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HOUSE FILE **2313**
BY COMMITTEE ON COMMERCE AND
REGULATION

WITHDRAWN
*3-26-96
(P.959)*

(SUCCESSOR TO HSB 640)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the regulation of insurance companies for
2 purposes of solvency and establishing a measure for the risk-
3 based capital of an insurer, providing for the Act's
4 applicability, and providing penalties.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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WITHDRAWN

1 Section 1. Section 508.5, Code Supplement 1995, is amended
2 to read as follows:

3 508.5 CAPITAL AND SURPLUS REQUIRED.

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

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

21 Sec. 2. Section 508.9, Code Supplement 1995, is amended to
22 read as follows:

23 508.9 MUTUAL COMPANIES -- CONDITIONS.

24 1. Level premium and natural premium life insurance
25 companies organized under the laws of this state upon the
26 mutual plan shall, before issuing policies, have actual
27 applications on at least two hundred and fifty lives for an
28 average amount of one thousand dollars each. A list of the
29 applications giving the name, age, residence, amount of
30 insurance, and annual premium of each applicant shall be filed
31 with the commissioner of insurance, and a deposit made with
32 the commissioner of an amount equal to three-fifths of the
33 whole annual premium on the applications, in cash or the
34 securities required by section 508.5. In addition, a deposit
35 of cash or securities of the character provided by law for the

1 investment of funds for life insurance companies in the sum of
2 five million dollars shall be made with the commissioner,
3 which shall constitute a security fund for the protection of
4 policyholders. The contribution to the security fund shall
5 not give to contributors to the fund or to other persons any
6 voting or other power in the management of the affairs of the
7 company. The security fund may be repaid to the contributors
8 to the security fund with interest at six percent from the
9 date of contribution, at any time, in whole or in part, if the
10 repayment does not reduce the surplus of the company below the
11 amount of five million dollars and then only if consent in
12 writing for the repayment is obtained from the commissioner of
13 insurance. Upon compliance with this section, the
14 commissioner shall issue to the mutual company the certificate
15 prescribed in this chapter. A mutual insurance company
16 authorized to do business in Iowa that undergoes a change of
17 control as defined in chapter 521A shall maintain the minimum
18 surplus requirement mandated by this section.

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

23 Sec. 3. Section 515.8, Code Supplement 1995, is amended to
24 read as follows:

25 515.8 PAID-UP CAPITAL REQUIRED.

26 1. An insurance company other than a life insurance
27 company shall not be incorporated to transact business upon
28 the stock plan with less than two million five hundred
29 thousand dollars capital, the entire amount of which shall be
30 fully paid up in cash and invested as provided by law. An
31 insurance company other than a life insurance company shall
32 not increase its capital stock unless the amount of the
33 increase is fully paid up in cash. The stock shall be divided
34 into shares of not less than one dollar each. An insurance
35 company authorized to do business in Iowa that undergoes a

1 change of control as defined under chapter 521A shall maintain
2 the minimum capital requirements mandated by this section.

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

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

10 515.10 SURPLUS REQUIRED.

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

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

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

26 515.69 FOREIGN COMPANIES -- CAPITAL REQUIRED.

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

1 security of those insured in that state, territory, district,
2 or country.

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

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

9 515.76 FOREIGN MUTUAL COMPANIES -- SURPLUS.

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

24 1- a. In case of a mutual company issuing policies for a
25 cash premium without an additional contingent liability equal
26 to or greater than the cash premium, the surplus shall be at
27 least two million dollars.

28 2- b. In case of any other such mutual company issuing
29 policies for a cash premium or payment with an additional
30 contingent liability equal to or greater than the cash premium
31 or payment, the surplus shall be such an amount as the
32 commissioner of insurance of Iowa may require, but in no case
33 less than three hundred thousand dollars, provided that the
34 provisions of this section fixing a minimum surplus of three
35 hundred thousand dollars shall not apply to companies now

1 admitted to do business in Iowa; provided, further, that no
2 such mutual company shall be authorized to transact
3 compensation insurance without a surplus of at least three
4 hundred thousand dollars unless all liability for each
5 adjusted claim in this state, the payment of any part of which
6 is deferred for more than one year, shall be provided for by a
7 special deposit, in a trust company or a bank having fiduciary
8 powers, located in this state, which shall be a trust fund
9 applicable solely and exclusively to the payment of the
10 compensation benefits for which such deposit is made, or shall
11 be reinsured in an authorized stock company, or in an
12 authorized mutual company with a surplus of at least three
13 hundred thousand dollars.

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

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

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

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

25 520.9 STANDARD OF SOLVENCY.

26 1. There shall at all times be maintained as assets a sum
27 in cash, or in securities of the kind designated by the laws
28 of the state where the principal office is located for the
29 investment of funds of insurance companies, equal to one
30 hundred percent of the net unearned premiums or deposits
31 collected and credited to the account of subscribers, or
32 assets equal to fifty percent of the net annual deposits
33 collected and credited to the account of subscribers on
34 policies having one year or less to run and pro rata on those
35 for longer periods; in addition to which there shall be

1 maintained in cash, or in such securities, assets sufficient
2 to discharge all liabilities on all outstanding losses arising
3 under policies issued, the same to be calculated in accordance
4 with the laws of the state relating to similar reserves for
5 companies insuring similar risks; provided that where the
6 assets on hand available for the payment of losses other than
7 determined losses, do not equal two million dollars, all
8 liability for each determined loss or claim deferred for more
9 than one year, shall be provided for by a special deposit in a
10 trust company or bank having fiduciary powers of the state in
11 which the principal office is located, to be used in payment
12 of compensation benefits for disability; such deposit to be a
13 trust fund and applicable only to the purposes stated, or such
14 liability may be reinsured in authorized companies with a
15 surplus of at least two million dollars. For the purpose of
16 such reserves, net deposits shall be construed to mean the
17 advance payments of subscribers after deducting the amount
18 specifically provided in the subscribers' agreements for
19 expenses. If at any time the assets so held in cash or such
20 securities shall be less than required above, or less than two
21 million dollars, the subscribers or their attorney for them
22 shall make up the deficiency within thirty days after notice
23 from the commissioner of insurance to do so. In computing the
24 assets required by this section, the amount specified in
25 section 520.4, subsection 7, shall be included.

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

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

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

34 1. "Adjusted risk-based capital report" means a risk-based
35 capital report adjusted by the commissioner pursuant to

1 section 521E.2, subsection 5.

2 2. "Commissioner" means the commissioner of insurance.

3 3. "Corrective order" means an order issued by the
4 commissioner of insurance specifying corrective actions which
5 the commissioner has determined are required.

6 4. "Domestic insurer" means an insurance company domiciled
7 in this state and licensed to transact the business of
8 insurance under chapter 508, 515, or 520, except that it shall
9 not include any of the following:

10 a. An agency, authority, or instrumentality of the United
11 States, its possessions and territories, the commonwealth of
12 Puerto Rico, the District of Columbia, or a state or political
13 subdivision of a state.

14 b. A fraternal benefit society organized under chapter
15 512B.

16 c. A nonprofit medical, hospital, or dental service
17 corporation organized under chapter 514.

18 d. A county mutual insurance association organized under
19 chapter 518.

20 e. A mutual casualty assessment insurance association
21 organized under chapter 518A.

22 f. A health maintenance organization organized under
23 chapter 514B.

24 5. "Filing date" means March 1 of each year.

25 6. "Foreign insurer" means an insurance company not
26 domiciled in this state which is licensed to transact the
27 business of insurance in this state under chapter 508, 515, or
28 520.

29 7. "Life and health insurer" means an insurance company
30 licensed under chapter 508 or a licensed property and casualty
31 insurer writing only accident and health insurance under
32 chapter 515.

33 8. "Negative trend" means a negative trend over a period
34 of time as determined in accordance with the trend test
35 calculation included in the risk-based capital instructions.

1 9. "Property and casualty insurer" means an insurance
2 company licensed under chapter 515 but does not include
3 monoline mortgage guaranty insurers, financial guaranty
4 insurers, or title insurers.

5 10. "Revised risk-based capital plan" is a risk-based
6 capital plan which has been rejected by the commissioner and
7 has been revised by the insurer, with or without the
8 commissioner's recommendation.

9 11. "Risk-based capital instructions" means the
10 instructions included in the risk-based capital report as
11 adopted by the national association of insurance
12 commissioners, as such risk-based capital instructions may be
13 amended by the national association of insurance commissioners
14 from time to time in accordance with the procedures adopted by
15 the national association of insurance commissioners.

16 12. "Risk-based capital level" means an insurer's company-
17 action-level risk-based capital, regulatory-action-level risk-
18 based capital, authorized-control-level risk-based capital, or
19 mandatory-control-level risk-based capital as follows:

20 a. "Company-action-level risk-based capital" means, with
21 respect to any insurer, the product of two and the insurer's
22 authorized-control-level risk-based capital.

23 b. "Regulatory-action-level risk-based capital" means the
24 product of one and one-half and the insurer's authorized-
25 control-level risk-based capital.

26 c. "Authorized-control-level risk-based capital" means the
27 number determined under the risk-based capital formula in
28 accordance with the risk-based capital instructions.

29 d. "Mandatory-control-level risk-based capital" means the
30 product of seven-tenths and the insurer's authorized-control-
31 level risk-based capital.

32 13. "Risk-based capital plan" means a comprehensive
33 financial plan containing the elements identified in section
34 521E.3, subsection 2.

35 14. "Risk-based capital report" means the report required

1 to be prepared and submitted to the commissioner pursuant to
2 section 521E.2.

3 15. "Total adjusted capital" means the sum of the
4 following:

5 a. An insurer's statutory capital and surplus.

6 b. Such other items, if any, as identified in the risk-
7 based capital instructions.

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

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

16 a. The national association of insurance commissioners.

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

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

24 (2) The filing date.

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

30 a. The risk with respect to the insurer's assets.

31 b. The risk of adverse insurance experience with respect
32 to the insurer's liabilities and obligations.

33 c. The interest rate risk with respect to the insurer's
34 business.

35 d. All other business risks and other relevant risks as

1 identified in the risk-based capital instructions, determined
2 in each case by applying the factors in the manner provided
3 for in the risk-based capital instructions.

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

10 a. Asset risk.

11 b. Credit risk.

12 c. Underwriting risk.

13 d. All other business risks and other relevant risks as
14 identified in the risk-based capital instructions, determined
15 in each case by applying the factors in the manner provided
16 for in the risk-based capital instructions.

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

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

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

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

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

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

34 (2) For a life and health insurer, the insurer's total
35 adjusted capital is greater than or equal to its company-

1 action-level risk-based capital but less than the product of
2 its authorized-control-level risk-based capital and two and
3 one-half, and has a negative trend.

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

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

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

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

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

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

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

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

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

13 4. Within sixty days after the submission by an insurer of
14 a risk-based capital plan to the commissioner, the
15 commissioner shall notify the insurer whether the risk-based
16 capital plan shall be implemented or, in the judgment of the
17 commissioner, is unsatisfactory. If the commissioner
18 determines the risk-based capital plan is unsatisfactory, the
19 notification to the insurer shall set forth the reasons for
20 the determination, and may set forth proposed revisions which
21 in the judgment of the commissioner will render the risk-based
22 capital plan satisfactory. Upon the receipt of notification
23 from the commissioner pursuant to this subsection, the insurer
24 shall prepare a revised risk-based capital plan, which may
25 incorporate by reference any revisions proposed by the
26 commissioner, and submit the revised risk-based capital plan
27 to the commissioner within forty-five days of the receipt of
28 notification from the commissioner of the commissioner's
29 determination that the risk-based capital plan is
30 unsatisfactory, or, if the insurer requests a hearing pursuant
31 to section 521E.7 for the purpose of challenging the
32 commissioner's determination, within forty-five days after
33 notification to the insurer that the commissioner, after
34 hearing, has rejected the insurer's challenge.

35 5. After notification of the insurer by the commissioner

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 h. Notification by the commissioner to the insurer that
34 the insurer has failed to adhere to the insurer's risk-based
35 capital plan or revised risk-based capital plan, but only if

1 the failure has a substantial adverse effect on the ability of
2 the insurer to eliminate the company-action-level event
3 pursuant to the insurer's risk-based capital plan or revised
4 risk-based capital plan and the commissioner has so stated in
5 the notification. However, notification by the commissioner
6 pursuant to this paragraph does not constitute a company-
7 action-level event if the insurer has challenged the
8 determination of the commissioner pursuant to section 521E.7.

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

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

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

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

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

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

34 a. If the insurer challenges an adjusted risk-based
35 capital report pursuant to section 521E.7, and in the judgment

1 of the commissioner the challenge is not frivolous, within
2 forty-five days after the notification to the insurer that the
3 commissioner, after a hearing pursuant to section 521E.7, has
4 rejected the insurer's challenge.

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

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

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

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

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

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

34 c. After a hearing pursuant to section 521E.7,
35 notification by the commissioner to the insurer that the

1 commissioner has rejected the insurer's challenge of the
2 adjusted risk-based capital report indicating the event in
3 paragraph "a".

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

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

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

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

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

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

35 1. "Mandatory-control-level event" means any of the

1 following events:

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

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

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

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

17 a. With respect to a life insurer, take action as
18 necessary to place the insurer under supervision or other
19 regulatory control under chapter 507C. If the commissioner
20 takes action pursuant to this paragraph, the mandatory-
21 control-level event is deemed sufficient grounds for the
22 commissioner to take action pursuant to chapter 507C, and the
23 commissioner shall have the rights, powers, and duties with
24 respect to the insurer as set forth in chapter 507C. If the
25 commissioner takes action pursuant to an adjusted risk-based
26 capital report, the insurer is entitled to the protections of
27 chapter 17A pertaining to summary proceedings.

28 Notwithstanding the provisions of this paragraph, the
29 commissioner may forego any action pursuant to this paragraph
30 for up to ninety days after the mandatory-control-level event
31 if the commissioner finds a reasonable expectation exists that
32 the mandatory-control-level event may be eliminated within the
33 ninety-day period.

34 b. With respect to a property and casualty insurer, take
35 action as necessary to place the insurer under supervision or

1 other regulatory control under chapter 507C, or, in the case
2 of an insurer which is no longer writing business and which is
3 running off its existing business, the commissioner may allow
4 the insurer to continue its run-off under the supervision of
5 the commissioner. In either event, the mandatory-control-
6 level event is deemed sufficient grounds for the commissioner
7 to take action under chapter 507C and the commissioner shall
8 have the rights, powers, and duties with respect to the
9 insurer as set forth in chapter 507C. If the commissioner
10 takes action pursuant to an adjusted risk-based capital
11 report, the insurer is entitled to the protections of chapter
12 17A pertaining to summary proceedings. Notwithstanding the
13 provisions of this paragraph, the commissioner may forego
14 action for up to ninety days after the mandatory-control-level
15 event if the commissioner finds a reasonable expectation
16 exists that the mandatory-control-level event may be
17 eliminated within the ninety-day period.

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

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

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

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

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

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

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

1 its risk-based capital plan or revised risk-based capital
2 plan.

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

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

12 Sec. 16. NEW SECTION. 521E.8 CONFIDENTIALITY -- USE OF
13 REPORTS AND INFORMATION -- PROHIBITION ON ANNOUNCEMENTS --
14 PROHIBITION ON USE IN RATEMAKING.

15 1. A risk-based capital report, to the extent the
16 information in the report is not required to be set forth in a
17 publicly available annual statement schedule, or a risk-based
18 capital plan, including the results or report of any
19 examination or analysis of an insurer performed pursuant to
20 this chapter, and any corrective order issued by the
21 commissioner pursuant to an examination or analysis, with
22 respect to a domestic insurer or foreign insurer, which are
23 filed with the commissioner, are deemed not to be public
24 records under chapter 22 and are privileged and confidential.
25 This information shall not be made public and is not subject
26 to subpoena, other than by the commissioner, and then only for
27 the purpose of enforcement actions taken by the commissioner
28 pursuant to this chapter or any other provision of the
29 insurance laws of this state.

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

35 3. Except as otherwise required under this chapter or as

1 required of a publicly held company by the United States
2 securities and exchange commission or other regulatory agency,
3 the publication or dissemination in any manner of an
4 announcement or statement which contains an assertion,
5 representation, or statement with regard to the risk-based
6 capital levels of an insurer, or of a component derived in the
7 calculation, by an insurer, agent, broker, or other person
8 engaged in any manner in the business of insurance which would
9 be misleading, is prohibited. However, if a materially false
10 statement comparing an insurer's total adjusted capital to its
11 risk-based capital levels or a misleading comparison of any
12 other amount to the insurer's risk-based capital levels is
13 published or disseminated in any manner and if the insurer is
14 able to demonstrate to the commissioner with substantial proof
15 that the statement is false, misleading, or inappropriate, as
16 the case may be, the insurer may publish an announcement in a
17 written publication for the sole purpose of rebutting the
18 materially false, misleading, or inappropriate statement.

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

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

1 chapter 507B.

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

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

9 2. The commissioner may adopt rules pursuant to chapter
10 17A necessary for the administration of this chapter.

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

14 a. Writes direct business only in this state.

15 b. Writes direct annual premiums of one million dollars or
16 less.

17 c. Does not assume reinsurance in excess of five percent
18 of direct premiums written.

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

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

24 a. The filing date.

25 b. Fifteen days after the request is received by the
26 foreign insurer.

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

31 2. In the event of a company-action-level event,
32 regulatory-action-level event, or authorized-control-level
33 event with respect to a foreign insurer as determined under
34 the risk-based capital statute applicable in the state of
35 domicile of the insurer, or, if no risk-based capital statute

1 is in force in that state, under the provisions of this
2 chapter, and if the insurance commissioner of the state of
3 domicile of the foreign insurer fails to require the foreign
4 insurer to file a risk-based capital plan in the manner
5 specified under that state's risk-based capital statute, or,
6 if no risk-based capital statute is in force in that state,
7 pursuant to section 521E.2, the commissioner may require the
8 foreign insurer to file a risk-based capital plan with the
9 commissioner. The failure of the foreign insurer to file a
10 risk-based capital plan with the commissioner shall be
11 sufficient grounds for the commissioner to order the insurer
12 to cease and desist from writing new insurance business in
13 this state.

14 3. In the event of a mandatory-control-level event with
15 respect to a foreign insurer, if a domiciliary receiver has
16 not been appointed with respect to the foreign insurer under
17 the rehabilitation and liquidation statute applicable in the
18 state of domicile of the foreign insurer, the commissioner may
19 make application to the district court as permitted under
20 chapter 507C with respect to the liquidation of property of
21 foreign insurers found in this state, and the occurrence of
22 the mandatory-control-level event shall be considered adequate
23 grounds for the application.

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

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

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

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

1 Sec. 21. APPLICABILITY.

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

5 a. The commissioner shall take no regulatory action
6 pursuant to this chapter as the result of a risk-based capital
7 report which indicates a company-action-level event.

8 b. The commissioner shall take the regulatory action
9 provided for under section 521E.3 upon the submission of a
10 risk-based capital report which indicates a regulatory-action-
11 level event under section 521E.4, subsection 1, paragraph "a",
12 "b", or "c".

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

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

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

25 a. The commissioner shall take no regulatory action
26 pursuant to this chapter as the result of a risk-based capital
27 report which indicates a company-action-level event.

28 b. The commissioner shall take the regulatory action
29 provided for under section 521E.3 upon the submission of a
30 risk-based capital report which indicates a regulatory action
31 level event under section 521E.4, subsection 1, paragraph "a",
32 "b", or "c".

33 c. The commissioner shall take the regulatory action
34 provided for under section 521E.4 upon the submission of a
35 risk-based capital report which indicates a regulatory-action-

1 level event under section 521E.4, subsection 1, paragraphs "d"
2 through "i".

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

7

EXPLANATION

8 This bill relates to measures of risk-based capital for
9 purposes of regulating insurance companies in this state. The
10 bill establishes a new chapter 521E.

11 New section 515.12A is created and sections 508.5 (stock
12 life insurance company), 508.9 (mutual life insurance
13 company), 515.8 (insurance company other than life insurance
14 company), 515.10 (insurance company other than life insurance
15 company), 515.12 (mutual insurance company other than mutual
16 life insurance company), 515.69 (foreign stock insurance
17 company other than life insurance company), 515.76 (foreign
18 mutual insurance company other than life insurance company),
19 and 520.9 (reciprocals) are amended to provide that capital
20 and surplus requirements for insurers subject to those
21 sections are the greater of the capital and surplus
22 requirements identified in those sections or the applicable
23 capital and surplus requirements under chapter 521E.

24 New section 521E.1 establishes the definitions of terms
25 used in the bill.

26 New section 521E.2 requires a domestic insurer to annually
27 file with the commissioner a report of the insurer's risk-
28 based capital level as of the end of a calendar year. In
29 addition to the insurance commissioner, the report is to be
30 filed with the national association of insurance commissioners
31 and with the insurance commissioner in each state in which the
32 insurance company is authorized to do business. The section
33 defines how the risk-based capital is determined for a life
34 and health insurer, and a property and casualty insurer.

35 New section 521E.3 establishes and defines a company-

1 action-level event and the steps which the insurer must take
2 as a result of the event.

3 New section 521E.4 establishes and defines a regulatory-
4 action-level event and steps which the insurer must take as a
5 result of the event.

6 New section 521E.5 establishes and defines an authorized-
7 control-level event. Upon the occurrence of an authorized-
8 control-level event, the commissioner may take action in the
9 same manner as if a regulatory-action-level event has
10 occurred, or may take action to place the insurer under
11 supervision or other regulatory control.

12 New section 521E.6 establishes and defines a mandatory-
13 control-level event. Upon the occurrence of a mandatory-
14 control-level event, the commissioner is to take the necessary
15 action to place the insurer under supervision or other
16 regulatory control.

17 New section 521E.7 establishes the right of an insurer to
18 request a hearing upon receipt of the insurer of notification
19 by the commissioner of an adjusted risk-based capital report,
20 or notification by the commissioner that an insurer's risk-
21 based capital plan or revised risk-based capital plan is
22 unsatisfactory and that the notification constitutes a
23 regulatory-action-level event with respect to the insurer.

24 New section 521E.8 provides that all risk-based capital
25 reports are confidential and provides that such reports are
26 not to be used or introduced as evidence with regard to any
27 rate proceeding. A violation of this section constitutes an
28 unfair trade practice.

29 New section 521E.9 exempts a domestic property and casualty
30 insurer from the application of the chapter if the insurer
31 writes direct business only in this state, writes direct
32 annual premiums of no more than \$1 million, and does not
33 assume reinsurance in an amount in excess of five percent of
34 the insurer's direct written premium.

35 New section 521E.10 establishes the manner in which the

1 chapter applies to foreign insurers.

2 New section 521E.11 provides that the commissioner,
3 insurance division, and employees and agents of the division
4 do not incur liability as the result of any action taken in
5 the exercise of powers or performance of duties under chapter
6 521E.

7 New section 521E.12 provides that notice by the
8 commissioner to an insurer which may result in regulatory
9 action under chapter 521E is effective upon being sent if
10 transmitted by certified mail, or in the case of any other
11 transmission is effective upon the insurer's receipt of the
12 notice.

13 The last section of the bill provides for a phased-in
14 application of the bill.

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HALLORSON: CHAIR
RENKEN
HOLUECK

HSB 640

COMMERCE - REGULATION

§ C 2313

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
COMMERCE/INSURANCE
DIVISION BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the regulation of insurance companies for
2 purposes of solvency and establishing a measure for the risk-
3 based capital of an insurer, and providing penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 508.5, Code Supplement 1995, is amended
2 to read as follows:

3 508.5 CAPITAL AND SURPLUS REQUIRED.

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

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

21 Sec. 2. Section 508.9, Code Supplement 1995, is amended to
22 read as follows:

23 508.9 MUTUAL COMPANIES -- CONDITIONS.

24 1. Level premium and natural premium life insurance
25 companies organized under the laws of this state upon the
26 mutual plan shall, before issuing policies, have actual
27 applications on at least two hundred and fifty lives for an
28 average amount of one thousand dollars each. A list of the
29 applications giving the name, age, residence, amount of
30 insurance, and annual premium of each applicant shall be filed
31 with the commissioner of insurance, and a deposit made with
32 the commissioner of an amount equal to three-fifths of the
33 whole annual premium on the applications, in cash or the
34 securities required by section 508.5. In addition, a deposit
35 of cash or securities of the character provided by law for the

1 investment of funds for life insurance companies in the sum of
2 five million dollars shall be made with the commissioner,
3 which shall constitute a security fund for the protection of
4 policyholders. The contribution to the security fund shall
5 not give to contributors to the fund or to other persons any
6 voting or other power in the management of the affairs of the
7 company. The security fund may be repaid to the contributors
8 to the security fund with interest at six percent from the
9 date of contribution, at any time, in whole or in part, if the
10 repayment does not reduce the surplus of the company below the
11 amount of five million dollars and then only if consent in
12 writing for the repayment is obtained from the commissioner of
13 insurance. Upon compliance with this section, the
14 commissioner shall issue to the mutual company the certificate
15 prescribed in this chapter. A mutual insurance company
16 authorized to do business in Iowa that undergoes a change of
17 control as defined in chapter 521A shall maintain the minimum
18 surplus requirement mandated by this section.

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

23 Sec. 3. Section 515.8, Code Supplement 1995, is amended to
24 read as follows:

25 515.8 PAID-UP CAPITAL REQUIRED.

26 1. An insurance company other than a life insurance
27 company shall not be incorporated to transact business upon
28 the stock plan with less than two million five hundred
29 thousand dollars capital, the entire amount of which shall be
30 fully paid up in cash and invested as provided by law. An
31 insurance company other than a life insurance company shall
32 not increase its capital stock unless the amount of the
33 increase is fully paid up in cash. The stock shall be divided
34 into shares of not less than one dollar each. An insurance
35 company authorized to do business in Iowa that undergoes a

1 change of control as defined under chapter 521A shall maintain
2 the minimum capital requirements mandated by this section:

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

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

10 515.10 SURPLUS REQUIRED.

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

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

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

26 515.69 FOREIGN COMPANIES -- CAPITAL REQUIRED.

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

1 security of those insured in that state, territory, district,
2 or country.

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

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

9 515.76 FOREIGN MUTUAL COMPANIES -- SURPLUS.

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

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

28 2. b. In case of any other such mutual company issuing
29 policies for a cash premium or payment with an additional
30 contingent liability equal to or greater than the cash premium
31 or payment, the surplus shall be such an amount as the
32 commissioner of insurance of Iowa may require, but in no case
33 less than three hundred thousand dollars, provided that the
34 provisions of this section fixing a minimum surplus of three
35 hundred thousand dollars shall not apply to companies now

1 admitted to do business in Iowa; provided, further, that no
2 such mutual company shall be authorized to transact
3 compensation insurance without a surplus of at least three
4 hundred thousand dollars unless all liability for each
5 adjusted claim in this state, the payment of any part of which
6 is deferred for more than one year, shall be provided for by a
7 special deposit, in a trust company or a bank having fiduciary
8 powers, located in this state, which shall be a trust fund
9 applicable solely and exclusively to the payment of the
10 compensation benefits for which such deposit is made, or shall
11 be reinsured in an authorized stock company, or in an
12 authorized mutual company with a surplus of at least three
13 hundred thousand dollars.

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

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

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

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

25 520.9 STANDARD OF SOLVENCY.

26 1. There shall at all times be maintained as assets a sum
27 in cash, or in securities of the kind designated by the laws
28 of the state where the principal office is located for the
29 investment of funds of insurance companies, equal to one
30 hundred percent of the net unearned premiums or deposits
31 collected and credited to the account of subscribers, or
32 assets equal to fifty percent of the net annual deposits
33 collected and credited to the account of subscribers on
34 policies having one year or less to run and pro rata on those
35 for longer periods; in addition to which there shall be

1 maintained in cash, or in such securities, assets sufficient
2 to discharge all liabilities on all outstanding losses arising
3 under policies issued, the same to be calculated in accordance
4 with the laws of the state relating to similar reserves for
5 companies insuring similar risks; provided that where the
6 assets on hand available for the payment of losses other than
7 determined losses, do not equal two million dollars, all
8 liability for each determined loss or claim deferred for more
9 than one year, shall be provided for by a special deposit in a
10 trust company or bank having fiduciary powers of the state in
11 which the principal office is located, to be used in payment
12 of compensation benefits for disability; such deposit to be a
13 trust fund and applicable only to the purposes stated, or such
14 liability may be reinsured in authorized companies with a
15 surplus of at least two million dollars. For the purpose of
16 such reserves, net deposits shall be construed to mean the
17 advance payments of subscribers after deducting the amount
18 specifically provided in the subscribers' agreements for
19 expenses. If at any time the assets so held in cash or such
20 securities shall be less than required above, or less than two
21 million dollars, the subscribers or their attorney for them
22 shall make up the deficiency within thirty days after notice
23 from the commissioner of insurance to do so. In computing the
24 assets required by this section, the amount specified in
25 section 520.4, subsection 7, shall be included.

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

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

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

34 1. "Adjusted risk-based capital report" means a risk-based
35 capital report adjusted by the commissioner pursuant to

1 section 521E.2, subsection 5.

2 2. "Commissioner" means the commissioner of insurance.

3 3. "Corrective order" means an order issued by the
4 commissioner of insurance specifying corrective actions which
5 the commissioner has determined are required.

6 4. "Domestic insurer" means an insurance company domiciled
7 in this state and licensed to transact the business of
8 insurance under chapter 508, 515, or 520, except that it shall
9 not include any of the following:

10 a. An agency, authority, or instrumentality of the United
11 States, its possessions and territories, the commonwealth of
12 Puerto Rico, the District of Columbia, or a state or political
13 subdivision of a state.

14 b. A fraternal benefit society organized under chapter
15 512B.

16 c. A nonprofit medical, hospital, or dental service
17 corporation organized under chapter 514.

18 d. A county mutual insurance association organized under
19 chapter 518.

20 e. A mutual casualty assessment insurance association
21 organized under chapter 518A.

22 f. A health maintenance organization organized under
23 chapter 514B.

24 5. "Filing date" means March 1 of each year.

25 6. "Foreign insurer" means an insurance company not
26 domiciled in this state which is licensed to transact the
27 business of insurance in this state under chapter 508, 515, or
28 520.

29 7. "Life and health insurer" means an insurance company
30 licensed under chapter 508 or a licensed property and casualty
31 insurer writing only accident and health insurance under
32 chapter 515.

33 8. "Negative trend" means a negative trend over a period
34 of time as determined in accordance with the trend test
35 calculation included in the risk-based capital instructions.

1 9. "Property and casualty insurer" means an insurance
2 company licensed under chapter 515 but does not include
3 monoline mortgage guaranty insurers, financial guaranty
4 insurers, or title insurers.

5 10. "Revised risk-based capital plan" is a risk-based
6 capital plan which has been rejected by the commissioner and
7 has been revised by the insurer, with or without the
8 commissioner's recommendation.

9 11. "Risk-based capital instructions" means the
10 instructions included in the risk-based capital report as
11 adopted by the national association of insurance
12 commissioners, as such risk-based capital instructions may be
13 amended by the national association of insurance commissioners
14 from time to time in accordance with the procedures adopted by
15 the national association of insurance commissioners.

16 12. "Risk-based capital level" means an insurer's company-
17 action-level risk-based capital, regulatory-action-level risk-
18 based capital, authorized-control-level risk-based capital, or
19 mandatory-control-level risk-based capital as follows:

20 a. "Company-action-level risk-based capital" means, with
21 respect to any insurer, the product of two and the insurer's
22 authorized-control-level risk-based capital.

23 b. "Regulatory-action-level risk-based capital" means the
24 product of one and one-half and the insurer's authorized-
25 control-level risk-based capital.

26 c. "Authorized-control-level risk-based capital" means the
27 number determined under the risk-based capital formula in
28 accordance with the risk-based capital instructions.

29 d. "Mandatory-control-level risk-based capital" means the
30 product of seven-tenths and the insurer's authorized-control-
31 level risk-based capital.

32 13. "Risk-based capital plan" means a comprehensive
33 financial plan containing the elements identified in section
34 521E.3, subsection 2.

35 14. "Risk-based capital report" means the report required

1 to be prepared and submitted to the commissioner pursuant to
2 section 521E.2.

3 15. "Total adjusted capital" means the sum of the
4 following:

- 5 a. An insurer's statutory capital and surplus.
- 6 b. Such other items, if any, as identified in the risk-
7 based capital instructions.

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

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

- 16 a. The national association of insurance commissioners.
- 17 b. The insurance commissioner in each state in which the
18 insurer is authorized to do business, if such insurance
19 commissioner has notified the insurer of its request in
20 writing. Upon receipt of the written request, the insurer
21 shall file its risk-based capital report with the requesting
22 commissioner by no later than the later of the following:

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

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

- 30 a. The risk with respect to the insurer's assets.
- 31 b. The risk of adverse insurance experience with respect
32 to the insurer's liabilities and obligations.
- 33 c. The interest rate risk with respect to the insurer's
34 business.
- 35 d. All other business risks and other relevant risks as

1 identified in the risk-based capital instructions, determined
2 in each case by applying the factors in the manner provided
3 for in the risk-based capital instructions.

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

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

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

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

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

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

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

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

34 (2) For a life and health insurer, the insurer's total
35 adjusted capital is greater than or equal to its company-

1 action-level risk-based capital but less than the product of
2 its authorized-control-level risk-based capital and two and
3 one-half, and has a negative trend.

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

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

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

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

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

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

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

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

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

13 4. Within sixty days after the submission by an insurer of
14 a risk-based capital plan to the commissioner, the
15 commissioner shall notify the insurer whether the risk-based
16 capital plan shall be implemented or, in the judgment of the
17 commissioner, is unsatisfactory. If the commissioner
18 determines the risk-based capital plan is unsatisfactory, the
19 notification to the insurer shall set forth the reasons for
20 the determination, and may set forth proposed revisions which
21 in the judgment of the commissioner will render the risk-based
22 capital plan satisfactory. Upon the receipt of notification
23 from the commissioner pursuant to this subsection, the insurer
24 shall prepare a revised risk-based capital plan, which may
25 incorporate by reference any revisions proposed by the
26 commissioner, and submit the revised risk-based capital plan
27 to the commissioner within forty-five days of the receipt of
28 notification from the commissioner of the commissioner's
29 determination that the risk-based capital plan is
30 unsatisfactory, or, if the insurer requests a hearing pursuant
31 to section 521E.7 for the purpose of challenging the
32 commissioner's determination, within forty-five days after
33 notification to the insurer that the commissioner, after
34 hearing, has rejected the insurer's challenge.

35 5. After notification of the insurer by the commissioner

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 h. Notification by the commissioner to the insurer that
34 the insurer has failed to adhere to the insurer's risk-based
35 capital plan or revised risk-based capital plan, but only if

1 the failure has a substantial adverse effect on the ability of
2 the insurer to eliminate the company-action-level event
3 pursuant to the insurer's risk-based capital plan or revised
4 risk-based capital plan and the commissioner has so stated in
5 the notification. However, notification by the commissioner
6 pursuant to this paragraph does not constitute a company-
7 action-level event if the insurer has challenged the
8 determination of the commissioner pursuant to section 521E.7.

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

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

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

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

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

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

34 a. If the insurer challenges an adjusted risk-based
35 capital report pursuant to section 521E.7, and in the judgment

1 of the commissioner the challenge is not frivolous, within
2 forty-five days after the notification to the insurer that the
3 commissioner, after a hearing pursuant to section 521E.7, has
4 rejected the insurer's challenge.

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

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

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

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

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

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

34 c. After a hearing pursuant to section 521E.7,
35 notification by the commissioner to the insurer that the

1 commissioner has rejected the insurer's challenge of the
2 adjusted risk-based capital report indicating the event in
3 paragraph "a".

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

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

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

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

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

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

35 1. "Mandatory-control-level event" means any of the

1 following events:

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

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

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

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

17 a. With respect to a life insurer, take action as
18 necessary to place the insurer under supervision or other
19 regulatory control under chapter 507C. If the commissioner
20 takes action pursuant to this paragraph, the mandatory-
21 control-level event is deemed sufficient grounds for the
22 commissioner to take action pursuant to chapter 507C, and the
23 commissioner shall have the rights, powers, and duties with
24 respect to the insurer as set forth in chapter 507C. If the
25 commissioner takes action pursuant to an adjusted risk-based
26 capital report, the insurer is entitled to the protections of
27 chapter 17A pertaining to summary proceedings.

28 Notwithstanding the provisions of this paragraph, the
29 commissioner may forego any action pursuant to this paragraph
30 for up to ninety days after the mandatory-control-level event
31 if the commissioner finds a reasonable expectation exists that
32 the mandatory-control-level event may be eliminated within the
33 ninety-day period.

34 b. With respect to a property and casualty insurer, take
35 action as necessary to place the insurer under supervision or

1 other regulatory control under chapter 507C, or, in the case
2 of an insurer which is no longer writing business and which is
3 running off its existing business, the commissioner may allow
4 the insurer to continue its run-off under the supervision of
5 the commissioner. In either event, the mandatory-control-
6 level event is deemed sufficient grounds for the commissioner
7 to take action under chapter 507C and the commissioner shall
8 have the rights, powers, and duties with respect to the
9 insurer as set forth in chapter 507C. If the commissioner
10 takes action pursuant to an adjusted risk-based capital
11 report, the insurer is entitled to the protections of chapter
12 17A pertaining to summary proceedings. Notwithstanding the
13 provisions of this paragraph, the commissioner may forego
14 action for up to ninety days after the mandatory-control-level
15 event if the commissioner finds a reasonable expectation
16 exists that the mandatory-control-level event may be
17 eliminated within the ninety-day period.

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

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

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

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

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

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

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

1 its risk-based capital plan or revised risk-based capital
2 plan.

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

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

12 Sec. 16. NEW SECTION. 521E.8 CONFIDENTIALITY -- USE OF
13 REPORTS AND INFORMATION -- PROHIBITION ON ANNOUNCEMENTS --
14 PROHIBITION ON USE IN RATEMAKING.

15 1. A risk-based capital report, to the extent the
16 information in the report is not required to be set forth in a
17 publicly available annual statement schedule, or a risk-based
18 capital plan, including the results or report of any
19 examination or analysis of an insurer performed pursuant to
20 this chapter, and any corrective order issued by the
21 commissioner pursuant to an examination or analysis, with
22 respect to a domestic insurer or foreign insurer, which are
23 filed with the commissioner, are deemed not to be public
24 records under chapter 22 and are privileged and confidential.
25 This information shall not be made public and is not subject
26 to subpoena, other than by the commissioner, and then only for
27 the purpose of enforcement actions taken by the commissioner
28 pursuant to this chapter or any other provision of the
29 insurance laws of this state.

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

35 3. Except as otherwise required under this chapter or as

1 required of a publicly held company by the United States
2 securities and exchange commission or other regulatory agency,
3 the publication or dissemination in any manner of an
4 announcement or statement which contains an assertion,
5 representation, or statement with regard to the risk-based
6 capital levels of an insurer, or of a component derived in the
7 calculation, by an insurer, agent, broker, or other person
8 engaged in any manner in the business of insurance which would
9 be misleading, is prohibited. However, if a materially false
10 statement comparing an insurer's total adjusted capital to its
11 risk-based capital levels or a misleading comparison of any
12 other amount to the insurer's risk-based capital levels is
13 published or disseminated in any manner and if the insurer is
14 able to demonstrate to the commissioner with substantial proof
15 that the statement is false, misleading, or inappropriate, as
16 the case may be, the insurer may publish an announcement in a
17 written publication for the sole purpose of rebutting the
18 materially false, misleading, or inappropriate statement.

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

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

1 chapter 507B.

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

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

9 2. The commissioner may adopt rules pursuant to chapter
10 17A necessary for the administration of this chapter.

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

14 a. Writes direct business only in this state.

15 b. Writes direct annual premiums of one million dollars or
16 less.

17 c. Does not assume reinsurance in excess of five percent
18 of direct premiums written.

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

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

24 a. The filing date.

25 b. Fifteen days after the request is received by the
26 foreign insurer.

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

31 2. In the event of a company-action-level event,
32 regulatory-action-level event, or authorized-control-level
33 event with respect to a foreign insurer as determined under
34 the risk-based capital statute applicable in the state of
35 domicile of the insurer, or, if no risk-based capital statute

1 is in force in that state, under the provisions of this
2 chapter, and if the insurance commissioner of the state of
3 domicile of the foreign insurer fails to require the foreign
4 insurer to file a risk-based capital plan in the manner
5 specified under that state's risk-based capital statute, or,
6 if no risk-based capital statute is in force in that state,
7 pursuant to section 521E.2, the commissioner may require the
8 foreign insurer to file a risk-based capital plan with the
9 commissioner. The failure of the foreign insurer to file a
10 risk-based capital plan with the commissioner shall be
11 sufficient grounds for the commissioner to order the insurer
12 to cease and desist from writing new insurance business in
13 this state.

14 3. In the event of a mandatory-control-level event with
15 respect to a foreign insurer, if a domiciliary receiver has
16 not been appointed with respect to the foreign insurer under
17 the rehabilitation and liquidation statute applicable in the
18 state of domicile of the foreign insurer, the commissioner may
19 make application to the district court as permitted under
20 chapter 507C with respect to the liquidation of property of
21 foreign insurers found in this state, and the occurrence of
22 the mandatory-control-level event shall be considered adequate
23 grounds for the application.

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

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

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

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

1 Sec. 21. APPLICABILITY.

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

5 a. The commissioner shall take no regulatory action
6 pursuant to this chapter as the result of a risk-based capital
7 report which indicates a company-action-level event.

8 b. The commissioner shall take the regulatory action
9 provided for under section 521E.3 upon the submission of a
10 risk-based capital report which indicates a regulatory-action-
11 level event under section 521E.4, subsection 1, paragraph "a",
12 "b", or "c".

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

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

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

25 a. The commissioner shall take no regulatory action
26 pursuant to this chapter as the result of a risk-based capital
27 report which indicates a company-action-level event.

28 b. The commissioner shall take the regulatory action
29 provided for under section 521E.3 upon the submission of a
30 risk-based capital report which indicates a regulatory action
31 level event under section 521E.4, subsection 1, paragraph "a",
32 "b", or "c".

33 c. The commissioner shall take the regulatory action
34 provided for under section 521E.4 upon the submission of a
35 risk-based capital report which indicates a regulatory-action-

1 level event under section 521E.4, subsection 1, paragraphs "d"
2 through "i".

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

7 EXPLANATION

8 This bill relates to measures of risk-based capital for
9 purposes of regulating insurance companies in this state. The
10 bill establishes a new chapter 521E.

11 New section 515.12A is created and sections 508.5 (stock
12 life insurance company), 508.9 (mutual life insurance
13 company), 515.8 (insurance company other than life insurance
14 company), 515.10 (insurance company other than life insurance
15 company), 515.12 (mutual insurance company other than mutual
16 life insurance company), 515.69 (foreign stock insurance
17 company other than life insurance company), 515.76 (foreign
18 mutual insurance company other than life insurance company),
19 and 520.9 (reciprocals) are amended to provide that capital
20 and surplus requirements for insurers subject to those
21 sections are the greater of the capital and surplus
22 requirements identified in those sections or the applicable
23 capital and surplus requirements under chapter 521E.

24 New section 521E.1 establishes the definitions of terms
25 used in the bill.

26 New section 521E.2 requires a domestic insurer to annually
27 file with the commissioner a report of the insurer's risk-
28 based capital level as of the end of a calendar year. In
29 addition to the insurance commissioner, the report is to be
30 filed with the national association of insurance commissioners
31 and with the insurance commissioner in each state in which the
32 insurance company is authorized to do business. The section
33 defines how the risk-based capital is determined for a life
34 and health insurer, and a property and casualty insurer.

35 New section 521E.3 establishes and defines a company-

1 action-level event and the steps which the insurer must take
2 as a result of the event.

3 New section 521E.4 establishes and defines a regulatory-
4 action-level event and steps which the insurer must take as a
5 result of the event.

6 New section 521E.5 establishes and defines an authorized-
7 control-level event. Upon the occurrence of an authorized-
8 control-level event, the commissioner may take action in the
9 same manner as if a regulatory-action-level event has
10 occurred, or may take action to place the insurer under
11 supervision or other regulatory control.

12 New section 521E.6 establishes and defines a mandatory-
13 control-level event. Upon the occurrence of a mandatory-
14 control-level event, the commissioner is to take the necessary
15 action to place the insurer under supervision or other
16 regulatory control.

17 New section 521E.7 establishes the right of an insurer to
18 request a hearing upon receipt of the insurer of notification
19 by the commissioner of an adjusted risk-based capital report,
20 or notification by the commissioner that an insurer's risk-
21 based capital plan or revised risk-based capital plan is
22 unsatisfactory and that the notification constitutes a
23 regulatory-action-level event with respect to the insurer.

24 New section 521E.8 provides that all risk-based capital
25 reports are confidential and provides that such reports are
26 not to be used or introduced as evidence with regard to any
27 rate proceeding. A violation of this section constitutes an
28 unfair trade practice.

29 New section 521E.9 exempts a domestic property and casualty
30 insurer from the application of the chapter if the insurer
31 writes direct business only in this state, writes direct
32 annual premiums of no more than \$1 million, and does not
33 assume reinsurance in an amount in excess of five percent of
34 the insurer's direct written premium.

35 New section 521E.10 establishes the manner in which the

1 chapter applies to foreign insurers.

2 New section 521E.11 provides that the commissioner,
3 insurance division, and employees and agents of the division
4 do not incur liability as the result of any action taken in
5 the exercise of powers or performance of duties under chapter
6 521E.

7 New section 521E.12 provides that notice by the
8 commissioner to an insurer which may result in regulatory
9 action under chapter 521E is effective upon being sent if
10 transmitted by certified mail, or in the case of any other
11 transmission is effective upon the insurer's receipt of the
12 notice.

13 The last section of the bill provides for a phased-in
14 application of the bill.

15 BACKGROUND STATEMENT

16 SUBMITTED BY THE AGENCY

17 Risk-based capital is a method of measuring the minimum
18 amount of capital appropriate for an insurance company to
19 support its overall business operations in consideration of
20 its size and risk profile. It provides a means of setting the
21 capital requirement in which the degree of risk taken by the
22 insurer is the primary determinant. Major risk categories
23 include asset risk, insurance risk, interest rate risk, credit
24 risk, underwriting risk, and business risk.

25 Iowa's current capital and surplus standard is \$5 million.
26 Risk-based capital provides for additional capital
27 requirements for those insurers which elect to assume greater
28 levels of risk.

29 The bill requires an insurer to make an annual filing with
30 the insurance division detailing its risk-based capital level
31 and provides a mechanism for the division to monitor capital
32 levels and take appropriate regulatory action as necessary.

33 The bill applies to all domestic and foreign life/health
34 and property/casualty companies doing business in Iowa. It
35 does not, however, apply to county or state mutual insurers

1 licensed under Iowa Code chapter 518 or 518A, HMOs, or
2 fraternal benefit societies.

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