

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 715

Introduced by Gloor, 35.

Read first time January 08, 2014

Committee: Banking, Commerce and Insurance

A BILL

- 1 FOR AN ACT relating to insurance; to amend section 44-5702, Reissue
- 2 Revised Statutes of Nebraska, and sections 44-6008 and
- 3 44-6016, Revised Statutes Supplement, 2013; to redefine
- 4 terms; and to repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 44-5702, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 44-5702 For purposes of the Producer-Controlled Property
4 and Casualty Insurer Act:

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

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

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

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

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

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

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

1 include:

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

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

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

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

16 Sec. 2. Section 44-6008, Revised Statutes Supplement,
17 2013, is amended to read:

18 44-6008 Insurer means an insurer as defined in section
19 44-103 authorized to transact the business of insurance, except that
20 insurer does not include health organizations, unincorporated mutual
21 associations, assessment associations, health maintenance
22 organizations, prepaid dental service corporations, prepaid limited
23 health service organizations, monoline mortgage guaranty insurers,
24 monoline financial guaranty insurers, title insurers, prepaid legal
25 corporations, intergovernmental risk management pools, and any other

1 kind of insurer to which the application of the Insurers and Health
2 Organizations Risk-Based Capital Act, in the determination of the
3 director, would be clearly inappropriate. Insurer includes a risk
4 retention group.

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

11 Insurer, when referring to property and casualty
12 insurers, means an insurer authorized to transact property insurance
13 business and casualty insurance business specified in subdivisions
14 (5) through (14) and (16) through (20) of section 44-201, or any
15 combination thereof, and also includes an insurer authorized to
16 transact insurance business specified in subdivision (4) of section
17 44-201 if also authorized to transact insurance business specified in
18 subdivisions (5) through (14) and (16) through (20) of section
19 44-201.

20 Sec. 3. Section 44-6016, Revised Statutes Supplement,
21 2013, is amended to read:

22 44-6016 (1) Company action level event means any of the
23 following events:

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

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

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

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

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

23 (b) The notification by the director to the insurer or
24 health organization of an adjusted risk-based capital report that
25 indicates an event described in subdivision (1)(a) of this section

1 unless the insurer or health organization challenges the adjusted
2 risk-based capital report under section 44-6020; or

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

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

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

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

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

1 of business and separately identify each significant income, expense,
2 and benefit component;

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

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

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

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

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

19 (4) Within sixty days after the submission by an insurer
20 or a health organization of a risk-based capital plan to the
21 director, the director shall notify the insurer or health
22 organization whether the risk-based capital plan shall be implemented
23 or is, in the judgment of the director, unsatisfactory. If the
24 director determines that the risk-based capital plan is
25 unsatisfactory, the notification to the insurer or health

1 organization shall set forth the reasons for the determination and
2 may set forth proposed revisions which will render the risk-based
3 capital plan satisfactory in the judgment of the director. Upon
4 notification from the director, the insurer or health organization
5 shall prepare a revised risk-based capital plan which may incorporate
6 by reference any revisions proposed by the director. The insurer or
7 health organization shall submit the revised risk-based capital plan
8 to the director:

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

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

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

23 (6) Every domestic insurer or domestic health
24 organization that files a risk-based capital plan or revised risk-
25 based capital plan with the director shall file a copy of the risk-

1 based capital plan or revised risk-based capital plan with the
2 insurance commissioner of any state in which the insurer or health
3 organization is authorized to do business if:

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

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

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

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

17 Sec. 4. Original section 44-5702, Reissue Revised
18 Statutes of Nebraska, and sections 44-6008 and 44-6016, Revised
19 Statutes Supplement, 2013, are repealed.