

CHAPTER 1046**INSURANCE REGULATION – RISK-BASED CAPITAL REQUIREMENTS**

S.F. 2395

AN ACT relating to the regulation of insurance companies for purposes of solvency and establishing a measure for the risk-based capital of an insurer, and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 508.5, Code Supplement 1995, is amended to read as follows:
508.5 CAPITAL AND SURPLUS REQUIRED.

1. A stock life insurance company shall not be authorized to transact business under this chapter with less than two million five hundred thousand dollars capital stock fully paid for in cash and two million five hundred thousand dollars of surplus paid in cash or invested as provided by law. A stock life insurance company shall not increase its capital stock unless the amount of the increase is fully paid in cash. The stock shall be divided into shares of not less than one dollar par value each. A stock life insurance company authorized to do business in Iowa that undergoes a change of control as defined under chapter 521A shall maintain the minimum capital and surplus requirements mandated by this section.

2. Notwithstanding subsection 1, a stock life insurance company, or any other life insurance company authorized to transact business under this chapter shall comply with the minimum capital and surplus requirements of this chapter or chapter 521E, whichever is greater.

Sec. 2. Section 508.9, Code Supplement 1995, is amended to read as follows:
508.9 MUTUAL COMPANIES – CONDITIONS.

1. Level premium and natural premium life insurance companies organized under the laws of this state upon the mutual plan shall, before issuing policies, have actual applications on at least two hundred and fifty lives for an average amount of one thousand dollars each. A list of the applications giving the name, age, residence, amount of insurance, and annual premium of each applicant shall be filed with the commissioner of insurance, and a deposit made with the commissioner of an amount equal to three-fifths of the whole annual premium on the applications, in cash or the securities required by section 508.5. In addition, a deposit of cash or securities of the character provided by law for the investment of funds for life insurance companies in the sum of five million dollars shall be made with the commissioner, which shall constitute a security fund for the protection of policyholders. The contribution to the security fund shall not give to contributors to the fund or to other persons any voting or other power in the management of the affairs of the company. The security fund may be repaid to the contributors to the security fund with interest at six percent from the date of contribution, at any time, in whole or in part, if the repayment does not reduce the surplus of the company below the amount of five million dollars and then only if consent in writing for the repayment is obtained from the commissioner of insurance. Upon compliance with this section, the commissioner shall issue to the mutual company the certificate prescribed in this chapter. A mutual insurance company authorized to do business in Iowa that undergoes a change of control as defined in chapter 521A shall maintain the minimum surplus requirement mandated by this section.

2. Notwithstanding subsection 1, a mutual insurance company authorized to transact business under this chapter shall comply with the minimum surplus requirements of this section or chapter 521E, whichever is greater.

Sec. 3. Section 515.8, Code Supplement 1995, is amended to read as follows:
515.8 PAID-UP CAPITAL REQUIRED.

1. An insurance company other than a life insurance company shall not be incorporated to transact business upon the stock plan with less than two million five hundred

thousand dollars capital, the entire amount of which shall be fully paid up in cash and invested as provided by law. An insurance company other than a life insurance company shall not increase its capital stock unless the amount of the increase is fully paid up in cash. The stock shall be divided into shares of not less than one dollar each. An insurance company authorized to do business in Iowa that undergoes a change of control as defined under chapter 521A shall maintain the minimum capital requirements mandated by this section.

2. Notwithstanding subsection 1, an insurance company, other than a life insurance company, authorized to transact business under this chapter shall comply with the minimum capital requirements of this section or chapter 521E, whichever is greater.

Sec. 4. Section 515.10, Code Supplement 1995, is amended to read as follows:

515.10 SURPLUS REQUIRED.

1. An insurance company other than a life insurance company shall have, in addition to the required paid-up capital, a surplus in cash or invested in securities authorized by law of not less than two million five hundred thousand dollars. An insurance company authorized to do business in Iowa that undergoes a change of control as defined under chapter 521A shall maintain the minimum surplus requirements mandated by this section.

2. Notwithstanding subsection 1, an insurance company, other than a life insurance company, authorized to transact business under this chapter shall comply with the minimum surplus requirements of this section or chapter 521E, whichever is greater.

Sec. 5. Section 515.69, Code 1995, is amended to read as follows:

515.69 FOREIGN COMPANIES – CAPITAL REQUIRED.

1. A stock insurance company organized under or by the laws of any other state or foreign government for the purpose specified in this chapter, shall not, directly or indirectly, take risks or transact business of insurance in this state unless the company has two and one-half million dollars of actual paid-up capital, and a surplus in cash or invested in securities authorized by law of not less than two and one-half million dollars, exclusive of assets deposited in a state, territory, district, or country for the special benefit or security of those insured in that state, territory, district, or country.

2. Notwithstanding subsection 1, a stock insurance company authorized to transact business under this section shall comply with the minimum capital and surplus requirements of this section or chapter 521E, whichever is greater.

Sec. 6. Section 515.76, Code 1995, is amended to read as follows:

515.76 FOREIGN MUTUAL COMPANIES – SURPLUS.

1. Any mutual insurance company organized outside of this state and authorized to transact the business of insurance on the mutual plan in any other state of the United States or in the District of Columbia, may be admitted to this state and authorized to transact herein any of the kinds of insurance authorized by its charter or articles of incorporation, when so permitted by the provisions of this chapter, with the powers and privileges and subject to the conditions and limitations specified in said chapter; provided, however, such company has complied with all the statutory provisions which require stock companies to file papers and to furnish information and to submit to examination, and is also solvent according to the requirements of this chapter and is possessed of a surplus safely invested as follows:

~~1. a.~~ In case of a mutual company issuing policies for a cash premium without an additional contingent liability equal to or greater than the cash premium, the surplus shall be at least two million dollars.

~~2. b.~~ In case of any other such mutual company issuing policies for a cash premium or payment with an additional contingent liability equal to or greater than the cash premium or payment, the surplus shall be such an amount as the commissioner of insurance of Iowa may require, but in no case less than three hundred thousand dollars, provided that the provisions of this section fixing a minimum surplus of three hundred thousand dollars

shall not apply to companies now admitted to do business in Iowa; provided, further, that no such mutual company shall be authorized to transact compensation insurance without a surplus of at least three hundred thousand dollars unless all liability for each adjusted claim in this state, the payment of any part of which is deferred for more than one year, shall be provided for by a special deposit, in a trust company or a bank having fiduciary powers, located in this state, which shall be a trust fund applicable solely and exclusively to the payment of the compensation benefits for which such deposit is made, or shall be reinsured in an authorized stock company, or in an authorized mutual company with a surplus of at least three hundred thousand dollars.

2. Notwithstanding subsection 1, a mutual insurance company authorized to transact business under this section shall comply with the minimum surplus requirements of this section or chapter 521E, whichever is greater.

Sec. 7. NEW SECTION. 515.12A ALTERNATIVE MINIMUM SURPLUS LEVELS.

A mutual company authorized to transact business under this chapter shall comply with the minimum surplus requirements of section 515.12 or chapter 521E, whichever is greater.

Sec. 8. Section 520.9, Code 1995, is amended to read as follows:

520.9 STANDARD OF SOLVENCY.

1. There shall at all times be maintained as assets a sum in cash, or in securities of the kind designated by the laws of the state where the principal office is located for the investment of funds of insurance companies, equal to one hundred percent of the net unearned premiums or deposits collected and credited to the account of subscribers, or assets equal to fifty percent of the net annual deposits collected and credited to the account of subscribers on policies having one year or less to run and pro rata on those for longer periods; in addition to which there shall be maintained in cash, or in such securities, assets sufficient to discharge all liabilities on all outstanding losses arising under policies issued, the same to be calculated in accordance with the laws of the state relating to similar reserves for companies insuring similar risks; provided that where the assets on hand available for the payment of losses other than determined losses, do not equal two million dollars, all liability for each determined loss or claim deferred for more than one year, shall be provided for by a special deposit in a trust company or bank having fiduciary powers of the state in which the principal office is located, to be used in payment of compensation benefits for disability; such deposit to be a trust fund and applicable only to the purposes stated, or such liability may be reinsured in authorized companies with a surplus of at least two million dollars. For the purpose of such reserves, net deposits shall be construed to mean the advance payments of subscribers after deducting the amount specifically provided in the subscribers' agreements for expenses. If at any time the assets so held in cash or such securities shall be less than required above, or less than two million dollars, the subscribers or their attorney for them shall make up the deficiency within thirty days after notice from the commissioner of insurance to do so. In computing the assets required by this section, the amount specified in section 520.4, subsection 7, shall be included.

2. Notwithstanding subsection 1, a person issuing reciprocal contracts and authorized to transact business under this chapter shall comply with the minimum surplus requirements of this section or chapter 521E, whichever is greater.

Sec. 9. NEW SECTION. 521E.1 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Adjusted risk-based capital report" means a risk-based capital report adjusted by the commissioner pursuant to section 521E.2, subsection 5.
2. "Commissioner" means the commissioner of insurance.
3. "Corrective order" means an order issued by the commissioner of insurance specifying corrective actions which the commissioner has determined are required.
4. "Domestic insurer" means an insurance company domiciled in this state and licensed to transact the business of insurance under chapter 508, 515, or 520, except that it shall not include any of the following:

- a. An agency, authority, or instrumentality of the United States, its possessions and territories, the commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.
- b. A fraternal benefit society organized under chapter 512B.
- c. A nonprofit medical, hospital, or dental service corporation organized under chapter 514.
- d. A county mutual insurance association organized under chapter 518.
- e. A mutual casualty assessment insurance association organized under chapter 518A.
- f. A health maintenance organization organized under chapter 514B.
5. "Filing date" means March 1 of each year.
6. "Foreign insurer" means an insurance company not domiciled in this state which is licensed to transact the business of insurance in this state under chapter 508, 515, or 520.
7. "Life and health insurer" means an insurance company licensed under chapter 508 or a licensed property and casualty insurer writing only accident and health insurance under chapter 515.
8. "Negative trend" means a negative trend over a period of time as determined in accordance with the trend test calculation included in the risk-based capital instructions.
9. "Property and casualty insurer" means an insurance company licensed under chapter 515 but does not include monoline mortgage guaranty insurers, financial guaranty insurers, or title insurers.
10. "Revised risk-based capital plan" is a risk-based capital plan which has been rejected by the commissioner and has been revised by the insurer, with or without the commissioner's recommendation.
11. "Risk-based capital instructions" means the instructions included in the risk-based capital report as adopted by the national association of insurance commissioners, as such risk-based capital instructions may be amended by the national association of insurance commissioners from time to time in accordance with the procedures adopted by the national association of insurance commissioners.
12. "Risk-based capital level" means an insurer's company-action-level risk-based capital, regulatory-action-level risk-based capital, authorized-control-level risk-based capital, or mandatory-control-level risk-based capital as follows:
 - a. "Company-action-level risk-based capital" means, with respect to any insurer, the product of two and the insurer's authorized-control-level risk-based capital.
 - b. "Regulatory-action-level risk-based capital" means the product of one and one-half and the insurer's authorized-control-level risk-based capital.
 - c. "Authorized-control-level risk-based capital" means the number determined under the risk-based capital formula in accordance with the risk-based capital instructions.
 - d. "Mandatory-control-level risk-based capital" means the product of seven-tenths and the insurer's authorized-control-level risk-based capital.
13. "Risk-based capital plan" means a comprehensive financial plan containing the elements identified in section 521E.3, subsection 2.
14. "Risk-based capital report" means the report required to be prepared and submitted to the commissioner pursuant to section 521E.2.
15. "Total adjusted capital" means the sum of the following:
 - a. An insurer's statutory capital and surplus.
 - b. Such other items, if any, as identified in the risk-based capital instructions.

Sec. 10. NEW SECTION. 521E.2 RISK-BASED CAPITAL REPORTS.

1. A domestic insurer, on or prior to the filing date, shall prepare and submit to the commissioner a report of the insurer's risk-based capital level as of the end of the calendar year immediately preceding the filing date, in a form and containing the information required by the risk-based capital instructions. A domestic insurer shall also file its risk-based capital report with both of the following:
 - a. The national association of insurance commissioners.

b. The insurance commissioner in each state in which the insurer is authorized to do business, if such insurance commissioner has notified the insurer of its request in writing. Upon receipt of the written request, the insurer shall file its risk-based capital report with the requesting commissioner by no later than the later of the following:

- (1) Fifteen days from the receipt of the written request.
- (2) The filing date.

2. A life and health insurer's risk-based capital shall be determined pursuant to the formula set forth in the risk-based capital instructions. The formula shall take into account all of the following, and may be adjusted, as deemed appropriate by the commissioner, for the covariance between the following:

- a. The risk with respect to the insurer's assets.
- b. The risk of adverse insurance experience with respect to the insurer's liabilities and obligations.
- c. The interest rate risk with respect to the insurer's business.
- d. All other business risks and other relevant risks as identified in the risk-based capital instructions, determined in each case by applying the factors in the manner provided for in the risk-based capital instructions.

3. A property and casualty insurer's risk-based capital shall be determined pursuant to the formula set forth in the risk-based capital instructions. The formula shall take into account all of the following, and may be adjusted, as deemed appropriate by the commissioner, for the covariance between the following:

- a. Asset risk.
- b. Credit risk.
- c. Underwriting risk.
- d. All other business risks and other relevant risks as identified in the risk-based capital instructions, determined in each case by applying the factors in the manner provided for in the risk-based capital instructions.

4. An insurer shall seek to maintain capital above the risk-based capital levels required by this chapter.

5. A risk-based capital report filed by a domestic insurer which in the judgment of the commissioner is inaccurate, shall be adjusted by the commissioner to correct the inaccuracy. The commissioner shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment.

Sec. 11. NEW SECTION. 521E.3 COMPANY-ACTION-LEVEL EVENT.

1. "Company-action-level event" means any of the following:

a. The filing of a risk-based capital report by an insurer which indicates either of the following:

(1) For an insurer other than a life and health insurer, the insurer's total adjusted capital is greater than or equal to its regulatory-action-level risk-based capital but less than its company-action-level risk-based capital.

(2) For a life and health insurer, the insurer's total adjusted capital is greater than or equal to its company-action-level risk-based capital but less than the product of its authorized-control-level risk-based capital and two and one-half, and has a negative trend.

b. Notification by the commissioner to the insurer of an adjusted risk-based capital report that indicates an event in paragraph "a", provided the insurer does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521E.7.

c. If a hearing is requested pursuant to section 521E.7, notification by the commissioner to the insurer after the hearing that the commissioner has rejected the insurer's challenge of the adjusted risk-based capital report indicating an event in paragraph "a".

2. Upon the occurrence of a company-action-level event, the insurer shall prepare and submit to the commissioner a risk-based capital plan which shall include all of the following:

- a. Identification of the conditions which contributed to the company-action-level event.

b. Proposed corrective actions which the insurer intends to implement and which are expected to result in the elimination of the company-action-level event.

c. Projections of the insurer's financial results for the current year and at least the four succeeding years, including projections of statutory operating income, net income, capital, and surplus. Projections shall be provided assuming the absence of the proposed corrective actions and assuming the implementation of the proposed corrective actions. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component.

d. Identification of the primary assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions.

e. Identification of 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.

3. The risk-based capital plan shall be submitted within forty-five days of the company-action-level event, or, if the insurer requests a hearing pursuant to section 521E.7 for the purpose of challenging the adjusted risk-based capital report, within forty-five days after notification to the insurer that the commissioner, after hearing, has rejected the insurer's challenge.

4. Within sixty days after the submission by an insurer of a risk-based capital plan to the commissioner, the commissioner shall notify the insurer whether the risk-based capital plan shall be implemented or, in the judgment of the commissioner, is unsatisfactory. If the commissioner determines the risk-based capital plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions which in the judgment of the commissioner will render the risk-based capital plan satisfactory. Upon the receipt of notification from the commissioner pursuant to this subsection, the insurer shall prepare a revised risk-based capital plan, which may incorporate by reference any revisions proposed by the commissioner, and submit the revised risk-based capital plan to the commissioner within forty-five days of the receipt of notification from the commissioner of the commissioner's determination that the risk-based capital plan is unsatisfactory, or, if the insurer requests a hearing pursuant to section 521E.7 for the purpose of challenging the commissioner's determination, within forty-five days after notification to the insurer that the commissioner, after hearing, has rejected the insurer's challenge.

5. After notification of the insurer by the commissioner that the insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the commissioner, at the commissioner's discretion and subject to the insurer's right to a hearing pursuant to section 521E.7, may specify in the notification that the notification constitutes a regulatory-action-level event.

6. A domestic insurer that files a risk-based capital plan or revised risk-based capital plan with the commissioner shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance commissioner in a state in which the insurer is authorized to do business if both of the following apply:

a. The other state has a provision substantially similar to section 521E.8, subsection 1, with respect to the confidentiality and availability of such plans.

b. The insurance commissioner of that state has notified the insurer in writing of its request to receive a copy of the risk-based capital plan or revised risk-based capital plan. Upon receipt of the written request, the insurer shall file a copy of the risk-based capital plan or revised risk-based capital plan with the requesting commissioner by no later than the later of the following:

(1) Fifteen days from the receipt of the written request.

(2) The date on which the risk-based capital plan or revised risk-based capital plan is filed pursuant to subsection 3 or 4, as applicable.

Sec. 12. NEW SECTION. 521E.4 REGULATORY-ACTION-LEVEL EVENT.

1. "Regulatory-action-level event" means any of the following:

a. The filing of a risk-based capital report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its authorized-control-level risk-based capital but less than its regulatory-action-level risk-based capital.

b. Notification by the commissioner to an insurer of an adjusted risk-based capital report that indicates the event in paragraph "a", provided the insurer does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521E.7.

c. After a hearing pursuant to section 521E.7, notification by the commissioner to the insurer that the commissioner has rejected the insurer's challenge of the adjusted risk-based capital report indicating the event in paragraph "a".

d. Failure of the insurer to file a risk-based capital report by the filing date, unless the insurer has provided an explanation for the failure which is satisfactory to the commissioner and has cured the failure within ten days after the filing date.

e. Failure of the insurer to submit a risk-based capital plan to the commissioner within the time period set forth in section 521E.3, subsection 3.

f. Notification by the commissioner to the insurer of both of the following:

(1) The risk-based capital plan or revised risk-based capital plan submitted by the insurer, in the judgment of the commissioner, is unsatisfactory.

(2) Notification pursuant to this paragraph constitutes a regulatory-action-level event with respect to the insurer, provided the insurer has not challenged the determination pursuant to section 521E.7.

g. After a hearing pursuant to section 521E.7, notification by the commissioner to the insurer that the commissioner has rejected the insurer's challenge of the determination made by the commissioner pursuant to paragraph "f".

h. Notification by the commissioner to the insurer that the insurer has failed to adhere to the insurer's risk-based capital plan or revised risk-based capital plan, but only if the failure has a substantial adverse effect on the ability of the insurer to eliminate the company-action-level event pursuant to the insurer's risk-based capital plan or revised risk-based capital plan and the commissioner has so stated in the notification. However, notification by the commissioner pursuant to this paragraph does not constitute a company-action-level event if the insurer has challenged the determination of the commissioner pursuant to section 521E.7.

i. After a hearing pursuant to section 521E.7, notification by the commissioner to the insurer that the commissioner has rejected the insurer's challenge of the commissioner's determination pursuant to paragraph "h".

2. In the event of a regulatory-action-level event the commissioner shall do all of the following:

a. Require the insurer to prepare and submit a risk-based capital plan or a revised risk-based capital plan, as applicable.

b. Perform an examination or analysis of the assets, liabilities, and operations of the insurer, including a review of its risk-based capital plan or revised risk-based capital plan, as deemed necessary by the commissioner.

c. Subsequent to the examination or analysis pursuant to paragraph "b", issue a corrective order.

3. In determining the corrective actions to be specified, the commissioner shall take into account factors the commissioner deems to be relevant with respect to the insurer based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the risk-based capital instructions. The risk-based capital plan or revised risk-based capital plan shall be submitted within forty-five days after the occurrence of the regulatory-action-level event, except as follows:

a. If the insurer challenges an adjusted risk-based capital report pursuant to section 521E.7, and in the judgment of the commissioner the challenge is not frivolous, within

forty-five days after the notification to the insurer that the commissioner, after a hearing pursuant to section 521E.7, has rejected the insurer's challenge.

b. If the insurer challenges a revised risk-based capital plan pursuant to section 521E.7, and in the judgment of the commissioner the challenge is not frivolous, within forty-five days after the notification to the insurer that the commissioner, after a hearing pursuant to section 521E.7, has rejected the insurer's challenge.

4. The commissioner may retain actuaries, investment experts, and other consultants as deemed necessary by the commissioner to review the insurer's risk-based capital plan or revised risk-based capital plan; examine or analyze the assets, liabilities, and operations of the insurer; and assist in the formulation of the corrective order with respect to the insurer. Fees of the actuaries, investment experts, or other consultants retained by the commissioner shall be paid by the insurer subject to the review or examination.

Sec. 13. NEW SECTION. 521E.5 AUTHORIZED-CONTROL-LEVEL EVENT.

1. "Authorized-control-level event" means any of the following:

a. The filing of a risk-based capital report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its mandatory-control-level risk-based capital but less than its authorized-control-level risk-based capital.

b. Notification by the commissioner to an insurer of an adjusted risk-based capital report that indicates the event in paragraph "a", provided the insurer does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521E.7.

c. After a hearing pursuant to section 521E.7, notification by the commissioner to the insurer that the commissioner has rejected the insurer's challenge of the adjusted risk-based capital report indicating the event in paragraph "a".

d. Failure of the insurer to respond to a corrective order in a manner satisfactory to the commissioner, unless the insurer has challenged the corrective order pursuant to section 521E.7.

e. Failure of the insurer to respond to the corrective order in a manner satisfactory to the commissioner after the insurer has challenged the corrective order pursuant to section 521E.7, and the commissioner, after a hearing pursuant to section 521E.7, has rejected the challenge or modified the corrective order.

2. In the event of an authorized-control-level event the commissioner shall do either of the following:

a. Take action as required pursuant to section 521E.4 in the same manner as if a regulatory-action-level event has occurred.

b. Take action as necessary to cause the insurer to be placed under supervision or other regulatory control under chapter 507C, if the commissioner deems such action to be in the best interests of the policyholders and creditors of the insurer and of the public. If the commissioner takes action pursuant to this paragraph, the authorized-control-level event is deemed sufficient grounds for the commissioner to take action pursuant to chapter 507C, and the commissioner has the rights, powers, and duties with respect to the insurer as set forth in chapter 507C. If the commissioner takes action under this paragraph pursuant to an adjusted risk-based capital report, the insurer is entitled to the protections afforded to insurers under the provisions of chapter 17A relating to summary proceedings.

Sec. 14. NEW SECTION. 521E.6 MANDATORY-CONTROL-LEVEL EVENT.

1. "Mandatory-control-level event" means any of the following events:

a. The filing of a risk-based capital report which indicates that an insurer's total adjusted capital is less than its mandatory-control-level risk-based capital.

b. Notification by the commissioner to an insurer of an adjusted risk-based capital report that indicates the event in paragraph "a", provided the insurer does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521E.7.

c. After a hearing pursuant to section 521E.7, notification by the commissioner to the insurer that the commissioner has rejected the insurer's challenge of the adjusted risk-based capital report indicating the event in paragraph "a".

2. In the event of a mandatory-control-level event the commissioner shall do the following:

a. With respect to a life insurer, take action as necessary to place the insurer under supervision or other regulatory control under chapter 507C. If the commissioner takes action pursuant to this paragraph, the mandatory-control-level event is deemed sufficient grounds for the commissioner to take action pursuant to chapter 507C, and the commissioner shall have the rights, powers, and duties with respect to the insurer as set forth in chapter 507C. If the commissioner takes action pursuant to an adjusted risk-based capital report, the insurer is entitled to the protections of chapter 17A pertaining to summary proceedings. Notwithstanding the provisions of this paragraph, the commissioner may forego any action pursuant to this paragraph for up to ninety days after the mandatory-control-level event if the commissioner finds a reasonable expectation exists that the mandatory-control-level event may be eliminated within the ninety-day period.

b. With respect to a property and casualty insurer, take action as necessary to place the insurer under supervision or other regulatory control under chapter 507C, or, in the case of an insurer which is no longer writing business and which is running off its existing business, the commissioner may allow the insurer to continue its run-off under the supervision of the commissioner. In either event, the mandatory-control-level event is deemed sufficient grounds for the commissioner to take action under chapter 507C and the commissioner shall have the rights, powers, and duties with respect to the insurer as set forth in chapter 507C. If the commissioner takes action pursuant to an adjusted risk-based capital report, the insurer is entitled to the protections of chapter 17A pertaining to summary proceedings. Notwithstanding the provisions of this paragraph, the commissioner may forego action for up to ninety days after the mandatory-control-level event if the commissioner finds a reasonable expectation exists that the mandatory-control-level event may be eliminated within the ninety-day period.

Sec. 15. NEW SECTION. 521E.7 CONFIDENTIAL HEARINGS.

1. An insurer shall notify the commissioner of the insurer's request for a confidential hearing within five days after the occurrence of any of the following:

a. Notification to an insurer by the commissioner of an adjusted risk-based capital report.

b. Notification to an insurer by the commissioner of both of the following:

(1) The insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory.

(2) That the notification pursuant to this paragraph constitutes a regulatory-action-level event with respect to the insurer.

c. Notification to an insurer by the commissioner that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan and that the failure has a substantial adverse effect on the ability of the insurer to eliminate the company-action-level event in accordance with its risk-based capital plan or revised risk-based capital plan.

d. Notification to an insurer by the commissioner of a corrective order with respect to the insurer.

2. An insurer receiving a notification pursuant to subsection 1 is entitled to a confidential hearing before the insurance division, at which the insurer may challenge a determination or action by the commissioner. Upon receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing, which shall be no less than ten or more than thirty days after the date of the insurer's request.

Sec. 16. NEW SECTION. 521E.8 CONFIDENTIALITY – USE OF REPORTS AND INFORMATION – PROHIBITION ON ANNOUNCEMENTS – PROHIBITION ON USE IN RATEMAKING.

1. A risk-based capital report, to the extent the information in the report is not required to be set forth in a publicly available annual statement schedule, or a risk-based capital

plan, including the results or report of any examination or analysis of an insurer performed pursuant to this chapter, and any corrective order issued by the commissioner pursuant to an examination or analysis, with respect to a domestic insurer or foreign insurer, which are filed with the commissioner, are deemed not to be public records under chapter 22 and are privileged and confidential. This information shall not be made public and is not subject to subpoena, other than by the commissioner, and then only for the purpose of enforcement actions taken by the commissioner pursuant to this chapter or any other provision of the insurance laws of this state.

2. The comparison of an insurer's total adjusted capital to any of its risk-based capital levels is a regulatory tool which may indicate the need for possible corrective action with respect to the insurer, and is not to be used as a means to rank insurers generally.

3. Except as otherwise required under this chapter or as required of a publicly held company by the United States securities and exchange commission or other regulatory agency, the publication or dissemination in any manner of an announcement or statement which contains an assertion, representation, or statement with regard to the risk-based capital levels of an insurer, or of a component derived in the calculation, by an insurer, agent, broker, or other person engaged in any manner in the business of insurance which would be misleading, is prohibited. However, if a materially false statement comparing an insurer's total adjusted capital to its risk-based capital levels or a misleading comparison of any other amount to the insurer's risk-based capital levels is published or disseminated in any manner and if the insurer is able to demonstrate to the commissioner with substantial proof that the statement is false, misleading, or inappropriate, as the case may be, the insurer may publish an announcement in a written publication for the sole purpose of rebutting the materially false, misleading, or inappropriate statement.

4. The risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans shall be solely used by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers. The risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans shall not be used by the commissioner for ratemaking and shall not be considered or introduced as evidence in any rate proceeding or used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to write.

5. A violation of this section by an insurer, agent, broker, or other person engaged in any manner in the business of insurance constitutes an unfair trade practice under chapter 507B.

Sec. 17. NEW SECTION. 521E.9 SUPPLEMENTAL PROVISIONS - RULES - EXEMPTION.

1. The provisions of this chapter are supplemental to any other provisions of the laws of this state, and shall not preclude or limit any other powers or duties of the commissioner under such laws, including, but not limited to, chapter 507C.

2. The commissioner may adopt rules pursuant to chapter 17A necessary for the administration of this chapter.

3. The commissioner may exempt from the application of this chapter any domestic property and casualty insurer which satisfies all of the following:

- a. Writes direct business only in this state.
- b. Writes direct annual premiums of one million dollars or less.
- c. Does not assume reinsurance in excess of five percent of direct premiums written.

Sec. 18. NEW SECTION. 521E.10 FOREIGN INSURERS.

1. A foreign insurer, upon the written request of the commissioner, shall submit to the commissioner a risk-based capital report as of the end of the calendar year just ended by the later of the following:

- a. The filing date.
- b. Fifteen days after the request is received by the foreign insurer.

A foreign insurer, upon the written request of the commissioner, shall promptly submit to the commissioner a copy of any risk-based capital plan that is filed with the insurance commissioner of any other state.

2. In the event of a company-action-level event, regulatory-action-level event, or authorized-control-level event with respect to a foreign insurer as determined under the risk-based capital statute applicable in the state of domicile of the insurer, or, if no risk-based capital statute is in force in that state, under the provisions of this chapter, and if the insurance commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file a risk-based capital plan in the manner specified under that state's risk-based capital statute, or, if no risk-based capital statute is in force in that state, pursuant to section 521E.2, the commissioner may require the foreign insurer to file a risk-based capital plan with the commissioner. The failure of the foreign insurer to file a risk-based capital plan with the commissioner shall be sufficient grounds for the commissioner to order the insurer to cease and desist from writing new insurance business in this state.

3. In the event of a mandatory-control-level event with respect to a foreign insurer, if a domiciliary receiver has not 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 make application to the district court as permitted under chapter 507C with respect to the liquidation of property of foreign insurers found in this state, and the occurrence of the mandatory-control-level event shall be considered adequate grounds for the application.

Sec. 19. NEW SECTION. 521E.11 IMMUNITY.

No liability shall arise on the part of, and no cause of action shall arise against, the commissioner or the insurance division or its employees or agents for an action taken in the exercise of powers or performance of duties under this chapter.

Sec. 20. NEW SECTION. 521E.12 EFFECT OF NOTICES.

Notice by the commissioner to an insurer which may result in regulatory action under this chapter is effective upon being sent if transmitted by certified mail, or in the case of any other transmission is effective upon the insurer's receipt of the notice.

Sec. 21. APPLICABILITY.

1. Notwithstanding the provisions of this Act, for risk-based capital reports to be filed in 1997 by a life insurance company, the following shall apply:

- a. The commissioner shall take no regulatory action pursuant to this chapter as the result of a risk-based capital report which indicates a company-action-level event.
- b. The commissioner shall take the regulatory action provided for under section 521E.3 upon the submission of a risk-based capital report which indicates a regulatory-action-level event under section 521E.4, subsection 1, paragraph "a", "b", or "c".
- c. The commissioner shall take the regulatory action provided for under section 521E.4 upon the submission of a risk-based capital report which indicates a regulatory-action-level event under section 521E.4, subsection 1, paragraphs "d" through "i".
- d. The commissioner shall take the regulatory action provided for under section 521E.5 upon the submission of a risk-based capital report which indicates a mandatory-control-level event under section 521E.6.

2. Notwithstanding the provisions of this Act, for risk-based capital reports to be filed in 1997 by a property and casualty insurance company, the following shall apply:

- a. The commissioner shall take no regulatory action pursuant to this chapter as the result of a risk-based capital report which indicates a company-action-level event.
- b. The commissioner shall take the regulatory action provided for under section 521E.3 upon the submission of a risk-based capital report which indicates a regulatory-action-level event under section 521E.4, subsection 1, paragraph "a", "b", or "c".

c. The commissioner shall take the regulatory action provided for under section 521E.4 upon the submission of a risk-based capital report which indicates a regulatory-action-level event under section 521E.4, subsection 1, paragraphs "d" through "i".

d. The commissioner shall take the regulatory action provided for under section 521E.5 upon the submission of a risk-based capital report which indicates a mandatory-control-level event under section 521E.6.

Approved April 2, 1996

CHAPTER 1047

TAX INCREMENT FINANCING CERTIFICATION REQUIREMENTS

H.F. 2426

AN ACT relating to certain certification requirements of a city or county urban renewal area.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 403.19, subsection 5, Code 1995, is amended to read as follows:

5. A municipality shall certify to the county auditor on or before December 31 the amount of loans, advances, indebtedness, or bonds which qualify for payment from the special fund referred to in subsection 2, and the filing of the certificate shall make it a duty of the auditor to provide for the division of taxes in each subsequent year until the amount of the loans, advances, indebtedness, or bonds is paid to the special fund. In any year, the county auditor shall, upon receipt of a certified request from a municipality filed ~~prior to January~~ on or before December 1, increase the amount to be allocated under subsection 1 in order to reduce the amount to be allocated in the following fiscal year to the special fund, to the extent that the municipality does not request allocation to the special fund of the full portion of taxes which could be collected. Upon receipt of a certificate from a municipality, the auditor shall mail a copy of the certificate to each affected taxing district.

Approved April 2, 1996

CHAPTER 1048

ANATOMICAL GIFTS - AUTHORITY OF MEDICAL EXAMINER

H.F. 2400

AN ACT relating to anatomical gifts including the use of confidential information and the authority of a medical examiner to release and permit the removal of a body part in certain instances for the purposes of making an anatomical gift.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 142C.4A AUTHORITY OF MEDICAL EXAMINER - RELEASE AND REMOVAL OF PART FOR MAKING OF ANATOMICAL GIFT.