

LEGISLATIVE BILL 258

Approved by the Governor February 24, 1999

Introduced by Landis, 46

AN ACT relating to insurance; to amend sections 44-214, 44-219, and 44-6001 to 44-6026, Reissue Revised Statutes of Nebraska; to change provisions relating to the Insurers Risk-Based Capital Act; to rename the act; to provide for applicability of the act to health organizations; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 44-214, Reissue Revised Statutes of Nebraska, is amended to read:

44-214. (1) Except as provided in section 44-202.01, no stock insurance company shall, on and after August 25, 1989, transact any line of insurance specified in section 44-201 in this state unless it maintains a capital stock, actually paid in cash or invested as provided by law, of at least one million dollars, nor shall it, on or after such date, transact the line or lines of insurance specified in subdivisions (1) and (2) of section 44-201 and in addition thereto one or more lines of insurance other than those specified in subdivisions (3) and (4) of such section in this state unless it maintains a capital stock, actually paid in cash or invested as provided by law, of at least two million dollars. No stock insurance company shall, on and after August 25, 1989, begin to transact any line of insurance as specified in section 44-201 unless it has a surplus of at least one million dollars, nor shall it, on and after such date, begin to transact the line or lines of insurance specified in subdivisions (1) and (2) of section 44-201 and in addition thereto one or more lines of insurance other than those specified in subdivisions (3) and (4) of such section in this state unless it has a surplus of at least two million dollars.

(2) The provisions of subsection (1) of this section shall be considered minimum requirements. Stock insurers holding a certificate of authority to transact business in this state shall also be subject to the requirements of the Insurers and Health Organizations Risk-Based Capital Act.

Sec. 2. Section 44-219, Reissue Revised Statutes of Nebraska, is amended to read:

44-219. (1)(a) No domestic mutual insurance company shall begin to transact the business of insurance until (i) it has received not less than one hundred applications for insurance unless organized to write (A) workers' compensation and employers liability insurance, in which case it shall receive applications from at least twenty employers covering in the aggregate five hundred employees, or (B) the line or lines of insurance specified in subdivisions (13) and (14) of section 44-201, in which case no application shall be required, and in addition thereto (ii) it has received in cash one annual premium for each application for insurance.

(b) Except as provided in section 44-202.01, no mutual insurance company shall, on and after August 25, 1989, transact any line of insurance specified in section 44-201 in this state unless it has and maintains a minimum surplus, in cash or invested as provided by law, of at least one million dollars, nor shall it, on and after such date, transact the line or lines of insurance specified in subdivisions (1) and (2) of section 44-201 and in addition thereto one or more lines of insurance other than those specified in subdivisions (3) and (4) of such section in this state unless it has and maintains a minimum surplus, in cash or invested as provided by law, of at least two million dollars.

(2) The provisions of subsection (1) of this section shall be considered minimum requirements. Mutual insurers holding a certificate of authority to transact business in this state shall also be subject to the requirements of the Insurers and Health Organizations Risk-Based Capital Act.

Sec. 3. Section 44-6001, Reissue Revised Statutes of Nebraska, is amended to read:

44-6001. Sections 44-6001 to 44-6026 and sections 9, 11, and 12 of this act shall be known and may be cited as the Insurers and Health Organizations Risk-Based Capital Act.

Sec. 4. Section 44-6002, Reissue Revised Statutes of Nebraska, is amended to read:

44-6002. For purposes of the Insurers and Health Organizations Risk-Based Capital Act, the definitions found in sections 44-6003 to 44-6014 and sections 9, 11, and 12 of this act shall be used.

Sec. 5. Section 44-6003, Reissue Revised Statutes of Nebraska, is amended to read:

44-6003. Adjusted risk-based capital report ~~shall mean~~ means a risk-based capital report which has been adjusted by the director in accordance with subsection ~~(5)~~ (6) of section 44-6015.

Sec. 6. Section 44-6004, Reissue Revised Statutes of Nebraska, is amended to read:

44-6004. Corrective order ~~shall mean~~ means an order issued by the director specifying corrective actions which the director has determined are required.

Sec. 7. Section 44-6005, Reissue Revised Statutes of Nebraska, is amended to read:

44-6005. Director ~~shall mean~~ means the Director of Insurance.

Sec. 8. Section 44-6006, Reissue Revised Statutes of Nebraska, is amended to read:

44-6006. Domestic, when referring to insurers, ~~shall have~~ has the same meaning as in section 44-103.

Sec. 9. Domestic health organization means a health organization domiciled in this state.

Sec. 10. Section 44-6007, Reissue Revised Statutes of Nebraska, is amended to read:

44-6007. Foreign, when referring to insurers, ~~shall have~~ has the same meaning as in section 44-103.

Sec. 11. Foreign health organization means a health organization that is authorized to do business in this state but is not domiciled in this state.

Sec. 12. Health organization means a health maintenance organization, prepaid limited health service organization, prepaid dental service corporation, or other managed care organization. Health organization does not include a life and health insurer or a property and casualty insurer as defined in section 44-6008 that is otherwise subject to either life and health or property and casualty risk-based capital requirements.

Sec. 13. Section 44-6008, Reissue Revised Statutes of Nebraska, is amended to read:

44-6008. Insurer ~~shall mean~~ means an insurer as defined in section 44-103 authorized to transact the business of insurance, except that insurer ~~shall~~ does not include health organizations, unincorporated mutual associations, assessment associations, fraternal benefit societies, health maintenance organizations, prepaid dental service corporations, prepaid limited health service organizations, monoline mortgage guaranty insurers, monoline financial guaranty insurers, title insurers, prepaid legal corporations, intergovernmental risk management pools, and any other kind of insurer to which the application of the Insurers and Health Organizations Risk-Based Capital Act, in the determination of the director, would be clearly inappropriate.

Insurer, when referring to life and health insurers, ~~shall mean~~ means an insurer authorized to transact life insurance business and sickness and accident insurance business specified in subdivisions (1) through (4) of section 44-201, or any combination thereof.

Insurer, when referring to property and casualty insurers, ~~shall mean~~ means an insurer authorized to transact property insurance business and casualty insurance business specified in subdivisions (5) through (14) and (16) through (20) of section 44-201, or any combination thereof, and ~~shall also include~~ also includes an insurer authorized to transact insurance business specified in subdivision (4) of section 44-201 if also authorized to transact insurance business specified in subdivisions (5) through (14) and (16) through (20) of section 44-201.

Sec. 14. Section 44-6009, Reissue Revised Statutes of Nebraska, is amended to read:

44-6009. Negative trend, with respect to a life and health insurer, ~~shall mean~~ means a negative trend over a period of time, as determined in accordance with the trend test calculation included in the risk-based capital instructions.

Sec. 15. Section 44-6010, Reissue Revised Statutes of Nebraska, is amended to read:

44-6010. Risk-based capital instructions ~~shall mean~~ means the risk-based capital report, including risk-based capital instructions adopted by the National Association of Insurance Commissioners, as such instructions may be amended by the association from time to time in accordance with the procedures adopted by the association.

Sec. 16. Section 44-6011, Reissue Revised Statutes of Nebraska, is amended to read:

44-6011. Risk-based capital level ~~shall mean~~ means an insurer's or a health organization'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. For purposes of this section:

(1) Authorized control level risk-based capital ~~shall mean~~ means the number determined under the risk-based capital formula in accordance with the risk-based capital instructions;

(2) Company action level risk-based capital ~~shall mean~~ means, with respect to any insurer or health organization, the product of 2.0 and its authorized control level risk-based capital;

(3) Mandatory control level risk-based capital ~~shall mean~~ means the product of 0.7 and the authorized control level risk-based capital; and

(4) Regulatory action level risk-based capital ~~shall mean~~ means the product of 1.5 and its authorized control level risk-based capital.

Sec. 17. Section 44-6012, Reissue Revised Statutes of Nebraska, is amended to read:

44-6012. Risk-based capital plan ~~shall mean~~ means a comprehensive financial plan containing the elements specified in subsection (2) of section 44-6016. If the director rejects a plan and it is revised by the insurer or health organization, with or without the director's recommendation, the plan shall be called the revised risk-based capital plan.

Sec. 18. Section 44-6013, Reissue Revised Statutes of Nebraska, is amended to read:

44-6013. Risk-based capital report ~~shall mean~~ means the report required in section 44-6015.

Sec. 19. Section 44-6014, Reissue Revised Statutes of Nebraska, is amended to read:

44-6014. Total adjusted capital ~~shall mean~~ means the sum of:

(1) An insurer's or a health organization's statutory capital and surplus as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under sections 44-322, 44-32,134, 44-3823, and 44-4720; and

(2) Such other items, if any, as the risk-based capital instructions may provide.

Sec. 20. Section 44-6015, Reissue Revised Statutes of Nebraska, is amended to read:

44-6015. (1) Every domestic insurer or domestic health organization shall annually, on or prior to March 1, referred to in this section as the filing date, prepare and submit to the director a risk-based capital report of its risk-based capital levels as of the end of the calendar year just ended, in a form and containing such information as is required by the risk-based capital instructions. In addition, every domestic insurer or domestic health organization shall file its risk-based capital report:

(a) With the National Association of Insurance Commissioners in accordance with the risk-based capital instructions; and

(b) With the insurance commissioner in any state in which the insurer or health organization is authorized to do business if such insurance commissioner has notified the insurer or health organization of its request in writing, in which case the insurer or health organization shall file its risk-based capital report not later than the later of:

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

(ii) The filing date.

(2) A life and health insurer's risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account and may adjust for the covariance between:

(a) The risk with respect to the insurer's assets;

(b) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(c) The interest rate risk with respect to the insurer's business; and

(d) All other business risks and such other relevant risks as are set forth in the risk-based capital instructions.

Such risks shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

(3) A property and casualty insurer's risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account and may adjust for the covariance between:

(a) Asset risk;

(b) Credit risk;

(c) Underwriting risk; and

(d) All other business risks and such other relevant risks as are set forth in the risk-based capital instructions.

Such risks shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

(4) A health organization's risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account and may adjust for the covariance between:

(a) Asset risk;

(b) Credit risk;

(c) Underwriting risk; and

(d) All other business risks and such other relevant risks as are set forth in the risk-based capital instructions.

Such risks shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

(5) An excess of capital over the amount produced by the risk-based capital requirements contained in the Insurers and Health Organizations Risk-Based Capital Act and the formulas, schedules, and instructions referenced in the act is desirable in the business of insurance. Accordingly, insurers and health organizations should seek to maintain capital above the risk-based capital levels required by the act. Additional capital is used and useful in the insurance business and helps to secure an insurer or a health organization against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in the act.

~~(5)~~ (6) If a domestic insurer or a domestic health organization files a risk-based capital report which in the judgment of the director is inaccurate, the director shall adjust the risk-based capital report to correct the inaccuracy and shall notify the insurer or health organization of the adjustment. The notice shall contain a statement of the reason for the adjustment.

Sec. 21. Section 44-6016, Reissue Revised Statutes of Nebraska, is amended to read:

44-6016. (1) Company action level event ~~shall mean~~ means any of the following events:

(a) The filing of a risk-based capital report by an insurer or a health organization which indicates that:

(i) The insurer's or health organization'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

(ii) If a life and health insurer, the insurer has total adjusted capital which is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 2.5 and has a negative trend;

(b) The notification by the director to the insurer or health organization of an adjusted risk-based capital report that indicates an event described in subdivision (1)(a)(i) or (ii) of this section unless the insurer or health organization challenges the adjusted risk-based capital report under section 44-6020; or

(c) If, pursuant to section 44-6020, the insurer or health organization challenges an adjusted risk-based capital report that indicates an event described in subdivision (1)(a)(i) or (ii) of this section, the notification by the director to the insurer or health organization that the director has, after a hearing, rejected the insurer's or health organization's challenge.

(2) In the event of a company action level event, the insurer or health organization shall prepare and submit to the director a risk-based capital plan which shall:

(a) Identify the conditions which contribute to the company action level event;

(b) Contain proposals of corrective actions which the insurer or health organization intends to take and would be expected to result in the elimination of the company action level event;

(c) Provide projections of the insurer's or health organization's financial results in the current year and at least the four succeeding years in the case of an insurer or at least the two succeeding years in the case of a health organization, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, ~~and~~ capital and surplus, and risk-based capital levels. The projections for both new and renewal business may include separate projections for each major line of

business and separately identify each significant income, expense, and benefit component;

(d) Identify the key assumptions impacting the insurer's or health organization's projections and the sensitivity of the projections to the assumptions; and

(e) Identify the quality of, and problems associated with, the insurer's or health organization's business, including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, and mix of business and use of reinsurance, if any, in each case.

(3) The risk-based capital plan shall be submitted:

(a) Within forty-five days after the occurrence of the company action level event; or

(b) If the insurer or health organization challenges an adjusted risk-based capital report pursuant to section 44-6020, within forty-five days after the notification to the insurer or health organization that the director has, after a hearing, rejected the insurer's or health organization's challenge.

(4) Within sixty days after the submission by an insurer or a health organization of a risk-based capital plan to the director, the director shall notify the insurer or health organization whether the risk-based capital plan shall be implemented or is, in the judgment of the director, unsatisfactory. If the director determines that the risk-based capital plan is unsatisfactory, the notification to the insurer or health organization shall set forth the reasons for the determination and may set forth proposed revisions which will render the risk-based capital plan satisfactory in the judgment of the director. Upon notification from the director, the insurer or health organization shall prepare a revised risk-based capital plan which may incorporate by reference any revisions proposed by the director. The insurer or health organization shall submit the revised risk-based capital plan to the director:

(a) Within forty-five days after the notification from the director;

or

(b) If the insurer or health organization challenges the notification from the director under section 44-6020, within forty-five days after a notification to the insurer or health organization that the director has, after a hearing, rejected the insurer's or health organization's challenge.

(5) In the event of a notification by the director to an insurer or a health organization that the insurer's or health organization's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the director may, at the director's discretion and subject to the insurer's or health organization's right to a hearing under section 44-6020, specify in the notification that the notification constitutes a regulatory action level event.

(6) Every domestic insurer or domestic health organization that files a risk-based capital plan or revised risk-based capital plan with the director shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance commissioner of any state in which the insurer or health organization is authorized to do business if:

(a) Such state has a law substantially similar to subsection (1) of section 44-6021; and

(b) The insurance commissioner of such state has notified the insurer or health organization of its request for the filing in writing, in which case the insurer or health organization shall file a copy of the risk-based capital plan or revised risk-based capital plan in such state no later than the later of:

(i) 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

(ii) The date on which the risk-based capital plan or revised risk-based capital plan is filed under subsection (3) ~~of section 44-6017~~ or (4) of this section.

Sec. 22. Section 44-6017, Reissue Revised Statutes of Nebraska, is amended to read:

44-6017. (1) Regulatory action level event ~~shall mean~~ means any of the following events:

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

(b) The notification by the director to an insurer or a health

organization of an adjusted risk-based capital report that indicates the event described in subdivision (1)(a) of this section unless the insurer or health organization challenges the adjusted risk-based capital report under section 44-6020;

(c) If, pursuant to section 44-6020, the insurer or health organization challenges an adjusted risk-based capital report that indicates the event described in subdivision (1)(a) of this section, the notification by the director to the insurer or health organization that the director has, after a hearing, rejected the insurer's or health organization's challenge;

(d) The failure of the insurer or health organization to file a risk-based capital report by the filing date prescribed in section 44-6015 unless the insurer or health organization has provided an explanation for such failure which is satisfactory to the director and has cured the failure within ten days after the filing date;

(e) The failure of the insurer or health organization to submit a risk-based capital plan to the director within the time period set forth in subsection (3) of section 44-6016;

(f) Notification by the director to the insurer or health organization that:

(i) The risk-based capital plan or revised risk-based capital plan submitted by the insurer or health organization is, in the judgment of the director, unsatisfactory; and

(ii) Such notification constitutes a regulatory action level event with respect to the insurer or health organization unless the insurer or health organization has challenged the determination under section 44-6020;

(g) If, pursuant to section 44-6020, the insurer or health organization challenges a determination by the director under subdivision (1)(f) of this section, the notification by the director to the insurer or health organization that the director has, after a hearing, rejected such challenge;

(h) Notification by the director to the insurer or health organization that the insurer or health organization has failed to adhere to its risk-based capital plan or revised risk-based capital plan, but only if such failure has a substantial adverse effect on the ability of the insurer or health organization to eliminate the company action level event in accordance with its risk-based capital plan or revised risk-based capital plan and the director has so stated in the notification unless the insurer or health organization has challenged the determination under section 44-6020; or

(i) If, pursuant to section 44-6020, the insurer or health organization challenges a determination by the director under subdivision (1)(h) of this section, the notification by the director to the insurer or health organization that the director has, after a hearing, rejected the challenge.

(2) In the event of a regulatory action level event, the director shall:

(a) Require the insurer or health organization to prepare and submit a risk-based capital plan or, if applicable, a revised risk-based capital plan;

(b) Perform such examination or analysis as the director deems necessary of the assets, liabilities, and operations of the insurer or health organization including a review of its risk-based capital plan or revised risk-based capital plan; and

(c) Subsequent to the examination or analysis, issue a corrective order.

(3) In determining corrective actions, the director may take into account such factors as are deemed relevant with respect to the insurer or health organization based upon the director's examination or analysis of the assets, liabilities, and operations of the insurer or health organization, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the risk-based capital instructions. The risk-based capital plan or revised risk-based capital plan shall be submitted:

(a) Within forty-five days after the occurrence of the regulatory action level event;

(b) If the insurer or health organization challenges an adjusted risk-based capital report pursuant to section 44-6020 and the challenge is not frivolous in the judgment of the director, within forty-five days after the notification to the insurer or health organization that the director has, after a hearing, rejected the insurer's or health organization's challenge; or

(c) If the insurer or health organization challenges a revised risk-based capital plan pursuant to section 44-6020 and the challenge is not frivolous in the judgment of the director, within forty-five days after the notification to the insurer or health organization that the director has,

after a hearing, rejected the insurer's or health organization's challenge.

(4) The director may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the director to review the insurer's or health organization's risk-based capital plan or revised risk-based capital plan, to examine or analyze the assets, liabilities, and operations, including contractual relationships in the case of a health organization, of the insurer or health organization, and to formulate the corrective order with respect to the insurer or health organization. The fees, costs, and expenses relating to consultants shall be borne by the affected insurer or health organization or such other party as directed by the director.

Sec. 23. Section 44-6018, Reissue Revised Statutes of Nebraska, is amended to read:

44-6018. (1) Authorized control level event ~~shall mean~~ means any of the following events:

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

(b) The notification by the director to the insurer or health organization of an adjusted risk-based capital report that indicates the event described in subdivision (1)(a) of this section unless the insurer or health organization challenges the adjusted risk-based capital report under section 44-6020;

(c) If, pursuant to section 44-6020, the insurer or health organization challenges an adjusted risk-based capital report that indicates the event described in subdivision (1)(a) of this section, the notification by the director to the insurer or health organization that the director has, after a hearing, rejected the insurer's or health organization's challenge;

(d) The failure of the insurer or health organization to respond, in a manner satisfactory to the director, to a corrective order unless the insurer or health organization has challenged the corrective order under section 44-6020; or

(e) If the insurer or health organization has challenged a corrective order under section 44-6020 and the director has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer or health organization to respond, in a manner satisfactory to the director, to the corrective order subsequent to rejection or modification by the director.

(2) In the event of an authorized control level event the director shall:

(a) Take such actions as are required under section 44-6017 regarding an insurer or a health organization with respect to which a regulatory action level event has occurred; or

(b) If the director deems it to be in the best interests of the policyholders and creditors of the insurer or health organization and of the public, take such actions as are necessary to cause the insurer or health organization to be placed under regulatory control under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act. In the event the director takes such actions, the authorized control level event shall be deemed sufficient grounds for the director to take action under the act, and the director shall have the rights, powers, and duties with respect to the insurer or health organization as are set forth in the act. In the event the director takes actions under this subdivision pursuant to an adjusted risk-based capital report, the insurer or health organization shall be entitled to such protections as are afforded to insurers or health organizations under the provisions of the act pertaining to summary proceedings.

Sec. 24. Section 44-6019, Reissue Revised Statutes of Nebraska, is amended to read:

44-6019. (1) Mandatory control level event ~~shall mean~~ means any of the following events:

(a) The filing of a risk-based capital report which indicates that the insurer's or health organization's total adjusted capital is less than its mandatory control level risk-based capital;

(b) The notification by the director to the insurer or health organization of an adjusted risk-based capital report that indicates the event described in subdivision (1)(a) of this section unless the insurer or health organization challenges the adjusted risk-based capital report under section 44-6020; or

(c) If, pursuant to section 44-6020, the insurer or health organization challenges an adjusted risk-based capital report that indicates

the event described in subdivision (1)(a) of this section, the notification by the director to the insurer or health organization that the director has, after a hearing, rejected the insurer's or health organization's challenge.

(2) In the event of a mandatory control level event, the director shall take such actions as are necessary to place the insurer or health organization under regulatory control under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act or, in the case of a property and casualty insurer which is writing no business and which is running off its existing business, may allow the insurer to continue its run-off under the supervision of the director. In the event the director takes such actions, the mandatory control level event shall be deemed sufficient grounds for the director to take action under the act, and the director shall have the rights, powers, and duties with respect to the insurer or health organization as are set forth in the act. In the event the director takes actions under this subsection pursuant to an adjusted risk-based capital report, the insurer or health organization shall be entitled to such protections as are afforded to insurers or health organizations under the provisions of the act pertaining to summary proceedings. Notwithstanding the provisions of this subsection, the director may forego action for up to ninety days after the mandatory control level event if he or she finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.

Sec. 25. Section 44-6020, Reissue Revised Statutes of Nebraska, is amended to read:

44-6020. Upon any of the following notifications, the insurer or health organization shall have the right to a hearing pursuant to the Administrative Procedure Act at which the insurer or health organization may challenge any determination ~~of~~ or action by the director:

(1) Notification to an insurer or a health organization by the director of an adjusted risk-based capital report;

(2) Notification to an insurer or a health organization by the director that:

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

(b) Such notification constitutes a regulatory action level event with respect to such insurer or health organization;

(3) Notification to an insurer or a health organization by the director that the insurer or health organization 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 or health organization to eliminate the company action level event with respect to the insurer or health organization in accordance with its risk-based capital plan or revised risk-based capital plan; or

(4) Notification to an insurer or a health organization by the director of a corrective order with respect to the insurer or health organization.

The insurer or health organization shall notify the director of its request for a hearing within five days after the notification by the director. Upon receipt of the insurer's or health organization's request for a hearing, the director shall set a date for the hearing, which date shall be no less than ten nor more than thirty days after the date of the insurer's or health organization's request.

Sec. 26. Section 44-6021, Reissue Revised Statutes of Nebraska, is amended to read:

44-6021. (1) All risk-based capital reports, to the extent the information in the reports is not required to be set forth in a publicly available annual statement schedule and risk-based capital plans, including the results or reports of any examination or analysis of an insurer or a health organization performed pursuant to the Insurers and Health Organizations Risk-Based Capital Act and any corrective order issued by the director pursuant to examination or analysis, with respect to any domestic insurer or domestic health organization or foreign insurer or foreign health organization which are filed with the director shall constitute information that might be damaging to the insurer or health organization if made available to its competitors and therefor shall be kept confidential by the director and shall not be public records subject to disclosure pursuant to sections 84-712 to 84-712.09. This information shall not be made public or be subject to subpoena other than by the director and then only for the purpose of enforcement actions taken by the director pursuant to the act or any other provision of the insurance laws of this state. Nothing in the act shall prevent or be construed to prohibit the director from disclosing risk-based capital reports and risk-based capital plans to the National Association of Insurance Commissioners and to the insurance department of any other state or

country if the association or department agrees in writing to keep them confidential.

(2) It is the judgment of the Legislature that the comparison of an insurer's or a health organization's total adjusted capital to any of its risk-based capital levels is a regulatory tool which may indicate the need for possible corrective action with respect to the insurer or health organization and is not intended as a means to rank insurers or health organizations generally. Therefor, except as otherwise required under the act, the making, publishing, disseminating, circulating, or placing before the public or the 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, representation, or statement with regard to the risk-based capital levels of any insurer or health organization or of any component derived in the calculation, by any insurer or health organization, agent, broker, or other person engaged in any manner in the insurance business would be misleading and is therefor prohibited. If any materially false statement with respect to the comparison regarding an insurer's or a health organization's total adjusted capital to any of its risk-based capital levels, or any of them, or an inappropriate comparison of any other amount to the insurers' or health organizations' risk-based capital levels is published in any written publication and the insurer or health organization is able to demonstrate to the director with substantial proof the falsity of such statement or the inappropriateness, as the case may be, the insurer or health organization may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(3) It is the further judgment of the Legislature that the risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans are intended solely for use by the director in monitoring the solvency of insurers and health organizations and the need for possible corrective action with respect to insurers and health organizations and shall not be used by the director for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the director to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or a health organization or any affiliate is authorized to write.

Sec. 27. Section 44-6022, Reissue Revised Statutes of Nebraska, is amended to read:

44-6022. (1) The provisions of the Insurers and Health Organizations Risk-Based Capital Act are supplemental to any other provisions of the laws of this state and shall not preclude or limit any other powers or duties of the director under such laws, including, but not limited to, the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

(2) The director may exempt from the application of the Insurers and Health Organizations Risk-Based Capital Act a domestic health organization which:

- (a)(i) Writes direct business only in this state;
- (ii) Assumes no reinsurance in excess of five percent of direct premium written; and
- (iii) Writes direct annual premiums for comprehensive medical business of two million dollars or less; or
- (b) Is a limited health service organization that covers fewer than two thousand lives.

Sec. 28. Section 44-6023, Reissue Revised Statutes of Nebraska, is amended to read:

44-6023. (1) Any foreign insurer or foreign health organization shall, upon the written request of the director, submit to the director a risk-based capital report as of the end of the calendar year just ended not later than the later of:

(a) The date a risk-based capital report would be required to be filed by a domestic insurer or domestic health organization under section 44-6015; or

(b) Fifteen days after the request is received by the foreign insurer or foreign health organization.

Any foreign insurer or foreign health organization shall, at the written request of the director, promptly submit to the director a copy of any risk-based capital plan that is filed with the insurance commissioner of any other state.

(2) In the event of a company action level event, a regulatory

action level event, or an authorized control level event with respect to any foreign insurer or foreign health organization as determined under the risk-based capital law applicable in the state of domicile of the insurer or health organization or, if no risk-based capital law is in force in that state, under the Insurers and Health Organizations Risk-Based Capital Act, if the insurance commissioner of the state of domicile of the foreign insurer or foreign health organization fails to require the foreign insurer or foreign health organization to file a risk-based capital plan in the manner specified under the risk-based capital law applicable in the state of domicile of the insurer or health organization or, if no risk-based capital law is in force in the state of domicile of the insurer or health organization, under section 44-6016, the director may require the foreign insurer or foreign health organization to file a risk-based capital plan with the director. In such event, the failure of the foreign insurer or foreign health organization to file a risk-based capital plan with the director shall be grounds to order the insurer or health organization to cease and desist from writing new insurance business in this state.

(3) In the event of a mandatory control level event with respect to any foreign insurer or foreign health organization, if no domiciliary receiver has been appointed with respect to the foreign insurer or foreign health organization under the rehabilitation and liquidation law applicable in the state of domicile of the foreign insurer or foreign health organization, the director may make application to the district court of Lancaster County under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act with respect to the liquidation of property of foreign insurers or foreign health organizations found in this state, and the occurrence of the mandatory control level event shall be considered adequate grounds for the application.

Sec. 29. Section 44-6023.01, Reissue Revised Statutes of Nebraska, is amended to read:

44-6023.01. There shall be no liability on the part of, and no cause of action shall arise against, the director, the Department of Insurance, or its employees or agents for any action taken by them in the performance of their powers and duties under the Insurers and Health Organizations Risk-Based Capital Act.

Sec. 30. Section 44-6024, Reissue Revised Statutes of Nebraska, is amended to read:

44-6024. All notices by the director to an insurer or a health organization which may result in regulatory action under the Insurers and Health Organizations Risk-Based Capital Act shall be effective upon dispatch if transmitted by registered or certified mail or, in the case of any other transmission, shall be effective upon the insurer's or health organization's receipt of such notice.

Sec. 31. Section 44-6025, Reissue Revised Statutes of Nebraska, is amended to read:

44-6025. For risk-based capital reports required to be filed by ~~life and health insurers~~ health organizations with respect to ~~1993 only, and for risk-based capital reports required to be filed by property and casualty insurers with respect to 1994 1999 only,~~ the following requirements shall apply in lieu of the provisions of sections 44-6016 to 44-6019:

(1) In the event of a company action level event with respect to a domestic ~~insurer~~ health organization, the director shall take no regulatory action under the Insurers and Health Organizations Risk-Based Capital Act;

(2) In the event of a regulatory action level event under subdivisions (1)(a) through (c) of section 44-6017, the director shall take the actions required under section 44-6016;

(3) In the event of a regulatory action level event under subdivisions (1)(d) through (i) of section 44-6017 or an authorized control level event, the director shall take the actions required under section 44-6017 with respect to the ~~insurer~~ health organization; and

(4) In the event of a mandatory control level event with respect to ~~an insurer~~ a health organization, the director shall take the actions required under section 44-6018 with respect to the ~~insurer~~ health organization.

Sec. 32. Section 44-6026, Reissue Revised Statutes of Nebraska, is amended to read:

44-6026. The director may adopt and promulgate rules and regulations to carry out the Insurers and Health Organizations Risk-Based Capital Act.

Sec. 33. Original sections 44-214, 44-219, and 44-6001 to 44-6026, Reissue Revised Statutes of Nebraska, are repealed.