

LEGISLATURE OF NEBRASKA  
ONE HUNDRED THIRD LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 426**

Introduced by Howard, 9.

Read first time January 22, 2013

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to insurance; to amend sections 44-1090,  
2 44-6007.02, 44-6008, 44-6009, 44-6015, and 44-6016,  
3 Reissue Revised Statutes of Nebraska; to change  
4 provisions relating to fraternal benefit societies and  
5 risk-based capital; to harmonize provisions; and to  
6 repeal the original sections.

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

1           Section 1. Section 44-1090, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           44-1090 (1) Every society authorized to do business in  
4 this state shall issue to each owner of a benefit contract a  
5 certificate specifying the amount of benefits provided by the  
6 contract. The certificate, together with any riders or endorsements  
7 attached thereto, the laws of the society, the application for  
8 membership, the application for insurance and declaration of  
9 insurability, if any, signed by the applicant, and all amendments to  
10 each thereof, shall constitute the benefit contract, as of the date  
11 of issuance, between the society and the owner, and the certificate  
12 shall so state. A copy of the application for insurance and  
13 declaration of insurability, if any, shall be endorsed upon or  
14 attached to the certificate. All statements on the application shall  
15 be representations and not warranties. Any waiver of this subsection  
16 shall be void.

17           (2) Any changes, additions, or amendments to the laws of  
18 the society duly made or enacted subsequent to the issuance of the  
19 certificate shall bind the owner and the beneficiaries and shall  
20 govern and control the benefit contract in all respects the same as  
21 though such changes, additions, or amendments had been made prior to  
22 and were in force at the time of the application for insurance,  
23 except that no change, addition, or amendment shall destroy or  
24 diminish benefits which the society contracted to give the owner as  
25 of the date of issuance of the contract.

1                   (3) Any person upon whose life a benefit contract is  
2 issued prior to attaining the age of majority shall be bound by the  
3 terms of the application and certificate and by all the laws and  
4 rules of the society to the same extent as though the age of majority  
5 had been attained at the time of application.

6                   (4) A society shall provide in its laws that if its  
7 reserves as to all or any class of certificates become impaired its  
8 board of directors or corresponding body may require that there shall  
9 be paid by the owner to the society the amount of the owner's  
10 equitable proportion of such deficiency as ascertained by its board  
11 and that if the payment is not made either (a) it shall stand as an  
12 indebtedness against the certificate and draw interest not to exceed  
13 the rate specified for certificate loans under the certificates or  
14 (b) in lieu of or in combination with subdivision (a) of this  
15 subsection, the owner may accept a proportionate reduction in  
16 benefits under the certificate. The society may specify the manner of  
17 the election and which alternative is to be presumed if no election  
18 is made.

19                   (5) A domestic society may assess owners as described in  
20 subsection (4) of this section only after such assessment is filed  
21 with the Director of Insurance and approved by him or her. In the  
22 case of a foreign or alien society, notice of an assessment shall be  
23 provided to the director at least thirty days before the effective  
24 date of the assessment. The director shall have the authority to  
25 prohibit any foreign or alien society that has assessed its owners

1 from issuing any new contracts of insurance in this state.

2 ~~(5)~~(6) Copies of any of the documents mentioned in this  
3 section, certified by the secretary or corresponding officer of the  
4 society, shall be received in evidence of the terms and conditions  
5 thereof.

6 ~~(6)~~(7) No certificate shall be delivered or issued for  
7 delivery in this state unless a copy of the form has been filed with  
8 the Director of Insurance in the manner provided for like policies  
9 issued by life insurers in this state. Every life, accident, health,  
10 or disability insurance certificate and every annuity certificate  
11 issued on or after one year from September 6, 1985, shall meet the  
12 standard contract provision requirements not inconsistent with  
13 sections 44-1072 to 44-10,109 for like policies issued by life  
14 insurers in this state, except that a society may provide for a grace  
15 period for payment of premiums of one full month in its certificates.  
16 The certificate shall also contain a provision stating the amount of  
17 premiums which are payable under the certificate and a provision  
18 reciting or setting forth the substance of any sections of the  
19 society's laws or rules in force at the time of issuance of the  
20 certificate which, if violated, will result in the termination or  
21 reduction of benefits payable under the certificate. If the laws of  
22 the society provide for expulsion or suspension of a member, the  
23 certificate shall also contain a provision that any member so  
24 expelled or suspended, except for nonpayment of a premium or within  
25 the contestable period for material misrepresentation in the

1 application for membership or insurance, shall have the privilege of  
2 maintaining the certificate in force by continuing payment of the  
3 required premium.

4 ~~(7)~~(8) Benefit contracts issued on the lives of persons  
5 younger than the society's minimum age for adult membership may  
6 provide for transfer of control or ownership to the insured at an age  
7 specified in the certificate. A society may require approval of an  
8 application for membership in order to effect this transfer and may  
9 provide in all other respects for the regulation, government, and  
10 control of such certificates and all rights, obligations, and  
11 liabilities incident thereto and connected therewith. Ownership  
12 rights prior to such transfer shall be specified in the certificate.

13 ~~(8)~~(9) A society may specify the terms and conditions on  
14 which benefit contracts may be assigned.

15 Sec. 2. Section 44-6007.02, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17 44-6007.02 Health organization means a health maintenance  
18 organization, prepaid limited health service organization, prepaid  
19 dental service corporation, or other managed care organization.  
20 Health organization does not include a life and health insurer, a  
21 fraternal benefit society, or a property and casualty insurer as  
22 defined in section 44-6008 that is otherwise subject to either life  
23 and health or property and casualty risk-based capital requirements.

24 Sec. 3. Section 44-6008, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1                   44-6008 Insurer means an insurer as defined in section  
2 44-103 authorized to transact the business of insurance, except that  
3 insurer does not include health organizations, unincorporated mutual  
4 associations, assessment associations, fraternal benefit societies,  
5 health maintenance organizations, prepaid dental service  
6 corporations, prepaid limited health service organizations, monoline  
7 mortgage guaranty insurers, monoline financial guaranty insurers,  
8 title insurers, prepaid legal corporations, intergovernmental risk  
9 management pools, and any other kind of insurer to which the  
10 application of the Insurers and Health Organizations Risk-Based  
11 Capital Act, in the determination of the director, would be clearly  
12 inappropriate.

13                   Insurer, when referring to life and health insurers,  
14 means an insurer authorized to transact life insurance business and  
15 sickness and accident insurance business specified in subdivisions  
16 (1) through (4) of section 44-201, or any combination thereof, and  
17 also includes fraternal benefit societies authorized to transact  
18 business specified in sections 44-1072 to 44-10,109.

19                   Insurer, when referring to property and casualty  
20 insurers, means an insurer authorized to transact property insurance  
21 business and casualty insurance business specified in subdivisions  
22 (5) through (14) and (16) through (20) of section 44-201, or any  
23 combination thereof, and also includes an insurer authorized to  
24 transact insurance business specified in subdivision (4) of section  
25 44-201 if also authorized to transact insurance business specified in

1 subdivisions (5) through (14) and (16) through (20) of section  
2 44-201.

3           Sec. 4. Section 44-6009, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           44-6009 Negative trend, with respect to a life and health  
6 insurer or a fraternal benefit society, means a negative trend over a  
7 period of time, as determined in accordance with the trend test  
8 calculation included in the life risk-based capital instructions.

9           Sec. 5. Section 44-6015, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           44-6015 (1) Every domestic insurer or domestic health  
12 organization shall annually, on or prior to March 1, referred to in  
13 this section as the filing date, prepare and submit to the director a  
14 risk-based capital report of its risk-based capital levels as of the  
15 end of the calendar year just ended, in a form and containing such  
16 information as is required by the risk-based capital instructions. In  
17 addition, every domestic insurer or domestic health organization  
18 shall file its risk-based capital report:

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

22           (b) With the insurance commissioner in any state in which  
23 the insurer or health organization is authorized to do business if  
24 such insurance commissioner has notified the insurer or health  
25 organization of its request in writing, in which case the insurer or

1 health organization shall file its risk-based capital report not  
2 later than the later of:

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

5 (ii) The filing date.

6 (2) A life and health insurer's or a fraternal benefit  
7 society's risk-based capital shall be determined in accordance with  
8 the formula set forth in the risk-based capital instructions. The  
9 formula shall take into account and may adjust for the covariance  
10 between:

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

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

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

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

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

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

25 (a) Asset risk;

1           (b) Credit risk;  
2           (c) Underwriting risk; and  
3           (d) All other business risks and such other relevant  
4 risks as are set forth in the risk-based capital instructions.

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

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

12           (a) Asset risk;  
13           (b) Credit risk;  
14           (c) Underwriting risk; and  
15           (d) All other business risks and such other relevant  
16 risks as are set forth in the risk-based capital instructions.

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

20           (5) An excess of capital over the amount produced by the  
21 risk-based capital requirements contained in the Insurers and Health  
22 Organizations Risk-Based Capital Act and the formulas, schedules, and  
23 instructions referenced in the act is desirable in the business of  
24 insurance. Accordingly, insurers and health organizations should seek  
25 to maintain capital above the risk-based capital levels required by

1 the act. Additional capital is used and useful in the insurance  
2 business and helps to secure an insurer or a health organization  
3 against various risks inherent in, or affecting, the business of  
4 insurance and not accounted for or only partially measured by the  
5 risk-based capital requirements contained in the act.

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

12 Sec. 6. Section 44-6016, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14 44-6016 (1) Company action level event means any of the  
15 following events:

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

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

22 (ii) If a life and health insurer or a fraternal benefit  
23 society, the insurer or society has total adjusted capital which is  
24 greater than or equal to its company action level risk-based capital  
25 but less than the product of its authorized control level risk-based

1 capital and 2.5 and has a negative trend; or

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

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

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

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

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

25 (b) Contain proposals of corrective actions which the

1 insurer or health organization intends to take and would be expected  
2 to result in the elimination of the company action level event;

3 (c) Provide projections of the insurer's or health  
4 organization's financial results in the current year and at least the  
5 four succeeding years in the case of an insurer or at least the two  
6 succeeding years in the case of a health organization, both in the  
7 absence of proposed corrective actions and giving effect to the  
8 proposed corrective actions, including projections of statutory  
9 balance sheets, operating income, net income, capital and surplus,  
10 and risk-based capital levels. The projections for both new and  
11 renewal business may include separate projections for each major line  
12 of business and separately identify each significant income, expense,  
13 and benefit component;

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

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

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

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

25 (b) If the insurer or health organization challenges an

1 adjusted risk-based capital report pursuant to section 44-6020,  
2 within forty-five days after the notification to the insurer or  
3 health organization that the director has, after a hearing, rejected  
4 the insurer's or health organization's challenge.

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

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

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

1 health organization's challenge.

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

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

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

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

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

25 (ii) The date on which the risk-based capital plan or

1 revised risk-based capital plan is filed under subsection (3) or (4)  
2 of this section.

3           Sec. 7. Original sections 44-1090, 44-6007.02, 44-6008,  
4 44-6009, 44-6015, and 44-6016, Reissue Revised Statutes of Nebraska,  
5 are repealed.