

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 772

FINAL READING

Introduced by Schumacher, 22.

Read first time January 06, 2016

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to insurance; to amend section 44-4404,
2 Reissue Revised Statutes of Nebraska, and sections 44-2120, 44-2121,
3 44-2138, and 44-9004, Revised Statutes Cumulative Supplement, 2014;
4 to adopt the Corporate Governance Annual Disclosure Act; to change
5 provisions of the Insurance Holding Company System Act; to define
6 terms; to provide for group-wide supervisors and international
7 insurance groups as prescribed; to change provisions relating to
8 risk retention groups; to harmonize provisions; to provide operative
9 dates; to repeal the original sections; and to declare an emergency.
10 Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

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

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

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

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

30 (2) Director means the Director of Insurance;

31 (3) Insurance group means those insurers and affiliates included

1 within an insurance holding company system as defined in section 44-2121;
2 and

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

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

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

26 (3) An insurer not required to submit a corporate governance annual
27 disclosure under this section shall do so upon the director's request.

28 (4) For purposes of completing the corporate governance annual
29 disclosure, the insurer or insurance group may provide information
30 regarding corporate governance at the ultimate controlling parent level,
31 an intermediate holding company level, or the individual legal entity

1 level, depending upon how the insurer or insurance group has structured
2 its system of corporate governance. The insurer or insurance group is
3 encouraged to make the corporate governance annual disclosure at the
4 level at which the insurer's or insurance group's risk appetite is
5 determined, the level at which the earnings, capital, liquidity,
6 operations, and reputation of the insurer are overseen collectively and
7 at which the supervision of those factors are coordinated and exercised,
8 or the level at which legal liability for failure of general corporate
9 governance duties would be placed. If the insurer or insurance group
10 determines the level of reporting based on one of these three criteria,
11 it shall indicate which of the three criteria was used to determine the
12 level of reporting and explain any subsequent changes in the level of
13 reporting.

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

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

26 Sec. 5. The corporate governance annual disclosure shall be
27 prepared in a manner prescribed by the director. The insurer or insurance
28 group shall have discretion over the responses to the corporate
29 governance annual disclosure inquiries, except that the corporate
30 governance annual disclosure shall contain the material information
31 necessary to permit the director to gain an understanding of the

1 insurer's or insurance group's corporate governance structure, policies,
2 and practices. The director may request additional information that he or
3 she deems material and necessary to provide the director with a clear
4 understanding of the corporate governance policies, reporting or
5 information systems, or controls implementing the corporate governance
6 policies. Documentation and supporting information shall be maintained
7 and made available upon examination or upon request of the director.

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

28 (2) Neither the director nor any person who received documents,
29 materials, or other information related to the corporate governance
30 annual disclosure, through examination or otherwise, while acting under
31 the authority of the director, or with whom such documents, materials, or

1 other information are shared pursuant to the Corporate Governance Annual
2 Disclosure Act, shall be permitted or required to testify in any private
3 civil action concerning any confidential documents, materials, or other
4 information subject to subsection (1) of this section.

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

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

19 (b) May receive documents, materials, or other information related
20 to the corporate governance annual disclosure, including otherwise
21 confidential and privileged documents, materials, or other information,
22 including proprietary and trade secret documents and materials, from
23 regulatory officials of other state, federal, and international financial
24 regulatory agencies, including members of any supervisory college as
25 described in section 44-2137.01 and from the National Association of
26 Insurance Commissioners, and shall maintain as confidential or privileged
27 any documents, materials, or other information received with notice or
28 the understanding that it is confidential or privileged under the laws of
29 the jurisdiction that is the source of the document, material, or other
30 information.

31 (4) The sharing of information and documents by the director

1 pursuant to the Corporate Governance Annual Disclosure Act shall not
2 constitute a delegation of regulatory authority or rulemaking, and the
3 director is solely responsible for the administration, execution, and
4 enforcement of the provisions of the act.

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

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

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

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

23 (4) As part of the retention process, a third-party consultant shall
24 verify to the director, with notice to the insurer, that the third-party
25 consultant is free of a conflict of interest and that it has internal
26 procedures in place to monitor compliance with a conflict of interest and
27 to comply with the confidentiality standards and requirements of the
28 Corporate Governance Annual Disclosure Act.

29 (5) A written agreement with the National Association of Insurance
30 Commissioners or a third-party consultant governing sharing and use of
31 information provided pursuant to the Corporate Governance Annual

1 Disclosure Act shall contain the following provisions and expressly
2 require the written consent of the insurer prior to making public
3 information provided under the act:

4 (a) Specific procedures and protocols for maintaining the
5 confidentiality and security of information related to the corporate
6 governance annual disclosure that is shared with the National Association
7 of Insurance Commissioners or a third-party consultant pursuant to the
8 act;

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

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

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

27 (e) A provision requiring the National Association of Insurance
28 Commissioners or third-party consultant to provide prompt notice to the
29 director and to the insurer or insurance group regarding any subpoena,
30 request for disclosure, or request for production of the insurer's or
31 insurance group's information related to the corporate governance annual

1 disclosure; and

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

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

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

23 Sec. 10. Section 44-2120, Revised Statutes Cumulative Supplement,
24 2014, is amended to read:

25 44-2120 Sections 44-2120 to 44-2153 and sections 12 and 13 of this
26 act shall be known and may be cited as the Insurance Holding Company
27 System Act.

28 Sec. 11. Section 44-2121, Revised Statutes Cumulative Supplement,
29 2014, is amended to read:

30 44-2121 For purposes of the Insurance Holding Company System Act:

31 (1) An affiliate of, or person affiliated with, a specific person

1 means a person that directly, or indirectly through one or more
2 intermediaries, controls, is controlled by, or is under common control
3 with the person specified;

4 (2) Control, including controlling, controlled by, and under common
5 control with, means the possession, direct or indirect, of the power to
6 direct or cause the direction of the management and policies of a person,
7 whether through the ownership of voting securities, by contract other
8 than a commercial contract for goods or nonmanagement services, or
9 otherwise, unless the power is the result of an official position with or
10 corporate office held by the person. Control is presumed to exist if any
11 person, directly or indirectly, owns, controls, holds with the power to
12 vote, or holds proxies representing ten percent or more of the voting
13 securities of any other person. This presumption may be rebutted by a
14 showing made in the manner provided by subsection (11) of section 44-2132
15 that control does not exist in fact. The director may determine, after
16 furnishing all persons in interest notice and opportunity to be heard and
17 making specific findings of fact to support such determination, that
18 control exists in fact, notwithstanding the absence of a presumption to
19 that effect;

20 (3) Director means the Director of Insurance;

21 (4) Enterprise risk means any activity, circumstance, event, or
22 series of events involving one or more affiliates of an insurer that, if
23 not remedied promptly, is likely to have a material adverse effect upon
24 the financial condition or liquidity of the insurer or its insurance
25 holding company system as a whole, including, but not limited to,
26 anything that would cause the insurer's risk-based capital to fall into
27 company action level as set forth in section 44-6011 or would cause the
28 insurer to be in hazardous financial condition as defined by rule and
29 regulation adopted and promulgated by the director to define standards
30 for companies deemed to be in hazardous financial condition;

31 (5) Group-wide supervisor means the chief insurance regulatory

1 official, including the director, who (a) is authorized to conduct and
2 coordinate group-wide supervision activities of an international
3 insurance group and (b) is from the jurisdiction determined or
4 acknowledged by the director under section 13 of this act to have
5 sufficient contacts with the international insurance group;

6 (6 5) An insurance holding company system shall consist of two or
7 more affiliated persons, one or more of which is an insurer;

8 (7 6) Insurer has the same meaning as in section 44-103, except that
9 insurer does not include agencies, authorities, or instrumentalities of
10 the United States, its possessions and territories, the Commonwealth of
11 Puerto Rico, the District of Columbia, or a state or political
12 subdivision of a state;

13 (8) International insurance group means an insurance holding company
14 system that has been determined by the director to be an international
15 insurance group under section 12 of this act;

16 (9 7) Person means an individual, a corporation, a partnership, a
17 limited partnership, an association, a joint-stock company, a trust, an
18 unincorporated organization, any similar entity, or any combination of
19 such entities acting in concert but does not include any joint-venture
20 partnership exclusively engaged in owning, managing, leasing, or
21 developing real or tangible personal property;

22 (10 8) Security holder of a specified person means one who owns any
23 security of such person, including common stock, preferred stock, debt
24 obligations, and any other security convertible into or evidencing the
25 right to acquire any such stock or obligations;

26 (11 9) Subsidiary of a specified person means an affiliate
27 controlled by such person directly or indirectly through one or more
28 intermediaries; and

29 (12 10) Voting security includes any security convertible into or
30 evidencing a right to acquire a voting security.

31 Sec. 12. The director may determine whether or not an insurance

1 holding company system is an international insurance group. An insurance
2 holding company system shall be considered an international insurance
3 group if the insurance holding company system includes an insurer
4 registered under section 44-2132 and:

5 (1) Meets the following criteria:

6 (a) The insurance holding company system has premiums written in at
7 least three countries;

8 (b) The percentage of gross premiums written outside the United
9 States is at least ten percent of the insurance holding company system's
10 gross written premiums; and

11 (c) Based on a three-year rolling average, the total assets of the
12 insurance holding company system are at least fifty billion dollars or
13 the total gross written premiums of the insurance holding company system
14 are at least ten billion dollars; or

15 (2) Does not meet the criteria in subdivision (1) of this section
16 but is determined by the director to have significant international
17 insurance business operations. Such a determination may be made anytime
18 by the director or after a request by an insurance holding company
19 system.

20 Sec. 13. (1) In cooperation with other state, federal, and
21 international regulatory agencies, the director may identify a group-wide
22 supervisor for an international insurance group in accordance with this
23 section. The director may determine that the director is the appropriate
24 group-wide supervisor, or he or she may acknowledge that a chief
25 insurance regulatory official from another jurisdiction is the
26 appropriate group-wide supervisor.

27 (2) The director may determine that the director is the appropriate
28 group-wide supervisor for:

29 (a) An international insurance group that conducts substantial
30 insurance operations in this state;

31 (b) An international insurance group with substantial insurance

1 operations conducted by subsidiary insurance companies domiciled in this
2 state whose ultimate controlling person is domiciled outside of this
3 state;

4 (c) An international insurance group with an insurance company
5 domiciled in this state that conducts substantial insurance operations
6 from offices in this state;

7 (d) An international insurance group whose ultimate controlling
8 person is domiciled in this state or whose top-tiered insurance company
9 subsidiary is domiciled in this state; or

10 (e) Any other international insurance group, under the factors set
11 forth in subsection (4) of this section.

12 (3) The director may acknowledge that a chief insurance regulatory
13 official from another jurisdiction is the appropriate group-wide
14 supervisor if the international insurance group:

15 (a) Does not have substantial insurance operations in the United
16 States;

17 (b) Has substantial insurance operations in the United States, but
18 not in this state; or

19 (c) Has substantial insurance operations in the United States and
20 this state, but the director has determined pursuant to the factors set
21 forth in subsections (4) and (10) of this section that the chief
22 insurance regulatory official from another jurisdiction is the
23 appropriate group-wide supervisor.

24 (4) The director shall consider, but shall not be limited to, the
25 following factors when making a determination or acknowledgment regarding
26 a group-wide supervisor under this section:

27 (a) The place of domicile of the ultimate controlling person of the
28 international insurance group, if the chief insurance regulatory official
29 of that place has significant insurance regulatory authority over such
30 ultimate controlling person;

31 (b) The place of domicile of the insurer within the international

1 insurance group that holds the largest share of the group's written
2 premiums, assets, or liabilities;

3 (c) The place of domicile of the top-tiered insurer or insurers in
4 the insurance holding company system of the international insurance
5 group;

6 (d) The location of the executive offices of the international
7 insurance group;

8 (e) Whether another chief insurance regulatory official is acting or
9 is seeking to act as the group-wide supervisor under a regulatory system
10 that the director determines is accredited by the National Association of
11 Insurance Commissioners or has substantially similar laws when compared
12 to the insurance laws of this state, especially with regard to the
13 provision of group-wide supervision, enterprise risk analysis, and
14 cooperation with other chief insurance regulatory officials;

15 (f) Whether another chief insurance regulatory official acting or
16 seeking to act as the group-wide supervisor provides the director with
17 reasonably reciprocal recognition and cooperation;

18 (g) Whether substantial insurance operations are conducted by
19 subsidiary insurance companies domiciled in this state;

20 (h) Whether another chief insurance regulatory official acting or
21 seeking to act as the group-wide supervisor and key staff maintain the
22 requisite skill, experience, and tenure necessary to act as group-wide
23 supervisor; and

24 (i) Whether the international insurance group's current group-wide
25 supervisor is carrying out such duty reasonably.

26 (5) An international insurance group for which the director has not
27 determined or acknowledged a group-wide supervisor may request that the
28 director make a determination or acknowledgment as to a group-wide
29 supervisor pursuant to this section.

30 (6) A group-wide supervisor may determine that it is appropriate to
31 acknowledge another chief insurance regulatory official to serve as the

1 group-wide supervisor. The acknowledgment of the group-wide supervisor
2 shall be made after consideration of the factors listed in subsection (4)
3 of this section and shall be made in cooperation with and subject to the
4 acknowledgment of other regulatory officials involved with supervision of
5 members of the international insurance group and in consultation with the
6 international insurance group.

7 (7) Notwithstanding any other provision of law, when another chief
8 insurance regulatory official is acting as the group-wide supervisor of
9 an international insurance group, the director may acknowledge that chief
10 insurance regulatory official as the group-wide supervisor. Such
11 acknowledgment shall not remove any obligation of an insurer to provide
12 information to the director pursuant to the Insurance Holding Company
13 System Act. However, if there is a material change in the international
14 insurance group that results in (a) the international insurance group's
15 insurers domiciled in this state holding the largest share of the group's
16 premiums, assets, or liabilities or (b) this state being the place of
17 domicile of the top-tiered insurer or insurers in the insurance holding
18 company system of the international insurance group, the director shall
19 make a determination or acknowledgment as to the appropriate group-wide
20 supervisor for such an international insurance group pursuant to this
21 section.

22 (8) Pursuant to section 44-2137, the director is authorized to
23 collect from any insurer registered pursuant to section 44-2132 all
24 information necessary to determine whether the director may act as the
25 group-wide supervisor of an international insurance group or if the
26 director may acknowledge another chief insurance regulatory official to
27 act as the group-wide supervisor. Prior to issuing a determination that
28 an international insurance group is subject to group-wide supervision by
29 the director, the director shall notify the insurer registered pursuant
30 to section 44-2132 and the ultimate controlling person within the
31 international insurance group. The international insurance group shall

1 have not less than thirty days to provide the director with additional
2 information pertinent to the pending determination. The director shall
3 publish on the web site of the Department of Insurance the identity of
4 international insurance groups that the director has determined are
5 subject to group-wide supervision by the director.

6 (9) If the director is the group-wide supervisor for an
7 international insurance group, the director may engage in any of the
8 following group-wide supervision activities:

9 (a) Assess the enterprise risks within the international insurance
10 group to ensure that:

11 (i) The material financial condition and liquidity risks to the
12 members of the international insurance group that are engaged in the
13 business of insurance are identified by management; and

14 (ii) Reasonable and effective mitigation measures are in place;

15 (b) Request, from any member of an international insurance group
16 subject to the director's supervision, information necessary and
17 appropriate to assess enterprise risk, including, but not limited to,
18 information about the members of the international insurance group
19 regarding:

20 (i) Governance, risk assessment, and management;

21 (ii) Capital adequacy; and

22 (iii) Material intercompany transactions;

23 (c) Coordinate and, through the authority of the regulatory
24 officials of the jurisdictions where members of the international
25 insurance group are domiciled, compel development and implementation of
26 reasonable measures designed to ensure that the international insurance
27 group is able to timely recognize and mitigate enterprise risks to
28 members of such international insurance group that are engaged in the
29 business of insurance;

30 (d) Communicate with other state, federal, and international
31 regulatory agencies for members within the international insurance group

1 and share relevant information, subject to the confidentiality provisions
2 of section 44-2138, through supervisory colleges as set forth in section
3 44-2137.01 or otherwise;

4 (e) Enter into agreements with or obtain documentation from any
5 insurer registered under section 44-2132, any member of the international
6 insurance group, and any other state, federal, and international
7 regulatory agencies for members of the international insurance group,
8 providing the basis for or otherwise clarifying the director's role as
9 group-wide supervisor, including provisions for resolving disputes with
10 other regulatory officials. Such agreements or documentation shall not
11 serve as evidence in any proceeding that any insurer or person within an
12 insurance holding company system not domiciled or incorporated in this
13 state is doing business in this state or is otherwise subject to
14 jurisdiction in this state; and

15 (f) Other group-wide supervision activities, consistent with the
16 authorities and purposes enumerated in this section, as considered
17 necessary by the director.

18 (10) If the director acknowledges that another regulatory official
19 from a jurisdiction that is not accredited by the National Association of
20 Insurance Commissioners is the group-wide supervisor, the director may
21 reasonably cooperate, through supervisory colleges or otherwise, with
22 group-wide supervision undertaken by the group-wide supervisor if:

23 (a) The director's cooperation is in compliance with the laws of
24 this state; and

25 (b) The regulatory official acknowledged as the group-wide
26 supervisor also recognizes and cooperates with the director's activities
27 as a group-wide supervisor for other international insurance groups where
28 applicable. Where such recognition and cooperation is not reasonably
29 reciprocal, the director may refuse recognition and cooperation.

30 (11) The director may enter into agreements with or obtain
31 documentation from any insurer registered under section 44-2132, any

1 affiliate of the insurer, and other state, federal, and international
2 regulatory agencies for members of the international insurance group that
3 provide the basis for or otherwise clarify a regulatory official's role
4 as group-wide supervisor.

5 (12) A registered insurer subject to this section shall be liable
6 for and shall pay the reasonable expenses of the director's participation
7 in the administration of this section, including the engagement of
8 attorneys, actuaries, and any other professionals and all reasonable
9 travel expenses.

10 Sec. 14. Section 44-2138, Revised Statutes Cumulative Supplement,
11 2014, is amended to read:

12 44-2138 (1) All information, documents, and copies thereof obtained
13 by or disclosed to the director or any other person in the course of an
14 examination or investigation made pursuant to section 44-2137 and all
15 information reported or provided to the director pursuant to sections
16 44-2132 to 44-2136 and section 13 of this act shall be given confidential
17 treatment, shall not be subject to subpoena, and shall not be made public
18 by the director, the National Association of Insurance Commissioners and
19 its affiliates and subsidiaries, or any other person, except to other
20 state, federal, foreign, and international regulatory and law enforcement
21 agencies if the recipient agrees in writing to maintain the
22 confidentiality of the information, without the prior written consent of
23 the insurer to which it pertains unless the director, after giving the
24 insurer and its affiliates who would be affected thereby notice and
25 opportunity to be heard, determines that the interest of policyholders,
26 shareholders, or the public will be served by the publication thereof, in
27 which event he or she may publish all or any part thereof in such manner
28 as he or she may deem appropriate.

29 (2) The director may receive information, documents, and copies of
30 information and documents disclosed to other state, federal, foreign, or
31 international regulatory and law enforcement agencies and from the

1 National Association of Insurance Commissioners and its affiliates and
2 subsidiaries pursuant to an examination of an insurance holding company
3 system. The director shall maintain information, documents, and copies of
4 information and documents received pursuant to this subsection as
5 confidential or privileged if received with notice or the understanding
6 that it is confidential or privileged under the laws of the jurisdiction
7 that is the source of the information. Such information shall not be a
8 public record subject to disclosure by the director pursuant to sections
9 84-712 to 84-712.09, subject to subpoena, subject to discovery, or
10 admissible in evidence in any private civil action, except that the
11 director may use such information in any regulatory or legal action
12 brought by the director. The director, and any other person while acting
13 under the authority of the director who has received information pursuant
14 to this subsection, may not, and shall not be required to, testify in any
15 private civil action concerning any information subject to this section.
16 Nothing in this section shall constitute a waiver of any applicable
17 privilege or claim of confidentiality in the information received
18 pursuant to this subsection as a result of information sharing authorized
19 by this section.

20 (3) In order to assist in the performance of the director's duties,
21 the director may share information with state, federal, and international
22 regulatory agencies, the National Association of Insurance Commissioners
23 and its affiliates and subsidiaries, state, federal, and international
24 law enforcement authorities, including members of any supervisory college
25 described in section 44-2137.01, the International Association of
26 Insurance Supervisors, and the Bank for International Settlements under
27 the conditions set forth in section 44-154 if the recipient agrees in
28 writing to maintain the confidentiality and privileged status of the
29 document, material, or other information and has verified in writing the
30 legal authority to maintain confidentiality. The director may only share
31 confidential and privileged documents, material, or information reported

1 pursuant to subsection (12) of section 44-2132 with directors or
2 commissioners of states having statutes or regulations substantially
3 similar to subsection (1) of this section and who have agreed in writing
4 not to disclose such information.

5 (4) The director shall enter into written agreements with the
6 National Association of Insurance Commissioners governing sharing and use
7 of information provided pursuant to this section that shall:

8 (a) Specify procedures and protocols regarding the confidentiality
9 and security of information shared with the National Association of
10 Insurance Commissioners and its affiliates and subsidiaries pursuant to
11 this section, including procedures and protocols for sharing by the
12 association with other state, federal, or international regulators;

13 (b) Specify that ownership of information shared with the National
14 Association of Insurance Commissioners and its affiliates and
15 subsidiaries pursuant to this section remains with the director and the
16 association's use of the information is subject to the direction of the
17 director;

18 (c) Require prompt notice to be given to an insurer whose
19 confidential information in the possession of the National Association of
20 Insurance Commissioners pursuant to this section is subject to a request
21 or subpoena to the association for disclosure or production; and

22 (d) Require the National Association of Insurance Commissioners and
23 its affiliates and subsidiaries to consent to intervention by an insurer
24 in any judicial or administrative action in which the association and its
25 affiliates and subsidiaries may be required to disclose confidential
26 information about the insurer shared with the association and its
27 affiliates and subsidiaries pursuant to this section.

28 (5) The sharing of information by the director pursuant to this
29 section shall not constitute a delegation of regulatory authority or
30 rulemaking, and the director is solely responsible for the
31 administration, execution, and enforcement of this section.

1 (6) No waiver of any applicable privilege or claim of
2 confidentiality in the documents, materials, or information shall occur
3 as a result of disclosure to the director under this section or as a
4 result of sharing as authorized by this section.

5 (7) Documents, materials, or other information in the possession or
6 control of the National Association of Insurance Commissioners pursuant
7 to this section shall be confidential and privileged, shall not be
8 subject to public disclosure under section 84-712, shall not be subject
9 to subpoena, and shall not be subject to discovery or admissible as
10 evidence in any private civil action.

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

13 44-4404 (1) A risk retention group seeking to be chartered and
14 licensed in this state shall be chartered and licensed as a liability
15 insurance company under Chapter 44 and, except as provided elsewhere in
16 the Risk Retention Act, shall comply with all of the laws, rules, and
17 regulations applicable to such insurers chartered and licensed in this
18 state and with sections 44-4405 to 44-4413 to the extent such
19 requirements are not a limitation on laws, rules, or regulations of this
20 state.

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

25 (3) At the time of filing its application for a charter and license,
26 the risk retention group shall provide to the director in summary form
27 the following information: The identity of the initial members of the
28 group; the identity of those individuals who organized the group or who
29 will provide administrative services or otherwise influence or control
30 the activities of the group; the amount and nature of initial
31 capitalization; the coverages to be afforded; and the states in which the

1 group intends to operate. Upon receipt of this information, the director
2 shall forward such information to the National Association of Insurance
3 Commissioners. Providing notification to the National Association of
4 Insurance Commissioners shall be in addition to and shall not be
5 sufficient to satisfy the requirements of section 44-4405 or any other
6 sections of the act.

7 (4) Subsections (5) through (11) of this section provide governance
8 standards for risk retention groups licensed and chartered in this state.
9 Any risk retention group in existence on the operative date of this
10 section shall be in compliance with such standards by January 1, 2018.
11 Any risk retention group that is initially licensed on or after the
12 operative date of this section shall be in compliance with such standards
13 at the time of licensure.

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

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

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

22 (b) The board of directors of the risk retention group shall have a
23 majority of independent directors. If the risk retention group is a
24 reciprocal, then the attorney in fact would be required to adhere to the
25 same standards regarding independence of operation and governance as
26 imposed on the risk retention group's board of directors or subscribers
27 advisory committee under this subsection. To the extent permissible under
28 state law, service providers of a reciprocal risk retention group should
29 contract with the risk retention group and not the attorney in fact.

30 (c) No director qualifies as independent unless the board of
31 directors affirmatively determines that the director has no material

1 relationship with the risk retention group. Each risk retention group
2 shall disclose these determinations to its domestic regulator at least
3 annually. For this purpose, any person that is a direct or indirect owner
4 of or subscriber in the risk retention group, or is an officer, director,
5 or employee of such an owner and insured unless some other position of
6 such officer, director, or employee constitutes a material relationship,
7 as contemplated by section 3901(a)(4)(E)(ii) of the federal Liability
8 Risk Retention Act of 1986, is considered to be independent.

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

11 (i) The receipt in any one twelve-month period of compensation or
12 payment of any other item of value by such person, a member of such
13 person's immediate family, or any business with which such person is
14 affiliated from the risk retention group or a consultant or service
15 provider to the risk retention group is greater than or equal to five
16 percent of the risk retention group's gross written premium for such
17 twelve-month period or two percent of its surplus, whichever is greater,
18 as measured at the end of any fiscal quarter falling in such a twelve-
19 month period. Such person or immediate family member of such person is
20 not independent until one year after his or her compensation from the
21 risk retention group falls below the threshold;

22 (ii) A relationship with an auditor as follows: A director or an
23 immediate family member of a director who is affiliated with or employed
24 in a professional capacity by a present or former internal or external
25 auditor of the risk retention group is not independent until one year
26 after the end of the affiliation, employment, or auditing relationship;
27 and

28 (iii) A relationship with a related entity as follows: A director or
29 immediate family member of a director who is employed as an executive
30 officer of another company where any of the risk retention group's
31 present executives serve on that other company's board of directors is

1 not independent until one year after the end of such service or the
2 employment relationship.

3 (6)(a) The term of any material service provider contract with the
4 risk retention group shall not exceed five years. Any such contract, or
5 its renewal, shall require the approval of the majority of the risk
6 retention group's independent directors. The risk retention group's board
7 of directors shall have the right to terminate any service provider,
8 audit, or actuarial contracts at any time for cause after providing
9 adequate notice as defined in the contract. The service provider contract
10 is deemed material if the amount to be paid for such contract is greater
11 than or equal to five percent of the risk retention group's annual gross
12 written premium or two percent of its surplus, whichever is greater.

13 (b) For purposes of this subsection, service providers shall include
14 captive managers, auditors, accountants, actuaries, investment advisors,
15 lawyers, managing general underwriters, or other parties responsible for
16 underwriting, determination of rates, collection of premiums, adjusting
17 and settling claims, or the preparation of financial statements. Any
18 reference to lawyers in this subdivision does not include defense counsel
19 retained by the risk retention group to defend claims, unless the amount
20 of fees paid to such lawyers are material as referenced in subdivision
21 (5)(d) of this section.

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

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

31 (a) Assure that all owners or insureds of the risk retention group

1 receive evidence of ownership interest;

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

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

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

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

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

14 (ii) The officers' and service providers' performance in light of
15 those goals and objectives; and

16 (iii) The continued engagement of the officers and material service
17 providers.

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

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

25 (i) Assist board oversight of (A) the integrity of the financial
26 statements, (B) the compliance with legal and regulatory requirements,
27 and (C) the qualifications, independence, and performance of the
28 independent auditor and actuary;

29 (ii) Discuss the annual audited financial statements and quarterly
30 financial statements with management;

31 (iii) Discuss the annual audited financial statements with its

1 independent auditor and, if advisable, discuss its quarterly financial
2 statements with its independent auditor;

3 (iv) Discuss policies with respect to risk assessment and risk
4 management;

5 (v) Meet separately and periodically, either directly or through a
6 designated representative of the committee, with management and
7 independent auditors;

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

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

12 (viii) Require the external auditor to rotate the lead or
13 coordinating audit partner having primary responsibility for the risk
14 retention group's audit as well as the audit partner responsible for
15 reviewing that audit so that neither individual performs audit services
16 for more than five consecutive fiscal years; and

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

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

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

29 (a) A process by which the directors are elected by the owners or
30 insureds;

31 (b) Director qualification standards;

1 (c) Director responsibilities;

2 (d) Director access to management and, as necessary and appropriate,
3 independent advisors;

4 (e) Director compensation;

5 (f) Director orientation and continuing education;

6 (g) The policies and procedures that are followed for management
7 succession; and

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

10 (10) The board of directors shall adopt and disclose a code of
11 business conduct and ethics for directors, officers, and employees and
12 promptly disclose to the board of directors any waivers of the code for
13 directors or executive officers, which should include the following
14 topics:

15 (a) Conflicts of interest;

16 (b) Matters covered under the corporate opportunities doctrine under
17 the state of domicile;

18 (c) Confidentiality;

19 (d) Fair dealing;

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

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

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

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

29 Sec. 16. Section 44-9004, Revised Statutes Cumulative Supplement,
30 2014, is amended to read:

31 44-9004 For purposes of the Risk Management and Own Risk and

1 Solvency Assessment Act:

2 (1) Director means the Director of Insurance;

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

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

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

17 (5) Own risk and solvency assessment guidance manual means the own
18 risk and solvency assessment guidance manual prescribed by the director
19 which conforms substantially to the Own Risk and Solvency Assessment
20 Guidance Manual developed and adopted by the National Association of
21 Insurance Commissioners. A change in the own risk and solvency assessment
22 guidance manual shall be effective on the January 1 following the
23 calendar year in which the change has been adopted by the director; and

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

27 Sec. 17. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 15, and 18 of this act
28 become operative on January 1, 2017. The other sections of this act
29 become operative on their effective date.

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

1 Sec. 19. Original sections 44-2120, 44-2121, 44-2138, and 44-9004,
2 Revised Statutes Cumulative Supplement, 2014, are repealed.

3 Sec. 20. Since an emergency exists, this act takes effect when
4 passed and approved according to law.