

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 693

Introduced by Price, 3.

Read first time January 06, 2010

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to insurance; to amend sections 44-114, 44-134,
2 44-135, 44-152, 44-162, 44-304, 44-319.06, 44-710.08,
3 44-2710, 44-4850, and 44-6203, Reissue Revised Statutes
4 of Nebraska, and section 44-2132, Revised Statutes
5 Cumulative Supplement, 2008; to provide for interstate
6 agreements to authorize foreign insurers to offer
7 sickness and accident insurance as prescribed; to state
8 intent; to provide powers and duties for the Director
9 of Insurance and the Attorney General; to harmonize
10 provisions; to provide an operative date; and to repeal
11 the original sections.

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

1 Section 1. Section 44-114, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 44-114 In addition to any other fees and charges provided
4 by law, the following shall be due and payable to the Department
5 of Insurance: (1) For filing the documents, papers, statements,
6 and information required by law upon the organization of domestic
7 or the entry of foreign ~~or~~ insurers, including those authorized
8 by an interstate agreement, alien insurers, statistical agents,
9 or advisory organizations, three hundred dollars; (2) for filing
10 each amendment of articles of incorporation, twenty dollars; (3)
11 for filing restated articles of incorporation, twenty dollars; (4)
12 for renewing each certificate of authority of insurers, statistical
13 agents, or advisory organizations, one hundred dollars, except
14 domestic assessment associations which do business in less than
15 thirty-one counties in Nebraska, which shall pay twenty dollars;
16 (5) for issuance of an amended certificate of authority, one
17 hundred dollars; (6) for filing a certified copy of articles
18 of merger involving a domestic or foreign insurance corporation
19 holding a certificate of authority to transact insurance business
20 in this state, fifty dollars; (7) for filing an annual statement,
21 two hundred dollars; (8) for each certificate of valuation,
22 deposit, or compliance or other certificate for whomsoever issued,
23 five dollars; (9) for filing any report which may be required by
24 the department from any unincorporated mutual association, five
25 dollars; (10) for copying official records or documents, fifty

1 cents per page; and (11) for a preadmission review of documents
2 required to be filed for the admission of a foreign insurer or
3 for the organization and licensing of a domestic insurer other
4 than an assessment association, a nonrefundable fee of one thousand
5 dollars.

6 Sec. 2. Section 44-134, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 44-134 Whenever the authority of a foreign company,
9 including a company authorized by an interstate agreement, or an
10 alien company to do business is suspended or revoked by its state
11 of domicile or state of entry into the United States or whenever
12 any of the grounds mentioned in section 44-4809, 44-4812, or
13 44-4817 exist as to a foreign or alien company, the Department of
14 Insurance may suspend or revoke the certificate of authority of
15 such company or the authorization by interstate agreement to do
16 business in this state, which order of suspension or revocation
17 shall be subject to appeal, and the appeal shall be in accordance
18 with the Administrative Procedure Act.

19 Sec. 3. Section 44-135, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 44-135 ~~Any~~ (1) Except as provided in subsection (2)
22 of this section, any foreign or alien insurance company or
23 association, before it shall do any business in this state,
24 shall procure a certificate of authority to do business in this
25 state as provided by the laws of the State of Nebraska. Procuring

1 such a certificate shall constitute sufficient contact with this
2 state for the exercise of personal jurisdiction over the company
3 or association in any action arising out of its activities in this
4 state.

5 (2) Any foreign insurance company or association
6 proposing to offer sickness and accident insurance in the State
7 of Nebraska, before it shall do any business in this state, shall
8 procure an authorization pursuant to section 4 of this act to do
9 business in this state as provided in the interstate agreement.
10 Procuring such an authorization shall constitute sufficient contact
11 with this state for the exercise of personal jurisdiction over the
12 company or association in any action arising out of its activities
13 in this state. The foreign insurance company or association shall
14 not be subject to the laws of this state except as specifically
15 provided in section 4 of this act and sections 44-114, 44-134,
16 44-152, 44-162, 44-304, 44-319.06, 44-710.08, 44-2132, 44-2710, and
17 44-4850.

18 Sec. 4. (1) The Legislature recognizes the need for
19 individuals, employers, and other purchasers of health insurance
20 in this state to have the opportunity to choose health insurance
21 policies that are more affordable and flexible than existing market
22 policies of sickness and accident insurance coverage in this state.
23 Further, the Legislature seeks to increase the availability of
24 health insurance in the state by allowing insurers authorized to
25 engage in the business of insurance in selected states to offer or

1 issue sickness and accident insurance policies in Nebraska.

2 (2) (a) The Director of Insurance, in consultation with
3 the Attorney General as provided in subdivision (b) of this
4 subsection, may enter into interstate agreements with other willing
5 states to authorize the issuance of sickness and accident insurance
6 policies by foreign insurers from such states.

7 (b) Before entering into an interstate agreement, the
8 director, in consultation with the Attorney General, shall review
9 and certify that the other state's laws, rules, and regulations
10 with respect to sickness and accident insurance policies are
11 substantially similar to those of Nebraska that govern domestic
12 insurers and foreign and alien insurers operating pursuant to a
13 certificate of authority.

14 (c) Foreign insurers authorized to offer or issue a
15 sickness and accident insurance policy pursuant to this section
16 shall not be required to offer or provide health insurance coverage
17 required by Nebraska law or rules and regulations adopted and
18 promulgated pursuant to Nebraska law except for the requirements in
19 the sections enumerated in subsection (2) of section 44-135.

20 (d) The director may conduct market and solvency
21 examinations of foreign insurers seeking to offer or issue or
22 offering or issuing sickness and accident insurance policies in
23 this state. Such examinations shall be conducted in the same
24 manner and under the same terms and conditions as examinations
25 are conducted for domestic insurers and foreign and alien insurers

1 operating pursuant to a certificate of authority in this state.

2 (3) When determining whether to enter into an interstate
3 agreement with another state under this section, the director
4 shall consider whether insured individuals will have access to a
5 sufficient number of health care providers in Nebraska, including
6 specialty health care providers. The director shall not enter into
7 an interstate agreement with another state unless the agreement
8 includes policies and procedures to (a) resolve claims and benefit
9 and payment issues, including the provision of protections and
10 recourse for the Department of Insurance to pursue and resolve
11 consumer and provider disputes, and (b) provide for the suspension
12 or revocation of the interstate agreement by the State of Nebraska.

13 (4) Nothing in this section shall prevent the director
14 from entering into an interstate agreement to allow insurers
15 domiciled in Nebraska to offer sickness and accident insurance
16 policies in another state.

17 Sec. 5. Section 44-152, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 44-152 Whenever it appears to the Director of Insurance
20 that permission to transact business within any state of the United
21 States or within any foreign country is refused to a company
22 organized under the laws of this state after a certificate of
23 compliance has been issued to the company by the director and after
24 such company has complied with all laws of such state or foreign
25 country, then and in every such case the director may forthwith

1 cancel the authority of every company organized under the laws of
2 such state or foreign government licensed to do business in this
3 state and may refuse a certificate of authority or an authorization
4 by interstate agreement to every such company thereafter applying
5 to him or her for authority to do business in this state until his
6 or her certificate has been duly recognized by the government of
7 such state or country.

8 Sec. 6. Section 44-162, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 44-162 Any domestic insurer may, upon the approval of the
11 Director of Insurance, transfer its domicile to any other state
12 in which it is admitted to transact the business of insurance.
13 Upon such a transfer, the domestic insurer shall cease to be a
14 domestic insurer and shall be admitted to this state if qualified
15 as a foreign insurer, either by the issuance of a certificate of
16 authority or an authorization by interstate agreement. The Director
17 of Insurance shall approve any such proposed transfer unless he
18 or she determines such transfer is not in the interest of the
19 policyholders of this state.

20 Sec. 7. Section 44-304, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 44-304 Every insurance company before transacting the
23 business of insurance in this state shall file in the office of
24 the Department of Insurance a legally authenticated copy of its
25 charter, articles of incorporation or record of its organization,

1 and bylaws as follows: (1) If a domestic company, a copy of
2 its articles of incorporation together with any amendments made
3 therein; and (2) if a foreign company, including a company
4 authorized to do business in this state by interstate agreement,
5 or an alien company, a copy of its articles of incorporation or
6 charter and bylaws, including all amendments made therein, with a
7 certificate duly executed by the officer having the custody of such
8 articles or charter, under his or her seal of office, that such
9 company is duly authorized under the laws of such state or country
10 to do business therein, and a certificate showing the amount of
11 issued and outstanding capital stock and assets as required by
12 section 44-305. Such company shall furnish such other information
13 and copies of all other papers which the department may require.

14 Sec. 8. Section 44-319.06, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 44-319.06 No foreign insurer or assessment association
17 ~~now or hereafter~~ authorized to do business in this state either
18 by the issuance of a certificate of authority or authorization
19 by interstate agreement shall ~~henceforth~~ transact such business
20 unless it shall ~~deposit~~ deposits and continually ~~maintain~~ maintains
21 with the Department of Insurance or with the proper official
22 of ~~some one~~ a state of the United States designated by law to
23 accept such deposit, eligible securities in the amount of not less
24 than one hundred thousand dollars for the benefit of all of its
25 policyholders in the United States.

1 Sec. 9. Section 44-710.08, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 44-710.08 (1) Any policy of sickness and accident
4 insurance of a foreign or alien insurer, when delivered or issued
5 for delivery to any person in this state, may contain any provision
6 which is not less favorable to the insured or the beneficiary than
7 the provisions of sections 44-709 to 44-767 and which is prescribed
8 or required by the law of the state under which the insurer is
9 organized.

10 (2)(a) Any application for a policy of sickness and
11 accident insurance of a foreign insurer, when such policy will be
12 delivered or issued for delivery to any person in this state, shall
13 contain the following in boldface type at the beginning of the
14 application:

15 "The policy which is the subject of this application is
16 primarily subject to the laws of [state of domicile of foreign
17 insurer]. Any rating law applicable to policies offered in this
18 state do not apply to this policy, which may result in an increase
19 in your renewal premium which would not be permissible in a
20 policy subject to the rating laws of the State of Nebraska.
21 Any purchase of individual health insurance should be considered
22 carefully since future medical conditions may make it impossible
23 to qualify for another individual health insurance policy. For
24 information concerning individual health insurance coverage under a
25 policy offered by an insurer subject to the laws of the State of

1 Nebraska, please contact your insurance agent or the Department of
2 Insurance."

3 (b) Any policy of sickness and accident insurance of
4 a foreign insurer, when delivered or issued for delivery to any
5 person in this state, shall contain the following in boldface type
6 at the beginning of the policy:

7 "This policy is primarily subject to the laws of [state
8 of domicile of foreign insurer]. While this health insurance policy
9 may provide you with more affordable health insurance coverage than
10 a policy subject to the laws of the State of Nebraska, it may also
11 provide less coverage than would be included in a policy subject to
12 the laws of the State of Nebraska. Please contact your insurance
13 agent to determine what types of health insurance coverage that
14 would be required by the State of Nebraska is excluded from this
15 policy."

16 ~~(2)~~ (3) Any policy of sickness and accident insurance of
17 a domestic insurer may, when issued for delivery in any other state
18 or country, contain any provision permitted or required by the laws
19 of such other state or country.

20 Sec. 10. Section 44-2132, Revised Statutes Cumulative
21 Supplement, 2008, is amended to read:

22 44-2132 (1) Every insurer which is authorized to do
23 business in this state and which is a member of an insurance
24 holding company system shall register with the director, except
25 that registration shall not be required for a foreign insurer

1 either issued a certificate of authority or an authorization
2 by interstate agreement subject to registration requirements and
3 standards adopted by statute or regulation in the jurisdiction of
4 its domicile which are substantially similar to those contained
5 in this section, subsection (1) of section 44-2133, sections
6 44-2134 and 44-2136, and either subsection (2) of section 44-2133
7 or a provision such as the following: Each registered insurer
8 shall keep current the information required to be disclosed in
9 its registration statement by reporting all material changes or
10 additions within fifteen days after the end of the month in which
11 it learns of each such change or addition. Any insurer which is
12 subject to registration under this section shall register within
13 fifteen days after it becomes subject to registration and annually
14 thereafter by May 1 of each year for the previous calendar year
15 unless the director for good cause shown extends the time for
16 such initial or annual registration and then within such extended
17 time. The director may require any insurer which is authorized
18 to do business in the state, which is a member of an insurance
19 holding company system, and which is not subject to registration
20 under this section to furnish a copy of the registration statement,
21 the summary specified in subsection (3) of this section, or other
22 information filed by such insurer with the insurance regulatory
23 authority of its domiciliary jurisdiction.

24 (2) Every insurer subject to registration shall file
25 the registration statement on a form prescribed by the National

1 Association of Insurance Commissioners which shall contain the
2 following current information:

3 (a) The capital structure, general financial condition,
4 ownership, and management of the insurer and any person controlling
5 the insurer;

6 (b) The identity and relationship of every member of the
7 insurance holding company system;

8 (c) The following agreements in force and transactions
9 currently outstanding or which have occurred during the last
10 calendar year between such insurer and its affiliates:

11 (i) Loans, other investments, or purchases, sales, or
12 exchanges of securities of the affiliates by the insurer or of the
13 insurer by its affiliates;

14 (ii) Purchases, sales, or exchanges of assets;

15 (iii) Transactions not in the ordinary course of
16 business;

17 (iv) Guarantees or undertakings for the benefit of an
18 affiliate which result in an actual contingent exposure of the
19 insurer's assets to liability, other than insurance contracts
20 entered into in the ordinary course of the insurer's business;

21 (v) All management agreements, service contracts, and
22 cost-sharing arrangements;

23 (vi) Reinsurance agreements;

24 (vii) Dividends and other distributions to shareholders;

25 and

1 (viii) Consolidated tax allocation agreements;

2 (d) Any pledge of the insurer's stock, including stock
3 of any subsidiary or controlling affiliate, for a loan made to any
4 member of the insurance holding company system; and

5 (e) Other matters concerning transactions between
6 registered insurers and any affiliates as may be included from
7 time to time in any registration forms adopted or approved by the
8 director.

9 (3) All registration statements shall contain a summary
10 outlining all items in the current registration statement
11 representing changes from the prior registration statement.

12 (4) It shall not be necessary to disclose on the
13 registration statement information which is not material for the
14 purposes of this section. Unless the director by rule, regulation,
15 or order provides otherwise, sales, purchases, exchanges, loans,
16 or extensions of credit, investments, or guarantees involving
17 one-half of one percent or less of an insurer's admitted assets
18 as of December 31 next preceding shall not be deemed material for
19 purposes of this section.

20 (5) Subject to the requirements of section 44-2134,
21 each registered insurer shall give notice to the director of
22 all dividends and other distributions to shareholders within five
23 business days following the declaration thereof and shall not pay
24 any such dividends or other distributions to shareholders within
25 ten business days following receipt of such notice by the director

1 unless for good cause shown the director has approved such payment
2 within such ten-business-day period.

3 (6) Any person within an insurance holding company system
4 subject to registration shall be required to provide complete
5 and accurate information to an insurer when such information is
6 reasonably necessary to enable the insurer to comply with the
7 Insurance Holding Company System Act.

8 (7) The director shall terminate the registration of any
9 insurer which demonstrates that it no longer is a member of an
10 insurance holding company system.

11 (8) The director may require or allow two or more
12 affiliated insurers subject to registration under this section to
13 file a consolidated registration statement.

14 (9) The director may allow an insurer which is authorized
15 to do business in this state and which is part of an insurance
16 holding company system to register on behalf of any affiliated
17 insurer which is required to register under subsection (1) of this
18 section and to file all information and material required to be
19 filed under this section.

20 (10) This section shall not apply to any insurer,
21 information, or transaction if and to the extent that the director
22 by rule, regulation, or order exempts the same from this section.

23 (11) Any person may file with the director a disclaimer
24 of affiliation with any authorized insurer or such a disclaimer
25 may be filed by such insurer or any member of an insurance holding

1 company system. The disclaimer shall fully disclose all material
2 relationships and bases for affiliation between such person and
3 such insurer as well as the basis for disclaiming such affiliation.
4 After a disclaimer has been filed, the insurer shall be relieved
5 of any duty to register or report under this section which may
6 arise out of the insurer's relationship with such person unless and
7 until the director disallows such a disclaimer. The director shall
8 disallow such a disclaimer only after furnishing all parties in
9 interest with notice and opportunity to be heard and after making
10 specific findings of fact to support such disallowance.

11 (12) The failure to file a registration statement or
12 any summary of the registration statement thereto required by this
13 section within the time specified for such filing shall be a
14 violation of this section.

15 Sec. 11. Section 44-2710, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 44-2710 In addition to the powers and duties enumerated
18 in the Nebraska Life and Health Insurance Guaranty Association Act:

19 (1) The director shall:

20 (a) Notify the board of directors of the existence of
21 an impaired or insolvent insurer not later than three days after
22 a determination of impairment or insolvency is made or he or she
23 receives notice of impairment or insolvency;

24 (b) Upon request of the board of directors, provide the
25 association with a statement of the premiums in the appropriate

1 states for each member insurer;

2 (c) When an impairment is declared and the amount of the
3 impairment is determined, serve a demand upon the impaired insurer
4 to make good the impairment within a reasonable time. Notice to the
5 impaired insurer shall constitute notice to its shareholders, if
6 any. The failure of the insurer to promptly comply with such demand
7 shall not excuse the association from the performance of its powers
8 and duties under the act;

9 (d) In any liquidation or rehabilitation proceeding
10 under Nebraska law involving a domestic insurer, be appointed
11 as the liquidator or rehabilitator. If a foreign or alien member
12 insurer is subject to a liquidation proceeding in its domiciliary
13 jurisdiction or state of entry, the director shall be appointed
14 conservator; and

15 (e) Transmit to the association all claims on covered
16 policies timely filed with him or her pursuant to the Nebraska
17 Insurers Supervision, Rehabilitation, and Liquidation Act. The
18 association shall then be considered to have been designated as
19 the director's representative pursuant to the act, and it shall
20 proceed to investigate, hear, settle, and determine such claims
21 unless the claimant shall, within thirty days from the date the
22 claim is filed with the director, file with the director a written
23 demand that the claim be processed in the liquidation proceedings
24 as a claim not covered by the Nebraska Life and Health Insurance
25 Guaranty Association Act. In regard to those claims transmitted

1 to the association by the director, the association and claimants
2 shall have all of the rights and obligations and be subject to the
3 same limitations and procedures as are specified in the Nebraska
4 Insurers Supervision, Rehabilitation, and Liquidation Act for the
5 determination of claims;

6 (2) The director may suspend or revoke, after notice
7 and hearing, the certificate of authority or an authorization by
8 interstate agreement to transact the business of insurance in this
9 state of any member insurer which fails to pay an assessment
10 when due or fails to comply with the plan of operation. As an
11 alternative, the director may levy a forfeiture on any member
12 insurer which fails to pay an assessment when due. Such forfeiture
13 shall not exceed five percent of the unpaid assessment per month,
14 but no forfeiture shall be less than one hundred dollars per month;

15 (3) Any action of the board of directors or the
16 association may be appealed to the director by any member
17 insurer if such appeal is taken within thirty days of the action
18 being appealed. Any final action or order of the director may
19 be appealed, and the appeal shall be in accordance with the
20 Administrative Procedure Act; and

21 (4) The liquidator, rehabilitator, or conservator of any
22 impaired or insolvent insurer may notify all interested persons
23 of the effect of the Nebraska Life and Health Insurance Guaranty
24 Association Act.

25 Sec. 12. Section 44-4850, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 44-4850 (1) If a domiciliary liquidator has not been
3 appointed, the director may apply to the district court of
4 Lancaster County by verified petition for an order directing
5 him or her to act as conservator to conserve the property of an
6 alien insurer not domiciled in this state or a foreign insurer on
7 any one or more of the following grounds:

8 (a) Any of the grounds in section 44-4812;

9 (b) That any of its property has been sequestered by
10 official action in its domiciliary state or in any other state;

11 (c) That enough of its property has been sequestered in
12 a foreign country to give reasonable cause to believe that the
13 insurer is or may become insolvent; or

14 (d) (i) That its certificate of authority or authorization
15 by interstate agreement to do business in this state has been
16 revoked or that ~~none~~ no certificate or authorization was ever
17 issued; and

18 (ii) That there are residents of this state with
19 outstanding claims against or outstanding policies issued by such
20 insurer.

21 (2) When an order is sought under subsection (1) of
22 this section, the court shall cause the insurer to be given such
23 notice and time to respond thereto as is reasonable under the
24 circumstances.

25 (3) The court may issue the order in whatever terms it

1 deems appropriate. The filing or recording of the order with the
2 clerk of the district court or the register of deeds of the county
3 in which the principal business of the company is located shall
4 impart the same notice as a deed, bill of sale, or other evidence
5 of title duly filed or recorded with that register of deeds would
6 have imparted.

7 (4) The conservator may at any time petition for and
8 the court may grant an order under section 44-4851 to liquidate
9 assets of a foreign or alien insurer under conservation or, if
10 appropriate, for an order under section 44-4853 to be appointed
11 ancillary receiver.

12 (5) The conservator may at any time petition the court
13 for an order terminating conservation of an insurer. If the court
14 finds that the conservation is no longer necessary, it shall order
15 that the insurer be restored to possession of its property and the
16 control of its business. The court may also make such finding and
17 issue such order at any time upon motion of any interested party,
18 but if such motion is denied all costs shall be assessed against
19 such party.

20 Sec. 13. Section 44-6203, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 44-6203 (1) The Assumption Reinsurance Act shall apply
23 to any insurer authorized to transact business in this state which
24 either assumes or transfers the obligations or risks on contracts
25 of insurance owned by policyholders residing in this state pursuant

1 to an assumption reinsurance agreement. The act shall not relieve
2 any insurer of any other requirements of the insurance laws of
3 this state except as specifically provided in section 44-135 with
4 respect to foreign insurers authorized by interstate agreement.

5 (2) The act shall not apply to:

6 (a) Any reinsurance agreement or transaction in which
7 the ceding insurer continues to remain directly liable for its
8 insurance obligations or risks under the contracts of insurance
9 subject to the reinsurance agreement;

10 (b) The substitution of one insurer for another upon
11 the expiration of insurance coverage pursuant to statutory or
12 contractual requirements and the issuance of a new contract of
13 insurance by another insurer;

14 (c) The transfer of contracts of insurance pursuant to
15 mergers or consolidations of two or more insurers to the extent
16 that those transactions are regulated by law;

17 (d) Any insurer subject to a judicial order of
18 rehabilitation or liquidation; or

19 (e) Any reinsurance agreement or transaction to which a
20 state insurance guaranty association is a party.

21 Sec. 14. This act becomes operative on January 1, 2011.

22 Sec. 15. Original sections 44-114, 44-134, 44-135,
23 44-152, 44-162, 44-304, 44-319.06, 44-710.08, 44-2710, 44-4850, and
24 44-6203, Reissue Revised Statutes of Nebraska, and section 44-2132,
25 Revised Statutes Cumulative Supplement, 2008, are repealed.