

AMENDMENTS TO LB700

Introduced by Gloor

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

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

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

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

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

17 (b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 Sec. 18. Sections 1 to 11 of this act become operative on
25 January 1, 2015. The other sections of this act become operative on
26 their effective date.

27 Sec. 19. Original sections 12-1109, 44-165, 44-3719, and

- 1 44-5702, Reissue Revised Statutes of Nebraska, and sections 44-6008
- 2 and 44-6016, Revised Statutes Supplement, 2013, are repealed.