

LEGISLATIVE BILL 235

Approved by the Governor March 11, 1991

Introduced by Landis, 46; Lindsay, 9; Conway, 17;
Wesely, 26; Schmit, 23; Haberman, 44;
Abboud, 12

AN ACT relating to title insurance; to amend sections 25-1292, 44-309.02, 44-413.01, 44-1487 to 44-1490, 44-1492, 44-1494 to 44-1497, 44-1901, 44-1902, 44-1905 to 44-1907, 44-1909, 44-1910, 44-1912, 44-1913, 44-1917, 44-1919, 44-1922 to 44-1926, and 76-1003, Reissue Revised Statutes of Nebraska, 1943, and sections 44-201, 44-203, 44-1491, 44-1493, 44-1498, 44-1525, 44-1908, 44-1911, 44-1914 to 44-1916, and 44-4802, Revised Statutes Supplement, 1990; to rename and include provisions in the Nebraska Title Insurance Act; to define and redefine terms; to provide limitations on title insurers and the issuance of title insurance; to describe an unfair or deceptive act or practice; to transfer sections; to eliminate definitions and provisions on prohibited business and kinds of insurance; to harmonize provisions; and to repeal the original sections, and also sections 44-1903, 44-1904, 44-1918, and 44-1921, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 25-1292, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-1292. (1) Any party to a civil action who may desire to use in evidence at the trial any abstract of title to real estate shall, not less than seven days prior to the date of trial, notify the adverse party by written notice addressed to such party's counsel of record and deposit such abstract in the office of the clerk of the district court of the county in which such action is pending for examination by such adverse party. Such abstract of title, if certified to and issued by a registered abstractor, shall be received in evidence as prima facie evidence of the existence of the record of deeds, mortgages, and other instruments, conveyances, or liens affecting the real estate mentioned in such

abstract and that such record is as described in such abstract. If such abstract ~~shall be~~ is successively certified to by abstracters who were bonded under section 76-506 prior to November 18, 1965, registered under sections 76-509 to 76-528 on or after November 18, 1965, but prior to March 26, 1985, or registered under the Abstracters Act, the same shall be received in evidence without further foundation.

(2) A ~~policy of~~ title insurance; policy issued by a title ~~insurance company insurer~~ licensed to issue such policy by the State of Nebraska; shall also be received in court as prima facie evidence of the ownership, liens, mortgages, easements, and all other corporeal as well as incorporeal hereditaments to such real estate, the existence of which are indicated in such ~~policy of~~ title insurance policy.

Sec. 2. That section 44-201, Revised Statutes Supplement, 1990, be amended to read as follows:

44-201. An insurance corporation may be formed for the following purposes or may insure the following lines:

(1) LIFE INSURANCE. Insurance upon lives of persons, including endowments and annuities, and every insurance pertaining thereto and disability benefits, except that life insurance shall not include variable life insurance specified in subdivision (2) of this section and variable annuities specified in subdivision (3) of this section;

(2) VARIABLE LIFE INSURANCE. Insurance on the lives of individuals, the amount or duration of which varies according to the investment experience of any separate account or accounts established and maintained by the insurer as to such insurance;

(3) VARIABLE ANNUITIES. Insurance policies issued on an individual or group basis by which an insurer promises to pay a variable sum of money either in a lump sum or periodically for life or for some other specified period;

(4) SICKNESS AND ACCIDENT INSURANCE. Insurance against loss or expense resulting from the sickness of the insured, from bodily injury or death of the insured by accident, or both, and every insurance pertaining thereto;

(5) PROPERTY INSURANCE. Insurance against loss or damage, including consequential loss or damage, to real or personal property of every kind and any interest in such property from any and all hazards or causes, except that property insurance shall not include title insurance specified in subdivision (15) of this

section and marine insurance specified in subdivision (18) of this section;

(6) CREDIT PROPERTY INSURANCE. Insurance against loss or damage to personal property used as collateral for securing a loan or to personal property purchased pursuant to a credit transaction, but only insofar as it applies to property sold to or pledged by individual consumers for personal use;

(7) GLASS INSURANCE. Insurance against loss or damage to glass, including its lettering, ornamentation, and fittings;

(8) BURGLARY AND THEFT INSURANCE. Insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation or wrongful conversion, disposal, or concealment or from any attempt at any of the foregoing;

(9) BOILER AND MACHINERY INSURANCE. Insurance against any liability and loss or damage to life, person, property, or interest resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus;

(10) LIABILITY INSURANCE. Insurance against legal liability for the death, injury, or disability of any person, for injury or damage to any person, or for damage to property, and the providing of medical, hospital, surgical, or disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance, except that liability insurance shall not include workers' compensation and employers liability insurance specified in subdivision (11) of this section;

(11) WORKERS' COMPENSATION AND EMPLOYERS LIABILITY INSURANCE. Insurance against the legal liability of any employer for the death or disablement of or injury to an employee whether imposed by common law or statute or assumed by contract, except that workers' compensation and employers liability insurance shall not include liability insurance specified in subdivision (10) of this section;

(12) VEHICLE INSURANCE. Insurance against any loss or damage to any land vehicle, other than railroad rolling stock, or any draft animal, from any hazard or cause, and against any loss, liability, or expense resulting from or incidental to ownership, maintenance, or use of any such vehicle or animal, together with insurance against accidental injury to or death of any

person, irrespective of legal liability of the insured, if such insurance is issued as an incidental part of insurance on the vehicle or draft animal;

(13) FIDELITY INSURANCE. Insurance guaranteeing the fidelity of persons holding positions of public or private trust;

(14) SURETY INSURANCE. Insurance guaranteeing the performance of contracts other than insurance policies or guaranteeing and executing all bonds, undertakings, and contracts of suretyship, except that surety insurance shall not include title insurance specified in subdivision (15) of this section and financial guaranty insurance specified in subdivision (19) of this section;

(15) TITLE INSURANCE. Insurance guaranteeing or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of (a) liens, encumbrances upon, defects in, or the unmarketability of title to such real property, or adverse claim to title in real property with reasonable examination of title guaranteeing, warranting, or otherwise insuring by a title ~~insurance company insurer~~ the correctness of searches relating to the title to real property and (b) defects in the authorization, execution, or delivery of an encumbrance upon such real property, or any share, participation, or other interest in such encumbrance, guaranteeing, warranting, or otherwise insuring by a title ~~insurance company insurer~~ the validity and enforceability of evidences of indebtedness secured by an encumbrance upon or interest in such real property;

(16) CREDIT INSURANCE. Insurance against loss or damage from the failure of persons indebted to or to become indebted to the insured to meet existing or contemplated liabilities, including agreements to purchase uncollectible debts, except that credit insurance shall not include mortgage guaranty insurance specified in subdivision (17) of this section and financial guaranty insurance specified in subdivision (19) of this section;

(17) MORTGAGE GUARANTY INSURANCE. Insurance against financial loss by lenders by reason of nonpayment of principal, interest, or other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate;

(18) MARINE INSURANCE. Insurance against loss or damage, including consequential loss or damage, to

vessels, craft, aircraft, automobiles, and vehicles of every kind as well as goods, freights, cargoes, merchandise, effects, disbursements, profits, money, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry, and respondentia interests, and all kinds of property and interests therein in respect to, pertaining to, or in connection with any or all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas, or waters, on land or in the air, or while being assembled, packed, crated, baled, compressed, or similarly prepared for shipment or while awaiting the same, or during any delays, storage, transshipment, or reshipment incidental thereto; including marine builders' risks and war risks; and against loss or damage to persons or property in connection with or appertaining to marine, inland marine, transit, or transportation insurance, including loss or damage to either, arising out of or in connection with the construction, repair, operation, maintenance, or use of the subject matter of such primary insurance, but not including life insurance or surety bonds; but, except as specified in this subdivision, marine insurance shall not include insurance against loss by reason of bodily injury to the person;

(19) FINANCIAL GUARANTY INSURANCE. (1)

Insurance issued in the form of a surety bond, insurance policy, or, when issued by an insurer, an indemnity contract and any guaranty similar to the foregoing types, against financial loss to an insured claimant, obligee, or indemnitee as a result of any of the following events:

(a) Failure of any obligor on any debt instrument or other monetary obligation, including common or preferred stock guaranteed under a surety bond, insurance policy, or indemnity contract, to pay when due principal, interest, premium, dividend, or purchase price of or on such instrument or obligation, when such failure is the result of a financial default or insolvency, regardless of whether such obligation is incurred directly or as guarantor by or on behalf of another obligor that has also defaulted;

(b) Changes in the levels of interest rates, whether short or long term, or the differential in interest rates between various markets or products;

(c) Changes in the rate of exchange of currency;

(d) Inconvertibility of one currency into

another for any reason or inability to withdraw funds held in a foreign country resulting from restrictions imposed by a governmental authority;

(e) Changes in the value of specific assets or commodities, financial or commodity indices, or price levels in general; or

(f) Other events which the Director of Insurance determines are substantially similar to any of the events described in subdivisions (a) through (e) of this subdivision.

(2) Financial guaranty insurance shall not include:

(a) Insurance of any loss resulting from any event described in subdivisions (19)(1)(a) through (e) of this section if the loss is payable only upon the occurrence of any of the following, as specified in a surety bond, insurance policy, or indemnity contract:

(i) A fortuitous physical event;

(ii) A failure of or deficiency in the operation of equipment; or

(iii) An inability to extract or recover a natural resource;

(b) Any individual or schedule public official bond;

(c) Any contract bond, including bid, payment, or maintenance bond, or a performance bond when the bond is guarantying the execution of any contract other than a contract of indebtedness or other monetary obligation;

(d) Any court bond required in connection with judicial, probate, bankruptcy, or equity proceedings, including waiver, probate, open estate, and life tenant bond;

(e) Any bond running to the federal, state, county, or municipal government or other political subdivision as a condition precedent to granting of a license to engage in a particular business or of a permit to exercise a particular privilege;

(f) Any loss security bond or utility payment indemnity bond running to a governmental unit, railroad, or charitable organization;

(g) Any lease, purchase, and sale or concessionaire surety bond;

(h) Credit unemployment insurance, meaning insurance on a debtor, in connection with a specific loan or other credit transaction, to provide payments to creditor in the event of unemployment of the debtor for the installments or other periodic payments becoming due while a debtor is unemployed;

(i) Credit insurance, meaning insurance

indemnifying manufacturers, merchants, or educational institutions extending credit against loss or damage resulting from nonpayment of debts owed to them for goods or services provided in the normal course of their business;

(j) Guaranteed investment contracts issued by life insurance companies which provide that the life insurer itself will make specified payments in exchange for specific premiums or contributions;

(k) Surety insurance as specified in subdivision (14) of this section and mortgage guaranty insurance as specified in subdivision (17) of this section;

(l) Indemnity contracts or similar guaranties to the extent that they are not otherwise limited or proscribed by Chapter 44 in which a life insurer:

(i) Guaranties its obligations or indebtedness or the obligations or indebtedness of a subsidiary of which it owns more than fifty percent, other than a financial guaranty insurance corporation, except that:

(A) To the extent that any such obligations or indebtedness are backed by specific assets, such assets shall at all times be owned by the insurer or the subsidiary; and

(B) In the case of the guaranty of the obligations or indebtedness of the subsidiary that is not backed by specific assets of the life insurer, such guaranty terminates once the subsidiary ceases to be a subsidiary; or

(ii) Guaranties obligations or indebtedness, including the obligation to substitute assets where appropriate, with respect to specific assets acquired by a life insurer in the course of normal investment activities and not for the purpose of resale with credit enhancement, or guaranties obligations or indebtedness acquired by its subsidiary if such assets have been:

(A) Acquired by a special purpose entity, the sole purpose of which is to acquire specific assets of the life insurer or the subsidiary and issue securities or participation certificates backed by such assets; or

(B) Sold to an independent third party; or

(iii) Guaranties obligations or indebtedness of an employee or agent of the life insurer; and

(m) Any other form of insurance covering risks which the director determines to be substantially similar to any of the risks described in subdivisions (a) through (l) of this subdivision; and

(20) MISCELLANEOUS INSURANCE. Insurance upon any risk, including but not limited to legal expense

insurance and mechanical breakdown insurance, not included within subdivisions (1) to (19) of this section, and which is a proper subject for insurance, not prohibited by law or contrary to sound public policy, to be determined by the Department of Insurance.

Sec. 3. That section 44-203, Revised Statutes Supplement, 1990, be amended to read as follows:

44-203. A Except as provided in section 25 of this act, a company may be formed or an existing company may be authorized to transact any one or more of the lines of insurance specified in section 44-201, 7 ~~except that any company formed or authorized for the purposes specified in subdivision (15) of section 44-201 shall transact no other lines of insurance.~~

Sec. 4. That section 44-309.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-309.02. In addition to the investments permitted in section 44-309, any domestic title ~~insurance company insurer~~ may invest in a title plant, if an amount equivalent to its minimum capital or minimum surplus is invested pursuant to the provisions of section 44-309. The title plant shall be considered an asset at the fair value thereof, and in determining fair value, no value shall be attributed to furniture and fixtures, and the real estate in which the title plant is housed shall be carried as real estate. The value of title abstracts, title briefs, copies of conveyances and other documents, indices, and other records comprising the title plant shall be determined by considering the expenses incurred in obtaining them, the age thereof, the cost of replacement less depreciation, and all other relevant factors.

Sec. 5. That section 44-1525, Revised Statutes Supplement, 1990, be amended to read as follows:

44-1525. The following shall be unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(1) Making, issuing, circulating, or causing to be made, issued, or circulated any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:

(a) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy;

(b) Misrepresents the dividends or share of the surplus to be received on any insurance policy;

(c) Makes any false or misleading statements as to the dividends or share of surplus previously paid

on any insurance policy;

(d) Misleads as to or misrepresents the financial condition of any person or the legal reserve system upon which any life insurer operates;

(e) Uses any name or title of any insurance policy or class of insurance policies which misrepresents the true nature thereof;

(f) Misrepresents for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy;

(g) Misrepresents for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or

(h) Misrepresents any insurance policy as being shares of stock;

(2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his or her insurance business which is untrue, deceptive, or misleading;

(3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false or maliciously critical of or derogatory to the financial condition of any person and which is calculated to injure such person;

(4) Entering into any agreement to commit or by any concerted action committing any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of or monopoly in the business of insurance;

(5)(a) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person; or

(b) Making any false entry of a material fact in any book, report, or statement of any person or omitting to make a true entry of any material fact pertaining to the business of such person in any book, report, or statement of such person;

(6) Issuing or delivering or permitting agents, officers, or employees to issue or deliver agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance;

(7)(a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon or in any other of the terms and conditions of such contract;

(b) Making or permitting any unfair discrimination between individuals of the same class involving essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, in any of the terms or conditions of such contract, or in any other manner, except that this subdivision shall not limit the negotiation of preferred provider policies and contracts under sections 44-4101 to 44-4113; or

(c) Making or permitting any unfair discrimination between individuals, risks, or insurance policies of the same class involving essentially the same hazards in the amount of premium, policy fees, or rates charged for any risks or insurance policies as described in section 44-1402; or 44-1444; or ~~44-1991~~ section 21 of this act or in the coverages provided, in any of the terms or conditions of such contracts, or in any other manner. Any rate or classification approved by the Director of Insurance shall be presumed to be nondiscriminatory;

(8)(a) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity, or sickness and accident and health insurance, or agreement as to any such contract other than as plainly expressed in the insurance contract issued thereon, or paying, allowing, or giving, or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the

dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, selling, purchasing, or offering to give, sell, or purchase as inducement to such insurance contract or annuity or in connection therewith any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value not specified in the contract.

(b) Nothing in subdivision (7)(a) or (b) or (8)(a) of this section shall be construed as including within the definition of discrimination or rebates any of the following practices: (i) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance if such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the company and its policyholders; (ii) in the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses; or (iii) readjustment of the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;

(9) Committing or performing with such frequency as to indicate a general business practice any act which:

(a) Misrepresents pertinent facts or insurance policy provisions relating to coverage at issue;

(b) Fails to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(c) Fails to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(d) Refuses to pay claims without conducting a reasonable investigation based upon all available information;

(e) Fails to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(f) Does not attempt in good faith to

effectuate prompt, 'fair, and equitable settlements of claims in which liability has become reasonably clear;

(g) Compels an insured to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by insureds;

(h) Attempts to settle a claim for less than the amount to which a reasonable person would have believed he or she was entitled by reference to written or printed advertising material accompanying or made part of an application;

(i) Attempts to settle claims on the basis of an application which was altered without notice to or knowledge or consent of the insured;

(j) Makes claims payments to an insured or beneficiary not accompanied by a statement setting forth the coverage under which the payments are being made;

(k) Makes known to an insured or claimant a policy of appealing from arbitration awards in favor of the insured or claimant for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(l) Delays the investigation or payment of claims by requiring an insured or claimant or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(m) Fails to promptly settle claims, when liability has become clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(n) Fails to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;

(10) Failing of any person to maintain a complete record of all the complaints received since the date of its last examination pursuant to section 44-107. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition thereof, and the time it took to process each complaint. For purposes of this subdivision, complaint shall mean any written communication primarily expressing a grievance;

(11) Making false or fraudulent statements or representations on or relative to an application for an insurance policy for the purpose of obtaining a fee,

commission, money, or other benefit from any insurers insurer, agent, broker, or individual; and

(12) Violating any provision of section 44-348, 44-360, 44-361, 44-369, 44-392, 44-393, 44-1412, 44-1455, ~~44-1498~~, 44-4809, 44-4812, or 44-4817 or section 30 or 54 of this act.

Sec. 6. That section 44-1917, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1917. Sections 44-1901 to 44-1917 6 to 56 of this act shall be known and may be cited as the Nebraska Title Insurance Act.

Sec. 7. That section 44-1901, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1901. For purposes of the Act used in the Nebraska Title Insurance Act, the definitions found in sections 8 to 24 of this act shall be used, unless the context otherwise requires:

(1) Title insurance shall mean:

(a) Insuring, guaranteeing, or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, defects in or the unmarketability of title to such real property, or adverse claim to title in real property, with reasonable examination to title guaranteeing, warranting, or otherwise insuring by a title insurance company the correctness of searches relating to the title to real property;

(b) Insuring, guaranteeing, or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of defects in the authorization, execution, or delivery of an encumbrance upon such real property, or any share, participation, or other interest in such encumbrance; guaranteeing, warranting, or otherwise insuring by a title insurance company the validity and enforceability of evidences of indebtedness secured by an encumbrance upon or interest in such real property; or

(c) Doing any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the Nebraska Title Insurance Act;

(2) Business of title insurance shall mean (a) the making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor, or surety, of any contract or policy of title insurance; (b) the transacting or proposing to transact any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a contract of

title insurance insuring; and transacting matters subsequent to the execution of the contract and arising out of it; including reinsurance; or (c) the doing, or proposing to do, any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the Nebraska Title Insurance Act;

(3) Title insurance company shall mean any domestic company organized under the provisions of Chapter 44 for the purpose of issuing policies or contracts of title insurance; any title insurance company organized under the laws of another state or foreign government and licensed to issue policies or contracts of title insurance within the state pursuant to the provisions of Chapter 44; and any domestic or foreign company having the power and authorized to issue policies or contracts of title insurance within this state;

(4) Applicants for insurance shall include all those, whether or not a prospective insured, who from time to time apply to a title insurance company or to its agent for title insurance and who at the time of such application are not agents for a title insurance company;

(5) Risk premium for title insurance shall mean that portion of the fee charged to an insured or to an applicant for insurance for the assumption by the title insurance company of the risk created by the issuance of the title insurance policy;

(6) Fee for title insurance shall mean and include the risk premium, searching charge, and every other charge, whether denominated premium or otherwise made by a title insurance company or agent of a title insurance company or either of them, to an insured or to an applicant for insurance, for any policy or contract for the issuance of title insurance;

(7) Single insurance risk shall mean the insured amount of any policy or contract of title insurance issued by a title insurance company unless two or more policies or contracts are simultaneously issued on different estates in identical real property; in which event single insurance risk shall mean the sum of the insured amounts of all such policies or contracts. Any policy or contract that insures a mortgage interest that is excepted in a fee or leasehold policy or contract, and which does not exceed the insured amount of such fee or leasehold policy or contract, shall be excluded in computing the amount of a single insurance risk;

(8) Net retained liability shall mean the

total liability retained by a title insurance company under any policy or contract of insurance, or under a single insurance risk as defined in or computed in accordance with subdivision (7) of this section, after the purchase of reinsurance; and

(9) Title insurance agent shall mean an agent as defined in section 44-4002 who is engaged in the business of selling title insurance as defined in subdivision (1) of this section.

Sec. 8. Applicants for insurance shall include all those, whether or not a prospective insured, who from time to time apply for title insurance to a title insurer or to its title insurance agent and who at the time of such application are not title insurance agents.

Sec. 9. Associate shall mean (1) any firm, association, organization, partnership, business trust, corporation, or other legal entity organized for profit in which a producer of title insurance business is a director, officer, partner, or owner of a financial interest, (2) the spouse or any relative within the second degree by blood or marriage of a producer of title insurance business who is a natural person, (3) any director, officer, or employee of a producer of title insurance business, (4) any legal entity that controls, is controlled by, or is under common control with a producer of title insurance business, and (5) any natural person or legal entity with whom a producer of title insurance business has any agreement, arrangement, or understanding or who pursues any course of conduct the purpose or effect of which is to evade the Title Insurance Act.

Sec. 10. Controlled business shall mean business referred to a title insurer or title insurance agent by a producer of title insurance business or an associate if either the producer of title insurance business or the associate has a financial interest in such title insurer or title insurance agent.

Sec. 11. Director shall mean the Director of Insurance.

Sec. 12. Fee shall mean and include the risk premium, the searching charge, and every other charge, whether denominated premium or otherwise, made for the issuance of any title insurance policy by a title insurer or a title insurance agent or either of them to an insured or to an applicant for insurance.

Sec. 13. Financial interest shall mean any interest, legal or beneficial, such that the holder of the interest is or will be entitled to more than a

one-percent share of the net profits or net worth of the legal entity in which such interest is held. The ownership of a legal or beneficial interest of one percent or less of the net profits or net worth of the legal entity in which such interest is held shall constitute a financial interest if the primary purpose of the acquisition or maintenance of such legal or beneficial interest is the financial benefit to be obtained from the referral of title insurance business.

Sec. 14. Mortgagee's title insurance policy shall mean a title insurance policy issued to a party whose interest in the real property is confined to that of a lender or mortgagee and whose entire risk is something less than the market price of the real property and is evidenced by a real estate mortgage or similar instrument given to the mortgagee by the owner which may or may not be recorded with a register of deeds.

Sec. 15. Net retained liability shall mean the total liability retained after the purchase of reinsurance by a title insurer under any title insurance policy or under a single title insurance risk.

Sec. 16. Owner's title insurance policy shall mean a title insurance policy which insures the owner or owners in fee by something other than a mortgage interest against risks normally associated with the ownership in fee of real property.

Sec. 17. Producer of title insurance business shall mean any natural person, firm, association, organization, partnership, business trust, corporation, or other legal entity engaged in this state in the trade, business, occupation, or profession of (1) buying or selling interests in real property, (2) making loans secured by interests in real property, or (3) acting as broker, agent, representative, or attorney of natural persons or other legal entities that buy or sell interests in real property or that lend money with such interests as security, except that an attorney licensed to practice law in this state who, in connection with a real estate transaction, examines the title and issues a title insurance policy to or on behalf of a client and who, in doing so, acts consistently with the ethical standards applicable to the legal profession in this state shall not be deemed to be a producer of title insurance business.

Sec. 18. Refer or referral shall mean to direct, to cause to be directed, or to exercise any power or influence over the direction of title insurance business, whether or not the consent or approval of any

other person is sought or obtained with respect to the referral.

Sec. 19. Risk premium shall mean that portion of the fee charged to an insured or to an applicant for insurance for the assumption by the title insurer of the risk created by the issuance of the title insurance policy.

Sec. 20. Single insurance risk shall mean the insured amount of any title insurance policy issued by a title insurer unless two or more policies are simultaneously issued on different estates in identical real property, in which event single insurance risk shall mean the sum of the insured amounts of all such policies. Any policy that insures a mortgage interest that is excepted in a fee or leasehold policy and which does not exceed the insured amount of such fee or leasehold policy shall be excluded in computing the amount of a single insurance risk.

Sec. 21. Title insurance shall mean such term as described in subdivision (15) of section 44-201 and shall also mean doing any business in substance equivalent to any of the activities listed in such subdivision in a manner designed to evade the Title Insurance Act.

Sec. 22. Title insurance agent shall mean an insurance agent as defined in section 44-4002 who is engaged in selling title insurance.

Sec. 23. Title insurance business shall mean (1) the making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor, or surety, of any title insurance policy, (2) the transacting or proposing to transact any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a title insurance policy insuring, and transacting matters subsequent to the execution of the policy and arising out of it, including reinsurance, or (3) the doing of, or proposing to do, any business in substance equivalent to any of the activities listed in this section in a manner designed to evade the Title Insurance Act.

Sec. 24. Title insurer shall mean any domestic insurer organized under the provisions of Chapter 44 for the purpose of issuing title insurance policies, any foreign or alien insurer authorized to issue title insurance policies within this state pursuant to the provisions of Chapter 44, and any domestic or foreign insurer having the power and authorized to issue title insurance policies within this state.

Sec. 25. That section 44-1902, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1902- (1) Except as prohibited by sections 44-1921 to 44-1926 32 to 36 of this act, every title insurer may transact title insurance business and may insurance company shall have the power to do the kinds of business defined in subdivisions (1) and (2) of section 44-1901, and to provide any other services related to the land title insurance business, including issuing insured closing letters issued incidental to a title insurance policy. For purposes of this section, insured closing letter shall mean an instrument, approved by the director as to form and content, which provides that the title insurer assumes liability for loss due to the fraud of, dishonesty of, misappropriation of funds by, or failure to comply with written closing instructions by its agents, attorneys, or other employees in connection with a real estate transaction for which a title insurance policy is to be issued by the title insurer. The issuance of an insured closing letter incidental to the issuance of a title insurance policy shall not constitute the transaction of other kinds of insurance for purposes of section 44-201.

(2) A title insurer shall not engage in the business of guaranteeing the payment of the principal or the interest of bonds, mortgages, or other obligations.

(3) A title insurer formed or authorized for the purposes specified in the Title Insurance Act shall not transact, underwrite, or issue any line of insurance other than title insurance as specified in subdivision (15) of section 44-201. No insurer transacting any other line of insurance shall transact, underwrite, or issue title insurance.

Sec. 26. That section 44-1905, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1905- No policy or contract of title insurance policy shall be written unless and until the title insurance company insurer has caused to be conducted a reasonable examination of the title and has caused to be made a determination of insurability of title in accordance with sound underwriting practices for title insurance companies insurers. Evidence thereof shall be preserved and retained in the files of the title insurance company insurer or its title insurance agent for a period of not less than fifteen years after the policy or contract of title insurance policy has been issued. In lieu of retaining the

original copy, the title insurance company insurer or the agent of the title insurance company agent may in the regular course of business establish a system whereby all or part of these writings are recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces ~~on~~ or forms a durable medium for reproducing the original. This section shall not apply to (1) a company an insurer assuming no primary liability in a contract of reinsurance, or (2) a company an insurer acting as a coinsurer if one of the other coinsuring companies insurers has complied with this section.

Sec. 27. That section 44-1906, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1906. (1) The net retained liability of any title insurance company insurer under any single insurance risk as defined in subdivisions (7) and (8) of ~~section 44-1901~~ shall not exceed fifty percent of the net amount remaining after deducting from the sum of its capital, surplus, unearned premium reserve, and voluntary reserves; the value, if any, assigned in such summation to its title plants, all as shown in its most recent report on file with the director. The same limitation shall apply to any secondary risk assumed by means of reinsurance or to any policy of excess coinsurance, except, that whenever the primary retained liability of a ceding title insurer equals or exceeds company shall equal or exceed ten percent of the single insurance risk liability, the net retained or assumed liability limit of this section may be increased by an additional two hundred fifty thousand dollars but in no event above one hundred percent of the net amount remaining after deducting from the sum of its capital and surplus; the value, if any, assigned in such summation to its title plants, all as shown by its most recent report on file with the Director of Insurance director.

(2) Nothing in this section is intended to shall limit the amount of a single insurance risk, as defined in subdivision (7) of ~~section 44-1901~~; that may be written or assumed by a title insurer if it cedes insurance company; PROVIDED, that it shall cede to one or more other title insurance companies insurers, on or before the effective date of such writing or assumption, such portion or portions of such risk as are shall be sufficient to bring its net retained liability thereunder within the limits hereinabove set forth in in

this section and if ; AND PROVIDED FURTHER, that each such cession of risk shall also be is within the limits of the provisions of this section as applied to the sum of the capital, surplus, unearned premium reserve, and voluntary reserves, less the value, if any, assigned in such summation to the title plant of the assuming and reinsuring title insurance company insurer, as shown by its most recent report on file with the supervisory agent agency in the state of its domicile.

Sec. 28. That section 44-413.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~44-413.01.~~ (1) Every domestic title insurance company insurer shall maintain loss reserves in an amount estimated in the aggregate as sufficient to provide for the payment of all losses or claims under title insurance contracts policies of which the company title insurer has received notice from or on behalf of the insured.

(2) In addition to the reserves required by subsection (1) of this section, every such title insurer insurance company shall establish a reinsurance reserve during the period and for the uses and purposes provided in this subsection. Such reserve shall be cumulative and shall be established in the following manner: (a) On each contract of title insurance policy including interim binders and guaranty title insurance issued by a title insurance company insurer during the calendar year ~~1961~~ and in each calendar year, thereafter, there shall be reserved initially a sum equal to fourteen percent of the risk premium charged; and (b) at the end of each calendar year following the year in which the contracts policies were issued, there shall be a reduction in the sum so reserved in the amount of one-twentieth of such sum. The amounts so reserved initially or maintained thereafter shall at all times and for all purposes be considered unearned portions of the original risk premiums on such contracts, policies and shall be charged as a reserve liability of the company title insurer in determining its financial condition. In calculating reserves, all contracts of title insurance policies shall be assumed to be dated in the middle of the year in which they are issued.

Sec. 29. That section 44-1907, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~44-1907.~~ Title insurance agents shall be licensed, examined, and trained as to title insurance coverages in the manner provided for in Chapter 44. 7

as the same may be amended from time to time.

Sec. 30. That section 44-1908, Revised Statutes Supplement, 1990, be amended to read as follows:

44-1908- (1) A title insurance agent or title insurer insurance company may engage in the business of handling escrows of real property estate transactions subject to rules and regulations issued by the director. In so acting the title insurance agent or the company title insurer shall:

{1} (a) Maintain a separate record of all receipts and disbursements of escrow funds and shall not commingle any such funds with the title insurance agent's or the company's title insurer's own funds or with funds held by the title insurance agent or the company title insurer in any other capacity; and

{2} (b) Obtain and maintain a fidelity bond, letter of credit, certificate of deposit, or deposit of cash or securities, in the form and amount required by the director, for such title insurance company insurer and for each officer or employee of such title insurance agent who shall perform any escrow service.

(2) In addition to other remedies and penalties available under the laws of this state, each violation of this section and any rules and regulations issued thereunder shall be an unfair or deceptive act or practice in the business of insurance subject to sections 44-1522 to 44-1535.

Sec. 31. That section 44-1919, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1919- All title insurance companies insurers and agents of title insurance companies agents issuing a mortgagee's title insurance policy shall, where if no owner's title insurance policy has been ordered by the owner and the real property is transferred or about to be transferred, cause the owner to be advised in writing of the fact that a mortgagee's title insurance policy is to be issued, and that such policy does not afford title insurance protection to the owner, and further advising the owner that he or she has a right to obtain title insurance in his or her own favor covering the fee title interest in the real property. If the owner elects not to purchase an owner's title insurance policy, the title insurance company insurer shall obtain from the owner a statement in writing that he or she has received such notice and has waived the right to purchase a policy of an owner's title insurance policy on the real property. If the

owner of the real property elects in writing not to purchase a policy of an owner's title insurance policy, the title insurance company insurer or title insurance agent may then issue the mortgagee's title insurance policy to the mortgagee. The Director of insurance director shall approve the form and substance of the notice to the owner and the waiver by the owner of his the right to purchase title insurance for his or her own behalf.

Sec. 32. That section 44-1922, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1922- No title insurance company insurer or title insurance agent may accept an order for title insurance business from a producer of title insurance business, issue a title insurance policy, or receive or retain any premium, charge, or portion thereof, in connection with any transaction if (1) the title insurance company insurer or title insurance agent knows or has reason to believe that such transaction will constitute controlled business for such company title insurer or title insurance agent and (2) twenty percent or more of the gross revenue of the title insurance company insurer or title insurance agent in the calendar year in which the transaction takes place is derived from such producer of title insurance business.

Sec. 33. That section 44-1923, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1923- Except to the extent permitted in section 44-1922 32 of this act, no application for a certificate of authority as a title insurance company insurer or application for a title insurance agent's license shall be approved by the department if it director if he or she reasonably determines that controlled business is or will be a factor in the proposed plan of operation or in the ownership or acquisition of financial interests in the proposed title insurance company insurer or title insurance agent by any producer of title insurance business or by any associate of a producer.

Sec. 34. That section 44-1924, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1924- (1) Each title insurance company insurer and title insurance agent shall file annually with the department director, on forms prescribed by the department director, reports containing:

(1) (a) The names and addresses of persons, if

any, who have had a financial interest in the title insurance company insurer or title insurance agent during the calendar year who are reasonably believed by the title insurance company insurer or title insurance agent to be producers of title insurance business or associates; ~~of producers;~~ and

(2) (b) Information from the title insurance company's insurer's or title insurance agent's records sufficient to inform the department director of the proportion of the title insurance company's insurer's or title insurance agent's gross operating revenue that may have been attributable to controlled business, if any, during the preceding calendar year.

(2) The reports shall be filed within ninety days after the end of each calendar year and shall contain the certification of an officer of the title insurance company insurer or title insurance agent that the information in the report is true to the best of the officer's knowledge, information, and belief. The reports shall be public records upon filing.

Sec. 35. That section 44-1925, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1925. (1) Any violation of sections ~~44-1921 to 44-1924~~ 32 to 34 of this act shall constitute grounds for the suspension or revocation of a title insurance company's insurer's certificate of authority or a title insurance agent's license and shall constitute an unfair method of competition and an unfair and deceptive act and practice under sections 44-1522 to 44-1535.

(2) No title insurance company insurer or title insurance agent may receive any fee or commission in connection with the sale of a title insurance policy in a transaction which such title insurance company insurer or title insurance agent knows or has reason to believe will be in violation of the provisions of sections ~~44-1921 to 44-1924~~ 32 to 34 of this act.

(3) Any title insurance company insurer or title insurance agent that is a competitor of any title insurance company insurer or title insurance agent that, subsequent to August 26, 1983, has violated or is violating sections ~~44-1921 to 44-1924~~ 32 to 34 of this act or subsection (1) or (2) of this section shall have a cause of action against such title insurance company insurer or title insurance agent. Upon establishing the existence of a violation of any provision of sections ~~44-1921 to 44-1924~~ 32 to 34 of this act or subsection (1) or (2) of this section, such competitor shall be

entitled, in addition to any other damages or remedies provided by law, to any equitable or injunctive relief as the court deems proper, except that an action pursuant to this subsection may be instituted only if the complainant has first brought the alleged violation to the attention of the director within ninety days after the violation has occurred, and the director has failed to take action to remedy the alleged violation. In any action pursuant to this subsection, the court may award to the successful party the court costs of the action together with reasonable attorney's fees.

Sec. 36. That section 44-1926, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~44-1926-~~ (1) Sections ~~44-1921 to 44-1925~~ 32 to 35 of this act shall not apply to title insurance business arising out of any real estate transaction when the real estate property which is the subject of the transaction is located in a county with a population of less than five thousand people as shown by the last preceding decennial census.

(2) Nothing contained in sections ~~44-1921 to 44-1925~~ 32 to 35 of this act shall affect the right of any title insurance agent or title insurance company insurer operating in a controlled business situation or relationship on August 26, 1983, to continue to operate in the controlled business situation or relationship, except that the company title insurer operating in such a situation or relationship shall conspicuously disclose the controlled business situation or relationship on the face of any title insurance commitment issued by the company title insurer and on the closing statement of any transaction in which the company title insurer or its associate acts as a lender or real estate broker. Failure to disclose the information required pursuant to this subsection shall subject the violator to the penalties and provisions provided in section ~~44-1925~~ 35 of this act.

(3) A title insurance agent or title insurance company insurer operating in a controlled business situation or relationship on August 26, 1983, shall have the same rights to sell, transfer, or otherwise dispose of his, her, or its business as he, she, or it possessed prior to August 26, 1983.

(4) Any producer of title insurance business, associate, person, or other entity may purchase all or a portion of the ownership interests of a title insurance agent or title insurance company insurer operating in a controlled business situation or relationship on August

26, 1983, and shall have all the same rights and privileges as its predecessor in ownership.

Sec. 37. That section 44-1909, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1909. After October 23, 1967, no title insurance agent for a title insurance company shall adopt a firm name containing the words title insurance unless such words are followed by the words agent or agency. The words agent or agency must shall be in the same size and type as the words preceding them. The provisions of this This section shall not apply to a title insurance company insurer acting as agent for another title insurance company insurer.

Sec. 38. That section 44-1910, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1910. (1) Every title insurance company insurer shall file with the Director of insurance director all forms of title insurance policies and other contracts of title insurance before the same shall be they are issued. In no event shall any title insurance company insurer issue any such form of title insurance policy or contract until thirty days after it shall have has been filed with the director unless it shall have has received earlier approval by the director. Unless the director shall disapprove disapproves a form of title insurance policy or contract of title insurance within thirty days from the date of its filing, such filing shall be deemed to have been approved.

(2) For purposes of this section, forms Ferms of title insurance policies and other contracts of insurance, as used in this section, shall be deemed to include preliminary reports of title, binders for insurance, and policies of insurance or guaranty, together with all the terms and conditions of insurance coverage or guaranty that relate to title to any interest in real property and which shall be are offered by a title insurance company insurer. They shall specifically exclude {1} (a) reinsurance contracts or agreements, {2} (b) all specific defects in title that may be ascertained from an examination of the risk and excepted in such reports, binders, or policies, together with any affirmative assurances of the title insurance company insurer with respect to such defects whether given by endorsement or otherwise, and {3} (c) such further exceptions from coverage by reason of limitations upon the examination of the risk imposed by an applicant for insurance or through failure of an

applicant for insurance to provide the data requisite to a judgment of insurability.

Sec. 39. That section 44-1911, Revised Statutes Supplement, 1990, be amended to read as follows:

~~44-1911-~~ (1) Every title insurance company insurer shall file with the Director of Insurance director its schedules of fees, every manual of classifications, rules and plans pertaining thereto, and every modification of any ~~of the foregoing~~ such filing which it proposes to use in this state. Every such filing shall state the proposed effective date thereof and shall indicate the character and extent of the coverage contemplated.

(2) A title insurance company insurer may satisfy its obligations to make such filings by becoming a member of or a subscriber to a licensed title insurance rating advisory organization which has been issued a certificate of authority by the director and which makes such filings and by authorizing the director to accept such filings on its behalf.

(3) The director shall make such review of the filings as may be necessary to carry out the Nebraska Title Insurance Act.

(4) Subject to the provisions of subsection (6) of this section, each filing shall be on file for a period of fifteen days before it becomes effective. The director may, upon written notice given within such period to the person making the filing, extend such waiting period for an additional period, not to exceed fifteen days, to enable him or her to complete the review of the filing. Further extensions of such waiting period may also be made with the consent of the title insurance company insurer or rating title insurance advisory organization making the filing. Upon written application by the title insurance company insurer or rating title insurance advisory organization making the filing, the director may authorize a filing or any part thereof which he or she has reviewed to become effective before the expiration of the waiting period or any extension thereof.

(5) Except in the case of rates filed under subsection (6) of this section, a filing which has become effective shall be deemed to meet the requirements of the Nebraska Title Insurance Act act.

(6) When the director finds that any rate for a particular kind or class of risk cannot practically be filed before it is used or any contract policy or kind of title insurance, by reason of rarity or peculiar

circumstances, does not lend itself to advance determination and filing of rates, he or she may, under such pursuant to rules and regulations, as he or she may adept and promulgate, permit such rate to be used without a previous filing and waiting period.

(7) No title insurance company insurer or title insurance agent of a title insurance company shall charge any fee for any policy or contract of title insurance policy except in accordance with filings or rates which are in effect for such title insurance company insurer as provided in the Nebraska Title Insurance Act act or in accordance with subsection (6) of this section.

(8) The director shall not have the power to regulate or require the filing of rates or fees for reinsurance contracts or agreements or policies of excess coinsurance.

Sec. 40. That section 44-1912, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~44-1912-~~ A rate filing shall be accompanied by a statement of the title insurance company insurer or title insurance rating advisory organization making the filing. The statement shall set ~~7~~ setting forth the basis upon which the rate was fixed; and upon which the fees are to be computed. Any filing may be justified by:

(1) The experience or judgment of the title insurance company insurer or title insurance rating advisory organization making the filing;

(2) Its interpretation of any statistical data relied upon;

(3) The experience of other title insurance companies insurers or title insurance rating advisory organizations; or

(4) Any other factors which the title insurance company insurer or title insurance rating advisory organization deems relevant.

The statement and justification shall be open to public inspection after the rate to which it applies becomes effective.

Sec. 41. That section 44-1913, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~44-1913-~~ (1) Every title insurance company insurer that makes shall make its own rates and every title insurance rating advisory organization shall make rates that are not excessive nor inadequate for the safety and soundness of any title insurer, which do not

unfairly discriminate between risks in this state, which involve essentially the same exposure to loss and expense elements, and which shall give due consideration to the following matters:

(a) The desirability of stability of rate structures;

(b) The necessity, by encouraging growth in assets of title ~~insurance companies~~ insurers in periods of high business activity, of assuring the financial solvency of title ~~insurance companies~~ insurers in periods of economic depression; and

(c) The necessity for paying dividends on the capital stock of title ~~insurance companies~~ insurers sufficient to induce capital to be invested therein.

(2) Every title ~~insurance company insurer~~ that shall make ~~makes~~ its own rates, or at the discretion of the ~~shall~~, and every title insurance rating advisory organization may, shall adopt basic classifications of policies or contracts of title insurance policies which shall be used as the basis for rates.

(3) Rates within each rate classification may, at the discretion of the title ~~insurance company insurer~~ that files its own rates, be less than the cost of the expense elements in the case of smaller insurances, and the excess may be charged against the larger insurances without rendering the rates unfairly discriminatory.

Sec. 42. That section 44-1914, Revised Statutes Supplement, 1990, be amended to read as follows:

~~44-1914-~~ (1) If within the waiting period or any extension thereof the director finds that a filing does not meet the requirements of the Nebraska Title Insurance Act, he or she shall send to the title ~~insurance company insurer~~ or the title insurance rating advisory organization which made such filing written notice of disapproval of such filing specifying in the notice in what respects he or she finds such filing fails to meet the requirements of the act and stating that such filing shall not become effective.

(2) Upon review of a filing by the director at any time after the waiting period, he or she shall, before issuing an order of disapproval, hold a hearing upon not less than ten days' written notice, specifying in reasonable detail the matters to be considered at such hearing, to every title ~~insurance company insurer~~ or title insurance rating advisory organization which made such filing. If, after such hearing, he or she finds that such filing or a part thereof does not meet the requirements of the Nebraska Title Insurance Act, he

or she shall issue an order specifying in what respects he or she finds that it so fails and stating when, within a reasonable period thereafter, such filing or a part thereof shall be deemed no longer effective if the filing or a part thereof has become effective under the act. A title insurance company insurer or title insurance rating advisory organization shall have the right at any time to withdraw a filing or a part thereof. Copies of the order shall be sent to every title insurance company insurer or title insurance rating advisory organization affected. The order shall not affect any contract or title insurance policy made or issued prior to the expiration of the period set forth in such order.

(3) Any person or organization aggrieved with respect to any filing which is in effect may make written application to the Director of insurance director for a hearing thereon. The title insurance company insurer or title insurance rating advisory organization that made the filing shall not be authorized to proceed under this subsection. Such application shall specify in reasonable detail the grounds to be relied upon by the applicant. If the director finds that the application is made in good faith, that the applicant would be so aggrieved if his or her grounds are established, and that such grounds otherwise justify holding such a hearing, the director shall, within thirty days after receipt of such application, hold a hearing upon not less than ten days' written notice to the applicant and to every title insurance company insurer and title insurance rating advisory organization which made such a filing. If, after such hearing, the director finds that the filing or a part thereof does not meet the requirements of the Nebraska Title Insurance Act, he or she shall issue an order specifying in what respects he or she finds that such filing or a part thereof fails to meet the requirements of the act and stating when within a reasonable period thereafter such filing or a part thereof shall be deemed no longer effective. Copies of such order shall be sent to the applicant and to every such title insurance company insurer and title insurance rating advisory organization. The order shall not affect any contract or title insurance policy made or issued prior to the expiration of the period set forth in the order.

(4) No filing or any modification thereof shall be disapproved if the rates in connection therewith meet the requirements of the Nebraska Title

Insurance Act.

Sec. 43. That section 44-1487, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1487- A corporation organized under the laws of the State of Nebraska this state or qualified to do business in Nebraska this state may make application to the Director of Insurance director for license a certificate of authority to act as a rating organization for title insurance companies; title insurance advisory organization and shall file therewith:

(1) A copy of its articles of incorporation, and its constitution, bylaws, rules, and regulations governing the conduct of its business and the affairs of its membership;

(2) A list of its members and subscribers;

(3) The name and address of its registered agent and registered office within the State of Nebraska; and

(4) A statement of its qualifications as a rating an advisory organization including information regarding the qualifications and experience of the officers, directors, and managers of such rating advisory organization.

Sec. 44. That section 44-1488, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1488- If the Director of Insurance director finds that the applicant for licensing a certificate of authority to act as a rating title insurance advisory organization is competent and otherwise qualified to act as a title insurance rating advisory organization, and that its articles of incorporation and constitution, bylaws, rules, and regulations governing the conduct of its business and affairs of its membership conform to the requirements of law, he the director shall issue a license certificate of authority authorizing the applicant to act as a rating title insurance advisory organization for title insurance in the State of Nebraska in this state. Every such application shall be granted or denied in full or in part by the director within sixty days of the date of its filing with him or her. Licenses issued pursuant to this section A certificate of authority shall remain in effect for three years unless sooner suspended or revoked by the director or withdrawn by the licensee title insurance advisory organization. The fee for such license a certificate of authority shall be in an amount prescribed by the director but in no event shall be more

than five hundred dollars. Licenses issued pursuant to this section A certificate of authority may be suspended or revoked by the director after hearing upon notice, in the event if the title insurance rating advisory organization ceases to meet the requirements of law.

Sec. 45. That section 44-1489, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1489- Every title insurance rating advisory organization shall notify the Director of Insurance promptly of every change in:

(1) its articles of incorporation, constitution, bylaws, rules and regulations governing the conduct of its business and the affairs of its membership;

(2) its list of members and subscribers; and

(3) The name and address of the registered agent or registered office within the State of Nebraska the information required in subdivisions (1) through (3) of section 43 of this act.

Sec. 46. That section 44-1490, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1490- Subject to rules and regulations which have been approved by the Director of Insurance as reasonable, each title insurance rating advisory organization shall permit any title insurance company insurer not a member to be a subscriber to its rating services. Notices of proposed changes in such rules and regulations shall be given to subscribers. Each such rating advisory organization shall furnish its rating services without discrimination to its members and subscribers. The reasonable notice of any rule or regulation in its application to subscribers, or the refusal of any such rating advisory organization to admit a title insurance company insurer as a subscriber, shall, at the request of any subscriber or any such title insurance company insurer, be reviewed by the director at a hearing held upon at least ten days' written notice to such rating advisory organization and to such subscriber. If the director finds that such rule or regulation is unreasonable in its application to its subscribers, he or she shall order that such rule or regulation shall not be applicable to subscribers. If the rating title insurance advisory organization fails to grant or reject an application of a title insurance company for subscribers insurer as a subscriber within thirty days after it was made, a title insurance company the title insurer may request a review by the director

as if the application had been rejected. If the director finds that the title insurance company insurer rating advisory organization as a subscriber without justification, he or she shall order such rating advisory organization to admit the title insurance company insurer as a subscriber. If he or she finds that the action of the title insurance rating advisory organization was justified, he or she shall make an order affirming its action.

Sec. 47. That section 44-1491, Revised Statutes Supplement, 1990, be amended to read as follows:

44-1491- Cooperation among title insurance rating advisory organizations or among such rating advisory organizations and title insurance companies insurers and concert of action among title insurance companies insurers under the same general management and control in ratemaking or in other matters within the provisions of sections 44-1487 to 44-1498, 44-1498, 44-1498, and 44-1499 and the Nebraska Title Insurance Act are hereby authorized, but the filings resulting therefrom are shall be subject to all the provisions of such sections and act which are applicable to filings generally. The Director of insurance director may review such activities and practices, and if, after a hearing, he or she finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with such sections and act, he or she may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with such sections and act and requiring the discontinuance of such activity or practice.

Sec. 48. That section 44-1492, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1492- Every member of or subscriber to a title insurance rating advisory organization shall adhere to the filings made on its behalf by such advisory organization, except that any title insurance company insurer which is a member of or subscriber to such a rating an advisory organization may file with the Director of insurance director a uniform percentage of decrease or increase to be applied to any or all elements of the fees produced by the rating system so filed for a class of title insurance which is found by the director to be a proper rating unit for the application of such uniform decrease or increase, or to

be applied to the rates for a particular area. Such deviation filing shall specify the basis for the modification and shall be accompanied by the data or historical pattern upon which the applicant relies. A copy of the deviation filing and data shall be sent simultaneously to such rating advisory organization. Any such deviation filing shall be on file for a waiting period of fifteen days before it becomes effective. Extension of such waiting period may be made in the same manner that such period is extended in the case of rate filings. The director may authorize a deviation filing or any part thereof to become effective before the expiration of the waiting period or any extension thereof. Deviation filings shall be subject to the provisions of section 44-1914 42 of this act.

Sec. 49. That section 44-1493, Revised Statutes Supplement, 1990, be amended to read as follows:

44-1493. Any member of or subscriber to a title insurance rating advisory organization may appeal to the Director of Insurance director from any action or decision of such rating advisory organization in approving or rejecting any proposed change in or addition to the filings of such rating advisory organization. The director shall, after a hearing held upon not less than ten days' written notice to the appellant and to such rating advisory organization, issue an order approving the action or decision of such rating advisory organization or directing it to give further consideration to such proposal and to take action or make a decision upon it within thirty days. If such appeal is from the action or decision of the title insurance rating advisory organization in rejecting a proposed addition to its filings, the director may, if he or she finds that such action or decision was unreasonable, issue an order directing such rating advisory organization to make an addition to its filings on behalf of its members and subscribers in a manner consistent with his or her findings and within a reasonable time after the issuance of such order. If the appeal is from the action of the title insurance rating advisory organization with regard to a rate or a proposed change in or addition to its filings relating to the character and extent of coverage, he or she shall approve the action of such rating advisory organization or such modification thereof as has been suggested by the appellant, if either is in accordance with sections 44-413-01; 44-1487 to 44-1498; 44-1918; and 44-1919 and the Nebraska Title Insurance Act.

Sec. 50. That section 44-1494, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1494. The failure of a title insurance rating advisory organization to take action or make a decision within thirty days after submission to it of a proposal under this section shall constitute a rejection of such proposal within the meaning of this section. If such appeal is based upon the failure of such rating advisory organization to make a filing on behalf of such member or subscriber which is based on a system of expense allocation which differs, in accordance with the right granted in subsection (3) of section 44-1913 41 of this act, from the system of expense allocation included in a filing made by such rating advisory organization, the Director of Insurance director shall, if he or she grants the appeal, order the rating advisory organization to make the requested filing for use by the appellant. In deciding such appeal, the director shall apply the standards set forth in section 44-1913 41 of this act.

Sec. 51. That section 44-1495, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1495. The Director of Insurance director may, in his discretion, prescribe by regulation issue rules and regulations reasonably adaptable to each of the rating systems on file with him or her, uniform classification of accounts to be observed, statistics to be reported, and uniform forms for reporting such data by all title insurance companies insurers and title insurance rating advisory organizations. No such rule or regulation shall be promulgated issued by the director except after a hearing held upon notice to all title insurance companies insurers and title insurance rating advisory organizations. Any such rule or regulation, or amendment thereto, shall be promulgated issued by the director not less than six months prior to the first day of its effect.

Sec. 52. That section 44-1496, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1496. Reasonable rules and plans may be promulgated by the Director of Insurance The director may adopt and promulgate rules and regulations for the interchange of data necessary for the application of rating plans.

Sec. 53. That section 44-1497, Reissue Revised Statutes of Nebraska, 1943, be amended to read

as follows:

~~44-1497-~~ In order to further uniform administration of rate regulatory laws, the ~~Director of Insurance~~ director and every title insurance company insurer and title insurance rating advisory organization may exchange information and experience data with insurance supervisory officials, title insurance companies insurers, and title insurance rating advisory organizations in other states, and may consult with them and with each other with respect to ratemaking and the application of rating systems.

Sec. 54. That section 44-1498, Revised Statutes Supplement, 1990, be amended to read as follows:

~~44-1498-~~ No title insurance company insurer or title insurance agent shall willfully withhold information from or knowingly give false or misleading information to the ~~Director of Insurance~~ director or to any title insurance rating advisory organization of which the title insurance company insurer is a member or subscriber which will affect the rates or fees chargeable under ~~sections 44-413-01, 44-1487 to 44-1498, 44-1918, and 44-1919~~ and the Nebraska Title Insurance Act.

Sec. 55. That section 44-1915, Revised Statutes Supplement, 1990, be amended to read as follows:

~~44-1915-~~ The director may adopt and promulgate reasonable rules and regulations necessary to effect to carry out the purposes of the Nebraska Title Insurance Act.

Sec. 56. That section 44-1916, Revised Statutes Supplement, 1990, be amended to read as follows:

~~44-1916-~~ Nothing contained in the Nebraska Title Insurance Act shall require the observance at any hearing of formal rules of pleading or evidence.

Sec. 57. That section 44-4802, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4802. The proceedings authorized by the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act may be applied to:

(1) All insurers who are doing or have done an insurance business in this state and against whom claims arising from that business may exist now or in the future;

(2) All insurers who purport to do an insurance business in this state;

(3) All insurers who have insureds who are residents of this state;

(4) All other persons organized or in the process of organizing with the intent to do an insurance business in this state;

(5) All fraternal benefit societies subject to Chapter 44, article 10;

(6) All title insurance companies insurers subject to Chapter 44, article 19 the Title Insurance Act;

(7) All health maintenance organizations subject to the Health Maintenance Organization Act;

(8) All legal service insurance corporations subject to Chapter 44, article 33;

(9) All prepaid dental service corporations subject to Chapter 44, article 38; and

(10) All prepaid limited health service organizations subject to the Prepaid Limited Health Service Organization Act.

Sec. 58. That section 76-1003, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-1003. (1) The trustee of a trust deed shall be:

(a) A member of the Nebraska State Bar Association or a licensed real estate broker of Nebraska;

(b) Any bank, building and loan association, or savings and loan association authorized to do business in Nebraska under the laws of Nebraska or the United States;

(c) Any corporation authorized to conduct a trust business in Nebraska under the laws of Nebraska or the United States; or

(d) Any title insurance company insurer authorized to do business in Nebraska under the laws of Nebraska.

(2) The trustee of a trust deed shall not be the beneficiary therein, unless the beneficiary is qualified to be a trustee under subdivision (1)(b) or (c) of subsection (1) of this section.

Sec. 59. That original sections 25-1292, 44-309.02, 44-413.01, 44-1487 to 44-1490, 44-1492, 44-1494 to 44-1497, 44-1901, 44-1902, 44-1905 to 44-1907, 44-1909, 44-1910, 44-1912, 44-1913, 44-1917, 44-1919, 44-1922 to 44-1926, and 76-1003, Reissue Revised Statutes of Nebraska, 1943, and sections 44-201, 44-203, 44-1491, 44-1493, 44-1498, 44-1525, 44-1908, 44-1911, 44-1914 to 44-1916, and 44-4802, Revised

Statutes Supplement, 1990, and also sections 44-1903, 44-1904, 44-1918, and 44-1921, Reissue Revised Statutes of Nebraska, 1943, are repealed.