

LEGISLATURE OF NEBRASKA
 ONE HUNDRED THIRD LEGISLATURE
 SECOND SESSION
LEGISLATIVE BILL 700

Final Reading

Introduced by Schumacher, 22.

Read first time January 08, 2014

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to insurance; to amend sections 12-1109, 44-165,
 2 44-3524, 44-3719, and 44-5702, Reissue Revised Statutes
 3 of Nebraska, and sections 44-6008 and 44-6016, Revised
 4 Statutes Supplement, 2013; to adopt the Risk Management
 5 and Own Risk and Solvency Assessment Act; to provide
 6 requirements for certain health care sharing ministries;
 7 to change provisions regarding rules and regulations and
 8 cease and desist orders of the Director of Insurance; to
 9 redefine insurer; to change provisions relating to the
 10 Insurers and Health Organizations Risk-Based Capital Act;
 11 to harmonize provisions; to provide operative dates; and
 12 to repeal the original sections.

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

1 Section 1. Sections 1 to 11 of this act shall be known
2 and may be cited as the Risk Management and Own Risk and Solvency
3 Assessment Act.

4 Sec. 2. (1) The purposes of the Risk Management and Own
5 Risk and Solvency Assessment Act are to provide requirements for
6 maintaining a risk management framework and completing an own risk
7 and solvency assessment and to provide guidance and instructions for
8 filing an own risk and solvency assessment summary report with the
9 director.

10 (2) The requirements of the act apply to all insurers
11 domiciled in this state unless exempt pursuant to section 8 of this
12 act.

13 Sec. 3. The Legislature finds and declares that the own
14 risk and solvency assessment summary report will contain confidential
15 and sensitive information related to an insurer's or insurance
16 group's identification of risks that is material and relevant to the
17 insurer or insurance group filing the report. The information will
18 include proprietary and trade secret information that has the
19 potential for harm and competitive disadvantage to the insurer or
20 insurance group if the information is made public. It is the intent
21 of the Legislature that the own risk and solvency assessment summary
22 report shall be a confidential document filed with the director, that
23 the own risk and solvency assessment summary report shall be shared
24 only as provided in the Risk Management and Own Risk and Solvency
25 Assessment Act and to assist the director in the performance of his

1 or her duties, and that in no event shall the own risk and solvency
2 assessment summary report be subject to public disclosure.

3 Sec. 4. For purposes of the Risk Management and Own Risk
4 and Solvency Assessment Act:

5 (1) Director means the Director of Insurance;

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

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

14 (4) Own risk and solvency assessment means a confidential
15 internal assessment, appropriate to the nature, scale, and complexity
16 of an insurer or insurance group, conducted by the insurer or
17 insurance group, of the material and relevant risks associated with
18 the insurer's or insurance group's current business plan and the
19 sufficiency of capital resources to support those risks;

20 (5) Own risk and solvency assessment guidance manual
21 means the own risk and solvency assessment guidance manual prescribed
22 by the director which conforms substantially to the Own Risk and
23 Solvency Assessment Guidance Manual developed and adopted by the
24 National Association of Insurance Commissioners. A change in the own
25 risk and solvency assessment guidance manual shall be effective on

1 the January 1 following the calendar year in which the change has
2 been adopted by the director; and

3 (6) Own risk and solvency assessment summary report means
4 a confidential, high-level summary of an insurer's or insurance
5 group's own risk and solvency assessment.

6 Sec. 5. An insurer shall maintain a risk management
7 framework to assist the insurer with identifying, assessing,
8 monitoring, managing, and reporting on its material and relevant
9 risks. This requirement is satisfied if the insurance group of which
10 the insurer is a member maintains a risk management framework
11 applicable to the operations of the insurer.

12 Sec. 6. Subject to section 8 of this act, an insurer, or
13 the insurance group of which the insurer is a member, shall regularly
14 conduct an own risk and solvency assessment consistent with a process
15 comparable to the own risk and solvency assessment guidance manual.
16 The own risk and solvency assessment shall be conducted no less than
17 annually but also at any time when there are significant changes to
18 the risk profile of the insurer or the insurance group of which the
19 insurer is a member.

20 Sec. 7. (1) Upon the director's request, and no more than
21 once each year, an insurer shall submit to the director an own risk
22 and solvency assessment summary report or any combination of reports
23 that together contain the information described in the own risk and
24 solvency assessment guidance manual applicable to the insurer or the
25 insurance group of which the insurer is a member. Notwithstanding any

1 request from the director, if the insurer is a member of an insurance
2 group, the insurer shall submit the report required by this
3 subsection if the director is the lead state insurance commissioner
4 of the insurance group.

5 (2) The report shall include a signature of the insurer's
6 or insurance group's chief risk officer or other executive having
7 responsibility for the oversight of the insurer's enterprise risk
8 management process attesting to the best of his or her belief and
9 knowledge that the insurer applies the enterprise risk management
10 process described in the own risk and solvency assessment summary
11 report and that a copy of the report has been provided to the
12 insurer's board of directors or the appropriate committee thereof.

13 (3) An insurer may comply with subsection (1) of this
14 section by providing the most recent and substantially similar report
15 provided by the insurer or another member of an insurance group of
16 which the insurer is a member to the insurance commissioner of
17 another state or to a supervisor or regulator of a foreign
18 jurisdiction if that report provides information that is comparable
19 to the information described in the own risk and solvency assessment
20 guidance manual. Any such report in a language other than English
21 must be accompanied by a translation of that report into the English
22 language.

23 (4) The first filing of the own risk and solvency
24 assessment summary report shall be in 2015.

25 Sec. 8. (1) An insurer shall be exempt from the

1 requirements of the Risk Management and Own Risk and Solvency
2 Assessment Act if:

3 (a) The insurer has annual direct written and
4 unaffiliated assumed premium, including international direct and
5 assumed premium but excluding premiums reinsured with the Federal
6 Crop Insurance Corporation and National Flood Insurance Program, of
7 less than five hundred million dollars; and

8 (b) The insurance group of which the insurer is a member
9 has annual direct written and unaffiliated assumed premium, including
10 international direct and assumed premium but excluding premiums
11 reinsured with the Federal Crop Insurance Corporation and National
12 Flood Insurance Program, of less than one billion dollars.

13 (2) If an insurer qualifies for exemption pursuant to
14 subdivision (1)(a) of this section, but the insurance group of which
15 the insurer is a member does not qualify for exemption pursuant to
16 subdivision (1)(b) of this section, then the own risk and solvency
17 assessment summary report required pursuant to section 7 of this act
18 shall include every insurer within the insurance group. This
19 requirement may be satisfied by the submission of more than one own
20 risk and solvency assessment summary report for any combination of
21 insurers if the combination of reports includes every insurer within
22 the insurance group.

23 (3) If an insurer does not qualify for exemption pursuant
24 to subdivision (1)(a) of this section, but the insurance group of
25 which the insurer is a member qualifies for exemption pursuant to

1 subdivision (1)(b) of this section, then the only own risk and
2 solvency assessment summary report required pursuant to section 7 of
3 this act shall be the report applicable to that insurer.

4 (4) An insurer that does not qualify for exemption
5 pursuant to subsection (1) of this section may apply to the director
6 for a waiver from the requirements of the act based upon unique
7 circumstances. In deciding whether to grant the insurer's request for
8 waiver, the director may consider the type and volume of business
9 written, ownership and organizational structure, and any other factor
10 the director considers relevant to the insurer or insurance group of
11 which the insurer is a member. If the insurer is part of an insurance
12 group with insurers domiciled in more than one state, the director
13 shall coordinate with the lead state insurance commissioner and with
14 the other domiciliary insurance commissioners in considering whether
15 to grant the insurer's request for a waiver.

16 (5) Notwithstanding the exemptions stated in this
17 section:

18 (a) The director may require that an insurer maintain a
19 risk management framework, conduct an own risk and solvency
20 assessment, and file an own risk and solvency assessment summary
21 report based on unique circumstances, including, but not limited to,
22 the type and volume of business written, ownership and organizational
23 structure, federal agency requests, and international supervisor
24 requests; and

25 (b) The director may require that an insurer maintain a

1 risk management framework, conduct an own risk and solvency
2 assessment, and file an own risk and solvency assessment summary
3 report if the insurer has risk-based capital for a company action
4 level event as set forth in section 44-6016, meets one or more of the
5 standards of an insurer deemed to be in hazardous financial condition
6 as defined by rule and regulation adopted and promulgated by the
7 director to define standards for companies deemed to be in hazardous
8 financial condition, or otherwise exhibits qualities of a troubled
9 insurer as determined by the director.

10 (6) If an insurer that qualified for an exemption
11 pursuant to subsection (1) of this section no longer qualifies for
12 that exemption due to changes in premium as reflected in the
13 insurer's most recent annual statement or in the most recent annual
14 statements of the insurers within the insurance group of which the
15 insurer is a member, the insurer shall have one year after the year
16 the threshold is exceeded to comply with the requirements of the act.

17 Sec. 9. (1) An own risk and solvency assessment summary
18 report shall be prepared consistent with the own risk and solvency
19 assessment guidance manual, subject to the requirements of subsection
20 (2) of this section. Documentation and supporting information shall
21 be maintained and made available upon examination or upon request of
22 the director.

23 (2) The review of the own risk and solvency assessment
24 summary report, and any additional requests for information, shall be
25 made using similar procedures currently used in the analysis and

1 examination of multistate or global insurers and insurance groups.

2 Sec. 10. (1) Documents, materials, or other information,
3 including the own risk and solvency assessment summary report, in the
4 possession or control of the director that are obtained by, created
5 by, or disclosed to the director or any other person under the Risk
6 Management and Own Risk and Solvency Assessment Act, is recognized by
7 this state as being proprietary and to contain trade secrets. All
8 such documents, materials, or other information shall be confidential
9 by law and privileged, shall not be a public record subject to
10 disclosure by the director pursuant to sections 84-712 to 84-712.09,
11 shall not be subject to subpoena, and shall not be subject to
12 discovery or admissible in evidence in any private civil action. The
13 director may use the documents, materials, or other information in
14 the furtherance of any regulatory or legal action brought as a part
15 of the director's official duties. The director shall not otherwise
16 make the documents, materials, or other information public without
17 the prior written consent of the insurer.

18 (2) Neither the director nor any person who received
19 documents, materials, or other own risk and solvency assessment
20 related information through examination or otherwise while acting
21 under the authority of the director or with whom such documents,
22 materials, or other information are shared pursuant to the act shall
23 be permitted or required to testify in any private civil action
24 concerning any confidential documents, materials, or information
25 subject to subsection (1) of this section.

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

3 (a) May, upon request, share documents, materials, or
4 other own risk and solvency assessment information, including the
5 confidential and privileged documents, materials, or information
6 subject to subsection (1) of this section, including proprietary and
7 trade secret documents and materials, with other state, federal, and
8 international financial regulatory agencies, including members of any
9 supervisory college under section 44-2137.01, with the National
10 Association of Insurance Commissioners, and with any third-party
11 consultants designated by the director, if the recipient agrees in
12 writing to maintain the confidentiality and privileged status of the
13 documents, materials, or other information and has verified in
14 writing the legal authority to maintain confidentiality; and

15 (b) May receive documents, materials, or other own risk
16 and solvency assessment information, including otherwise confidential
17 and privileged documents, materials, or information, including
18 proprietary and trade secret documents and materials, from regulatory
19 officials of other foreign or domestic jurisdictions, including
20 members of any supervisory college under section 44-2137.01, and from
21 the National Association of Insurance Commissioners, and shall
22 maintain as confidential or privileged any documents, materials, or
23 information received with notice or the understanding that it is
24 confidential or privileged under the laws of the jurisdiction that is
25 the source of the document, material, or information.

1 (4) The director shall enter into a written agreement
2 with the National Association of Insurance Commissioners or a third-
3 party consultant governing sharing and use of information provided
4 pursuant to the act that:

5 (a) Specifies procedures and protocols regarding the
6 confidentiality and security of information shared with the National
7 Association of Insurance Commissioners or a third-party consultant
8 pursuant to the act, including procedures and protocols for sharing
9 by the National Association of Insurance Commissioners with other
10 state regulators from states in which the insurance group has
11 domiciled insurers. The agreement shall provide that the recipient
12 agrees in writing to maintain the confidentiality and privileged
13 status of the documents, materials, or other information and has
14 verified in writing the legal authority to maintain confidentiality;

15 (b) Specifies that ownership of information shared with
16 the National Association of Insurance Commissioners or a third-party
17 consultant pursuant to the act remains with the director and that the
18 National Association of Insurance Commissioners' or a third-party
19 consultant's use of the information is subject to the direction of
20 the director;

21 (c) Prohibits the National Association of Insurance
22 Commissioners or a third-party consultant from storing the
23 information shared pursuant to the act in a permanent data base after
24 the underlying analysis is completed;

25 (d) Requires prompt notice to be given to an insurer

1 whose confidential information in the possession of the National
2 Association of Insurance Commissioners or a third-party consultant
3 pursuant to the act is subject to a request or subpoena to the
4 National Association of Insurance Commissioners or a third-party
5 consultant for disclosure or production;

6 (e) Requires the National Association of Insurance
7 Commissioners or a third-party consultant to consent to intervention
8 by an insurer in any judicial or administrative action in which the
9 National Association of Insurance Commissioners or a third-party
10 consultant may be required to disclose confidential information about
11 the insurer shared with the National Association of Insurance
12 Commissioners or a third-party consultant pursuant to the act; and

13 (f) As part of the retention process, requires a third-
14 party consultant to verify to the director, with notice to the
15 insurer, that it is free of any conflict of interest and that it has
16 internal procedures in place to monitor compliance with any conflicts
17 and to comply with the act's confidentiality standards and
18 requirements. The retention agreement with a third-party consultant
19 shall require prior written consent of the insurer before making
20 public any information provided pursuant to the act as required in
21 subsection (1) of this section.

22 (5) The sharing of information and documents by the
23 director pursuant to the act shall not constitute a delegation of
24 regulatory authority or rulemaking, and the director is solely
25 responsible for the administration, execution, and enforcement of the

1 provisions of the act.

2 (6) No waiver of any applicable privilege or claim of
3 confidentiality in the documents, materials, or other own risk and
4 solvency assessment information shall occur as a result of disclosure
5 of such documents, materials, or other information to the director
6 under this section or as a result of sharing as authorized in the
7 act.

8 (7) Documents, materials, or other information in the
9 possession or control of the National Association of Insurance
10 Commissioners or a third-party consultant pursuant to the act shall
11 be confidential by law and privileged, shall not be a public record
12 subject to disclosure by the director pursuant to sections 84-712 to
13 84-712.09, shall not be subject to subpoena, and shall not be subject
14 to discovery or admissible in evidence in any private civil action.

15 Sec. 11. Any insurer failing, without just cause, to
16 timely file its own risk and solvency assessment summary report as
17 required in the Risk Management and Own Risk and Solvency Assessment
18 Act shall be required, after notice and hearing, to pay a penalty of
19 not to exceed two hundred dollars for each day's delay. The maximum
20 penalty under this section is ten thousand dollars. The director may
21 reduce the penalty if the insurer demonstrates to the director that
22 the imposition of the penalty would constitute a financial hardship
23 to the insurer. The director shall remit any penalties collected
24 under this section to the State Treasurer for distribution in
25 accordance with Article VII, section 5, of the Constitution of

1 Nebraska.

2 Sec. 12. (1) A health care sharing ministry shall not be
3 considered to be engaging in the business of insurance for purposes
4 of the insurance laws of this state.

5 (2) For purposes of this section, health care sharing
6 ministry means a faith-based, nonprofit organization that is tax-
7 exempt under the Internal Revenue Code which:

8 (a) Limits its participants to those who are of a similar
9 faith;

10 (b) Acts as a facilitator among participants who have
11 financial or medical needs and matches those participants with other
12 participants with the present ability to assist those with financial
13 or medical needs in accordance with criteria established by the
14 health care sharing ministry;

15 (c) Provides for the financial or medical needs of a
16 participant through contributions from one participant to another;

17 (d) Provides amounts that participants may contribute
18 with no assumption of risk or promise to pay among the participants
19 and no assumption of risk or promise to pay by the health care
20 sharing ministry to the participants;

21 (e) Provides a written monthly statement to all
22 participants that lists the total dollar amount of qualified needs
23 submitted to the health care sharing ministry, as well as the amount
24 actually published or assigned to participants for their
25 contribution;

1 (f) Provides a written disclaimer on or accompanying all
2 applications and guideline materials distributed by or on behalf of
3 the organization that reads, in substance:

4 IMPORTANT NOTICE. This organization is not an insurance
5 company, and its product should never be considered insurance. If you
6 join this organization instead of purchasing health insurance, you
7 will be considered uninsured. By the terms of this agreement, whether
8 anyone chooses to assist you with your medical bills as a participant
9 of this organization will be totally voluntary, and neither the
10 organization nor any participant can be compelled by law to
11 contribute toward your medical bills. Regardless of whether you
12 receive payment for medical expenses or whether this organization
13 continues to operate, you are always personally responsible for the
14 payment of your own medical bills. This organization is not regulated
15 by the Nebraska Department of Insurance. You should review this
16 organization's guidelines carefully to be sure you understand any
17 limitations that may affect your personal medical and financial
18 needs;

19 (g) Has participants which retain participation even
20 after they develop a medical condition; and

21 (h) Conducts an annual audit which is performed by an
22 independent certified public accounting firm in accordance with
23 generally accepted accounting principles and which is made available
24 to the public upon request.

25 Sec. 13. Section 12-1109, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 12-1109 The director ~~shall~~may adopt and promulgate rules
3 and regulations necessary to carry out and enforce the Burial Pre-
4 Need Sale Act.

5 Sec. 14. Section 44-165, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 44-165 (1)(a) A financial conglomerate may submit to the
8 jurisdiction of the Director of Insurance for supervision on a
9 consolidated basis under this section. Supervision under this section
10 shall be in addition to all statutory and regulatory requirements
11 imposed on domestic insurers and shall be for the purpose of
12 determining how the operations of the financial conglomerate impact
13 insurance operations.

14 (b) For purposes of this section:

15 (i) Control has the same meaning as in section 44-2121;
16 and

17 (ii) Financial conglomerate means either an insurance
18 company domiciled in Nebraska or a person established under the laws
19 of the United States, any state, or the District of Columbia which
20 directly or indirectly controls an insurance company domiciled in
21 Nebraska. Financial conglomerate includes the person applying for
22 supervision under this section and all entities, whether insurance
23 companies or otherwise, to the extent the entities are controlled by
24 such person.

25 (2) The director may approve any application for

1 supervision under this section that meets the requirements of this
2 section and the rules and regulations adopted and promulgated under
3 this section.

4 (3)(a) The director ~~shall~~may adopt and promulgate rules
5 and regulations for supervision of a financial conglomerate,
6 including all persons controlled by a financial conglomerate, that
7 will permit the director to assess at the level of the financial
8 conglomerate the financial situation of the financial conglomerate,
9 including solvency, risk concentration, and intra-group transactions.

10 (b) Such rules and regulations shall require the
11 financial conglomerate to:

12 (i) Have in place sufficient capital adequacy policies at
13 the level of the financial conglomerate;

14 (ii) Report to the director at least annually any
15 significant risk concentration at the level of the financial
16 conglomerate;

17 (iii) Report to the director at least annually all
18 significant intra-group transactions of regulated entities within a
19 financial conglomerate. Such reporting shall be in addition to all
20 reports required under any other provision of Chapter 44; and

21 (iv) Have in place at the level of the financial
22 conglomerate adequate risk management processes and internal control
23 mechanisms, including sound administrative and accounting procedures.

24 (c) In adopting and promulgating the rules and
25 regulations, the director:

1 (i) Shall consider the rules and regulations that may be
2 adopted by a member state of the European Union, the European Union,
3 or any other country for the supervision of financial conglomerates;

4 (ii) Shall require the filing of such information as the
5 director may determine;

6 (iii) Shall include standards and processes for effective
7 qualitative group assessment, quantitative group assessment including
8 capital adequacy, affiliate transaction, and risk concentration
9 assessment, risks and internal capital assessments, disclosure
10 requirements, and investigation and enforcement powers;

11 (iv) Shall state that supervision of financial
12 conglomerates concerns how the operations of the financial
13 conglomerate impact the insurance operations;

14 (v) Shall adopt an application fee in an amount not to
15 exceed the amount necessary to recover the cost of review and
16 analysis of the application; and

17 (vi) May verify information received under this section.

18 (4)(a) If it appears to the director that a financial
19 conglomerate that submits to the jurisdiction of the director under
20 this section, or any director, officer, employee, or agent thereof,
21 willfully violates this section or the rules and regulations adopted
22 and promulgated under this section, the director may order the
23 financial conglomerate to cease and desist immediately any such
24 activity. After notice and hearing, the director may order the
25 financial conglomerate to void any contracts between the financial

1 conglomerate and any of its affiliates or among affiliates of the
2 financial conglomerate and restore the status quo if such action is
3 in the best interest of policyholders, creditors, or the public.

4 (b) If it appears to the director that any financial
5 conglomerate that submits to the jurisdiction of the director under
6 this section, or any director, officer, employee, or agent thereof,
7 has committed or is about to commit a violation of this section or
8 the rules and regulations adopted and promulgated under this section,
9 the director may apply to the district court of Lancaster County for
10 an order enjoining such financial conglomerate, director, officer,
11 employee, or agent from violating or continuing to violate this
12 section or the rules and regulations adopted and promulgated under
13 this section and for such other equitable relief as the nature of the
14 case and the interest of the financial conglomerate's policyholders,
15 creditors, or the public may require.

16 (c)(i) Any financial conglomerate that fails, without
17 just cause, to provide information which may be required under the
18 rules and regulations adopted and promulgated under this section may
19 be required by the director, after notice and hearing, to pay an
20 administrative penalty of one hundred dollars for each day's delay
21 not to exceed an aggregate penalty of ten thousand dollars. The
22 director may reduce the penalty if the financial conglomerate
23 demonstrates to the director that the imposition of the penalty would
24 constitute a financial hardship to the financial conglomerate.

25 (ii) Any financial conglomerate that fails to notify the

1 director of any action for which such notification may be required
2 under the rules and regulations adopted and promulgated under this
3 section may be required by the director, after notice and hearing, to
4 pay an administrative penalty of not more than two thousand five
5 hundred dollars per violation.

6 (iii) Any violation of this section or the rules and
7 regulations adopted and promulgated under this section shall be an
8 unfair trade practice under the Unfair Insurance Trade Practices Act
9 in addition to any other remedies and penalties available under the
10 laws of this state.

11 (d) Any director or officer of a financial conglomerate
12 that submits to the jurisdiction of the director under this section
13 who knowingly violates or assents to any officer or agent of the
14 financial conglomerate to violate this section or the rules and
15 regulations adopted and promulgated under this section may be
16 required by the director, after notice and hearing, to pay in his or
17 her individual capacity an administrative penalty of not more than
18 five thousand dollars per violation. In determining the amount of the
19 penalty, the director shall take into account the appropriateness of
20 the penalty with respect to the gravity of the violation, the history
21 of previous violations, and such other matters as justice may
22 require.

23 (e) After notice and hearing, the director may terminate
24 the supervision of any financial conglomerate under this section if
25 it ceases to qualify as a financial conglomerate under this section

1 or the rules and regulations adopted and promulgated under this
2 section.

3 (f) If it appears to the director that any person has
4 committed a violation of this section or the rules and regulations
5 adopted and promulgated under this section which so impairs the
6 financial condition of a domestic insurer that submits to the
7 jurisdiction of the director under this section as to threaten
8 insolvency or make the further transaction of business by such
9 financial conglomerate hazardous to its policyholders or the public,
10 the director may proceed as provided in the Nebraska Insurers
11 Supervision, Rehabilitation, and Liquidation Act to take possession
12 of the property of such domestic insurer and to conduct the business
13 thereof.

14 (g) If it appears to the director that any person that
15 submits to the jurisdiction of the director under this section has
16 committed a violation of this section or the rules and regulations
17 adopted and promulgated under this section which makes the continued
18 operation of an insurer contrary to the interests of policyholders or
19 the public, the director may, after giving notice and an opportunity
20 to be heard, suspend, revoke, or refuse to renew such insurer's
21 license or authority to do business in this state for such period as
22 the director finds is required for the protection of policyholders or
23 the public. Any such determination shall be accompanied by specific
24 findings of fact and conclusions of law.

25 (h)(i) Any financial conglomerate that submits to the

1 jurisdiction of the director under this section that willfully
2 violates this section or the rules and regulations adopted and
3 promulgated under this section shall be guilty of a Class IV felony.

4 (ii) Any director, officer, employee, or agent of a
5 financial conglomerate that submits to the jurisdiction of the
6 director under this section who willfully violates this section or
7 the rules and regulations adopted and promulgated under this section
8 or who willfully and knowingly subscribes to or makes or causes to be
9 made any false statements, false reports, or false filings with the
10 intent to deceive the director in the performance of his or her
11 duties under this section or the rules and regulations adopted and
12 promulgated under this section shall be guilty of a Class IV felony.

13 (iii) Any person aggrieved by any act, determination,
14 order, or other action of the director pursuant to this section or
15 the rules and regulations adopted and promulgated under this section
16 may appeal. The appeal shall be in accordance with the Administrative
17 Procedure Act.

18 (iv) Any person aggrieved by any failure of the director
19 to act or make a determination required by this section or the rules
20 and regulations adopted and promulgated under this section may
21 petition the district court of Lancaster County for a writ in the
22 nature of a mandamus or a peremptory mandamus directing the director
23 to act or make such determination forthwith.

24 (i) The powers, remedies, procedures, and penalties
25 governing financial conglomerates under this section shall be in

1 addition to any other provisions provided by law.

2 (5)(a) The director may contract with such qualified
3 persons as the director deems necessary to allow the director to
4 perform any duties and responsibilities under this section.

5 (b) The reasonable expenses of supervision of a financial
6 conglomerate under this section shall be fixed and determined by the
7 director who shall collect the same from the supervised financial
8 conglomerate. The financial conglomerate shall reimburse the amount
9 upon presentation of a statement by the director. All money collected
10 by the director for supervision of financial conglomerates pursuant
11 to this section shall be remitted in accordance with section 44-116.

12 (c) All information, documents, and copies thereof
13 obtained by or disclosed to the director pursuant to this section
14 shall be held by the director in accordance with sections 44-154 and
15 44-2138.

16 Sec. 15. Section 44-3524, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 44-3524 (1) The director may issue an order ~~and notice of~~
19 ~~hearing~~ instructing a motor vehicle service contract provider to
20 cease and desist from selling or offering for sale motor vehicle
21 service contracts if the director determines that the provider has
22 failed to comply with the Motor Vehicle Service Contract
23 Reimbursement Insurance Act. At the same time the order is issued,
24 the director shall serve notice to the motor vehicle service provider
25 of the reasons for such order and that the motor vehicle service

1 provider may request a hearing in writing within ten business days
2 after receipt of the order. If a hearing is requested, the director
3 shall schedule a hearing within ten business days after receipt of
4 the request. The hearing shall be conducted in accordance with the
5 Administrative Procedure Act. If a hearing is not requested and none
6 is ordered by the director, the order shall remain in effect until
7 modified or vacated by the director.

8 (2) Upon the failure of a motor vehicle service contract
9 provider to obey a cease and desist order issued by the director, the
10 director may give notice in writing of the failure to the Attorney
11 General who may commence an action against the provider to enjoin the
12 provider from selling or offering for sale motor vehicle service
13 contracts until the provider complies with the act. The district
14 court may issue the injunction.

15 Sec. 16. Section 44-3719, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 44-3719 The director shall administer and enforce the
18 provisions of sections 44-3701 to 44-3721 and ~~shall publish, may~~
19 adopt, and promulgate rules and regulations in accordance with
20 sections 44-3701 to 44-3721.

21 Sec. 17. Section 44-5702, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 44-5702 For purposes of the Producer-Controlled Property
24 and Casualty Insurer Act:

25 (1) Accredited state shall mean a state in which the

1 insurance department or regulatory agency has qualified as meeting
2 the minimum financial regulatory standards established and
3 promulgated from time to time by the National Association of
4 Insurance Commissioners;

5 (2) Captive insurers shall mean insurance companies owned
6 by another organization the exclusive purpose of which is to insure
7 risks of the parent organization and affiliated companies or, in the
8 case of groups and associations, insurance organizations owned by the
9 insureds the exclusive purpose of which is to insure risks to member
10 organizations or group members and their affiliates;

11 (3) Control or controlled shall have the same meaning as
12 in section 44-2121;

13 (4) Controlled insurer shall mean an insurer which is
14 controlled, directly or indirectly, by a producer;

15 (5) Controlling producer shall mean a producer which,
16 directly or indirectly, controls an insurer;

17 (6) Director shall mean the Director of Insurance;

18 (7) Insurer shall mean any person, firm, association, or
19 corporation holding a certificate of authority to transact property
20 and casualty insurance business in this state. Insurer shall not
21 include:

22 ~~(a) Risk retention groups as defined in the Superfund~~
23 ~~Amendments Reauthorization Act of 1986, Public Law 99-499, the Risk~~
24 ~~Retention Act, 15 U.S.C. 3901 et seq., and the Risk Retention Act;~~

25 ~~(b)~~ (a) Residual market pools and joint underwriting

1 authorities or associations; and

2 ~~(e)-(b)~~ Captive insurers other than risk retention groups
3 as defined in 15 U.S.C. 3901 et seq. and 42 U.S.C. 9671, as such
4 sections existed on January 1, 2014; and

5 (8) Producer shall mean an insurance broker or any other
6 person, firm, association, or corporation when, for any compensation,
7 commission, or other thing of value, such person, firm, association,
8 or corporation acts or aids in any manner in soliciting, negotiating,
9 or procuring the making of any insurance contract on behalf of an
10 insured other than the person, firm, association, or corporation.

11 Sec. 18. Section 44-6008, Revised Statutes Supplement,
12 2013, is amended to read:

13 44-6008 Insurer means an insurer as defined in section
14 44-103 authorized to transact the business of insurance, except that
15 insurer does not include health organizations, unincorporated mutual
16 associations, assessment associations, health maintenance
17 organizations, prepaid dental service corporations, prepaid limited
18 health service organizations, monoline mortgage guaranty insurers,
19 monoline financial guaranty insurers, title insurers, prepaid legal
20 corporations, intergovernmental risk management pools, and any other
21 kind of insurer to which the application of the Insurers and Health
22 Organizations Risk-Based Capital Act, in the determination of the
23 director, would be clearly inappropriate. Insurer includes a risk
24 retention group.

25 Insurer, when referring to life and health insurers,

1 means an insurer authorized to transact life insurance business and
2 sickness and accident insurance business specified in subdivisions
3 (1) through (4) of section 44-201, or any combination thereof, and
4 also includes fraternal benefit societies authorized to transact
5 business specified in sections 44-1072 to 44-10,109.

6 Insurer, when referring to property and casualty
7 insurers, means an insurer authorized to transact property insurance
8 business and casualty insurance business specified in subdivisions
9 (5) through (14) and (16) through (20) of section 44-201, or any
10 combination thereof, and also includes an insurer authorized to
11 transact insurance business specified in subdivision (4) of section
12 44-201 if also authorized to transact insurance business specified in
13 subdivisions (5) through (14) and (16) through (20) of section
14 44-201.

15 Sec. 19. Section 44-6016, Revised Statutes Supplement,
16 2013, is amended to read:

17 44-6016 (1) Company action level event means any of the
18 following events:

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

21 (i) The insurer's or health organization's total adjusted
22 capital is greater than or equal to its regulatory action level risk-
23 based capital but less than its company action level risk-based
24 capital;

25 (ii) If a life and health insurer or a fraternal benefit

1 society, the insurer or society has total adjusted capital which is
2 greater than or equal to its company action level risk-based capital
3 but less than the product of its authorized control level risk-based
4 capital and ~~2.5~~3.0 and has a negative trend; ~~or~~

5 (iii) If a property and casualty insurer, the insurer has
6 total adjusted capital which is greater than or equal to its company
7 action level risk-based capital but less than the product of its
8 authorized control level risk-based capital and 3.0 and triggers the
9 trend test determined in accordance with the trend test calculation
10 included in the property and casualty risk-based capital
11 instructions; or

12 (iv) If a health organization has total adjusted capital
13 which is greater than or equal to its company action level risk-based
14 capital but less than the product of its authorized control level
15 risk-based capital and 3.0 and triggers the trend test determined in
16 accordance with the trend test calculation included in the health
17 risk-based capital instructions;

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

23 (c) If, pursuant to section 44-6020, the insurer or
24 health organization challenges an adjusted risk-based capital report
25 that indicates an event described in subdivision (1)(a) of this

1 section, the notification by the director to the insurer or health
2 organization that the director has, after a hearing, rejected the
3 insurer's or health organization's challenge.

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

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

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

12 (c) Provide projections of the insurer's or health
13 organization's financial results in the current year and at least the
14 four succeeding years in the case of an insurer or at least the two
15 succeeding years in the case of a health organization, both in the
16 absence of proposed corrective actions and giving effect to the
17 proposed corrective actions, including projections of statutory
18 balance sheets, operating income, net income, capital and surplus,
19 and risk-based capital levels. The projections for both new and
20 renewal business may include separate projections for each major line
21 of business and separately identify each significant income, expense,
22 and benefit component;

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

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

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

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

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

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

1 by reference any revisions proposed by the director. The insurer or
2 health organization shall submit the revised risk-based capital plan
3 to the director:

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

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

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

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

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

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

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

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

12 Sec. 20. Sections 1 to 11 of this act become operative on
13 January 1, 2015. The other sections of this act become operative on
14 their effective date.

15 Sec. 21. Original sections 12-1109, 44-165, 44-3524,
16 44-3719, and 44-5702, Reissue Revised Statutes of Nebraska, and
17 sections 44-6008 and 44-6016, Revised Statutes Supplement, 2013, are
18 repealed.