

1 **State of Arkansas**  
2 **80th General Assembly**  
3 **Regular Session, 1995**

# **A Bill**

**ACT 622 OF 1995**  
**HOUSE BILL 1722**

4 **By: Representatives Beatty, Maddox, J. Miller, Capps, Cunningham, Newman, M. Wilson,**  
5 **Purdom, Allen, and Young**

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## **For An Act To Be Entitled**

9 "AN ACT TO ADOPT THE RISK BASED CAPITAL LAW SO THAT THE  
10 ARKANSAS INSURANCE COMMISSIONER CAN BETTER REGULATE THE  
11 FINANCIAL SOLVENCY OF INSURANCE COMPANIES; AND FOR OTHER  
12 PURPOSES."

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14

### **Subtitle**

15 "RISK BASED CAPITAL ACT"

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

19

20 SECTION 1. Title 23 Chapter 63 of the Arkansas Code is hereby amended  
21 by adding new Subchapter 13 following the end of the existing Subchapter 12,  
22 to read as follows:

23 "23-63-1301. Title.

24 This Subchapter may be cited as the `Risk Based Capital Act'.

25 23-63-1302. Definitions.

26 As used in this Subchapter, these terms shall have the following  
27 meanings:

28 A. `Adjusted RBC Report' means an RBC report which has  
29 been adjusted by the commissioner in accordance with §23-63-1303(E).

30 B. `Corrective Order' means an order issued by the commissioner  
31 specifying corrective actions which the commissioner has determined are  
32 required.

33 C. `Domestic insurer' means any insurance company domiciled in this  
34 state.

35 D. `Foreign insurer' means any insurance company which is authorized  
36 to do business in this state pursuant to §23-63-201 et seq. but is not

1 domiciled in this state.

2 E. 'NAIC' means the National Association of Insurance Commissioners.

3 F. 'Life and/or disability insurer' means any insurance company  
4 authorized to transact a life and/or disability insurance business pursuant to  
5 §23-63-201 et seq.

6 G. 'Property and/or casualty insurer' means any insurance company  
7 authorized to transact a property and/or casualty insurance business pursuant  
8 to §23-63-201 et seq., but shall not include monoline mortgage guaranty  
9 insurers, financial guaranty insurers, and title insurers.

10 H. 'Negative Trend' means, with respect to a life and/or disability  
11 insurer, negative trend over a period of time, as determined in accordance  
12 with the 'Trend Test Calculation', included in the RBC Instructions.

13 I. 'RBC Instructions' means the RBC Report including risk-based  
14 capital instructions adopted by the NAIC, as such RBC Instructions may be  
15 amended by the NAIC from time to time in accordance with the procedures  
16 adopted by the NAIC.

17 J. 'RBC Level' means an insurer's Company Action Level RBC,  
18 Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory  
19 Control Level RBC where:

20 (1) 'Company Action Level RBC' means, with respect to any  
21 insurer, the product of 2.0 and its Authorized Control Level RBC;

22 (2) 'Regulatory Action Level RBC' means the product of 1.5 and  
23 its Authorized Control Level RBC;

24 (3) 'Authorized Control Level RBC' means the number determined  
25 under the risk-based capital formula in accordance with the RBC Instructions;

26 (4) 'Mandatory Control Level RBC' means the product of .70 and  
27 the Authorized Control Level RBC.

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

32 L. 'RBC Report' means the report required in §23-63-1303.

33 M. 'Total Adjusted Capital' means the sum of:

34 (1) An insurer's statutory capital and surplus as determined in  
35 accordance with the statutory accounting applicable to the annual financial

1 statements required to be filed under §23-63-216; and

2           (2) Such other items, if any, as the RBC Instructions may  
3 provide.

4           N. `Commissioner' means the Insurance Commissioner for the State of  
5 Arkansas unless the context requires otherwise.

6           23-63-1303. RBC Reports.

7           A. Every domestic insurer shall, on or prior to each March 1, prepare  
8 and submit to the commissioner a report of its RBC Levels as of the end of the  
9 calendar year just ended, in a form and containing such information as is  
10 required by the RBC Instructions. In addition, every domestic insurer shall  
11 file its RBC Report:

12           (1) With the NAIC in accordance with the RBC Instructions; and

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

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

19                   (b) The filing date.

20           B. A life and/or disability insurer's RBC shall be determined in  
21 accordance with the formula set forth in the RBC Instructions. The formula  
22 shall take into account and may adjust for the covariance between:

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

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

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

28           (4) All other business risks and such other relevant risks as are  
29 set forth in the RBC Instructions.

30 determined in each case by applying the factors in the manner set forth in the  
31 RBC Instructions.

32           C. A property and/or casualty insurer's RBC shall be determined in  
33 accordance with the formula set forth in the RBC Instructions. The formula  
34 shall take into account and may adjust for the covariance between:

35           (1) Asset risk;

1           (2) Credit risk;  
2           (3) Underwriting risk; and  
3           (4) All other business risks and such other relevant risks as are  
4 set forth in the RBC Instructions;  
5 determined in each case by applying the factors in the manner set forth in the  
6 RBC Instructions.

7           D. An excess of capital over the amount produced by the risk-based  
8 capital requirements contained in this Subchapter and the formulas, schedules  
9 and instructions referenced in this Subchapter is desirable in the business of  
10 insurance. Accordingly, insurers should seek to maintain capital above the  
11 RBC levels required by this Subchapter. Additional capital is used and useful  
12 in the insurance business and helps to secure an insurer against various risks  
13 inherent in, or affecting, the business of insurance and not accounted for or  
14 only partially measured by the risk-based capital requirements contained in  
15 this Subchapter.

16           E. If a domestic insurer files an RBC Report which in the judgment of  
17 the commissioner is inaccurate, then the commissioner shall adjust the RBC  
18 Report to correct the inaccuracy and shall notify the insurer of the  
19 adjustment. The notice shall contain a statement of the reason for the  
20 adjustment. An RBC Report as so adjusted is referred to as an Adjusted RBC  
21 Report.

22           23-63-1304. Company Action Level Event.

23           A. `Company Action Level Event' means any of the following events:

24           (1) The filing of an RBC Report by an insurer which indicates  
25 that:

26                       (a) The insurer's Total Adjusted Capital is greater than or  
27 equal to its Regulatory Action Level RBC but less than its Company Action  
28 Level RBC; or

29                       (b) If a life and/or disability insurer, the insurer has  
30 Total Adjusted Capital which is greater than or equal to its Company Action  
31 Level RBC but less than the product of its Authorized Control Level RBC and  
32 2.5 and has a negative trend;

33           (2) The notification by the commissioner to the insurer of an  
34 Adjusted RBC Report that indicates an event in paragraph (1) of this  
35 subsection, provided the insurer does not challenge the Adjusted RBC Report

1 under §23-63-1308; or

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

6           B. In the event of a Company Action Level Event, the insurer shall  
7 prepare and submit to the commissioner an RBC Plan which shall:

8           (1) Identify the conditions which contribute to the Company  
9 Action Level Event;

10           (2) Contain proposals of corrective actions which the insurer  
11 intends to take and would be expected to result in the elimination of the  
12 Company Action Level Event;

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

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

22           (5) Identify the quality of, and problems associated with, the  
23 insurer's business, including but not limited to its assets, anticipated  
24 business growth and associated surplus strain, extraordinary exposure to  
25 risk, mix of business and use of reinsurance, if any, in each case.

26           C. The RBC Plan shall be submitted:

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

29           (2) If the insurer challenges an Adjusted RBC Report pursuant to  
30 §23-63-1308, within forty-five (45) days after notification to the insurer  
31 that the commissioner has, after a hearing, rejected the insurer's challenge.

32           D. Within sixty (60) days after the submission by an insurer of an  
33 RBC Plan to the commissioner, the commissioner shall notify the insurer  
34 whether the RBC Plan shall be implemented or is, in the judgment of the  
35 commissioner, unsatisfactory. If the commissioner determines the RBC Plan

1 is unsatisfactory, the notification to the insurer shall set forth the reasons  
2 for the determination, and may set forth proposed revisions which will render  
3 the RBC Plan satisfactory, in the judgment of the commissioner. Upon  
4 notification from the commissioner, the insurer shall prepare a Revised RBC  
5 Plan, which may incorporate by reference any revisions proposed by the  
6 commissioner, and shall submit the Revised RBC Plan to the commissioner:

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

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

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

18       F. Every domestic insurer that files an RBC Plan or Revised RBC Plan  
19 with the commissioner shall file a copy of the RBC Plan or Revised RBC Plan  
20 with the insurance commissioner in any state in which the insurer is  
21 authorized to do business if:

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

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

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

30                   (b) The date on which the RBC Plan or Revised RBC Plan is  
31 filed under §23-63-1304C and §23-63-1304D.

32       23-63-1305. Regulatory Action Level Event.

33       A. 'Regulatory Action Level Event' means, with respect to  
34 any insurer, any of the following events:

35           (1) The filing of an RBC Report by the insurer which indicates

1 that the insurer's Total Adjusted Capital is greater than or equal to its  
2 Authorized Control Level RBC but less than its Regulatory Action Level RBC;

3 (2) The notification by the commissioner to an insurer of an  
4 Adjusted RBC Report that indicates the event in paragraph (1), provided the  
5 insurer does not challenge the Adjusted RBC Report under §23-63-1308;

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

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

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

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

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

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

22 (7) If, pursuant to §23-63-1308, the insurer challenges a  
23 determination by the commissioner under paragraph (6), the notification by  
24 the commissioner to the insurer that the commissioner has, after a hearing,  
25 rejected such challenge;

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

33 (9) If, pursuant to §23-63-1308, the insurer challenges a  
34 determination by the commissioner under paragraph (8), the notification by  
35 the commissioner to the insurer that the commissioner has, after a hearing,

1 rejected the challenge.

2           B.     In the event of a Regulatory Action Level Event the  
3 commissioner shall:

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

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

9                   (3)   Subsequent to the examination or analysis, issue a Corrective  
10 Order specifying such corrective actions as the commissioner shall determine  
11 are required.

12           C.     In determining corrective actions, the commissioner may take into  
13 account such factors as are deemed relevant with respect to the insurer based  
14 upon the commissioner's examination or analysis of the assets, liabilities  
15 and operations of the insurer, including, but not limited to, the results of  
16 any sensitivity tests undertaken pursuant to the RBC Instructions. The RBC  
17 Plan or Revised RBC Plan shall be submitted:

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

20                   (2)   If the insurer challenges an Adjusted RBC Report pursuant to  
21 §23-63-1308 and the challenge is not frivolous in the judgment of the  
22 commissioner within forty-five (45) days after the notification to the insurer  
23 that the commissioner has, after a hearing, rejected the insurer's challenge;  
24 or

25                   (3)   If the insurer challenges a Revised RBC Plan pursuant to  
26 §23-63-1308 and the challenge is not frivolous in the judgment of the  
27 commissioner, within forty-five (45) days after the notification to the  
28 insurer that the commissioner has, after a hearing, rejected the insurer's  
29 challenge.

30           D.     The commissioner may retain actuaries and investment experts and  
31 other consultants as may be necessary in the judgment of the commissioner to  
32 review the insurer's RBC Plan or Revised RBC Plan, examine or analyze the  
33 assets, liabilities and operations of the insurer and formulate the Corrective  
34 Order with respect to the insurer. The fees, costs and expenses relating to  
35 consultants shall be borne by the affected insurer or such other party as

1 directed by the commissioner.

2 23-63-1306. Authorized Control Level Event.

3 A. 'Authorized Control Level Event' means any of the following  
4 events:

5 (1) The filing of an RBC Report by the insurer which indicates  
6 that the insurer's Total Adjusted Capital is greater than or equal to its  
7 Mandatory Control Level RBC but less than its Authorized Control Level RBC;

8 (2) The notification by the commissioner to the insurer of an  
9 Adjusted RBC Report that indicates the event in paragraph (1), provided the  
10 insurer does not challenge the Adjusted RBC Report under §23-63-1308;

11 (3) If, pursuant to §23-63-1308, the insurer challenges an  
12 Adjusted RBC Report that indicates the event in paragraph (1), notification by  
13 the commissioner to the insurer that the commissioner has, after a hearing,  
14 rejected the insurer's challenge;

15 (4) The failure of the insurer to respond, in a manner  
16 satisfactory to the commissioner, to a Corrective Order provided the insurer  
17 has not challenged the Corrective Order under §23-63-1308; or

18 (5) If the insurer has challenged a Corrective Order under  
19 §23-63-1308 and the commissioner has, after a hearing, rejected the challenge  
20 or modified the Corrective Order, the failure of the insurer to respond, in a  
21 manner satisfactory to the commissioner, to the Corrective Order subsequent to  
22 rejection or modification by the commissioner.

23 B. In the event of an Authorized Control Level Event with respect to  
24 an insurer, the commissioner shall:

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

28 (2) If the commissioner deems it to be in the best interests of  
29 the policyholders and creditors of the insurer and of the public, take such  
30 actions as are necessary to cause the insurer to be placed under regulatory  
31 control pursuant to §23-68-101 et seq. In the event the commissioner takes  
32 such actions, the Authorized Control Level Event shall be deemed sufficient  
33 grounds for the commissioner to take action under §§23-68-101 et seq. and the  
34 commissioner shall have the rights, powers and duties with respect to the  
35 insurer as are set forth in §§23-68-101 et seq. In the event the commissioner

1 takes actions under this paragraph pursuant to an Adjusted RBC Report, the  
2 insurer shall be entitled to such protections as are afforded to insurers  
3 under the provisions of §§23-68-101 et seq. pertaining to summary proceedings.  
4 23-63-1307. Mandatory Control Level Event.

5 A. 'Mandatory Control Level Event', means any of the following  
6 events:

- 7 (1) The filing of an RBC Report which indicates that the  
8 insurer's Total Adjusted Capital is less than its Mandatory Control Level RBC;
- 9 (2) Notification by the commissioner to the insurer of an  
10 Adjusted RBC Report that indicates the event in paragraph (1), provided the  
11 insurer does not challenge the Adjusted RBC Report under §23-63-1308; or
- 12 (3) If, pursuant to §23-63-1308, the insurer challenges an  
13 Adjusted RBC Report that indicates the event in paragraph (1), notification by  
14 the commissioner to the insurer that the commissioner has, after a hearing,  
15 rejected the insurer's challenge.

16 B. In the event of a Mandatory Control Level Event:

- 17 (1) With respect to a life insurer, the commissioner shall take  
18 such actions as are necessary to place the insurer under regulatory control  
19 pursuant to §§23-68-101 et seq. In that event, the Mandatory Control Level  
20 Event shall be deemed sufficient grounds for the commissioner to take action  
21 under §§23-68-101 et seq., and the commissioner shall have the rights, powers  
22 and duties with respect to the insurer as are set forth in §§23-68-101 et seq.  
23 If the commissioner takes action pursuant to an Adjusted RBC Report, the  
24 insurer shall be entitled to the protections of §§23-68-101 et seq. pertaining  
25 to summary proceedings. Notwithstanding any of the foregoing, the  
26 commissioner may forego action for up to ninety (90) days after the Mandatory  
27 Control Level Event if the commissioner finds there is a reasonable  
28 expectation that the Mandatory Control Level Event may be eliminated within  
29 the ninety (90) day period.

- 30 (2) With respect to a property and casualty insurer, the  
31 commissioner shall take such actions as are necessary to place the insurer  
32 under regulatory control pursuant to §§23-68-101 et seq., or, in the case of  
33 an insurer which is writing no business and which is running-off its existing  
34 business, may allow the insurer to continue its run-off under the supervision  
35 of the commissioner. In either event, the Mandatory Control Level Event shall

1 be deemed sufficient grounds for the commissioner to take action under  
2 §§23-68-101 et seq. and the commissioner shall have the rights, powers and  
3 duties with respect to the insurer as are set forth in §§23-68-101 et seq. If  
4 the commissioner takes action pursuant to an Adjusted RBC Report, the insurer  
5 shall be entitled to the protections of §§23-68-101 et seq. pertaining to  
6 summary proceedings. Notwithstanding any of the foregoing, the commissioner  
7 may forego action for up to ninety (90) days after the Mandatory Control Level  
8 Event if the commissioner finds there is a reasonable expectation that the  
9 Mandatory Control Level Event may be eliminated within the ninety (90) day  
10 period.

11 23-63-1308. Hearings.

12 Upon any of the following the insurer shall have the right to a confidential  
13 Department hearing, on a record, at which the insurer may challenge any  
14 determination or action by the commissioner. The insurer shall notify the  
15 commissioner of its request for a hearing within five (5) days after the  
16 notification by the commissioner under Subsection A, B, C or D. Upon receipt  
17 of the insurer's request for a hearing, the commissioner shall set a date for  
18 the hearing, which date shall be no less than ten (10) days nor more than  
19 thirty (30) days after the date of the insurer's request.

20 A. Notification to an insurer by the commissioner of an Adjusted RBC  
21 Report; or

22 B. Notification to an insurer by the commissioner that:

23 1. The insurer's RBC Plan or Revised RBC Plan is unsatisfactory;  
24 and

25 2. Such notification constitutes a Regulatory Action Level Event  
26 with respect to such insurer; or

27 C. Notification to any insurer by the commissioner that the insurer has  
28 failed to adhere to its RBC Plan or Revised RBC Plan and that such failure has  
29 a substantial adverse effect on the ability of the insurer to eliminate the  
30 Company Action Level Event with respect to the insurer in accordance with its  
31 RBC Plan or Revised RBC Plan; or

32 D. Notification to an insurer by the commissioner of a Corrective Order  
33 with respect to the insurer.

34 23-63-1309. Confidentiality; Prohibition on Announcements, Prohibition  
35 on Use in Ratemaking.

1           A.     All RBC Reports, to the extent the information therein is not  
2 required to be set forth in a publicly available annual statement schedule and  
3 RBC Plans, including the results or report of any examination or analysis of  
4 an insurer performed pursuant hereto and any Corrective Order issued by the  
5 commissioner pursuant to examination or analysis, with respect to any domestic  
6 insurer or foreign insurer which are filed with the commissioner constitute  
7 information that might be damaging to the insurer if made available to its  
8 competitors, and therefore shall be kept confidential by the commissioner.  
9 This information shall not be made public and/or be subject to subpoena, other  
10 than by the commissioner and then only for the purpose of enforcement actions  
11 taken by the commissioner pursuant to this Subchapter or any other provision  
12 of the insurance laws of this state.

13           B.     It is the judgment of the legislature that the comparison of an  
14 insurer's Total Adjusted Capital to any of its RBC Levels is a regulatory tool  
15 which may indicate the need for possible corrective action with respect to the  
16 insurer, and is not intended as a means to rank insurers generally.  
17 Therefore, except as otherwise required under the provisions of this  
18 Subchapter, the making, publishing, disseminating, circulating or placing  
19 before the public, or causing, directly or indirectly to be made, published,  
20 disseminated, circulated or placed before the public, in a newspaper, magazine  
21 or other publication, or in the form of a notice, circular, pamphlet, letter  
22 or poster, or over any radio or television station, or in any other way, an  
23 advertisement, announcement or statement containing an assertion,  
24 representation or statement with regard to the RBC Levels of any insurer, or  
25 of any component derived in the calculation, by any insurer, agent, broker or  
26 other person engaged in any manner in the insurance business would be  
27 misleading and is therefore prohibited; provided, however, that if any  
28 materially false statement with respect to the comparison regarding an  
29 insurer's Total Adjusted Capital to its RBC Levels or any of them or an  
30 inappropriate comparison of any other amount to the insurers RBC Levels is  
31 published in any written publication and the insurer is able to demonstrate to  
32 the commissioner with substantial proof the falsity of such statement, or the  
33 inappropriateness, as the case may be, then the insurer may publish an  
34 announcement in a written publication if the sole purpose of the announcement  
35 is to rebut the materially false statement.

1 C. It is the further judgment of the legislature that the RBC  
2 Instructions, RBC Reports, Adjusted RBC Reports, RBC Plans and Revised RBC  
3 Plans are intended solely for use by the commissioner in monitoring the  
4 solvency of insurers and the need for possible corrective action with respect  
5 to insurers and shall not be used by the commissioner for ratemaking nor  
6 considered or introduced as evidence in any rate proceeding nor used by the  
7 commissioner to calculate or derive any elements of an appropriate premium  
8 level or rate of return for any line of insurance which an insurer or any  
9 affiliate is authorized to write.

10 23-63-1310. Supplemental Provisions; Rules; Exemption.

11 A. The provisions of this Subchapter are supplemental to any other  
12 provisions of the laws of this state, and shall not preclude or limit any  
13 other powers or duties of the commissioner under such laws, including, but not  
14 limited to, §§23-68-101, et seq.

15 B. The commissioner may adopt reasonable rules necessary for the  
16 implementation of this Subchapter.

17 C. The commissioner may exempt from the application of this  
18 Subchapter any domestic insurer which:

- 19 (1) Writes direct business only in this state;  
20 (2) Writes direct annual premiums of \$35,000,000 or less; and  
21 (3) Assumes no reinsurance in excess of five percent (5%) of  
22 direct premium written.

23 D. The commissioner may exempt from the application of this  
24 Subchapter any of the following entities:

- 25 (1) Hospital and/or medical service corporations;  
26 (2) Health maintenance organizations;  
27 (3) Fraternal benefit societies; or  
28 (4) Farmers' mutual aid associations.

29 23-63-1311. Foreign Insurers.

30 A. Any foreign insurer shall, upon the written request of the  
31 commissioner, submit to the commissioner an RBC Report as of the end of the  
32 calendar year just ended the later of:

- 33 (1) The date an RBC Report would be required to be filed by a  
34 domestic insurer under this Subchapter; or  
35 (2) Fifteen (15) days after the request is received by the

1 foreign insurer. Any foreign insurer shall, at the written request of the  
2 commissioner, promptly submit to the commissioner a copy of any RBC Plan that  
3 is filed with the insurance commissioner of any other state.

4       B.     In the event of a Company Action Level Event, Regulatory Action  
5 Level Event or Authorized Control Level Event with respect to any foreign  
6 insurer as determined under the RBC statute applicable in the state of  
7 domicile of the insurer or, if no RBC statute is in force in that state, under  
8 the provisions of this Subchapter, if the insurance commissioner of the state  
9 of domicile of the foreign insurer fails to require the foreign insurer to  
10 file an RBC Plan in the manner specified under that states RBC statute or, if  
11 no RBC statute is in force in that state, under §23-63-1304 hereof, the  
12 commissioner may require the foreign insurer to file an RBC Plan with the  
13 commissioner. In such event, the failure of the foreign insurer to file an  
14 RBC Plan with the commissioner shall be grounds to order the insurer to cease  
15 and desist from writing new insurance business in this state.

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

25       23-63-1312. Immunity.

26 There shall be no liability on the part of, and no cause of action shall  
27 arise against, the commissioner or the insurance department or its employees  
28 or agents for any action taken by them in the performance of their powers and  
29 duties under this Subchapter.

30       23-63-1313. Rules and Regulations.

31 The commissioner may adopt reasonable rules and regulations for the  
32 implementation and administration of the provisions of this Subchapter.

33       23-63-1314. Penalties and Liabilities.

34       (a) If the commissioner finds after a hearing conducted in accordance  
35 with §§23-61-301, et seq. that any insurer or person has violated any

1 provision(s) of this Subchapter, the commissioner may order:

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

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

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

10          (c) Nothing contained in this section shall affect the right of the  
11 commissioner to impose any other penalties provided for in the insurance laws.

12           23-63-1315. Severability Clause.

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

18           23-63-1316. Notices.

19 All notices by the commissioner to an insurer which may result in regulatory  
20 action hereunder shall be effective upon dispatch if transmitted by registered  
21 or certified mail, or in the case of any other transmission shall be  
22 effective upon the insurer's receipt of such notice."

23

24           SECTION 2. All provisions of this Act of a general and permanent nature  
25 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
26 Revision Commission shall incorporate the same in the Code.

27

28           SECTION 3. All laws and parts of laws in conflict with this Act are  
29 hereby repealed.

30

31           SECTION 4. EMERGENCY. It is hereby found and determined by the General  
32 Assembly of the State of Arkansas that the present insurance laws are not  
33 sufficient to protect the Arkansas insurance buying public. It is determined  
34 that it is in the best interests of the State of Arkansas that the laws in  
35 this Act be adopted immediately so that the Arkansas Insurance Department can

1 better regulate the insurance industry. Therefore, an emergency is hereby  
2 declared to exist and this Act being necessary for the immediate preservation  
3 of the public peace, health and safety shall be in full force and effect from  
4 and after its passage and approval.

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*/s/Rep. Beatty, et al*

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APPROVED: 3-14-95

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