

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 863

Introduced by Williams, 36.

Read first time January 07, 2022

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to the Insurance Holding Company System Act;
- 2 to amend sections 44-2121, 44-2132, 44-2138, and 44-9004, Reissue
- 3 Revised Statutes of Nebraska; to define terms; to require the filing
- 4 of annual group capital calculations and liquidity stress tests as
- 5 prescribed; to provide for confidentiality and recognize trade
- 6 secrets as prescribed; to provide powers and duties; to harmonize
- 7 provisions; and to repeal the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 44-2121, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 44-2121 For purposes of the Insurance Holding Company System Act:

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

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

24 (3) Director means the Director of Insurance;

25 (4) Director or commissioner of the lead state means the director or
26 commissioner of insurance in the lead state for the insurance holding
27 company system as determined by the procedures within the Financial
28 Analysis Handbook adopted by the National Association of Insurance
29 Commissioners;

30 (5) (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 (6) Group capital calculation instructions means the group capital
10 calculation instructions as adopted by the National Association of
11 Insurance Commissioners and amended from time to time in accordance with
12 its adopted procedures;

13 (7) ~~(5)~~ Group-wide supervisor means the chief insurance regulatory
14 official, including the director, who (a) is authorized to conduct and
15 coordinate group-wide supervision activities of an international
16 insurance group and (b) is from the jurisdiction determined or
17 acknowledged by the director under section 44-2155 to have sufficient
18 contacts with the international insurance group;

19 (8) ~~(6)~~ An insurance holding company system shall consist of two or
20 more affiliated persons, one or more of which is an insurer;

21 (9) ~~(7)~~ Insurer has the same meaning as in section 44-103, except
22 that insurer does not include agencies, authorities, or instrumentalities
23 of the United States, its possessions and territories, the Commonwealth
24 of Puerto Rico, the District of Columbia, or a state or political
25 subdivision of a state;

26 (10) ~~(8)~~ International insurance group means an insurance holding
27 company system that has been determined by the director to be an
28 international insurance group under section 44-2154;

29 (11) NAIC Liquidity Stress Test Framework means a separate
30 publication of the National Association of Insurance Commissioners which
31 includes a history of the National Association of Insurance

1 Commissioners' development of regulatory liquidity stress testing, the
2 scope criteria applicable for a specific data year, and the liquidity
3 stress test instructions and reporting templates for a specific data
4 year;

5 (12) ~~(9)~~ Person means an individual, a corporation, a partnership, a
6 limited partnership, an association, a joint-stock company, a trust, an
7 unincorporated organization, any similar entity, or any combination of
8 such entities acting in concert but does not include any joint-venture
9 partnership exclusively engaged in owning, managing, leasing, or
10 developing real or tangible personal property;

11 (13) Scope criteria means, as detailed in the NAIC Liquidity Stress
12 Test Framework, the designated exposure bases along with minimum
13 magnitudes thereof for the specified data year, used to establish a
14 preliminary list of insurers considered scoped into the NAIC Liquidity
15 Stress Test Framework for such data year;

16 (14) ~~(10)~~ Security holder of a specified person means one who owns
17 any security of such person, including common stock, preferred stock,
18 debt obligations, and any other security convertible into or evidencing
19 the right to acquire any such stock or obligations;

20 (15) ~~(11)~~ Subsidiary of a specified person means an affiliate
21 controlled by such person directly or indirectly through one or more
22 intermediaries; and

23 (16) ~~(12)~~ Voting security includes any security convertible into or
24 evidencing a right to acquire a voting security.

25 Sec. 2. Section 44-2132, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 44-2132 (1) Every insurer which is authorized to do business in this
28 state and which is a member of an insurance holding company system shall
29 register with the director, except that registration shall not be
30 required for a foreign insurer subject to registration requirements and
31 standards adopted by statute or regulation in the jurisdiction of its

1 domicile which are substantially similar to those contained in this
2 section, subsection (1) of section 44-2133, sections 44-2134 and 44-2136,
3 and either subsection (2) of section 44-2133 or a provision such as the
4 following: Each registered insurer shall keep current the information
5 required to be disclosed in its registration statement by reporting all
6 material changes or additions within fifteen days after the end of the
7 month in which it learns of each such change or addition. Any insurer
8 which is subject to registration under this section shall register within
9 fifteen days after it becomes subject to registration and annually
10 thereafter by May 1 of each year for the previous calendar year unless
11 the director for good cause shown extends the time for such initial or
12 annual registration and then within such extended time. The director may
13 require any insurer which is authorized to do business in the state,
14 which is a member of an insurance holding company system, and which is
15 not subject to registration under this section to furnish a copy of the
16 registration statement, the summary specified in subsection (3) of this
17 section, or other information filed by such insurer with the insurance
18 regulatory authority of its domiciliary jurisdiction.

19 (2) Every insurer subject to registration shall file the
20 registration statement with the director on a form and in a format
21 prescribed by the National Association of Insurance Commissioners which
22 shall contain the following current information:

23 (a) The capital structure, general financial condition, ownership,
24 and management of the insurer and any person controlling the insurer;

25 (b) The identity and relationship of every member of the insurance
26 holding company system;

27 (c) The following agreements in force and transactions currently
28 outstanding or which have occurred during the last calendar year between
29 such insurer and its affiliates:

30 (i) Loans, other investments, or purchases, sales, or exchanges of
31 securities of the affiliates by the insurer or of the insurer by its

1 affiliates;

2 (ii) Purchases, sales, or exchanges of assets;

3 (iii) Transactions not in the ordinary course of business;

4 (iv) Guarantees or undertakings for the benefit of an affiliate
5 which result in an actual contingent exposure of the insurer's assets to
6 liability, other than insurance contracts entered into in the ordinary
7 course of the insurer's business;

8 (v) All management agreements, service contracts, and cost-sharing
9 arrangements;

10 (vi) Reinsurance agreements;

11 (vii) Dividends and other distributions to shareholders; and

12 (viii) Consolidated tax allocation agreements;

13 (d) Any pledge of the insurer's stock, including stock of any
14 subsidiary or controlling affiliate, for a loan made to any member of the
15 insurance holding company system;

16 (e) If requested by the director, the insurer shall include
17 financial statements of or within an insurance holding company system,
18 including all affiliates. Financial statements may include, but are not
19 limited to, annual audited financial statements filed with the Securities
20 and Exchange Commission pursuant to the Securities Act of 1933, as
21 amended, or the Securities Exchange Act of 1934, as amended. An insurer
22 required to file financial statements pursuant to this subdivision may
23 satisfy the request by providing the director with the most recently
24 filed parent corporation financial statements that have been filed with
25 the Securities and Exchange Commission;

26 (f) Statements that show that the insurer's board of directors
27 oversees corporate governance and internal controls and that the
28 insurer's officers or senior management have approved, implemented, and
29 continue to maintain and monitor corporate governance and internal
30 control procedures;

31 (g) Other matters concerning transactions between registered

1 insurers and any affiliates as may be included from time to time in any
2 registration forms adopted or approved by the director; and

3 (h) Any other information required by rules and regulations which
4 the director may adopt and promulgate.

5 (3) All registration statements shall contain a summary outlining
6 all items in the current registration statement representing changes from
7 the prior registration statement.

8 (4) It shall not be necessary to disclose on the registration
9 statement information which is not material for the purposes of this
10 section. Unless the director by rule, regulation, or order provides
11 otherwise, sales, purchases, exchanges, loans, or extensions of credit,
12 investments, or guarantees involving one-half of one percent or less of
13 an insurer's admitted assets as of December 31 next preceding shall not
14 be deemed material for purposes of this section. Such exclusion from the
15 definition of material shall not apply for purposes of group capital
16 calculation instructions or the NAIC Liquidity Stress Test Framework.

17 (5) Subject to the requirements of section 44-2134, each registered
18 insurer shall give notice to the director of all dividends and other
19 distributions to shareholders within five business days following the
20 declaration thereof and shall not pay any such dividends or other
21 distributions to shareholders within ten business days following receipt
22 of such notice by the director unless for good cause shown the director
23 has approved such payment within such ten-business-day period.

24 (6) Any person within an insurance holding company system subject to
25 registration shall be required to provide complete and accurate
26 information to an insurer when such information is reasonably necessary
27 to enable the insurer to comply with the Insurance Holding Company System
28 Act.

29 (7) The director shall terminate the registration of any insurer
30 which demonstrates that it no longer is a member of an insurance holding
31 company system.

1 (8) The director may require or allow two or more affiliated
2 insurers subject to registration under this section to file a
3 consolidated registration statement.

4 (9) The director may allow an insurer which is authorized to do
5 business in this state and which is part of an insurance holding company
6 system to register on behalf of any affiliated insurer which is required
7 to register under subsection (1) of this section and to file all
8 information and material required to be filed under this section.

9 (10) This section shall not apply to any insurer, information, or
10 transaction if and to the extent that the director by rule, regulation,
11 or order exempts the same from this section.

12 (11) Any person may file with the director a disclaimer of
13 affiliation with any authorized insurer or such a disclaimer may be filed
14 by such insurer or any member of an insurance holding company system. The
15 disclaimer shall fully disclose all material relationships and bases for
16 affiliation between such person and such insurer as well as the basis for
17 disclaiming such affiliation. A disclaimer of affiliation shall be deemed
18 to have been granted unless the director, within thirty days after
19 receipt of a complete disclaimer, notifies the filing party that the
20 disclaimer is disallowed. If the disclaimer is disallowed, the
21 disclaiming party may request and shall be entitled to an administrative
22 hearing. The disclaiming party shall be relieved of its duty to register
23 under this section if approval of the disclaimer has been granted by the
24 director or if the disclaimer is deemed to have been approved.

25 (12) The ultimate controlling person of every insurer subject to
26 registration shall also file an annual enterprise risk report. The report
27 shall, to the best of the ultimate controlling person's knowledge and
28 belief, identify the material risks within the insurance holding company
29 system that could pose enterprise risk to the insurer. The report shall
30 be filed with the ~~lead state~~ director or commissioner of the lead state
31 ~~insurance holding company system as determined by the procedures within~~

1 ~~the Financial Analysis Handbook adopted by the National Association of~~
2 ~~Insurance Commissioners.~~

3 (13)(a) Except as otherwise provided in this section, the ultimate
4 controlling person of every insurer subject to registration shall
5 concurrently file with the registration an annual group capital
6 calculation as directed by the director or commissioner of the lead
7 state. The annual group capital calculation shall be completed in
8 accordance with the group capital calculation instructions, which may
9 permit the director or commissioner of the lead state to allow a
10 controlling person that is not the ultimate controlling person to file
11 the annual group capital calculation. The annual group capital
12 calculation shall be filed with the director or commissioner of the lead
13 state. The following insurance holding company systems shall be exempt
14 from filing an annual group capital calculation:

15 (i) An insurance holding company system that has only one insurer
16 within its holding company structure, only writes business and is only
17 licensed in its domestic state, and assumes no business from any other
18 insurer;

19 (ii) An insurance holding company system that is required to perform
20 a group capital calculation specified by the Federal Reserve Board. The
21 director or commissioner of the lead state shall request the calculation
22 from the Federal Reserve Board under the terms of information-sharing
23 agreements in effect. If the Federal Reserve Board cannot share the
24 calculation with the director or commissioner of the lead state, the
25 insurance holding company system is not exempt from the annual group
26 capital calculation filing requirement;

27 (iii) An insurance holding company system whose non-United-States
28 group-wide supervisor is located within a reciprocal jurisdiction as
29 described in subdivision (7)(a)(i) of section 44-416.06 that recognizes
30 the state regulatory approach to group supervision and group capital of
31 the United States; and

1 (iv) An insurance holding company system:

2 (A) That provides information to the director or commissioner of the
3 lead state that meets the requirements for accreditation under the
4 financial standards and accreditation program of the National Association
5 of Insurance Commissioners, either directly or indirectly through the
6 group-wide supervisor, who has determined such information is
7 satisfactory to allow the director or commissioner of the lead state to
8 comply with the group supervision approach of the National Association of
9 Insurance Commissioners, as detailed in the Financial Analysis Handbook
10 of the National Association of Insurance Commissioners; and

11 (B) Whose non-United-States group-wide supervisor, that is not in a
12 reciprocal jurisdiction, recognizes and accepts, as provided in
13 subsection (15) of this section, the group capital calculation as the
14 world-wide group capital assessment for United States' insurance groups
15 who operate in that jurisdiction.

16 (b) Notwithstanding subdivisions (13)(a)(iii) and (iv) of this
17 section, the director or commissioner of the lead state shall require the
18 filing of the annual group capital calculation for the United States
19 operations of any non-United-States-based insurance holding company
20 system if, after any necessary consultation with other supervisors or
21 officials, it is deemed appropriate by the director or commissioner of
22 the lead state for prudential oversight and solvency monitoring purposes
23 or for ensuring the competitiveness of the insurance marketplace.

24 (c) Notwithstanding the exemptions from filing the annual group
25 capital calculation stated in subdivisions (13)(a)(i) through (iv) of
26 this section, the director or commissioner of the lead state has the
27 discretion to exempt the ultimate controlling person from filing the
28 annual group capital calculation or to accept a limited group capital
29 filing in accordance with subsection (14) of this section.

30 (d) If the director or commissioner of the lead state determines
31 that an insurance holding company system no longer meets one or more of

1 the requirements for an exemption from filing the annual group capital
2 calculation under this subsection, the insurance holding company system
3 shall file the annual group capital calculation at the next annual filing
4 date unless given an extension by the director or commissioner of the
5 lead state based on reasonable grounds shown.

6 (14)(a) The director or commissioner of the lead state has the
7 discretion to exempt the ultimate controlling person from filing the
8 annual group capital calculation if the director or commissioner of the
9 lead state determines that:

10 (i) The holding company system has annual direct written and
11 unaffiliated assumed premium, including international direct and assumed
12 premium, but excluding premiums reinsured with the Federal Crop Insurance
13 Corporation and the national flood insurance program, of less than one
14 billion dollars;

15 (ii) The holding company system has no insurers within its holding
16 company structure that are domiciled outside of the United States or one
17 of its territories;

18 (iii) The holding company system has no banking, depository, or
19 other financial entity that is subject to an identified regulatory
20 capital framework within its holding company structure;

21 (iv) The holding company system attests that there are no material
22 changes in the transactions between insurers and noninsurers in the
23 group; and

24 (v) The noninsurers within the holding company system do not pose a
25 material financial risk to the insurer's ability to honor policyholder
26 obligations.

27 (b) The director or commissioner of the lead state has the
28 discretion to accept, in lieu of the group capital calculation, a limited
29 group capital filing if the holding company system:

30 (i) Has annual direct written and unaffiliated assumed premium,
31 including international direct and assumed premium but excluding premiums

1 reinsured with the Federal Crop Insurance Corporation and the national
2 flood insurance program, of less than one billion dollars;

3 (ii) Has no insurers within its holding company structure that are
4 domiciled outside of the United States or one of its territories;

5 (iii) Does not include a banking, depository, or other financial
6 entity that is subject to an identified regulatory capital framework; and

7 (iv) Attests that there are no material changes in transactions
8 between insurers and noninsurers in the group that have occurred and the
9 noninsurers within the holding company system do not pose a material
10 financial risk to the insurers ability to honor policyholder obligations.

11 (c) For an insurance holding company that has previously met an
12 exemption with respect to the group capital calculation pursuant to
13 subdivisions (14)(a) and (b) of this section, the director or
14 commissioner of the lead state may require, at any time, the ultimate
15 controlling person to file an annual group capital calculation, completed
16 in accordance with the group capital calculation instructions, if:

17 (i) Any insurer within the insurance holding company system is in a
18 risk-based capital company action level event as set forth in section
19 44-6016 or a similar standard for a non-United-States insurer;

20 (ii) Any insurer within the insurance holding company system meets
21 one or more of the standards of an insurer deemed to be in hazardous
22 financial condition as defined by rule and regulation adopted and
23 promulgated by the director to define standards for companies deemed to
24 be in hazardous financial condition; or

25 (iii) Any insurer within the insurance holding company system
26 otherwise exhibits qualities of a troubled insurer as determined by the
27 director or commissioner of the lead state based on unique circumstances,
28 including, but not limited to, the type and volume of business written,
29 ownership and organizational structure, federal agency requests, and
30 international supervisor requests.

31 (15) A non-United-States jurisdiction is considered to recognize and

1 accept the group capital calculation if:

2 (a) For annual group capital calculations under subdivision (13)(a)
3 (iv) of this section:

4 (i) The non-United-States jurisdiction recognizes the United States
5 state regulatory approach to group supervision and group capital by
6 providing confirmation by a competent regulatory authority in such
7 jurisdiction that insurers and insurance groups whose lead state is
8 accredited by the National Association of Insurance Commissioners under
9 its accreditation program shall be subject only to worldwide prudential
10 insurance group supervision including worldwide group governance,
11 solvency and capital, and reporting, as applicable, by the lead state and
12 will not be subject to group supervision, including worldwide group
13 governance, solvency and capital, and reporting, at the level of the
14 worldwide parent undertaking of the insurance or reinsurance group by the
15 non-United-States jurisdiction; or

16 (ii) The non-United-States jurisdiction, if such jurisdiction has no
17 United States insurance groups operating in such jurisdiction, indicates
18 formally in writing to the lead state with a copy to the International
19 Association of Insurance Supervisors that the group capital calculation
20 is an acceptable international capital standard. Such writing will serve
21 as the documentation otherwise required in subdivision (15)(a)(i) of this
22 section; or

23 (b) The non-United-States jurisdiction provides confirmation by a
24 competent regulatory authority in such jurisdiction that information
25 regarding insurers and their parent, subsidiary, or affiliated entities,
26 if applicable, shall be provided to the director or commissioner of the
27 lead state in accordance with a memorandum of understanding or similar
28 document between the director and such jurisdiction, including, but not
29 limited to, the International Association of Insurance Supervisors
30 Multilateral Memorandum of Understanding or other multilateral memoranda
31 of understanding coordinated by the National Association of Insurance

1 Commissioners. The director shall determine, in consultation with the
2 National Association of Insurance Commissioners, if the requirements of
3 the information-sharing agreements are in force.

4 (16)(a) A list of non-United-States jurisdictions that recognize and
5 accept the group capital calculation shall be published through the
6 National Association of Insurance Commissioners committee process.

7 (b) A list of jurisdictions that recognize and accept the group
8 capital calculation pursuant to subdivision (13)(a)(iv) of this section
9 shall be published in accordance with the National Association of
10 Insurance Commissioners committee process to assist the director or
11 commissioner of the lead state in determining which insurers shall file
12 an annual group capital calculation. The list will clarify those
13 situations in which a jurisdiction is exempted from filing under
14 subdivision (13)(a)(iv) of this section. To assist with a determination
15 under subdivision (13)(b) of this section, the list will also identify
16 whether a jurisdiction that is exempted under subdivisions (13)(a)(iii)
17 or (iv) of this section requires a group capital filing for any United
18 States based insurance group's operations in that non-United-States
19 jurisdiction.

20 (c) For a non-United-States jurisdiction where no United States
21 insurance groups operate, the confirmation provided to meet the
22 requirement of subdivision (15)(a)(ii) of this section will serve as
23 support for a recommendation that such non-United-States jurisdiction be
24 published as a jurisdiction that recognizes and accepts the group capital
25 calculation through the National Association of Insurance Commissioners
26 committee process.

27 (d) If the director or commissioner of the lead state makes a
28 determination pursuant to subdivision (13)(a)(iv) that differs from the
29 National Association of Insurance Commissioners list, the director or
30 commissioner of the lead state shall provide thoroughly documented
31 justification to the National Association of Insurance Commissioners and

1 other states.

2 (e) Upon determination by the director or commissioner of the lead
3 state that a non-United-States jurisdiction no longer meets one or more
4 of the requirements to recognize and accept the group capital
5 calculation, the director or commissioner of the lead state may provide a
6 recommendation to the National Association of Insurance Commissioners
7 that the non-United-States jurisdiction be removed from the list of
8 jurisdictions that recognize and accept the group capital calculation.

9 (17)(a) The ultimate controlling person of every insurer that is
10 subject to registration and scoped into the NAIC Liquidity Stress Test
11 Framework shall file the results of a specific data year's liquidity
12 stress test. The filing shall be made to the director or commissioner of
13 the lead state.

14 (b) The NAIC Liquidity Stress Test Framework includes scope criteria
15 applicable to a specific data year. These scope criteria are reviewed at
16 least annually by the Financial Stability Task Force of the National
17 Association of Insurance Commissioners or any successor to the task
18 force. Any change to the NAIC Liquidity Stress Test Framework or to the
19 data year for which the scope criteria are to be measured shall be
20 effective on January 1 following the calendar year when such changes are
21 adopted. Insurers meeting at least one threshold of the scope criteria
22 shall be considered scoped into the NAIC Liquidity Stress Test Framework
23 for the specified data year unless the director or commissioner of the
24 lead state, in consultation with the Financial Stability Task Force of
25 the National Association of Insurance Commissioners or any successor to
26 the task force, determines the insurer should not be scoped into the
27 framework for such data year. Similarly, insurers that do not meet at
28 least one threshold of the scope criteria shall be considered scoped out
29 of the NAIC Liquidity Stress Test Framework for the specified data year
30 unless the director or commissioner of the lead state, in consultation
31 with the Financial Stability Task Force or any successor to the task

1 force, determines the insurer should be scoped into the framework for
2 that data year.

3 (c) In order for regulators to avoid having insurers scoped in and
4 out of the NAIC Liquidity Stress Test Framework on a frequent basis, the
5 director or commissioner of the lead state, in consultation with the
6 Financial Stability Task Force or any successor to the task force, shall
7 assess this concern as part of the determination for an insurer.

8 (d) The performance of, and filing of the results from, a liquidity
9 stress test for a specific data year shall comply with the instructions
10 and reporting templates for the NAIC Liquidity Stress Test Framework for
11 such data year and any determinations made by the director or
12 commissioner of the lead state, in consultation with the Financial
13 Stability Task Force or any successor to the task force, provided within
14 the NAIC Liquidity Stress Test Framework.

15 (18) ~~(13)~~ The failure to file a registration statement or any
16 summary of the registration statement thereto or enterprise risk report
17 required by this section within the time specified for such filing shall
18 be a violation of this section.

19 Sec. 3. Section 44-2138, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 44-2138 (1)(a) ~~(1)~~ All information, documents, and copies thereof
22 obtained by or disclosed to the director or any other person in the
23 course of an examination or investigation made pursuant to section
24 44-2137 and all information reported or provided to the director pursuant
25 to sections 44-2132 to 44-2136 and 44-2155 shall be recognized by this
26 state as being proprietary and containing trade secrets, shall be given
27 confidential treatment, shall not be subject to subpoena, and shall not
28 be made public by the director, the National Association of Insurance
29 Commissioners and its affiliates and subsidiaries, or any other person,
30 except to other state, federal, foreign, and international regulatory and
31 law enforcement agencies if the recipient agrees in writing to maintain

1 the confidentiality of the information, without the prior written consent
2 of the insurer to which it pertains unless the director, after giving the
3 insurer and its affiliates who would be affected thereby notice and
4 opportunity to be heard, determines that the interest of policyholders,
5 shareholders, or the public will be served by the publication thereof, in
6 which event he or she may publish all or any part thereof in such manner
7 as he or she may deem appropriate.

8 (b) For purposes of the information filed with the Director of
9 Insurance pursuant to subsection (13) of section 44-2132, the director
10 shall maintain the confidentiality of the annual group capital
11 calculation and group capital ratio produced within the calculation and
12 any group capital information received from an insurance holding company
13 supervised by the Federal Reserve Board or by any United States group-
14 wide supervisor.

15 (c) For purposes of the information filed with the Director of
16 Insurance pursuant to subsection (17) of section 44-2132, the director
17 shall maintain the confidentiality of the liquidity stress test results
18 and supporting disclosures and any liquidity stress test information
19 received from an insurance holding company supervised by the Federal
20 Reserve Board and non-United-States group-wide supervisors.

21 (2) The director may receive information, documents, and copies of
22 information and documents, including proprietary and trade secret
23 information, disclosed to other state, federal, foreign, or international
24 regulatory and law enforcement agencies and from the National Association
25 of Insurance Commissioners and its affiliates and subsidiaries pursuant
26 to an examination of an insurance holding company system. The director
27 shall maintain information, documents, and copies of information and
28 documents received pursuant to this subsection as confidential or
29 privileged if received with notice or the understanding that it is
30 confidential or privileged under the laws of the jurisdiction that is the
31 source of the information. Such information shall not be a public record

1 subject to disclosure by the director pursuant to sections 84-712 to
2 84-712.09, subject to subpoena, subject to discovery, or admissible in
3 evidence in any private civil action, except that the director may use
4 such information in any regulatory or legal action brought by the
5 director. The director, and any other person while acting under the
6 authority of the director who has received information pursuant to this
7 subsection, may not, and shall not be required to, testify in any private
8 civil action concerning any information subject to this section. Nothing
9 in this section shall constitute a waiver of any applicable privilege or
10 claim of confidentiality in the information received pursuant to this
11 subsection as a result of information sharing authorized by this section.

12 (3) In order to assist in the performance of the director's duties,
13 the director may share information, including any proprietary or trade
14 secret document or material, with state, federal, and international
15 regulatory agencies, with the National Association of Insurance
16 Commissioners, with any third-party consultant designated by the
17 director, and with ~~and its affiliates and subsidiaries~~, state, federal,
18 and international law enforcement authorities, including members of any
19 supervisory college described in section 44-2137.01, with the
20 International Association of Insurance Supervisors, and with the Bank for
21 International Settlements under the conditions set forth in section
22 44-154 if the recipient agrees in writing to maintain the confidentiality
23 and privileged status of the document, material, or ~~other~~ information and
24 has verified in writing the legal authority to maintain confidentiality.
25 The director may only share any confidential and privileged document
26 ~~documents~~, material, or information filed reported pursuant to subsection
27 (12) of section 44-2132 with directors or commissioners of states having
28 statutes or regulations substantially similar to subsection (1) of this
29 section and who have agreed in writing not to disclose such document,
30 material, or information.

31 (4) The director shall enter into written agreements with the

1 National Association of Insurance Commissioners and any third-party
2 consultant designated by the director governing sharing and use of any
3 document, material, or information provided pursuant to this section that
4 shall:

5 (a) Specify procedures and protocols regarding the confidentiality
6 and security of information shared with the National Association of
7 Insurance Commissioners or any third-party consultant designated by the
8 director and its affiliates and subsidiaries pursuant to this section,
9 including procedures and protocols for sharing by the association or any
10 third-party consultant designated by the director with other state,
11 federal, or international regulators. The agreement shall provide that
12 the recipient agrees in writing to maintain the confidentiality and
13 privileged status of any such document, material, or information and has
14 verified in writing the legal authority to maintain such confidentiality;

15 (b) Specify that ownership of any document, material, or information
16 shared with the National Association of Insurance Commissioners or any
17 third-party consultant designated by the director and its affiliates and
18 subsidiaries pursuant to this section remains with the director and the
19 association's use of any document, material, or the information by the
20 association or any third-party consultant designated by the director is
21 subject to the direction of the director;

22 (c) Prohibit the National Association of Insurance Commissioners or
23 any third-party consultant designated by the director from storing any
24 document, material, or information shared pursuant to this section in a
25 permanent database after the underlying analysis is completed. This
26 subdivision does not apply to any document, material, or information
27 filed pursuant to subsection (17) of section 44-2132;

28 (d) ~~(e)~~ Require prompt notice to be given to an insurer whose
29 confidential document, material, or information in the possession of the
30 National Association of Insurance Commissioners or any third-party
31 consultant designated by the director pursuant to this section is subject

1 to a request or subpoena to the association or any third-party consultant
2 designated by the director for disclosure or production; ~~and~~

3 (e) ~~(d)~~ Require the National Association of Insurance Commissioners
4 or any third-party consultant designated by the director ~~and its~~
5 ~~affiliates and subsidiaries~~ to consent to intervention by an insurer in
6 any judicial or administrative action in which the association or any
7 third-party consultant designated by the director ~~and its affiliates and~~
8 ~~subsidiaries~~ may be required to disclose confidential information about
9 the insurer shared with the association or any third-party consultant
10 designated by the director ~~and its affiliates and subsidiaries~~ pursuant
11 to this section; ~~and -~~

12 (f) For any document, material, or information filed pursuant to
13 subsection (17) of section 44-2132, in the case of an agreement involving
14 any third-party consultant designated by the director, provide for
15 notification to the applicable insurers of the identity of such third-
16 party consultant.

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

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

26 (7) Any document, material ~~Documents, materials,~~ or other
27 information in the possession or control of the National Association of
28 Insurance Commissioners or any third-party consultant designated by the
29 director pursuant to this section shall be confidential and privileged,
30 shall not be subject to public disclosure under section 84-712, shall not
31 be subject to subpoena, and shall not be subject to discovery or

1 admissible as evidence in any private civil action.

2 (8) The annual group capital calculation and resulting group capital
3 ratio required under subsection (13) of section 44-2132 and the liquidity
4 stress test along with its results and supporting disclosures required
5 under subsection (17) of section 44-2132 shall be considered regulatory
6 tools for assessing group risks and capital adequacy and group liquidity
7 risks, respectively, and shall not be used as a means to rank insurers or
8 insurance holding company systems. Except as otherwise may be required
9 under the Insurance Holding Company System Act, it is unlawful to make,
10 publish, disseminate, circulate, place before the public, or cause
11 directly or indirectly to be made, published, disseminated, circulated,
12 or placed before the public in a newspaper, magazine, or other
13 publication, or in the form of a notice, circular, pamphlet, letter, or
14 poster, or over any radio or television station or any electronic means
15 of communication available to the public, or in any other way as an
16 advertisement, announcement, or statement containing a representation or
17 statement with regard to the annual group capital calculation, the group
18 capital ratio, the liquidity stress test results, or supporting
19 disclosures for the liquidity stress test of any insurer or any insurer
20 group, or of any component derived in the calculation by any insurer,
21 broker, or other person engaged in any manner in the insurance business,
22 except that if any materially false statement with respect to the annual
23 group capital calculation, the resulting group capital ratio, an
24 inappropriate comparison of any amount to an insurer's or insurance
25 group's annual group capital calculation or resulting group capital
26 ratio, liquidity stress test result, supporting disclosures for the
27 liquidity stress test, or an inappropriate comparison of any amount to an
28 insurer's or insurance group's liquidity stress test result or supporting
29 disclosures is published in any written publication and the insurer is
30 able to demonstrate to the director with substantial proof the falsity of
31 such statement or the inappropriateness, as the case may be, then the

1 insurer may publish announcements in a written publication if the sole
2 purpose of the announcement is to rebut the materially false statement.

3 Sec. 4. Section 44-9004, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 44-9004 For purposes of the Risk Management and Own Risk and
6 Solvency Assessment Act:

7 (1) Director means the Director of Insurance;

8 (2) Insurance group means those insurers and affiliates included
9 within an insurance holding company system as defined in ~~subdivision (6)~~
10 ~~of~~ section 44-2121;

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

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

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

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

1 Sec. 5. Original sections 44-2121, 44-2132, 44-2138, and 44-9004,
2 Reissue Revised Statutes of Nebraska, are repealed.