

Senate Study Bill 2203

Conference Committee Text

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1 1 Section 1. Section [508.5](#), Code Supplement 1995, is amended
1 2 to read as follows:

1 3 508.5 CAPITAL AND SURPLUS REQUIRED.

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

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

1 21 Sec. 2. Section [508.9](#), Code Supplement 1995, is amended to
1 22 read as follows:

1 23 508.9 MUTUAL COMPANIES - CONDITIONS.

1 24 1. Level premium and natural premium life insurance
1 25 companies organized under the laws of this state upon the
1 26 mutual plan shall, before issuing policies, have actual
1 27 applications on at least two hundred and fifty lives for an
1 28 average amount of one thousand dollars each. A list of the
1 29 applications giving the name, age, residence, amount of
1 30 insurance, and annual premium of each applicant shall be filed
1 31 with the commissioner of insurance, and a deposit made with
1 32 the commissioner of an amount equal to three-fifths of the
1 33 whole annual premium on the applications, in cash or the
1 34 securities required by section 508.5. In addition, a deposit
1 35 of cash or securities of the character provided by law for the
2 1 investment of funds for life insurance companies in the sum of
2 2 five million dollars shall be made with the commissioner,
2 3 which shall constitute a security fund for the protection of
2 4 policyholders. The contribution to the security fund shall
2 5 not give to contributors to the fund or to other persons any
2 6 voting or other power in the management of the affairs of the
2 7 company. The security fund may be repaid to the contributors
2 8 to the security fund with interest at six percent from the
2 9 date of contribution, at any time, in whole or in part, if the
2 10 repayment does not reduce the surplus of the company below the
2 11 amount of five million dollars and then only if consent in
2 12 writing for the repayment is obtained from the commissioner of
2 13 insurance. Upon compliance with this section, the
2 14 commissioner shall issue to the mutual company the certificate
2 15 prescribed in this chapter. A mutual insurance company
2 16 authorized to do business in Iowa that undergoes a change of
2 17 control as defined in chapter 521A shall maintain the minimum
2 18 surplus requirement mandated by this section.

2 19 2. Notwithstanding subsection 1, a mutual insurance
2 20 company authorized to transact business under this chapter
2 21 shall comply with the minimum surplus requirements of this

2 22 section or chapter 521E, whichever is greater.

2 23 Sec. 3. Section 515.8, Code Supplement 1995, is amended to
2 24 read as follows:

2 25 515.8 PAID-UP CAPITAL REQUIRED.

2 26 1. An insurance company other than a life insurance
2 27 company shall not be incorporated to transact business upon
2 28 the stock plan with less than two million five hundred
2 29 thousand dollars capital, the entire amount of which shall be
2 30 fully paid up in cash and invested as provided by law. An
2 31 insurance company other than a life insurance company shall
2 32 not increase its capital stock unless the amount of the
2 33 increase is fully paid up in cash. The stock shall be divided
2 34 into shares of not less than one dollar each. An insurance
2 35 company authorized to do business in Iowa that undergoes a
3 1 change of control as defined under chapter 521A shall maintain
3 2 the minimum capital requirements mandated by this section.

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

3 8 Sec. 4. Section 515.10, Code Supplement 1995, is amended
3 9 to read as follows:

3 10 515.10 SURPLUS REQUIRED.

3 11 1. An insurance company other than a life insurance
3 12 company shall have, in addition to the required paid-up
3 13 capital, a surplus in cash or invested in securities
3 14 authorized by law of not less than two million five hundred
3 15 thousand dollars. An insurance company authorized to do
3 16 business in Iowa that undergoes a change of control as defined
3 17 under chapter 521A shall maintain the minimum surplus
3 18 requirements mandated by this section.

3 19 2. Notwithstanding subsection 1, an insurance company,
3 20 other than a life insurance company, authorized to transact
3 21 business under this chapter shall comply with the minimum
3 22 surplus requirements of this section or chapter 521E,
3 23 whichever is greater.

3 24 Sec. 5. Section 515.69, Code 1995, is amended to read as
3 25 follows:

3 26 515.69 FOREIGN COMPANIES - CAPITAL REQUIRED.

3 27 1. A stock insurance company organized under or by the
3 28 laws of any other state or foreign government for the purpose
3 29 specified in this chapter, shall not, directly or indirectly,
3 30 take risks or transact business of insurance in this state
3 31 unless the company has two and one-half million dollars of
3 32 actual paid-up capital, and a surplus in cash or invested in
3 33 securities authorized by law of not less than two and one-half
3 34 million dollars, exclusive of assets deposited in a state,
3 35 territory, district, or country for the special benefit or
4 1 security of those insured in that state, territory, district,
4 2 or country.

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

4 7 Sec. 6. Section 515.76, Code 1995, is amended to read as
4 8 follows:

4 9 515.76 FOREIGN MUTUAL COMPANIES - SURPLUS.

4 10 1. Any mutual insurance company organized outside of this
4 11 state and authorized to transact the business of insurance on
4 12 the mutual plan in any other state of the United States or in
4 13 the District of Columbia, may be admitted to this state and
4 14 authorized to transact herein any of the kinds of insurance
4 15 authorized by its charter or articles of incorporation, when
4 16 so permitted by the provisions of this chapter, with the
4 17 powers and privileges and subject to the conditions and
4 18 limitations specified in said chapter; provided, however, such

4 19 company has complied with all the statutory provisions which
4 20 require stock companies to file papers and to furnish
4 21 information and to submit to examination, and is also solvent
4 22 according to the requirements of this chapter and is possessed
4 23 of a surplus safely invested as follows:
4 24

1.

- a. In case of a mutual company issuing policies for a
4 25 cash premium without an additional contingent liability equal
4 26 to or greater than the cash premium, the surplus shall be at
4 27 least two million dollars.
4 28

2.

- b. In case of any other such mutual company issuing
4 29 policies for a cash premium or payment with an additional
4 30 contingent liability equal to or greater than the cash premium
4 31 or payment, the surplus shall be such an amount as the
4 32 commissioner of insurance of Iowa may require, but in no case
4 33 less than three hundred thousand dollars, provided that the
4 34 provisions of this section fixing a minimum surplus of three
4 35 hundred thousand dollars shall not apply to companies now
5 1 admitted to do business in Iowa; provided, further, that no
5 2 such mutual company shall be authorized to transact
5 3 compensation insurance without a surplus of at least three
5 4 hundred thousand dollars unless all liability for each
5 5 adjusted claim in this state, the payment of any part of which
5 6 is deferred for more than one year, shall be provided for by a
5 7 special deposit, in a trust company or a bank having fiduciary
5 8 powers, located in this state, which shall be a trust fund
5 9 applicable solely and exclusively to the payment of the
5 10 compensation benefits for which such deposit is made, or shall
5 11 be reinsured in an authorized stock company, or in an
5 12 authorized mutual company with a surplus of at least three
5 13 hundred thousand dollars.

5 14 2. Notwithstanding subsection 1, a mutual insurance
5 15 company authorized to transact business under this section
5 16 shall comply with the minimum surplus requirements of this
5 17 section or chapter 521E, whichever is greater.

5 18 Sec. 7. NEW SECTION. 515.12A ALTERNATIVE MINIMUM SURPLUS
5 19 LEVELS.

5 20 A mutual company authorized to transact business under this
5 21 chapter shall comply with the minimum surplus requirements of
5 22 section 515.12 or chapter 521E, whichever is greater.

5 23 Sec. 8. Section 520.9, Code 1995, is amended to read as
5 24 follows:

5 25 520.9 STANDARD OF SOLVENCY.

5 26 1. There shall at all times be maintained as assets a sum
5 27 in cash, or in securities of the kind designated by the laws
5 28 of the state where the principal office is located for the
5 29 investment of funds of insurance companies, equal to one
5 30 hundred percent of the net unearned premiums or deposits
5 31 collected and credited to the account of subscribers, or
5 32 assets equal to fifty percent of the net annual deposits
5 33 collected and credited to the account of subscribers on
5 34 policies having one year or less to run and pro rata on those
5 35 for longer periods; in addition to which there shall be
6 1 maintained in cash, or in such securities, assets sufficient
6 2 to discharge all liabilities on all outstanding losses arising
6 3 under policies issued, the same to be calculated in accordance
6 4 with the laws of the state relating to similar reserves for
6 5 companies insuring similar risks; provided that where the
6 6 assets on hand available for the payment of losses other than
6 7 determined losses, do not equal two million dollars, all
6 8 liability for each determined loss or claim deferred for more
6 9 than one year, shall be provided for by a special deposit in a

6 10 trust company or bank having fiduciary powers of the state in
6 11 which the principal office is located, to be used in payment
6 12 of compensation benefits for disability; such deposit to be a
6 13 trust fund and applicable only to the purposes stated, or such
6 14 liability may be reinsured in authorized companies with a
6 15 surplus of at least two million dollars. For the purpose of
6 16 such reserves, net deposits shall be construed to mean the
6 17 advance payments of subscribers after deducting the amount
6 18 specifically provided in the subscribers' agreements for
6 19 expenses. If at any time the assets so held in cash or such
6 20 securities shall be less than required above, or less than two
6 21 million dollars, the subscribers or their attorney for them
6 22 shall make up the deficiency within thirty days after notice
6 23 from the commissioner of insurance to do so. In computing the
6 24 assets required by this section, the amount specified in
6 25 section 520.4, subsection 7, shall be included.

6 26 2. Notwithstanding subsection 1, a person issuing
6 27 reciprocal contracts and authorized to transact business under
6 28 this chapter shall comply with the minimum surplus
6 29 requirements of this section or chapter 521E, whichever is
6 30 greater.

6 31 Sec. 9. NEW SECTION. 521E.1 DEFINITIONS.

6 32 As used in this chapter, unless the context otherwise
6 33 requires:

6 34 1. "Adjusted risk-based capital report" means a risk-based
6 35 capital report adjusted by the commissioner pursuant to
7 1 section 521E.2, subsection 5.

7 2 2. "Commissioner" means the commissioner of insurance.

7 3 3. "Corrective order" means an order issued by the
7 4 commissioner of insurance specifying corrective actions which
7 5 the commissioner has determined are required.

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

7 10 a. An agency, authority, or instrumentality of the United
7 11 States, its possessions and territories, the commonwealth of
7 12 Puerto Rico, the District of Columbia, or a state or political
7 13 subdivision of a state.

7 14 b. A fraternal benefit society organized under chapter
7 15 512B.

7 16 c. A nonprofit medical, hospital, or dental service
7 17 corporation organized under chapter 514.

7 18 d. A county mutual insurance association organized under
7 19 chapter 518.

7 20 e. A mutual casualty assessment insurance association
7 21 organized under chapter 518A.

7 22 f. A health maintenance organization organized under
7 23 chapter 514B.

7 24 5. "Filing date" means March 1 of each year.

7 25 6. "Foreign insurer" means an insurance company not
7 26 domiciled in this state which is licensed to transact the
7 27 business of insurance in this state under chapter 508, 515, or
7 28 520.

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

7 33 8. "Negative trend" means a negative trend over a period
7 34 of time as determined in accordance with the trend test
7 35 calculation included in the risk-based capital instructions.

8 1 9. "Property and casualty insurer" means an insurance
8 2 company licensed under chapter 515 but does not include
8 3 monoline mortgage guaranty insurers, financial guaranty
8 4 insurers, or title insurers.

8 5 10. "Revised risk-based capital plan" is a risk-based
8 6 capital plan which has been rejected by the commissioner and

8 7 has been revised by the insurer, with or without the
8 8 commissioner's recommendation.

8 9 11. "Risk-based capital instructions" means the
8 10 instructions included in the risk-based capital report as
8 11 adopted by the national association of insurance
8 12 commissioners, as such risk-based capital instructions may be
8 13 amended by the national association of insurance commissioners
8 14 from time to time in accordance with the procedures adopted by
8 15 the national association of insurance commissioners.

8 16 12. "Risk-based capital level" means an insurer's company-
8 17 action-level risk-based capital, regulatory-action-level risk-
8 18 based capital, authorized-control-level risk-based capital, or
8 19 mandatory-control-level risk-based capital as follows:

8 20 a. "Company-action-level risk-based capital" means, with
8 21 respect to any insurer, the product of two and the insurer's
8 22 authorized-control-level risk-based capital.

8 23 b. "Regulatory-action-level risk-based capital" means the
8 24 product of one and one-half and the insurer's authorized-
8 25 control-level risk-based capital.

8 26 c. "Authorized-control-level risk-based capital" means the
8 27 number determined under the risk-based capital formula in
8 28 accordance with the risk-based capital instructions.

8 29 d. "Mandatory-control-level risk-based capital" means the
8 30 product of seven-tenths and the insurer's authorized-control-
8 31 level risk-based capital.

8 32 13. "Risk-based capital plan" means a comprehensive
8 33 financial plan containing the elements identified in section
8 34 521E.3, subsection 2.

8 35 14. "Risk-based capital report" means the report required
9 1 to be prepared and submitted to the commissioner pursuant to
9 2 section 521E.2.

9 3 15. "Total adjusted capital" means the sum of the
9 4 following:

9 5 a. An insurer's statutory capital and surplus.

9 6 b. Such other items, if any, as identified in the risk-
9 7 based capital instructions.

9 8 Sec. 10. NEW SECTION. 521E.2 RISK-BASED CAPITAL REPORTS.

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

9 16 a. The national association of insurance commissioners.

9 17 b. The insurance commissioner in each state in which the
9 18 insurer is authorized to do business, if such insurance
9 19 commissioner has notified the insurer of its request in
9 20 writing. Upon receipt of the written request, the insurer
9 21 shall file its risk-based capital report with the requesting
9 22 commissioner by no later than the later of the following:

9 23 (1) Fifteen days from the receipt of the written request.

9 24 (2) The filing date.

9 25 2. A life and health insurer's risk-based capital shall be
9 26 determined pursuant to the formula set forth in the risk-based
9 27 capital instructions. The formula shall take into account all
9 28 of the following, and may be adjusted, as deemed appropriate
9 29 by the commissioner, for the covariance between the following:

9 30 a. The risk with respect to the insurer's assets.

9 31 b. The risk of adverse insurance experience with respect
9 32 to the insurer's liabilities and obligations.

9 33 c. The interest rate risk with respect to the insurer's
9 34 business.

9 35 d. All other business risks and other relevant risks as
10 1 identified in the risk-based capital instructions, determined
10 2 in each case by applying the factors in the manner provided
10 3 for in the risk-based capital instructions.

10 4 3. A property and casualty insurer's risk-based capital
10 5 shall be determined pursuant to the formula set forth in the
10 6 risk-based capital instructions. The formula shall take into
10 7 account all of the following, and may be adjusted, as deemed
10 8 appropriate by the commissioner, for the covariance between
10 9 the following:

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

10 17 4. An insurer shall seek to maintain capital above the
10 18 risk-based capital levels required by this chapter.

10 19 5. A risk-based capital report filed by a domestic insurer
10 20 which in the judgment of the commissioner is inaccurate, shall
10 21 be adjusted by the commissioner to correct the inaccuracy.
10 22 The commissioner shall notify the insurer of the adjustment.
10 23 The notice shall contain a statement of the reason for the
10 24 adjustment.

10 25 Sec. 11. NEW SECTION. 521E.3 COMPANY-ACTION-LEVEL EVENT.

10 26 1. "Company-action-level event" means any of the
10 27 following:

10 28 a. The filing of a risk-based capital report by an insurer
10 29 which indicates either of the following:

10 30 (1) For an insurer other than a life and health insurer,
10 31 the insurer's total adjusted capital is greater than or equal
10 32 to its regulatory-action-level risk-based capital but less
10 33 than its company-action-level risk-based capital.

10 34 (2) For a life and health insurer, the insurer's total
10 35 adjusted capital is greater than or equal to its company-
11 1 action-level risk-based capital but less than the product of
11 2 its authorized-control-level risk-based capital and two and
11 3 one-half, and has a negative trend.

11 4 b. Notification by the commissioner to the insurer of an
11 5 adjusted risk-based capital report that indicates an event in
11 6 paragraph "a", provided the insurer does not challenge the
11 7 adjusted risk-based capital report and request a hearing
11 8 pursuant to section 521E.7.

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

11 14 2. Upon the occurrence of a company-action-level event,
11 15 the insurer shall prepare and submit to the commissioner a
11 16 risk-based capital plan which shall include all of the
11 17 following:

11 18 a. Identification of the conditions which contributed to
11 19 the company-action-level event.

11 20 b. Proposed corrective actions which the insurer intends
11 21 to implement and which are expected to result in the
11 22 elimination of the company-action-level event.

11 23 c. Projections of the insurer's financial results for the
11 24 current year and at least the four succeeding years, including
11 25 projections of statutory operating income, net income,
11 26 capital, and surplus. Projections shall be provided assuming
11 27 the absence of the proposed corrective actions and assuming
11 28 the implementation of the proposed corrective actions. The
11 29 projections for both new and renewal business may include
11 30 separate projections for each major line of business and
11 31 separately identify each significant income, expense, and
11 32 benefit component.

11 33 d. Identification of the primary assumptions impacting the
11 34 insurer's projections and the sensitivity of the projections
11 35 to the assumptions.

12 1 e. Identification of the quality of, and problems
12 2 associated with, the insurer's business, including but not
12 3 limited to its assets, anticipated business growth and
12 4 associated surplus strain, extraordinary exposure to risk, mix
12 5 of business, and use of reinsurance, if any, in each case.

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

12 13 4. Within sixty days after the submission by an insurer of
12 14 a risk-based capital plan to the commissioner, the
12 15 commissioner shall notify the insurer whether the risk-based
12 16 capital plan shall be implemented or, in the judgment of the
12 17 commissioner, is unsatisfactory. If the commissioner
12 18 determines the risk-based capital plan is unsatisfactory, the
12 19 notification to the insurer shall set forth the reasons for
12 20 the determination, and may set forth proposed revisions which
12 21 in the judgment of the commissioner will render the risk-based
12 22 capital plan satisfactory. Upon the receipt of notification
12 23 from the commissioner pursuant to this subsection, the insurer
12 24 shall prepare a revised risk-based capital plan, which may
12 25 incorporate by reference any revisions proposed by the
12 26 commissioner, and submit the revised risk-based capital plan
12 27 to the commissioner within forty-five days of the receipt of
12 28 notification from the commissioner of the commissioner's
12 29 determination that the risk-based capital plan is
12 30 unsatisfactory, or, if the insurer requests a hearing pursuant
12 31 to section 521E.7 for the purpose of challenging the
12 32 commissioner's determination, within forty-five days after
12 33 notification to the insurer that the commissioner, after
12 34 hearing, has rejected the insurer's challenge.

12 35 5. After notification of the insurer by the commissioner
13 1 that the insurer's risk-based capital plan or revised risk-
13 2 based capital plan is unsatisfactory, the commissioner, at the
13 3 commissioner's discretion and subject to the insurer's right
13 4 to a hearing pursuant to section 521E.7, may specify in the
13 5 notification that the notification constitutes a regulatory-
13 6 action-level event.

13 7 6. A domestic insurer that files a risk-based capital plan
13 8 or revised risk-based capital plan with the commissioner shall
13 9 file a copy of the risk-based capital plan or revised risk-
13 10 based capital plan with the insurance commissioner in a state
13 11 in which the insurer is authorized to do business if both of
13 12 the following apply:

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

13 16 b. The insurance commissioner of that state has notified
13 17 the insurer in writing of its request to receive a copy of the
13 18 risk-based capital plan or revised risk-based capital plan.
13 19 Upon receipt of the written request, the insurer shall file a
13 20 copy of the risk-based capital plan or revised risk-based
13 21 capital plan with the requesting commissioner by no later than
13 22 the later of the following:

13 23 (1) Fifteen days from the receipt of the written request.

13 24 (2) The date on which the risk-based capital plan or

13 25 revised risk-based capital plan is filed pursuant to
13 26 subsection 3 or 4, as applicable.

13 27 Sec. 12. NEW SECTION. 521E.4 REGULATORY-ACTION-LEVEL
13 28 EVENT.

13 29 1. "Regulatory-action-level event" means any of the
13 30 following:

13 31 a. The filing of a risk-based capital report by the
13 32 insurer which indicates that the insurer's total adjusted

13 33 capital is greater than or equal to its authorized-control-
13 34 level risk-based capital but less than its regulatory-action-
13 35 level risk-based capital.

14 1 b. Notification by the commissioner to an insurer of an
14 2 adjusted risk-based capital report that indicates the event in
14 3 paragraph "a", provided the insurer does not challenge the
14 4 adjusted risk-based capital report and request a hearing
14 5 pursuant to section 521E.7.

14 6 c. After a hearing pursuant to section 521E.7,
14 7 notification by the commissioner to the insurer that the
14 8 commissioner has rejected the insurer's challenge of the
14 9 adjusted risk-based capital report indicating the event in
14 10 paragraph "a".

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

14 16 e. Failure of the insurer to submit a risk-based capital
14 17 plan to the commissioner within the time period set forth in
14 18 section 521E.3, subsection 3.

14 19 f. Notification by the commissioner to the insurer of both
14 20 of the following:

14 21 (1) The risk-based capital plan or revised risk-based
14 22 capital plan submitted by the insurer, in the judgment of the
14 23 commissioner, is unsatisfactory.

14 24 (2) Notification pursuant to this paragraph constitutes a
14 25 regulatory-action-level event with respect to the insurer,
14 26 provided the insurer has not challenged the determination
14 27 pursuant to section 521E.7, subsection 7.

14 28 g. After a hearing pursuant to section 521E.7,
14 29 notification by the commissioner to the insurer that the
14 30 commissioner has rejected the insurer's challenge of the
14 31 determination made by the commissioner pursuant to paragraph
14 32 "f".

14 33 h. Notification by the commissioner to the insurer that
14 34 the insurer has failed to adhere to the insurer's risk-based
14 35 capital plan or revised risk-based capital plan, but only if
15 1 the failure has a substantial adverse effect on the ability of
15 2 the insurer to eliminate the company-action-level event
15 3 pursuant to the insurer's risk-based capital plan or revised
15 4 risk-based capital plan and the commissioner has so stated in
15 5 the notification. However, notification by the commissioner
15 6 pursuant to this paragraph does not constitute a company-
15 7 action-level event if the insurer has challenged the
15 8 determination of the commissioner pursuant to section 521E.7.

15 9 i. After a hearing pursuant to section 521E.7,
15 10 notification by the commissioner to the insurer that the
15 11 commissioner has rejected the insurer's challenge of the
15 12 commissioner's determination pursuant to paragraph "h".

15 13 2. In the event of a regulatory-action-level event the
15 14 commissioner shall do all of the following:

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

15 18 b. Perform an examination or analysis of the assets,
15 19 liabilities, and operations of the insurer, including a review
15 20 of its risk-based capital plan or revised risk-based capital
15 21 plan, as deemed necessary by the commissioner.

15 22 c. Subsequent to the examination or analysis pursuant to
15 23 paragraph "b", issue a corrective order.

15 24 3. In determining the corrective actions to be specified,
15 25 the commissioner shall take into account factors the
15 26 commissioner deems to be relevant with respect to the insurer
15 27 based upon the commissioner's examination or analysis of the
15 28 assets, liabilities, and operations of the insurer, including,
15 29 but not limited to, the results of any sensitivity tests

15 30 undertaken pursuant to the risk-based capital instructions.
15 31 The risk-based capital plan or revised risk-based capital plan
15 32 shall be submitted within forty-five days after the occurrence
15 33 of the regulatory-action-level event, except as follows:

15 34 a. If the insurer challenges an adjusted risk-based
15 35 capital report pursuant to section 521E.7, and in the judgment
16 1 of the commissioner the challenge is not frivolous, within
16 2 forty-five days after the notification to the insurer that the
16 3 commissioner, after a hearing pursuant to section 521E.7, has
16 4 rejected the insurer's challenge.

16 5 b. If the insurer challenges a revised risk-based capital
16 6 plan pursuant to section 521E.7, and in the judgment of the
16 7 commissioner the challenge is not frivolous, within forty-five
16 8 days after the notification to the insurer that the
16 9 commissioner, after a hearing pursuant to section 521E.7, has
16 10 rejected the insurer's challenge.

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

16 20 Sec. 13. NEW SECTION. 521E.5 AUTHORIZED-CONTROL-LEVEL
16 21 EVENT.

16 22 1. "Authorized-control-level event" means any of the
16 23 following:

16 24 a. The filing of a risk-based capital report by the
16 25 insurer which indicates that the insurer's total adjusted
16 26 capital is greater than or equal to its mandatory-control-
16 27 level risk-based capital but less than its authorized-control-
16 28 level risk-based capital.

16 29 b. Notification by the commissioner to an insurer of an
16 30 adjusted risk-based capital report that indicates the event in
16 31 paragraph "a", provided the insurer does not challenge the
16 32 adjusted risk-based capital report and request a hearing
16 33 pursuant to section 521E.7.

16 34 c. After a hearing pursuant to section 521E.7,
16 35 notification by the commissioner to the insurer that the
17 1 commissioner has rejected the insurer's challenge of the
17 2 adjusted risk-based capital report indicating the event in
17 3 paragraph "a".

17 4 d. Failure of the insurer to respond to a corrective order
17 5 in a manner satisfactory to the commissioner, unless the
17 6 insurer has challenged the corrective order pursuant to
17 7 section 521E.7.

17 8 e. Failure of the insurer to respond to the corrective
17 9 order in a manner satisfactory to the commissioner after the
17 10 insurer has challenged the corrective order pursuant to
17 11 section 521E.7, and the commissioner, after a hearing pursuant
17 12 to section 521E.7, has rejected the challenge or modified the
17 13 corrective order.

17 14 2. In the event of an authorized-control-level event the
17 15 commissioner shall do either of the following:

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

17 19 b. Take action as necessary to cause the insurer to be
17 20 placed under supervision or other regulatory control under
17 21 chapter 507C, if the commissioner deems such action to be in
17 22 the best interests of the policyholders and creditors of the
17 23 insurer and of the public. If the commissioner takes action
17 24 pursuant to this paragraph, the authorized-control-level event
17 25 is deemed sufficient grounds for the commissioner to take
17 26 action pursuant to chapter 507C, and the commissioner has the

17 27 rights, powers, and duties with respect to the insurer as set
17 28 forth in chapter 507C. If the commissioner takes action under
17 29 this paragraph pursuant to an adjusted risk-based capital
17 30 report, the insurer is entitled to the protections afforded to
17 31 insurers under the provisions of chapter 17A relating to
17 32 summary proceedings.

17 33 Sec. 14. NEW SECTION. 521E.6 MANDATORY-CONTROL-LEVEL
17 34 EVENT.

17 35 1. "Mandatory-control-level event" means any of the
18 1 following events:

18 2 a. The filing of a risk-based capital report which
18 3 indicates that an insurer's total adjusted capital is less
18 4 than its mandatory-control-level risk-based capital.

18 5 b. Notification by the commissioner to an insurer of an
18 6 adjusted risk-based capital report that indicates the event in
18 7 paragraph "a", provided the insurer does not challenge the
18 8 adjusted risk-based capital report and request a hearing
18 9 pursuant to section 521E.7.

18 10 c. After a hearing pursuant to section 521E.7,
18 11 notification by the commissioner to the insurer that the
18 12 commissioner has rejected the insurer's challenge of the
18 13 adjusted risk-based capital report indicating the event in
18 14 paragraph "a".

18 15 2. In the event of a mandatory-control-level event the
18 16 commissioner shall do the following:

18 17 a. With respect to a life insurer, take action as
18 18 necessary to place the insurer under supervision or other
18 19 regulatory control under chapter 507C. If the commissioner
18 20 takes action pursuant to this paragraph, the mandatory-
18 21 control-level event is deemed sufficient grounds for the
18 22 commissioner to take action pursuant to chapter 507C, and the
18 23 commissioner shall have the rights, powers, and duties with
18 24 respect to the insurer as set forth in chapter 507C. If the
18 25 commissioner takes action pursuant to an adjusted risk-based
18 26 capital report, the insurer is entitled to the protections of
18 27 chapter 17A pertaining to summary proceedings.
18 28 Notwithstanding the provisions of this paragraph, the
18 29 commissioner may forego any action pursuant to this paragraph
18 30 for up to ninety days after the mandatory-control-level event
18 31 if the commissioner finds a reasonable expectation exists that
18 32 the mandatory-control-level event may be eliminated within the
18 33 ninety-day period.

18 34 b. With respect to a property and casualty insurer, take
18 35 action as necessary to place the insurer under supervision or
19 1 other regulatory control under chapter 507C, or, in the case
19 2 of an insurer which is no longer writing business and which is
19 3 running off its existing business, the commissioner may allow
19 4 the insurer to continue its run-off under the supervision of
19 5 the commissioner. In either event, the mandatory-control-
19 6 level event is deemed sufficient grounds for the commissioner
19 7 to take action under chapter 507C and the commissioner shall
19 8 have the rights, powers, and duties with respect to the
19 9 insurer as set forth in chapter 507C. If the commissioner
19 10 takes action pursuant to an adjusted risk-based capital
19 11 report, the insurer is entitled to the protections of chapter
19 12 17A pertaining to summary proceedings. Notwithstanding the
19 13 provisions of this paragraph, the commissioner may forego
19 14 action for up to ninety days after the mandatory-control-level
19 15 event if the commissioner finds a reasonable expectation
19 16 exists that the mandatory-control-level event may be
19 17 eliminated within the ninety-day period.

19 18 Sec. 15. NEW SECTION. 521E.7 CONFIDENTIAL HEARINGS.

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

19 22 a. Notification to an insurer by the commissioner of an
19 23 adjusted risk-based capital report.

19 24 b. Notification to an insurer by the commissioner of both
19 25 of the following:

19 26 (1) The insurer's risk-based capital plan or revised risk-
19 27 based capital plan is unsatisfactory.

19 28 (2) That the notification pursuant to this paragraph
19 29 constitutes a regulatory-action-level event with respect to
19 30 the insurer.

19 31 c. Notification to an insurer by the commissioner that the
19 32 insurer has failed to adhere to its risk-based capital plan or
19 33 revised risk-based capital plan and that the failure has a
19 34 substantial adverse effect on the ability of the insurer to
19 35 eliminate the company-action-level event in accordance with
20 1 its risk-based capital plan or revised risk-based capital
20 2 plan.

20 3 d. Notification to an insurer by the commissioner of a
20 4 corrective order with respect to the insurer.

20 5 2. An insurer receiving a notification pursuant to
20 6 subsection 1 is entitled to a confidential hearing before the
20 7 insurance division, at which the insurer may challenge a
20 8 determination or action by the commissioner. Upon receipt of
20 9 the insurer's request for a hearing, the commissioner shall
20 10 set a date for the hearing, which shall be no less than ten or
20 11 more than thirty days after the date of the insurer's request.

20 12 Sec. 16. NEW SECTION. 521E.8 CONFIDENTIALITY - USE OF
20 13 REPORTS AND INFORMATION - PROHIBITION ON ANNOUNCEMENTS -
20 14 PROHIBITION ON USE IN RATEMAKING.

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

20 30 2. The comparison of an insurer's total adjusted capital
20 31 to any of its risk-based capital levels is a regulatory tool
20 32 which may indicate the need for possible corrective action
20 33 with respect to the insurer, and is not to be used as a means
20 34 to rank insurers generally.

20 35 3. Except as otherwise required under this chapter or as
21 1 required of a publicly held company by the United States
21 2 securities and exchange commission or other regulatory agency,
21 3 the publication or dissemination in any manner of an
21 4 announcement or statement which contains an assertion,
21 5 representation, or statement with regard to the risk-based
21 6 capital levels of an insurer, or of a component derived in the
21 7 calculation, by an insurer, agent, broker, or other person
21 8 engaged in any manner in the business of insurance which would
21 9 be misleading, is prohibited. However, if a materially false
21 10 statement comparing an insurer's total adjusted capital to its
21 11 risk-based capital levels or a misleading comparison of any
21 12 other amount to the insurer's risk-based capital levels is
21 13 published or disseminated in any manner and if the insurer is
21 14 able to demonstrate to the commissioner with substantial proof
21 15 that the statement is false, misleading, or inappropriate, as
21 16 the case may be, the insurer may publish an announcement in a
21 17 written publication for the sole purpose of rebutting the
21 18 materially false, misleading, or inappropriate statement.

21 19 4. The risk-based capital instructions, risk-based capital
21 20 reports, adjusted risk-based capital reports, risk-based

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

21 33 5. A violation of this section by an insurer, agent,
21 34 broker, or other person engaged in any manner in the business
21 35 of insurance constitutes an unfair trade practice under
22 1 chapter 507B.

22 2 Sec. 17. NEW SECTION. 521E.9 SUPPLEMENTAL PROVISIONS -
22 3 RULES - EXEMPTION.

22 4 1. The provisions of this chapter are supplemental to any
22 5 other provisions of the laws of this state, and shall not
22 6 preclude or limit any other powers or duties of the
22 7 commissioner under such laws, including, but not limited to,
22 8 chapter 507C.

22 9 2. The commissioner may adopt rules pursuant to chapter
22 10 17A necessary for the administration of this chapter.

22 11 3. The commissioner may exempt from the application of
22 12 this chapter any domestic property and casualty insurer which
22 13 satisfies all of the following:

22 14 a. Writes direct business only in this state.

22 15 b. Writes direct annual premiums of one million dollars or
22 16 less.

22 17 c. Does not assume reinsurance in excess of five percent
22 18 of direct premiums written.

22 19 Sec. 18. NEW SECTION. 521E.10 FOREIGN INSURERS.

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

22 24 a. The filing date.

22 25 b. Fifteen days after the request is received by the
22 26 foreign insurer.

22 27 A foreign insurer, upon the written request of the
22 28 commissioner, shall promptly submit to the commissioner a copy
22 29 of any risk-based capital plan that is filed with the
22 30 insurance commissioner of any other state.

22 31 2. In the event of a company-action-level event,
22 32 regulatory-action-level event, or authorized-control-level
22 33 event with respect to a foreign insurer as determined under
22 34 the risk-based capital statute applicable in the state of
22 35 domicile of the insurer, or, if no risk-based capital statute
23 1 is in force in that state, under the provisions of this
23 2 chapter, and if the insurance commissioner of the state of
23 3 domicile of the foreign insurer fails to require the foreign
23 4 insurer to file a risk-based capital plan in the manner
23 5 specified under that state's risk-based capital statute, or,
23 6 if no risk-based capital statute is in force in that state,
23 7 pursuant to section 521E.2, the commissioner may require the
23 8 foreign insurer to file a risk-based capital plan with the
23 9 commissioner. The failure of the foreign insurer to file a
23 10 risk-based capital plan with the commissioner shall be
23 11 sufficient grounds for the commissioner to order the insurer
23 12 to cease and desist from writing new insurance business in
23 13 this state.

23 14 3. In the event of a mandatory-control-level event with
23 15 respect to a foreign insurer, if a domiciliary receiver has
23 16 not been appointed with respect to the foreign insurer under
23 17 the rehabilitation and liquidation statute applicable in the

23 18 state of domicile of the foreign insurer, the commissioner may
23 19 make application to the district court as permitted under
23 20 chapter 507C with respect to the liquidation of property of
23 21 foreign insurers found in this state, and the occurrence of
23 22 the mandatory-control-level event shall be considered adequate
23 23 grounds for the application.

23 24 Sec. 19. NEW SECTION. 521E.11 IMMUNITY.

23 25 No liability shall arise on the part of, and no cause of
23 26 action shall arise against, the commissioner or the insurance
23 27 division or its employees or agents for an action taken in the
23 28 exercise of powers or performance of duties under this
23 29 chapter.

23 30 Sec. 20. NEW SECTION. 521E.12 EFFECT OF NOTICES.

23 31 Notice by the commissioner to an insurer which may result
23 32 in regulatory action under this chapter is effective upon
23 33 being sent if transmitted by certified mail, or in the case of
23 34 any other transmission is effective upon the insurer's receipt
23 35 of the notice.

24 1 Sec. 21. APPLICABILITY.

24 2 1. Notwithstanding the provisions of this Act, for risk-
24 3 based capital reports to be filed in 1997 by a life insurance
24 4 company, the following shall apply:

24 5 a. The commissioner shall take no regulatory action
24 6 pursuant to this chapter as the result of a risk-based capital
24 7 report which indicates a company-action-level event.

24 8 b. The commissioner shall take the regulatory action
24 9 provided for under section 521E.3 upon the submission of a
24 10 risk-based capital report which indicates a regulatory-action-
24 11 level event under section 521E.4, subsection 1, paragraph "a",
24 12 "b", or "c".

24 13 c. The commissioner shall take the regulatory action
24 14 provided for under section 521E.4 upon the submission of a
24 15 risk-based capital report which indicates a regulatory-action-
24 16 level event under section 521E.4, subsection 1, paragraphs "d"
24 17 through "i".

24 18 d. The commissioner shall take the regulatory action
24 19 provided for under section 521E.5 upon the submission of a
24 20 risk-based capital report which indicates a mandatory-control-
24 21 level event under section 521E.6.

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

24 25 a. The commissioner shall take no regulatory action
24 26 pursuant to this chapter as the result of a risk-based capital
24 27 report which indicates a company-action-level event.

24 28 b. The commissioner shall take the regulatory action
24 29 provided for under section 521E.3 upon the submission of a
24 30 risk-based capital report which indicates a regulatory action
24 31 level event under section 521E.4, subsection 1, paragraph "a",
24 32 "b", or "c".

24 33 c. The commissioner shall take the regulatory action
24 34 provided for under section 521E.4 upon the submission of a
24 35 risk-based capital report which indicates a regulatory-action-
25 1 level event under section 521E.4, subsection 1, paragraphs "d"
25 2 through "i".

25 3 d. The commissioner shall take the regulatory action
25 4 provided for under section 521E.5 upon the submission of a
25 5 risk-based capital report which indicates a mandatory control
25 6 level event under section 521E.6.

25 7 EXPLANATION

25 8 This bill relates to measures of risk-based capital for
25 9 purposes of regulating insurance companies in this state. The
25 10 bill establishes a new chapter 521E.

25 11 New section 515.12A is created and sections 508.5 (stock
25 12 life insurance company), 508.9 (mutual life insurance
25 13 company), 515.8 (insurance company other than life insurance
25 14 company), 515.10 (insurance company other than life insurance

25 15 company), 515.12 (mutual insurance company other than mutual
25 16 life insurance company), 515.69 (foreign stock insurance
25 17 company other than life insurance company), 515.76 (foreign
25 18 mutual insurance company other than life insurance company),
25 19 and 520.9 (reciprocals) are amended to provide that capital
25 20 and surplus requirements for insurers subject to those
25 21 sections are the greater of the capital and surplus
25 22 requirements identified in those sections or the applicable
25 23 capital and surplus requirements under chapter 521E.
25 24 New section 521E.1 establishes the definitions of terms
25 25 used in the bill.
25 26 New section 521E.2 requires a domestic insurer to annually
25 27 file with the commissioner a report of the insurer's risk-
25 28 based capital level as of the end of a calendar year. In
25 29 addition to the insurance commissioner, the report is to be
25 30 filed with the national association of insurance commissioners
25 31 and with the insurance commissioner in each state in which the
25 32 insurance company is authorized to do business. The section
25 33 defines how the risk-based capital is determined for a life
25 34 and health insurer, and a property and casualty insurer.
25 35 New section 521E.3 establishes and defines a company-
26 1 action-level event and the steps which the insurer must take
26 2 as a result of the event.
26 3 New section 521E.4 establishes and defines a regulatory-
26 4 action-level event and steps which the insurer must take as a
26 5 result of the event.
26 6 New section 521E.5 establishes and defines an authorized-
26 7 control-level event. Upon the occurrence of an authorized-
26 8 control-level event, the commissioner may take action in the
26 9 same manner as if a regulatory-action-level event has
26 10 occurred, or may take action to place the insurer under
26 11 supervision or other regulatory control.
26 12 New section 521E.6 establishes and defines a mandatory-
26 13 control-level event. Upon the occurrence of a mandatory-
26 14 control-level event, the commissioner is to take the necessary
26 15 action to place the insurer under supervision or other
26 16 regulatory control.
26 17 New section 521E.7 establishes the right of an insurer to
26 18 request a hearing upon receipt of the insurer of notification
26 19 by the commissioner of an adjusted risk-based capital report,
26 20 or notification by the commissioner that an insurer's risk-
26 21 based capital plan or revised risk-based capital plan is
26 22 unsatisfactory and that the notification constitutes a
26 23 regulatory-action-level event with respect to the insurer.
26 24 New section 521E.8 provides that all risk-based capital
26 25 reports are confidential and provides that such reports are
26 26 not to be used or introduced as evidence with regard to any
26 27 rate proceeding. A violation of this section constitutes an
26 28 unfair trade practice.
26 29 New section 521E.9 exempts a domestic property and casualty
26 30 insurer from the application of the chapter if the insurer
26 31 writes direct business only in this state, writes direct
26 32 annual premiums of no more than \$1 million, and does not
26 33 assume reinsurance in an amount in excess of five percent of
26 34 the insurer's direct written premium.
26 35 New section 521E.10 establishes the manner in which the
27 1 chapter applies to foreign insurers.
27 2 New section 521E.11 provides that the commissioner,
27 3 insurance division, and employees and agents of the division
27 4 do not incur liability as the result of any action taken in
27 5 the exercise of powers or performance of duties under chapter
27 6 521E.
27 7 New section 521E.12 provides that notice by the
27 8 commissioner to an insurer which may result in regulatory
27 9 action under chapter 521E is effective upon being sent if
27 10 transmitted by certified mail, or in the case of any other
27 11 transmission is effective upon the insurer's receipt of the

27 12 notice.

27 13 The last section of the bill provides for a phased-in
27 14 application of the bill.

27 15 BACKGROUND STATEMENT
27 16 SUBMITTED BY THE AGENCY

27 17 Risk-based capital is a method of measuring the minimum
27 18 amount of capital appropriate for an insurance company to
27 19 support its overall business operations in consideration of
27 20 its size and risk profile. It provides a means of setting the
27 21 capital requirement in which the degree of risk taken by the
27 22 insurer is the primary determinant. Major risk categories
27 23 include asset risk, insurance risk, interest rate risk, credit
27 24 risk, underwriting risk, and business risk.

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

27 29 The bill requires an insurer to make an annual filing with
27 30 the insurance division detailing its risk-based capital level
27 31 and provides a mechanism for the division to monitor capital
27 32 levels and take appropriate regulatory action as necessary.

27 33 The bill applies to all domestic and foreign life/health
27 34 and property/casualty companies doing business in Iowa. It
27 35 does not, however, apply to county or state mutual insurers
28 1 licensed under Iowa Code chapter 518 or 518A, HMOs, or
28 2 fraternal benefit societies.

28 3 LSB 3372DP 76

28 4 mj/sc/14.1