

CHAPTER 79

RISK-BASED CAPITAL STANDARDS

§6451. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1993, c. 634, Pt. A, §1 (NEW).]

1. Adjusted risk-based capital report. "Adjusted risk-based capital report" means a risk-based capital report that has been adjusted by the superintendent in accordance with section 6452, subsection 3.

[PL 1993, c. 634, Pt. A, §1 (NEW).]

2. Corrective order. "Corrective order" means an order issued by the superintendent specifying corrective actions that the superintendent has determined are required.

[PL 1993, c. 634, Pt. A, §1 (NEW).]

3. Domestic insurer. "Domestic insurer" means any insurance company domiciled in this State.

[PL 1997, c. 81, §1 (AMD).]

4. Foreign insurer. "Foreign insurer" means any insurance company that is authorized to do business in this State under section 404 but is not domiciled in this State.

[PL 1997, c. 81, §1 (AMD).]

4-A. Life or health insurer. "Life or health insurer" means any insurance company described in section 409, subsection 3 and authorized to do business in this State under section 410, or a licensed property and casualty insurer writing only accident and health insurance.

[PL 1997, c. 81, §2 (NEW).]

5. NAIC. "NAIC" means the National Association of Insurance Commissioners.

[PL 1993, c. 634, Pt. A, §1 (NEW).]

6. Negative trend. "Negative trend" means:

A. With respect to a life or health insurer, a negative trend over a period of time, as determined in accordance with the trend test calculation included in the risk-based capital instructions; and [PL 2013, c. 238, Pt. D, §1 (NEW).]

B. With respect to a property and casualty insurer, a trend that meets the triggering criteria, as determined in accordance with the trend test calculation included in the risk-based capital instructions. [PL 2013, c. 238, Pt. D, §1 (NEW).]

[PL 2013, c. 238, Pt. D, §1 (RPR).]

6-A. Property and casualty insurer. "Property and casualty insurer" means any insurance company authorized to do business in this State under section 410 except a life or health insurer or single line mortgage guaranty insurer, financial guaranty insurer or title insurer.

[PL 1997, c. 81, §4 (NEW).]

7. Risk-based capital instructions. "Risk-based capital instructions" means the risk-based capital instructions adopted by the NAIC, as such risk-based capital instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

[PL 1993, c. 634, Pt. A, §1 (NEW).]

8. Risk-based capital level. "Risk-based capital level" means an insurer's company action level risk-based capital, regulatory action level risk-based capital, authorized control level risk-based capital or mandatory control level risk-based capital where:

A. "Company action level risk-based capital" means, with respect to any insurer, the product of 2.0 and its authorized control level risk-based capital; [PL 1993, c. 634, Pt. A, §1 (NEW).]

B. "Regulatory action level risk-based capital" means the product of 1.5 and its authorized control level risk-based capital; [PL 1993, c. 634, Pt. A, §1 (NEW).]

C. "Authorized control level risk-based capital" means the number determined under the risk-based capital formula in accordance with the risk-based capital instructions; and [PL 1993, c. 634, Pt. A, §1 (NEW).]

D. "Mandatory control level risk-based capital" means the product of .70 and the authorized control level risk-based capital. [PL 1993, c. 634, Pt. A, §1 (NEW).]
[PL 1993, c. 634, Pt. A, §1 (NEW).]

9. Risk-based capital plan. "Risk-based capital plan" means a comprehensive financial plan containing the elements specified in section 6453, subsection 2. If the superintendent rejects the risk-based capital plan and it is revised by the insurer, with or without the superintendent's recommendation, the plan is called the revised risk-based capital plan.
[PL 1993, c. 634, Pt. A, §1 (NEW).]

10. Risk-based capital report. "Risk-based capital report" means the report required in section 6452.
[PL 1993, c. 634, Pt. A, §1 (NEW).]

11. Total adjusted capital. "Total adjusted capital" means the sum of:

A. An insurer's statutory capital and surplus; and [PL 1993, c. 634, Pt. A, §1 (NEW).]

B. Such other items, if any, as the risk-based capital instructions provide. [PL 1993, c. 634, Pt. A, §1 (NEW).]

[PL 1993, c. 634, Pt. A, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 634, Pt. A, §1 (NEW). PL 1997, c. 81, §§1-4 (AMD). PL 2013, c. 238, Pt. D, §1 (AMD).

§6451-A. Applicability to other regulated entities

This chapter applies to fraternal benefit societies authorized to do business in this State pursuant to section 4124, to health maintenance organizations authorized to do business in this State pursuant to section 4204 and to nonprofit hospital or medical service organizations authorized to do business in this State pursuant to Title 24, section 2305. [PL 2009, c. 511, Pt. E, §1 (RPR).]

1. Fraternal benefit societies providing life or annuity benefits. Fraternal benefit societies providing life or annuity benefits are subject to the provisions of this chapter applicable to life or health insurers.

[PL 2009, c. 511, Pt. E, §1 (NEW).]

2. Fraternal benefit societies providing health benefits. Fraternal benefit societies providing health benefits are considered health organizations for purposes of this chapter.

[PL 2009, c. 511, Pt. E, §1 (NEW).]

3. Other licensees. Health maintenance organizations and nonprofit hospital or medical service organizations are considered health organizations for purposes of this chapter.

[PL 2009, c. 511, Pt. E, §1 (NEW).]

3-A. Qualified nonprofit health insurance issuers. Qualified nonprofit health insurance issuers as defined in Section 1322 of the federal Affordable Care Act are considered health organizations for purposes of this chapter.

[PL 2011, c. 364, §35 (NEW).]

4. Provisions applicable to health organizations. Except as otherwise expressly provided in this chapter, health organizations are subject to the provisions of this chapter applicable to property and casualty insurers.

[PL 2009, c. 511, Pt. E, §1 (NEW).]

SECTION HISTORY

PL 1999, c. 113, §24 (NEW). PL 2009, c. 511, Pt. E, §1 (RPR). PL 2011, c. 364, §35 (AMD).

§6452. Risk-based capital reports

1. Duty to file. A domestic insurer shall, on or before March 1st, submit to the superintendent a report of its risk-based capital levels as of the end of the previous calendar year, in a form and containing such information as is required by the risk-based capital instructions. In addition, a domestic insurer shall file its risk-based capital report:

A. With the NAIC in accordance with the risk-based capital instructions; and [PL 1993, c. 634, Pt. A, §1 (NEW).]

B. With the insurance regulator in any state in which the insurer is authorized to do business, if that regulator has notified the insurer of its request for the filing in writing, in which case the insurer shall file its risk-based capital report not later than the later of:

(1) Fifteen days after the receipt of notice to file its risk-based capital report with that state; or

(2) The filing date. [PL 1999, c. 113, §25 (AMD).]

[PL 1999, c. 113, §25 (AMD).]

2. Determination of a life or health insurer's risk-based capital. A life or health insurer's risk-based capital must be determined in accordance with the formula set forth in the risk-based capital instructions. The formula must take into account, and may adjust for the covariance between, the following:

A. The risk with respect to the insurer's assets; [PL 1993, c. 634, Pt. A, §1 (NEW).]

B. The risk of adverse insurance experience with respect to the insurer's liabilities and obligations; [PL 1993, c. 634, Pt. A, §1 (NEW).]

C. The interest rate risk with respect to the insurer's business; and [PL 1993, c. 634, Pt. A, §1 (NEW).]

D. All other business risks and such other relevant risks as are set forth in the risk-based capital instructions, determined in each case by applying the factors in the manner set forth in the risk-based capital instructions. [PL 1993, c. 634, Pt. A, §1 (NEW).]

[PL 1997, c. 81, §5 (AMD).]

3. Filing of inaccurate report. If a domestic insurer files a risk-based capital report that in the judgment of the superintendent is inaccurate, then the superintendent shall adjust the risk-based capital report to correct the inaccuracy and notify the insurer of the adjustment. The notice must contain a statement of the reason for the adjustment. A risk-based capital report so adjusted is referred to as an adjusted risk-based capital report.

[PL 1993, c. 634, Pt. A, §1 (NEW).]

4. Determination of a property and casualty insurer's risk-based capital. A property and casualty insurer's risk-based capital is determined in accordance with the formula set forth in the risk-based capital instructions. The formula must take into account and may adjust for the covariance between the following:

A. Asset risk; [PL 1997, c. 81, §6 (NEW).]

B. Credit risk; [PL 1997, c. 81, §6 (NEW).]

C. Underwriting risk; and [PL 1997, c. 81, §6 (NEW).]

D. All other business risks and such other relevant risks as are set forth in the risk-based capital instructions, determined in each case by applying the factors set forth in the risk-based capital instructions. [PL 1997, c. 81, §6 (NEW).]

[PL 1997, c. 81, §6 (NEW).]

SECTION HISTORY

PL 1993, c. 634, §A1 (NEW). PL 1997, c. 81, §§5,6 (AMD). PL 1999, c. 113, §25 (AMD).

§6453. Company action level event

1. Company action level event; defined. "Company action level event" means any of the following events:

A. The filing of a risk-based capital report by an insurer that indicates that:

(1) The insurer's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital; or

(2) The insurer has total adjusted capital that is greater than or equal to its company action level risk-based capital but has a negative trend, if its total adjusted capital is less than the product of its authorized control level risk-based capital and 3.0. [PL 2013, c. 238, Pt. D, §2 (AMD).]

B. Provided the insurer does not challenge the adjusted risk-based capital report under section 6457, the notification by the superintendent to the insurer of an adjusted risk-based capital report that indicates the event in paragraph A; or [PL 1993, c. 634, Pt. A, §1 (NEW).]

C. If the insurer, under section 6457, challenges the adjusted risk-based capital report that indicates the event in paragraph A, the notification by the superintendent to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge. [PL 1993, c. 634, Pt. A, §1 (NEW).]

[PL 2013, c. 238, Pt. D, §2 (AMD).]

2. Contents of risk-based capital plan. When a company action level event occurs, the insurer shall submit to the superintendent a risk-based capital plan that must:

A. Identify the conditions in the insurer's business that contribute to the company action level event; [PL 1993, c. 634, Pt. A, §1 (NEW).]

B. Contain proposals of corrective actions that the insurer intends to take and that are expected to result in the elimination of the company action level event; [PL 1993, c. 634, Pt. A, §1 (NEW).]

C. Provide projections of the insurer's financial results in the current year and at least the 4 succeeding years, with consideration given to the effect of implementing and not implementing the proposed corrective actions, including projections of statutory operating income, net income, capital and surplus. The projections for new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense and benefit component; [PL 1993, c. 634, Pt. A, §1 (NEW).]

D. Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and [PL 1993, c. 634, Pt. A, §1 (NEW).]

E. Identify the quality of, and the problems associated with, the insurer's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance in each case, if any. [PL 1993, c. 634, Pt. A, §1 (NEW).]

[PL 1993, c. 634, Pt. A, §1 (NEW).]

3. Submission of risk-based capital plan. The risk-based capital plan must be submitted:

A. Within 45 days after the company action level event; or [PL 1999, c. 113, §26 (AMD).]

B. If the insurer challenges an adjusted risk-based capital report under section 6457, within 45 days after notification to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge. [PL 1993, c. 634, Pt. A, §1 (NEW).]

[PL 1999, c. 113, §26 (AMD).]

4. Review by superintendent. Within 60 days after the submission by an insurer of a risk-based capital plan to the superintendent pursuant to this section, the superintendent shall notify the insurer whether the risk-based capital plan may be implemented or is, in the judgment of the superintendent, unsatisfactory. If the superintendent determines the risk-based capital plan is unsatisfactory, the notification to the insurer must set forth the reasons for the determination and may set forth proposed revisions that will render the risk-based capital plan satisfactory, in the judgment of the superintendent. Upon notification from the superintendent, the insurer shall prepare a revised risk-based capital plan, which may incorporate by reference any revisions proposed by the superintendent, and shall submit the revised risk-based capital plan to the superintendent:

A. Within 45 days after the notification from the superintendent; or [PL 1993, c. 634, Pt. A, §1 (NEW).]

B. If the insurer challenges the notification from the superintendent under section 6457, within 45 days after a notification to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge. [PL 1993, c. 634, Pt. A, §1 (NEW).]

[PL 1993, c. 634, Pt. A, §1 (NEW).]

5. Notification that plan is unsatisfactory. In the event of a notification by the superintendent to an insurer that the insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the superintendent may at the superintendent's discretion, subject to the insurer's right to a hearing under section 6457, specify in the notification that the notification constitutes a regulatory action level event. [PL 1993, c. 634, Pt. A, §1 (NEW).]

6. Duty to file copies of plan with other states. A domestic insurer that files a risk-based capital plan or revised risk-based capital plan with the superintendent pursuant to this section shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance regulator in any state in which the insurer is authorized to do business if:

A. That state has a risk-based capital provision substantially similar to that required by this chapter; and [PL 1993, c. 634, Pt. A, §1 (NEW).]

B. The insurance regulator of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the risk-based capital plan or revised risk-based capital plan in that state no later than the later of:

(1) Fifteen days after the receipt of notice to file a copy of its risk-based capital plan or revised risk-based capital plan with the state; or

(2) The date on which the risk-based capital plan or revised risk-based capital plan is filed with the superintendent. [PL 1999, c. 113, §27 (AMD).]

[PL 1999, c. 113, §27 (AMD).]

SECTION HISTORY

PL 1993, c. 634, Pt. A, §1 (NEW). PL 1997, c. 81, §7 (AMD). PL 1999, c. 113, §§26, 27 (AMD). PL 2009, c. 511, Pt. E, §2 (AMD). PL 2013, c. 238, Pt. D, §2 (AMD).

§6454. Regulatory action level event

1. Regulatory action level event; defined. "Regulatory action level event" means, with respect to any insurer, any of the following events:

A. The filing of a risk-based capital report by the insurer that indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level risk-based capital but less than its regulatory action level risk-based capital; [PL 1993, c. 634, Pt. A, §1 (NEW).]

B. Provided the insurer does not challenge the adjusted risk-based capital report under section 6457, the notification by the superintendent to an insurer of an adjusted risk-based capital report that indicates the event in paragraph A; [PL 1993, c. 634, Pt. A, §1 (NEW).]

C. If the insurer, under section 6457, challenges an adjusted risk-based capital report that indicates the event in paragraph A, the notification by the superintendent to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge; [PL 1993, c. 634, Pt. A, §1 (NEW).]

D. The failure of the insurer to file a risk-based capital report by the filing date, unless the insurer has provided an explanation for the failure that is satisfactory to the superintendent and has cured the failure within 10 days after the filing date; [PL 1993, c. 634, Pt. A, §1 (NEW).]

E. The failure of the insurer to submit a risk-based capital plan to the superintendent within the time period set forth in section 6453, subsection 3; [PL 1993, c. 634, Pt. A, §1 (NEW).]

F. Provided the insurer has not challenged the determination under section 6457, the notification by the superintendent to the insurer that:

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

(2) The superintendent's finding unless vacated or stayed constitutes a regulatory action level event with respect to the insurer; [PL 1999, c. 113, §28 (AMD).]

G. If the insurer, under section 6457, challenges a determination by the superintendent under paragraph F, the notification by the superintendent to the insurer that the superintendent has, after a hearing, rejected that challenge; [PL 1993, c. 634, Pt. A, §1 (NEW).]

H. Provided the insurer has not challenged the determination under section 6457, the notification by the superintendent to the insurer that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan, but only if that failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event or regulatory action level event in accordance with its risk-based capital plan or revised risk-based capital plan and the superintendent has so stated in the notification; or [PL 1999, c. 113, §28 (AMD).]

I. If the insurer, under section 6457, challenges a determination by the superintendent under paragraph H, the notification by the superintendent to the insurer that the superintendent has, after a hearing, rejected the challenge unless the failure of the insurer to adhere to its risk-based capital plan or revised risk-based capital plan has no substantial adverse effect on the ability of the insurer to eliminate the company action level event or regulatory action level event with respect to the insurer. [PL 1999, c. 113, §28 (AMD).]
[PL 1999, c. 113, §28 (AMD).]

2. Superintendent duties; regulatory action level event. When a regulatory action level event occurs, the superintendent shall:

A. Require the insurer to submit a risk-based capital plan or, if applicable, a revised risk-based capital plan; [PL 1993, c. 634, Pt. A, §1 (NEW).]

B. Perform such examination or analysis as the superintendent considers necessary of the assets, liabilities and operations of the insurer, including a review of its risk-based capital plan or revised risk-based capital plan; and [PL 1993, c. 634, Pt. A, §1 (NEW).]

C. Subsequent to the examination or analysis, issue a corrective order specifying corrective actions that the superintendent considers necessary. [PL 1993, c. 634, Pt. A, §1 (NEW).]
[PL 1993, c. 634, Pt. A, §1 (NEW).]

3. Determination of corrective actions. In determining corrective actions, the superintendent may take into account those factors that the superintendent considers relevant with respect to the insurer based upon the superintendent's examination or analysis of the assets, liabilities and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the risk-based capital instructions. The risk-based capital plan or revised risk-based capital plan must be submitted:

A. Within 45 days after the occurrence of the regulatory action level event; [PL 1993, c. 634, Pt. A, §1 (NEW).]

B. If the insurer challenges an adjusted risk-based capital report under section 6457 and the challenge is not, in the judgment of the superintendent, frivolous, within 45 days after the notification to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge; or [PL 1993, c. 634, Pt. A, §1 (NEW).]

C. If the insurer challenges a revised risk-based capital plan under section 6457, within 45 days after notification to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge. [PL 1993, c. 634, Pt. A, §1 (NEW).]

[PL 1993, c. 634, Pt. A, §1 (NEW).]

4. Consultants. The superintendent may retain actuaries, investment experts and other consultants as may be necessary in the judgment of the superintendent to review the insurer's risk-based capital plan or revised risk-based capital plan; examine or analyze the assets, liabilities and operations of the insurer; and formulate the corrective order with respect to the insurer. For insurers offering managed care plans as defined in section 4301-A, the analysis of the insurer's operations may include an analysis of its contractual relationships with providers and the ability of the providers to fulfill their contractual obligations. The fees, costs and expenses relating to consultants must be borne by the affected insurer or such other party as directed by the superintendent.

[RR 2001, c. 1, §38 (COR).]

SECTION HISTORY

PL 1993, c. 634, §A1 (NEW). PL 1999, c. 113, §§28,29 (AMD). RR 2001, c. 1, §38 (COR).

§6455. Authorized control level event

1. Authorized control level event; defined. "Authorized control level event" means any of the following events:

A. The filing of a risk-based capital report by the insurer that indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level risk-based capital but less than its authorized control level risk-based capital; [PL 1993, c. 634, Pt. A, §1 (NEW).]

B. Provided the insurer does not challenge the adjusted risk-based capital report under section 6457, the notification by the superintendent to the insurer of an adjusted risk-based capital report that indicates the event in paragraph A; [PL 1993, c. 634, Pt. A, §1 (NEW).]

C. If the insurer, under section 6457, challenges an adjusted risk-based capital report that indicates the event in paragraph A, the notification by the superintendent to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge; [PL 1993, c. 634, Pt. A, §1 (NEW).]

D. Provided the insurer has not challenged the corrective order under section 6457, the failure of the insurer to respond, in a manner satisfactory to the superintendent, to a corrective order; or [PL 1993, c. 634, Pt. A, §1 (NEW).]

E. If the insurer has challenged a corrective order under section 6457 and the superintendent has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the superintendent, to the corrective order subsequent to rejection or modification by the superintendent. [PL 1993, c. 634, Pt. A, §1 (NEW).]
[PL 1993, c. 634, Pt. A, §1 (NEW).]

2. Superintendent duties; authorized control level event. When an authorized control level event occurs, the superintendent shall:

A. Take those actions that are required under section 6454 regarding an insurer with respect to which a regulatory action level event has occurred; or [PL 1993, c. 634, Pt. A, §1 (NEW).]

B. If the superintendent considers it to be in the best interests of the policyholders and creditors of the insurer and of the public, take those actions that are necessary to cause the insurer to be placed under regulatory control under chapter 57. If the commissioner takes those actions, the authorized control level event is deemed sufficient grounds for the superintendent to take action under chapter 57, and the superintendent has the rights, powers and duties with respect to the insurer as are set forth in chapter 57. If the superintendent takes actions under this paragraph pursuant to an adjusted risk-based capital report, the insurer is entitled to those protections that are afforded to insurers under the provisions of chapter 57, subchapter II pertaining to summary proceedings. [PL 1993, c. 634, Pt. A, §1 (NEW).]

[PL 1993, c. 634, Pt. A, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 634, §A1 (NEW).

§6456. Mandatory control level event

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

A. The filing of a risk-based capital report that indicates that the insurer's total adjusted capital is less than its mandatory control level risk-based capital; [PL 1993, c. 634, Pt. A, §1 (NEW).]

B. Provided the insurer does not challenge the adjusted risk-based capital report under section 6457, the notification by the superintendent to the insurer of an adjusted risk-based capital report that indicates the event in paragraph A; or [PL 1993, c. 634, Pt. A, §1 (NEW).]

C. If the insurer, under section 6457, challenges an adjusted risk-based capital report that indicates the event in paragraph A, the notification by the superintendent to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge. [PL 1993, c. 634, Pt. A, §1 (NEW).]

[PL 1993, c. 634, Pt. A, §1 (NEW).]

2. Superintendent duties; mandatory control level event. When a mandatory control level event occurs, the superintendent shall take those actions that are necessary to cause the insurer to be placed under regulatory control under chapter 57 or take alternative action as authorized under paragraphs A and B. If the superintendent takes those actions, the mandatory control level event is deemed sufficient grounds for the superintendent to take action under chapter 57, and the superintendent has the rights, powers and duties with respect to the insurer as are set forth in chapter 57. If the superintendent takes actions pursuant to an adjusted risk-based capital report, the insurer is entitled to those protections that are afforded to insurers under the provisions of chapter 57, subchapter 2 pertaining to summary proceedings.

A. The superintendent may forgo action for up to 90 days after the mandatory control level event if the superintendent finds there is a reasonable expectation that the mandatory control level event may be eliminated within the 90-day period. [PL 2017, c. 169, Pt. F, §1 (NEW).]

B. In the case of a property and casualty insurer that is not authorized to write new business, the superintendent may allow the insurer to continue to run off its existing business under the superintendent's supervision if the superintendent determines that there will be sufficient funds to meet the insurer's obligations as they become due. This paragraph does not apply to health insurers. [PL 2017, c. 169, Pt. F, §1 (NEW).]

[PL 2017, c. 169, Pt. F, §1 (RPR).]

SECTION HISTORY

PL 1993, c. 634, §A1 (NEW). PL 1997, c. 81, §8 (AMD). PL 2017, c. 169, Pt. F, §1 (AMD).

§6457. Hearings

1. Right to hearing. An insurer has the right to a departmental hearing, on record, at which the insurer may challenge any determination or action by the superintendent upon:

A. Notification to an insurer by the superintendent of an adjusted risk-based capital report; [PL 1993, c. 634, Pt. A, §1 (NEW).]

B. Notification to an insurer by the superintendent that:

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

(2) That notification constitutes a regulatory action level event with respect to the insurer; [PL 1993, c. 634, Pt. A, §1 (NEW).]

C. Notification to any insurer by the superintendent that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan and that such failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its risk-based capital plan or revised risk-based capital plan; or [PL 1993, c. 634, Pt. A, §1 (NEW).]

D. Notification to an insurer by the superintendent of a corrective order with respect to the insurer. [PL 1993, c. 634, Pt. A, §1 (NEW).]

The insurer must notify the superintendent of its request for a hearing within 5 days after the notification by the superintendent under paragraph A, B, C or D. Upon receipt of the insurer's request for a hearing, the superintendent shall set a date for the hearing, which may not be less than 10 or more than 30 days after the date of the insurer's request.

[PL 1993, c. 634, Pt. A, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 634, §A1 (NEW).

§6458. Confidentiality and prohibition on announcements

1. Confidentiality. The following constitute information that might be damaging to the insurer if made available to its competitors and must be kept confidential by the superintendent:

A. Risk-based capital reports, with respect to any domestic insurer or foreign insurer, that are filed with the superintendent, to the extent that the information in the reports is not required to be set forth in a publicly available annual statement schedule; and [PL 1993, c. 634, Pt. A, §1 (NEW).]

B. Risk-based capital plans, with respect to any domestic insurer or foreign insurer, that are filed with the superintendent, including the results or report of any examination or analysis of an insurer

performed pursuant to this chapter and any corrective order issued by the superintendent pursuant to the examination or analysis. [PL 1993, c. 634, Pt. A, §1 (NEW).]

The information listed in paragraph A or B may be shared on a confidential basis in accordance with section 216, subsection 5 but may not be made public or be subject to subpoena, other than by the superintendent and then only for the purpose of enforcement actions taken by the superintendent pursuant to this chapter or any other provision of the insurance laws of this State.

[PL 2017, c. 169, Pt. F, §2 (AMD).]

2. Prohibition on dissemination of information regarding risk-based capital levels. Except as otherwise required under this chapter, making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion or representation with regard to the risk-based capital levels of any insurer, or of any component derived in the calculation of risk-based capital levels, by any insurer, agent, broker or other person engaged in any manner in the insurance business would be misleading and is prohibited; provided, however, that if any materially false statement with respect to the comparison between an insurer's total adjusted capital to its risk-based capital levels or an inappropriate comparison of any other amount to the insurer's risk-based capital levels is published in any written publication and the insurer is able to demonstrate to the superintendent with substantial proof the falsity of that statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

[PL 1993, c. 634, Pt. A, §1 (NEW).]

3. Prohibition on use in ratemaking. Risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans and revised risk-based capital plans may not be used by the superintendent for purposes of rate review, considered or used as evidence in any rate proceeding or used by the superintendent to calculate or derive any elements of an appropriate premium level or appropriate rate of return. This subsection does not prohibit the consideration of premium rates and projected or realized rates of return for purposes of company action or regulatory action taken under this chapter.

[PL 2017, c. 169, Pt. F, §3 (NEW).]

SECTION HISTORY

PL 1993, c. 634, §A1 (NEW). PL 2017, c. 169, Pt. F, §§2, 3 (AMD).

§6459. Supplemental provisions

1. Existing authority supplemented. The provisions of this chapter are supplemental to any other provisions of the laws of this State and do not preclude or limit any other powers or duties of the superintendent under those laws, including, but not limited to, sections 417, 3423 and 3424 and chapter 57.

[PL 1997, c. 81, §9 (NEW).]

2. Rules. The superintendent may adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[PL 1997, c. 81, §9 (NEW).]

3. Exemptions. The superintendent may exempt from the application of this chapter any domestic property and casualty insurer that:

A. Writes business only in the State; [PL 1997, c. 81, §9 (NEW).]

B. Writes direct annual premium of \$2,000,000 or less; and [PL 1997, c. 81, §9 (NEW).]

C. Assumes no reinsurance in excess of 5% of direct premium written. [PL 1997, c. 81, §9 (NEW).]

[PL 1997, c. 81, §9 (NEW).]

SECTION HISTORY

PL 1993, c. 634, §A1 (NEW). PL 1997, c. 81, §9 (RPR).

§6460. Foreign insurers

1. Submission of risk-based capital report. Upon the written request of the superintendent, a foreign insurer shall submit to the superintendent a risk-based capital report as of the end of the previous calendar year by the later of:

A. The date a risk-based capital report would be required to be filed by a domestic insurer under this chapter; or [PL 1993, c. 634, Pt. A, §1 (NEW).]

B. Fifteen days after the request is received by the foreign insurer. [PL 1993, c. 634, Pt. A, §1 (NEW).]

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

[PL 1993, c. 634, Pt. A, §1 (NEW).]

2. Risk-based capital plan. When a company action level event, regulatory action level event or authorized control level event with respect to a foreign insurer occurs, as determined under laws governing risk-based capital applicable in the state of domicile of the insurer, or, if no such risk-based capital provision is in force in that state, under the provisions of this chapter, if the insurance superintendent of the state of domicile of the foreign insurer fails to require the foreign insurer to file a risk-based capital plan in the manner specified under the laws governing risk-based capital in that state, or, if no such risk-based capital provision is in force in that state, under this chapter, the superintendent may require the foreign insurer to file a risk-based capital plan with the superintendent. In this event, the failure of the foreign insurer to file a risk-based capital plan with the superintendent is grounds to order the insurer to desist from writing new insurance business in this State.

[PL 2017, c. 169, Pt. F, §4 (AMD).]

3. Mandatory control level event. When a mandatory control level event with respect to any foreign insurer occurs, if a domiciliary receiver has not been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the superintendent may make application to the Superior Court under chapter 57 with respect to the liquidation of property of foreign insurers in this State, and the occurrence of the mandatory control level event is considered adequate grounds for the application.

[PL 1993, c. 634, Pt. A, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 634, §A1 (NEW). PL 2017, c. 169, Pt. F, §4 (AMD).

§6461. Notices

A notice by the superintendent to an insurer that may result in regulatory action under this chapter is effective upon dispatch if transmitted by registered or certified mail or, in the case of any other transmission, is effective upon the insurer's receipt of the notice. [PL 1993, c. 634, Pt. A, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 634, §A1 (NEW).

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