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SENATE BILL 7

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Carrol H. Leavell

AN ACT

RELATING TO INSURANCE; CLARIFYING THE PROVISIONS OF THE
RISK-BASED CAPITAL ACT AS THEY APPLY TO CERTAIN INSURERS;
SUBJECTING HEALTH ORGANIZATIONS TO THE RISK-BASED CAPITAL ACT;
INCORPORATING TREND TESTS FOR CERTAIN INSURERS IN THE
RISK-BASED CAPITAL ACT; REVISING CERTAIN TRIGGERS FOR
REGULATORY INTERVENTION IN THE RISK-BASED CAPITAL ACT;
CLARIFYING THAT FRATERNAL BENEFIT ORGANIZATIONS ARE SUBJECT TO
THE RISK-BASED CAPITAL ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 59A-5A-2 NMSA 1978 (being Laws 1995,
Chapter 149, Section 2) is amended to read:

"59A-5A-2. DEFINITIONS.--As used in the Risk-Based
Capital Act:

A. "adjusted risk-based capital report" means a

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1 risk-based capital report adjusted in accordance with
2 Subsection E of Section 59A-5A-3 NMSA 1978;

3 B. "authorized control level risk-based capital"
4 means the number determined under the risk-based capital
5 formula in accordance with the risk-based capital instructions
6 bearing the same designation;

7 C. "company action level risk-based capital" means
8 an amount equal to two hundred percent of an insurer's or
9 health organization's authorized control level risk-based
10 capital;

11 D. "corrective order" means an order issued by the
12 superintendent specifying required corrective actions;

13 E. "domestic insurer or health organization" means
14 an insurer, fraternal benefit society or health organization
15 domiciled in New Mexico;

16 F. "foreign insurer or health organization" means
17 an insurer, fraternal benefit society or health organization
18 that is authorized to do business in New Mexico but is not
19 domiciled in New Mexico;

20 G. "fraternal benefit society" means an
21 incorporated society, order or supreme lodge, without capital
22 stock, including one exempted pursuant to the provisions of
23 Paragraph (2) of Subsection A of Section 59A-44-40 NMSA 1978,
24 whether incorporated or not, conducted solely for the benefit
25 of its members and their beneficiaries and not for profit,

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1 operated on a lodge system with ritualistic form of work,
2 having a representative form of government and that provides
3 benefits in accordance with Chapter 59A, Article 44 NMSA 1978;

4 H. "health organization" means a health maintenance
5 organization; nonprofit health care plan; limited health
6 service organization; dental or vision plan; hospital, medical
7 and dental indemnity or service corporation; or other managed
8 care organization, but does not mean an organization that is
9 licensed as either a life or health insurer or as a property
10 and casualty insurer and that is otherwise subject to either
11 the life or property and casualty risk-based capital
12 requirements;

13 ~~[E.]~~ I. "life or health insurer" means any
14 authorized life insurer, health insurer or a property and
15 casualty insurer writing only health insurance ~~[or nonprofit~~
16 ~~health care plan];~~

17 ~~[F.]~~ J. "mandatory control level risk-based
18 capital" means an amount equal to seventy percent of an
19 insurer's or health organization's authorized control level
20 risk-based capital;

21 ~~[G.]~~ K. "property ~~[or]~~ and casualty insurer" means
22 any insurer authorized to write property, marine and
23 transportation, casualty, vehicle or surety insurance, but does
24 not include any insurer writing only one of the following:

25 (1) mortgage guaranty insurance;

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1 (2) financial guaranty insurance;

2 (3) title insurance; or

3 (4) health insurance;

4 ~~[H.]~~ L. "negative trend" means, with respect to a
5 life or health insurer or a fraternal benefit society, negative
6 trend over a period of time, as determined in accordance with
7 the trend test calculation included in the life or fraternal
8 risk-based capital instructions;

9 ~~[I.]~~ M. "regulatory action level risk-based
10 capital" means an amount equal to one hundred fifty percent of
11 an insurer's or health organization's authorized control level
12 risk-based capital;

13 ~~[J.]~~ N. "revised risk-based capital plan" means a
14 risk-based capital plan that has been rejected by the
15 superintendent and revised by the insurer or health
16 organization, with or without the superintendent's
17 recommendation;

18 ~~[K.]~~ O. "risk-based capital instructions" means the
19 risk-based capital report, including risk-based capital
20 instructions, adopted by the national association of insurance
21 commissioners, as they may be amended by the national
22 association of insurance commissioners from time to time, and
23 not disapproved by the superintendent;

24 ~~[L.]~~ P. "risk-based capital level" means an
25 insurer's or health organization's company action level

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1 risk-based capital, regulatory action level risk-based capital,
2 authorized control level risk-based capital or mandatory
3 control level risk-based capital;

4 [M-] Q. "risk-based capital plan" means a
5 comprehensive financial plan as specified in Subsection B of
6 Section 59A-5A-4 NMSA 1978;

7 [N-] R. "risk-based capital report" means the
8 report specified in Section 59A-5A-3 NMSA 1978; and

9 [O-] S. "total adjusted capital" means the sum of:

10 (1) an insurer's or health organization's
11 capital and surplus as determined in accordance with statutory
12 accounting principles applicable to annual financial statements
13 required to be filed under Section 59A-5-29 NMSA 1978; and

14 (2) such other items, if any, as the
15 risk-based capital instructions may provide."

16 SECTION 2. Section 59A-5A-3 NMSA 1978 (being Laws 1995,
17 Chapter 149, Section 3) is amended to read:

18 "59A-5A-3. RISK-BASED CAPITAL REPORTS.--

19 A. On or before March 1 each year, every domestic
20 insurer and health organization shall prepare and submit to the
21 superintendent a report of its risk-based capital levels as of
22 December 31 of the immediately preceding calendar year, in a
23 form and containing such information as is required by the
24 risk-based capital instructions. In addition, every domestic
25 insurer and health organization shall file its risk-based

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1 capital report with:

2 (1) the national association of insurance
3 commissioners in accordance with the risk-based capital
4 instructions; and

5 (2) the insurance commissioner of each state
6 in which the insurer or health organization is authorized to do
7 business, if the insurance commissioner for that state has
8 notified the insurer or health organization of [~~his~~] the
9 request in writing. The insurer or health organization shall
10 file a copy of its risk-based capital report with each [~~such~~]
11 commissioner not later than March 1 each year or fifteen days
12 from receipt of the notice, whichever is later.

13 B. A life or health insurer's or a fraternal
14 benefit society's risk-based capital shall be determined in
15 accordance with the formula in the risk-based capital
16 instructions. The formula shall take into account and may
17 adjust for the covariance among the following factors:

18 (1) asset risk;

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

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

23 (4) all other business risks and other
24 relevant risks set forth in the risk-based capital
25 instructions.

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1 C. A health organization's or property or casualty
2 insurer's risk-based capital shall be determined in accordance
3 with the appropriate formula in the risk-based capital
4 instructions. The formula shall take into account and may
5 adjust for the covariance among the following factors:

- 6 (1) asset risk;
7 (2) credit risk;
8 (3) underwriting risk; and
9 (4) all other business risks and other
10 relevant risks set forth in the risk-based capital
11 instructions.

12 D. [~~An excess of~~] Capital [~~over~~] in excess of the
13 amount [~~calculated~~] produced by the risk-based capital
14 requirements contained in the Risk-Based Capital Act and
15 formulas, schedules and instructions referenced in the
16 Risk-Based Capital Act is desirable in the business of
17 insurance. Additional capital is used and useful in the
18 insurance business and helps to secure an insurer or health
19 organization against various risks inherent in, or affecting,
20 the business of insurance and not accounted for or only
21 partially measured by the risk-based capital requirements
22 contained in the Risk-Based Capital Act. Accordingly, insurers
23 and health organizations should seek to maintain capital above
24 the risk-based capital levels required by that act.

25 E. If a domestic insurer or health organization

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1 files a risk-based capital report [~~which~~] that in the
2 superintendent's judgment is inaccurate, then the
3 superintendent shall adjust the risk-based capital report to
4 correct the inaccuracy and shall notify the insurer or health
5 organization of the adjustment. The notice shall contain a
6 statement of the reason for the adjustment."

7 SECTION 3. Section 59A-5A-4 NMSA 1978 (being Laws 1995,
8 Chapter 149, Section 4) is amended to read:

9 "59A-5A-4. COMPANY ACTION LEVEL EVENT.--

10 A. As used in the Risk-Based Capital Act, a
11 "company action level event" means any [~~one or more~~] of the
12 following events:

13 (1) the filing of a risk-based capital report
14 by an insurer [~~which~~] or health organization that indicates
15 [~~that~~]:

16 (a) that the insurer or health
17 organization has total adjusted capital greater than or equal
18 to its regulatory action level risk-based capital but less than
19 its company action level risk-based capital; [~~or~~]

20 (b) in the case of a life or health
21 insurer or fraternal benefit society, that the insurer has
22 total adjusted capital greater than or equal to its company
23 action level risk-based capital but less than [~~two hundred~~
24 ~~fifty~~] three hundred percent of its authorized control level
25 risk-based capital and has a negative trend;

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1 (c) in the case of a property and
2 casualty insurer, that the insurer has total adjusted capital
3 greater than or equal to its company action level risk-based
4 capital but less than three hundred percent of its authorized
5 control level risk-based capital and triggers the trend test
6 determined in accordance with the trend test calculation
7 included in the property and casualty risk-based capital
8 instructions; or

9 (d) in the case of a health
10 organization, that the health organization has total adjusted
11 capital greater than or equal to its company action level risk-
12 based capital but less than three hundred percent of its
13 authorized control level risk-based capital and triggers the
14 trend test determined in accordance with the trend test
15 calculation included in the health risk-based capital
16 instructions;

17 (2) the superintendent's notification to an
18 insurer or health organization that its adjusted risk-based
19 capital report indicates the existence of an event described in
20 Paragraph (1) of this subsection, unless the insurer or health
21 organization challenges the adjusted report pursuant to Section
22 59A-5A-8 NMSA 1978; or

23 (3) if an insurer or health organization
24 challenges the adjusted report, notification to the insurer or
25 health organization that the superintendent has, after hearing,

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1 rejected the challenge.

2 B. In the event of a company action level event,
3 the insurer or health organization shall prepare and submit to
4 the superintendent a risk-based capital plan, which shall:

5 (1) identify the conditions [~~which~~] that
6 contribute to the company action level event;

7 (2) contain proposals of corrective actions
8 [~~which~~] that the insurer or health organization intends to take
9 to eliminate the company action level event;

10 (3) provide projections of the insurer's or
11 health organization's expected financial results in the current
12 year and at least the four succeeding years, both in the
13 absence of and giving effect to the proposed corrective
14 actions, including projections of statutory operating income,
15 net income, capital and surplus. Projections for new and
16 renewal business may, if appropriate, include separate
17 projections for each major line of business and separately
18 identify each significant income, expense and benefit
19 component;

20 (4) identify the key assumptions impacting the
21 insurer's or health organization's projections and the
22 sensitivity of the projections to the assumptions; and

23 (5) identify the quality of, and problems
24 associated with, the insurer's or health organization's
25 business, including [~~but not limited to~~] its assets,

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1 anticipated business growth and associated surplus strain,
2 extraordinary exposure to risk, mix of business and use of
3 reinsurance, if any, in each case.

4 C. The risk-based capital plan shall be submitted
5 on or before the later of the following dates:

6 (1) forty-five days after the company action
7 level event; or

8 (2) if the insurer or health organization
9 challenges the adjusted risk-based capital report pursuant to
10 Section 59A-5A-8 NMSA 1978, forty-five days after the date of
11 the notification to the insurer or health organization that the
12 superintendent has, after hearing, rejected the insurer's or
13 health organization's challenge.

14 D. Within sixty days after the submission of an
15 insurer's or health organization's risk-based capital plan, the
16 superintendent shall notify the insurer or health organization
17 whether the plan shall be implemented or is, in the
18 superintendent's judgment, unsatisfactory. If the
19 superintendent determines that the risk-based capital plan is
20 unsatisfactory, the notification to the insurer or health
21 organization shall set forth the reasons for the determination
22 and may set forth proposed revisions that will render the plan
23 satisfactory. Upon notification, the insurer or health
24 organization shall prepare a revised risk-based capital plan,
25 which may incorporate by reference any revisions proposed by

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1 the superintendent, and shall submit the revised plan to the
2 superintendent. The revised plan shall be submitted on or
3 before the last of the following dates:

4 (1) forty-five days after the date of the
5 superintendent's notification; or

6 (2) if the insurer or health organization
7 challenges the notification pursuant to Section 59A-5A-8 NMSA
8 1978, forty-five days after the date of the notification to the
9 insurer or health organization that the superintendent has,
10 after hearing, rejected the insurer's or health organization's
11 challenge.

12 E. A notification that the insurer's or health
13 organization's risk-based capital plan or revised risk-based
14 capital plan is unsatisfactory may include a statement that the
15 notification constitutes a regulatory action level event,
16 subject to the insurer's or health organization's right to a
17 hearing pursuant to Section 59A-5A-8 NMSA 1978.

18 F. Every domestic insurer [~~which~~] or health
19 organization that files a risk-based capital plan or revised
20 risk-based capital plan with the superintendent shall file a
21 copy of the risk-based capital plan and any revised risk-based
22 capital plan with the insurance commissioner of each state in
23 which the insurer or health organization is authorized to do
24 business if:

25 (1) the state has confidentiality provisions

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1 substantially similar to those in Subsection A of Section
2 59A-5A-9 NMSA 1978; and

3 (2) the insurance commissioner for that state
4 has notified the insurer or health organization of [~~his~~] the
5 request in writing. The insurer or health organization shall
6 file a copy of the risk-based capital plan or revised
7 risk-based capital plan with each [~~such~~] commissioner on or
8 before the later of the following dates:

9 (a) fifteen days after the receipt of
10 notice to file a copy of its risk-based capital plan or revised
11 risk-based capital plan with the state; or

12 (b) the date that the risk-based capital
13 plan or revised risk-based capital plan is filed under
14 Subsections C and D of this section."

15 SECTION 4. Section 59A-5A-5 NMSA 1978 (being Laws 1995,
16 Chapter 149, Section 5) is amended to read:

17 "59A-5A-5. REGULATORY ACTION LEVEL EVENT.--

18 A. For purposes of the Risk-Based Capital Act,
19 "regulatory action level event" means any of the following
20 events:

21 (1) the filing of a risk-based capital report
22 by an insurer [~~which~~] or health organization that indicates
23 that the insurer's or health organization's total adjusted
24 capital is greater than or equal to its authorized control
25 level risk-based capital but less than its regulatory action

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1 level risk-based capital;

2 (2) the superintendent's notification to an
3 insurer or health organization that its adjusted risk-based
4 capital report indicates the existence of an event described in
5 Paragraph (1) of this subsection, unless the insurer or health
6 organization challenges the adjusted report pursuant to Section
7 59A-5A-8 NMSA 1978;

8 (3) if an insurer or health organization
9 challenges the adjusted report, notification to the insurer or
10 health organization that the superintendent has, after hearing,
11 rejected the challenge;

12 (4) an insurer's or health organization's
13 failure to file a risk-based capital report by the filing date,
14 unless the insurer or health organization has provided an
15 explanation satisfactory to the superintendent and has cured
16 the failure within ten days after the filing date;

17 (5) an insurer's or health organization's
18 failure to submit a risk-based capital plan to the
19 superintendent by the date specified in Subsection C of Section
20 59A-5A-4 NMSA 1978;

21 (6) the superintendent's notification to an
22 insurer or health organization that:

23 (a) the risk-based capital plan or
24 revised risk-based capital plan submitted by the insurer or
25 health organization is, in the superintendent's judgment,

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1 unsatisfactory; and

2 (b) the notification constitutes a
3 regulatory action level event with respect to the insurer or
4 health organization, unless the insurer or health organization
5 has challenged the determination pursuant to Section 59A-5A-8
6 NMSA 1978;

7 (7) if an insurer or health organization
8 challenges the superintendent's determination made pursuant to
9 Paragraph (6) of this subsection, notification to the insurer
10 or health organization that the superintendent has, after
11 hearing, rejected the challenge;

12 (8) the superintendent's notification to an
13 insurer or health organization that the insurer or health
14 organization has failed to adhere to its risk-based capital
15 plan or revised risk-based capital plan and that the failure
16 has had or will have a substantial adverse effect on the
17 ability of the insurer or health organization to eliminate the
18 company action level event, unless the insurer or health
19 organization has challenged the determination pursuant to
20 Section 59A-5A-8 NMSA 1978; or

21 (9) if an insurer or health organization
22 challenges the superintendent's determination made pursuant to
23 Paragraph (8) of this subsection, notification to the insurer
24 or health organization that the superintendent has, after
25 hearing, rejected the challenge.

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1 B. In the event of a regulatory action level event,
2 the superintendent shall:

3 (1) require the insurer or health organization
4 to prepare and submit a risk-based capital plan or, if
5 applicable, a revised risk-based capital plan;

6 (2) perform such examination or analysis as
7 the superintendent deems necessary of the assets, liabilities
8 and operations of the insurer or health organization, including
9 a review of its risk-based capital plan or revised risk-based
10 capital plan; and

11 (3) subsequent to the examination or analysis,
12 issue an order specifying such corrective actions as the
13 superintendent determines are required.

14 C. In determining corrective actions, the
15 superintendent may take into account such factors as are deemed
16 relevant based upon the superintendent's examination or
17 analysis of the assets, liabilities and operations of the
18 insurer or health organization, including ~~[but not limited to]~~
19 the results of any sensitivity tests undertaken pursuant to the
20 risk-based capital instructions. The risk-based capital plan
21 or revised risk-based capital plan shall be submitted on or
22 before the later of the following dates:

23 (1) forty-five days after the occurrence of
24 the regulatory action level event; or

25 (2) if the insurer or health organization

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1 challenges an adjusted or revised risk-based capital report or
2 plan pursuant to Section 59A-5A-8 NMSA 1978 and the challenge
3 is not frivolous in the superintendent's judgment, forty-five
4 days after notification to the insurer or health organization
5 that the superintendent has, after hearing, rejected the
6 insurer's or health organization's challenge.

7 D. The superintendent may retain actuaries and
8 investment experts and other consultants as [~~he may deem~~] the
9 superintendent deems necessary to review the insurer's or
10 health organization's risk-based capital plan or revised
11 risk-based capital plan, examine or analyze the assets,
12 liabilities and operations of the insurer or health
13 organization and formulate the corrective order with respect to
14 the insurer or health organization. The fees, costs and
15 expenses incurred by consultants shall be paid by the affected
16 insurer or health organization or such other party as the
17 superintendent directs."

18 SECTION 5. Section 59A-5A-6 NMSA 1978 (being Laws 1995,
19 Chapter 149, Section 6) is amended to read:

20 "59A-5A-6. AUTHORIZED CONTROL LEVEL EVENT.--

21 A. As used in the Risk-Based Capital Act,
22 "authorized control level event" means any of the following
23 events:

24 (1) the filing of a risk-based capital report
25 by an insurer [~~which~~] or health organization that indicates

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1 that the insurer's or health organization's total adjusted
2 capital is greater than or equal to its mandatory control level
3 risk-based capital but less than its authorized control level
4 risk-based capital;

5 (2) the superintendent's notification to an
6 insurer or health organization that its adjusted risk-based
7 capital report indicates the existence of an event described in
8 Paragraph (1) of this subsection, unless the insurer or health
9 organization challenges the adjusted report pursuant to Section
10 59A-5A-8 NMSA 1978;

11 (3) if an insurer or health organization
12 challenges the adjusted capital report, notification to the
13 insurer or health organization that the superintendent has,
14 after hearing, rejected the challenge;

15 (4) an insurer's or health organization's
16 failure to respond, in a manner satisfactory to the
17 superintendent, to a corrective order unless the insurer or
18 health organization has challenged the order pursuant to
19 Section 59A-5A-8 NMSA 1978; or

20 (5) if an insurer or health organization has
21 challenged a corrective order and the superintendent has, after
22 hearing, rejected the challenge or modified the corrective
23 order, the failure of the insurer or health organization to
24 respond, in a manner satisfactory to the superintendent, to the
25 corrective order subsequent to rejection or modification.

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1 B. In the event of an authorized control level
2 event with respect to an insurer or health organization, the
3 superintendent shall:

4 (1) take such actions as are required pursuant
5 to Section 59A-5A-5 NMSA 1978 regarding an insurer or health
6 organization with respect to which a regulatory action level
7 event has occurred; or

8 (2) if the superintendent deems it to be in
9 the best interests of the insurer's or health organization's
10 policyholders and creditors and of the public, take such
11 actions as are necessary to cause the insurer or health
12 organization to be placed under regulatory control pursuant to
13 Chapter 59A, Article 41 NMSA 1978. The authorized control
14 level event [~~shall constitute~~] constitutes sufficient grounds
15 for the superintendent to take action pursuant to Chapter 59A,
16 Article 41 NMSA 1978, and the superintendent [~~shall have~~] has
17 the rights, powers and duties with respect to the insurer or
18 health organization set forth in Chapter 59A, Article 41 NMSA
19 1978."

20 SECTION 6. Section 59A-5A-7 NMSA 1978 (being Laws 1995,
21 Chapter 149, Section 7) is amended to read:

22 "59A-5A-7. MANDATORY CONTROL LEVEL EVENT.--

23 A. As used in the Risk-Based Capital Act,
24 "mandatory control level event" means any of the following
25 events:

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1 (1) the filing of a risk-based capital report
2 [~~which~~] that indicates that an insurer's or health
3 organization's total adjusted capital is less than its
4 mandatory control level risk-based capital;

5 (2) the superintendent's notification to an
6 insurer or health organization that its adjusted risk-based
7 capital report indicates the existence of an event described in
8 Paragraph (1) of this subsection, unless the insurer or health
9 organization challenges the adjusted report pursuant to Section
10 59A-5A-8 NMSA 1978; or

11 (3) if the insurer or health organization
12 challenges the adjusted report, notification to the insurer or
13 health organization that the superintendent has, after hearing,
14 rejected the insurer's or health organization's challenge.

15 B. In the event of a mandatory control level event,
16 the superintendent shall:

17 (1) with respect to a life or health insurer,
18 fraternal benefit society or health organization, take such
19 actions as are necessary to place the life or health insurer,
20 fraternal benefit society or health organization under
21 regulatory control pursuant to Chapter 59A, Article 41 NMSA
22 1978. In that event, the mandatory control level event [~~shall~~
23 ~~constitute~~] constitutes sufficient grounds for the
24 superintendent to take action pursuant to Chapter 59A, Article
25 41 NMSA 1978, and the superintendent [~~shall have~~] has the

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1 rights, powers and duties with respect to the insurer set forth
2 in Chapter 59A, Article 41 NMSA 1978. Notwithstanding the
3 foregoing provisions of this paragraph, the superintendent may
4 [~~forego~~] forgo action for up to ninety days after the mandatory
5 control level event if the superintendent finds that there is a
6 reasonable expectation that the mandatory control level event
7 can be eliminated within the ninety-day period; or

8 (2) with respect to a property [~~or~~] and
9 casualty insurer, take such actions as are necessary to place
10 the insurer under regulatory control pursuant to Chapter 59A,
11 Article 41 NMSA 1978, or, in the case of an insurer that is
12 writing no business and that is running off its existing
13 business, may allow the insurer to continue its run off under
14 the superintendent's supervision. In either event, the
15 mandatory control level event [~~shall constitute~~] constitutes
16 sufficient grounds for the superintendent to take action
17 pursuant to Chapter 59A, Article 41 NMSA 1978, and the
18 superintendent [~~shall have~~] has the rights, powers and duties
19 with respect to the insurer as are set forth in Chapter 59A,
20 Article 41 NMSA 1978. Notwithstanding the foregoing provisions
21 of this paragraph, the superintendent may [~~forego~~] forgo action
22 for up to ninety days after the mandatory control level event
23 if the superintendent finds that there is a reasonable
24 expectation that the mandatory control level event can be
25 eliminated within the ninety-day period."

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1 SECTION 7. Section 59A-5A-8 NMSA 1978 (being Laws 1995,
2 Chapter 149, Section 8) is amended to read:

3 "59A-5A-8. CHALLENGE HEARINGS.--Any insurer or health
4 organization has the right to a confidential administrative
5 hearing of record in accordance with Chapter 59A, Article 4
6 NMSA 1978 at which the insurer or health organization may
7 challenge any determination or action by the superintendent
8 pursuant to the Risk-Based Capital Act.

9 A. The insurer or health organization shall file
10 and serve on the superintendent its request for hearing within
11 five days after any of the following events:

12 (1) the superintendent's notification to the
13 insurer or health organization of an adjusted risk-based
14 capital report;

15 (2) the superintendent's notification to the
16 insurer or health organization that:

17 (a) the insurer's or health
18 organization's risk-based capital plan or revised risk-based
19 capital plan is unsatisfactory; and

20 (b) such notification constitutes a
21 regulatory action level event with respect to [~~such~~] the
22 insurer or health organization;

23 (3) the superintendent's notification to the
24 insurer or health organization that the insurer or health
25 organization has failed to adhere to its risk-based capital

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1 plan or revised risk-based capital plan and that such failure
2 has had or will have a substantial adverse effect on the
3 ability of the insurer or health organization to eliminate the
4 company action level event; or

5 (4) the superintendent's notification to an
6 insurer or health organization of a corrective order with
7 respect to the insurer or health organization.

8 B. Upon receipt of the insurer's or health
9 organization's request for hearing, the superintendent shall
10 set a hearing date, which shall be not less than ten nor more
11 than thirty days after the date of the insurer's or health
12 organization's request."

13 SECTION 8. Section 59A-5A-9 NMSA 1978 (being Laws 1995,
14 Chapter 149, Section 9) is amended to read:

15 "59A-5A-9. CONFIDENTIALITY--PROHIBITION ON
16 ANNOUNCEMENTS--PROHIBITION ON USE IN RATEMAKING.--

17 A. To the extent not set forth in any other form
18 accessible to the public, all information in risk-based capital
19 reports, risk-based capital plans, results or reports of any
20 examination or analysis of an insurer or health organization
21 performed [~~pursuant to~~] exclusively for the purposes required
22 by the Risk-Based Capital Act and all corrective orders issued
23 by the superintendent pursuant to such examination or analysis
24 [~~is~~] are and shall be kept confidential by the superintendent.
25 This information shall not be made public. [~~or be subject to~~

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1 ~~subpoena, other than by the superintendent and then only for~~
2 ~~the purpose of enforcement actions taken by the superintendent~~
3 ~~pursuant to the Insurance Code.]~~

4 B. To assist in the performance of the
5 superintendent's duties, the superintendent may:

6 (1) share documents, materials or other
7 information, including the confidential and privileged
8 documents, materials or information identified in Subsection A
9 of this section, with other state, federal and international
10 regulatory agencies, with the national association of insurance
11 commissioners, its affiliates or its subsidiaries and with
12 state, federal and international law enforcement authorities if
13 the recipient agrees in writing to maintain the confidentiality
14 and privilege of the documents, materials or other information;

15 (2) receive documents, materials or
16 information, including otherwise confidential and privileged
17 documents, materials or information, from the national
18 association of insurance commissioners, its affiliates or its
19 subsidiaries and from regulatory and law enforcement officials
20 of foreign or domestic jurisdictions, except that the
21 superintendent shall maintain as confidential or privileged
22 documents, materials or other information received with notice
23 or the understanding that the content is confidential or
24 privileged pursuant to the laws of the jurisdiction from which
25 the information originates; and

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1 (3) enter into agreements governing the
2 sharing and use of information that are consistent with this
3 subsection.

4 [~~B-~~] C. The comparison of an insurer's or health
5 organization's total adjusted capital to any of its risk-based
6 capital levels is a regulatory tool that may indicate the need
7 for possible corrective action by the superintendent with
8 respect to the insurer or health organization and is not
9 intended as a means to rank insurers or health organizations
10 generally or to compare insurers or health organizations for
11 marketing purposes. Use of such comparisons for such purposes
12 is inherently misleading and deceptive. Except as otherwise
13 required under the provisions of the Risk-Based Capital Act or
14 applicable law, no insurer, health organization, agent, broker
15 or other person engaged in any manner in the business of
16 insurance shall make, publish, disseminate, circulate or place
17 before the public, or cause, directly or indirectly, to be
18 made, published, disseminated, circulated or placed before the
19 public in a newspaper, magazine or other publication, or in the
20 form of a notice, circular, pamphlet, letter or poster, or over
21 any radio or television station, or in any other way, an
22 advertisement, announcement or statement containing an
23 assertion, representation or statement with regard to the
24 risk-based capital levels of any insurer or health
25 organization, or of any component derived in their calculation;

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1 provided, however, that if any materially false statement with
2 respect to the comparison regarding an insurer's or health
3 organization's total adjusted capital to its risk-based capital
4 levels or an inappropriate comparison of any other amount to
5 the insurer's or health organization's risk-based capital
6 levels is published in any written publication and the insurer
7 or health organization is able to demonstrate to the
8 superintendent's satisfaction the falsity or inappropriateness
9 of the statement, then the insurer or health organization may
10 publish an announcement approved in advance by the
11 superintendent in a written publication whose sole purpose is
12 to rebut the materially false statement.

13 ~~[G.]~~ D. The risk-based capital instructions,
14 risk-based capital reports, adjusted risk-based capital
15 reports, risk- based capital plans and revised risk-based
16 capital plans are intended solely for use by the superintendent
17 in monitoring the solvency of insurers and health organizations
18 and the need for possible corrective action with respect to
19 insurers and health organizations. They shall not be used by
20 the superintendent for ratemaking, considered or introduced as
21 evidence in any rate proceeding or used to calculate or derive
22 any elements of an appropriate premium level or rate of return
23 for any line of insurance ~~[which]~~ that an insurer, health
24 organization or any affiliate is authorized to write."

25 SECTION 9. Section 59A-5A-11 NMSA 1978 (being Laws 1995,

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1 Chapter 149, Section 11) is amended to read:

2 "59A-5A-11. FOREIGN INSURERS.--

3 A. Any foreign insurer or health organization
4 shall, upon the superintendent's written request, submit to the
5 superintendent a risk-based capital report, as of the end of
6 the most recent calendar year, on the same date risk-based
7 capital reports are required to be filed by domestic insurers
8 and health organizations under the Risk-Based Capital Act or
9 fifteen days after the request is received by the foreign
10 insurer or health organization, whichever is later. Any
11 foreign insurer or health organization shall, upon the
12 superintendent's written request, promptly submit to the
13 superintendent a copy of any risk-based capital plan filed with
14 the insurance commissioner of any other state.

15 B. In the event of a company action level event,
16 regulatory action level event or authorized control level event
17 with respect to any foreign insurer or health organization as
18 determined pursuant to the risk-based capital statute
19 applicable in an insurer's or health organization's state of
20 domicile, or, if no risk-based capital requirements are in
21 force in that state, under the provisions of the Risk-Based
22 Capital Act, the superintendent may require the foreign insurer
23 or health organization to file a risk-based capital plan with
24 the superintendent unless the insurance commissioner of the
25 insurer's or health organization's state of domicile has

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1 previously so required. The failure of the foreign insurer or
2 health organization to timely file a risk-based capital plan
3 with the superintendent shall be grounds to order the insurer
4 or health organization to cease and desist from writing new
5 insurance business in this state or to suspend or revoke its
6 certificate of authority.

7 C. In the event of a mandatory control level event
8 with respect to any foreign insurer or health organization, the
9 superintendent may proceed in accordance with Subsection B of
10 Section 59A-5A-7 NMSA 1978."

11 SECTION 10. Section 59A-5A-13 NMSA 1978 (being Laws 1995,
12 Chapter 149, Section 13) is amended to read:

13 "59A-5A-13. NOTICES.--The superintendent's notices to an
14 insurer or health organization pursuant to the Risk-Based
15 Capital Act shall be effective upon mailing by certified mail
16 or, in the case of any other mode of transmission, shall be
17 effective upon the insurer's or health organization's receipt."

18 SECTION 11. A new section of the Risk-Based Capital Act
19 is enacted to read:

20 "[NEW MATERIAL] SEVERABILITY.--If any part or application
21 of the Risk-Based Capital Act is held invalid, the remainder or
22 its application to other situations or persons shall not be
23 affected."

24 SECTION 12. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2014.

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