

LEGISLATIVE BILL 772

Approved by the Governor March 30, 2016

Introduced by Schumacher, 22.

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

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

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

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

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

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

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

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

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

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

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

(2) Director means the Director of Insurance;

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

(4) Insurer has the same meaning as in section 44-103, except that it shall 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.

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

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

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

(4) For purposes of completing the corporate governance annual disclosure, the insurer or insurance group may provide information regarding corporate governance at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the corporate governance annual disclosure at the level at which the insurer's or insurance group's risk appetite is determined, the level at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at

which the supervision of those factors are coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on one of these three criteria, it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in the level of reporting.

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

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

Sec. 5. The corporate governance annual disclosure shall be prepared in a manner prescribed by the director. The insurer or insurance group shall have discretion over the responses to the corporate governance annual disclosure inquiries, except that the corporate governance annual disclosure shall contain the material information necessary to permit the director to gain an understanding of the insurer's or insurance group's corporate governance structure, policies, and practices. The director may request additional information that he or she deems material and necessary to provide the director with a clear understanding of the corporate governance policies, reporting or information systems, or controls implementing the corporate governance policies. Documentation and supporting information shall be maintained and made available upon examination or upon request of the director.

Sec. 6. (1) Documents, materials, or other information, including the corporate governance annual disclosure, in the possession or control of the Department of Insurance that are obtained by, created by, or disclosed to the director or any other person under the Corporate Governance Annual Disclosure Act are 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. However, the director is authorized to 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. Nothing in this section shall be construed to require written consent of the insurer before the director may share or receive confidential documents, materials, or other information related to the corporate governance annual disclosure pursuant to subsection (3) of this section to assist in the performance of the director's regular duties.

(2) Neither the director nor any person who received documents, materials, or other information related to the corporate governance annual disclosure, 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 Corporate Governance Annual Disclosure Act, shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or other 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 information related to the corporate governance annual disclosure, including the confidential and privileged documents, materials, or other 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 as described in section 44-2137.01, with the National Association of Insurance Commissioners, and with third-party consultants pursuant to section 7 of this act if the recipient agrees in writing to maintain the confidentiality and privileged status of such documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality; and

(b) May receive documents, materials, or other information related to the corporate governance annual disclosure, including otherwise confidential and privileged documents, materials, or other information, including proprietary and trade secret documents and materials, from regulatory officials of other state, federal, and international financial regulatory agencies, including members of any supervisory college as described in section 44-2137.01 and from the National Association of Insurance Commissioners, and shall maintain as confidential or privileged any documents, materials, or other 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 other information.

(4) The sharing of information and documents by the director pursuant to the Corporate Governance Annual Disclosure 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.

(5) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or other information related to the corporate governance annual disclosure 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 Corporate Governance Annual Disclosure Act.

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

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

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

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

(5) 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 Corporate Governance Annual Disclosure Act shall contain the following provisions and expressly require the written consent of the insurer prior to making public information provided under the act:

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

(b) Procedures and protocols for sharing by the National Association of Insurance Commissioners only 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 related to the corporate governance annual disclosure and has verified in writing the legal authority to maintain confidentiality.

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

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

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

(f) A requirement that the National Association of Insurance Commissioners or a third-party consultant 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 Corporate Governance Annual Disclosure Act.

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

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

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

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

Sec. 11. Section 44-2121, Revised Statutes Cumulative Supplement, 2014, is

amended to read:

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

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

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

(3) Director means the Director of Insurance;

(4) Enterprise risk means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital to fall into company action level as set forth in section 44-6011 or would cause the insurer 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;

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

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

(7) 6) Insurer has the same meaning as in section 44-103, except that insurer 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;

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

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

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

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

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

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

(1) Meets the following criteria:

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

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

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

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

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

jurisdiction is the appropriate group-wide supervisor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Governance, risk assessment, and management;

(ii) Capital adequacy; and

(iii) Material intercompany transactions;

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

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

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

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

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

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

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

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

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

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

44-2138 (1) All information, documents, and copies thereof obtained by or disclosed to the director or any other person in the course of an examination or investigation made pursuant to section 44-2137 and all information reported or provided to the director pursuant to sections 44-2132 to 44-2136 and section 13 of this act shall be given confidential treatment, shall not be subject to subpoena, and shall not be made public by the director, the National Association of Insurance Commissioners and its affiliates and subsidiaries, or

any other person, except to other state, federal, foreign, and international regulatory and law enforcement agencies if the recipient agrees in writing to maintain the confidentiality of the information, without the prior written consent of the insurer to which it pertains unless the director, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in such manner as he or she may deem appropriate.

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

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

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

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

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

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

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

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

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

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

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

44-4404 (1) A risk retention group seeking to be chartered and licensed in

this state shall be chartered and licensed as a liability insurance company under Chapter 44 and, except as provided elsewhere in the Risk Retention Act, shall comply with all of the laws, rules, and regulations applicable to such insurers chartered and licensed in this state and with sections 44-4405 to 44-4413 to the extent such requirements are not a limitation on laws, rules, or regulations of this state.

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

(3) At the time of filing its application for a charter and license, the risk retention group shall provide to the director in summary form the following information: The identity of the initial members of the group; the identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group; the amount and nature of initial capitalization; the coverages to be afforded; and the states in which the group intends to operate. Upon receipt of this information, the director shall forward such information to the National Association of Insurance Commissioners. Providing notification to the National Association of Insurance Commissioners shall be in addition to and shall not be sufficient to satisfy the requirements of section 44-4405 or any other sections of the act.

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

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

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

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

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

(c) No director qualifies as independent unless the board of directors affirmatively determines that the director has no material relationship with the risk retention group. Each risk retention group shall disclose these determinations to its domestic regulator at least annually. For this purpose, any person that is a direct or indirect owner of or subscriber in the risk retention group, or is an officer, director, or employee of such an owner and insured unless some other position of such officer, director, or employee constitutes a material relationship, as contemplated by section 3901(a)(4)(E)(ii) of the federal Liability Risk Retention Act of 1986, is considered to be independent.

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

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

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

(iii) A relationship with a related entity as follows: A director or immediate family member of a director who is employed as an executive officer of another company where any of the risk retention group's present executives serve on that other company's board of directors is not independent until one year after the end of such service or the employment relationship.

(6)(a) The term of any material service provider contract with the risk retention group shall not exceed five years. Any such contract, or its renewal, shall require the approval of the majority of the risk retention group's independent directors. The risk retention group's board of directors shall have the right to terminate any service provider, audit, or actuarial contracts at any time for cause after providing adequate notice as defined in the contract. The service provider contract is deemed material if the amount to be paid for

such contract is greater than or equal to five percent of the risk retention group's annual gross written premium or two percent of its surplus, whichever is greater.

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

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

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

(a) Assure that all owners or insureds of the risk retention group receive evidence of ownership interest;

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

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

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

(e) Review and approve, at least annually:

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

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

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

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

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

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

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

(iii) Discuss the annual audited financial statements with its independent auditor and, if advisable, discuss its quarterly financial statements with its independent auditor;

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

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

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

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

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

(ix) Report regularly to the board of directors.

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

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

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

(b) Director qualification standards;

(c) Director responsibilities;

(d) Director access to management and, as necessary and appropriate,

independent advisors;

(e) Director compensation;

(f) Director orientation and continuing education;

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

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

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

(a) Conflicts of interest;

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

(c) Confidentiality;

(d) Fair dealing;

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

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

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

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

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

44-9004 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 (6 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. 17. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 15, and 18 of this act become operative on January 1, 2017. The other sections of this act become operative on their effective date.

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

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

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