

LEGISLATIVE BILL 117

Approved by the Governor May 30, 2007

Introduced by Banking, Commerce and Insurance Committee; Pahls, 31, Chairperson; Carlson, 38; Christensen, 44; Gay, 14; Hansen, 42; Langemeier, 23; Pankonin, 2; Pirsch, 4

FOR AN ACT relating to insurance; to amend sections 21-2005, 44-319.07, 44-501, 44-507, 44-508, 44-522, 44-1104, 44-4501, 44-4519, 44-5110, 44-5111, 44-5120, 44-5137, 44-5140, 44-5141, 44-5152, 44-5501, 44-5502, 44-5504, 44-7504, and 48-446, Reissue Revised Statutes of Nebraska, and sections 44-5103, 44-5153, 44-8101, 44-8102, 44-8103, 44-8104, 44-8105, 44-8106, 44-8107, 48-144.03, 48-146.01, and 77-908, Revised Statutes Cumulative Supplement, 2006; to change provisions relating to the Business Corporation Act, the Long-Term Care Insurance Act, the Surplus Lines Insurance Act, securities, workers' compensation insurance, fire insurance policies, standard provisions and forms, the Viatical Settlements Act, nonadmitted insurers, and the Insurers Investment Act; to provide training requirements for long-term care insurance providers; to provide for a tax on premiums of policies procured by industrial insureds and premiums received by captive insurers; to rename the Nebraska Senior Protection in Annuity Transactions Act; to adopt the Captive Insurers Act; to define and redefine terms; to provide powers and duties; to harmonize provisions; to provide a duty for the Revisor of Statutes; and to repeal the original sections.

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

Section 1. Section 21-2005, Reissue Revised Statutes of Nebraska, is amended to read:

21-2005 (1) The Secretary of State shall collect the fees prescribed by this section when the documents described in this subsection are delivered to him or her for filing:

(a) Articles of incorporation or documents relating to domestication:

- (i) If the capital stock is \$10,000 or less, the fee shall be \$60;
- (ii) If the capital stock is more than \$10,000 but does not exceed \$25,000, the fee shall be \$100;
- (iii) If the capital stock is more than \$25,000 but does not exceed \$50,000, the fee shall be \$150;
- (iv) If the capital stock is more than \$50,000 but does not exceed \$75,000, the fee shall be \$225;
- (v) If the capital stock is more than \$75,000 but does not exceed \$100,000, the fee shall be \$300; and
- (vi) If the capital stock is more than \$100,000, the fee shall be \$300, plus \$3 additional for each \$1,000 in excess of \$100,000.

For purposes of computing this fee, the capital stock of a corporation organized under the laws of any other state that domesticates in this state, and which stock does not have a par value, shall be deemed to have a par value of an amount per share equal to the amount paid in as capital for each of such shares as are then issued and outstanding, and in no event less than one dollar per share.

(b) Articles of incorporation or documents relating to domestication if filed by an insurer holding a certificate of authority issued by the Director of Insurance, the fee shall be \$300.

- ~~(b)~~ (c) Application for use of indistinguishable name...\$25
- ~~(e)~~ (d) Application for reserved name...\$25
- ~~(d)~~ (e) Notice of transfer of reserved name...\$25
- ~~(e)~~ (f) Application for registered name...\$25
- ~~(f)~~ (g) Application for renewal of registered name...\$25
- ~~(g)~~ (h) Corporation's statement of change of registered agent or registered office or both...\$25
- ~~(h)~~ (i) Agent's statement of change of registered office for each affected corporation...\$25 not to exceed a total of...\$1,000
- ~~(i)~~ (j) Agent's statement of resignation...No fee
- ~~(j)~~ (k) Amendment of articles of incorporation...\$25
- ~~(k)~~ (l) Restatement of articles of incorporation...\$25 with amendment of articles...\$25
- ~~(l)~~ (m) Articles of merger or share exchange...\$25
- ~~(m)~~ (n) Articles of dissolution...\$45
- ~~(n)~~ (o) Articles of revocation of dissolution...\$25

~~(e)~~ (p) Certificate of administrative dissolution...No fee
~~(f)~~ (q) Application for reinstatement...\$25
~~(g)~~ (r) Certificate of reinstatement...No fee
~~(h)~~ (s) Certificate of judicial dissolution...No fee
~~(i)~~ (t) Application for certificate of authority...\$130
~~(j)~~ (u) Application for amended certificate of authority...\$25
~~(k)~~ (v) Application for certificate of withdrawal...\$25
~~(l)~~ (w) Certificate of revocation of authority to transact business...No fee
~~(m)~~ (x) Articles of correction...\$25
~~(n)~~ (y) Application for certificate of existence or authorization...\$25
~~(o)~~ (z) Any other document required or permitted to be filed by the Business Corporation Act...\$25.

(2) The Secretary of State shall collect a recording fee of five dollars per page in addition to the fees set forth in subsection (1) of this section.

(3) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (a) One dollar per page for copying; and
- (b) Ten dollars for the certificate.

(4) All fees set forth in this section shall be collected by the Secretary of State and remitted to the State Treasurer and credited two-thirds to the General Fund and one-third to the Corporation Cash Fund.

Sec. 2. Section 44-319.07, Reissue Revised Statutes of Nebraska, is amended to read:

44-319.07 (1) The depositing insurer or assessment association may, from time to time, exchange for the deposited securities, or any of them, other securities eligible for deposit if the aggregate value of such deposit will not thereby be reduced below the amount required by sections 44-319.01 to 44-319.13. Upon application of the depositing insurer or assessment association, the director may approve the withdrawal of securities which are in excess of the amount required by sections 44-319.01 to 44-319.13. Insurers and assessment associations may, upon an application approved by the director, withdraw all or any part of the securities so deposited upon good cause therefor being shown. Securities so withdrawn shall, except if withdrawn as the result of a merger, consolidation, or total reinsurance, be used to pay excess losses only and shall be restored within such time and under such conditions as the director may direct by order.

(2) If the depositing insurer or assessment association fails to comply with the requirements of subsection (1) of this section or the rules and regulations adopted and promulgated pursuant to section 44-319.11, such insurer or assessment association shall forfeit five hundred dollars for each such failure. The director shall collect and remit the forfeitures to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Sec. 3. Section 48-146.01, Revised Statutes Cumulative Supplement, 2006, is amended to read:

~~48-146.01~~ (1) For purposes of this section:

(a) Assigned risk employer means a Nebraska employer that is in good faith entitled to, but is unable to obtain, workers' compensation insurance through ordinary methods; ~~and - Assigned risk employer does not include an employer who is in default on workers' compensation premiums, who has failed to reimburse an insurer for amounts to be repaid pursuant to workers' compensation insurance written on a policy with a deductible, who has failed to provide an insurer reasonable access to books and records necessary for a premium audit, or who has defrauded or attempted to defraud an insurer, and~~

(b) Director means the Director of Insurance.

~~(2)(a) The director, after consultation with insurers authorized to issue workers' compensation insurance policies in this state, shall put into effect a reasonable system to guarantee that each assigned risk employer shall be covered by workers' compensation insurance covering its employees subject to the Nebraska Workers' Compensation Act following the assigned risk employer's application to the assigned risk plan and tender of the required premium.~~

~~(b) (2)(a) The director shall enter into an agreement with one or more workers' compensation insurers to provide workers' compensation insurance to assigned risk employers. In selecting an insurer to become an assigned risk insurer, the director shall consider the cost of coverage to assigned risk employers, the loss control and claims handling services available from the workers' compensation insurer, the financial condition of the workers'~~

compensation insurer, and any other relevant factors. An agreement entered into under this subsection may not exceed five years.

~~(e)~~ (b) If the director determines that the cost of workers' compensation insurance premiums for an insurer to provide assigned risk coverage pursuant to such an agreement would be unreasonably high, the director may enter into an agreement in which the assigned risk insurer covers a portion of the losses incurred by the assigned risk employer. Any agreement that involves an average rate level of less than two and one-half times the prospective loss costs approved for an advisory organization pursuant to section 44-7511 shall not be considered unreasonably high for the purposes of this section. Pursuant to any such agreement, remaining losses shall be assessed against all workers' compensation insurers writing workers' compensation insurance in this state and risk management pools created under the Intergovernmental Risk Management Act based on their workers' compensation premiums written in this state or contributions made to risk management pools. Assigned risk premiums shall be excluded from the basis for such assessments.

(c) If the assigned risk system described in subdivisions (2)(a) and (b) of this section ceases to be viable because no qualified insurer is willing to provide workers' compensation coverage at an average rate level of two and one-half times the prospective loss costs approved for an advisory organization pursuant to section 44-7511 without also requiring substantial sharing of losses with all other workers' compensation insurers writing workers' compensation insurance in this state and risk management pools created under the Intergovernmental Risk Management Act, then the director may, after consultation with insurers authorized to issue workers' compensation insurance policies in this state, create a reasonable alternative assigned risk system involving the sharing of premiums and losses for assigned risk employers among all such workers' compensation insurers writing workers' compensation insurance in this state and such risk management pools. If established, such alternative assigned risk system shall not utilize an average rate level of less than two and one-half times the prospective loss costs approved for an advisory organization pursuant to section 44-7511.

(3) The director may adopt and promulgate rules and regulations to carry out this section.

(4) Any An employer shall not be considered to be in good faith entitled to be covered by workers' compensation insurance under this section if:

(a) The employer which is required to establish a safety committee pursuant to sections 48-443 to 48-445 and which is not in compliance with such sections; shall not be entitled to be covered by workers' compensation insurance under this section.

(b) The employer is in default on workers' compensation premiums;

(c) The employer has failed to reimburse an insurer for amounts to be repaid pursuant to workers' compensation insurance written on a policy with a deductible;

(d) The employer has failed to provide an insurer reasonable access to books and records necessary for a premium audit;

(e) The employer has defrauded or attempted to defraud an insurer;

or

(f) The employer is found to have been owned or controlled by persons who owned or controlled a prior employer that is or would be ineligible for coverage pursuant to subdivisions (4)(b) through (e) of this section.

Sec. 4. Section 44-501, Reissue Revised Statutes of Nebraska, is amended to read:

44-501 No policy or contract of fire and lightning insurance, including a renewal thereof, shall be made, issued, used, or delivered by any insurer or by any insurance producer or representative of an insurer on property within this state other than such as shall conform as nearly as practicable to blanks, size of type, context, provisions, agreements, and conditions with the 1943 Standard Fire Insurance Policy of the State of New York, a copy of which shall be filed in the office of the Director of Insurance as standard policy for this state, and no other or different provision, agreement, condition, or clause shall in any manner be made a part of such contract or policy or be endorsed thereon or delivered therewith except as provided in subdivisions (1) through (11) of this section.

(1) The name of the company, its location and place of business, the date of its incorporation or organization, the state or country under which such company is organized, the amount of paid-up capital stock, whether it is a stock, mutual, reciprocal, or assessment company, the names of its officers, the number and date of the policy, and appropriate company emblems may be printed on policies issued on property in this state. Any insurer organized

under special charter provisions may so indicate upon its policy and may add a statement of the plan under which it operates in this state.

In lieu of the facsimile signatures of the president and secretary of the insurer on such policy, there may appear the signature or signatures of such persons as are duly authorized by the insurer to execute the contract. No such policy shall be void if the facsimile signature or signatures of any officer of the company shall not correspond with the actual persons who are such officers at the inception of the contract if such policy is countersigned by a duly authorized agent of the insurer.

(2) Printed or written forms of description and specifications or schedules of the property covered by any particular policy and any other matter necessary to express clearly all the facts and conditions of insurance on any particular risk, which facts or conditions shall in no case be inconsistent with or a waiver of any of the provisions or conditions of the standard policy herein provided for, may be written upon or attached or appended to any policy issued on property in this state. Appropriate forms of supplemental contracts, contracts, or endorsements, whereby the interest in the property described in such policy shall be insured against one or more of the perils which insurer is empowered to assume, may be used in connection with the standard policy. Such forms of contracts, supplemental contracts, or endorsements attached or printed thereon may contain provisions and stipulations inconsistent with the standard policy if applicable only to such other perils. The pages of the standard policy may be renumbered and rearranged for convenience in the preparation of individual contracts and to provide space for the listing of rates and premiums for coverages insured thereunder or under endorsements attached or printed thereon and such other data as may be included for duplication on daily reports for office records.

(3) A company, corporation, or association organized or incorporated under and in pursuance of the laws of this state or elsewhere, if entitled to do business in this state, may with the approval of the Director of Insurance, if the same is not already included in the standard form as filed in the office of the Department of Insurance, print on its policies any provision which it is required by law to insert therein if the provision is not in conflict with the laws of this state or the United States or with the provisions of the standard form provided for in this section, but such provision shall be printed apart from the other provisions, agreements, or conditions of the policy and in type not smaller than the body of the policy and a separate title, as follows: Provisions required by law to be stated in this policy, and be a part of the policy.

(4) There may be endorsed on the outside of any policy provided for in this section for the name, with the words insurance producer and place of business, of any insurance producer, either by writing, printing, stamping, or otherwise. There may also be added, with the approval of the Director of Insurance, a statement of the group of companies with which the company is financially affiliated and the usual company medallion.

(5) When two or more companies, each having previously complied with the laws of this state, unite to issue a joint policy, there may be expressed in the headline of each policy the fact of the severalty of the contract and also the proportion of premiums to be paid to each company and the proportion of liability which each company agrees to assume. In the printed conditions of such policy, the necessary change may be made from the singular to plural number when reference is made to the companies issuing such policy.

(6) This section shall not apply to motor vehicle, inland marine, or ocean marine insurance, reinsurance contracts between insurance companies, or insurance that does not cover risks of a personal nature. ~~The Director of Insurance may approve~~ An insurer may file with the director, pursuant to the Property and Casualty Insurance Rate and Form Act, any form of policy which includes coverage against the peril of fire and substantial coverage against other perils without complying with the provisions of this section if such policy with respect to the peril of fire includes provisions which are the substantial equivalent of the minimum provisions of the standard policy provided for in this section and if the policy is complete as to all its terms without reference to any other document.

(7) If the policy is made by a mutual assessment or other company having special regulations lawfully applicable to its organization, membership, policies, or contracts of insurance, such regulations shall apply to and form a part of the policy as the same may be written or printed upon or attached or appended thereto.

(8) ~~Policies of assessment~~ Assessment associations may be issued issue policies with such modifications as shall be ~~approved in writing by the Department of Insurance,~~ filed with the director pursuant to the Property and Casualty Insurance Rate and Form Act.

(9) Any other coverage which a company is authorized to write under the laws of this state may be written in combination with a fire insurance policy.

(10) The policy shall provide that claims involving total loss situations shall be paid in accordance with section 44-501.02.

(11) Notwithstanding any other provision of this section, ~~the Director of Insurance may approve~~ an insurer may file, pursuant to the Property and Casualty Insurance Rate and Form Act, any form of policy with variations in terms and conditions from the standard policy provided for in this section.

Sec. 5. Section 44-507, Reissue Revised Statutes of Nebraska, is amended to read:

44-507 The policies of any insurance company not organized under the laws of this state may, ~~if approved by the Department of Insurance,~~ filed with the director pursuant to the Property and Casualty Insurance Rate and Form Act, contain any provisions which the law of the state, territory, district, or country under which the company is organized prescribes, shall be in such policies when issued in this state, and the policies of any insurance company organized under the laws of this state may, when issued or delivered in any other state, territory, district, or country, contain any provision required by the laws of the state, territory, district, or country in which ~~the same~~ such policies are issued, ~~anything in the provisions of sections 44-501 to 44-510 to the contrary notwithstanding.~~

Sec. 6. Section 44-508, Reissue Revised Statutes of Nebraska, is amended to read:

44-508 The policies or contracts of insurance covering legal liability for injury to a person or persons caused through by the ownership, operation, use, or maintenance of automobiles an automobile issued by any domestic or foreign company shall, ~~if approved by the Department of Insurance,~~ filed with the director pursuant to the Property and Casualty Insurance Rate and Form Act, contain a provision ~~to the effect~~ that the insolvency or bankruptcy of the assured shall not release the company from the payment of damages for injury sustained or loss occasioned during the life of the policy, and, in case of such insolvency or bankruptcy, an action may be maintained within the terms and limits of the policy by the injured person or his or her heirs against the insurer. ~~company.~~

Sec. 7. Section 44-522, Reissue Revised Statutes of Nebraska, is amended to read:

44-522 (1) ~~The Department of Insurance shall not approve any~~ No insurer may file an insurance policy filed for approval with the department, as required by the Property and Casualty Insurance Rate and Form Act, which insures against loss or damage to property or against legal liability from any cause unless such policy contains appropriate provisions for cancellation thereof by either the insurer or the insured and for nonrenewal thereof by the insurer.

(2) On any policy or binder of property, marine, or liability insurance, as specified in section 44-201, the insurer shall give the insured sixty days' written notice prior to cancellation or nonrenewal of such policy or binder, except that the insurer may cancel upon ten days' written notice to the insured in the event of nonpayment of premium or if such policy or binder has a specified term of sixty days or less unless the policy or binder has previously been renewed. The requirements of this subsection shall apply to a cancellation initiated by a premium finance company for nonpayment of premium. The provisions of this subsection and subsection (4) of this section shall not apply to nonrenewal of a policy or binder which has a specified term of sixty days or less unless the policy or binder has previously been renewed. Such notice shall state the reason for cancellation or nonrenewal.

(3) Notwithstanding subsection (2) of this section, no policy of property, marine, or liability insurance, as specified in section 44-201, which has been in effect for more than sixty days shall be canceled by the insurer except for one of the following reasons:

(a) Nonpayment of premium;
 (b) The policy was obtained through a material misrepresentation;
 (c) Any insured has submitted a fraudulent claim;
 (d) Any insured has violated any of the terms and conditions of the policy;

(e) The risk originally accepted has substantially increased;
 (f) Certification to the Director of Insurance of loss of reinsurance by the insurer which provided coverage to the insurer for all or a substantial part of the underlying risk insured; or

(g) The determination by the director that the continuation of the policy could place the insurer in violation of the insurance laws of this

state.

(4) Notice of cancellation or nonrenewal shall be sent by registered, certified, or first-class mail to the insured's last mailing address known to the insurer. If sent by first-class mail, a United States Postal Service certificate of mailing shall be sufficient proof of receipt of notice on the third calendar day after the date of the certificate.

(5) For purposes of this section:

(a) An insurer's substitution of insurance upon renewal which results in substantially equivalent coverage shall not be considered a cancellation of or a refusal to renew a policy; and

(b) The transfer of a policyholder between insurers within the same insurance group shall be considered a cancellation or a refusal to renew a policy only if the transfer results in policy coverage or rates substantially less favorable to the insured.

(6) The requirements of subsections (2), (3), and (4) of this section shall not apply to automobile insurance coverage, insurance coverage issued under the Nebraska Workers' Compensation Act, insurance coverage on growing crops, or insurance coverage which is for a specified season or event and which is not subject to renewal or replacement.

(7) All policy forms issued for delivery in Nebraska shall conform to this section.

Sec. 8. Section 44-1104, Reissue Revised Statutes of Nebraska, is amended to read:

44-1104 (1) The director may suspend, revoke, or refuse to issue or renew a license if the director finds that:

(a) There was any material misrepresentation in the application for the license;

(b) The applicant or licensee or any officer, partner, member, or key management personnel is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent;

(c) The viatical settlement provider demonstrates a pattern of unreasonable payments to viators;

(d) The applicant or licensee or any officer, partner, member, or key management personnel has been found guilty of, or has pleaded guilty or nolo contendere to, any felony or a Class I, II, or III misdemeanor, regardless of whether a judgment of conviction has been entered by the court;

(e) The viatical settlement provider has entered into any viatical settlement contract that has not been approved pursuant to the Viatical Settlements Act;

(f) The viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;

(g) The licensee no longer meets the requirements for initial licensure;

(h) The viatical settlement provider has assigned, transferred, or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state, a viatical settlement purchaser, an accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501, or Rule 144A of the federal Securities Act of 1933, as the act existed on September 1, 2001, a financing entity, a special purpose entity, or a related provider trust;

(i) The applicant or licensee or any officer, partner, member, or key management personnel has violated any provision of the Viatical Settlements Act; or

(j) The licensee has failed to respond to the department within fifteen working days after receipt of an inquiry from the department.

(2) ~~If the The director denies a license application or suspends, revokes, or refuses to renew may suspend or revoke a license, the director shall conduct pursuant to subsection (1) of this section after notice and a hearing held in accordance with the Administrative Procedure Act.~~

(3) If the director denies a license application or refuses to renew a license pursuant to subsection (1) of this section, he or she shall notify the applicant or licensee of the reason for such denial or refusal of renewal. The applicant or licensee has thirty days after receipt of such notification to demand a hearing. The hearing shall be held within thirty days after receipt of such demand by the director and shall be held in accordance with the Administrative Procedure Act.

Sec. 9. Section 44-4501, Reissue Revised Statutes of Nebraska, is amended to read:

44-4501 Sections 44-4501 to 44-4520 and section 10 of this act shall be known and may be cited as the Long-Term Care Insurance Act.

Sec. 10. (1) An individual may not sell, solicit, or negotiate long-term care insurance unless the individual is licensed as an insurance

producer for health or sickness and accident insurance and has completed a one-time training course on or before August 1, 2008, and ongoing training every twenty-four months thereafter. All training shall meet the requirements of subsection (2) of this section.

(2) The one-time training course required by subsection (1) of this section shall be no less than eight hours in length, and the required ongoing training shall be no less than four hours in length. All training required under subsection (1) of this section shall consist of topics related to long-term care insurance, long-term care services, and, if applicable, qualified state long-term insurance partnership programs, including, but not limited to:

(a) State and federal regulations and requirements and the relationship between qualified state long-term care insurance partnership programs and other public and private coverage of long-term care services, including medicaid;

(b) Available long-term care services and providers;

(c) Changes or improvements in long-term care services or providers;

(d) Alternatives to the purchase of private long-term care insurance;

(e) The effect of inflation on benefits and the importance of inflation protection; and

(f) Consumer suitability standards and guidelines.

Training required by subsection (1) of this section shall not include any sales or marketing information, materials, or training other than those required by state or federal law.

(3) (a) Insurers subject to the Long-Term Care Insurance Act shall obtain verification that the insurance producer receives training required by subsection (1) of this section before a producer is permitted to sell, solicit, or negotiate the insurer's long-term care insurance products. Records shall be maintained in accordance with section 44-5905 and shall be made available to the director upon request.

(b) Insurers subject to the act shall maintain records with respect to the training of its producers concerning the distribution of its partnership policies that will allow the director to provide assurance to the Department of Health and Human Services Finance and Support that producers have received the training required by subsection (1) of this section and that producers have demonstrated an understanding of the partnership policies and their relationship to public and private coverage of long-term care, including medicaid, in this state. These records shall be maintained in accordance with section 44-5905 and shall be made available to the director upon request.

(4) The satisfaction of the training requirements in any state shall be deemed to satisfy the training requirements of the State of Nebraska.

(5) The training requirements of subsection (1) of this section may be approved as continuing education courses pursuant to sections 44-3901 to 44-3913.

Sec. 11. Section 44-4519, Reissue Revised Statutes of Nebraska, is amended to read:

44-4519 The director may adopt and promulgate rules and regulations to carry out the Long-Term Care Insurance Act, including minimum standards for insurance producer training.

Sec. 12. Section 44-5103, Revised Statutes Cumulative Supplement, 2006, is amended to read:

44-5103 For purposes of the Insurers Investment Act:

(1) Admitted assets means the investments authorized under the act and stated at values at which they are permitted to be reported in the insurer's financial statement filed under section 44-322, except that admitted assets does not include assets of separate accounts, the investments of which are not subject to the act;

(2) Agent means a national bank, state bank, trust company, or broker-dealer that maintains an account in its name in a clearing corporation or that is a member of the Federal Reserve System and through which a custodian participates in a clearing corporation including the Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country or securities used to meet deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, agent may include a corporation that is organized or existing under the laws of a foreign country and that is legally qualified under those laws to accept custody of securities;

(3) Business entity means a sole proprietorship, corporation, limited liability company, association, partnership, limited liability partnership, joint-stock company, joint venture, mutual fund, trust, joint

tenancy, or other similar form of business organization, whether organized for profit or not for profit;

(4) Clearing corporation means a clearing corporation as defined in subdivision (a)(5) of section 8-102, Uniform Commercial Code, that is organized for the purpose of effecting transactions in securities by computerized book-entry, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, clearing corporation may include a corporation that is organized or existing under the laws of a foreign country and which is legally qualified under those laws to effect transactions in securities by computerized book-entry. Clearing corporation also includes Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system;

(5) Custodian means:

(a) A national bank, state bank, or trust company that shall at all times during which it acts as a custodian pursuant to the Insurers Investment Act be no less than adequately capitalized as determined by the standards adopted by United States banking regulators and that is regulated by either state banking laws or is a member of the Federal Reserve System and that is legally qualified to accept custody of securities in accordance with the standards set forth below, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country, or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, custodian may include a bank or trust company incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof that shall at all times during which it acts as a custodian pursuant to the Insurers Investment Act be no less than adequately capitalized as determined by the standards adopted by international banking authorities and that is legally qualified to accept custody of securities; or

(b) A broker-dealer that shall be registered with and subject to jurisdiction of the Securities and Exchange Commission, maintains membership in the Securities Investor Protection Corporation, and has a tangible net worth equal to or greater than two hundred fifty million dollars;

(6) Custodied securities means securities held by the custodian or its agent or in a clearing corporation, including the Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system;

(7) Direct when used in connection with the term obligation means that the designated obligor is primarily liable on the instrument representing the obligation;

(8) Director means the Director of Insurance;

(9) Insurer is defined as provided in section 44-103, and unless the context otherwise requires, insurer means domestic insurer;

(10) Mortgage means a consensual interest created by a real estate mortgage, a trust deed on real estate, or a similar instrument;

(11) Obligation means a bond, debenture, note, or other evidence of indebtedness or a participation, certificate, or other evidence of an interest in any of the foregoing;

(12) Policyholders surplus means the amount obtained by subtracting from the admitted assets (a) actual liabilities and (b) any and all reserves which by law must be maintained. In the case of a stock insurer, the policyholders surplus also includes the paid-up and issued capital stock;

(13) Securities Valuation Office means the Securities Valuation Office of the National Association of Insurance Commissioners or any successor office established by the National Association of Insurance Commissioners;

(14) Security certificate has the same meaning as defined in subdivision (a)(16) of section 8-102, Uniform Commercial Code;

(15) State means any state of the United States, the District of Columbia, or any territory organized by Congress;

(16) Tangible net worth means shareholders equity, less intangible assets, as reported in the broker-dealer's most recent Annual or Transition Report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934, S.E.C. Form 10-K, filed with the Securities and Exchange Commission; and

(17) Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system mean the book-entry securities systems established pursuant to 5 U.S.C. 301, 12 U.S.C. 391, and 31 U.S.C. 3101 et seq. The operation of the systems are subject to 31 C.F.R. part 357 et seq.

Sec. 13. Section 44-5110, Reissue Revised Statutes of Nebraska, is amended to read:

44-5110 (1) An insurer may invest in an individual interest of a

pool of obligations or a fractional interest of a single obligation if:

(a) The certificate of participation or interest or the confirmation of participation or interest in the investment is issued in the name of the insurer, a custodian bank, or the nominee of either; and

(b) The certificate or confirmation, if held by a custodian bank, is kept separate and apart from the investment of others so that at all times the participation or interest may be identified as belonging solely to the insurer making the investment.

(2) If an investment is not evidenced by a certificate, adequate evidence of the insurer's investment shall be obtained from the issuer or its transfer or recording agent and retained by the insurer, custodian bank, or clearing corporation except as provided in subdivision (2) of section 44-5109. For purposes of this subsection, adequate evidence shall mean a written receipt or other verification issued by the depository, issuer, or custodian bank which shows that the investment is held for the insurer. Transfers of ownership or investments held as described in subdivisions (1)(c) and (2) of section 44-5109 and this section may be evidenced by a bookkeeping entry on the books of the issuer of the investment, its transfer or recording agent, or the clearing corporation without physical delivery of certificates, if any, evidencing the insurer's investment.

(3) Any investment made pursuant to this section shall also conform with the following:

(a) The investment in which the interest is purchased shall be authorized under the Insurers Investment Act; and

(b) The insurer's pro rata interest in the investment shall be in the same percentage as the par amount of its interest bears to the outstanding par amount of the investment at the time of purchase. +

~~(c) Any person, other than an insurer, that is the obligor of the investment instrument or the investor from whom the interest is purchased shall have outstanding senior debt or commercial paper having a minimum quality rating as described in subdivision (2) of section 44-5112 or subsection (2) of section 44-5138; and~~

~~(d) Any insurer that is the obligor of the investment instrument or the investor from whom the interest is purchased shall be rated A or better by A.M. Best's rating service or the corresponding rating of a successor organization approved by the director.~~

(4) An investment may be authorized under this section although its interest does not include the right to exercise the investor's rights or enforce the investor's remedies according to the provisions of the issue.

(5) Any investment made pursuant to this section shall be purchased pursuant to a written participation agreement.

~~(6) An insurer's investments authorized under this section shall not exceed ten percent of its admitted assets.~~

Sec. 14. Section 44-5111, Reissue Revised Statutes of Nebraska, is amended to read:

44-5111 Any investment limitation in the Insurers Investment Act based upon the amount of the insurer's admitted assets or policyholders surplus shall relate to admitted assets or policyholders surplus as shown by the most recent financial statement filed by the insurer pursuant to section 44-322 unless the insurer's admitted assets or policyholders surplus is revised as a result of an examination conducted pursuant to the Insurers Examination Act, in which case the results of the examination shall control. Except as otherwise provided by law, an investment shall be measured by the lesser of actual cost or admitted value at the time of acquisition. If there is no actual cost at the time of acquisition, the investment shall be measured at the lesser of fair value or admitted value.

For purposes of this section, actual cost ~~shall mean~~ means the total amount invested, expended, or which should be reasonably anticipated to be invested or expended in the acquisition or organization of any investment, insurer, or subsidiary, including all organizational expenses or contributions to capital and surplus whether or not represented by the purchase of capital stock or issuance of other securities.

Sec. 15. Section 44-5120, Reissue Revised Statutes of Nebraska, is amended to read:

44-5120 (1) An insurer may lend its securities if:

(a) The securities are created or existing under the laws of the United States and, simultaneously with the delivery of the loaned securities, the insurer receives collateral from the borrower consisting of cash or securities backed by the full faith and credit of the United States or an agency or instrumentality of the United States, except that any securities provided as collateral shall not be of lesser quality than the quality of the loaned securities. Any investment made by an insurer with cash received as

collateral for loaned securities shall be made in the same kinds, classes, and investment grades as those authorized under the Insurers Investment Act and in a manner that recognizes the liquidity needs of the transaction or is used by the insurer for its general corporate purposes. The securities provided as collateral shall have a market value when the loan is made of at least one hundred two percent of the market value of the loaned securities;

(b) The securities are created or existing under the laws of Canada or are securities described in section 44-5137 and, simultaneously with the delivery of the loaned securities, the insurer receives collateral from the borrower consisting of cash or securities backed by the full faith and credit of the foreign country, except that any securities provided as collateral shall not be of lesser quality than the quality of the loaned securities. Any investment made by an insurer with cash received as collateral for loaned securities shall be made in the same kinds, classes, and investment grades as those authorized under the Insurers Investment Act and in a manner that recognizes the liquidity needs of the transaction or is used by the insurer for its general corporate purposes. The securities provided as collateral shall have a market value when the loan is made of at least one hundred two percent of the market value of the loaned securities;

(c) Prior to the loan, the borrower or any indemnifying party furnishes the insurer with or the insurer otherwise obtains the most recent financial statement of the borrower or any indemnifying party;

(d) The insurer receives a reasonable fee related to the market value of the loaned securities and to the term of the loan;

(e) The loan is made pursuant to a written loan agreement; and

(f) The borrower is required to furnish by the close of each business day during the term of the loan a report of the market value of all collateral and the market value of all loaned securities as of the close of trading on the previous business day. If at the close of any business day the market value of the collateral for any loan outstanding to a borrower is less than one hundred percent of the market value of the loaned securities, the borrower shall deliver by the close of the next business day an additional amount of cash or securities. The market value of the additional securities, together with the market value of all previously delivered collateral, shall equal at least one hundred two percent of the market value of the loaned securities for that loan.

~~(2) If at the close of any business day the market value of the collateral for all loans outstanding to a borrower is less than one hundred two percent of the market value of the loaned securities, the borrower shall deliver by the close of the next business day an additional amount of cash or securities. The market value of the additional securities, together with the market value of all previously delivered collateral, shall equal at least one hundred two percent of the market value of the loaned securities for all loans to that borrower. This subsection does not apply if the insurer receives cash collateral for all loans outstanding to the borrower.~~

~~(3) (2) For purposes of this section, market value shall include includes accrued interest.~~

~~(4) (3) An insurer shall effect securities lending only through the services of a custodian bank or similar entity as approved by the director.~~

~~(5) (4) An insurer's investments authorized under this section shall not exceed ten percent of its admitted assets.~~

Sec. 16. Section 44-5137, Reissue Revised Statutes of Nebraska, is amended to read:

44-5137 (1) An insurer may invest in securities or other investments (a) issued in, (b) located in, (c) denominated in the currency of, (d) whose ultimate payment amounts of principal or interest are subject to fluctuations in the currency of, or (e) whose obligors are domiciled in countries other than the United States or Canada, which are substantially of the same kinds and classes as those authorized for investment under the Insurers Investment Act.

(2) Subject to the limitations in subsection (3) of this section:

(a) An insurer's investments authorized under subsection (1) of this section in any one foreign jurisdiction whose sovereign debt has a 1 designation from the Securities Valuation Office shall not exceed ten percent of the insurer's admitted assets;

(b) An insurer's investments authorized under subsection (1) of this section in any one foreign jurisdiction whose sovereign debt has a 2 or 3 designation from the Securities Valuation Office shall not exceed five percent of the insurer's admitted assets;

(c) An insurer's investments authorized under subsection (1) of this section ~~shall not include investments~~ in any one foreign jurisdiction whose sovereign debt has a 4, 5, or 6 designation from the Securities Valuation

Office shall not exceed three percent of the insurer's admitted assets;

(d) An insurer's investments authorized under subsection (1) of this section denominated in any one foreign currency shall not exceed two percent of the insurer's admitted assets; ~~and~~

(e) An insurer's investments authorized under subsection (1) of this section denominated in foreign currencies, in the aggregate, shall not exceed five percent of the insurer's admitted assets; ~~and~~

(f) An insurer's investments authorized under subsection (1) of this section shall not be considered denominated in a foreign currency if the acquiring insurer enters into one or more contracts in transactions permitted under section 44-5149 to exchange all payments made on the foreign currency denominated investments for United States currency at a rate which effectively insulates the investment cash flows against future changes in currency exchange rates during the period the contract or contracts are in effect.

(3) An insurer's investments authorized under subsection (1) of this section shall not exceed, in the aggregate, ~~fifteen~~ twenty percent of its admitted assets.

(4) An insurer which is authorized to do business in a foreign country or which has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in a foreign country may, in addition to the investments authorized by subsection (1) of this section, invest in securities and investments (a) issued in, (b) located in, (c) denominated in the currency of, (d) whose ultimate payment amounts of principal and interest are subject to fluctuations in the currency of, or (e) whose obligors are domiciled in such foreign countries, which are substantially of the same kinds and classes as those authorized for investment under the act.

(5) An insurer's investments authorized under subsection (4) of this section and cash in the currency of such country which is at any time held by such insurer, in the aggregate, shall not exceed the greater of (a) one and one-half times the amount of its reserves and other obligations under such contracts or (b) the amount which such insurer is required by law to invest in such country.

(6) Any investment in debt obligations authorized under this section shall have a minimum quality rating as described in subdivision (2) of section 44-5112.

(7) An insurer's investments made under this section shall be aggregated with investments of the same kinds and classes made under the Insurers Investment Act except section 44-5153 for purposes of determining compliance with the limitations contained in other sections.

Sec. 17. Section 44-5140, Reissue Revised Statutes of Nebraska, is amended to read:

44-5140 (1) An insurer may invest in the preferred stock of any corporation which:

(a) Has retained earnings of not less than one million dollars;

(b) Has earned and paid regular dividends at the regular prescribed rate each year upon its preferred stock, if any is or has been outstanding, for not less than five years immediately preceding the purchase of such preferred stock or during such part of such five-year period as it has had preferred stock outstanding; and

(c) Has had no material defaults in principal payments of or interest on any obligations of such corporation and its subsidiaries having a priority equal to or higher than those purchased during the period of five years immediately preceding the date of acquisition or, if outstanding for less than five years, at any time since such obligations were issued.

The earnings of and the regular dividends paid by all predecessor, merged, consolidated, or purchased corporations may be included through the use of consolidated or pro forma statements.

(2) Except as authorized under the Insurance Holding Company System Act, an insurer shall not own more than five percent of the total issued shares of stock of any corporation other than an insurer.

(3) A life insurer's investments authorized under this section shall not exceed the greater of ~~ten~~ twenty-five percent of its admitted assets or one hundred percent of its policyholders surplus, nor shall a life insurer's investments authorized under this section that are not rated P-1 or P-2 by the Securities Valuation Office exceed ten percent of its admitted assets.

Sec. 18. Section 44-5141, Reissue Revised Statutes of Nebraska, is amended to read:

44-5141 (1) An insurer may invest in the common stock or rights to purchase or sell common stock of any corporation which has retained earnings of not less than one million dollars, except that an investment may be made in any corporation having a majority of its operations in this state which

has retained earnings of not less than two hundred fifty thousand dollars. The earnings of all predecessor, merged, consolidated, or purchased corporations shall be included through the use of consolidated or pro forma statements.

(2)(a) An insurer may invest in equity interests or rights to purchase or sell equity interests in business entities, other than general partnerships, created or existing under the laws of the United States or Canada or any state or province thereof.

(b)(i) A life insurer's investments authorized under this subsection shall not exceed fifty percent of its policyholders surplus.

(ii) A life insurer shall not invest under this subsection in any investment which the life insurer may invest in under section 44-5140 or 44-5144 or subsection (1) of this section.

(3) Except as authorized under the Insurance Holding Company System Act, an insurer shall not invest in more than ten percent of the total equity interests in any business entity other than an insurer.

(4) A life insurer's investments authorized under this section shall not exceed one hundred percent of its policyholders surplus.

Sec. 19. Section 44-5152, Reissue Revised Statutes of Nebraska, is amended to read:

44-5152 (1) Subject In addition to investments otherwise authorized under the Insurers Investment Act and subject to the limitations in subsections (2) through (4) and (3) of this section, an insurer may invest in obligations having 3, 4, 5, and 6 designations from the Securities Valuation Office.

(2) Subject to the limitation in subsection (4) (3) of this section, an insurer shall not acquire, directly or indirectly through an investment subsidiary, investments in obligations:

(a) An insurer's investments in obligations having a 4 designation from the Securities Valuation Office shall not exceed four percent of the insurer's admitted assets; Having a 4 designation from the Securities Valuation Office if, as a result of and giving effect to the investment, the aggregate amount of such investments would exceed four percent of the insurer's admitted assets;

(b) An insurer's investments in obligations having a 5 designation from the Securities Valuation Office shall not exceed two percent of the insurer's admitted assets; and Having a 5 designation from the Securities Valuation Office if, as a result of and giving effect to the investment, the aggregate amount of such investments would exceed two percent of the insurer's admitted assets; and

(c) An insurer's investments in obligations having a 6 designation from the Securities Valuation Office shall not exceed one percent of the insurer's admitted assets. Having a 6 designation from the Securities Valuation Office if, as a result of and giving effect to the investment, the aggregate amount of such investments would exceed one percent of the insurer's admitted assets.

~~(3) Subject to the limitations in subsection (2) of this section:~~

~~(a) An insurer's investments in obligations having any combination of 4, 5, and 6 designations from the Securities Valuation Office, except the combination described in subdivision (3)(b) of this section, in the aggregate, shall not exceed four percent of the insurer's admitted assets; and~~

~~(b) An insurer's investments in obligations having 5 and 6 designations from the Securities Valuation Office, in the aggregate, shall not exceed two percent of the insurer's admitted assets.~~

~~(4) An insurer's investments authorized under this section, in the aggregate, shall not exceed fifteen percent of its admitted assets.~~

(3) An insurer shall not acquire, directly or indirectly through an investment subsidiary, investments under this section if, as a result of and giving effect to the investment, the aggregate amount would exceed fifteen percent of the insurer's admitted assets.

Sec. 20. Section 44-5153, Revised Statutes Cumulative Supplement, 2006, is amended to read:

44-5153 (1)(a)(i) A life insurer may make investments not otherwise authorized under the Insurers Investment Act in an amount, in the aggregate, not exceeding the lesser of five percent of its admitted assets or one hundred percent of its policyholders surplus.

(ii) An insurer other than a life insurer may make investments not otherwise authorized under the act in an amount, in the aggregate, not exceeding the lesser of twenty-five percent of the amount by which its admitted assets exceed its total liabilities, excluding capital, or five percent of its admitted assets.

(b) Investments authorized under this subsection shall not include obligations having 3, 4, 5, and 6 designations from the Securities Valuation

Office.

(2) (a) ~~Notwithstanding~~ In addition to the provisions of subdivision (1) (a) (i) of this section, a life insurer may make investments not otherwise authorized under the act in an amount not exceeding that portion of its policyholders surplus which is in excess of ten percent of its admitted assets.

(b) ~~Notwithstanding~~ In addition to the provisions of subdivisions (1) (a) (ii) and (b) of this section, an insurer other than a life insurer may make investments not otherwise authorized under the act in an amount not exceeding that portion of its policyholders surplus which is in excess of fifty percent of its annual net written premiums as shown by the most recent annual financial statement filed by the insurer pursuant to section 44-322.

(3) Investments authorized under subsection (1) or (2) of this section shall not include insurance agents' balances or amounts advanced to or owing by insurance agents.

(4) The limitations set forth in this section shall be applied at the time the investment in question is made and at the end of each calendar quarter. An insurer's investment, which at the time of its acquisition was authorized only under the provisions of this section but which has subsequently and while held by such insurer become of such character as to be authorized elsewhere under the act, shall not be included in determining the amount of such insurer's investments, in the aggregate, authorized under this section, and investments otherwise authorized under the act at the time of their acquisition shall not be included in making such determination.

(5) Derivative instruments described in subsections (1), (2), and (3) of section 44-5149 shall not be authorized investments under this section.

Sec. 21. Section 44-5501, Reissue Revised Statutes of Nebraska, is amended to read:

44-5501 Sections 44-5501 to 44-5514 and section 24 of this act shall be known and may be cited as the Surplus Lines Insurance Act.

Sec. 22. Section 44-5502, Reissue Revised Statutes of Nebraska, is amended to read:

44-5502 For purposes of the Surplus Lines Insurance Act:

- (1) Department ~~shall mean~~ means the Department of Insurance;
- (2) Director ~~shall mean~~ means the Director of Insurance;
- (3) Insurer ~~shall have~~ has the same meaning as in section 44-103;

and

(4) Foreign, alien, admitted, and nonadmitted, when referring to insurers, ~~shall have~~ has the same meanings as in section 44-103; and -

(5) Industrial insured means an insured that:

(a) Procures the insurance of any risk or risks other than sickness and accident insurance and life and annuity contracts, has fifty full-time employees, and has aggregate annual premiums for insurance on all risks other than workers' compensation insurance that total at least one hundred thousand dollars; and

(b) Uses, to procure such insurance, the services of a salaried full-time employee who counsels or advises his or her employer regarding the insurance interests of the employer or the employer's subsidiaries or business affiliates, if the employee does not sell or solicit insurance or receive a commission.

Sec. 23. Section 44-5504, Reissue Revised Statutes of Nebraska, is amended to read:

44-5504 (1) No person, other than an industrial insured, shall place, procure, or effect insurance upon any risk located in this state in any nonadmitted insurer until such person has first been issued a surplus lines license from the department as provided in section 44-5503.

(2) Application for a surplus lines license shall be made to the department on forms designated and furnished by the department and shall be accompanied by a license fee as established by the director not to exceed two hundred fifty dollars for each individual and corporate surplus lines license.

(3) (a) All corporate surplus lines licenses shall expire on April 30 of each year, and all individual surplus lines licenses shall expire on the licensee's birthday in the first year after issuance in which his or her age is divisible by two, and all individual surplus lines licenses may be renewed within the ninety-day period before their expiration dates and all individual surplus lines licenses also may be renewed within the thirty-day period after their expiration dates upon payment of a late renewal fee as established by the director not to exceed two hundred dollars in addition to the applicable fee otherwise required for renewal of individual surplus lines licenses as established by the director pursuant to subsection (2) of this section. All individual surplus lines licenses renewed within the thirty-day period after their expiration dates pursuant to this subdivision shall be deemed to have

been renewed before their expiration dates. The department shall establish procedures for the renewal of surplus lines licenses.

(b) Every licensee shall notify the department within thirty days of any changes in the licensee's residential or business address.

Sec. 24. Every industrial insured shall annually, on or before February 15, pay to the department a tax of three percent on the total gross amount of insurance premiums for policies procured through nonadmitted insurers. Every industrial insured shall pay the fire insurance tax prescribed in section 81-523. The department shall prescribe a form for an industrial insured tax filing.

Sec. 25. Section 44-7504, Reissue Revised Statutes of Nebraska, is amended to read:

44-7504 For purposes of the Property and Casualty Insurance Rate and Form Act:

(1) Advisory organization means any entity, including its affiliates or subsidiaries, which (a) has majority ownership or control by two or more insurers and assists two or more insurers in activities related to ratemaking, the promulgation of policy forms, or related matters or (b) makes the same prospective loss cost or policy form filings on behalf of or to be available for two or more insurers. For purposes of this subdivision, a group of insurers under common ownership or control shall be considered a single insurer. Advisory organization does not include joint reinsurance pools, joint underwriting pools, or insurers engaged in joint underwriting;

(2) Classification means the process of grouping insureds with similar loss or expense characteristics so that differences in losses and expenses may be recognized;

(3) Director means the Director of Insurance;

(4) Exempt commercial policyholder means an entity to which specific aspects of rate or policy form regulation do not apply or have been relaxed in accordance with rules and regulations adopted and promulgated pursuant to section 44-7515;

(5) Expense means that portion of a rate attributable to acquisition, field supervision, collection expense, general expense, taxes, licenses, and fees. Expense does not include loss adjustment expense;

(6) Experience rating plan means a rating formula and related procedures that use past loss experience of an individual policyholder to forecast future losses by measuring the policyholder's loss experience against the expected losses for policyholders in that classification to produce a prospective premium credit, debit, or unity modification;

(7) Joint reinsurance pool means an ongoing voluntary arrangement pursuant to which two or more insurers participate in the reinsurance of risks written by one or more member insurers and reinsured by one or more other member insurers. For purposes of this subdivision, a group of insurers under common ownership or control shall be considered a single insurer. A joint reinsurance pool may operate through an association, syndicate, or other arrangement;

(8) Joint underwriting means a voluntary arrangement established on an individual risk basis by which two or more insurers jointly contract to provide coverage for an insured. For purposes of this subdivision, a group of insurers under common ownership or control shall be considered a single insurer. Joint underwriting does not include any arrangement by which the participants are reinsuring the direct obligation of another risk-assuming entity;

(9) Joint underwriting pool means an ongoing voluntary arrangement pursuant to which two or more insurers participate in the sharing of risks written as their direct obligations according to a predetermined basis and the insurance remains the direct obligation of the pool participants. For purposes of this subdivision, a group of insurers under common ownership or control shall be considered a single insurer. A joint underwriting pool may operate through an association, syndicate, or other arrangement;

(10) Loss adjustment expense means the expense incurred by an insurer in the course of settling claims;

(11) Policy form means all policies, certificates, or other contracts providing insurance coverage. Policy form includes bonds and includes riders, endorsements, or other amendments to the policy form;

(12) Premium means the cost of insurance to the policyholder after all audit adjustments have been made and any dividends payable have been subtracted;

(13) Prospective loss cost means that portion of a rate intended to provide for expected losses and loss adjustment expenses. Prospective loss costs may provide for anticipated special assessments. Prospective loss costs do not include provisions for profits, dividends, or expenses other than loss

adjustment expenses;

(14) Rating system means the information needed to determine the applicable rate or premium including rates, any manual or plan of rates, classifications, rating schedules, minimum premiums, policy fees, payment plans, rating plans or rules, anniversary rating date rules, and other similar information. Rating system does not include dividend rating plans or other provisions for the possible payment of dividends if such dividends are declared by the insurer's board of directors and are not guaranteed;

(15) Special assessments means guaranty fund assessments made pursuant to section 44-2407, Workers' Compensation Trust Fund assessments made pursuant to section 48-162.02, residual market assessments made pursuant to section 44-7528 or ~~48-146.01~~, section 3 of this act, and similar assessments. Special assessments are not expenses or losses;

(16) Statistical agent means an entity that, for the purpose of fulfilling the statistical reporting obligations of two or more insurers under the act, collects or compiles statistics from two or more insurers or provides reports developed from these statistics to the director. For purposes of this subdivision, a group of insurers under common ownership or control shall be considered a single insurer; and

(17) Supporting information means the experience and judgment of the filer and the experience or data of other insurers or advisory organizations relied upon by the filer, the interpretation of any other data relied upon by the filer, descriptions of methods used in developing a rating system, and any other information required by the director to be filed.

Sec. 26. Section 44-8101, Revised Statutes Cumulative Supplement, 2006, is amended to read:

44-8101 Sections 44-8101 to 44-8107 shall be known and may be cited as the Nebraska ~~Senior~~ Protection in Annuity Transactions Act.

Sec. 27. Section 44-8102, Revised Statutes Cumulative Supplement, 2006, is amended to read:

44-8102 The purpose of the Nebraska ~~Senior~~ Protection in Annuity Transactions Act is to set forth standards and procedures for recommendations made by insurance producers and insurers to ~~senior~~ consumers regarding annuity transactions so that ~~senior~~ consumers' insurance needs and financial objectives at the time of the transaction are appropriately addressed.

Sec. 28. Section 44-8103, Revised Statutes Cumulative Supplement, 2006, is amended to read:

44-8103 The Nebraska ~~Senior~~ Protection in Annuity Transactions Act applies to any recommendation to purchase or exchange an annuity made to a ~~senior~~ consumer by an insurance producer, or an insurer if an insurance producer is not involved, that results in the recommended purchase or exchange.

Sec. 29. Section 44-8104, Revised Statutes Cumulative Supplement, 2006, is amended to read:

44-8104 Unless otherwise specifically included, the Nebraska ~~Senior~~ Protection in Annuity Transactions Act does not apply to recommendations involving:

(1) Direct response solicitations if there is no recommendation based on information collected from the ~~senior~~ consumer pursuant to the act; or

(2) Contracts used to fund:

(a) An employee pension or welfare benefit plan that is covered by the federal Employee Retirement Income Security Act of 1974;

(b) A plan described by section 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code if established or maintained by an employer;

(c) A government or church plan defined in section 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the Internal Revenue Code;

(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(e) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(f) Contracts entered into pursuant to the Burial Pre-Need Sale Act.

Sec. 30. Section 44-8105, Revised Statutes Cumulative Supplement, 2006, is amended to read:

44-8105 For purposes of the Nebraska ~~Senior~~ Protection in Annuity Transactions Act:

(1) Annuity means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity;

(2) Insurer means a company required to be licensed under the laws of this state to provide insurance products, including annuities;

(3) Insurance producer means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, including annuities; and

(4) Recommendation means advice provided by an insurance producer, or an insurer if an insurance producer is not involved, to a ~~senior~~ consumer that results in a purchase or exchange of an annuity in accordance with that advice. + ~~and~~

~~(5) Senior consumer means a person sixty-five years of age or older. In the event of a joint purchase by more than one person, the purchaser will be considered to be a senior consumer if any of the purchasers is sixty-five years of age or older.~~

Sec. 31. Section 44-8106, Revised Statutes Cumulative Supplement, 2006, is amended to read:

44-8106 (1) The insurance producer, or insurer if an insurance producer is not involved, shall have reasonable grounds to believe that the recommendation is suitable for the ~~senior~~ consumer based on the facts disclosed by the ~~senior~~ consumer before making a recommendation to a ~~senior~~ consumer under the Nebraska Senior Protection in Annuity Transactions Act. The recommendation shall be based on the facts disclosed by the ~~senior~~ consumer relating to his or her investments, other insurance products, and the financial situation and needs of the ~~senior~~ consumer.

(2) Before the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer if an insurance producer is not involved, shall make reasonable efforts to obtain information concerning:

(a) The ~~senior~~ consumer's financial status; + ~~including investments held by the senior consumer;~~

~~(b) Other insurance products owned by the senior consumer;~~

~~(c) (b) The senior consumer's tax status;~~

~~(d) (c) The senior consumer's investment objectives; and~~

~~(e) (d) Such other information used or considered to be reasonable in making recommendations to the senior consumer.~~

(3) (a) Except as provided under subdivision (3) (b) of this section, neither an insurance producer, nor an insurer if an insurance producer is not involved, shall have any obligation to a ~~senior~~ consumer under subsection (1) of this section related to any recommendation if the ~~senior~~ consumer:

(i) Refuses to provide relevant information requested by the insurance producer or insurer;

(ii) Decides to enter into an insurance transaction that is not based on a recommendation of the insurance producer or insurer; or

(iii) Fails to provide complete or accurate information.

(b) If a ~~senior~~ consumer provides information as described in subdivision (3) (a) of this section, an insurance producer or insurer shall make a recommendation that is reasonable under all the circumstances that are actually known to the insurance producer or insurer at the time of the recommendation.

(4) (a) An insurer shall:

(i) Assure that a system to supervise recommendations that is reasonably designed to achieve compliance with the Nebraska Senior Protection in Annuity Transactions Act is established and maintained by complying with subdivisions (4) (d) through (f) of this section; or

(ii) Establish and maintain a system to supervise recommendations.

(b) Such system shall include, but not be limited to:

(i) Maintaining written procedures; and

(ii) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of the act.

(c) A general agent and independent agency shall either adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with the act or establish and maintain such a system. Such system shall include, but not be limited to:

(i) Maintaining written procedures; and

(ii) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of the act.

(d) An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by subdivision (4) (a) of this section with respect to insurance producers under contract with or employed by the third party.

(e) An insurer shall make reasonable inquiry to assure that the third party contracting under subdivision (4) (d) of this section is performing

the functions required under subdivision (4)(a) of this section and shall take such reasonable action to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing the following:

(i) Obtaining annually a certification from a third-party senior manager that the manager represents that the third party is performing the required functions; and

(ii) Periodically selecting third parties contracting under subdivision (4)(d) of this section to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances. Such third parties shall be selected based on reasonable selection criteria.

(f) An insurer shall have fulfilled its responsibilities under subdivision (4)(a) of this section if the insurer:

(i) Contracts with a third party pursuant to subdivision (4)(d) of this section; and

(ii) Complies with the requirements to supervise in subdivision (4)(e) of this section.

(g) An insurer, general agent, or independent agency is not required by subdivision (4)(a) or (b) of this section to:

(i) Review all insurance producer solicited transactions; or

(ii) Supervise an insurance producer's recommendations to ~~senior~~ consumers of products other than the annuities offered by the insurer, general agent, or independent agency.

(h) A general agent or independent agency contracting with an insurer pursuant to subdivision (4)(d) of this section shall, when requested by the insurer pursuant to subdivision (4)(e) of this section, promptly give a certification as described in subdivision (4)(e)(i) of this section or give a clear statement that it is unable to meet the certification criteria.

(i) No person may provide a certification under subdivision (4)(e)(i) of this section unless:

(i) The person is a senior manager with responsibility for the delegated functions; and

(ii) The person has a reasonable basis for making the certification.

(5) Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the ability of the Director of Insurance to enforce the act.

Sec. 32. Section 44-8107, Revised Statutes Cumulative Supplement, 2006, is amended to read:

44-8107 (1) The Director of Insurance may order:

(a) An insurer to take reasonably appropriate corrective action for any ~~senior~~ consumer harmed by an insurance producer's or insurer's violation of the Nebraska ~~Senior~~ Protection in Annuity Transactions Act;

(b) An insurance producer to take reasonably appropriate corrective action for any ~~senior~~ consumer harmed by the insurance producer's violation of the act; and

(c) A general agency or independent agency that employs or contracts with an insurance producer to sell or solicit the sale of annuities to ~~senior~~ consumers, to take reasonably appropriate corrective action for any ~~senior~~ consumer harmed by the insurance producer's violation of the act.

(2) A violation of the act shall be an unfair trade practice in the business of insurance under the Unfair Insurance Trade Practices Act.

(3) The director may reduce or eliminate any applicable penalty under section 44-1529 for a violation of subsection (1) or (2) of section 44-8106 or subdivision (3)(b) of such section if corrective action for the ~~senior~~ consumer was taken promptly after a violation was discovered.

Sec. 33. Section 48-144.03, Revised Statutes Cumulative Supplement, 2006, is amended to read:

48-144.03 (1) Notwithstanding policy provisions that stipulate a workers' compensation insurance policy to be a contract with a fixed term of coverage that expires at the end of the term, coverage under a workers' compensation insurance policy shall continue in full force and effect until notice is given in accordance with this section.

(2) No cancellation of a workers' compensation insurance policy within the policy period shall be effective unless notice of the cancellation is given by the workers' compensation insurer to the Nebraska Workers' Compensation Court and to the employer. No such cancellation shall be effective until thirty days after the giving of such notices, except that the cancellation may be effective ten days after the giving of such notices if such cancellation is based on (a) notice from the employer to the insurer

to cancel the policy, (b) nonpayment of premium due the insurer under any policy written by the insurer for the employer, (c) failure of the employer to reimburse deductible losses as required under any policy written by the insurer for the employer, or (d) failure of the employer, if covered pursuant to section ~~48-146.01, 3 of this act,~~ to comply with sections 48-443 to 48-445.

(3) No workers' compensation insurance policy shall expire or lapse at the end of the policy period unless notice of nonrenewal is given by the workers' compensation insurer to the compensation court and to the employer. No workers' compensation insurance policy shall expire or lapse until thirty days after the giving of such notices, except that a policy may expire or lapse ten days after the giving of such notices if the nonrenewal is based on (a) notice from the employer to the insurer to not renew the policy, (b) nonpayment of premium due the insurer under any policy written by the insurer for the employer, (c) failure of the employer to reimburse deductible losses as required under any policy written by the insurer for the employer, or (d) failure of the employer, if covered pursuant to section ~~48-146.01, 3 of this act,~~ to comply with sections 48-443 to 48-445.

(4) Notwithstanding other provisions of this section, if the employer has secured workers' compensation insurance coverage with another workers' compensation insurer, then the cancellation or nonrenewal shall be effective as of the effective date of such other insurance coverage.

(5) The notices required by this section shall state the reason for the cancellation or nonrenewal of the policy.

(6) The notices required by this section shall be provided in writing and shall be deemed given upon the mailing of such notices by certified mail, except that notices from insurers to the compensation court may be provided by electronic means if such electronic means is approved by the administrator of the compensation court. If notice is provided by electronic means pursuant to such an approval, it shall be deemed given upon receipt by the compensation court.

Sec. 34. Section 48-446, Reissue Revised Statutes of Nebraska, is amended to read:

48-446 (1) There is hereby created the Workplace Safety Consultation Program. It is the intent of the Legislature that such program help provide employees in Nebraska with safe and healthful workplaces.

(2) Under the Workplace Safety Consultation Program, the Department of Labor may conduct workplace inspections and consultations to determine whether employers are complying with standards issued by the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration for safe and healthful workplaces. Workplace inspections and safety consultations shall be performed by employees of the Department of Labor who are knowledgeable and experienced in the occupational safety and health field and who are trained in the federal standards and in the recognition of safety and health hazards. The Department of Labor may employ qualified persons as may be necessary to carry out this section.

(3) All employers shall be subject to occupational safety and health inspections covering their Nebraska operations. Employers shall be selected by the Commissioner of Labor for inspection on the basis of factors intended to identify the likelihood of workplace injuries and to achieve the most efficient utilization of safety personnel of the Department of Labor. Such factors shall include:

(a) The amount of premium paid by the employer for workers' compensation insurance;

(b) The experience modification produced by the experience rating system referenced in section 44-7524;

(c) Whether the employer is covered by workers' compensation insurance under section ~~48-146.01, 3 of this act;~~

(d) The relative hazard of the employer's type of business as evidenced by insurance rates or loss costs filed with the Director of Insurance for the insurance rating classification or classifications applicable to the employer;

(e) The nature, type, or frequency of accidents for the employer as may be reported to the Department of Insurance, the Nebraska Workers' Compensation Court, or the Department of Labor;

(f) Workplace hazards as may be reported to the Department of Insurance, the Nebraska Workers' Compensation Court, or the Department of Labor;

(g) Previous safety and health history;

(h) Possible employee exposure to toxic substances;

(i) Requests by employers for the Department of Labor to inspect their workplaces or otherwise provide consulting services on a basis by which the employer will reimburse the Department of Labor; and

(j) All other relevant factors.

(4) Hazards identified by an inspection shall be eliminated within a reasonable time as specified by the Commissioner of Labor.

(5) An employer who refuses to eliminate workplace hazards in compliance with an inspection shall be referred to the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration for enforcement.

(6) At the discretion of the Commissioner of Labor, inspection of an employer may be repeated to ensure compliance by the employer, with the expenses incurred by the Department of Labor to be paid by the employer.

(7) The Commissioner of Labor shall adopt and promulgate rules and regulations establishing a schedule of fees for consultations and inspections. Such fees shall be established with due regard for the costs of administering the Workplace Safety Consultation Program. The cost of consultations and inspections shall be borne by each employer for which these services are rendered.

(8) There is hereby created the Workplace Safety Consultation Program Cash Fund. All fees collected pursuant to the Workplace Safety Consultation Program shall be remitted to the State Treasurer for credit to the fund and shall be used for the sole purpose of administering the program. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(9) Each employer provided a consultation or inspection by the Department of Labor shall retain up-to-date records for each place of employment as recommended by the inspection or consultation. The employer shall make such records available to the Department of Labor upon request to ensure continued progress of the employer's efforts to comply with the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration standards.

(10) Any person who knowingly operates or causes to be operated a business in violation of recommendations to correct serious or imminent hazards as identified by the Workplace Safety Consultation Program shall be referred to the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration.

(11) The Attorney General, acting on behalf of the Commissioner of Labor, or the county attorney in a county in which a business is located or operated may apply to the district court for an order against any employer in violation of this section.

(12) The Workplace Safety Consultation Program shall not be construed to alter the duty of care or the liability of an owner or a business for injuries or death of any person or damage to any property. The state and its officers and employees shall not be construed to assume liability arising out of an accident involving a business by reason of administration of the Workplace Safety Consultation Program.

(13) Inspectors employed by the Department of Labor may inspect any place of employment with or without notice during normal hours of operation. Such inspectors may suspend the operation of equipment determined to constitute an imminent danger situation. Operation of such equipment shall not resume until the hazardous or unsafe condition is corrected to the satisfaction of the inspector.

(14) No person with a reasonable cause to believe the truth of the information shall be subject to civil liability for libel, slander, or any other relevant tort cause of action by virtue of providing information without malice on workplace hazards or the nature, type, or frequency of accidents to the Department of Insurance, the Nebraska Workers' Compensation Court, or the Department of Labor.

(15) Safety and health inspectors employed by the Department of Labor shall have the right and power to enter any premise, building, or structure, public or private, for the purpose of inspecting any work area or equipment. A refusal by the employer of entry by a safety and health inspector employed by the Department of Labor shall be a violation of this subsection. If the Commissioner of Labor finds, after notice and hearing, that an employer has violated this subsection, he or she may order payment of a civil penalty of not more than one thousand dollars for each violation. Each day of continued violation shall constitute a separate violation.

(16) The Commissioner of Labor shall adopt and promulgate rules and regulations to carry out this section.

Sec. 35. Sections 35 to 52 of this act shall be known and may be cited as the Captive Insurers Act.

Sec. 36. The purposes of the Captive Insurers Act are to set forth the procedures for organizing and regulating the operations of captive

insurers within the State of Nebraska and to encourage integrity, financial solvency, and stability of captive insurers for the purpose of promoting the development of Nebraska businesses.

Sec. 37. For purposes of the Captive Insurers Act:

(1) Affiliated entity means any entity that directly or indirectly controls, is controlled by, or is under common control with a captive insurer;

(2) Captive insurer means a domestic insurer authorized under the act to provide insurance and reinsurance to its parent, any affiliated entity, or both. Such insurance and reinsurance shall be limited to the risks, hazards, and liabilities of its parent and affiliated entities;

(3) Control means the power to direct or cause the direction of the management and policies of an entity through ownership of voting securities;

(4) Director means the Director of Insurance; and

(5) Parent means an entity that directly or indirectly owns, controls, or holds, with power to vote, more than fifty percent of the outstanding voting securities or other ownership interest of a captive insurer.

Sec. 38. No captive insurer shall adopt the name of any existing insurer or any name that may be misleading to the public.

Sec. 39. (1) No person shall transact the business of insurance as a captive insurer without first applying for and obtaining from the director a certificate of authority. An applicant shall submit a nonrefundable application fee of five hundred dollars with a plan of operation which includes:

(a) Articles of incorporation and bylaws or other documents of organization;

(b) Pro forma financial statements for two years;

(c) The source and nature of initial and ongoing capital;

(d) A feasibility study which discloses the types and adequacy of the insurance programs of the captive insurer, the identity of the parent and affiliated entities benefiting from such insurance program, and the relationships to the captive insurer as well as all projected expenses, contracts, and a holding company system chart identifying the ownership and relationship of the parent and affiliated entities;

(e) Copies of all insurance and reinsurance agreements of the captive insurer as well as disclosure of all transactions material to the insurance operations;

(f) Financial condition of the parent and, if requested by the director, any affiliated entities, benefiting from the captive insurance program;

(g) A management overview including competence, experience, and integrity of those controlling the insurance operations;

(h) A statement submitting to the jurisdiction of the director; and

(i) An explanation of how the operation of the captive insurer promotes the development of a Nebraska business.

(2) If the plan of operation is accepted and approved by the director, the articles and other documents of organization shall be filed in the office of the Secretary of State. A copy of the articles or other documents of organization, certified by the Secretary of State, shall be filed with the director. Amendments to organizational documents shall be deemed a change to the plan of operation and shall be filed with and approved by the director before they are submitted to the Secretary of State.

(3) The director may refuse to issue a certificate of authority until he or she is reasonably satisfied that the plan of operation contains sufficient indication of a successful insurance operation and that the captive insurer will be able to meet expected or ongoing policy obligations.

(4) A captive insurer shall obtain prior written approval of any subsequent amendments to any components of the original plan of operation. The director shall deem that any captive insurer that has failed to disclose a transaction or a series of transactions that would circumvent the Captive Insurers Act to be in hazardous financial condition with respect to the public or its policyholders and subject to suspension or revocation of the certificate of authority of the captive insurer.

(5) Except as otherwise authorized in section 50 of this act, a captive insurer may only transact any line or lines of insurance specified in subdivisions (5), (7), (8), (9), (10), and (18) of section 44-201. A captive insurer shall not transact directors and officers insurance.

(6) Every captive insurer shall provide to the director books and records in the state as to enable the financial examination of the captive insurer by the director.

Sec. 40. A board of directors or other governing body consisting of not less than three individuals shall manage the business of each captive

insurer. The organizational documents or bylaws shall provide for the terms, meetings, and elections of the directors and officers of the governing body. No individual may serve as a director or officer who has been convicted of fraud involving any financial institution or of a felony involving misuse of funds.

Sec. 41. The certificate of authority issued to a captive insurer shall expire on June 30 of each year. The director shall renew the certificate of authority upon payment of an annual renewal fee of five hundred dollars and all other required fees and the filing of all required reports.

Sec. 42. (1) Every captive insurer with a certificate of authority to transact business in this state pursuant to the Captive Insurers Act shall file with the director a report, signed and sworn to by its chief officers, of its financial condition as of the end of each fiscal year. The report shall be in a form prescribed by the director and contain such information as the director deems necessary for the purpose of ascertaining whether the captive insurer can continue to meet its policy obligations to its parent, affiliated entities, and claimants. The report shall be filed within sixty days following the end of the captive insurer's fiscal year. The director may require that the report include the information required by section 44-322, including any instructions, procedures, and guidelines consistent with the act.

(2) The director may prescribe the format and frequency of other reports to be filed, which may include, but not be limited to, summary loss reports, quarterly financial statements, audited annual financial statements, holding company statements, biographical information on officers and directors, and other professional reports.

Sec. 43. (1) No captive insurer shall be permitted to transact any business in this state unless it maintains total capital and surplus in the amount of at least one hundred thousand dollars in such form as is acceptable to the director.

(2) Upon a written finding by the director that the approved plan of operation or the operational results of the captive insurer require either additional capital or a larger surplus than required by this section, the director may require that additional capital or surplus, or both, be obtained. Additional capital or surplus may be tendered in the form of an irrevocable evergreen letter of credit acceptable to the director.

(3) Any letter of credit provided to satisfy the requirements of the Captive Insurers Act shall be:

(a) Jointly held under the control of the director and the captive insurer for the benefit of claimants;

(b) Issued or confirmed by an institution that is insured by the Federal Deposit Insurance Corporation;

(c) The sole property of such captive insurer; and

(d) Free and clear of any claim or encumbrance.

Sec. 44. The director may examine the financial condition, affairs, and management of any applicant or captive insurer pursuant to the Insurers Examination Act.

Sec. 45. (1) Captive insurers shall be subject to the types and nature of investments as set forth in the Insurers Investment Act, but not subject to any limitations contained in such act as to invested amounts, except that the director may prohibit or limit any investment that threatens the solvency or liquidity of any such captive insurer or if such investments are not made in accordance with the approved plan of operation.

(2) No captive insurer may make a loan to or an investment in its parent or affiliated entities without prior written approval of the director and any such transaction shall be evidenced by documentation approved by the director. Loans of minimum capital and surplus funds are prohibited.

Sec. 46. (1) Except as otherwise provided in subsection (2) of this section, any captive insurer authorized to do business in this state may take credit for reserves on risks ceded to a reinsurer pursuant to the provisions of sections 44-416.05 to 44-416.10 and any rules and regulations adopted and promulgated under such sections.

(2) Notwithstanding the provisions of subsection (1) of this section, any captive insurer may cede risks to a reinsurer not meeting the standards of sections 44-416.05 to 44-416.10 and may take reserve credits if the captive insurer receives prior written approval from the director.

Sec. 47. A captive insurer shall not be a member of the Nebraska Property and Liability Insurance Guaranty Association or the Nebraska Life and Health Insurance Guaranty Association. The Nebraska Property and Liability Insurance Guaranty Association Act and the Nebraska Life and Health Insurance Guaranty Association Act shall not be applicable to coverage offered by a captive insurer.

Sec. 48. The director shall approve any voluntary dissolution of a

captive insurer if the director determines that all obligations of the captive insurer have been satisfied. The dissolution of a captive insurer shall not impair the right of any person to commence an action against the captive insurer for any liability previously incurred.

Sec. 49. (1) After notice and a hearing conducted pursuant to the Administrative Procedure Act, the director may suspend or revoke a certificate of authority or may impose an administrative fine not to exceed one thousand dollars per violation, or any combination of such actions, if the director finds the captive insurer:

(a) Engages in financial practices that make further transaction of business in this state hazardous or injurious to claimants or the public as defined by rule and regulation adopted and promulgated by the director;

(b) Within fifteen business days fails to respond to an inquiry of the director;

(c) Fails to pay any final judgment rendered against it in this state on any contractual obligation in a reasonable period of time;

(d) Conducts business fraudulently or has not met its contractual obligations in good faith; or

(e) Violates any provision of the laws of this or any other state.

(2) In lieu of or in addition to the administrative fines set forth in subsection (1) of this section, the director may issue a cease and desist order to a captive insurer if the captive insurer engages in any of the activities set forth in subsection (1) of this section.

Sec. 50. (1) This section provides for the creation of special purpose financial captive insurers to diversify and broaden insurers' access to sources of capital.

(2) For purposes of this section:

(a) Counterparty means a special purpose financial captive insurer's parent or affiliated entity, which is an insurer domiciled in Nebraska that cedes life insurance risks to the special purpose financial captive insurer pursuant to the special purpose financial captive insurer contract;

(b) Insolvency or insolvent means that the special purpose financial captive insurer is unable to pay its obligations when they are due, unless those obligations are the subject of a bona fide dispute;

(c) Insurance securitization means a package of related risk transfer instruments, capital market offerings, and facilitating administrative agreements, under which a special purpose financial captive insurer obtains proceeds either directly or indirectly through the issuance of securities, and may hold the proceeds in trust to secure the obligations of the special purpose financial captive insurer under one or more special purpose financial captive insurer contracts, in that the investment risk to the holders of the securities is contingent upon the obligations of the special purpose financial captive insurer to the counterparty under the special purpose financial captive insurer contract in accordance with the transaction terms and pursuant to the Captive Insurers Act;

(d) Organizational document means the special purpose financial captive insurer's articles of incorporation, articles of organization, bylaws, operating agreement, or other foundational documents that establish the special purpose financial captive insurer as a legal entity or prescribes its existence;

(e) Permitted investments means those investments that meet the qualifications set forth in section 45 of this act;

(f) Securities means debt obligations, equity investments, surplus certificates, surplus notes, funding agreements, derivatives, and other legal forms of financial instruments;

(g) Special purpose financial captive insurer means a captive insurer which has received a certificate of authority from the director for the limited purposes provided for in this section;

(h) Special purpose financial captive insurer contract means a contract between the special purpose financial captive insurer and the counterparty pursuant to which the special purpose financial captive insurer agrees to provide insurance or reinsurance protection to the counterparty for risks associated with the counterparty's insurance or reinsurance business; and

(i) Special purpose financial captive insurer securities means the securities issued by a special purpose financial captive insurer.

(3) (a) The provisions of the Captive Insurers Act, other than those in subdivision (3) (b) of this section, apply to a special purpose financial captive insurer. If a conflict occurs between a provision of the act not in this section and a provision of this section, the latter controls.

(b) The requirements of this section shall not apply to specific special purpose financial captive insurers if the director finds a specific

requirement is inappropriate due to the nature of the risks to be insured by the special purpose financial captive insurer and if the special purpose financial captive insurer meets criteria established by rules and regulations adopted and promulgated by the director.

(4) A special purpose financial captive insurer may be established as a stock corporation, limited liability company, partnership, or other form of organization approved by the director.

(5) (a) A special purpose financial captive insurer may not issue a contract for assumption of risk or indemnification of loss other than a special purpose financial captive insurer contract. However, the special purpose financial captive insurer may cede risks assumed through a special purpose financial captive insurer contract to third-party reinsurers through the purchase of reinsurance or retrocession protection if approved by the director.

(b) A special purpose financial captive insurer may enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of the special purpose financial captive insurer contract, insurance securitization, and this section. Those activities may include, but are not limited to: Entering into special purpose financial captive insurer contracts; issuing securities of the special purpose financial captive insurer in accordance with applicable securities law; complying with the terms of these contracts or securities; entering into trust, swap, tax, administration, reimbursement, or fiscal agent transactions; or complying with trust indenture, reinsurance, retrocession, and other agreements necessary or incidental to effectuate an insurance securitization in compliance with this section and in the plan of operation approved by the director.

(6) (a) A special purpose financial captive insurer may issue securities, subject to and in accordance with applicable law, its approved plan of operation, and its organization documents.

(b) A special purpose financial captive insurer, in connection with the issuance of securities, may enter into and perform all of its obligations under any required contracts to facilitate the issuance of these securities.

(c) The obligation to repay principal or interest, or both, on the securities issued by the special purpose financial captive insurer shall be designed to reflect the risk associated with the obligations of the special purpose financial captive insurer to the counterparty under the special purpose financial captive insurer contract.

(7) A special purpose financial captive insurer may enter into swap agreements, or other forms of asset management agreements, including guaranteed investment contracts, or other transactions that have the objective of leveling timing differences in funding of up-front or ongoing transaction expenses or managing asset, credit, prepayment, or interest rate risk of the investments in the trust to ensure that the investments are sufficient to assure payment or repayment of the securities, and related interest or principal payments, issued pursuant to a special purpose financial captive insurer insurance securitization transaction or the obligations of the special purpose financial captive insurer under the special purpose financial captive insurer contract or for any other purpose approved by the director. All asset management agreements entered into by the special purpose financial captive insurer must be approved by the director.

(8) (a) A special purpose financial captive insurer, at any given time, may enter into and effectuate a special purpose financial captive insurer contract with a counterparty if the special purpose financial captive insurer contract obligates the special purpose financial captive insurer to indemnify the counterparty for losses and contingent obligations of the special purpose financial captive insurer under the special purpose financial captive insurer contract are securitized through a special purpose financial captive insurer insurance securitization, which security for such obligations may be funded and secured with assets held in trust for the benefit of the counterparty pursuant to agreements contemplated by this section and invested in a manner that meet the criteria as provided in section 45 of this act.

(b) A special purpose financial captive insurer may enter into agreements with affiliated companies and third parties and conduct business necessary to fulfill its obligations and administrative duties incidental to the insurance securitization and the special purpose financial captive insurer contract. The agreements may include management and administrative services agreements and other allocation and cost sharing agreements, or swap and asset management agreements, or both, or agreements for other contemplated types of transactions provided in this section.

(c) A special purpose financial captive insurer contract must contain provisions that:

(i) Require the special purpose financial captive insurer to either

(A) enter into a trust agreement specifying what recoverables or reserves, or both, the agreement is to cover and to establish a trust account for the benefit of the counterparty and the security holders or (B) establish such other method of security acceptable to the director;

(ii) Stipulate that assets deposited in the trust account must be valued in accordance with their current fair market value and must consist only of permitted investments;

(iii) If a trust arrangement is used, require the special purpose financial captive insurer, before depositing assets with the trustee, to execute assignments, to execute endorsements in blank, or to take such actions as are necessary to transfer legal title to the trustee of all shares, obligations, or other assets requiring assignments, in order that the counterparty, or the trustee upon the direction of the counterparty, may negotiate whenever necessary the assets without consent or signature from the special purpose financial captive insurer or another entity; and

(iv) If a trust arrangement is used, stipulate that the special purpose financial captive insurer and the counterparty agree that the assets in the trust account, established pursuant to the provisions of the special purpose financial captive insurer contract, may be withdrawn by the counterparty, or the trustee on its behalf, at any time, only in accordance with the terms of the special purpose financial captive insurer contract, and must be utilized and applied by the counterparty or any successor of the counterparty by operation of law, including, subject to the provisions of this section, but without further limitation, any liquidator, rehabilitator, or receiver of the counterparty, without diminution because of insolvency on the part of the counterparty or the special purpose financial captive insurer, only for the purposes set forth in the credit for reinsurance laws and rules and regulations of this state.

(d) The special purpose financial captive insurer contract may contain provisions that give the special purpose financial captive insurer the right to seek approval from the counterparty to withdraw from the trust all or part of the assets, or income from them, contained in the trust and to transfer the assets to the special purpose financial captive insurer if such provisions comply with the credit for reinsurance laws and rules and regulations of this state.

(9) A special purpose financial captive insurer contract meeting the provisions of this section must be granted credit for reinsurance treatment or otherwise qualify as an asset or a reduction from liability for reinsurance ceded by a domestic insurer to a special purpose financial captive insurer as an assuming insurer for the benefit of the counterparty if and only to the extent:

(a) Of the value of the assets held in trust for, or clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution as defined in section 44-416.08, or as approved by the director, for the benefit of the counterparty under the special purpose financial captive insurer contract; and

(b) The assets are held or invested in one or more of the forms allowed in section 45 of this act.

(10) (a) (i) Notwithstanding the provisions of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, the director may apply to the district court of Lancaster County for an order authorizing the director to rehabilitate or liquidate a special purpose financial captive insurer domiciled in this state on one or more of the following grounds:

(A) There has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the special purpose financial captive insurer intended to be used to pay amounts owed to the counterparty or the holders of special purpose financial captive insurer securities; or

(B) The special purpose financial captive insurer is insolvent and the holders of a majority in outstanding principal amount of each class of special purpose financial captive insurer securities request or consent to conservation, rehabilitation, or liquidation pursuant to the provisions of this section.

(ii) The court may not grant relief provided by subdivision (10) (a) (i) of this section unless, after notice and a hearing, the director establishes that relief must be granted.

(b) Notwithstanding any other applicable law, rule, or regulation, upon any order of rehabilitation or liquidation of a special purpose financial captive insurer, the receiver shall manage the assets and liabilities of the special purpose financial captive insurer pursuant to the provisions of subsection (11) of this section.

(c) With respect to amounts recoverable under a special purpose financial captive insurer contract, the amount recoverable by the receiver

must not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to the counterparty, notwithstanding another provision in the contracts or other documentation governing the special purpose financial captive insurer insurance securitization.

(d) An application or petition, or a temporary restraining order or injunction issued pursuant to the provisions of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, with respect to a counterparty does not prohibit the transaction of a business by a special purpose financial captive insurer, including any payment by a special purpose financial captive insurer made pursuant to a special purpose financial captive insurer security, or any action or proceeding against a special purpose financial captive insurer or its assets.

(e) Notwithstanding the provisions of any applicable law or rule or regulation, the commencement of a summary proceeding or other interim proceeding commenced before a formal delinquency proceeding with respect to a special purpose financial captive insurer, and any order issued by the court, does not prohibit the payment by a special purpose financial captive insurer made pursuant to a special purpose financial captive insurer security or special purpose financial captive insurer contract or the special purpose financial captive insurer from taking any action required to make the payment.

(f) Notwithstanding the provisions of any other applicable law, rule, or regulation:

(i) A receiver of a counterparty may not void a nonfraudulent transfer by a counterparty to a special purpose financial captive insurer of money or other property made pursuant to a special purpose financial captive insurer contract; and

(ii) A receiver of a special purpose financial captive insurer may not void a nonfraudulent transfer by the special purpose financial captive insurer of money or other property made to a counterparty pursuant to a special purpose financial captive insurer contract or made to or for the benefit of any holder of a special purpose financial captive insurer security on account of the special purpose financial captive insurer security.

(g) With the exception of the fulfillment of the obligations under a special purpose financial captive insurer contract, and notwithstanding the provisions of any other applicable law or rule or regulation, the assets of a special purpose financial captive insurer, including assets held in trust, must not be consolidated with or included in the estate of a counterparty in any delinquency proceeding against the counterparty pursuant to the provisions of this section for any purpose including, without limitation, distribution to creditors of the counterparty.

(11) A special purpose financial captive insurer may not declare or pay dividends in any form to its owners other than in accordance with the insurance securitization transaction agreements, and in no instance shall the dividends decrease the capital of the special purpose financial captive insurer below two hundred fifty thousand dollars, and, after giving effect to the dividends, the assets of the special purpose financial captive insurer, including any assets held in trust pursuant to the terms of the insurance securitization, must be sufficient to satisfy the director that it can meet its obligations. Approval by the director of an ongoing plan for the payment of dividends, interest on securities, or other distribution by a special purpose financial captive insurer must be conditioned upon the retention, at the time of each payment, of capital or surplus equal to or in excess of amounts specified by, or determined in accordance with formulas approved for the special purpose financial captive insurer by, the director.

(12) Information submitted pursuant to the provisions of this section shall be given confidential treatment, shall not be subject to subpoena, and shall not be made public by the director 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 special purpose financial captive insurer unless the director, after giving the special purpose financial captive insurer notice and opportunity to be heard, determines that the best 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.

Sec. 51. The director may adopt and promulgate rules and regulations to carry out the Captive Insurers Act.

Sec. 52. (1) The insurance laws of this state shall not apply to captive insurers except as permitted in the Captive Insurers Act.

(2) The following provisions of Chapter 44 apply to captive

insurers:(a) The Insurers Examination Act;(b) Sections 44-101, 44-101.01, 44-102, 44-103, 44-114, 44-116, 44-154, 44-205.01, 44-231, 44-301, 44-318, 44-320, 44-326, and 44-360; and(c) The Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act. Such act shall only apply to a captive insurer that provides insurance and reinsurance to a parent or affiliated entity that is an insurer.

Sec. 53. Section 77-908, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-908 Every insurance company organized under the stock, mutual, assessment, or reciprocal plan, except fraternal benefit societies, which is transacting business in this state shall, on or before March 1 of each year, pay a tax to the director of one percent of the gross amount of direct writing premiums received by it during the preceding calendar year for business done in this state, except that (1) for group sickness and accident insurance the rate of such tax shall be five-tenths of one percent, (2) for property and casualty insurance, excluding individual sickness and accident insurance, the rate of such tax shall be one percent, and (3) for capitation payments made in accordance with the Medical Assistance Act, the rate of tax shall be five percent. A captive insurer authorized under the Captive Insurers Act that is transacting business in this state shall, on or before March 1 of each year, pay to the director a tax of one-fourth of one percent of the gross amount of direct writing premiums received by such insurer during the preceding calendar year for business transacted in the state. The taxable premiums shall include premiums paid on the lives of persons residing in this state and premiums paid for risks located in this state whether the insurance was written in this state or not, including that portion of a group premium paid which represents the premium for insurance on Nebraska residents or risks located in Nebraska included within the group when the number of lives in the group exceeds five hundred. The tax shall also apply to premiums received by domestic companies for insurance written on individuals residing outside this state or risks located outside this state if no comparable tax is paid by the direct writing domestic company to any other appropriate taxing authority. Companies whose scheme of operation contemplates the return of a portion of premiums to policyholders, without such policyholders being claimants under the terms of their policies, may deduct such return premiums or dividends from their gross premiums for the purpose of tax calculations. Any such insurance company shall receive a credit on the tax imposed as provided in the Community Development Assistance Act and section 77-27,222.

Sec. 54. The Revisor of Statutes shall assign section 3 of this act to Chapter 44, article 3.

Sec. 55. Original sections 21-2005, 44-319.07, 44-501, 44-507, 44-508, 44-522, 44-1104, 44-4501, 44-4519, 44-5110, 44-5111, 44-5120, 44-5137, 44-5140, 44-5141, 44-5152, 44-5501, 44-5502, 44-5504, 44-7504, and 48-446, Reissue Revised Statutes of Nebraska, and sections 44-5103, 44-5153, 44-8101, 44-8102, 44-8103, 44-8104, 44-8105, 44-8106, 44-8107, 48-144.03, 48-146.01, and 77-908, Revised Statutes Cumulative Supplement, 2006, are repealed.