

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

As Engrossed: S3/15/11

A Bill

HOUSE BILL 1806

5 By: Representative Hyde
6 By: Senator Teague
7

For An Act To Be Entitled

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

Subtitle

31 TO ENACT THE STATE INSURANCE DEPARTMENT'S
32 GENERAL OMNIBUS BILL.
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36 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:



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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~~

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

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

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

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

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

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

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

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

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

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

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

25
26 SECTION 3. Arkansas Code § 23-63-216(a), concerning filing of annual
27 financial statements, is amended to read as follows:

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

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

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

1 (B) "Property And Casualty Annual Statement Blank";
2 (C) "Title Insurance Annual Statement Blank";
3 (D) "Annual Statement Blank for Health" for use by
4 hospital, medical, and dental service or indemnity corporations;
5 (E) "Fraternal Annual Statement Blank";
6 (F) "Annual Statement Blank for Health" for health
7 insurers or health maintenance organizations and others; or
8 (G) Other National Association of Insurance Commissioners'
9 convention blank as appropriate.

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

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

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

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

25 ~~(7)~~ (7) The commissioner ~~is authorized to~~ may allow a life insurer
26 or property and casualty insurer whose insurance premiums and required
27 statutory reserves for accident and health insurance constitute at least
28 ninety-five percent (95%) of its total premium considerations or total
29 statutory required reserves, respectively, to file the "Annual Statement
30 Blank for Health" as its annual statement with the companion quarterly
31 statement forms.

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

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

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

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

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

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

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

21 ~~(9)~~(10) At the time of filing, the insurer shall pay the fee for
22 filing its annual statement as prescribed by § 23-61-401.

23 ~~(10)~~(11) In addition to information called for and furnished in
24 connection with its annual statement, an insurer shall furnish to the
25 commissioner as soon as reasonably possible such information with respect to
26 any of its transactions or affairs as the commissioner ~~may from time to time~~
27 ~~request~~ requests in writing.

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

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

3
4 SECTION 4. Arkansas Code Title 23, Chapter 63, Subchapter 13 is
5 amended to read as follows:

6 23-63-1301. Title.

7 This subchapter shall be known and may be cited as the “Risk-Based
8 Capital Act”.

9
10 23-63-1302. Definitions.

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

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

16 ~~B.(2)~~ “Corrective order” means an order issued by the commissioner
17 specifying corrective actions ~~which that~~ the commissioner has determined are
18 ~~required,~~ needed;

19 ~~C.(3)~~ “Domestic insurer” means ~~any~~ an insurance company domiciled in
20 this state-;

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

24 ~~E.~~ “NAIC” means the National Association of Insurance Commissioners-.

25 ~~F.(5)~~ “Life ~~and/or~~ or accident and health insurer” means:

26 (A) ~~any~~ An insurance company authorized to transact a life
27 ~~and/or~~ or accident and health insurance business ~~pursuant to~~ under § 23-63-
28 201 et seq.-; or

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

31 (6) “NAIC” means the National Association of Insurance Commissioners;

32 ~~G.~~ “Property or casualty insurer” means ~~any insurance company~~
33 ~~authorized to transact property or casualty insurance business pursuant to~~
34 ~~§ 23-63-201 et seq., including farmers’ mutual aid associations, and~~
35 ~~fraternal benefit societies, but shall not include monoline mortgage~~
36 ~~guaranty insurers, financial guaranty insurers, and title insurers.~~

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

5 (8) "Property or casualty insurer" means:

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

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

10 (i) Monoline mortgage guaranty insurers;

11 (ii) Financial guaranty insurers; or

12 (iii) Title insurers;

13 ~~I.~~(9) "~~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. "RBC" means risk-based capital;

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

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

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

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

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

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

1 RBC;

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

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

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

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

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

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

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

18
19 23-63-1303. RBC Reports.

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

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

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

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

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

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

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

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

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

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

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

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

18 (1) Asset risk;

19 (2) Credit risk;

20 (3) Underwriting risk; and

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

24 ~~D.(d)~~ An excess of capital over the amount produced by the risk-based
 25 capital requirements contained in this subchapter and the formulas,
 26 schedules, and instructions referenced in this subchapter ~~is~~ are desirable
 27 in the business of insurance. ~~Accordingly, insurers~~ Insurers should seek to
 28 maintain capital above the RBC levels ~~required~~ needed by this subchapter.
 29 Additional capital is used and useful in the insurance business and helps to
 30 secure an insurer against various risks inherent in, or affecting, the
 31 business of insurance and not accounted for or only partially measured by
 32 the risk-based capital requirements contained in this subchapter.

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

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

3
4 23-63-1304. Company Action Level Event.

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

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

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

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

17 (C) For the year ending December 31, 2011, and each year
18 following, if a property and casualty insurer has total adjusted capital
19 that is more than or equal to its Company Action Level RBC but less than
20 the product of its Authorized Control Level RBC and three (3) and triggers
21 the trend test according to the trend test calculation included in the
22 Property and Casualty RBC Instructions;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 commissioner; or

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

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

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

15 (1) ~~Such~~ The state has an RBC provision substantially similar to
16 ~~§ 23-63-1309(A)~~ § 23-63-1309(a); and

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

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

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

26
27 23-63-1305. Regulatory Action Level Event.

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

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

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

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

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

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

11 (5) The failure of the insurer to submit an RBC Plan to the
12 commissioner within the time period ~~set forth~~ stated in ~~§ 23-63-1304(C)~~ §
13 23-63-1304(c);

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

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

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

21 (7) If, ~~pursuant to~~ under § 23-63-1308, the insurer challenges a
22 determination by the commissioner under ~~paragraph (6)~~ subdivision (a)(6) of
23 this section, the notification by the commissioner to the insurer that the
24 commissioner, after a hearing, has, ~~after a hearing~~, rejected ~~such the~~
25 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
28 if ~~such the~~ failure has a substantial adverse effect on the ability of the
29 insurer to eliminate the Company Action Level Event ~~in accordance with~~
30 according to its RBC Plan or Revised RBC Plan and the commissioner has so
31 stated in the notification, ~~provided if~~ if the insurer has not challenged the
32 determination under § 23-63-1308; or

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

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

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

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

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

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

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

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

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

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

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

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

3
4 23-63-1306. Authorized Control Level Event.

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

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

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

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

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

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

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

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

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

1 public, take ~~such the~~ actions ~~as are~~ necessary to cause the insurer to be
 2 placed under regulatory control ~~pursuant to~~ under § 23-68-101 et seq. In the
 3 event the commissioner takes ~~such the~~ actions, the Authorized Control Level
 4 Event ~~shall be deemed~~ is sufficient grounds for the commissioner to take
 5 action under § 23-68-101 et seq., and the commissioner shall have the rights,
 6 powers, and duties with respect to the insurer as ~~are set forth~~ stated in §
 7 23-68-101 et seq. ~~In the event~~ If the commissioner takes ~~actions~~ action
 8 under this ~~paragraph pursuant to~~ section under an Adjusted RBC Report, the
 9 insurer ~~shall be~~ is entitled to ~~such the~~ protections ~~as are afforded~~ provided
 10 to insurers under ~~the provisions of~~ § 23-68-101 et seq. pertaining to summary
 11 proceedings.

12
 13 23-63-1307. Mandatory Control Level Event.

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

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

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

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

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

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

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

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

24
 25 23-63-1308. Hearings.

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

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

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

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

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

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

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

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

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

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

19
20 23-63-1309. Confidentiality -- Prohibition on announcements --
21 ~~prohibition~~ Prohibition on use in ratemaking.

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

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

1 the comparison of an insurer's ~~Total Adjusted Capital~~ total adjusted capital
 2 to ~~any~~ of its RBC Levels is a regulatory tool ~~which~~ that may ~~indicate~~ show
 3 the need for possible corrective action with respect to the insurer, and is
 4 not intended as a means to rank insurers generally. ~~Therefore, except~~ Except
 5 as otherwise required under ~~the provisions of~~ this subchapter, the making,
 6 publishing, disseminating, circulating, or placing before the public, or
 7 causing, directly or indirectly to be made, published, ~~disseminated~~
 8 distributed, circulated, or placed before the public, in a newspaper,
 9 magazine, or other publication, or in the form of a notice, circular,
 10 pamphlet, letter, or poster, or over ~~any~~ a radio or television station, or in
 11 any other way, an advertisement, announcement, or statement containing an
 12 assertion, representation, or statement with regard to the RBC Levels of ~~any~~
 13 an insurer, or of any component derived in the calculation, by ~~any~~ an
 14 insurer, agent, broker, or other person engaged in any ~~manner~~ way in the
 15 insurance business would be misleading and is ~~therefore prohibited, provided,~~
 16 ~~however, that if.~~

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

26 ~~G.(c)~~ It is the further judgment of the ~~legislature~~ General Assembly
 27 that the RBC Instructions, RBC Reports, Adjusted RBC Reports, RBC Plans, and
 28 Revised RBC Plans;

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

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

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

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

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

3
4 23-63-1310. Supplemental provisions -- Rules -- Exemption.

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

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

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

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

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

18 (3) Assumes no reinsurance ~~in excess of~~ more than five percent
19 (5%) of direct premium written.

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

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

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

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

25
26 23-63-1311. Foreign insurers.

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

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

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

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

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

23
24 23-63-1312. Immunity.

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

29
30 23-63-1313. ~~Rules and regulations~~ Authority of commissioner to adopt
31 rules.

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

35
36 23-63-1314. Penalties and liabilities.

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

5 (1) For each separate violation, a penalty ~~in an amount~~ of one
 6 thousand dollars ~~(\$1,000.00)~~ (\$1,000) or, if the commissioner has found
 7 willful misconduct or willful violation, a penalty of five thousand dollars
 8 ~~(\$5,000.00)~~ (\$5,000); and

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

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

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

17
 18 ~~23-63-1315. Severability clause.~~

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

24
 25 23-63-1316. Notices.

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

31
 32 SECTION 5. Arkansas Code Title 23, Chapter 63, Subchapter 15 is
 33 amended to read as follows:

34 23-63-1501. Definitions.

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

1 (1) "Adjusted RBC report" means an RBC report ~~which~~ that has
2 been adjusted by the Insurance Commissioner in accordance with § 23-63-
3 1502(d);

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

7 (3) "Domestic health organization" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

10 ~~(B)(D)~~ “Regulatory action level RBC” means the product of
 11 ~~1.5~~ one and five-tenths (1.5) and its authorized control level RBC;

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

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

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

21 (11) “Total adjusted capital” means the sum of:

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

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

28
 29 23-63-1502. RBC reports.

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

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

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

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

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

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

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

16 (1) Asset risk;

17 (2) Credit risk;

18 (3) Underwriting risk; and

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

21 (c) An excess of capital, ~~i.e.,~~ including net worth, over the amount
22 produced by the risk-based capital requirements contained in this subchapter
23 and the formulas, schedules, and instructions referenced in this subchapter
24 is desirable in the business of health insurance. Accordingly, health
25 organizations should seek to maintain capital above the RBC levels required
26 by this subchapter. Additional capital is ~~used and~~ useful in the insurance
27 business and helps to secure a health organization against various risks
28 inherent in, or affecting, the business of insurance and not accounted for
29 or only partially measured by the risk-based capital requirements contained
30 in this subchapter.

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

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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

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

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

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

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

15 (c) The RBC plan shall be submitted:

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

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

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

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

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

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

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

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

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

16 (1) The state has an RBC provision substantially similar to §
17 23-63-1508(a); and

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

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

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

26
27 23-63-1504. Regulatory action level event.

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

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

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

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

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

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

11 (5) The failure of the health organization to submit an RBC plan
12 to the commissioner within the time ~~period set forth~~ stated in § 23-63-
13 1503(c);

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

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

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

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

27 (8) ~~Notification~~ The notification by the commissioner to the
28 health organization that the health organization has failed to adhere to its
29 RBC plan or revised RBC plan, but only if the failure has a substantial
30 adverse effect on the ability of the health organization to eliminate the
31 company action level event ~~in accordance with~~ according to its RBC plan or
32 revised RBC plan and the commissioner has so stated in the notification,
33 provided the health organization has not challenged the determination under
34 § 23-63-1507; or

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

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

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

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

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

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

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

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

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

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

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

1 analyze the assets, liabilities, and operations, including contractual
2 relationships, of the health organization and formulate the corrective order
3 with respect to the health organization. The fees, costs, and expenses
4 relating to consultants shall be borne by the affected health organization
5 or ~~such~~ the other party as directed by the commissioner.
6

7 23-63-1505. Authorized control level event.

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

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

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

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

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

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

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

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

1 level event has occurred; or

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

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

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

18
19 23-63-1506. Mandatory control level event.

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

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

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

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

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

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

13
 14 23-63-1507. Hearings.

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

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

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

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

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

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

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

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

6
7 23-63-1508. Confidentiality and prohibition on announcements -
8 Prohibition on use in ratemaking.

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

23 (b)(1) It is the judgment of the General Assembly that the comparison
24 of a health organization's total adjusted capital to any of its RBC levels
25 is a regulatory tool ~~which~~ that may indicate the need for corrective action
26 with respect to the health organization, and is not intended as a means to
27 rank health organizations generally. ~~Therefore, except as otherwise~~
28 ~~required under the provisions of this subchapter, the~~ The making,
29 publishing, disseminating, circulating, or placing before the public, or
30 causing, directly or indirectly to be made, published, disseminated,
31 circulated, or placed before the public, in a newspaper, magazine, or other
32 publication, or in the form of a notice, circular, pamphlet, letter, or
33 poster, or over a radio or television station, or in any other way, of an
34 advertisement, announcement, or statement containing an assertion,
35 representation, or statement with regard to the RBC levels of ~~any~~ a health
36 organization, or of ~~any~~ a component derived in the calculation, by ~~any~~ a

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

4 (2) ~~Provided, however~~ However, ~~that if any~~ if a materially false
5 statement with respect to the comparison regarding a health organization's
6 total adjusted capital to its RBC levels, or any of them, or an
7 inappropriate comparison of any other amount to the health organization's
8 RBC levels is published in ~~any a~~ a written publication and the health
9 organization is able to demonstrate to the commissioner with substantial
10 proof the falsity or inappropriateness of the statement, ~~or the~~
11 ~~inappropriateness, as the case may be, then~~ the health organization may
12 publish an announcement in a written publication if the sole purpose of the
13 announcement is to rebut the materially false statement.

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

24
25 23-63-1509. Supplemental provisions – Rules – Exemption.

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

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

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

34 (1) a A domestic health organization that:

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

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

1 of direct premium written; and

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

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

6
7 23-63-1510. Foreign health organizations.

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

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

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

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

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

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

1 ~~rehabilitation and liquidation~~ the Uniform Insurers Liquidation Act, § 23-
2 68-101 et seq., with respect to the liquidation of property of foreign
3 health organizations found in this state, and the occurrence of the
4 mandatory control level event ~~shall be~~ is considered adequate grounds for
5 the application.

6
7 23-63-1511. Immunity.

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

12
13 23-63-1512. Notices.

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

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

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

22
23 23-63-1513. Penalties and liabilities.

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

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

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

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

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

1
2 SECTION 6. Arkansas Code § 23-64-216(e), concerning the suspension and
3 revocation of producer licenses, is amended to read as follows:

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

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

11 (B) Issue an emergency cease and desist order.

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

14
15 SECTION 7. Arkansas Code § 23-64-301 is amended to read as follows:
16 23-64-301. Continuing education required.

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

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

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

28 (A) ~~Life insurance;~~

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

30 (C) ~~Property insurance;~~

31 (D) ~~Casualty insurance;~~

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

33 (F) ~~Personal lines insurance.~~

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

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

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

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

10
11 SECTION 8. Arkansas Code § 23-64-508(b), concerning producer licenses
12 of nonresidents, is amended to read as follows:

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

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

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

24
25 SECTION 9. Arkansas Code § 23-64-512(a)(2), concerning grounds for
26 producer discipline, is amended to read as follows:

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

31 (A) A law; or

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

33 (i) The commissioner;

34 (ii) Another state's insurance commissioner; or

35 (iii) A court of competent jurisdiction.

36

1 SECTION 10. Arkansas Code § 23-69-138 is amended to read as follows:
2 23-69-138. Impairment of capital or assets.

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

5 (i) Determine the amount of the deficiency; and

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

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

11 (2) For the purposes of this section, "insolvent" or
12 "impairment" ~~shall be defined as those terms are used~~ means the same as
13 defined in the Uniform Insurers Liquidation Act, §§ 23-68-101, 23-68-102(2)-
14 (13), 23-68-104, 23-68-105, 23-68-113, and 23-68-115 -- 23-68-120.

15 (b) The deficiency may be made good:

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

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

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

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

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

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

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

33 (A) The insurer shall be deemed insolvent; and

34 (B) The commissioner shall institute delinquency
35 proceedings against the insurer under the Uniform Insurers Liquidation Act,
36 §§ 23-68-101, 23-68-102(2)-(13), 23-68-104, 23-68-105, 23-68-113, and 23-68-

1 115 -- 23-68-120.

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

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

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

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

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

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

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

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

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

34
35 SECTION 11. Arkansas Code § 23-69-119 is amended to read as follows:
36 23-69-119. Bylaws - Mutual insurers.

1 (a)(1) A domestic mutual insurer shall have bylaws consistent with §
2 23-69-111(b)(7).

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

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

8 (b) The bylaws shall provide:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15
16 SECTION 12. Arkansas Code § 23-75-102 is amended to read as follows:

17 23-75-102. Applicability of other ~~provisions~~ laws.

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

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

23 (2) ~~Sections~~ Section 23-61-101 et seq., § 23-61-201 et seq., and
24 § 23-61-301 et seq., referring to the Insurance Commissioner;

25 (3) Sections 23-63-102 -- 23-63-104, 23-63-201 -- 23-63-216, and
26 23-63-301 -- 23-63-304, referring to registration of registered agents for
27 service of process;

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

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

31 ~~(6)~~ (6) Section 23-64-101 et seq., referring to
32 insurance producers, agents, brokers, and adjusters;

33 ~~(7)~~ (7) Section 23-66-201 et seq., and §§ 23-66-301 --
34 23-66-306, 23-66-308 -- 23-66-311, 23-66-313, and 23-66-314, referring to
35 trade practices and frauds;

36 ~~(8)~~ (8) Section 23-63-601 et seq. and §§ 23-84-101 --

1 23-84-111, referring to assets and liabilities;

2 ~~(8)~~(9) ~~Sections~~ Section 23-68-101 et seq., referring to
3 rehabilitation and liquidation;

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

5 ~~(9)~~(11) Sections 23-85-101 -- 23-85-131, referring to accident
6 and health insurance policies;

7 ~~(10)~~(12) Sections 23-86-101 -- 23-86-104, 23-86-106, 23-86-108,
8 and 23-86-109, referring to group and blanket accident and health insurance;

9 ~~(11)~~(13) Sections 23-79-101 -- 23-79-107, 23-79-109 -- 23-79-
10 128, 23-79-131 -- 23-79-134, and 23-79-202 -- 23-79-210, referring to
11 insurance contracts;

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

14 ~~(13)~~(15) Section 23-69-156, referring to extinguishment of
15 unused corporate charters.

16
17 SECTION 13. Arkansas Code § 23-76-104 is amended to read as follows:

18 23-76-104. Arkansas Insurance Code sections applicable to health
19 maintenance organizations.

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

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

26 (2) Section 23-61-101 et seq., § 23-61-201 et seq., and § 23-61-
27 301 et seq., referring to the Insurance Commissioner;

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

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

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

1 (6) Section 23-64-101 et seq., ~~and~~ § 23-64-201 et seq., and §
2 23-64-501 et seq. referring to agents, brokers, solicitors, and adjusters;

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

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

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

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

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

13 (12) Sections 23-79-101--23-79-107, 23-79-109--23-79-128, 23-79-
14 131--23-79-134, and 23-79-202--23-79-210, referring to insurance contracts;

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

17 (14) Sections 23-86-101--23-86-104, 23-86-106, 23-86-108--23-86-
18 111, 23-86-113--23-86-117, 23-86-119, 23-86-120, § 23-86-201 et seq., § 23-
19 86-301 et seq., and § 23-86-401 et seq., referring to blanket and group
20 accident and health insurance; and

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

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

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

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

32 (2) An election under this subsection:

33 (A) Shall not be revoked;

34 (B) Requires that if a modification is required to be
35 reported or filed under the Insurance Holding Company Regulatory Act, § 23-
36 63-501 et seq., the health maintenance organization shall comply with the

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

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

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

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

18 (f) Reimbursement, Coinsurance, and Deductibles.

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

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

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

30
31 SECTION 15. Arkansas Code § 23-86-110(b), concerning coordination of
32 benefit provisions in group health insurance policies, is amended to read as
33 follows:

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

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

3
4 */s/Hyde*

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7 **APPROVED: 03/29/2011**
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