

IC 27-1-36

Chapter 36. Risk Based Capital Requirements

IC 27-1-36-1

Exemption from applicability of chapter

Sec. 1. The commissioner may exempt from the application of this chapter:

- (1) A domestic property and casualty insurer that:
 - (A) writes direct business only in Indiana;
 - (B) receives annual premiums from direct business written of not more than two million dollars (\$2,000,000); and
 - (C) assumes no reinsurance in excess of five percent (5%) of direct business written.
- (2) A health maintenance organization that:
 - (A) operates only in Indiana; and
 - (B) receives annual subscriber premiums (as defined in IC 27-13-1-33) of not more than two million dollars (\$2,000,000).
- (3) A limited service health maintenance organization that:
 - (A) operates only in Indiana;
 - (B) receives annual subscriber premiums (as defined in IC 27-13-1-33) of not more than two million dollars (\$2,000,000); and
 - (C) covers not more than two thousand (2,000) enrollees.

As added by P.L.186-1996, SEC.1. Amended by P.L.51-2002, SEC.1.

IC 27-1-36-2

"Adjusted RBC report"

Sec. 2. As used in this chapter, "adjusted RBC report" means an RBC report that has been adjusted by the commissioner under section 28 of this chapter.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-3

"Authorized control level event"

Sec. 3. As used in this chapter, "authorized control level event" has the meaning set forth in section 39 of this chapter.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-4

"Authorized control level RBC"

Sec. 4. As used in this chapter, the "authorized control level RBC" means, with respect to an insurer, the number determined under the risk-based capital formula in accordance with the RBC instructions.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-5

"Company action level event"

Sec. 5. As used in this chapter, "company action level event" has the meaning set forth in section 29 of this chapter.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-6

"Company action level RBC"

Sec. 6. As used in this chapter, "company action level RBC" means, with respect to an insurer, the product of two (2) multiplied by the insurer's authorized control level RBC.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-7

"Corrective order"

Sec. 7. As used in this chapter, "corrective order" means an order issued by the commissioner that specifies the corrective actions that the commissioner determines are required.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-8

"Domestic insurer"

Sec. 8. As used in this chapter, "domestic insurer" means any:

- (1) insurance company;
- (2) health maintenance organization; or
- (3) limited service health maintenance organization;

that is domiciled in Indiana.

As added by P.L.186-1996, SEC.1. Amended by P.L.51-2002, SEC.2.

IC 27-1-36-9

"Foreign insurer"

Sec. 9. As used in this chapter, "foreign insurer" means the following:

- (1) An insurer that is:
 - (A) licensed to do business in Indiana under IC 27-1-17; but
 - (B) not a domestic insurer.
- (2) A health maintenance organization that:
 - (A) is organized under the laws of a state other than Indiana, a territory or another insular possession of the United States, or the District of Columbia; and
 - (B) has obtained a certificate of authority under IC 27-13-2.
- (3) A limited service health maintenance organization that:
 - (A) is organized under the laws of a state other than Indiana, a territory or another insular possession of the United States, or the District of Columbia; and
 - (B) has obtained a certificate of authority under IC 27-13-34.

As added by P.L.186-1996, SEC.1. Amended by P.L.51-2002, SEC.3.

IC 27-1-36-9.4

"Health maintenance organization"

Sec. 9.4. As used in this chapter, "health maintenance organization" has the meaning set forth in IC 27-13-1-19.

As added by P.L.51-2002, SEC.4.

IC 27-1-36-9.6**"Insurer"**

Sec. 9.6. As used in this chapter, "insurer" includes:

- (1) a health maintenance organization; and
- (2) a limited service health maintenance organization.

As added by P.L.51-2002, SEC.5.

IC 27-1-36-9.8**"Limited service health maintenance organization"**

Sec. 9.8. As used in this chapter, "limited service health maintenance organization" has the meaning set forth in IC 27-13-34-4.

As added by P.L.51-2002, SEC.6.

IC 27-1-36-10**"Life and health insurer"**

Sec. 10. As used in this chapter, "life and health insurer" means:

- (1) an insurer that makes one (1) or more of the types of insurance described in Class 1 of IC 27-1-5-1; or
- (2) a property and casualty insurer that writes only accident and health insurance.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-11**"Mandatory control level event"**

Sec. 11. As used in this chapter, "mandatory control level event" has the meaning set forth in section 41 of this chapter.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-12**"Mandatory control level RBC"**

Sec. 12. As used in this chapter, "mandatory control level RBC" means, with respect to an insurer, the product of seven-tenths (.7) multiplied by the insurer's authorized control level RBC.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-13**"NAIC"**

Sec. 13. As used in this chapter, "NAIC" refers to the National Association of Insurance Commissioners.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-14**"Negative trend"**

Sec. 14. As used in this chapter, "negative trend" means, with respect to a life and health insurer, a negative trend over a period of time, as determined in accordance with the trend test calculation included in the RBC instructions.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-15**"Property and casualty insurer"**

Sec. 15. As used in this chapter, "property and casualty insurer" means an insurer that is authorized to make one (1) or more of the types of insurance described in Class 2 and Class 3 of IC 27-1-5-1. The term does not include the following:

- (1) A monoline mortgage guaranty insurer.
- (2) A financial guaranty insurer.
- (3) A title insurer.
- (4) A health maintenance organization.
- (5) A limited service health maintenance organization.

As added by P.L.186-1996, SEC.1. Amended by P.L.51-2002, SEC.7.

IC 27-1-36-16**"RBC"**

Sec. 16. As used in this chapter, "RBC" refers to risk based capital.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-17**"RBC instructions"**

Sec. 17. As used in this chapter, "RBC instructions" means the RBC report including risk based capital instructions adopted by the NAIC, as amended by the NAIC.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-18**"RBC level"**

Sec. 18. As used in this chapter, "RBC level" means an insurer's:

- (1) company action level RBC;
- (2) regulatory action level RBC;
- (3) authorized control level RBC; or
- (4) mandatory control level RBC.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-19**"RBC plan"**

Sec. 19. As used in this chapter, "RBC plan" means a comprehensive financial plan containing the elements specified in section 30 of this chapter.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-20**"RBC report"**

Sec. 20. As used in this chapter, "RBC report" means the report required by section 25 of this chapter.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-21**"Regulatory action level event"**

Sec. 21. As used in this chapter, "regulatory action level event" has the meaning set forth in section 35 of this chapter.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-22

"Regulatory action level RBC"

Sec. 22. As used in this chapter, "regulatory action level RBC" means, with respect to an insurer, the product of one and five-tenths (1.5) multiplied by the insurer's authorized control level RBC.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-23

"Revised RBC plan"

Sec. 23. As used in this chapter, "revised RBC plan" means the revised RBC plan that an insurer must prepare, with or without the commissioner's recommendation, if the commissioner rejects the insurer's previous RBC plan.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-24

"Total adjusted capital"

Sec. 24. As used in this chapter, "total adjusted capital" means the sum of:

(1) an insurer's statutory capital and surplus determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under IC 27-1-3.5; and

(2) other items, if any, that the RBC instructions may provide.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-25

RBC report; requirements; filing

Sec. 25. (a) A domestic insurer shall prepare a report of the RBC levels of the insurer as of the last day of the calendar year most recently ended. The report must:

(1) be in the form; and

(2) contain the information;

required by the RBC instructions.

(b) On or before March 1 of each year, a domestic insurer shall file the RBC report described in subsection (a) with:

(1) the commissioner;

(2) the NAIC, in accordance with the RBC instructions; and

(3) the insurance commissioner in any state other than Indiana in which the insurer is authorized to do business, if the insurance commissioner has notified the insurer in writing of the commissioner's request for the insurer's RBC report.

An insurer is not required to pay a fee when filing an RBC report under this subsection.

(c) If an insurer is required under subsection (b)(3) to file its RBC report with the insurance commissioner of a state other than Indiana,

the insurer shall file the RBC report with the insurance commissioner of that state not later than:

- (1) fifteen (15) days after the insurer receives the notice; or
- (2) March 1 of the calendar year in which the insurer receives the notice;

whichever occurs later.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-26

Life and health insurer's RBC; formula

Sec. 26. A life and health insurer's RBC must be determined in accordance with the formula set forth in the RBC instructions. The formula must 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 such other relevant risks as are set forth in the RBC instructions;

determined by applying the factors in the manner set forth in the RBC instructions.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-26.1

Health maintenance organization's and limited service health maintenance organization's RBC; formula

Sec. 26.1. A health maintenance organization's RBC and a limited service health maintenance organization's RBC must be determined in accordance with the formula set forth in the RBC instructions for a health maintenance organization and a limited service health maintenance organization. The formula must take into account (and may adjust for the covariance between):

- (1) affiliation investment risk;
- (2) asset risk;
- (3) credit risk;
- (4) underwriting risk; and
- (5) all other business risks and such other relevant risks as are set forth in the RBC instructions;

determined by applying the factors in the manner set forth in the RBC instructions.

As added by P.L.51-2002, SEC.8.

IC 27-1-36-27

Property and casualty insurer's RBC; formula

Sec. 27. A property and casualty insurer's RBC must be determined in accordance with the formula set forth in the RBC instructions. The formula must 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 such other relevant risks as are set forth in the RBC instructions;
- determined by applying the factors in the manner set forth in the RBC instructions.
- As added by P.L.186-1996, SEC.1.*

IC 27-1-36-28

Inaccuracy of RBC report filed by domestic insurer

Sec. 28. (a) If the commissioner determines an RBC report filed by a domestic insurer is inaccurate, the commissioner shall:

- (1) adjust the RBC report to correct the inaccuracy; and
- (2) notify the insurer of the adjustment.

(b) A notice provided by the commissioner under subsection (a) must contain a statement of the reason for the adjustment.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-29

"Company action level event"

Sec. 29. As used in this chapter, "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:
 - (i) greater than or equal to its regulatory action level RBC; but
 - (ii) less than its company action level RBC;
 - (B) if a life and health insurer, the insurer:
 - (i) has total adjusted capital that is greater than or equal to its company action level RBC but less than the product of two and five-tenths (2.5) multiplied by its authorized control level RBC; and
 - (ii) has a negative trend; or
 - (C) if a property and casualty insurer, the insurer:
 - (i) has total adjusted capital that is greater than or equal to its company action level RBC but less than the product of three (3) multiplied by its authorized control level RBC; and
 - (ii) has a negative trend.
- (2) The notification by the commissioner to the insurer of an adjusted RBC report that indicates that:
 - (A) the insurer's total adjusted capital is:
 - (i) greater than or equal to its regulatory action level RBC; but
 - (ii) less than its company action level RBC;
 - (B) if a life and health insurer, the insurer:
 - (i) has total adjusted capital that is greater than or equal to its company action level RBC but less than the product of two and five-tenths (2.5) multiplied by its authorized

control level RBC; and
(ii) has a negative trend; or

(C) if a property and casualty insurer, the insurer:

(i) has total adjusted capital that is greater than or equal to its company action level RBC but less than the product of three (3) multiplied by its authorized control level RBC; and

(ii) has a negative trend;

unless the insurer challenges the adjusted RBC report under section 44 of this chapter.

(3) The notification by the commissioner to the insurer that the commissioner has, after a hearing under section 44 of this chapter, rejected the insurer's challenge to an adjusted RBC report described in subdivision (2).

As added by P.L.186-1996, SEC.1. Amended by P.L.11-2011, SEC.23.

IC 27-1-36-30

Preparation and submission of RBC plan after company action level event

Sec. 30. If a company action level event occurs, the insurer shall prepare and submit to the commissioner an RBC plan that does all the following:

(1) Addresses the following:

(A) The conditions that contribute to the insurer's RBC level.

(B) The key assumptions affecting the insurer's projections and the sensitivity of the projections to the assumptions.

(C) The quality of, and problems associated with, the insurer's business, including the following:

(i) Assets.

(ii) Anticipated business growth and associated surplus strain.

(iii) Extraordinary exposure to risk.

(iv) Mix of business and use of reinsurance, if any, in each case.

(2) Contains proposals for corrective actions that the insurer intends to take and that would be expected to result in the elimination of the RBC level.

(3) Provides projections of the insurer's financial results in the current year and at least the four (4) consecutive succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of the following:

(A) Statutory operating income.

(B) Net income.

(C) Capital.

(D) 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.)

As added by P.L.186-1996, SEC.1.

IC 27-1-36-31

Timing for submission of RBC plan after company action level event

Sec. 31. An insurer must submit to the commissioner an RBC plan required under section 30 of this chapter:

- (1) not more than forty-five (45) days after the company action level event; or
- (2) not more than forty-five (45) days after notification to the insurer that the commissioner has, after a hearing under section 44 of this chapter, rejected the insurer's challenge.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-32

RBC plan; notice by commissioner; revised RBC plan

Sec. 32. (a) Not more than sixty (60) days after an insurer submits an RBC plan under section 31 of this chapter, the commissioner shall notify the insurer of whether the RBC plan:

- (1) must be implemented; or
- (2) is unsatisfactory.

(b) If the commissioner determines that an RBC plan is unsatisfactory, the notification to the insurer:

- (1) must state the reasons for the determination; and
- (2) may include revisions proposed by the commissioner that will render the RBC plan satisfactory.

(c) Upon receiving a notification from the commissioner under subsection (b), the insurer shall prepare a revised RBC plan. The revised RBC plan may incorporate by reference any revisions proposed by the commissioner. The insurer shall submit the revised RBC plan to the commissioner:

- (1) not more than forty-five (45) days after the insurer receives the notification under subsection (a)(2); or
- (2) not more than forty-five (45) days after the insurer receives the notification from the commissioner that the commissioner has, after a hearing under section 44 of this chapter, rejected the insurer's challenge.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-33

Notification by commissioner as regulatory action level event

Sec. 33. If the commissioner notifies an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner may, subject to the insurer's right to a hearing under section 44 of this chapter, specify in the notification that the notification constitutes a regulatory action level event.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-34

Filing RBC plan with commissioner of state other than Indiana

Sec. 34. (a) A domestic insurer that files an RBC plan or a revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in each state other than Indiana in which the insurer is authorized to do business, if:

- (1) the state has an RBC provision substantially similar to section 45 of this chapter; and
- (2) the insurance commissioner of that state has notified the insurer in writing of its request for the filing.

(b) If an insurer is required under subsection (a) to file its RBC plan or revised RBC plan with the insurance commissioner of a state other than Indiana, the insurer shall file the RBC plan or revised RBC plan not later than:

- (1) fifteen (15) days after the insurer receives notice under subsection (a)(2); or
- (2) the date on which the RBC plan or revised RBC plan is filed under sections 31 and 32 of this chapter;

whichever occurs later.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-35

"Regulatory action level event"

Sec. 35. As used in this chapter, "regulatory action level event" means any of the following events:

- (1) The filing of an RBC report by the insurer that indicates that the insurer's total adjusted capital is:
 - (A) greater than or equal to its authorized control level RBC; but
 - (B) less than its regulatory action level RBC.

- (2) The notification by the commissioner to an insurer of an adjusted RBC report that indicates that the insurer's total adjusted capital is:

- (A) greater than or equal to its authorized control level RBC; but
- (B) less than its regulatory action level RBC;

unless the insurer challenges the adjusted RBC report under section 44 of this chapter.

- (3) The notification by the commissioner to the insurer that the commissioner has, after a hearing under section 44 of this chapter, rejected the insurer's challenge to an adjusted RBC report.

- (4) The failure of the insurer to file an RBC report by the filing date, unless the insurer:

- (A) has provided an explanation for the failure that is satisfactory to the commissioner; and
- (B) has cured the failure not more than ten (10) days after the March 1 filing date.

- (5) The failure of the insurer to submit an RBC plan to the commissioner within the period prescribed in section 31 of this chapter.

(6) Notification by the commissioner to the insurer under section 33 of this chapter, unless the insurer challenges the notification under section 44 of this chapter.

(7) The notification by the commissioner to the insurer that the commissioner has, after a hearing under section 44 of this chapter, rejected the challenge to a determination by the commissioner under section 33 of this chapter.

(8) Notification by the commissioner to the insurer that the insurer has failed to adhere to its RBC plan or revised RBC plan, but only if:

(A) the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event in accordance with its RBC plan or revised RBC plan; and

(B) the commissioner has so stated in the notification; unless the insurer challenges the determination under section 44 of this chapter.

(9) The notification by the commissioner to the insurer that the commissioner has, after a hearing under section 44 of this chapter, rejected the insurer's challenge to the determination made under subdivision (8).

As added by P.L.186-1996, SEC.1.

IC 27-1-36-36

Action by commissioner after regulatory action level event

Sec. 36. If a regulatory action level event occurs, the commissioner shall:

(1) require the insurer to prepare an RBC plan or, if applicable, a revised RBC plan;

(2) perform such examination or analysis as the commissioner considers necessary of the assets, liabilities, and operations of the insurer, including a review of the insurer's RBC plan or revised RBC plan; and

(3) after the examination or analysis, issue a corrective order specifying the corrective actions that the commissioner determines are required, taking into account relevant factors with respect to the insurer, based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the insurer, including the results of any sensitivity tests undertaken under the RBC instructions.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-37

Timing for submission of RBC plan or revised RBC plan after regulatory action level event

Sec. 37. The RBC plan or revised RBC plan must be submitted:

(1) not more than forty-five (45) days after the regulatory action level event;

(2) not later than forty-five (45) days after the notification to the insurer that the commissioner has, after a hearing under section 44 of this chapter, rejected the insurer's challenge to an adjusted

RBC report; or

(3) not more than forty-five (45) days after the notification to the insurer that the commissioner has, after a hearing under section 44 of this chapter, rejected the insurer's challenge to an adjusted RBC plan.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-38

Consultants to commissioner

Sec. 38. (a) The commissioner may retain actuaries, investment experts, and other consultants that the commissioner determines to be necessary to:

- (1) review the insurer's RBC plan or revised RBC plan;
- (2) examine or analyze the assets, liabilities, and operations of the insurer; and
- (3) formulate the corrective order with respect to the insurer.

(b) The reasonable costs and expenses relating to consultants shall be paid by the affected insurer or another party, as directed by the commissioner.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-39

"Authorized control level event"

Sec. 39. As used in this chapter, "authorized control level event" means any of the following events:

- (1) The filing of an RBC report by an insurer that indicates that the insurer's total adjusted capital is:
 - (A) greater than or equal to its mandatory control level RBC; but
 - (B) less than its authorized control level RBC.
- (2) The notification by the commissioner to the insurer of an adjusted RBC report that indicates that the insurer's total adjusted capital is:
 - (A) greater than or equal to its mandatory control level RBC; but
 - (B) less than its authorized control level RBC;

unless the insurer challenges the adjusted RBC report under section 44 of this chapter.

(3) Notification by the commissioner to the insurer that the commissioner has, after a hearing under section 44 of this chapter, rejected the insurer's challenge to an adjusted RBC report.

(4) The failure of the insurer to respond, in a manner satisfactory to the commissioner, to a corrective order, unless the insurer has challenged the corrective order under section 44 of this chapter.

(5) The failure of the insurer to respond, in a manner satisfactory to the commissioner, to a corrective order if, after a challenge and a hearing under section 44 of this chapter, the commissioner has:

- (A) rejected the challenge; or
- (B) modified the corrective order.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-40

Action by commissioner after authorized control level event

Sec. 40. (a) If an authorized control level event occurs with respect to an insurer, the commissioner shall:

- (1) take the actions required under section 36 of this chapter regarding an insurer; or
- (2) if the commissioner considers it to be in the best interests of:
 - (A) the policyholders and creditors of the insurer; and
 - (B) the public;

take any action necessary to cause the insurer to be placed under regulatory control under IC 27-9.

(b) An authorized control level event is sufficient grounds for the commissioner to:

- (1) determine, under IC 27-9-2-1, that an insurer has committed or engaged in, or is about to commit or engage in, an act, a practice, or a transaction that would subject the insurer to a delinquency proceeding under IC 27-9-3-1 or IC 27-9-3-6; and
- (2) serve upon the insurer, under IC 27-9-2-1, orders reasonably necessary to correct, eliminate, or remedy the conduct, condition, or ground.

The commissioner has the rights, powers, and duties with respect to the insurer that are set forth in IC 27-9.

(c) If the commissioner takes action under subsection (a)(2), the insurer is entitled to the protections of IC 27-9-2 pertaining to summary proceedings.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-41

"Mandatory control level event"

Sec. 41. As used in this chapter, "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) Notification by the commissioner to the insurer of an adjusted RBC report that indicates that the insurer's total adjusted capital is less than its mandatory control level RBC unless the insurer challenges the adjusted RBC report under section 44 of this chapter.
- (3) Notification by the commissioner to the insurer that the commissioner has, after a hearing under section 44 of this chapter, rejected the insurer's challenge to an adjusted RBC report.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-42

Action by commissioner after mandatory control level event with respect to life and health insurer

Sec. 42. (a) If a mandatory control level event occurs with respect to a life and health insurer, the commissioner shall take the actions necessary to place the insurer under regulatory control under IC 27-9.

(b) A mandatory control level event is sufficient grounds for the commissioner to take action against a life and health insurer under IC 27-9, and the commissioner has the rights, powers, and duties with respect to the insurer that are set forth in IC 27-9.

(c) If the commissioner takes action against a life and health insurer under an adjusted RBC report, the insurer is entitled to the protections of IC 27-9-2 pertaining to summary proceedings.

(d) The commissioner may forego action under subsections (a) through (c) for not more than ninety (90) days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety (90) day period.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-42.1

Action by commissioner after mandatory control level event with respect to health maintenance organization or limited service health maintenance organization

Sec. 42.1. (a) If a mandatory control level event occurs with respect to a health maintenance organization or a limited service health maintenance organization, the commissioner shall take the action necessary to place the health maintenance organization or limited service health maintenance organization under regulatory control under IC 27-13.

(b) A mandatory control level event is sufficient grounds for the commissioner to take action against a health maintenance organization or a limited service health maintenance organization under IC 27-13 and the commissioner has the rights, powers, and duties with respect to the health maintenance organization or limited service health maintenance organization that are set forth in IC 27-13.

(c) If the commissioner takes action against a health maintenance organization or a limited service health maintenance organization under an adjusted RBC report, the health maintenance organization or limited service health maintenance organization is entitled to the protections under IC 27-9-2 pertaining to summary proceedings.

(d) The commissioner may forego action under subsections (a) through (c) for not more than ninety (90) days after the mandatory control level event if the commissioner finds that there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety (90) day period.

As added by P.L.51-2002, SEC.9.

IC 27-1-36-43

Action by commissioner after mandatory control level event with

respect to property and casualty insurer

Sec. 43. (a) If a mandatory control level event occurs with respect to a property and casualty insurer, the commissioner:

(1) shall take the actions necessary to place the insurer under regulatory control under IC 27-9; or

(2) in the case of an insurer that is not writing business and that is running off its existing business, may allow the insurer to continue its run-off under the supervision of the commissioner.

(b) A mandatory control level event is sufficient grounds for the commissioner to take action against a property and casualty insurer under IC 27-9, and the commissioner has the rights, powers, and duties with respect to the insurer that are set forth in IC 27-9.

(c) If the commissioner takes action against a property and casualty insurer under an adjusted RBC report, the insurer is entitled to the protections of IC 27-9-2 pertaining to summary proceedings.

(d) The commissioner may forego action for not more than ninety (90) days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety (90) day period.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-44

Confidential department hearing

Sec. 44. (a) The insurer has the right to a confidential departmental hearing, on the record, upon the occurrence of any of the following:

(1) Notification to an insurer by the commissioner of an adjusted RBC report.

(2) Notification to an insurer by the commissioner under section 32(b) of this chapter.

(3) Notification to an insurer by the commissioner that:

(A) the insurer has failed to adhere to its RBC plan or revised RBC plan; and

(B) the insurer's failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its RBC plan or revised RBC plan.

(4) Notification to an insurer by the commissioner of a corrective order with respect to the insurer.

(b) At a confidential hearing under this section, the insurer may challenge any determination or action by the commissioner.

(c) An insurer must notify the commissioner of the insurer's request for a hearing under this section not more than five (5) days after the notification by the commissioner under subsection (a). Upon receiving the insurer's request for a hearing, the commissioner shall set a date for the hearing. The date set by the commissioner must be:

(1) at least ten (10); and

(2) not more than thirty (30);

days after the date of the insurer's request.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-45

Confidential information

Sec. 45. (a) Because they contain information that might be damaging to an insurer if made available to the insurer's competitors, the following are declared confidential for purposes of IC 5-14-3-4 and are not subject to inspection and copying by the public under IC 5-14-3-3:

- (1) An RBC report filed with the commissioner under this chapter, to the extent that the information in the report is not required to be provided in a publicly available annual statement schedule.
- (2) An RBC plan filed with the commissioner under this chapter, including:
 - (A) the results or report of any examination or analysis of an insurer performed under the plan; and
 - (B) any corrective order issued by the commissioner under the examination or analysis.
- (b) The information described in subsection (a):
 - (1) must be kept confidential by the commissioner;
 - (2) shall not be made public; and
 - (3) is not subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner under this chapter or another provision of this title.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-46

Comparison of insurer's total adjusted capital to RBC levels

Sec. 46. (a) The comparison of an insurer's total adjusted capital to any of its RBC levels is a regulatory tool that may indicate the need for possible corrective action with respect to the insurer and it is not intended as a means to rank insurers generally. Except as provided in subsection (b), the action of an insurer, an insurance producer, a broker, or other person engaged in any manner in the insurance business, in:

- (1) making, publishing, disseminating, circulating, or placing before the public; or
 - (2) causing, 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, an announcement, or a statement containing an assertion, a representation, or a statement regarding the RBC level of an insurer or any component derived in the calculation of the RBC level of an insurer is misleading and is prohibited.

(b) If:

- (1) a materially false statement with respect to the comparison regarding an insurer's total adjusted capital to an RBC level of the insurer or an inappropriate comparison of any other amount

to the insurer's RBC levels is published in any written publication; and

(2) the insurer is able to demonstrate to the commissioner with substantial proof the:

(A) falsity; or

(B) inappropriateness;

of the statement;

the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

As added by P.L.186-1996, SEC.1. Amended by P.L.178-2003, SEC.31.

IC 27-1-36-47

Use of documents referred to in chapter

Sec. 47. (a) The:

(1) RBC instructions;

(2) RBC reports;

(3) adjusted RBC reports;

(4) RBC plans; and

(5) revised RBC plans;

referred to in this chapter are intended solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers.

(b) The instructions, reports, and plans referred to in subsection (a) shall not be:

(1) used by the commissioner for ratemaking;

(2) considered or introduced as evidence in a rate proceeding;
or

(3) used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that an insurer or an affiliate is authorized to write.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-48

Chapter supplements other Indiana law

Sec. 48. This chapter is supplemental to other provisions of Indiana law and does not preclude or limit any other powers or duties of the commissioner under other provisions of Indiana law, including IC 27-9.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-49

Submission of RBC report by foreign insurer

Sec. 49. (a) Upon the written request of the commissioner, a foreign insurer shall submit to the commissioner an RBC report as of the last day of the calendar year most recently ended. The foreign insurer shall submit the report on or before:

(1) the date on which a domestic insurer would be required to

file an RBC report under this chapter; or
(2) fifteen (15) days after the foreign insurer receives the request;
whichever occurs later.

(b) Upon the written request of the commissioner, a foreign insurer shall promptly submit to the commissioner a copy of any RBC plan that the foreign insurer has filed with the insurance commissioner of any other state.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-50

Filing of RBC plan by foreign insurer

Sec. 50. (a) If:

(1) an event that is:

(A) a company action level event;

(B) a regulatory action level event; or

(C) an authorized control level event;

occurs with respect to a foreign insurer as determined under the RBC statute applicable in the state of domicile of the insurer (or, if no RBC statute is in force in that state, under this chapter); and

(2) the insurance commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file an RBC plan in the manner specified under that state's RBC statute (or, if no RBC statute is in force in that state, under sections 31 through 35 of this chapter);

the commissioner may require the foreign insurer to file an RBC plan with the commissioner.

(b) In a situation described in subsection (a), the failure of the foreign insurer to file an RBC plan with the commissioner is grounds for the commissioner to order the insurer to cease and desist from writing new insurance business in Indiana.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-51

Liquidation of property of foreign insurer

Sec. 51. If:

(1) a mandatory control level event occurs with respect to a foreign insurer; and

(2) no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer;

the commissioner may apply to the Marion County circuit court with respect to the liquidation of property of the foreign insurer that is found in Indiana. The occurrence of the mandatory control level event is adequate grounds for the application.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-52

Effective notice

Sec. 52. (a) A notice by the commissioner to an insurer that may result in regulatory action under this chapter, if transmitted by registered or certified mail, is effective when the notice is put in the mail.

(b) A transmission by the commissioner to an insurer under this chapter other than a notice described in subsection (a) is effective upon the insurer's receipt of the transmission.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-53

Immunity from liability

Sec. 53. There is no liability on the part of, and no cause of action shall arise against:

- (1) the commissioner;
- (2) the department; or
- (3) any employee or agent of the department;

for any action taken in the exercise of their powers and the performance of duties under this chapter.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-54

Severability of chapter provisions

Sec. 54. The provisions of this chapter are severable in the manner provided in IC 1-1-1-8. If:

- (1) any provision of this chapter; or
- (2) the application of this chapter to any person or circumstance;

is held invalid, that determination shall not affect the provisions or applications of this chapter that can be given effect without the invalid provision or application.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-55

Rules

Sec. 55. The commissioner, under IC 4-22-2, may adopt reasonable rules necessary for the implementation of this chapter.

As added by P.L.186-1996, SEC.1.

IC 27-1-36-56

Excess capital

Sec. 56. (a) An excess of capital over the amount produced by the:

- (1) risk based capital requirements contained in this chapter; and
- (2) formulas, schedules, and instructions referred to in this chapter;

is desirable in the business of insurance. Therefore, insurers should seek to maintain capital above the RBC levels required by this chapter.

(b) Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks that are:

- (1) inherent in or affecting the business of insurance; and
- (2) not accounted for or only partially measured by the risk based capital requirements contained in this chapter.

As added by P.L.186-1996, SEC.1.