

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 926

Introduced by Howard, 9.

Read first time January 15, 2014

Committee:

A BILL

1 FOR AN ACT relating to the Department of Insurance; to amend sections
2 12-1109, 44-165, and 44-3719, Reissue Revised Statutes of
3 Nebraska; to change provisions relating to rules and
4 regulations; and to repeal the original sections.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 12-1109, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 12-1109 The director ~~shall~~may adopt and promulgate rules
4 and regulations necessary to carry out and enforce the Burial Pre-
5 Need Sale Act.

6 Sec. 2. Section 44-165, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 44-165 (1)(a) A financial conglomerate may submit to the
9 jurisdiction of the Director of Insurance for supervision on a
10 consolidated basis under this section. Supervision under this section
11 shall be in addition to all statutory and regulatory requirements
12 imposed on domestic insurers and shall be for the purpose of
13 determining how the operations of the financial conglomerate impact
14 insurance operations.

15 (b) For purposes of this section:

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

18 (ii) Financial conglomerate means either an insurance
19 company domiciled in Nebraska or a person established under the laws
20 of the United States, any state, or the District of Columbia which
21 directly or indirectly controls an insurance company domiciled in
22 Nebraska. Financial conglomerate includes the person applying for
23 supervision under this section and all entities, whether insurance
24 companies or otherwise, to the extent the entities are controlled by
25 such person.

1 (2) The director may approve any application for
2 supervision under this section that meets the requirements of this
3 section and the rules and regulations adopted and promulgated under
4 this section.

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

11 (b) Such rules and regulations shall require the
12 financial conglomerate to:

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

15 (ii) Report to the director at least annually any
16 significant risk concentration at the level of the financial
17 conglomerate;

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

22 (iv) Have in place at the level of the financial
23 conglomerate adequate risk management processes and internal control
24 mechanisms, including sound administrative and accounting procedures.

25 (c) In adopting and promulgating the rules and

1 regulations, the director:

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

5 (ii) Shall require the filing of such information as the
6 director may determine;

7 (iii) Shall include standards and processes for effective
8 qualitative group assessment, quantitative group assessment including
9 capital adequacy, affiliate transaction, and risk concentration
10 assessment, risks and internal capital assessments, disclosure
11 requirements, and investigation and enforcement powers;

12 (iv) Shall state that supervision of financial
13 conglomerates concerns how the operations of the financial
14 conglomerate impact the insurance operations;

15 (v) Shall adopt an application fee in an amount not to
16 exceed the amount necessary to recover the cost of review and
17 analysis of the application; and

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

19 (4)(a) If it appears to the director that a financial
20 conglomerate that submits to the jurisdiction of the director under
21 this section, or any director, officer, employee, or agent thereof,
22 willfully violates this section or the rules and regulations adopted
23 and promulgated under this section, the director may order the
24 financial conglomerate to cease and desist immediately any such
25 activity. After notice and hearing, the director may order the

1 financial conglomerate to void any contracts between the financial
2 conglomerate and any of its affiliates or among affiliates of the
3 financial conglomerate and restore the status quo if such action is
4 in the best interest of policyholders, creditors, or the public.

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

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

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

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

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

24 (e) After notice and hearing, the director may terminate
25 the supervision of any financial conglomerate under this section if

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

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

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

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

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

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

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

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

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

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

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

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

17 Sec. 3. Section 44-3719, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 44-3719 The director shall administer and enforce the
20 provisions of sections 44-3701 to 44-3721 and ~~shall publish,~~ may
21 adopt, and promulgate rules and regulations in accordance with
22 sections 44-3701 to 44-3721.

23 Sec. 4. Original sections 12-1109, 44-165, and 44-3719,
24 Reissue Revised Statutes of Nebraska, are repealed.