LEGISLATIVE BILL 700

Approved by the Governor April 22, 2014

Introduced by Schumacher, 22.

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

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

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

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

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

Sec. 3. The Legislature finds and declares that the own risk and solvency assessment summary report will contain confidential and sensitive information related to an insurer's or insurance group's identification of risks that is material and relevant to the insurer or insurance group filing the report. The information will include proprietary and trade secret information that has the potential for harm and competitive disadvantage to the insurer or insurance group if the information is made public. It is the intent of the Legislature that the own risk and solvency assessment summary report shall be a confidential document filed with the director, that the own risk and solvency assessment summary report shall be shared only as provided in the Risk Management and Own Risk and Solvency Assessment Act and to assist the director in the performance of his or her duties, and that in no event shall the own risk and solvency assessment summary report be subject to public disclosure.

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

(1) Director means the Director of Insurance;

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

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

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

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

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

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

Sec. 6. Subject to section 8 of this act, an insurer, or the

insurance group of which the insurer is a member, shall regularly conduct an own risk and solvency assessment consistent with a process comparable to the own risk and solvency assessment guidance manual. The own risk and solvency assessment shall be conducted no less than annually but also at any time when there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

Sec. 7. (1) Upon the director's request, and no more than once each year, an insurer shall submit to the director an own risk and solvency assessment summary report or any combination of reports that together contain the information described in the own risk and solvency assessment guidance manual applicable to the insurer or the insurance group of which the insurer is a member. Notwithstanding any request from the director, if the insurer is a member of an insurance group, the insurer shall submit the report required by this subsection if the director is the lead state insurance commissioner of the insurance group.

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

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

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

Sec. 8. (1) An insurer shall be exempt from the requirements of the Risk Management and Own Risk and Solvency Assessment Act if:

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

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

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

(3) If an insurer does not qualify for exemption pursuant to subdivision (1)(a) of this section, but the insurance group of which the insurer is a member qualifies for exemption pursuant to subdivision (1)(b) of this section, then the only own risk and solvency assessment summary report required pursuant to section 7 of this act shall be the report applicable to that insurer.

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

(5) Notwithstanding the exemptions stated in this section:

(a) The director may require that an insurer maintain a risk

management framework, conduct an own risk and solvency assessment, and file an own risk and solvency assessment summary report based on unique circumstances, including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests; and

(b) The director may require that an insurer maintain a risk management framework, conduct an own risk and solvency assessment, and file an own risk and solvency assessment summary report if the insurer has risk-based capital for a company action level event as set forth in section 44-6016, meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined by rule and regulation adopted and promulgated by the director to define standards for companies deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer as determined by the director.

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

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

(2) The review of the own risk and solvency assessment summary report, and any additional requests for information, shall be made using similar procedures currently used in the analysis and examination of multistate or global insurers and insurance groups.

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

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

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

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

(b) May receive documents, materials, or other own risk and solvency assessment information, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade secret documents and materials, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college under section 44-2137.01, and from the National Association of Insurance Commissioners, and shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it

is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

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

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

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

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

(d) Requires prompt notice to be given to an insurer whose confidential information in the possession of the National Association of Insurance Commissioners or a third-party consultant pursuant to the act is subject to a request or subpoena to the National Association of Insurance Commissioners or a third-party consultant for disclosure or production;

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

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

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

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

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

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

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

(2) For purposes of this section, health care sharing ministry means

a faith-based, nonprofit organization that is tax-exempt under the Internal Revenue Code which:

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

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

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

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

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

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

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

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

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

Sec. 13. Section 12-1109, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

(b) For purposes of this section:

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

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

(2) The director may approve any application for supervision under this section that meets the requirements of this section and the rules and regulations adopted and promulgated under this section.

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

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

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

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

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

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

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

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

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

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

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

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

(vi) May verify information received under this section.

(4)(a) If it appears to the director that a financial conglomerate that submits to the jurisdiction of the director under this section, or any director, officer, employee, or agent thereof, willfully violates this section or the rules and regulations adopted and promulgated under this section, the director may order the financial conglomerate to cease and desist immediately any such activity. After notice and hearing, the director may order the financial conglomerate to void any contracts between the financial conglomerate and any of its affiliates or among affiliates of the financial conglomerate and restore the status quo if such action is in the best interest of policyholders, creditors, or the public.

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

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

(ii) Any financial conglomerate that fails to notify the director of any action for which such notification may be required under the rules and regulations adopted and promulgated under this section may be required by the director, after notice and hearing, to pay an administrative penalty of not more than two thousand five hundred dollars per violation.

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

(d) Any director or officer of a financial conglomerate that submits to the jurisdiction of the director under this section who knowingly violates or assents to any officer or agent of the financial conglomerate to violate this section or the rules and regulations adopted and promulgated under this section may be required by the director, after notice and hearing, to pay in his or her individual capacity an administrative penalty of not more than

five thousand dollars per violation. In determining the amount of the penalty, the director shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(e) After notice and hearing, the director may terminate the supervision of any financial conglomerate under this section if it ceases to qualify as a financial conglomerate under this section or the rules and regulations adopted and promulgated under this section.

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

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

(h)(i) Any financial conglomerate that submits to the jurisdiction of the director under this section that willfully violates this section or the rules and regulations adopted and promulgated under this section shall be guilty of a Class IV felony.

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

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

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

(i) The powers, remedies, procedures, and penalties governing financial conglomerates under this section shall be in addition to any other provisions provided by law.

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

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

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

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

44-3524 (1) The director may issue an order ~~and notice of hearing~~ instructing a motor vehicle service contract provider to cease and desist from selling or offering for sale motor vehicle service contracts if the director determines that the provider has failed to comply with the Motor Vehicle Service Contract Reimbursement Insurance Act. At the same time the order is

issued, the director shall serve notice to the motor vehicle service provider of the reasons for such order and that the motor vehicle service provider may request a hearing in writing within ten business days after receipt of the order. If a hearing is requested, the director shall schedule a hearing within ten business days after receipt of the request. The hearing shall be conducted in accordance with the Administrative Procedure Act. If a hearing is not requested and none is ordered by the director, the order shall remain in effect until modified or vacated by the director.

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

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

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

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

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

(1) Accredited state shall mean a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards established and promulgated from time to time by the National Association of Insurance Commissioners;

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

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

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

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

(6) Director shall mean the Director of Insurance;

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

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

~~(b)~~ (a) Residual market pools and joint underwriting authorities or associations; and

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

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

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

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

Insurer, when referring to life and health insurers, means an insurer authorized to transact life insurance business and sickness and

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

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

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

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

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

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

(ii) If a life and health insurer or a fraternal benefit society, the insurer or society has total adjusted capital which is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and ~~2.5~~ 3.0 and has a negative trend; ~~or~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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