

AN ACT concerning regulation.

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

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

(215 ILCS 5/35A-5)

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

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

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

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

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

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

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

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

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

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

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

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

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

"NAIC" means the National Association of Insurance Commissioners.

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

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

"RBC" means risk-based capital.

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

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

"RBC Plan" means a comprehensive financial plan containing

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

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

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

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

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

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

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

(215 ILCS 5/35A-10)

Sec. 35A-10. RBC Reports.

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

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

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

- (1) the risk with respect to the insurer's assets;
- (2) the risk of adverse insurance experience with respect to the insurer's liabilities and obligations;
- (3) the interest rate risk with respect to the insurer's business; and
- (4) all other business risks and other relevant risks set forth in the RBC Instructions.

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

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

- (1) asset risk;
- (2) credit risk;
- (3) underwriting risk; and
- (4) all other business risks and other relevant risks set forth in the RBC Instructions.

These risks shall be determined in each case by applying the

factors in the manner set forth in the RBC Instructions.

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

- (1) asset risk;
- (2) credit risk;
- (3) underwriting risk; and
- (4) all other business risks and other relevant risks set forth in the RBC Instructions.

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

(e) An excess of capital over the amount produced by the risk-based capital requirements contained in this Code and the formulas, schedules, and instructions referenced in this Code is desirable in the business of insurance. Accordingly, insurers should seek to maintain capital above the RBC levels required by this Code. 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 risk-based capital requirements contained in this Code.

(f) If a domestic insurer files an RBC Report that, in the judgment of the Director, is inaccurate, the Director 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.

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

(215 ILCS 5/35A-15)

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

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

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

(A) 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 insurer, if a life, health, or life and health insurer or a fraternal benefit society, 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 ~~2.5~~ and has a negative trend; or

(C) the insurer, if a property and casualty 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 and triggers the trend test determined in accordance with the trend test calculation included in the property and casualty RBC Instructions.

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

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

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

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

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

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

(3) Provides projections of the insurer's financial results in the current year and at least the 4 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, 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.

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

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

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

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

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

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

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

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

(215 ILCS 5/35A-30)

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

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

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

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

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

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

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

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

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

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

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

(215 ILCS 5/35A-60)

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

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

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

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

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

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

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

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

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

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

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

under Section 35A-20.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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