

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 772

Introduced by Schumacher, 22.

Read first time January 06, 2016

Committee: Banking, Commerce and Insurance

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

1 Section 1. Section 44-2120, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 44-2120 Sections 44-2120 to 44-2153 and sections 3 and 4 of this act
4 shall be known and may be cited as the Insurance Holding Company System
5 Act.

6 Sec. 2. Section 44-2121, Revised Statutes Cumulative Supplement,
7 2014, is amended to read:

8 44-2121 For purposes of the Insurance Holding Company System Act:

9 (1) An affiliate of, or person affiliated with, a specific person
10 means a person that directly, or indirectly through one or more
11 intermediaries, controls, is controlled by, or is under common control
12 with the person specified;

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

29 (3) Director means the Director of Insurance;

30 (4) Enterprise risk means any activity, circumstance, event, or
31 series of events involving one or more affiliates of an insurer that, if

1 not remedied promptly, is likely to have a material adverse effect upon
2 the financial condition or liquidity of the insurer or its insurance
3 holding company system as a whole, including, but not limited to,
4 anything that would cause the insurer's risk-based capital to fall into
5 company action level as set forth in section 44-6011 or would cause the
6 insurer to be in hazardous financial condition as defined by rule and
7 regulation adopted and promulgated by the director to define standards
8 for companies deemed to be in hazardous financial condition;

9 (5) Group-wide supervisor means the chief insurance regulatory
10 official, including the director, who (a) is authorized to conduct and
11 coordinate group-wide supervision activities of an international
12 insurance group and (b) is from the jurisdiction determined or
13 acknowledged by the director under section 4 of this act to have
14 sufficient contacts with the international insurance group;

15 (6 5) An insurance holding company system shall consist of two or
16 more affiliated persons, one or more of which is an insurer;

17 (7 6) Insurer has the same meaning as in section 44-103, except that
18 insurer does not include agencies, authorities, or instrumentalities of
19 the United States, its possessions and territories, the Commonwealth of
20 Puerto Rico, the District of Columbia, or a state or political
21 subdivision of a state;

22 (8) International insurance group means an insurance holding company
23 system that has been determined by the director to be an international
24 insurance group under section 3 of this act;

25 (9 7) Person means an individual, a corporation, a partnership, a
26 limited partnership, an association, a joint-stock company, a trust, an
27 unincorporated organization, any similar entity, or any combination of
28 such entities acting in concert but does not include any joint-venture
29 partnership exclusively engaged in owning, managing, leasing, or
30 developing real or tangible personal property;

31 (10 8) Security holder of a specified person means one who owns any

1 security of such person, including common stock, preferred stock, debt
2 obligations, and any other security convertible into or evidencing the
3 right to acquire any such stock or obligations;

4 (11 9) Subsidiary of a specified person means an affiliate
5 controlled by such person directly or indirectly through one or more
6 intermediaries; and

7 (12 10) Voting security includes any security convertible into or
8 evidencing a right to acquire a voting security.

9 Sec. 3. The director may determine whether or not an insurance
10 holding company system is an international insurance group. An insurance
11 holding company system shall be considered an international insurance
12 group if the insurance holding company system includes an insurer
13 registered under section 44-2132 and:

14 (1) Meets the following criteria:

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

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

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

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

29 Sec. 4. (1) In cooperation with other state, federal, and
30 international regulatory agencies, the director may identify a group-wide
31 supervisor for an international insurance group in accordance with this

1 section. The director may determine that the director is the appropriate
2 group-wide supervisor, or he or she may acknowledge that a chief
3 insurance regulatory official from another jurisdiction is the
4 appropriate group-wide supervisor.

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

7 (a) An international insurance group that conducts substantial
8 insurance operations in this state;

9 (b) An international insurance group with substantial insurance
10 operations conducted by subsidiary insurance companies domiciled in this
11 state whose ultimate controlling person is domiciled outside of this
12 state;

13 (c) An international insurance group with an insurance company
14 domiciled in this state that conducts substantial insurance operations
15 from offices in this state;

16 (d) An international insurance group whose ultimate controlling
17 person is domiciled in this state or whose top-tiered insurance company
18 subsidiary is domiciled in this state; or

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

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

24 (a) Does not have substantial insurance operations in the United
25 States;

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

28 (c) Has substantial insurance operations in the United States and
29 this state, but the director has determined pursuant to the factors set
30 forth in subsections (4) and (10) of this section that the chief
31 insurance regulatory official from another jurisdiction is the

1 appropriate group-wide supervisor.

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

5 (a) The place of domicile of the ultimate controlling person of the
6 international insurance group, if the chief insurance regulatory official
7 of that place has significant insurance regulatory authority over such
8 ultimate controlling person;

9 (b) The place of domicile of the insurer within the international
10 insurance group that holds the largest share of the group's written
11 premiums, assets, or liabilities;

12 (c) The place of domicile of the top-tiered insurer or insurers in
13 the insurance holding company system of the international insurance
14 group;

15 (d) The location of the executive offices of the international
16 insurance group;

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

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

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

29 (h) Whether another chief insurance regulatory official acting or
30 seeking to act as the group-wide supervisor and key staff maintain the
31 requisite skill, experience, and tenure necessary to act as group-wide

1 supervisor; and

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

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

8 (6) A group-wide supervisor may determine that it is appropriate to
9 acknowledge another chief insurance regulatory official to serve as the
10 group-wide supervisor. The acknowledgment of the group-wide supervisor
11 shall be made after consideration of the factors listed in subsection (4)
12 of this section and shall be made in cooperation with and subject to the
13 acknowledgment of other regulatory officials involved with supervision of
14 members of the international insurance group and in consultation with the
15 international insurance group.

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

31 (8) Pursuant to section 44-2137, the director is authorized to

1 collect from any insurer registered pursuant to section 44-2132 all
2 information necessary to determine whether the director may act as the
3 group-wide supervisor of an international insurance group or if the
4 director may acknowledge another chief insurance regulatory official to
5 act as the group-wide supervisor. Prior to issuing a determination that
6 an international insurance group is subject to group-wide supervision by
7 the director, the director shall notify the insurer registered pursuant
8 to section 44-2132 and the ultimate controlling person within the
9 international insurance group. The international insurance group shall
10 have not less than thirty days to provide the director with additional
11 information pertinent to the pending determination. The director shall
12 publish on the web site of the Department of Insurance the identity of
13 international insurance groups that the director has determined are
14 subject to group-wide supervision by the director.

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

18 (a) Assess the enterprise risks within the international insurance
19 group to ensure that:

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

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

24 (b) Request, from any member of an international insurance group
25 subject to the director's supervision, information necessary and
26 appropriate to assess enterprise risk, including, but not limited to,
27 information about the members of the international insurance group
28 regarding:

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

30 (ii) Capital adequacy; and

31 (iii) Material intercompany transactions;

1 (c) Coordinate and, through the authority of the regulatory
2 officials of the jurisdictions where members of the international
3 insurance group are domiciled, compel development and implementation of
4 reasonable measures designed to ensure that the international insurance
5 group is able to timely recognize and mitigate enterprise risks to
6 members of such international insurance group that are engaged in the
7 business of insurance;

8 (d) Communicate with other state, federal, and international
9 regulatory agencies for members within the international insurance group
10 and share relevant information, subject to the confidentiality provisions
11 of section 44-2138, through supervisory colleges as set forth in section
12 44-2137.01 or otherwise;

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

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

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

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

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

8 (11) The director may enter into agreements with or obtain
9 documentation from any insurer registered under section 44-2132, any
10 affiliate of the insurer, and other state, federal, and international
11 regulatory agencies for members of the international insurance group that
12 provide the basis for or otherwise clarify a regulatory official's role
13 as group-wide supervisor.

14 (12) A registered insurer subject to this section shall be liable
15 for and shall pay the reasonable expenses of the director's participation
16 in the administration of this section, including the engagement of
17 attorneys, actuaries, and any other professionals and all reasonable
18 travel expenses.

19 Sec. 5. Section 44-2138, Revised Statutes Cumulative Supplement,
20 2014, is amended to read:

21 44-2138 (1) All information, documents, and copies thereof obtained
22 by or disclosed to the director or any other person in the course of an
23 examination or investigation made pursuant to section 44-2137 and all
24 information reported or provided to the director pursuant to sections
25 44-2132 to 44-2136 and section 4 of this act shall be given confidential
26 treatment, shall not be subject to subpoena, and shall not be made public
27 by the director, the National Association of Insurance Commissioners and
28 its affiliates and subsidiaries, or any other person, except to other
29 state, federal, foreign, and international regulatory and law enforcement
30 agencies if the recipient agrees in writing to maintain the
31 confidentiality of the information, without the prior written consent of

1 the insurer to which it pertains unless the director, after giving the
2 insurer and its affiliates who would be affected thereby notice and
3 opportunity to be heard, determines that the interest of policyholders,
4 shareholders, or the public will be served by the publication thereof, in
5 which event he or she may publish all or any part thereof in such manner
6 as he or she may deem appropriate.

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

29 (3) In order to assist in the performance of the director's duties,
30 the director may share information with state, federal, and international
31 regulatory agencies, the National Association of Insurance Commissioners

1 and its affiliates and subsidiaries, state, federal, and international
2 law enforcement authorities, including members of any supervisory college
3 described in section 44-2137.01, the International Association of
4 Insurance Supervisors, and the Bank for International Settlements under
5 the conditions set forth in section 44-154 if the recipient agrees in
6 writing to maintain the confidentiality and privileged status of the
7 document, material, or other information and has verified in writing the
8 legal authority to maintain confidentiality. The director may only share
9 confidential and privileged documents, material, or information reported
10 pursuant to subsection (12) of section 44-2132 with directors or
11 commissioners of states having statutes or regulations substantially
12 similar to subsection (1) of this section and who have agreed in writing
13 not to disclose such information.

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

17 (a) Specify procedures and protocols regarding the confidentiality
18 and security of information shared with the National Association of
19 Insurance Commissioners and its affiliates and subsidiaries pursuant to
20 this section, including procedures and protocols for sharing by the
21 association with other state, federal, or international regulators;

22 (b) Specify that ownership of information shared with the National
23 Association of Insurance Commissioners and its affiliates and
24 subsidiaries pursuant to this section remains with the director and the
25 association's use of the information is subject to the direction of the
26 director;

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

31 (d) Require the National Association of Insurance Commissioners and

1 its affiliates and subsidiaries to consent to intervention by an insurer
2 in any judicial or administrative action in which the association and its
3 affiliates and subsidiaries may be required to disclose confidential
4 information about the insurer shared with the association and its
5 affiliates and subsidiaries pursuant to this section.

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

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

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

20 Sec. 6. Section 44-9004, Revised Statutes Cumulative Supplement,
21 2014, is amended to read:

22 44-9004 For purposes of the Risk Management and Own Risk and
23 Solvency Assessment Act:

24 (1) Director means the Director of Insurance;

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

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

1 subdivision of a state;

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

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

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

18 Sec. 7. Original sections 44-2120, 44-2121, 44-2138, and 44-9004,
19 Revised Statutes Cumulative Supplement, 2014, are repealed.

20 Sec. 8. Since an emergency exists, this act takes effect when
21 passed and approved according to law.