



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB1729

Introduced 2/15/2013, by Sen. William R. Haine

SYNOPSIS AS INTRODUCED:

215 ILCS 5/35A-5
215 ILCS 5/35A-10
215 ILCS 5/35A-15
215 ILCS 5/35A-30
215 ILCS 5/35A-60

Amends the Illinois Insurance Code in the Article concerning risk-based capital. Sets forth a definition of "fraternal benefit society" and makes a change in the definition of "negative trend". Includes fraternal benefit societies in the provisions concerning RBC Reports and mandatory control level events. Makes a change to one of the definitions of a company action level event to include the filing of an RBC Report by an insurer that indicates that the insurer, if a life, health, or life and health insurer or a fraternal benefit society (rather than a life, health, or life and health insurer), has total adjusted capital that is greater than or equal to its company action level RBC, but less than the product of its authorized control level RBC and 3.0 (rather than 2.5) and has a negative trend. Sets forth a provision concerning the RBC Reports required to be filed by fraternal benefit societies. Effective immediately.

LRB098 09834 RPM 39990 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by
5 changing Sections 35A-5, 35A-10, 35A-15, 35A-30, and 35A-60 as
6 follows:

7 (215 ILCS 5/35A-5)

8 Sec. 35A-5. Definitions. As used in this Article, the terms
9 listed in this Section have the meaning given herein.

10 "Adjusted RBC Report" means an RBC Report that has been
11 adjusted by the Director in accordance with subsection (f) of
12 Section 35A-10.

13 "Authorized control level RBC" means the number determined
14 under the risk-based capital formula in accordance with the RBC
15 Instructions.

16 "Company action level RBC" means the product of 2.0 and the
17 insurer's authorized control level RBC.

18 "Corrective Order" means an order issued by the Director in
19 accordance with Article XII 1/2 specifying corrective actions
20 that the Director determines are required.

21 "Domestic insurer" means any insurance company domiciled
22 in this State under Article II, Article III, Article III 1/2,
23 or Article IV or a health organization as defined by this

1 Article, except this shall include only those health
2 maintenance organizations that are "domestic companies" in
3 accordance with Section 5-3 of the Health Maintenance
4 Organization Act and only those limited health service
5 organizations that are "domestic companies" in accordance with
6 Section 4003 of the Limited Health Service Organization Act.

7 "Fraternal benefit society" means any insurance company
8 licensed under Article XVII of this Code.

9 "Foreign insurer" means any foreign or alien insurance
10 company licensed under Article VI that is not domiciled in this
11 State and any health maintenance organization that is not a
12 "domestic company" in accordance with Section 5-3 of the Health
13 Maintenance Organization Act and any limited health service
14 organization that is not a "domestic company" in accordance
15 with Section 4003 of the Limited Health Service Organization
16 Act.

17 "Health organization" means an entity operating under a
18 certificate of authority issued pursuant to the Health
19 Maintenance Organization Act, the Dental Service Plan Act, the
20 Limited Health Service Organization Act, or the Voluntary
21 Health Services Plans Act, unless the entity is otherwise
22 defined as a "life, health, or life and health insurer"
23 pursuant to this Act.

24 "Life, health, or life and health insurer" means an
25 insurance company that has authority to transact the kinds of
26 insurance described in either or both clause (a) or clause (b)

1 of Class 1 of Section 4 or a licensed property and casualty
2 insurer writing only accident and health insurance.

3 "Mandatory control level RBC" means the product of 0.70 and
4 the insurer's authorized control level RBC.

5 "NAIC" means the National Association of Insurance
6 Commissioners.

7 "Negative trend" means, with respect to a life, health, or
8 life and health insurer or a fraternal benefit society, a
9 negative trend over a period of time, as determined in
10 accordance with the trend test calculation included in the Life
11 or Fraternal RBC Instructions.

12 "Property and casualty insurer" means an insurance company
13 that has authority to transact the kinds of insurance in either
14 or both Class 2 or Class 3 of Section 4 or a licensed insurer
15 writing only insurance authorized under clause (c) of Class 1,
16 but does not include monoline mortgage guaranty insurers,
17 financial guaranty insurers, and title insurers.

18 "RBC" means risk-based capital.

19 "RBC Instructions" means the RBC Report including
20 risk-based capital instructions adopted by the NAIC as those
21 instructions may be amended by the NAIC from time to time in
22 accordance with the procedures adopted by the NAIC.

23 "RBC level" means an insurer's company action level RBC,
24 regulatory action level RBC, authorized control level RBC, or
25 mandatory control level RBC.

26 "RBC Plan" means a comprehensive financial plan containing

1 the elements specified in subsection (b) of Section 35A-15.

2 "RBC Report" means the risk-based capital report required
3 under Section 35A-10.

4 "Receivership" means conservation, rehabilitation, or
5 liquidation under Article XIII.

6 "Regulatory action level RBC" means the product of 1.5 and
7 the insurer's authorized control level RBC.

8 "Revised RBC Plan" means an RBC Plan rejected by the
9 Director and revised by the insurer with or without the
10 Director's recommendations.

11 "Total adjusted capital" means the sum of (1) an insurer's
12 statutory capital and surplus and (2) any other items that the
13 RBC Instructions may provide.

14 (Source: P.A. 90-794, eff. 8-14-98; 91-549, eff. 8-14-99.)

15 (215 ILCS 5/35A-10)

16 Sec. 35A-10. RBC Reports.

17 (a) On or before each March 1 (the "filing date"), every
18 domestic insurer shall prepare and submit to the Director a
19 report of its RBC levels as of the end of the previous calendar
20 year in the form and containing the information required by the
21 RBC Instructions. Every domestic insurer shall also file its
22 RBC Report with the NAIC in accordance with the RBC
23 Instructions. In addition, if requested in writing by the chief
24 insurance regulatory official of any state in which it is
25 authorized to do business, every domestic insurer shall file

1 its RBC Report with that official no later than the later of 15
2 days after the insurer receives the written request or the
3 filing date.

4 (b) A life, health, or life and health insurer's or
5 fraternal benefit society's RBC shall be determined under the
6 formula set forth in the RBC Instructions. The formula shall
7 take into account (and may adjust for the covariance between):

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

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

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

13 (4) all other business risks and other relevant risks
14 set forth in the RBC Instructions.

15 These risks shall be determined in each case by applying the
16 factors in the manner set forth in the RBC Instructions.

17 (c) A property and casualty insurer's RBC shall be
18 determined in accordance with the formula set forth in the RBC
19 Instructions. The formula shall take into account (and may
20 adjust for the covariance between):

21 (1) asset risk;

22 (2) credit risk;

23 (3) underwriting risk; and

24 (4) all other business risks and other relevant risks
25 set forth in the RBC Instructions.

26 These risks shall be determined in each case by applying the

1 factors in the manner set forth in the RBC Instructions.

2 (d) A health organization's RBC shall be determined in
3 accordance with the formula set forth in the RBC Instructions.
4 The formula shall take the following into account (and may
5 adjust for the covariance between):

6 (1) asset risk;

7 (2) credit risk;

8 (3) underwriting risk; and

9 (4) all other business risks and other relevant risks
10 set forth in the RBC Instructions.

11 These risks shall be determined in each case by applying the
12 factors in the manner set forth in the RBC Instructions.

13 (e) An excess of capital over the amount produced by the
14 risk-based capital requirements contained in this Code and the
15 formulas, schedules, and instructions referenced in this Code
16 is desirable in the business of insurance. Accordingly,
17 insurers should seek to maintain capital above the RBC levels
18 required by this Code. Additional capital is used and useful in
19 the insurance business and helps to secure an insurer against
20 various risks inherent in, or affecting, the business of
21 insurance and not accounted for or only partially measured by
22 the risk-based capital requirements contained in this Code.

23 (f) If a domestic insurer files an RBC Report that, in the
24 judgment of the Director, is inaccurate, the Director shall
25 adjust the RBC Report to correct the inaccuracy and shall
26 notify the insurer of the adjustment. The notice shall contain

1 a statement of the reason for the adjustment.

2 (Source: P.A. 91-549, eff. 8-14-99.)

3 (215 ILCS 5/35A-15)

4 Sec. 35A-15. Company action level event.

5 (a) A company action level event means any of the following
6 events:

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

9 (A) the insurer's total adjusted capital is
10 greater than or equal to its regulatory action level
11 RBC, but less than its company action level RBC;

12 (B) the insurer, if a life, health, or life and
13 health insurer or a fraternal benefit society, has
14 total adjusted capital that is greater than or equal to
15 its company action level RBC, but less than the product
16 of its authorized control level RBC and 3.0 ~~2.5~~ and has
17 a negative trend; or

18 (C) the insurer, if a property and casualty
19 insurer, has total adjusted capital that is greater
20 than or equal to its company action level RBC, but less
21 than the product of its authorized control level RBC
22 and 3.0 and triggers the trend test determined in
23 accordance with the trend test calculation included in
24 the property and casualty RBC Instructions.

25 (2) The notification by the Director to the insurer of

1 an Adjusted RBC Report that indicates an event described in
2 paragraph (1), provided the insurer does not challenge the
3 Adjusted RBC Report under Section 35A-35.

4 (3) The notification by the Director to the insurer
5 that the Director has, after a hearing, rejected the
6 insurer's challenge under Section 35A-35 to an Adjusted RBC
7 Report that indicates the event described in paragraph (1).

8 (b) In the event of a company action level event, the
9 insurer shall prepare and submit to the Director an RBC Plan
10 that does all of the following:

11 (1) Identifies the conditions that contribute to the
12 company action level event.

13 (2) Contains proposed corrective actions that the
14 insurer intends to take and that are expected to result in
15 the elimination of the company action level event. A health
16 organization is not prohibited from proposing recognition
17 of a parental guarantee or a letter of credit to eliminate
18 the company action level event; however the Director shall,
19 at his discretion, determine whether or the extent to which
20 the proposed parental guarantee or letter of credit is an
21 acceptable part of a satisfactory RBC Plan or Revised RBC
22 Plan.

23 (3) Provides projections of the insurer's financial
24 results in the current year and at least the 4 succeeding
25 years, both in the absence of proposed corrective actions
26 and giving effect to the proposed corrective actions,

1 including projections of statutory operating income, net
2 income, capital, and surplus. The projections for both new
3 and renewal business may include separate projections for
4 each major line of business and separately identify each
5 significant income, expense, and benefit component.

6 (4) Identifies the key assumptions affecting the
7 insurer's projections and the sensitivity of the
8 projections to the assumptions.

9 (5) Identifies the quality of, and problems associated
10 with, the insurer's business including, but not limited to,
11 its assets, anticipated business growth and associated
12 surplus strain, extraordinary exposure to risk, mix of
13 business, and use of reinsurance, if any, in each case.

14 (c) The insurer shall submit the RBC Plan to the Director
15 within 45 days after the company action level event occurs or
16 within 45 days after the Director notifies the insurer that the
17 Director has, after a hearing, rejected its challenge under
18 Section 35A-35 to an Adjusted RBC Report.

19 (d) Within 60 days after an insurer submits an RBC Plan to
20 the Director, the Director shall notify the insurer whether the
21 RBC Plan shall be implemented or is, in the judgment of the
22 Director, unsatisfactory. If the Director determines the RBC
23 Plan is unsatisfactory, the notification to the insurer shall
24 set forth the reasons for the determination and may set forth
25 proposed revisions that will render the RBC Plan satisfactory
26 in the judgment of the Director. Upon notification from the

1 Director, the insurer shall prepare a Revised RBC Plan, which
2 may incorporate by reference any revisions proposed by the
3 Director. The insurer shall submit the Revised RBC Plan to the
4 Director within 45 days after the Director notifies the insurer
5 that the RBC Plan is unsatisfactory or within 45 days after the
6 Director notifies the insurer that the Director has, after a
7 hearing, rejected its challenge under Section 35A-35 to the
8 determination that the RBC Plan is unsatisfactory.

9 (e) In the event the Director notifies an insurer that its
10 RBC Plan or Revised RBC Plan is unsatisfactory, the Director
11 may, at the Director's discretion and subject to the insurer's
12 right to a hearing under Section 35A-35, specify in the
13 notification that the notification constitutes a regulatory
14 action level event.

15 (f) Every domestic insurer that files an RBC Plan or
16 Revised RBC Plan with the Director shall file a copy of the RBC
17 Plan or Revised RBC Plan with the chief insurance regulatory
18 official in any state in which the insurer is authorized to do
19 business if that state has a law substantially similar to the
20 confidentiality provisions in subsection (a) of Section 35A-50
21 and if that official requests in writing a copy of the plan.
22 The insurer shall file a copy of the RBC Plan or Revised RBC
23 Plan in that state no later than the later of 15 days after
24 receiving the written request for the copy or the date on which
25 the RBC Plan or Revised RBC Plan is filed under subsection (c)
26 or (d) of this Section.

1 (Source: P.A. 97-955, eff. 8-14-12.)

2 (215 ILCS 5/35A-30)

3 Sec. 35A-30. Mandatory control level event.

4 (a) A mandatory control level event means any of the
5 following events:

6 (1) The filing of an RBC Report that indicates that the
7 insurer's total adjusted capital is less than its mandatory
8 control level RBC.

9 (2) The notification by the Director to the insurer of
10 an Adjusted RBC Report that indicates the event described
11 in paragraph (1), provided the insurer does not challenge
12 the Adjusted RBC Report under Section 35A-35.

13 (3) The notification by the Director to the insurer
14 that the Director has, after a hearing, rejected the
15 insurer's challenge under Section 35A-35 to the Adjusted
16 RBC Report that indicates the event described in paragraph
17 (1).

18 (b) In the event of a mandatory control level event with
19 respect to a life, health, or life and health insurer or a
20 fraternal benefit society, the Director shall take actions
21 necessary to place the insurer in receivership under Article
22 XIII. In that event, the mandatory control level event shall be
23 deemed sufficient grounds for the Director to take action under
24 Article XIII, and the Director shall have the rights, powers,
25 and duties with respect to the insurer that are set forth in

1 Article XIII. If the Director takes action under this
2 subsection regarding an Adjusted RBC Report, the insurer shall
3 be entitled to the protections of Article XIII. If the Director
4 finds that there is a reasonable expectation that the mandatory
5 control level event may be eliminated within 90 days after it
6 occurs, the Director may delay action for not more than 90 days
7 after the mandatory control level event.

8 (c) In the case of a mandatory control level event with
9 respect to a property and casualty insurer, the Director shall
10 take the actions necessary to place the insurer in receivership
11 under Article XIII or, in the case of an insurer that is
12 writing no business and that is running-off its existing
13 business, may allow the insurer to continue its run-off under
14 the supervision of the Director. In either case, the mandatory
15 control level event is deemed sufficient grounds for the
16 Director to take action under Article XIII, and the Director
17 has the rights, powers, and duties with respect to the insurer
18 that are set forth in Article XIII. If the Director takes
19 action regarding an Adjusted RBC Report, the insurer shall be
20 entitled to the protections of Article XIII. If the Director
21 finds that there is a reasonable expectation that the mandatory
22 control level event may be eliminated within 90 days after it
23 occurs, the Director may delay action for not more than 90 days
24 after the mandatory control level event.

25 (d) In the case of a mandatory control level event with
26 respect to a health organization, the Director shall take the

1 actions necessary to place the insurer in receivership under
2 Article XIII or, in the case of an insurer that is writing no
3 business and that is running-off its existing business, may
4 allow the insurer to continue its run-off under the supervision
5 of the Director. In either case, the mandatory control level
6 event is deemed sufficient grounds for the Director to take
7 action under Article XIII, and the Director has the rights,
8 powers, and duties with respect to the insurer that are set
9 forth in Article XIII. If the Director takes action regarding
10 an Adjusted RBC Report, the insurer shall be entitled to the
11 protections of Article XIII. If the Director finds that there
12 is a reasonable expectation that the mandatory control level
13 event may be eliminated within 90 days after it occurs, the
14 Director may delay action for not more than 90 days after the
15 mandatory control level event.

16 (Source: P.A. 91-549, eff. 8-14-99.)

17 (215 ILCS 5/35A-60)

18 Sec. 35A-60. Phase-in of Article.

19 (a) For RBC Reports filed with respect to the December 31,
20 1993 annual statement, instead of the provisions of Sections
21 35A-15, 35A-20, 35A-25, and 35A-30, the following provisions
22 apply:

23 (1) In the event of a company action level event, the
24 Director shall take no action under this Article.

25 (2) In the event of a regulatory action level event

1 under paragraph (1), (2), or (3) of subsection (a) of
2 Section 35A-20, the Director shall take the actions
3 required under Section 35A-15.

4 (3) In the event of a regulatory action level event
5 under paragraph (4), (5), (6), (7), (8), or (9) of
6 subsection (a) of Section 35A-20 or an authorized control
7 level event, the Director shall take the actions required
8 under Section 35A-20.

9 (4) In the event of a mandatory control level event,
10 the Director shall take the actions required under Section
11 35A-25.

12 (b) For RBC Reports required to be filed by property and
13 casualty insurers with respect to the December 31, 1995 annual
14 statement, instead of the provisions of Section 35A-15, 35A-20,
15 35A-25, and 35A-30, the following provisions apply:

16 (1) In the event of a company action level event with
17 respect to a domestic insurer, the Director shall take no
18 regulatory action under this Article.

19 (2) In the event of a regulatory action level event
20 under paragraph (1), (2) or (3) of subsection (a) of
21 Section 35A-20, the Director shall take the actions
22 required under Section 35A-15.

23 (3) In the event of a regulatory action level event
24 under paragraph (4), (5), (6), (7), (8), or (9) of
25 subsection (a) of Section 35A-20 or an authorized control
26 level event, the Director shall take the actions required

1 under Section 35A-20.

2 (4) In the event of a mandatory control level event,
3 the Director shall take the actions required under Section
4 35A-25.

5 (c) For RBC Reports required to be filed by health
6 organizations with respect to the December 31, 1999 annual
7 statement and the December 31, 2000 annual statement, instead
8 of the provisions of Sections 35A-15, 35A-20, 35A-25, and
9 35A-30, the following provisions apply:

10 (1) In the event of a company action level event with
11 respect to a domestic insurer, the Director shall take no
12 regulatory action under this Article.

13 (2) In the event of a regulatory action level event
14 under paragraph (1), (2), or (3) of subsection (a) of
15 Section 35A-20, the Director shall take the actions
16 required under Section 35A-15.

17 (3) In the event of a regulatory action level event
18 under paragraph (4), (5), (6), (7), (8), or (9) of
19 subsection (a) of Section 35A-20 or an authorized control
20 level event, the Director shall take the actions required
21 under Section 35A-20.

22 (4) In the event of a mandatory control level event,
23 the Director shall take the actions required under Section
24 35A-25.

25 This subsection does not apply to a health organization
26 that provides or arranges for a health care plan under which

1 enrollees may access health care services from contracted
2 providers without a referral from their primary care physician.

3 Nothing in this subsection shall preclude or limit other
4 powers or duties of the Director under any other laws.

5 (d) For RBC Reports required to be filed by fraternal
6 benefit societies with respect to the December 31, 2013 annual
7 statement and the December 31, 2014 annual statement, instead
8 of the provisions of Sections 35A-15, 35A-20, 35A-25, and
9 35A-30, the following provisions apply:

10 (1) In the event of a company action level event with
11 respect to a domestic insurer, the Director shall take no
12 regulatory action under this Article.

13 (2) In the event of a regulatory action level event
14 under paragraph (1), (2), or (3) of subsection (a) of
15 Section 35A-20, the Director shall take the actions
16 required under Section 35A-15.

17 (3) In the event of a regulatory action level event
18 under paragraph (4), (5), (6), (7), (8), or (9) of
19 subsection (a) of Section 35A-20 or an authorized control
20 level event, the Director shall take the actions required
21 under Section 35A-20.

22 (4) In the event of a mandatory control level event,
23 the Director shall take the actions required under Section
24 35A-25.

25 Nothing in this subsection shall preclude or limit other
26 powers or duties of the Director under any other laws.

1 (Source: P.A. 91-549, eff. 8-14-99.)

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.