§ 1324. Risk-based capital for property/casualty insurance companies. (a) Definitions. In this section:

(1) "Adjusted RBC report" means an RBC report which has been adjusted by the superintendent in accordance with paragraph two of subsection (c) of this section.

(2) "Corrective order" means an order issued by the superintendent specifying corrective actions which the superintendent has determined are required.

(3) "Domestic insurer" means any authorized property/casualty insurance company either incorporated or organized under any law of this state or, in the case of a United States branch of an alien insurer, entered into the United States through this state.

(4) "Foreign insurer" means any authorized property/casualty insurance company either incorporated or organized under the laws of any state, other than this state, or in the case of a United States branch of an alien insurer, entered into the United States through any state other than this state.

(5) "Property/casualty insurance company" means any property/casualty insurance company or United States branch of an alien insurer licensed under article forty-one of this chapter, any reciprocal insurer licensed under article sixty-one of this chapter or any advance premium corporation or assessment corporation organized and licensed under article sixty-six of this chapter.

(6) "RBC" means risk-based capital.

(7) "RBC instructions" means the RBC report including risk-based capital instructions in effect as of December thirty-first, two thousand four as issued by the national association of insurance commissioners, and which in addition to any other matter which may be required to be stated therein, either by law or by the superintendent pursuant to law, shall conform substantially to the form of the report and instructions adopted from time to time for such purpose by, or by the authority of, the national association of insurance commissioners, together with such additions, omissions, or modifications, similarly adopted from time to time, as may be approved by the superintendent.

(8) "RBC level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(A) "Company action level RBC" means the product of 2.0 and the insurer's authorized control level RBC;

(B) "Regulatory action level RBC" means the product of 1.5 and the insurer's authorized control level RBC;

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

(D) "Mandatory control level RBC" means the product of .70 and the insurer's authorized control level RBC.

(9) "RBC plan" means a comprehensive financial plan containing the elements specified in paragraph two of subsection (d) of this section. If the superintendent rejects the RBC plan, and it is revised by the insurer, with or without the superintendent's recommendation, the plan shall be called the "revised RBC plan".

(10) "RBC report" means the report required in subsection (c) of this section.

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

(A) An insurer's statutory capital and surplus; and

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

(b) Applicability. (1) This section shall apply to every property/casualty insurance company, unless exempted under paragraph two of this subsection.

(2) Except as set forth in subparagraph (C) of this paragraph, with prior written approval, the superintendent may exempt from the provisions of this section a non-stock domestic property/casualty insurance company which:

(A)(i) Writes no direct business outside of this state;

(ii) Writes direct annual premiums of twenty million dollars or less; and

(iii) Assumes reinsurance premiums in an amount that is less than five percent of total direct premiums written; or

(B)(i) Has total direct premiums comprised of at least ninety percent medical malpractice liability insurance, as that term is defined in subsection (b) of section five thousand five hundred one of this chapter;

(ii) Assumes reinsurance premiums in an amount that is less than five percent of total direct premiums written; and

(iii) Writes ninety percent of its total direct premiums in this state.

(C) The exemptions permitted under subparagraphs (A) and (B) of this paragraph shall not apply to an insurer which:

(i) Is controlled by another insurer;

(ii) Owns or controls another insurer, unless the insurer that is owned or controlled is subject to the provisions of this section, section one thousand three hundred twenty-two or section one thousand three hundred twenty-five of this article, as added by a chapter of the laws of 2007, or a substantially similar provision in another jurisdiction;

(iii) Is under common control of a person that controls another insurer; or

(iv) Is a party to a pooling agreement wherein risks underwritten by parties to the agreement are apportioned to the parties in a predetermined manner.

(c) RBC reports. (1) Every domestic insurer shall, on or prior to each March first (the "filing date"), prepare and submit to the superintendent a report of its RBC levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC instructions. In addition, the insurer shall file the RBC report:

(A) With the National Association of Insurance Commissioners in accordance with the RBC instructions; and

(B) With the insurance commissioner in any state in which the insurer is authorized to do business, upon the written request of the insurance commissioner. The insurer shall file the RBC report by the later of:

(i) The filing date; or

(ii) Fifteen days after the date of the request.

(2) If a domestic insurer files an RBC report which the superintendent determines is inaccurate, then the superintendent shall adjust the RBC report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC report as so adjusted is referred to as an "adjusted RBC report".

(d) Company action level event. (1) "Company action level event" means, with respect to a domestic insurer:

(A) The filing by the insurer of an RBC report indicating that the insurer's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC;

(B) The notification by the superintendent to the insurer of an adjusted RBC report that indicates the occurrence of an event described in subparagraph (A) of this paragraph, provided the insurer does not challenge the adjusted RBC report under subsection (h) of this section;

(C) If, under subsection (h) of this section, the insurer challenges an adjusted RBC report that indicates the occurrence of an event described in subparagraph (A) of this paragraph, the notification by the superintendent to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge; or

(D) The filing by the insurer of an RBC report indicating that the insurer has total adjusted capital that is greater than or equal to its company action level RBC, but less than the product of three point zero and its authorized control level RBC, and with a combined ratio greater than one hundred twenty percent as determined in accordance with the trend test calculation in the RBC instructions.

(2) If there is a company action level event, the domestic insurer shall prepare and submit to the superintendent an RBC plan which:

(A) Identifies the conditions which contribute to the company action level event;

(B) Contains proposals of corrective actions which the insurer intends to take and would be expected to result in the elimination of the company action level event;

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

(D) Identifies the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(E) Identifies the quality of, and problems associated with, the insurer's business, including its assets, liabilities, anticipated

business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance.

(3) The RBC plan shall be submitted within forty-five days after the occurrence of the company action level event.

(4)(A) Within sixty days after the submission by an insurer of an RBC plan to the superintendent, the superintendent shall notify the insurer whether the RBC plan is satisfactory or unsatisfactory.

(B) If the RBC plan is satisfactory, the insurer shall implement it.

(C) If the RBC plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions which will render the RBC plan satisfactory to the superintendent. Upon notification from the superintendent, the insurer shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by the superintendent, and shall submit the revised RBC plan to the superintendent:

(i) Within forty-five days after the notification from the superintendent; or

(ii) If, under subsection (h) of this section, the insurer challenges the notification from the superintendent, within forty-five days after a notification to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge.

(5) If there is a company action level event, the superintendent may limit the premium writings of the insurer.

(6)(A) Every domestic insurer that files an RBC plan or revised RBC plan with the superintendent shall file a copy with the insurance commissioner of any state in which the insurer is authorized to do business, upon the written request of the insurance commissioner, if the state has an RBC provision substantially similar to paragraph one of subsection (i) of this section.

(B) The insurer shall file a copy of the RBC plan or revised RBC plan in that state by the later of:

(i) The date on which the RBC plan or revised RBC plan is filed under paragraph three or four of this subsection; or

(ii) Fifteen days after the date of the request.

(e) Regulatory action level event. (1) "Regulatory action level event" means, with respect to a domestic insurer:

(A) The filing by the insurer of an RBC report indicating that the

insurer's total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;

(B) The notification by the superintendent to the insurer of an adjusted RBC report that indicates the occurrence of an event described in subparagraph (A) of this paragraph, provided the insurer does not challenge the adjusted RBC report under subsection (h) of this section;

(C) If, under subsection (h) of this section, the insurer challenges an adjusted RBC report that indicates the occurrence of an event described in subparagraph (A) of this paragraph, the notification by the superintendent to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge;

(D) The failure of the insurer to timely file an RBC report, unless the insurer provides the superintendent with a satisfactory explanation for the failure or cures the failure within ten days after the filing date;

(E) The failure of the insurer to timely submit an RBC plan or a revised RBC plan to the superintendent;

(F) Notification by the superintendent that the revised RBC plan is unsatisfactory, provided the insurer does not challenge the determination under subsection (h) of this section;

(G) If, under subsection (h) of this section, the insurer challenges a determination by the superintendent under subparagraph (F) of this paragraph, the notification by the superintendent to the insurer that the superintendent has, after a hearing, rejected the challenge;

(H) Notification by the superintendent to the insurer that the insurer has failed to adhere to its RBC plan or revised RBC plan or that the insurer has failed to attain the amount of capital projected in the RBC plan or revised RBC plan, and that the failure of either has a substantial adverse effect on the insurer's ability to eliminate the company action level event, provided the insurer does not challenge the determination under subsection (h) of this section; or

(I) If, under subsection (h) of this section, the insurer challenges a determination by the superintendent under subparagraph (H) of this paragraph, the notification by the superintendent to the insurer that the superintendent has, after a hearing, rejected the challenge.

(2) If there is a regulatory action level event, the superintendent

shall:

(A) Require the insurer to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(B) Perform such examination or analysis as the superintendent deems necessary of the assets, liabilities, and operations of the insurer, including a review of the RBC plan or revised RBC plan; and

(C) Subsequent to the examination or analysis, issue a corrective order.

(3) In determining corrective actions, the superintendent may take into account such factors as are deemed relevant, based upon the superintendent's examination or analysis of the assets, liabilities and operations of the insurer.

(4) The RBC plan or revised RBC plan shall be submitted:

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

(B) If, under subsection (h) of this section, the insurer challenges the superintendent's determination that an RBC plan is unsatisfactory, within forty-five days after notification to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge.

(5) The superintendent may retain actuaries, investment experts, and other consultants as the superintendent deems necessary to review the insurer's RBC plan or revised RBC plan, examine or analyze the assets, liabilities and operations of the insurer, and formulate the corrective order. The fees, costs and expenses relating to consultants shall be borne by the affected insurer as directed by the superintendent.

(6) If there is a regulatory action level event, the superintendent may limit the premium writings of the insurer.

(f) Authorized control level event. (1) "Authorized control level event" means, with respect to a domestic insurer:

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

(B) The notification by the superintendent to the insurer of an adjusted RBC report that indicates the occurrence of an event described in subparagraph (A) of this paragraph, provided the insurer does not challenge the adjusted RBC report under subsection (h) of this section;

(C) If, under subsection (h) of this section, the insurer challenges an adjusted RBC report that indicates the occurrence of an event described in subparagraph (A) of this paragraph, notification by the superintendent to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge;

(D) The failure of the insurer to respond, in a manner satisfactory to the superintendent, to a corrective order, provided the insurer has not challenged the corrective order under subsection (h) of this section; or

(E) If, under subsection (h) of this section, the insurer challenges a corrective order and the superintendent, after a hearing, rejects the challenge or modifies the corrective order, the failure of the insurer to respond, in a manner satisfactory to the superintendent, to the corrective order subsequent to rejection or modification by the superintendent.

(2) If there is an authorized control level event, the superintendent shall take such actions as are:

(A) Required under subsection (e) of this section regarding an insurer with respect to which a regulatory action level event has occurred; or

(B) Necessary to cause the insurer to be placed under rehabilitation or liquidation under article seventy-four of this chapter.

(g) Mandatory control level event. (1) "Mandatory control level event" means, with respect to a domestic insurer:

(A) The filing by the insurer of an RBC report, indicating that the insurer's total adjusted capital is less than its mandatory control level RBC;

(B) Notification by the superintendent to the insurer of an adjusted RBC report that indicates the occurrence of an event described in subparagraph (A) of this paragraph, provided the insurer does not challenge the adjusted RBC report under subsection (h) of this section; or

(C) If, under subsection (h) of this section, the insurer challenges an adjusted RBC report that indicates the occurrence of an event described in subparagraph (A) of this paragraph, notification by the superintendent to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge.

(2)(A) If there is a mandatory control level event, except as set forth in subparagraph (B) of this paragraph, the superintendent shall

take such actions as are necessary to cause the insurer to be placed under rehabilitation or liquidation under article seventy-four of this chapter.

(B) The superintendent may forgo action set forth in subparagraph (A) of this paragraph after the occurrence of a mandatory control level event if:

(i) The insurer has demonstrated within a ninety day period that the mandatory control level event will be eliminated under a plan approved by the superintendent; or

(ii) No business is being written or renewed, any existing policyholder obligations are being run-off under a plan approved by the superintendent and the insurer meets the minimum capital and surplus as otherwise required under this chapter.

(h) Hearings. (1) An insurer shall have the right to a hearing upon notification to the insurer by the superintendent:

(A) Of an adjusted RBC report;

(B) That the insurer's RBC plan is unsatisfactory or the revised RBC plan is unsatisfactory;

(C) That the insurer has failed to adhere to its RBC plan or revised RBC plan and that the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event; or

(D) Of a corrective order.

(2) If a hearing is requested within five days after the superintendent gives a notification specified in paragraph one of this subsection, the superintendent shall give notice and a hearing in accordance with the provisions of article three of this chapter, except that the hearing, and any report resulting from such hearing, shall be kept confidential in accordance with the provisions of paragraph one of subsection (i) of this section.

(3) The superintendent shall set a date for the hearing, which date shall be no less than ten nor more than thirty days after the date of the insurer's hearing request.

(i) Confidentiality; prohibition on announcements; prohibition on use in rate making; excess of capital over the amount indicated in the RBC report. (1) All RBC plans, revised RBC plans, results or reports of any examination or analysis of an insurer performed pursuant to this section, corrective orders filed with or issued by the superintendent

and any report resulting from a hearing held pursuant to subsection (h) of this section contain information that may be damaging to the insurer if made available to its competitors, and shall be confidential and not made public or subject to subpoena, except to the extent the superintendent finds release of information necessary to protect the public.

(2)(A) The comparison of an insurer's total adjusted capital to any of its RBC levels is a regulatory tool which may indicate the need for possible corrective action with respect to the insurer, and is not intended as a means to rank insurers generally, and the use of the information to rank insurers may be misleading to the general public.

(B) Except as otherwise required under the provisions of this section, no authorized insurer, licensed insurance agent, licensed insurance broker, or any person on behalf of the insurer, agent or broker, or any other person licensed pursuant to this chapter shall make, publish, disseminate, circulate, or place before the public or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement with regard to the RBC levels of any insurer, or of any component derived in the calculation.

(C) Notwithstanding subparagraph (B) of this paragraph, if a materially false or inappropriate statement, comparing an insurer's total adjusted capital or other amount to one or more of its RBC levels, is published in a written publication, and the insurer is able to demonstrate to the superintendent the falsity or inappropriateness of the statement, then the insurer may publish an announcement in a written publication to rebut the statement.

(3) RBC instructions, RBC reports, adjusted RBC reports, RBC plans and revised RBC plans shall not be used by the superintendent in determining whether rates comply with standards set forth in this chapter and shall not be considered or introduced as evidence in any hearing involving such standards.

(4) An excess of capital over the amount produced by the RBC requirements contained in this section is desirable in the business of

insurance. Accordingly, insurers should seek to maintain capital above the RBC levels required by this section. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the RBC requirements contained in this section.

(j) Foreign insurers. (1) A foreign insurer shall, upon the written request of the superintendent, submit to the superintendent an RBC report, in the same form as required of a domestic insurer, as of the end of the calendar year just ended by the later of:

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

(B) Fifteen days after the date of the request.

(2) A foreign insurer shall, upon the written request of the superintendent, within five days, submit to the superintendent a copy of its RBC plan or revised RBC plan that is filed with the insurance commissioner of any other state.

(3)(A) If there is a company action level event, regulatory action level event, or authorized control level event, and the insurance commissioner of the state of incorporation or organization of the insurer does not require the insurer to file an RBC plan, the superintendent may require the insurer to file an RBC plan, in the same form as required of a domestic insurer, with the superintendent within forty-five days of the superintendent's notification.

(B) If the RBC plan is unsatisfactory or if the insurer fails to timely file the RBC plan with the superintendent, the superintendent may order the insurer not to issue any new insurance policies or contracts in this state.

(4) If there is an authorized control level event or a mandatory control level event, the superintendent may make application under article seventy-four of this chapter.

(k) Notices. Unless a later date is specified, any notice by the superintendent to an insurer under this section which may result in regulatory action hereunder shall be effective upon delivery, except that, if the notice is mailed, it shall be effective three days after it is mailed.