

AMENDMENTS TO LB700

Introduced by Gloor

1           1. Strike section 12 and insert the following new  
2 sections:

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

5           12-1109 The director ~~shall~~ may adopt and promulgate rules  
6 and regulations necessary to carry out and enforce the Burial  
7 Pre-Need Sale Act.

8           Sec. 13. Section 44-165, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

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

17           (b) For purposes of this section:

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

20           (ii) Financial conglomerate means either an insurance  
21 company domiciled in Nebraska or a person established under  
22 the laws of the United States, any state, or the District  
23 of Columbia which directly or indirectly controls an insurance

1 company domiciled in Nebraska. Financial conglomerate includes  
2 the person applying for supervision under this section and all  
3 entities, whether insurance companies or otherwise, to the extent  
4 the entities are controlled by such person.

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

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

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

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

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

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

27 (iv) Have in place at the level of the financial

1 conglomerate adequate risk management processes and internal  
2 control mechanisms, including sound administrative and accounting  
3 procedures.

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

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

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

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

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

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

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

24 (4) (a) If it appears to the director that a financial  
25 conglomerate that submits to the jurisdiction of the director under  
26 this section, or any director, officer, employee, or agent thereof,  
27 willfully violates this section or the rules and regulations

1 adopted and promulgated under this section, the director may order  
2 the financial conglomerate to cease and desist immediately any such  
3 activity. After notice and hearing, the director may order the  
4 financial conglomerate to void any contracts between the financial  
5 conglomerate and any of its affiliates or among affiliates of the  
6 financial conglomerate and restore the status quo if such action is  
7 in the best interest of policyholders, creditors, or the public.

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

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

1 conglomerate demonstrates to the director that the imposition of  
2 the penalty would constitute a financial hardship to the financial  
3 conglomerate.

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

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

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

27 (e) After notice and hearing, the director may terminate

1 the supervision of any financial conglomerate under this section if  
2 it ceases to qualify as a financial conglomerate under this section  
3 or the rules and regulations adopted and promulgated under this  
4 section.

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

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

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

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

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

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

27           (i) The powers, remedies, procedures, and penalties

1 governing financial conglomerates under this section shall be  
2 in addition to any other provisions provided by law.

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

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

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

18 Sec. 14. Section 44-3719, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

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

24 Sec. 15. Section 44-5702, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

26 44-5702 For purposes of the Producer-Controlled Property  
27 and Casualty Insurer Act:



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

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

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

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

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

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

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

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

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

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

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

11           Sec. 16. Section 44-6008, Revised Statutes Supplement,  
12 2013, is amended to read:

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

25           Insurer, when referring to life and health insurers,  
26 means an insurer authorized to transact life insurance business and  
27 sickness and accident insurance business specified in subdivisions

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

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

13 Sec. 17. Section 44-6016, Revised Statutes Supplement,  
14 2013, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27           (a) Within forty-five days after the occurrence of the

1 company action level event; or

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

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

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

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

1 insurer's or health organization's challenge.

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

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

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

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

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

26 (ii) The date on which the risk-based capital plan or  
27 revised risk-based capital plan is filed under subsection (3) or

1 (4) of this section.

2           Sec. 18. Sections 1 to 11 of this act become operative on  
3 January 1, 2015. The other sections of this act become operative on  
4 their effective date.

5           Sec. 19. Original sections 12-1109, 44-165, 44-3719, and  
6 44-5702, Reissue Revised Statutes of Nebraska, and sections 44-6008  
7 and 44-6016, Revised Statutes Supplement, 2013, are repealed.