

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Representatives Beatty, Maddox, J. Miller, Capps, Cunningham, Newman, M.
5 Wilson, Purdom, Allen, and Young
6
7

A Bill

HOUSE BILL 1722

For An Act To Be Entitled

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

Subtitle

"RISK BASED CAPITAL ACT"

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

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

"23-63-1301. Title.

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

23-63-1302. Definitions.

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

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

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

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

D. `Foreign insurer` means any insurance company which is authorized

1 to do business in this state pursuant to §23-63-201 et seq. but is not
2 domiciled in this state.

3 E. `NAIC' means the National Association of Insurance Commissioners.

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

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

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

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

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

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

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

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

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

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

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

34 M. `Total Adjusted Capital' means the sum of:

35 (1) An insurer's statutory capital and surplus as determined in

1 accordance with the statutory accounting applicable to the annual financial
2 statements required to be filed under §23-63-216; and

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

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

7 23-63-1303. RBC Reports.

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

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

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

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

20 (b) The filing date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (b) If a life and/or disability insurer, the insurer has
31 Total Adjusted Capital which is greater than or equal to its Company Action
32 Level RBC but less than the product of its Authorized Control Level RBC and
33 2.5 and has a negative trend;

34 (2) The notification by the commissioner to the insurer of an
35 Adjusted RBC Report that indicates an event in paragraph (1) of this

1 subsection, provided the insurer does not challenge the Adjusted RBC Report
2 under §23-63-1308; or

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

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

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

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

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

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

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

28 C. The RBC Plan shall be submitted:

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

31 (2) If the insurer challenges an Adjusted RBC Report pursuant to
32 §23-63-1308, within forty-five (45) days after notification to the insurer
33 that the commissioner has, after a hearing, rejected the insurer's challenge.

34 D. Within sixty (60) days after the submission by an insurer of an
35 RBC Plan to the commissioner, the commissioner shall notify the insurer

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

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

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

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

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

24 (1) Such state has an RBC provision substantially similar to
25 §23-63-1309A; and

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

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

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

34 23-63-1305. Regulatory Action Level Event.

35 A. 'Regulatory Action Level Event' means, with respect to

1 any insurer, any of the following events:

2 (1) The filing of an RBC Report by the insurer which indicates
3 that the insurer's Total Adjusted Capital is greater than or equal to its
4 Authorized Control Level RBC but less than its Regulatory Action Level RBC;

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

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

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

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

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

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

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

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

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

35 (9) If, pursuant to §23-63-1308, the insurer challenges a

1 determination by the commissioner under paragraph (8), the notification by
2 the commissioner to the insurer that the commissioner has, after a hearing,
3 rejected the challenge.

4 B. In the event of a Regulatory Action Level Event the
5 commissioner shall:

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

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

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

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

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

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

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

32 D. The commissioner may retain actuaries and investment experts and
33 other consultants as may be necessary in the judgment of the commissioner to
34 review the insurer's RBC Plan or Revised RBC Plan, examine or analyze the
35 assets, liabilities and operations of the insurer and formulate the

1 Corrective Order with respect to the insurer. The fees, costs and expenses
2 relating to consultants shall be borne by the affected insurer or such other
3 party as directed by the commissioner.

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

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

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

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

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

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

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

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

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

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

1 commissioner shall have the rights, powers and duties with respect to the
2 insurer as are set forth in §§23-68-101 et seq. In the event the
3 commissioner takes actions under this paragraph pursuant to an Adjusted RBC
4 Report, the insurer shall be entitled to such protections as are afforded to
5 insurers under the provisions of §§23-68-101 et seq. pertaining to summary
6 proceedings.

7 23-63-1307. Mandatory Control Level Event.

8 A. `Mandatory Control Level Event', means any of the following
9 events:

10 (1) The filing of an RBC Report which indicates that the
11 insurer's Total Adjusted Capital is less than its Mandatory Control Level
12 RBC;

13 (2) Notification by the commissioner to the insurer of an
14 Adjusted RBC Report that indicates the event in paragraph (1), provided the
15 insurer does not challenge the Adjusted RBC Report under §23-63-1308; or

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

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

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

34 (2) With respect to a property and casualty insurer, the
35 commissioner shall take such actions as are necessary to place the insurer

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

15 23-63-1308. Hearings.

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

24 A. Notification to an insurer by the commissioner of an Adjusted RBC
25 Report; or

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

27 1. The insurer's RBC Plan or Revised RBC Plan is unsatisfactory;
28 and

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

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

1 D. Notification to an insurer by the commissioner of a Corrective
2 Order with respect to the insurer.

3 23-63-1309. Confidentiality; Prohibition on Announcements, Prohibition
4 on Use in Ratemaking.

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

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

1 demonstrate to the commissioner with substantial proof the falsity of such
2 statement, or the inappropriateness, as the case may be, then the insurer may
3 publish an announcement in a written publication if the sole purpose of the
4 announcement is to rebut the materially false statement.

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

14 23-63-1310. Supplemental Provisions; Rules; Exemption.

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

19 B. The commissioner may adopt reasonable rules necessary for the
20 implementation of this Subchapter.

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

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

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

- 29 (1) Hospital and/or medical service corporations;
30 (2) Health maintenance organizations;
31 (3) Fraternal benefit societies; or
32 (4) Farmers' mutual aid associations.

33 23-63-1311. Foreign Insurers.

34 A. Any foreign insurer shall, upon the written request of the
35 commissioner, submit to the commissioner an RBC Report as of the end of the

1 calendar year just ended the later of:

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

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

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

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

29 23-63-1312. Immunity.

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

34 23-63-1313. Rules and Regulations.

35 The commissioner may adopt reasonable rules and regulations for the

1 implementation and administration of the provisions of this Subchapter.

2 23-63-1314. Penalties and Liabilities.

3 (a) If the commissioner finds after a hearing conducted in accordance
4 with §§23-61-301, et seq. that any insurer or person has violated any
5 provision(s) of this Subchapter, the commissioner may order:

6 (1) For each separate violation, a penalty in an amount of one
7 thousand dollars (\$1,000.00) or, if the commissioner has found willful
8 misconduct or willful violation, five thousand dollars (\$5,000.00); 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 subsection (a) of this section shall be subject to judicial review
13 pursuant to §23-61-307.

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

17 23-63-1315. Severability Clause.

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

23 23-63-1316. Notices.

24 All notices by the commissioner to an insurer which may result in regulatory
25 action hereunder shall be effective upon dispatch if transmitted by
26 registered or certified mail, or in the case of any other transmission shall
27 be effective upon the insurer's receipt of such notice."
28

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

32

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

35

1 SECTION 4. EMERGENCY. It is hereby found and determined by the
2 General Assembly of the State of Arkansas that the present insurance laws are
3 not sufficient to protect the Arkansas insurance buying public. It is
4 determined that it is in the best interests of the State of Arkansas that the
5 laws in this Act be adopted immediately so that the Arkansas Insurance
6 Department can better regulate the insurance industry. Therefore, an
7 emergency is hereby declared to exist and this Act being necessary for the
8 immediate preservation of the public peace, health and safety shall be in
9 full force and effect from and after its passage and approval.

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/s/Rep. Beatty, et al

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