

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1968
97TH GENERAL ASSEMBLY

Reported from the Committee on Financial and Governmental Organizations and Elections, April 15, 2014, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

5975S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 354.465, 375.1250, 375.1252, 375.1255, 375.1257, 375.1260, 375.1262, 375.1265, 375.1267, 375.1269, 375.1270, 375.1272, and 375.1275, RSMo, and to enact in lieu thereof thirteen new sections relating to health organizations.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 354.465, 375.1250, 375.1252, 375.1255, 375.1257, 375.1260, 375.1262, 375.1265, 375.1267, 375.1269, 375.1270, 375.1272, and 375.1275, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 354.465, 375.1250, 375.1252, 375.1255, 375.1257, 375.1260, 375.1262, 375.1265, 375.1267, 375.1269, 375.1270, 375.1272, and 375.1275, to read as follows:

354.465. 1. The director, or any duly appointed representative, may make an examination of the affairs of any health maintenance organization as often as he deems it necessary for the protection of the interests of the people of this state, but not less frequently than once every ~~three~~ **five** years.

2. All costs incurred by the state as a result of making examinations under this section shall be paid by the organization being examined and remitted ~~[directly to the examiner or examiners conducting the examination on billings approved by the director]~~ **as provided in section 374.160.**

375.1250. As used in sections 375.1250 to 375.1275 and in the Risk-Based Capital (RBC) Instructions, the following terms mean:

(1) "Adjusted RBC report", an RBC report which has been adjusted in accordance with subsection 5 of section 375.1252;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

5 (2) "Corrective order", an order issued by the director specifying corrective
6 actions which the director has determined are required;

7 (3) "Director", the director of the department of insurance, financial
8 institutions and professional registration;

9 (4) **"Domestic health organization", a health organization**
10 **domiciled in this state;**

11 (5) "Domestic insurer", any insurance company domiciled in this state;

12 (6) **"Foreign health organization", a health organization that is**
13 **licensed to do business in this state under chapter 354 but is not**
14 **domiciled in this state;**

15 [(5)] (7) "Foreign insurer", any insurance company which is licensed to
16 do business in this state under section 375.791, but is not domiciled in this state;

17 (8) **"Health organization", a health services corporation, health**
18 **maintenance organization, limited health service organization, dental**
19 **or vision plan, hospital, medical and dental indemnity or service**
20 **corporation, or other managed care organization licensed under**
21 **chapter 354, but not an organization that is defined as a life and health**
22 **insurer or property and casualty insurer by this section and otherwise**
23 **subject to either the life or property and casualty RBC requirements;**

24 [(6)] (9) "Life and health insurer", any insurance company licensed under
25 chapter 376 or a licensed property and casualty insurer writing only accident and
26 health insurance;

27 [(7)] (10) "NAIC", the National Association of Insurance Commissioners;

28 [(8)] (11) "Negative trend", with respect to life and health insurers, a
29 negative trend over a period of time, as determined in accordance with the trend
30 test calculations included in the RBC instructions;

31 [(9)] (12) "Property and casualty insurer", any insurance company
32 licensed under chapter 379, but such term shall not include monoline mortgage
33 guaranty insurers, financial guaranty insurers and title insurers;

34 [(10)] (13) "RBC instructions", the RBC report, including risk-based
35 capital instructions adopted by the NAIC, as such RBC instructions may be
36 amended by the NAIC from time to time in accordance with the procedures
37 adopted by the NAIC;

38 [(11)] (14) "RBC level", an [insurer's] **insurer or health**
39 **organization's** company action level RBC, regulatory action level RBC,
40 authorized control level RBC, or mandatory control level RBC where:

41 (a) "Company action level RBC" means, with respect to any insurer **or**
42 **health organization**, the product of 2.0 and its authorized control level RBC;

43 (b) "Regulatory action level RBC" means the product of 1.5 and its
44 authorized control level RBC;

45 (c) "Authorized control level RBC" means the number determined under
46 the risk-based capital formula in accordance with the RBC instruction; and

47 (d) "Mandatory control level RBC" means the product of .70 and the
48 authorized control level RBC;

49 [(12)] **(15)** "RBC plan", a comprehensive financial plan containing the
50 elements specified in subsection 2 of section 375.1255. If the director rejects the
51 RBC plan and it is revised by the insurer **or health organization**, with or
52 without the director's recommendation, the plan shall be called the "Revised RBC
53 Plan";

54 [(13)] **(16)** "RBC report", the report required in section 375.1252;

55 [(14)] **(17)** "Total adjusted capital", the sum of:

56 (a) An [insurer's] **insurer or health organization's** statutory capital
57 and surplus as determined in accordance with the statutory accounting applicable
58 to the annual financial reports required to be filed under **chapter 354 for**
59 **health organizations**, section 376.350 for domestic life and health insurers,
60 section 379.105 for domestic property and casualty insurers and section 375.891
61 for foreign insurers; and

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

375.1252. 1. Every domestic insurer **and every health organization**
2 shall, on or prior to each March first, prepare and submit to the director a report
3 of its RBC level as of the end of the calendar year just ended, in a form and
4 containing such information as is required by the RBC instructions. In addition,
5 every domestic insurer **and every domestic health organization** shall file its
6 RBC report:

7 (1) With the NAIC in accordance with the RBC instructions; and

8 (2) With the chief insurance regulatory official in any state in which the
9 insurer **or health organization** is authorized to do business, if such official has
10 notified the insurer **or health organization** of its request in writing, in which
11 case the insurer **or health organization** shall file its RBC report not later than
12 the later of:

13 (a) Fifteen days from the receipt of notice to file its RBC report with that
14 state; or

15 (b) The filing date.

16 2. A life and health insurer's RBC shall be determined in accordance with
17 the formula set forth in the RBC instructions. The formula shall take into
18 account and may adjust for the covariance between:

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

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

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

23 (4) All other business risks and such other relevant risks as are set forth
24 in the RBC instructions. Such risks shall be determined in each case by applying
25 the factors in the manner set forth in the RBC instructions.

26 3. A property and casualty insurer's RBC shall be determined in
27 accordance with the formula set forth in the RBC instructions. The formula shall
28 take into account and may adjust for the covariance between:

29 (1) Asset risk;

30 (2) Credit risk;

31 (3) Underwriting risk; and

32 (4) All other business risks and such other relevant risks as are set forth
33 in the RBC instructions. Such risks shall be determined in each case by applying
34 the factors in the manner set forth in the RBC instructions.

35 **4. A health organization's RBC shall be determined in accordance**
36 **with the formula set forth in the RBC instructions. The formula shall**
37 **take into account and may adjust for the covariance between:**

38 **(1) Asset risk;**

39 **(2) Credit risk;**

40 **(3) Underwriting risk; and**

41 **(4) All other business risks and such other relevant risks as are**
42 **set forth in the RBC instructions. Such risks shall be determined in**
43 **each case by applying the factors in the manner set forth in the RBC**
44 **instructions.**

45 **5. Insurers and health organizations** should seek to maintain capital
46 above the RBC levels required by sections 375.1250 to 375.1275, as such
47 additional capital helps to secure an insurer against various risks inherent in, or
48 affecting, the business of insurance and not accounted for or partially measured
49 by the risk-based capital requirements contained in sections 375.1250 to
50 375.1275.

51 [5.] **6.** If a domestic insurer **or domestic health organization** files an
52 RBC report which in the judgment of the director is inaccurate, then the director
53 shall adjust the RBC report to correct the inaccuracy and shall notify the insurer
54 **or health organization** of the adjustment. The notice shall contain a
55 statement of the reason for the adjustment. An RBC report as so adjusted is
56 referred to as an "adjusted RBC report".

375.1255. 1. "Company action level event" means with respect to any
2 insurer **or health organization**, any of the following events:

3 (1) The filing of an RBC report by the insurer **or health organization**
4 which indicates that:

5 (a) The [insurer's] **insurer or health organization's** total adjusted
6 capital is greater than or equal to its regulatory action level RBC but less than
7 its company action level RBC; or

8 (b) If a life and health insurer, the insurer has total adjusted capital
9 which is greater than or equal to its company action level RBC but less than the
10 product of its authorized control level [capital] **RBC** and [2.5] **3.0**, and has a
11 negative trend;

12 (c) If a property and casualty insurer, the insurer has total adjusted
13 capital which is greater than or equal to its company action level RBC but less
14 than the product of its authorized control level RBC and 3.0 and triggers the
15 trend test determined in accordance with the trend test calculation included in
16 the property and casualty RBC report instructions;

17 (d) **If a health organization has total adjusted capital which is**
18 **greater than or equal to its company action level RBC but less than the**
19 **product of its authorized control level RBC and 3.0 and triggers the**
20 **trend test determined in accordance with the trend test calculation**
21 **included in the health RBC instructions;**

22 (2) The notification by the director to the insurer **or health**
23 **organization** of an adjusted RBC report that indicates the event in paragraph
24 (a), (b), [or] (c), **or (d)** of subdivision (1) of this subsection, if the insurer **or**
25 **health organization** does not challenge the adjusted RBC report pursuant to
26 section 375.1265;

27 (3) If pursuant to section 375.1265 the insurer **or health organization**
28 challenges an adjusted RBC report that indicates the event described in
29 subdivision (1) of this subsection, the notification by the director to the insurer
30 **or health organization** that the director has, after a hearing, rejected the

31 [insurer's] **insurer or health organization's** challenge.

32 2. In the event of a company action level event the insurer **or health**
33 **organization** shall prepare and submit to the director an RBC plan which shall:

34 (1) Identify the conditions in the insurer **or health organization** which
35 contribute to the company action level event;

36 (2) Contain proposals of corrective actions which the insurer **or health**
37 **organization** intends to take and would be expected to result in the elimination
38 of the company action level event;

39 (3) **(a)** Provide projections of the insurer's financial results in the current
40 year and at least the four succeeding years, both in the absence of proposed
41 corrective actions and giving effect to the proposed corrective actions, including
42 projections of statutory operating income, net income, capital or surplus. The
43 projections for both new and renewal business might include separate projections
44 for each major line of business and separately identify each significant income,
45 expense and benefit component;

46 **(b) Provide projections of the health organization's financial**
47 **results in the current year and at least the two succeeding years, both**
48 **in the absence of proposed corrective actions and giving effect to the**
49 **proposed corrective actions, including projections of statutory balance**
50 **sheets, operating income, net income, capital and surplus, and RBC**
51 **levels. The projections for both new and renewal business might**
52 **include separate projections for each major line of business and**
53 **separately identify each significant income, expense, and benefit**
54 **component;**

55 (4) Identify the key assumptions impacting the [insurer's] **insurer or**
56 **health organization's** projections and the sensitivity of the projections to the
57 assumptions; and

58 (5) Identify the quality of, and problems associated with, the [insurer's]
59 **insurer or health organization's** business, including but not limited to its
60 assets, anticipated business growth and associated surplus strain, extraordinary
61 exposure to risk, mix of business and use of reinsurance in each case, if any.

62 3. The RBC plan shall be submitted:

63 (1) Within forty-five days of the company action level event; or

64 (2) If the insurer **or health organization** challenges an adjusted RBC
65 report pursuant to section 375.1265 within forty-five days after notification to the
66 insurer **or health organization** that the director has, after a hearing, rejected

67 the [insurer's] **insurer or health organization's** challenge.

68 4. Within sixty days after the submission by an insurer **or health**
69 **organization** of an RBC plan to the director, the director shall notify the insurer
70 **or health organization** whether the RBC plan shall be implemented or is, in
71 the judgment of the director, unsatisfactory. If the director determines the RBC
72 plan is unsatisfactory, the notification to the insurer **or health organization**
73 shall set forth the reasons for the determination, and may set forth proposed
74 revisions which will render the RBC plan satisfactory, in the judgment of the
75 director. Upon notification from the director, the insurer **or health**
76 **organization** shall prepare a revised RBC plan, which may incorporate by
77 reference any revisions proposed by the director, and shall submit the revised
78 RBC plan to the director:

79 (1) Within forty-five days after the notification from the director; or

80 (2) If the insurer **or health organization** challenges the notification
81 from the director pursuant to section 375.1265, within forty-five days after a
82 notification to the insurer **or health organization** that the director has, after
83 a hearing, rejected the [insurer's] **insurer or health organization's** challenge.

84 5. In the event of a notification by the director to an insurer **or health**
85 **organization** that the [insurer's] **insurer or health organization's** RBC plan
86 or revised RBC plan is unsatisfactory, the director may at the director's
87 discretion, subject to the [insurer's] **insurer or health organization's** right to
88 a hearing under section 375.1265, specify in the notification that the notification
89 constitutes a regulatory action level event.

90 6. Every domestic insurer **or domestic health organization** that files
91 an RBC plan or revised RBC plan with the director shall file a copy of the RBC
92 plan or revised RBC plan with the chief insurance regulatory official in any state
93 in which the insurer is authorized to do business if:

94 (1) Such state has an RBC provision, substantially similar to subsection
95 1 of section 375.1267; and

96 (2) The chief insurance regulatory official of that state has notified the
97 insurer **or health organization** of its request for the filing in writing, in which
98 case the insurer **or organization** shall file a copy of the RBC plan or revised
99 RBC plan in that state no later than the later of:

100 (a) Fifteen days after the receipt of notice to file a copy of its RBC plan
101 or revised RBC plan with the state; or

102 (b) The date on which the RBC plan or revised RBC plan is filed under

103 subsection 3 or 4 of this section.

375.1257. 1. "Regulatory action level event" means, with respect to any
2 insurer **or health organization**, any of the following events:

3 (1) The filing of an RBC report by the insurer **or health organization**
4 which indicates that the [insurer's] **insurer or health organization's** total
5 adjusted capital is greater than or equal to its authorized control level RBC but
6 less than its regulatory action level RBC;

7 (2) The notification by the director to an insurer **or health organization**
8 of an adjusted RBC report that indicates the event in subdivision (1) of this
9 subsection, if the insurer **or health organization** does not challenge the
10 adjusted RBC report under section 375.1265;

11 (3) If, pursuant to section 375.1265, the insurer **or health organization**
12 challenges an adjusted RBC report that indicates the event in subdivision (1) of
13 this subsection, the notification by the director to the insurer **or health**
14 **organization** that the director has, after a hearing, rejected the [insurer's]
15 **insurer or health organization's** challenge;

16 (4) The failure of the insurer **or health organization** to file an RBC
17 report by the filing date, unless the insurer **or health organization** has
18 provided an explanation for such failure which is satisfactory to the director and
19 has cured the failure within ten days after the filing date;

20 (5) The failure of the insurer **or health organization** to submit an RBC
21 plan to the director within the time period set forth in subsection 3 of section
22 375.1255;

23 (6) Notification by the director to the insurer **or health organization**
24 that:

25 (a) The RBC plan or revised RBC plan submitted by the insurer **or**
26 **health organization** is, in the judgment of the director, unsatisfactory; and

27 (b) Such notification constitutes a regulatory action level event with
28 respect to the insurer **or health organization**, where the insurer **or health**
29 **organization** has not challenged the determination under section 375.1265;

30 (7) If, pursuant to section 375.1265, the insurer **or health organization**
31 challenges a determination by the director under subdivision (6) of this
32 subsection, the notification by the director to the insurer **or health**
33 **organization** that the director has, after a hearing, rejected such challenge;

34 (8) Notification by the director to the insurer **or health organization**
35 that the insurer **or health organization** has failed to adhere to its RBC plan

36 or revised RBC plan, but only if such failure has a substantial adverse effect on
37 the ability of the insurer **or health organization** to eliminate the company
38 action level event in accordance with its RBC plan or revised RBC plan and the
39 director has so stated in the notification provided the insurer **or health**
40 **organization** has not challenged the determination under section 375.1265; or

41 (9) If, pursuant to section 375.1265, the insurer **or health organization**
42 challenges a determination by the director under subdivision (8) of this subsection
43 the notification by the director to the insurer **or health organization** that the
44 director has, after a hearing, rejected the challenge.

45 2. In the event of a regulatory action level event the director shall:

46 (1) Require the insurer **or health organization** to prepare and submit
47 an RBC plan or, if applicable, a revised RBC plan;

48 (2) Perform such examination or analysis as the director deems necessary
49 of the assets, liabilities and operations of the insurer **or health organization**,
50 including a review of its RBC plan or revised RBC plan; and

51 (3) Subsequent to the examination or analysis, issue an order specifying
52 such corrective actions as the director shall determine are required.

53 3. In determining corrective actions, the director may take into account
54 such factors as are deemed relevant with respect to the insurer **or health**
55 **organization** based upon the director's examination or analysis of the assets,
56 liabilities and operations of the insurer **or health organization**, including, but
57 not limited to, the results of any sensitivity tests undertaken pursuant to the
58 RBC instructions. The RBC plan or revised RBC plan shall be submitted:

59 (1) Within forty-five days after the occurrence of the regulatory action
60 level event;

61 (2) If the insurer **or health organization** challenges an adjusted RBC
62 report pursuant to section 375.1265, within forty-five days after the notification
63 to the insurer **or health organization** that the director has, after a hearing,
64 rejected the [insurer's] **insurer or health organization's** challenge; or

65 (3) If the insurer **or health organization** challenges a revised RBC plan
66 under section 375.1265, within forty-five days after notification to the insurer **or**
67 **health organization** that the director has, after a hearing, rejected the
68 challenge.

69 4. The director may retain actuaries and investment experts and other
70 consultants as may be necessary in the judgment of the director to review the
71 [insurer's] **insurer or health organization's** RBC plan or revised RBC plan,

72 examine or analyze the assets, liabilities and operations of the insurer **or health**
73 **organization** and formulate the corrective order with respect to the insurer **or**
74 **health organization**. The fees, costs and expenses relating to the consultants
75 shall be borne by the affected insurer **or health organization**.

375.1260. 1. "Authorized control level event" means any of the following
2 events:

3 (1) The filing of an RBC report by the insurer **or health organization**
4 which indicates that the [insurer's] **insurer or health organization's** total
5 adjusted capital is greater than or equal to its mandatory control level RBC but
6 less than its authorized control level RBC;

7 (2) The notification by the director to the insurer **or health**
8 **organization** of an adjusted RBC report that indicates the event in subdivision
9 (1) of this subsection provided the insurer **or health organization** does not
10 challenge the adjusted RBC report under section 375.1265;

11 (3) If, pursuant to section 375.1265, the insurer **or health organization**
12 challenges an adjusted RBC report that indicates the event in subdivision (1) of
13 this subsection, notification by the director to the insurer **or health**
14 **organization** that the director has, after a hearing, rejected the [insurer's]
15 **insurer or health organization's** challenge;

16 (4) The failure of the insurer **or health organization** to respond, in a
17 manner satisfactory to the director, to a corrective order provided the insurer **or**
18 **health organization** has not challenged the corrective order under section
19 375.1265; or

20 (5) If the insurer **or health organization** has challenged a corrective
21 order under section 375.1265 and the director has, after a hearing, rejected the
22 challenge or modified the corrective order, the failure of the insurer **or health**
23 **organization** to respond, in a manner satisfactory to the director, to the
24 corrective order subsequent to rejection or modification by the director.

25 2. In the event of an authorized control level event the director shall:

26 (1) Take such actions as are required under section 375.1257 regarding
27 an insurer **or health organization** with respect to which a regulatory action
28 level event has occurred; or

29 (2) If the director deems it to be in the best interests of the policyholders
30 and creditors of the insurer **or health organization** and of the public, take such
31 actions as are necessary to cause the insurer **or health organization** to be
32 placed under regulatory control under sections 375.1150 to 375.1246. In the

33 event the director takes such actions, the authorized control level event shall be
34 deemed sufficient grounds for the director to take action pursuant to sections
35 375.1150 to 375.1246, and the director shall have the rights, powers and duties
36 with respect to the insurer **or health organization** as are set forth in sections
37 375.1150 to 375.1246. In the event the director takes actions under this
38 subdivision pursuant to an adjusted RBC report, the insurer **or health**
39 **organization** shall be entitled to such protections as are afforded to insurers **or**
40 **health organizations** pursuant to the provisions of sections 375.570 to 375.640,
41 provided that the adjusted RBC report shall be deemed a report of examination.

375.1262. 1. "Mandatory control level event" means, with respect to any
2 insurer **or health organization**, any of the following events:

3 (1) The filing of an RBC report which indicates that the [insurer's]
4 **insurer or health organization's** total adjusted capital is less than its
5 mandatory control level RBC;

6 (2) Notification by the director to the insurer **or health organization**
7 of an adjusted RBC report that indicates the event in subdivision (1) of this
8 subsection if the insurer **or health organization** does not challenge the
9 adjusted RBC report under section 375.1265; or

10 (3) If, pursuant to section 375.1265, the insurer **or health organization**
11 challenges an adjusted RBC report that indicates the event in subdivision (1) of
12 this subsection, notification by the director to the insurer **or health**
13 **organization** that the director has, after a hearing, rejected the [insurer's]
14 **insurer or health organization's** challenge.

15 2. In the event of a mandatory control level event the director shall take
16 such actions as are necessary to place the insurer **or health organization**
17 under regulatory control under sections 375.1150 to 375.1246, or, in the case of
18 a property and casualty insurer which is writing no business, may allow the
19 insurer to continue its existing policies until expiration of the policy term and
20 settlement of all outstanding claims under the supervision of the director. In
21 either event, the mandatory control level event shall be deemed sufficient grounds
22 for the director to take action pursuant to sections 375.1150 to 375.1246, and the
23 director shall have the rights, powers and duties with respect to the insurer **or**
24 **health organization** as are set forth in sections 375.1150 to 375.1246. In the
25 event the director takes actions pursuant to an adjusted RBC report, the insurer
26 **or health organization** shall be entitled to such protections as are afforded to
27 insurers **or health organizations** pursuant to the provisions of sections 375.570

28 to 375.640, if the adjusted RBC report shall be deemed a report of
29 examination. Notwithstanding any other provision of this subsection to the
30 contrary, the director may forego action for up to ninety days after the mandatory
31 control level event if the director finds there is a reasonable expectation that the
32 mandatory control level event be eliminated within the ninety-day period.

375.1265. 1. Upon:

2 (1) Notification to an insurer **or health organization** by the director of
3 an adjusted RBC report; or

4 (2) Notification to an insurer **or health organization** by the director
5 that:

6 (a) The [insurer's] **insurer or health organization's** RBC plan or
7 revised RBC plan is unsatisfactory; and

8 (b) Such notification constitutes a regulatory action level event with
9 respect to such insurer **or health organization**; or

10 (3) Notification to any insurer **or health organization** by the director
11 that the insurer **or health organization** has failed to adhere to its RBC plan
12 or revised RBC plan and that such failure has a substantial adverse effect on the
13 ability of the insurer **or health organization** to eliminate the company action
14 level event with respect to the insurer **or health organization** in accordance
15 with its RBC plan or revised RBC plan; or

16 (4) Notification to an insurer **or health organization** by the director of
17 a corrective order with respect to the insurer **or health organization**; the
18 insurer **or health organization** shall have the right to a confidential
19 departmental hearing, with a record made, at which the insurer **or health**
20 **organization** may challenge any determination or action by the director. The
21 insurer **or health organization** shall notify the director of its request for a
22 hearing within five days after the notification by the director pursuant to this
23 subsection. Upon receipt of the [insurer's] **insurer or health organization's**
24 request for a hearing, the director shall set a date for the hearing, which date
25 shall be no less than ten nor more than thirty days after the date of the
26 [insurer's] **insurer or health organization's** request.

27 2. An insurer **or health organization** aggrieved by an order of the
28 director after a hearing pursuant to subsection 1 of this section may obtain
29 judicial review of such order pursuant to sections 536.100 to 536.140, except that:

30 (1) No insurer **or health organization** shall be deemed aggrieved unless
31 the director has either:

32 (a) Made the director's order public; or
33 (b) Taken action pursuant to sections 375.1250 to 375.1275 or pursuant
34 to sections 375.1165 to 375.1246; or

35 (c) Issued a corrective order after the hearing;

36 (2) If the director has taken action as described in paragraph (b) of
37 subdivision (1) of subsection 1 of this section, judicial review pursuant to this
38 section shall be consolidated with and be pendent to the action pursuant to the
39 director's action.

40 3. There shall be no judicial review of any action by the director pursuant
41 to sections 375.1250 to 375.1275 except as provided in subsection 2 of this section.

375.1267. 1. All RBC reports, to the extent the information therein is not
2 required to be set forth in a publicly available annual statement schedule, and
3 RBC plans, including the results or report of any examination or analysis of an
4 insurer **or health organization** performed pursuant to this section and any
5 corrective order issued by the director pursuant to examination or analysis, with
6 respect to any **domestic** insurer [or], foreign insurer, **health organization, or**
7 **foreign health organization** which are filed with the director constitute
8 information that might be damaging to the **domestic** insurer [or], foreign
9 insurer, **health organization, or foreign health organization** if made
10 available to its competitors, and therefore shall be kept confidential by the
11 director. This information shall neither be made public nor be subject to
12 subpoena, other than by the director and then only for the purpose of enforcement
13 actions taken by the director pursuant to sections 375.1250 to 375.1275 or any
14 other provision of the insurance laws of this state.

15 2. The comparison of an [insurer's] **insurer or health organization's**
16 total adjusted capital to any of its RBC levels is a regulatory tool which may
17 indicate the need for possible corrective action with respect to the insurer **or**
18 **health organization**, and is not intended as a means to rank insurers **or**
19 **health organizations** generally. Therefore, except as otherwise required
20 pursuant to the provisions of sections 375.1250 to 375.1275, the making,
21 publishing, disseminating, circulating or placing before the public, or causing
22 directly or indirectly, the making, publishing, disseminating, circulating or
23 placing before the public, in a newspaper, magazine or other publication, or in the
24 form of a notice, circular, pamphlet, letter or poster, or over any radio or
25 television station, or in any other way, an advertisement, announcement or
26 statement containing an assertion, representation or statement with regard to the

27 RBC levels of any insurer **or health organization**, or of any component derived
28 in the calculations by any insurer **or health organization**, agent, broker, or
29 other person engaged in any manner in the business of insurance would be
30 misleading and is therefore an unfair trade practice as defined in section 375.934;
31 except that if any materially false statement with respect to the comparison
32 regarding an [insurer's] **insurer or health organization's** total adjusted
33 capital to its RBC levels or an inappropriate comparison of any other amount to
34 the [insurer's] **insurer or health organization's** RBC levels is published in
35 any written publication and the insurer **or health organization** is able to
36 demonstrate with substantial proof the falsity of such statement, or the
37 inappropriateness, as the case may be, then the insurer **or health organization**
38 may publish an announcement in a written publication if the sole purpose of the
39 announcement is to rebut the materially false statement.

40 3. The RBC instructions, RBC reports, adjusted RBC reports, RBC plans
41 and revised RBC plans are intended solely for use by the director in monitoring
42 the solvency of insurers **and health organizations** and the need for possible
43 corrective action with respect to insurers **or health organizations** and shall not
44 be used by the director for ratemaking nor considered or introduced as evidence
45 in any rate proceeding nor used by the director to calculate or derive any
46 elements of an appropriate premium level or rate of return for any line of
47 insurance which an insurer, **health organization**, or any affiliate is authorized
48 to write.

49 4. **In order to assist in the performance of the director's duties,**
50 **the director:**

51 (1) **May share documents, materials, or other information,**
52 **including the confidential and privileged documents, materials, or**
53 **information subject to subsection 1 of this section, with other state,**
54 **federal, and international regulatory agencies, with the National**
55 **Association of Insurance Commissioners and its affiliates and**
56 **subsidiaries, and with state, federal, and international law enforcement**
57 **authorities, provided that the recipient agrees to maintain the**
58 **confidentiality and privileged status of the document, material, or**
59 **other information;**

60 (2) **May receive documents, materials, or other information,**
61 **including otherwise confidential and privileged documents, materials,**
62 **or information from the National Association of Insurance**

63 **Commissioners and its affiliates and subsidiaries and from regulatory**
64 **and law enforcement officials of other foreign or domestic jurisdictions,**
65 **and shall maintain as confidential or privileged any document,**
66 **material, or information received with notice or the understanding that**
67 **it is confidential or privileged under the laws of the jurisdiction that**
68 **is the source of the document, material, or information; and**

69 **(3) May enter into agreements governing sharing and use of**
70 **information consistent with this subsection.**

71 **5. No waiver of any applicable privilege or claim of**
72 **confidentiality in the documents, materials, or information shall occur**
73 **as a result of disclosure to the director under this section or as a result**
74 **of sharing as authorized in subdivision (3) of subsection 4 of this**
75 **section.**

375.1269. 1. The provisions of sections 375.1250 to 375.1275 are
2 supplemental to any other provisions of the laws of this state, and shall not
3 preclude or limit any other powers or duties of the director under such laws,
4 including but not limited to sections 375.1150 to 375.1246.

5 2. The director may adopt reasonable rules and regulations necessary for
6 the implementation of sections 375.1250 to 375.1275. No rule or regulation
7 promulgated under authority of this section shall become effective unless it has
8 been promulgated pursuant to the provisions of section 536.024.

9 3. The director may exempt from the provisions of sections 375.1250 to
10 375.1275 any domestic property and casualty insurer which:

11 (1) Writes direct business only in this state;
12 (2) Writes direct annual premiums of two million dollars or less; and
13 (3) Assumes no reinsurance in excess of five percent of direct premium
14 written.

15 4. **The director may exempt from the provisions of sections**
16 **375.1250 to 375.1275 any domestic health organization that:**

17 **(1) Writes direct business only in this state; and**
18 **(2) Writes direct annual premiums of two million dollars or less;**
19 **and**

20 **(3) Assumes no reinsurance in excess of five percent of direct**
21 **premium written; or**

22 **(4) Is a limited health service organization that covers less than**
23 **two thousand lives.**

24 5. There shall be no liability on the part of, and no cause of action shall
25 arise against, the director, the department of insurance, financial institutions and
26 professional registration or its employees or agents for any action taken by them
27 in the performance of their powers and duties under sections 375.1250 to
28 375.1275.

 375.1270. 1. Any foreign insurer **or foreign health organization** shall,
2 upon the written request of the director, submit to the director an RBC report as
3 of the end of the calendar year just ended the later of:

4 (1) The date an RBC report would be required to be filed by [an] a
5 **domestic insurer or domestic health organization** under sections 375.1250
6 to 375.1275; or

7 (2) Fifteen days after the request is received by the foreign insurer **or**
8 **foreign health organization**.

9 2. Any foreign insurer **or foreign health organization** shall, at the
10 written request of the director, promptly submit to the director a copy of any RBC
11 plan that is filed with the chief insurance regulatory official of any other state.

12 3. In the event of a company action level event regulatory action level
13 event or authorized control level event with respect to any foreign insurer **or**
14 **foreign health organization** as determined under the RBC statute applicable
15 in the state of domicile of the insurer or, if no RBC provision is in force in that
16 state, under the provisions of sections 375.1250 to 375.1275, if the chief insurance
17 regulatory official of the state of domicile of the foreign insurer **or foreign**
18 **health organization** fails to require the foreign insurer **or foreign health**
19 **organization** to file an RBC plan in the manner specified under the RBC statute
20 or, if no RBC provision is in force in the state, under section 375.1255, the
21 director may require the foreign insurer **or foreign health organization** to file
22 an RBC plan with the director. In such event, the failure of the foreign insurer
23 **or foreign health organization** to file an RBC plan with the director shall be
24 grounds to order the insurer **or foreign health organization** to cease and
25 desist from writing new insurance business in this state, pursuant to the
26 procedures set forth in section 374.046.

27 4. In the event of a mandatory control level event with respect to any
28 foreign insurer **or foreign health organization**, if no domiciliary receiver has
29 been appointed with respect to the foreign insurer **or foreign health**
30 **organization** under the rehabilitation and liquidation statute applicable in the
31 state of domicile of the foreign insurer **or foreign health organization**, the

32 director may make application to the circuit court of Cole County permitted
33 pursuant to section 375.1234 with respect to the liquidation of property of foreign
34 insurers **or foreign health organizations** found in this state, and the
35 occurrence of the mandatory control level event shall be considered adequate
36 grounds for the application.

375.1272. All notices by the director to an insurer **or health**
2 **organization** which may result in regulatory action under sections 375.1250 to
3 375.1275 shall be effective upon dispatch if transmitted by registered or certified
4 mail, or in the case of any other transmission shall be effective upon the
5 [insurer's] **insurer or health organization's** receipt of such notice.

375.1275. 1. For RBC reports required to be filed by life and health
2 insurers with respect to 1993, the following requirements shall apply in lieu of
3 the provisions of section 375.1255:

4 (1) In the event of a company action level event with respect to an insurer,
5 the director shall take no regulatory action;

6 (2) In the event of a regulatory action level event pursuant to section
7 375.1257, the director shall take the actions required pursuant to section
8 375.1255;

9 (3) In the event of a regulatory action level event pursuant to section
10 375.1257 or an authorized control level event, the director shall take the actions
11 required pursuant to section 375.1257 with respect to the insurer;

12 (4) In the event of a mandatory control level event with respect to an
13 insurer, the director shall take the actions required pursuant to section 375.1260
14 with respect to the insurer.

15 2. For RBC reports required to be filed by property and casualty insurers
16 with respect to 1996, the following requirements shall apply in lieu of the
17 provisions of sections 375.1255 to 375.1262:

18 (1) In the event of a company action level event with respect to a domestic
19 insurer, the director shall take no regulatory action under sections 375.1250 to
20 375.1275;

21 (2) In the event of a regulatory action level event under subdivision (1),
22 (2) or (3) of subsection 1 of section 375.1257, the director shall take the actions
23 required under section 375.1255;

24 (3) In the event of a regulatory action level event under subdivision (4),
25 (5), (6), (7), (8) or (9) of subsection 1 of section 375.1257 or an authorized control
26 level event, the director shall take the actions required under section 375.1257,

27 with respect to the insurer;

28 (4) In the event of a mandatory control level event, the director shall take
29 the actions required under section 375.1260 with respect to the insurer.

30 **3. For RBC reports required to be filed by health organizations**
31 **with respect to 2014, the following requirements shall apply in lieu of**
32 **the provisions of sections 375.1255 to 375.1262:**

33 (1) In the event of a company action level event with respect to
34 a domestic health organization, the director shall take no regulatory
35 action;

36 (2) In the event of a regulatory action level event under
37 subdivisions (1) to (3) of subsection 1 of section 375.1257, the director
38 shall take the actions required pursuant to section 375.1255;

39 (3) In the event of a regulatory action level event under
40 subdivisions (4) to (9) of subsection 1 of section 375.1257 or an
41 authorized control level event, the director shall take the actions
42 required under section 375.1257 with respect to the health organization;

43 (4) In the event of a mandatory control level event with respect
44 to a health organization, the director shall take the actions required
45 under section 375.1260 with respect to the health organization.

46 **4. The actions required under sections 375.1255 to 375.1262 or this**
47 **section shall not apply to any insurer operating under the provisions of sections**
48 **287.900 to 287.920 which is under any order of supervision, including waivers of**
49 **requirements for capital and surplus, issued or commenced by the director prior**
50 **to August 28, 1996. This provision shall remain in effect until such order or**
51 **proceeding expires or is otherwise terminated by further order of the director.**

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