state, under ~~the provisions of~~ this subchapter, if the insurance commissioner of the state of domicile of the foreign health organization fails to require the foreign health organization to file an RBC plan in the ~~manner~~ way specified under that state's RBC statute or, if no RBC statute is in force in that state, under § 23-63-1503 ~~of this subchapter,~~ the commissioner may require the foreign health organization to file an RBC plan with the commissioner. In ~~such~~ this event, the failure of the foreign health organization to file an RBC plan with the commissioner shall be grounds to order the health organization to cease and desist from writing new insurance business in this state.

(c) In the event of a mandatory control level event with respect to a foreign health organization, if no domiciliary receiver has been appointed with respect to the foreign health organization under the rehabilitation and liquidation ~~statute~~ statutes applicable in the state of domicile of the foreign health organization, the commissioner may make application under

~~rehabilitation and liquidation~~ the Uniform Insurers Liquidation Act, § 23-68-101 et seq., with respect to the liquidation of property of foreign health organizations found in this state, and the occurrence of the mandatory control level event ~~shall be~~ is considered adequate grounds for the application.

23-63-1511. Immunity.

There shall be no liability ~~on the part of~~ by~~,~~ and no cause of action shall arise against~~,~~ the Insurance Commissioner or the State Insurance Department or its employees or agents for any action taken by them in the performance of their powers and duties under this subchapter.

23-63-1512. Notices.

~~All notices~~ A notice by the Insurance Commissioner to a health organization that may result in regulatory action under this subchapter ~~shall be~~ is effective upon:

(1) ~~dispatch~~ Dispatch if transmitted by ~~registered or~~ certified mail~~,~~; or

(2) ~~in the case of any other transmission shall be effective upon the~~ The health organization's receipt of notice in the case of any other transmission.

23-63-1513. Penalties and liabilities.

(a) If the Insurance Commissioner finds after a hearing conducted in accordance with §§ 23-61-301 et seq. that a health organization has violated this subchapter, the commissioner may order:

(1) For each separate violation, a penalty of one thousand dollars ($1000) or, if the commissioner has found willful misconduct or willful violation, five thousand dollars ($5,000); and

(2) Revocation or suspension of the health organization's license.

(b) The decision, determination, or order of the commissioner under subsection (a) of this section shall be subject to judicial review pursuant to § 23-61-307.

(c) This section does not affect the right of the commissioner to impose any other penalties provided for in the insurance laws of this state.

SECTION 6. Arkansas Code § 23-64-216(e), concerning the suspension and revocation of producer licenses, is amended to read as follows:

(e)(1) If the commissioner determines that the public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in his or her order, pending an administrative hearing the commissioner may:

(A) Issue a summary suspension of any license issued by him or her ~~may be ordered pending an administrative hearing before the commissioner.~~; or

(B) Issue an emergency cease and desist order.

(2) ~~The hearing~~ A hearing held under this subsection shall be promptly instituted.

SECTION 7. Arkansas Code § 23-64-301 is amended to read as follows:

23-64-301. Continuing education required.

(a)(1) Unless exempt under § 23-64-302, an insurance producer licensed in this state shall successfully complete and report the courses of instruction required by this section within the biennial period prescribed by rule of the Insurance Commissioner for the insurance producer to satisfy the continuing education requirements necessary to continue the insurance producer's license.

(2) The exemptions in § 23-64-302(3) and (4) do not apply to an insurance producer licensed after July 1, 2003.

(b)~~(1) An individual shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses each biennial period for continuing education if the individual is licensed to sell:~~

~~(A) Life insurance;~~

~~(B) Accident and health or sickness insurance;~~

~~(C) Property insurance;~~

~~(D) Casualty insurance;~~

~~(E) Variable products insurance; or~~

~~(F) Personal lines insurance.~~

~~(2) At least three (3) hours of continuing education required by this subsection shall be in an ethics course that is related to the business of insurance approved by the commissioner.~~ An individual who holds a title

insurance license shall complete the minimum number of hours of continuing education courses established by rule of the commissioner.

(c) ~~An individual who holds a title insurance license shall complete the minimum number of hours of continuing education courses established by rule of the commissioner.~~ The commissioner may promulgate rules containing the continuing education requirements for insurance producers licensed in this state as necessary for continued uniformity among the states.

(d) The commissioner may hire an independent contractor to administer all or part of this subchapter in a fair and impartial manner.

SECTION 8. Arkansas Code § 23-64-508(b), concerning producer licenses of nonresidents, is amended to read as follows:

(b)(1) The commissioner may verify the producer's licensing status through the producer database maintained by the National Association of Insurance Commissioners, its affiliates, or its subsidiaries.

(2) If at any time the nonresident producer has his or her home state producer license suspended, revoked, or terminated, the commissioner may summarily suspend the nonresident producer's nonresident producer license.

(3) A suspension under this subsection shall be lifted as a matter of law upon receipt of sufficient evidence that the nonresident producer's home state license is active and the nonresident producer is in good standing.

SECTION 9. Arkansas Code § 23-64-512(a)(2), concerning grounds for producer discipline, is amended to read as follows:

(2) Violating any ~~insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner~~ of the following that calls into question the insurance producer's fitness to hold a license:

(A) A law; or

(B) A regulation, subpoena, or order of:

(i) The commissioner;

(ii) Another state's insurance commissioner; or

(iii) A court of competent jurisdiction.

SECTION 10. Arkansas Code § 23-69-138 is amended to read as follows:

23-69-138. Impairment of capital or assets.

(a)(1)(A) If a stock or mutual insurer becomes impaired or insolvent, the Insurance Commissioner ~~shall at once~~ may:

(i) Determine the amount of the deficiency; and

(ii) Serve notice upon the insurer to make good the deficiency within thirty (30) days after service of the notice.

(B) After a hearing, the commissioner may suspend the insurer from soliciting or writing any new coverages in this state until the deficiency is made good.

(2) For the purposes of this section, "insolvent" or "impairment" ~~shall be defined as those terms are used~~ means the same as defined in the Uniform Insurers Liquidation Act, §§ 23-68-101, 23-68-102(2)-(13), 23-68-104, 23-68-105, 23-68-113, and 23-68-115 -- 23-68-120.

(b) The deficiency may be made good:

(1) ~~in~~ In cash; ~~or~~

(2) ~~in~~ In assets eligible under ~~the provisions of~~ § 23-63-801 et seq., which refers to investments, for the investment of the insurer's funds; ~~or,~~

(3) ~~if~~ If a stock insurer~~,~~ by:

(A) ~~reduction~~ Reduction of the stock insurer's capital to an amount not below the minimum required for the kinds of insurance thereafter to be transacted; or

(B) ~~by amendment~~ Amendment of its certificate of authority to cover only such kinds of insurance thereafter for which the stock insurer has sufficient capital~~, if a stock insurer, or surplus, if a mutual insurer, under the Arkansas Insurance Code.~~; or

(4) If a mutual insurer by amendment of its certificate of authority to cover only the kinds of insurance thereafter for which the mutual insurer has sufficient surplus.

(c)(1) If the deficiency is not made good and proof ~~thereof~~ filed with the commissioner within the thirty-day period:

(A) The insurer shall be deemed insolvent; and

(B) The commissioner shall institute delinquency proceedings against the insurer under the Uniform Insurers Liquidation Act, §§ 23-68-101, 23-68-102(2)-(13), 23-68-104, 23-68-105, 23-68-113, and 23-68-

115 -- 23-68-120.

(2)(A) However, the commissioner, upon application and submission of good cause, may extend the period that the deficiency may be made good and proof filed, but for no more than an additional thirty (30) days if the deficiency exists because of:

(i) ~~increased~~ Increased loss reserves required by the commissioner; or ~~because of~~

(ii) ~~disallowance~~ Disallowance by the commissioner of certain assets or reduction of the value at which carried in the insurer's accounts~~, the commissioner in his or her discretion and upon application and good cause shown may extend for not more than an additional thirty (30) days the period within which the deficiency may be made good and the proof thereof filed~~.

(B) However, acquisitions or changes of control of an impaired or insolvent domestic insurer that is or has applied to become an affiliate or subsidiary of a depository institution ~~pursuant to~~ under federal law shall comply with the ~~time~~ periods ~~set forth~~ stated ~~therein~~ to restore capital or surplus.

(d) ~~This section shall apply only to:~~

~~(1) Monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers that are excluded by definition from compliance with risk-based capital laws under § 23-63-1302;~~

~~(2) Organizations licensed as either life and health insurers or property and casualty insurers that are otherwise subject to either the life or property and casualty risk-based capital requirements and are excluded by definition from compliance with risk-based capital laws under § 23-63-1501; and~~

~~(3) Domestic stock and mutual insurers that, at the commissioner's discretion, are exempted from compliance with risk-based capital laws under § 23-63-1310 or § 23-63-1509.~~

This section applies in addition to or in conjunction with the insurance laws of this state including without limitation the Risk-Based Capital Act, § 23-63-1301 et seq., and § 23-63-1501 et seq.

SECTION 11. Arkansas Code § 23-69-119 is amended to read as follows:

23-69-119. Bylaws — Mutual insurers.

(a)(1) A domestic mutual insurer shall have bylaws consistent with § 23-69-111(b)(7).

(2) The initial board of directors of a domestic mutual insurer shall adopt original bylaws, subject to the approval of the insurer's members at the next succeeding meeting.

(3) The members ~~shall have power to~~ may make, modify, and revoke bylaws.

(b) The bylaws shall provide:

(1)(A) That on each matter coming to a vote at meetings of members, each member is entitled to one (1) vote ~~upon each matter coming to a vote at meetings of members~~ or to more votes ~~in accordance with~~ according to a reasonable classification of members ~~as set forth~~ stated in the bylaws and based ~~upon~~ on the amount of the insurance in force, the number of policies held, ~~or upon~~ the amount of the premiums paid by the member, or ~~upon~~ other reasonable factors.

(B)(i) A member ~~shall have the right to~~ may vote in person or by his or her written proxy.

(ii) ~~No~~ A proxy shall not be made irrevocable or for longer than a reasonable period of time;

(2) For election of directors by the members and the number, qualifications, terms of office, and powers of directors;

(3) The time, notice, quorum, and conduct of annual and special meetings of members and voting ~~thereat~~. The bylaws may provide that the annual meeting shall be held at a place, date, and time to be ~~set forth~~ stated in the policy ~~and~~ without giving other notice of the meeting;

(4) The number, designation, election, terms, ~~and~~ powers, and duties of the respective corporate officers;

(5) For deposit, custody, disbursement, and accounting for corporate funds; and

(6) For ~~any~~ the other reasonable provisions customary, necessary, or convenient for the management or regulation of its corporate affairs.

(c) ~~No~~ A provision in the bylaws for determining a quorum of members at ~~any~~ a meeting ~~thereof~~ that is ~~of~~ less than a majority of ~~all~~ the insurer's members shall not be effective unless approved by the Insurance Commissioner. This subsection ~~shall~~ does not affect ~~any~~ other ~~provision of~~ law requiring

the vote of a larger percentage of members for a specified purpose.

(d)(1) The insurer shall promptly file with the commissioner a copy, certified by the insurer's secretary, of its bylaws and of ~~every~~ each modification ~~thereof~~ or addition ~~thereto~~.

(2) The commissioner shall disapprove ~~any~~ a bylaw provision ~~deemed by him or her to be~~ that the commissioner deems unlawful, unreasonable, inadequate, unfair, or detrimental to the proper interests or protection of the insurer's members~~,~~ or any other class ~~thereof~~.

(3) ~~The~~ After receiving written notice of the disapproval of the bylaw provision and during the bylaw provision's existence, the insurer shall not~~, after receiving written notice of the disapproval and during the existence thereof,~~ effectuate ~~any~~ a bylaw provision so disapproved.

(e) Each domestic stock insurer shall provide written notice to the commissioner within fourteen (14) days after a modification of its bylaws.

SECTION 12. Arkansas Code § 23-75-102 is amended to read as follows:

23-75-102. Applicability of other ~~provisions~~ laws.

The corporations ~~shall also be~~ described in § 23-75-101 are subject to the following chapters and provisions of this code, to the extent applicable and not in conflict with the express provisions of this chapter:

(1) Sections 23-60-101 -- 23-60-108~~,~~ and 23-60-110, referring to scope of code;

(2) ~~Sections~~ Section 23-61-101 et seq., § 23-61-201 et seq., and § 23-61-301 et seq., referring to the Insurance Commissioner;

(3) Sections 23-63-102 -- 23-63-104, 23-63-201 -- 23-63-216, and 23-63-301 -- 23-63-304, referring to registration of registered agents for service of process;

(4) ~~Sections~~ Section 23-63-901 et seq., referring to administration of deposits;

(5) Section 23-63-1501 et seq., referring to risk-based capital;

~~(5)~~(6) ~~Sections~~ Section 23-64-101 et seq., referring to insurance producers, agents, brokers, and adjusters;

~~(6)~~(7) ~~Sections~~ Section 23-66-201 et seq.~~,~~ and §§ 23-66-301 -- 23-66-306, 23-66-308 -- 23-66-311, 23-66-313, and 23-66-314, referring to trade practices and frauds;

~~(7)~~(8) ~~Sections~~ Section 23-63-601 et seq. and §§ 23-84-101 --

23-84-111, referring to assets and liabilities;

~~(8)~~(9) ~~Sections~~ Section 23-68-101 et seq., referring to rehabilitation and liquidation;

(10) Section 23-69-142, referring to mergers and acquisitions;

~~(9)~~(11) Sections 23-85-101 -- 23-85-131, referring to accident and health insurance policies;

~~(10)~~(12) Sections 23-86-101 -- 23-86-104, 23-86-106, 23-86-108, and 23-86-109, referring to group and blanket accident and health insurance;

~~(11)~~(13) Sections 23-79-101 -- 23-79-107, 23-79-109 -- 23-79-128, 23-79-131 -- 23-79-134, and 23-79-202 -- 23-79-210, referring to insurance contracts;

~~(12)~~(14) Section 23-69-134, referring to home office and records; penalty for unlawful removal of records; and

~~(13)~~(15) Section 23-69-156, referring to extinguishment of unused corporate charters.

SECTION 13. Arkansas Code § 23-76-104 is amended to read as follows:

23-76-104. Arkansas Insurance Code sections applicable to health maintenance organizations.

(a) Except to the extent that the Insurance Commissioner determines that the nature of health maintenance organizations, health care plans, and evidences of coverage render such sections clearly inappropriate, the following sections are applicable to health maintenance organizations:

(1) Sections 23-60-101--23-60-108 and 23-60-110, referring to scope of the Arkansas Insurance Code;

(2) Section 23-61-101 et seq., § 23-61-201 et seq., and § 23-61-301 et seq., referring to the Insurance Commissioner;

(3) Sections 23-63-102 -- 23-63-104, § 23-63-201 et seq., general provisions, and § 23-63-301 et seq., referring to service of process, a registered agent as process agent, serving legal process, and time to plead;

(4) Section 23-63-601 et seq., referring to assets and liabilities, and § 23-63-901 et seq., referring to administration of deposits;

(5) Section 23-63-1501 et seq., referring to risk-based capital requirements;

(6) Section 23-64-101 et seq.~~,~~ ~~and~~ § 23-64-201 et seq., and § 23-64-501 et seq. referring to agents, brokers, solicitors, and adjusters;

(7) Section 23-66-201 et seq.~~,~~ and §§ 23-66-301 -- 23-66-306~~,~~ and ~~§§~~ 23-66-308 -- 23-66-314, referring to trade practices and frauds;

(8) Section 23-68-101 et seq., referring to rehabilitation and liquidation;

(9) Section 23-69-134, referring to home office and records and the penalty for unlawful removal of records;

(10) Section 23-69-156, referring to extinguishing unused corporate charters;

(11) Sections 23-75-104, 23-75-105, and 23-75-116, referring to hospital and medical service corporations;

(12) Sections 23-79-101--23-79-107, 23-79-109--23-79-128, 23-79-131--23-79-134, and 23-79-202--23-79-210, referring to insurance contracts;

(13) Sections 23-85-101--23-85-132, 23-85-134, and 23-85-136, referring to individual accident and health insurance;

(14) Sections 23-86-101--23-86-104, 23-86-106, 23-86-108--23-86-111, 23-86-113--23-86-117, 23-86-119, 23-86-120, § 23-86-201 et seq., § 23-86-301 et seq., and § 23-86-401 et seq., referring to blanket and group accident and health insurance; and

(15) Section 23-99-201 et seq., § 23-99-301 et seq., § 23-99-401 et seq., § 23-99-501 et seq., § 23-99-601 et seq., and § 23-99-701 et seq., referring to health care providers.

(b)(1) A health maintenance organization domiciled or applying to be domiciled in this state may elect to be subject to the Insurance Holding Company Regulatory Act, § 23-63-501 et seq., by:

(A) Written notice in its application at the time the health maintenance organization applies to be domiciled in Arkansas; or

(B) Providing thirty (30) days' prior written notice to the commissioner if the health maintenance organization was domiciled in Arkansas on March 22, 2007.

(2) An election under this subsection:

(A) Shall not be revoked;

(B) Requires that if a modification is required to be reported or filed under the Insurance Holding Company Regulatory Act, § 23-63-501 et seq., the health maintenance organization shall comply with the

provisions concerning notice of major modifications to the operation of the health maintenance organization under the Insurance Holding Company Regulatory Act, § 23-63-501 et seq., instead of the provisions concerning notice of major modifications to the operation of the health maintenance organization under § 23-76-107(d); and

(C) Does not affect the duty of a health maintenance organization to make any other filing required under § 23-76-107(d) that is not required by the Insurance Holding Company Regulatory Act, § 23-63-501 et seq.

(c) If a health maintenance organization does not elect to be subject to the Insurance Holding Company Regulatory Act, § 23-63-501 et seq., it shall be subject to § 23-69-142 regarding mergers, consolidations, and acquisitions.

SECTION 14. Arkansas Code § 23-79-141(f), concerning reimbursement levels for providers under the Children's Preventive Health Care Act, is amended to read as follows:

(f) Reimbursement, Coinsurance, and Deductibles.

(1) The benefits that are mandated by this section shall be reimbursed at levels established by the Insurance Commissioner ~~that shall not exceed those established for the same services under the Medicaid program in the State of Arkansas~~.

(2)(A) Benefits for recommended immunization services shall be exempt from any copayment, coinsurance, deductible, or dollar limit provisions in the accident and health insurance policy. This exemption shall be explicitly stated in the policy.

(B) All other children's preventive health care services will be subject to copayment, coinsurance, deductible, or dollar limit provisions in the accident and health insurance policy.

SECTION 15. Arkansas Code § 23-86-110(b), concerning coordination of benefit provisions in group health insurance policies, is amended to read as follows:

(b) This section ~~shall be applicable~~ applies to ~~all~~ group contracts of accident and health insurance sold, delivered, or issued for delivery, renewed, or offered for sale in this state~~, including those issued by~~

~~hospital and medical service corporations, except group contracts for employees whose employer pays one hundred percent (100%) of the premiums~~.

/s/Hyde