

AMENDMENTS TO LB772

Introduced by Lindstrom, 18.

1 1. Insert the following new sections:

2 Section 1. Sections 1 to 9 of this act shall be known and may be
3 cited as the Corporate Governance Annual Disclosure Act.

4 Sec. 2. (1) The purposes of the Corporate Governance Annual
5 Disclosure Act are to:

6 (a) Provide the director a summary of an insurer's or insurance
7 group's corporate governance structure, policies, and practices to permit
8 the director to gain and maintain an understanding of the insurer's or
9 insurance group's corporate governance framework;

10 (b) Outline the requirements for completing a corporate governance
11 annual disclosure with the director; and

12 (c) Provide for the confidential treatment of the corporate
13 governance annual disclosure and related information that contains
14 confidential and sensitive information related to an insurer's or
15 insurance group's internal operations and proprietary and trade secret
16 information which, if made public, could potentially cause the insurer or
17 insurance group competitive harm or disadvantage.

18 (2) Nothing in the Corporate Governance Annual Disclosure Act shall
19 be construed (a) to prescribe or impose corporate governance standards
20 and internal procedures beyond that which is required under applicable
21 state corporate law or (b) to limit the director's authority, or the
22 rights or obligations of third parties, under the Insurers Examination
23 Act.

24 (3) The requirements of the Corporate Governance Annual Disclosure
25 Act shall apply to all insurers that are domiciled in this state.

26 Sec. 3. For purposes of the Corporate Governance Annual Disclosure
27 Act:

1 (1) Corporate governance annual disclosure means a confidential
2 report filed by an insurer or insurance group made in accordance with the
3 requirements of the Corporate Governance Annual Disclosure Act;

4 (2) Director means the Director of Insurance;

5 (3) Insurance group means those insurers and affiliates included
6 within an insurance holding company system as defined in section 44-2121;
7 and

8 (4) Insurer has the same meaning as in section 44-103, except that
9 it shall not include agencies, authorities, or instrumentalities of the
10 United States, its possessions and territories, the Commonwealth of
11 Puerto Rico, the District of Columbia, or a state or political
12 subdivision of a state.

13 Sec. 4. (1) An insurer, or the insurance group of which the insurer
14 is a member, shall, no later than June 1 of each calendar year, submit to
15 the director a corporate governance annual disclosure that contains the
16 information described in section 5 of this act. Notwithstanding any
17 request from the director made pursuant to subsection (3) of this
18 section, if the insurer is a member of an insurance group, the insurer
19 shall submit the disclosure required by this section to the director of
20 the lead state for the insurance group, in accordance with the laws of
21 the lead state, as determined by the procedures outlined in the Financial
22 Analysis Handbook adopted by the National Association of Insurance
23 Commissioners.

24 (2) The corporate governance annual disclosure must include a
25 signature of the insurer's or insurance group's chief executive officer
26 or corporate secretary attesting to the best of that individual's belief
27 and knowledge that the insurer or insurance group has implemented the
28 corporate governance practices contained in the corporate governance
29 annual disclosure and that a copy of the disclosure has been provided to
30 the insurer's board of directors or the appropriate committee thereof.

31 (3) An insurer not required to submit a corporate governance annual

1 disclosure under this section shall do so upon the director's request.

2 (4) For purposes of completing the corporate governance annual
3 disclosure, the insurer or insurance group may provide information
4 regarding corporate governance at the ultimate controlling parent level,
5 an intermediate holding company level, or the individual legal entity
6 level, depending upon how the insurer or insurance group has structured
7 its system of corporate governance. The insurer or insurance group is
8 encouraged to make the corporate governance annual disclosure at the
9 level at which the insurer's or insurance group's risk appetite is
10 determined, the level at which the earnings, capital, liquidity,
11 operations, and reputation of the insurer are overseen collectively and
12 at which the supervision of those factors are coordinated and exercised,
13 or the level at which legal liability for failure of general corporate
14 governance duties would be placed. If the insurer or insurance group
15 determines the level of reporting based on one of these three criteria,
16 it shall indicate which of the three criteria was used to determine the
17 level of reporting and explain any subsequent changes in the level of
18 reporting.

19 (5) The review of the corporate governance annual disclosure and any
20 additional requests for information shall be made through the lead state
21 as determined by the procedures within the Financial Analysis Handbook
22 adopted by the National Association of Insurance Commissioners.

23 (6) Insurers providing information substantially similar to the
24 information required by the Corporate Governance Annual Disclosure Act in
25 other documents provided to the director, including proxy statements
26 filed in conjunction with the requirements of section 44-2132 or other
27 state or federal filings provided to the director, shall not be required
28 to duplicate such information in the corporate governance annual
29 disclosure, but shall only be required to cross reference the document in
30 which such information is included.

31 Sec. 5. The corporate governance annual disclosure shall be

1 prepared in a manner prescribed by the director. The insurer or insurance
2 group shall have discretion over the responses to the corporate
3 governance annual disclosure inquiries, except that the corporate
4 governance annual disclosure shall contain the material information
5 necessary to permit the director to gain an understanding of the
6 insurer's or insurance group's corporate governance structure, policies,
7 and practices. The director may request additional information that he or
8 she deems material and necessary to provide the director with a clear
9 understanding of the corporate governance policies, reporting or
10 information systems, or controls implementing the corporate governance
11 policies. Documentation and supporting information shall be maintained
12 and made available upon examination or upon request of the director.

13 Sec. 6. (1) Documents, materials, or other information, including
14 the corporate governance annual disclosure, in the possession or control
15 of the Department of Insurance that are obtained by, created by, or
16 disclosed to the director or any other person under the Corporate
17 Governance Annual Disclosure Act are recognized by this state as being
18 proprietary and to contain trade secrets. All such documents, materials,
19 or other information shall be confidential by law and privileged, shall
20 not be a public record subject to disclosure by the director pursuant to
21 sections 84-712 to 84-712.09, shall not be subject to subpoena, and shall
22 not be subject to discovery or admissible in evidence in any private
23 civil action. However, the director is authorized to use the documents,
24 materials, or other information in the furtherance of any regulatory or
25 legal action brought as a part of the director's official duties. The
26 director shall not otherwise make the documents, materials, or other
27 information public without the prior written consent of the insurer.
28 Nothing in this section shall be construed to require written consent of
29 the insurer before the director may share or receive confidential
30 documents, materials, or other information related to the corporate
31 governance annual disclosure pursuant to subsection (3) of this section

1 to assist in the performance of the director's regular duties.

2 (2) Neither the director nor any person who received documents,
3 materials, or other information related to the corporate governance
4 annual disclosure, through examination or otherwise, while acting under
5 the authority of the director, or with whom such documents, materials, or
6 other information are shared pursuant to the Corporate Governance Annual
7 Disclosure Act, shall be permitted or required to testify in any private
8 civil action concerning any confidential documents, materials, or other
9 information subject to subsection (1) of this section.

10 (3) In order to assist in the performance of the director's
11 regulatory duties, the director:

12 (a) May, upon request, share documents, materials, or other
13 information related to the corporate governance annual disclosure,
14 including the confidential and privileged documents, materials, or other
15 information subject to subsection (1) of this section, including
16 proprietary and trade secret documents and materials, with other state,
17 federal, and international financial regulatory agencies, including
18 members of any supervisory college as described in section 44-2137.01,
19 with the National Association of Insurance Commissioners, and with third-
20 party consultants pursuant to section 7 of this act if the recipient
21 agrees in writing to maintain the confidentiality and privileged status
22 of such documents, materials, or other information and has verified in
23 writing the legal authority to maintain confidentiality; and

24 (b) May receive documents, materials, or other information related
25 to the corporate governance annual disclosure, including otherwise
26 confidential and privileged documents, materials, or other information,
27 including proprietary and trade secret documents and materials, from
28 regulatory officials of other state, federal, and international financial
29 regulatory agencies, including members of any supervisory college as
30 described in section 44-2137.01 and from the National Association of
31 Insurance Commissioners, and shall maintain as confidential or privileged

1 any documents, materials, or other information received with notice or
2 the understanding that it is confidential or privileged under the laws of
3 the jurisdiction that is the source of the document, material, or other
4 information.

5 (4) The sharing of information and documents by the director
6 pursuant to the Corporate Governance Annual Disclosure Act shall not
7 constitute a delegation of regulatory authority or rulemaking, and the
8 director is solely responsible for the administration, execution, and
9 enforcement of the provisions of the act.

10 (5) No waiver of any applicable privilege or claim of
11 confidentiality in the documents, materials, or other information related
12 to the corporate governance annual disclosure shall occur as a result of
13 disclosure of such documents, materials, or other information to the
14 director under this section or as a result of sharing as authorized in
15 the Corporate Governance Annual Disclosure Act.

16 Sec. 7. (1) The director may retain, at the insurer's expense,
17 third-party consultants, including attorneys, actuaries, accountants, and
18 other experts not otherwise a part of the director's staff, as may be
19 reasonably necessary to assist the director in reviewing the corporate
20 governance annual disclosure and related information or the insurer's
21 compliance with the Corporate Governance Annual Disclosure Act.

22 (2) Any persons retained under subsection (1) of this section shall
23 be under the direction and control of the director and shall act in a
24 purely advisory capacity.

25 (3) The National Association of Insurance Commissioners and third-
26 party consultants shall be subject to the same confidentiality standards
27 and requirements as the director.

28 (4) As part of the retention process, a third-party consultant shall
29 verify to the director, with notice to the insurer, that the third-party
30 consultant is free of a conflict of interest and that it has internal
31 procedures in place to monitor compliance with a conflict of interest and

1 to comply with the confidentiality standards and requirements of the
2 Corporate Governance Annual Disclosure Act.

3 (5) A written agreement with the National Association of Insurance
4 Commissioners or a third-party consultant governing sharing and use of
5 information provided pursuant to the Corporate Governance Annual
6 Disclosure Act shall contain the following provisions and expressly
7 require the written consent of the insurer prior to making public
8 information provided under the act:

9 (a) Specific procedures and protocols for maintaining the
10 confidentiality and security of information related to the corporate
11 governance annual disclosure that is shared with the National Association
12 of Insurance Commissioners or a third-party consultant pursuant to the
13 act;

14 (b) Procedures and protocols for sharing by the National Association
15 of Insurance Commissioners only with other state regulators from states
16 in which the insurance group has domiciled insurers. The agreement shall
17 provide that the recipient agrees in writing to maintain the
18 confidentiality and privileged status of the documents, materials, or
19 other information related to the corporate governance annual disclosure
20 and has verified in writing the legal authority to maintain
21 confidentiality.

22 (c) A provision specifying that (i) ownership of the information
23 related to the corporate governance annual disclosure that is shared with
24 the National Association of Insurance Commissioners or a third-party
25 consultant remains with the Department of Insurance and (ii) the National
26 Association of Insurance Commissioners' or third-party consultant's use
27 of the information is subject to the direction of the director;

28 (d) A provision that prohibits the National Association of Insurance
29 Commissioners or a third-party consultant from storing the information
30 shared pursuant to the Corporate Governance Annual Disclosure Act in a
31 permanent data base after the underlying analysis is completed;

1 (e) A provision requiring the National Association of Insurance
2 Commissioners or third-party consultant to provide prompt notice to the
3 director and to the insurer or insurance group regarding any subpoena,
4 request for disclosure, or request for production of the insurer's or
5 insurance group's information related to the corporate governance annual
6 disclosure; and

7 (f) A requirement that the National Association of Insurance
8 Commissioners or a third-party consultant consent to intervention by an
9 insurer in any judicial or administrative action in which the National
10 Association of Insurance Commissioners or a third-party consultant may be
11 required to disclose confidential information about the insurer shared
12 with the National Association of Insurance Commissioners or a third-party
13 consultant pursuant to the Corporate Governance Annual Disclosure Act.

14 Sec. 8. Any insurer failing, without just cause, to timely file the
15 corporate governance annual disclosure as required in the Corporate
16 Governance Annual Disclosure Act shall forfeit fifty dollars each day
17 thereafter such failure continues. The maximum forfeit shall not exceed
18 ten thousand dollars. In addition to the forfeiture, the director may
19 suspend, after notice and hearing, the certificate of authority of the
20 insurer until it has complied with the act. The director may reduce the
21 forfeiture if the insurer demonstrates to the director that the
22 forfeiture would constitute a financial hardship to the insurer. The
23 director shall remit any forfeiture collected pursuant to this section to
24 the State Treasurer for distribution in accordance with Article VII,
25 section 5, of the Constitution of Nebraska.

26 Sec. 9. The director may adopt and promulgate rules and regulations
27 to carry out the Corporate Governance Annual Disclosure Act.

28 Sec. 15. Section 44-4404, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 44-4404 (1) A risk retention group seeking to be chartered and
31 licensed in this state shall be chartered and licensed as a liability

1 insurance company under Chapter 44 and, except as provided elsewhere in
2 the Risk Retention Act, shall comply with all of the laws, rules, and
3 regulations applicable to such insurers chartered and licensed in this
4 state and with sections 44-4405 to 44-4413 to the extent such
5 requirements are not a limitation on laws, rules, or regulations of this
6 state.

7 (2) Before a risk retention group may offer insurance in any state,
8 it shall submit for approval to the director a plan of operation and
9 revisions of such plan if the group intends to offer any additional lines
10 of liability insurance.

11 (3) At the time of filing its application for a charter and license,
12 the risk retention group shall provide to the director in summary form
13 the following information: The identity of the initial members of the
14 group; the identity of those individuals who organized the group or who
15 will provide administrative services or otherwise influence or control
16 the activities of the group; the amount and nature of initial
17 capitalization; the coverages to be afforded; and the states in which the
18 group intends to operate. Upon receipt of this information, the director
19 shall forward such information to the National Association of Insurance
20 Commissioners. Providing notification to the National Association of
21 Insurance Commissioners shall be in addition to and shall not be
22 sufficient to satisfy the requirements of section 44-4405 or any other
23 sections of the act.

24 (4) Subsections (5) through (11) of this section provide governance
25 standards for risk retention groups licensed and chartered in this state.
26 Any risk retention group in existence on the operative date of this
27 section shall be in compliance with such standards by January 1, 2018.
28 Any risk retention group that is initially licensed on or after the
29 operative date of this section shall be in compliance with such standards
30 at the time of licensure.

31 (5)(a) For purposes of this subsection:

1 (i) Board of directors or board means the governing body of the risk
2 retention group elected by the shareholders or members to establish
3 policy, elect or appoint officers and committees, and make other
4 governing decisions; and

5 (ii) Director means a natural person designated in the articles of
6 the risk retention group or designated, elected, or appointed by any
7 other manner, name, or title to act as a director.

8 (b) The board of directors of the risk retention group shall have a
9 majority of independent directors. If the risk retention group is a
10 reciprocal, then the attorney in fact would be required to adhere to the
11 same standards regarding independence of operation and governance as
12 imposed on the risk retention group's board of directors or subscribers
13 advisory committee under this subsection. To the extent permissible under
14 state law, service providers of a reciprocal risk retention group should
15 contract with the risk retention group and not the attorney in fact.

16 (c) No director qualifies as independent unless the board of
17 directors affirmatively determines that the director has no material
18 relationship with the risk retention group. Each risk retention group
19 shall disclose these determinations to its domestic regulator at least
20 annually. For this purpose, any person that is a direct or indirect owner
21 of or subscriber in the risk retention group, or is an officer, director,
22 or employee of such an owner and insured unless some other position of
23 such officer, director, or employee constitutes a material relationship,
24 as contemplated by section 3901(a)(4)(E)(ii) of the federal Liability
25 Risk Retention Act of 1986, is considered to be independent.

26 (d) Material relationship of a person with the risk retention group
27 includes, but is not limited to:

28 (i) The receipt in any one twelve-month period of compensation or
29 payment of any other item of value by such person, a member of such
30 person's immediate family, or any business with which such person is
31 affiliated from the risk retention group or a consultant or service

1 provider to the risk retention group is greater than or equal to five
2 percent of the risk retention group's gross written premium for such
3 twelve-month period or two percent of its surplus, whichever is greater,
4 as measured at the end of any fiscal quarter falling in such a twelve-
5 month period. Such person or immediate family member of such person is
6 not independent until one year after his or her compensation from the
7 risk retention group falls below the threshold;

8 (ii) A relationship with an auditor as follows: A director or an
9 immediate family member of a director who is affiliated with or employed
10 in a professional capacity by a present or former internal or external
11 auditor of the risk retention group is not independent until one year
12 after the end of the affiliation, employment, or auditing relationship;
13 and

14 (iii) A relationship with a related entity as follows: A director or
15 immediate family member of a director who is employed as an executive
16 officer of another company where any of the risk retention group's
17 present executives serve on that other company's board of directors is
18 not independent until one year after the end of such service or the
19 employment relationship.

20 (6)(a) The term of any material service provider contract with the
21 risk retention group shall not exceed five years. Any such contract, or
22 its renewal, shall require the approval of the majority of the risk
23 retention group's independent directors. The risk retention group's board
24 of directors shall have the right to terminate any service provider,
25 audit, or actuarial contracts at any time for cause after providing
26 adequate notice as defined in the contract. The service provider contract
27 is deemed material if the amount to be paid for such contract is greater
28 than or equal to five percent of the risk retention group's annual gross
29 written premium or two percent of its surplus, whichever is greater.

30 (b) For purposes of this subsection, service providers shall include
31 captive managers, auditors, accountants, actuaries, investment advisors,

1 lawyers, managing general underwriters, or other parties responsible for
2 underwriting, determination of rates, collection of premiums, adjusting
3 and settling claims, or the preparation of financial statements. Any
4 reference to lawyers in this subdivision does not include defense counsel
5 retained by the risk retention group to defend claims, unless the amount
6 of fees paid to such lawyers are material as referenced in subdivision
7 (5)(d) of this section.

8 (c) No service provider contract meeting the definition of material
9 relationship contained in subdivision (5)(d) of this section shall be
10 entered into unless the risk retention group has notified the director in
11 writing of its intention to enter into such transaction at least thirty
12 days prior thereto and the director has not disapproved it within such
13 period.

14 (7) The risk retention group's board of directors shall adopt a
15 written policy in the plan of operation as approved by the board that
16 requires the board to:

17 (a) Assure that all owners or insureds of the risk retention group
18 receive evidence of ownership interest;

19 (b) Develop a set of governance standards applicable to the risk
20 retention group;

21 (c) Oversee the evaluation of the risk retention group's management,
22 including, but not limited to, the performance of the captive manager,
23 managing general underwriter, or other party or parties responsible for
24 underwriting, determination of rates, collection of premiums, adjusting
25 or settling claims, or the preparation of financial statements;

26 (d) Review and approve the amount to be paid for all material
27 service providers; and

28 (e) Review and approve, at least annually:

29 (i) The risk retention group's goals and objectives relevant to the
30 compensation of officers and service providers;

31 (ii) The officers' and service providers' performance in light of

1 those goals and objectives; and

2 (iii) The continued engagement of the officers and material service
3 providers.

4 (8)(a) The risk retention group shall have an audit committee
5 composed of at least three independent board members as described in
6 subsection (5) of this section. A nonindependent board member may
7 participate in the activities of the audit committee, if invited by the
8 members, but cannot be a member of such committee.

9 (b) The audit committee shall have a written charter that defines
10 the committee's purpose, which, at a minimum, must be to:

11 (i) Assist board oversight of (A) the integrity of the financial
12 statements, (B) the compliance with legal and regulatory requirements,
13 and (C) the qualifications, independence, and performance of the
14 independent auditor and actuary;

15 (ii) Discuss the annual audited financial statements and quarterly
16 financial statements with management;

17 (iii) Discuss the annual audited financial statements with its
18 independent auditor and, if advisable, discuss its quarterly financial
19 statements with its independent auditor;

20 (iv) Discuss policies with respect to risk assessment and risk
21 management;

22 (v) Meet separately and periodically, either directly or through a
23 designated representative of the committee, with management and
24 independent auditors;

25 (vi) Review with the independent auditor any audit problems or
26 difficulties and management's response;

27 (vii) Set clear hiring policies of the risk retention group as to
28 the hiring of employees or former employees of the independent auditor;

29 (viii) Require the external auditor to rotate the lead or
30 coordinating audit partner having primary responsibility for the risk
31 retention group's audit as well as the audit partner responsible for

1 reviewing that audit so that neither individual performs audit services
2 for more than five consecutive fiscal years; and

3 (ix) Report regularly to the board of directors.

4 (c) The domestic regulator may waive the requirement to establish an
5 audit committee composed of independent board members if the risk
6 retention group is able to demonstrate to the domestic regulator that it
7 is impracticable to do so and the risk retention group's board of
8 directors itself is otherwise able to accomplish the purposes of an audit
9 committee as described in subdivision (8)(b) of this section.

10 (9) The board of directors shall adopt and disclose governance
11 standards, where disclose means making such information available through
12 electronic or other means, including the posting of such information on
13 the risk retention group's web site, and providing such information to
14 members or insureds upon request, which shall include:

15 (a) A process by which the directors are elected by the owners or
16 insureds;

17 (b) Director qualification standards;

18 (c) Director responsibilities;

19 (d) Director access to management and, as necessary and appropriate,
20 independent advisors;

21 (e) Director compensation;

22 (f) Director orientation and continuing education;

23 (g) The policies and procedures that are followed for management
24 succession; and

25 (h) The policies and procedures that are followed for annual
26 performance evaluation of the board.

27 (10) The board of directors shall adopt and disclose a code of
28 business conduct and ethics for directors, officers, and employees and
29 promptly disclose to the board of directors any waivers of the code for
30 directors or executive officers, which should include the following
31 topics:

1 (a) Conflicts of interest;

2 (b) Matters covered under the corporate opportunities doctrine under
3 the state of domicile;

4 (c) Confidentiality;

5 (d) Fair dealing;

6 (e) Protection and proper use of risk retention group assets;

7 (f) Compliance with all applicable laws, rules, and regulations; and

8 (g) Requiring the reporting of any illegal or unethical behavior
9 which affects the operation of the risk retention group.

10 (11) The captive manager, president, or chief executive officer of
11 the risk retention group shall promptly notify the domestic regulator in
12 writing if he or she becomes aware of any material noncompliance with any
13 of the governance standards provided in subsections (5) through (11) of
14 this section.

15 Sec. 17. Sections 1 to 9, 15, and 18 of this act become operative
16 on January 1, 2017. The other sections of this act become operative on
17 their effective date.

18 Sec. 18. Original section 44-4404, Reissue Revised Statutes of
19 Nebraska, is repealed.

20 2. Renumber the remaining sections and correct internal references
21 accordingly.