LEGISLATIVE BILL 236

Approved by the Governor March 11, 1991

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

AN ACT relating to insurance; to amend sections 44-224.11, 44-417, 44-4401, 44-4403 to 44-4405, 44-4407 to 44-4409, 44-4413, 44-4414, 44-4417, and 44-4418, Reissue Revised Statutes of Nebraska, 1943, and sections 44-211, 44-221, 44-251, 44-416, 44-416.01, 44-416.03, 44-416.04, 44-32,177, 44-4421, 44-4711, 44-4801, 44-4803, 44-4804, 44-4805, 44-4808 to 44-4819, 44-4821, 44-4822, 44-4824, 44-4826, 44-4827, 44-4830, 44-4842, 44-4851, 44-4853, 44-4861, 44-4902, and 44-4906, Revised Statutes Supplement, 1990; to adopt the Insurance Holding Company System Act; to eliminate provisions relating to insurance holding companies; to change provisions relating to credits for reinsurance; to define and redefine terms; to provide a requirement for boards of certain insurance companies; to change provisions relating to the supervision, rehabilitation, and liquidation of insurers; to change provisions relating to personal jurisdiction; to change the powers and duties of the Director of Insurance and of rehabilitators, receivers, and liquidators as prescribed; to change confidentiality requirements; to authorize advisory committees; to require appeal-pendency plans; to change and provide notice requirements; to provide liability for fraudulent transfers; to change setoff provisions; to change distribution priorities as prescribed; to provide for rules and regulations; to change application procedures for chartering and licensing risk retention groups; to provide for applicability of unfair claims settlement provisions; to change provisions relating to the applicability of insolvency guaranty laws; to change requirements for and other provisions relating to purchasing groups; to harmonize provisions; to provide severability; to repeal the original sections, and also

sections 44-416.02, 44-2101 to 44-2105, 44-2107 to 44-2111, 44-2113 to 44-2116, 44-2118, and 44-2119, Reissue Revised Statutes of Nebraska, 1943, and sections 44-2106, 44-2112, and 44-2117, Revised Statutes Supplement, 1990; and to declare an emergency.

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

Section 1. Sections 1 to 34 of this act shall be known and may be cited as the Insurance Holding Company System Act.

Sec. 2. For purposes of the Insurance Holding Company System Act:

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

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

(3) Director shall mean the Director of Insurance;

(4) An insurance holding company system shall consist of two or more affiliated persons, one or more of which is an insurer;

(5) Insurer shall have the same meaning as set forth in section 44-103, except that insurer shall not include (a) agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of

Columbia, or a state or political subdivision of a state or (b) fraternal benefit societies;

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

(7) Security holder of a specified person shall mean one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any such stock or obligations;

(8) Subsidiary of a specified person shall mean an affiliate controlled by such person directly or indirectly through one or more intermediaries; and

(9) Voting security shall include any security convertible into or evidencing a right to acquire a voting security.

Sec. 3. In addition to the authority granted in Chapter 44, any domestic insurer, either by itself or in cooperation with one or more persons, may, subject to the limitations set forth in the Insurance Holding Company System Act, organize or acquire one or more subsidiaries engaged in the following kinds of business:

(1) Any kind of insurance business authorized by the jurisdiction in which it is incorporated;

(2) Acting as an insurance broker or as an insurance agent for its parent or for any subsidiaries of its parent which are insurers;

(3) Investing, reinvesting, or trading in securities for its own account or that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;

(4) Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;

(5) Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;

(6) Rendering investment advice to governments, government agencies, corporations, or other organizations or groups;

(7) Rendering other services related to the operations of an insurance business, including

actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal, and collection services;

(8) Ownership and management of assets which the parent could itself own or manage. The aggregate investment by the insurer and its subsidiaries acquired or organized pursuant to this section shall not exceed the limitations applicable to such investments by the insurer;

(9) Acting as administrative agent for a governmental instrumentality which is performing an insurance function;

(10) Financing of insurance premiums, agents, and other forms of consumer financing;

(11) Any other business activity determined by the director to be reasonably ancillary to an insurance business; or

(12) Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section.

Sec. 4. In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under Chapter 44, a domestic insurer may also:

(1) Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent of such insurer's assets or fifty percent of such insurer's policyholders surplus if, after such investments, the insurer's policyholders surplus will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries shall be excluded and there shall be included:

(a) Total net funds or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and

(b) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation;

(2) Invest any amount in common stock, preferred stock, debt obligations, and other securities

of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer if each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in subdivision (1) of this section or in Chapter 44 applicable to the insurer. For purposes of this subdivision, the total investment of the insurer shall include:

(a) Any direct investment by the insurer in an asset; and

(b) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which share shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of such subsidiary; and

(3) With the approval of the director, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries if after such investment the insurer's policyholders surplus will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

Sec. 5. Whether any investment pursuant to section 4 of this act meets the applicable requirements thereof shall be determined before such investment is made by calculating the applicable investment limitations as though the investment had already been made, taking into account the then-outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.

Sec. 6. If an insurer ceases to control a subsidiary, it shall dispose of any investment made in the subsidiary pursuant to sections 3 to 5 of this act within three years from the time of the cessation of control or within such further time as the director may prescribe unless, at any time after such investment has been made, such investment has met the requirements for investment under any other provision of Chapter 44 and the insurer has notified the director thereof.

Sec. 7. (1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, or seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof,

such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the director and has sent to such insurer, a statement containing the information required by this section and such offer, request, invitation, agreement, or acquisition has been approved by the director in the manner prescribed in section 8 of this act.

(2) For purposes of this section, a domestic insurer shall include any person controlling a domestic insurer unless such person as determined by the director is either directly or through its affiliates primarily engaged in business other than the business of insurance. For purposes of this section, person shall not include any securities broker holding, in the usual and customary brokers function, less than twenty percent of the voting securities of an insurance company or of any person which controls an insurance company.

(3) The statement required to be filed with the director under this section shall be made under oath and shall contain the following information:

(a) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) of this section is to be effected and either:

(i) If such person is an individual, his or her principal occupation, all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years; or

(ii) If such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof have been in existence, an informative description of the business intended to be done by such person and such person's subsidiaries, and a list of all individuals who are or who have been selected to become directors of executive officers of such person or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subdivision (i) of this subdivision;

(b) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction in which funds were or are to be obtained for any such purpose, including any pledge of the insurer's stock or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing such consideration, except that when a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing such statement so requests;

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party or for such lesser period as such acquiring party and any predecessors thereof have been in existence and similar unaudited information as of a date not earlier than ninety days prior to the filing of the statement;

(d) Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(e) The number of shares of any security referred to in subsection (1) of this section which each acquiring party proposes to acquire, the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section, and a statement as to the method by which the fairness of the proposal was arrived at;

(f) The amount of each class of any security referred to in subsection (1) of this section which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(g) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (1) of this section in which any acquiring party is involved, including transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss, guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into;

(h) A description of the purchase of any security referred to in subsection (1) of this section

during the twelve calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor;

(i) A description of any recommendations to purchase any security referred to in subsection (1) of this section made during the twelve calendar months preceding the filing of the statement by any acquiring party or by anyone based upon interviews or at the suggestion of such acquiring party;

(j) Copies of all tender offers for, requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (1) of this section and, if distributed, of additional soliciting material relating thereto;

(k) The term of any agreement, contract, or understanding made with or proposed to made with any broker-dealer as to solicitation of securities referred to in subsection (1) of this section for tender and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto; and

(l) Such additional information as the director may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

(4) If the person required to file the statement is a partnership, limited partnership, syndicate, or other group, the director may require that the information called for by subsection (3) of this section shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation or the person required to file the statement is a corporation, the director may require that the information called for by subsection (3) of this section shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of such corporation.

(5) If any material change occurs in the facts set forth in the statement filed with the director and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the director and sent

to such insurer within two business days after the person learns of such change.

(6) If any offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section is proposed to be made by means of a registration statement under the Securities Act of 1933, in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement may utilize such documents in furnishing the information called for by the statement.

Sec. 8. (1) The director shall approve any merger or other acquisition of control referred to in subsection (1) of section 7 of this act unless, after a public hearing thereon, he or she finds that:

(a) After the change of control, the domestic insurer would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;

(c) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of policyholders of the insurer;

(d) The plans or proposals which the acquiring party has to liquidate the insurer, to sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure of management are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(e) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(f) The acquisition is likely to be hazardous or prejudicial to the public.

(2) The public hearing referred to in subsection (1) of this section shall be held within thirty days after the statement required by subsection (1) of section 7 of this act is filed, and at least twenty days' notice thereof shall be given by the director to the person filing the statement. Not less than seven days' notice of such public hearing shall be

given by the person filing the statement to the insurer and to such other persons as may be designated by the director. The director shall make a determination within thirty days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected thereby shall have the right to present evidence, examine and cross examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the district court. All discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.

(3) The director may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts who are not employees of the Department of Insurance as may be reasonably necessary to assist the director in reviewing the proposed acquisition of control.

Sec. 9. Section 7 of this act shall not apply to:

(1) Any transaction which is subject to the provisions of sections 44-224.01 to 44-224.10 and the Nebraska Business Corporation Act, except as otherwise provided in Chapter 44, dealing with the merger or consolidation of two or more insurers; or

(2) Any offer, request, invitation, agreement, or acquisition which the director by order shall exempt therefrom as (a) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer or (b) otherwise not comprehended within the purposes of section 7 of this act.

Sec. 10. (1) It shall be a violation of section 7 of this act to fail to file any statement, amendment, or other material required to be filed under such section.

(2) It shall be a violation of section 8 of this act to effectuate or attempt to effectuate an acquisition of control of or merger with a domestic insurer unless the director has given his or her approval thereto.

Sec. 11. The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the director under section 7 of this act and over all actions involving such person

arising out of violations of section 7 or 8 of this act, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the director to be such person's attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of such sections. Copies of all such lawful process shall be served on the director and transmitted by registered or certified mail by the director to such person at his or her last-known address.

Sec. 12. (1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the director, except that registration shall not be required for a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section, subsection (1) of section 13 of this act, sections 14 and 16 of this act, and either subsection (2) of section 13 of this act or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen days after the end of the month in which it learns of each such change or addition. Any insurer which is subject to registration under this section shall register within fifteen days after it becomes subject to registration and annually thereafter by March 1 of each year for the previous calendar year unless the director for good cause shown extends the time for such initial or annual registration and then within such extended time. The director may require any insurer which is authorized to do business in the state, which is a member of an insurance holding company system, and which is not subject to registration under this section to furnish a copy of the registration statement, the summary specified in subsection (3) of this section, or other information filed by such insurer with the insurance regulatory authority of its domiciliary jurisdiction.

(2) Every insurer subject to registration shall file the registration statement on a form prescribed by the National Association of Insurance Commissioners which shall contain the following current information:

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

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

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

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

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

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

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

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

(vi) Reinsurance agreements;

(vii) Dividends and other distributions to shareholders; and

(viii) Consolidated tax allocation agreements;

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

(e) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the director.

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

(4) It shall not be necessary to disclose on the registration statement information which is not material for the purposes of this section. Unless the director by rule, regulation, or order provides otherwise, sales, purchases, exchanges, loans, or extensions of credit, investments, or guarantees involving one-half of one percent or less of an insurer's admitted assets as of December 31 next preceding shall not be deemed material for purposes of this section.

(5) Subject to section 14 of this act, each registered insurer shall report to the director all dividends and other distributions to shareholders within fifteen business days following the declaration thereof.

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

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

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

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

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

(11) Any person may file with the director a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the director disallows such a disclaimer. The director shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(12) The failure to file a registration statement or any summary of the registration statement thereto required by this section within the time specified for such filing shall be a violation of this section.

Sec. 13. (1) Transactions within an insurance holding company system to which an insurer subject to registration is a party shall be subject to

the following standards:

(a) The terms shall be fair and reasonable;

(b) Charges or fees for services performed shall be reasonable;

(c) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(d) The books, accounts, and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and

(e) The insurer's policyholders surplus following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) The following transactions involving a domestic insurer and any person in its insurance holding company system may not be entered into unless the insurer has notified the director in writing of its intention to enter into such transaction at least thirty days prior thereto or such shorter period as the director may permit and the director has not disapproved it within such period:

(a) Sales, purchases, exchanges, loans, or extensions of credit, guarantees, or investments if such transactions are equal to or exceed (i) with respect to an insurer other than a life insurer, the lesser of three percent of the insurer's admitted assets or twenty-five percent of policyholders surplus as of December 31 next preceding and (ii) with respect to life insurers, three percent of the insurer's admitted assets as of December 31 next preceding;

(b) Loans or extensions of credit to any person who is not an affiliate, when the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in any affiliate of the insurer making such loans or extensions of credit if such transactions are equal to or exceed (i) with respect to an insurer other than a life insurer, the lesser of three percent of the insurer's admitted assets or twenty-five percent of policyholders surplus as of

December 31 next preceding and (ii) with respect to life insurers, three percent of the insurer's admitted assets as of December 31 next preceding;

(c) Reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent of the insurer's policyholders surplus as of December 31 next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer;

(d) All management agreements, service contracts, and cost-sharing arrangements; and

(e) Any material transactions, specified by rule and regulation, which the director determines may adversely affect the interests of the insurer's policyholders.

Nothing in this section shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law.

(3) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the director determines that such separate transactions were entered into over any twelve-month period for such purpose, the director may exercise his or her authority under sections 23 to 27 of this act.

(4) The director, in reviewing transactions pursuant to subsection (2) of this section, shall consider whether the transactions comply with the standards set forth in subsection (1) of this section and whether they may adversely affect the interests of policyholders.

(5) The director shall be notified within thirty days of any investment of the domestic insurer in any one corporation if the total investment in such corporation by the insurance holding company system exceeds ten percent of such corporation's voting securities.

Sec. 14. (1) No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until (a) thirty days after the director has received notice of

the declaration thereof and the director has not within such period disapproved such payment or (b) the director has approved such payment within such thirty-day period.

(2) For purposes of this section, an extraordinary dividend or distribution shall include any dividend or distribution of cash or other property the fair market value of which together with that of other dividends or distributions made within the preceding twelve months exceeds the lesser of (a) ten percent of such insurer's policyholders surplus as of December 31 next preceding or (b) the net gain from operations of such insurer if such insurer is a life insurer or the net income if such insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending December 31 next preceding but shall not include pro rata distributions of any class of the insurer's own securities. In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two calendar years that has not already been paid out as dividends. This carryforward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

(3) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the director's approval thereof, and such a declaration shall confer no rights upon shareholders until (a) the director has approved the payment of such a dividend or distribution or (b) the director has not disapproved such payment within the thirty-day period referred to in subsection (1) of this section.

Sec. 15. (1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with the Insurance Holding Company System Act.

(2) Nothing in this section shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with one or more other persons under arrangements meeting the standards of subsection (1) of section 13 of this act.

(3) Not less than one-third of the directors

of a domestic insurer which is a member of an insurance holding company system shall be persons who are not officers or employees of such insurer or of any entity controlling, controlled by, or under common control with such insurer and who are not beneficial owners of a controlling interest in the voting stock of such insurer or any such entity. At least one such person shall be included in any quorum for the transaction of business at any meeting of the board of directors.

(4) Subsection (3) of this section shall not apply to a domestic insurer if the person controlling such insurer has a board of directors that meets the requirements of such subsection.

Sec. 16. For purposes of the Insurance Holding Company System Act, in determining whether an insurer's policyholders surplus is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(2) The extent to which the insurer's business is diversified among the several lines of insurance;

(3) The number and size of risks insured in each line of business;

(4) The extent of the geographical dispersion of the insurer's insured risks;

(5) The nature and extent of the insurer's reinsurance program;

(6) The quality, diversification, and liquidity of the insurer's investment portfolio;

(7) The recent past and projected future trend in the size of the insurer's investment portfolio;

(8) The policyholders surplus maintained by other comparable insurers;

(9) The adequacy of the insurer's reserves; and

(10) The quality and liquidity of investments in affiliates. The director may treat any such investment as a disallowed asset for purposes of determining the adequacy of policyholders surplus whenever in his or her judgment such investment so warrants.

Sec. 17. (1) Subject to the limitation contained in this section and in addition to the powers which the director has under sections 44-107 and 44-107.01 relating to the examination of insurers, the director shall also have the power to order any insurer

registered under section 12 of this act to produce such records, books, or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to ascertain the financial condition of such insurer or to determine compliance with Chapter 44. In the event such insurer fails to comply with such order, the director may examine such affiliates to obtain such information.

(2) The director may retain at the registered insurer's expense such attorneys, actuaries, accountants, and other experts who are not employees of the Department of Insurance as shall be reasonably necessary to assist in the conduct of the examination under this section. Any persons so retained shall be under the direction and control of the director and shall act in a purely advisory capacity.

(3) Each registered insurer producing for examination records, books, and papers pursuant to this section shall be liable for and shall pay the expense of such examination in accordance with section 44-107.02 or 44-107.03.

Sec. 18. All information, documents, and copies thereof obtained by or disclosed to the director or any other person in the course of an examination or investigation made pursuant to section 17 of this act and all information reported pursuant to sections 12 to 16 of this act shall be given confidential treatment, shall not be subject to subpoena, and shall not be made public by the director, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the director, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the 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. 19. The director shall adopt and promulgate such rules and regulations and issue such orders as necessary to carry out the Insurance Holding Company System Act.

Sec. 20. Whenever it appears to the director that any insurer or any director, officer, employee, or agent thereof has committed or is about to commit a violation of the Insurance Holding Company System Act or of any rule, regulation, or order of the director, the director may apply to the district court of Lancaster

County for an order enjoining such insurer, director, officer, employee, or agent from violating or continuing to violate the act or any such rule, regulation, or order and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors, and shareholders or the public may require.

Sec. 21. No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the Insurance Holding Company System Act or of any rule, regulation, or order of the director may be voted at any shareholder's meeting or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding, but no action taken at any such meeting shall be invalidated by the voting of such securities unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the director has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the act or of any rule, regulation, or order of the director, the insurer or the director may apply to the district court of Lancaster County for an order to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of sections 7 to 11 of this act or any rule, regulation, or order of the director to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors, and shareholders or the public may require.

Sec. 22. In any case when a person has acquired or is proposing to acquire any voting securities in violation of the Insurance Holding Company System Act or any rule, regulation, or order of the director, the district court of Lancaster County may, on such notice as the court deems appropriate, upon the application of the insurer or the director seize or sequester any voting securities of the insurer owned directly or indirectly by such person and issue such order with respect thereto as may be appropriate to effectuate the act. Notwithstanding any other provisions of law, for purposes of the act the sites of the ownership of the securities of domestic insurers shall be deemed to be in this state.

Sec. 23. Any insurer which fails, without just cause, to file any registration statement as required by section 12 of this act may be required by the director, after notice and hearing, to pay an administrative penalty of one hundred dollars for each day's delay not to exceed an aggregate penalty of ten thousand dollars. The director may reduce the penalty if the insurer demonstrates to the director that the imposition of the penalty would constitute a financial hardship to the insurer.

Sec. 24. Any director or officer of an insurance holding company system who knowingly violates or assents to or permits any officer or agent of the insurer to violate the requirements of subsection (1) of section 12 of this act or section 13 or 14 of this act may be required by the director, after notice and hearing, to pay in his or her individual capacity an administrative penalty of not more than five thousand dollars per violation. In determining the amount of the penalty, the director shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

Sec. 25. Whenever it appears to the director that any insurer or any director, officer, employee, or agent thereof has engaged in any transaction or entered into a contract which is subject to sections 13 to 16 of this act and which would not have been approved had such approval been requested, the director may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the director may also order the insurer to void any such contracts and restore the status quo if such action is in the best interest of the policyholders, the creditors, or the public.

Sec. 26. Any insurer which willfully violates the Insurance Holding Company System Act shall be guilty of a Class IV felony. Any director, officer, employee, or agent of an insurer who willfully violates the act shall be guilty of a Class IV felony.

Sec. 27. Any officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements, false reports, or false filings with the intent to deceive the director in the performance of his or her duties under the Insurance Holding Company System Act shall be guilty of a Class IV felony.

Sec. 28. If it appears to the director that any person has committed a violation of the Insurance Holding Company System Act which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, or shareholders or the public, the director may proceed as provided in the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act to take possession of the property of such domestic insurer and to conduct the business thereof.

Sec. 29. (1) If an order for rehabilitation or liquidation of a domestic insurer has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer (a) from any parent or holding company or person or affiliate who otherwise controlled the insurer, the amount of any distribution, other than distribution of shares of the same class of stock, paid by the insurer on its capital stock or (b) any payment in the form of a bonus, termination settlement, or extraordinary lump-sum salary adjustment made by the insurer or its subsidiary to a director, officer, or employee, when the distribution or payment pursuant to subdivision (a) or (b) of this subsection is made at any time during the one year preceding the filing of the petition for rehabilitation or liquidation subject to the limitations of subsections (2), (3), and (4) of this section.

(2) No such distribution or payment shall be recoverable if the parent or affiliate shows that when paid such distribution or payment was lawful and reasonable and that the insurer did not know and could not reasonably have known that such distribution or payment might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who was a parent or holding company or a person who otherwise controlled the insurer or affiliate at the time such distribution or payment was paid shall be liable up to the amount of distribution or payment under subsection (1) of this section such person received. Any person who otherwise controlled the insurer at the time such distribution or payment was declared shall be liable up to the amount of distribution or payment he would have received if it had been paid immediately. If two or more persons are liable with respect to the same distribution or payment, they shall be jointly and severally liable.

(4) The maximum amount recoverable under subsection (3) of this section shall be the amount

needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(5) To the extent that any person liable under subsection (3) of this section is insolvent or otherwise fails to pay claims due from it pursuant to such subsection, its parent or holding company or the person who otherwise controlled it at the time the distribution or payment was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from such parent or holding company or person who otherwise controlled it.

Sec. 30. If it appears to the director that any person has committed a violation of the Insurance Holding Company System Act which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the director may, after giving notice and an opportunity to be heard, determine to suspend, revoke, or refuse to renew such insurer's license or authority to do business in this state for such period as the director finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

Sec. 31. Any person aggrieved by any act, determination, order, or other action of the director pursuant to the Insurance Holding Company System Act may appeal. The appeal shall be in accordance with the Administrative Procedure Act.

Any person aggrieved by any failure of the director to act or make a determination required by the Insurance Holding Company System Act may petition the district court of Lancaster County for a writ in the nature of a mandamus or a peremptory mandamus directing the director to act or make such determination forthwith.

Sec. 32. All laws and parts of laws of this state inconsistent with the Insurance Holding Company System Act shall be superseded with respect to matters covered by the act.

Sec. 33. The powers, remedies, procedures, and penalties provided in the Insurance Holding Company System Act shall be in addition to, and not in limitation of, any other powers, remedies, procedures, and penalties provided by law.

Sec. 34. The total fee for filing the documents required by sections 7 to 11 of this act and all amendments to such filings shall be one thousand

dollars. The initial fee for registration required by the provisions of section 12 of this act shall be one thousand dollars, and an additional fee of two hundred dollars shall be payable on August 1 of each calendar year thereafter so long as such registration continues. The fees provided for by this section shall be payable to the Department of Insurance and shall be remitted to the State Treasurer for credit to the Department of Insurance Cash Fund.

Sec. 35. That section 44-211, Revised Statutes Supplement, 1990, be amended to read as follows:

44-211. The business and affairs of an insurance corporation shall be managed by the incorporators until the first meeting of shareholders or members and then and thereafter by a board of directors elected by the shareholders or members and as otherwise provided by law. The board of directors shall consist of not less than five nor more than twenty-one persons, and one of them shall be a resident of the State of Nebraska. Commencing January 1, 1993, not less than one-fifth of the directors of an insurance company which is not subject to section 15 of this act shall be persons who are not officers or employees of such company. A person convicted of a felony may not be a director, and all directors shall be of good moral character and known professional, administrative, or business ability, such business ability to include a practical knowledge of insurance, finance, or investment. No person shall hold the office of director unless he or she is a policyholder if the company is a mutual company or assessment association. Unless otherwise provided in the articles of incorporation, the board of directors shall make all bylaws.

Sec. 36. That section 44-221, Revised Statutes Supplement, 1990, be amended to read as follows:

44-221. Except as provided in this section, surplus notes and the indebtedness which they represent shall not be a liability or claim against any of the assets of the company. The principal of such notes may be paid from time to time, either in full or in part, from available surplus funds of the company only when the amount of the surplus of the company over all liabilities is double that of the principal amount then being paid. The corporation shall have the right to make such repayments whenever it is able to do so, except that the corporation shall first receive the prior approval of the Director of Insurance for any such

repayments. The director shall use the standards set forth in ~~sections 44-2101 to 44-2119~~ section 16 of this act relating to adequacy of surplus in determining whether or not to approve such repayments. The interest on such notes shall only be payable from the surplus and shall not exceed such sum as may be fixed nor in any case six percent per annum. Upon a dissolution of the company, the principal and accrued and unpaid interest shall be payable from the surplus.

Sec. 37. That section 44-224.11, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-224.11. (1) In addition to any other reinsurance authority granted by Chapter 44, any domestic insurance company authorized to transact business in this state pursuant to Chapter 44, article 2, may accept reinsurance for any insurance transacted by any affiliate or affiliates of such company which such company is not authorized to transact directly. The term affiliate shall have the same meaning as that stated for such term in section ~~44-2101~~ 2 of this act.

(2) Before an insurance company may transact a business of accepting reinsurance, pursuant to this section, it shall obtain the approval of the Department of Insurance. No such approval shall be granted or continued in effect unless the company has and maintains a minimum surplus, in cash or invested as provided by law, of at least two million dollars and has and maintains admitted assets of at least ten million dollars. No such approval shall be granted or continued in effect if the Director of Insurance finds that such approval would not be in the best interests of the policyholders, shareholders, or public because of the competence, experience, or integrity of the management personnel of such business, the terms of reinsurance accepted in connection with such business, or the effect of the operation of such business on the other operations of the company.

(3) No insurance company shall accept reinsurance pursuant to the authority granted by this section on any one risk in an amount exceeding five percent of its surplus to policyholders as reflected by the last annual statement of the company. The term any one risk and the term surplus to policyholders shall have the same meaning as that stated for such terms in section 44-222.

(4) Nothing in this section shall be construed to require any insurance company otherwise authorized by law to transact the business of reinsurance to exercise

the authority granted by this section.

(5) The Department of Insurance shall adopt and promulgate such reasonable rules and regulations as may be necessary or appropriate to carry out the provisions of this section in accordance with the provisions of the Administrative Procedure Act. Such rules and regulations may include rules and regulations pertaining to the form of application for transaction of business authorized by this section, the plan of operation of such business, the qualifications of personnel engaged in such business, and the accounting and reporting procedures applicable to such business.

Sec. 38. That section 44-251, Revised Statutes Supplement, 1990, be amended to read as follows:

44-251. (1) Such plan of exchange shall then be submitted to the Director of Insurance for his or her approval after a hearing at which the shareholders of the company to be acquired shall have an opportunity to be heard upon at least ten days' notice to be given by the company to its shareholders of record at the time of mailing such notice. The director shall approve such plan within twenty days after such hearing unless he or she finds that the terms and conditions thereof for the issuance and exchange of securities or other consideration are unfair to the shareholders of the company to be acquired or if he or she finds that any of the conditions set forth in subsection (1) of section ~~44-2108~~ 8 of this act exist.

(2) After having obtained the approval of the Director of Insurance, the plan of exchange shall be submitted to a vote at a meeting of the shareholders of the company to be acquired. Such meeting may be either an annual or a special meeting. Notice shall be given not less than twenty days before such meeting to each shareholder of record as of the time of mailing such notice. Such notice shall be deemed to be delivered when deposited in the United States mail with postage prepaid, addressed to the shareholder at his or her address as it appears on the records of the company. A copy or summary of the plan of exchange shall be included in or enclosed with such notice. Each outstanding share of such company shall be entitled to vote on the proposed plan, whether or not such share has voting rights under the provisions of the articles of incorporation of such company. The affirmative vote of two-thirds of all of the outstanding shares, in person or by proxy, shall be necessary for the approval of any such plan by such shareholders.

Sec. 39. That section 44-416, Revised Statutes Supplement, 1990, be amended to read as follows:

44-416. For purposes of sections ~~44-416.01 to 44-416.04, a qualified~~ 44-416.01 and 44-416.03:

(1) Qualified United States financial institution, when specifying institutions that are eligible to act as a fiduciary of a trust, shall mean an institution that ~~(1)~~ (a) is organized, or, in the case of a United States branch or agency office of a foreign banking organization, licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers and ~~(2)~~ (b) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies; and

(2) Qualified United States financial institution, when specifying institutions that are acceptable for issuance or confirmation of letters of credit, shall mean an institution that (a) is organized, or, in the case of a United States branch or agency office of a foreign banking organization, licensed, under the laws of the United States or any state thereof, (b) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies, and (c) has been determined by either the Director of Insurance or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the director.

Sec. 40. That section 44-416.01, Revised Statutes Supplement, 1990, be amended to read as follows:

44-416.01. (1) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only if the reinsurer meets the requirements of subsection (2), (3), (4), or (5) of this section. If the requirements of subsection (3) or (4) of this section are met, the requirements of subsection (6) of this section shall also be met. ~~:~~

~~(1) The reinsurance is ceded to an assuming insurer which is licensed to transact insurance in this state or to an assuming insurer which is licensed in at least one state which employs standards regarding credit for reinsurance substantially similar to sections~~

~~44-416.01 to 44-416.04 and such insurer conforms to the same standards of solvency which would be required if such insurer were licensed in this state, including the capital and surplus requirements of section 44-214 or 44-219,~~

(2) ~~The~~ Credit for reinsurance shall be allowed when the reinsurance is ceded to an assuming insurer which is licensed to transact insurance in this state.

(3) Credit for reinsurance shall be allowed when the reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or, in the case of a United States branch of an alien assuming insurer, is entered through, a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this section and the assuming insurer or branch of an alien assuming insurer (a) maintains policyholders surplus in an amount not less than twenty million dollars and (b) submits to this state's authority to examine its books and records. The surplus requirement of this subsection shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system, except that such insurers shall conform to the same standards of solvency which would be required if such insurers were licensed in this state, including the capital and surplus requirements of section 44-214 or 44-219.

(4) Credit for reinsurance shall be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in subdivision (1) of section 44-416, for the payment of the valid claims of its United States policyholders and ceding insurers and their assigns and successors in interest. The assuming insurer shall report annually to the ~~Director of Insurance~~ director information required by the director. The director may utilize the National Association of Insurance Commissioners Annual Statement form. This information shall enable the director to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, include a trusteed surplus of not less than twenty million dollars. In the case of a group of individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities

attributable to business written in the United States and, in addition, include a trusteed surplus of not less than one hundred million dollars, and the group shall make available to the director an annual certification by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter. In the case of a group of incorporated insurers under common administration which has continuously transacted an insurance business outside the United States for at least three years, submits to this state's authority to examine its books and records, bears the expense of the examination, and has aggregate policyholders surplus of ten billion dollars, the trust shall be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group, plus the group shall maintain a joint-trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any such liabilities, and each member of the group shall make available to the director an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.

Such trust shall be established in a qualified United States financial institution, as defined in subdivision (1) of section 44-416, in a form approved by the director. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers and their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the director. Such trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year the trustees of the trust shall report to the director in writing the balance of the trust and the trust's investments at the end of the preceding year and shall certify the date of termination of the trust, if planned, or certify that the trust shall not expire prior to the following December 31.

(5) Credit for reinsurance shall be allowed when the ~~;~~ or

~~(3)~~ The reinsurance is ceded to an assuming

insurer not meeting the requirements of ~~subdivision (1) or (2)~~ subsection (2), (3), or (4) of this section but only with respect to the insurance of risks located in jurisdictions other than the United States where such reinsurance is required by applicable law or regulation of such jurisdiction.

(6) If the assuming insurer is not licensed to transact insurance in this state, the credit permitted by subsections (3) and (4) of this section shall not be allowed unless the assuming insurer agrees in the reinsurance agreements (a) that in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, shall comply with all requirements necessary to give such court jurisdiction, and shall abide by the final decision of such court or of any appellate court in the event of an appeal and (b) to designate the director or a designated attorney as its attorney upon whom may be served any lawful process in any action instituted by or on behalf of the ceding insurer. This subsection shall not conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement.

Sec. 41. That section 44-416.03, Revised Statutes Supplement, 1990, be amended to read as follows:

44-416.03. A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of ~~sections~~ section 44-416.01 ~~and 44-416.02~~ shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. Such reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such assuming insurer providing security for the payment of obligations thereunder if such security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in subdivision (1) of section 44-416. This security may be in the form of:

(1) Cash;

(2) Securities approved by the Director of Insurance. The director may use the list of securities

furnished by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets;

(3) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in subdivision (2) of section 44-416, no later than December 31 of the year for which filing is being made and in the possession of the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or

(4) Any other form of security acceptable to the director. ~~Director of Insurance.~~

~~Notwithstanding section 44-416, for purposes of subdivision (3) of this section qualified United States financial institution shall mean an institution that (a) is organized or, in the case of a United States office of a foreign banking organization, licensed, under the laws of the United States or any state thereof, (b) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies, and (c) has been determined by either the Director of Insurance or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the director.~~

Sec. 42. That section 44-416.04, Revised Statutes Supplement, 1990, be amended to read as follows:

44-416.04. The Director of Insurance may adopt and promulgate rules and regulations necessary to carry out sections 44-416 to ~~44-416.03~~ 44-417.

Sec. 43. That section 44-417, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-417. No credits specified in sections 44-416.01 to 44-416.04 shall be made or allowed unless the contract of reinsurance provides that the portion of any risk or obligation assumed by the reinsurer, when such portion is ascertained, shall be payable by the

assuming insurer on the basis of the liability of the ceding insurer under the contract or contracts reinsured without diminution because of the insolvency of the ceding insurer. Such reinsurance agreement may provide that the liquidator, receiver, or legal successor of an insolvent ceding insurer shall give written notice of the pendency of a claim against the insolvent ceding insurer on the policy or bond reinsured, within a reasonable time after such claim is filed in the insolvency proceeding, and that during the pendency of such claim, any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding when such claim is to be adjudicated, any defense or defenses which it may deem available to the ceding ~~company,~~ insurer or its liquidator, receiver, or legal successor. The expense thus incurred by the assuming insurer shall be chargeable, subject to court approval, against the insolvent ceding insurer as part of the expense of liquidation, to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer.

When two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to such claim, the expense shall be apportioned subject to court approval, in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding ~~company~~ insurer.

Sec. 44. That section 44-32,177, Revised Statutes Supplement, 1990, be amended to read as follows:

44-32,177. No person may (1) make a tender for or a request or invitation for tenders of, (2) enter into an agreement to exchange securities for, or (3) acquire in the open market or otherwise any voting security of a health maintenance organization or enter into any other agreement if, after the consummation thereof, that person would, directly or indirectly or by conversion or by exercise of any right to acquire, be in control of the health maintenance organization, and no person may enter into an agreement to merge or consolidate with or otherwise to acquire control of a health maintenance organization unless, at the time any offer, request, or invitation is made or any agreement is entered into or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the director and has sent to the health maintenance organization information required by

~~section 44-2105~~ subsection (3) of section 7 of this act and the offer, request, invitation, agreement, or acquisition has been approved by the director. Approval by the director shall be governed by ~~sections 44-2101 to 44-2119~~ the Insurance Holding Company System Act.

Sec. 45. That section 44-4401, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-4401. Sections 44-4401 to 44-4423 and section 56 of this act shall be known and may be cited as the Risk Retention Act.

Sec. 46. That section 44-4403, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-4403. ~~As used in~~ For purposes of the Risk Retention Act, unless the context otherwise requires:

(1) Commissioner shall mean the commissioner, director, or superintendent of insurance in any other state;

(2) Completed operations liability shall mean liability arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by (a) any person who performs the work or (b) any person who hires an independent contractor to perform the work. The term shall include liability for activities completed or abandoned before the date of the occurrence giving rise to the liability;

(3) Department shall mean the Department of Insurance;

(4) Director shall mean the Director of Insurance;

(5) Domicile, for purposes of determining the state in which a purchasing group is domiciled, shall mean (a) for a corporation, the state in which the purchasing group is incorporated and (b) for an unincorporated entity, the state of its principal place of business;

(6) Hazardous financial condition shall mean that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able to (a) meet obligations to policyholders with respect to known claims and reasonably anticipated claims or (b) pay other obligations in the normal course of business;

(7) Insurance shall mean primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under the laws

of this state;

(8) Liability shall mean legal liability for damages, including the cost of defense, legal costs and fees, and other claim expenses, for injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of (a) any profit or nonprofit business, trade, product, services, including professional services, premises, or operations or (b) any activity of any state or local government or any agency or political subdivision thereof. The term shall not include personal risk liability, workers' compensation, and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act, 45 U.S.C. 51 et seq.;

(9) Personal risk liability shall mean liability for damages for injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities rather than from responsibilities or activities referred to in subdivision (8) of this section;

(10) Plan of operation or a feasibility study shall mean an analysis which presents the expected activities and results of a risk retention group including at a minimum:

(a) Information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations;

(b) The coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer;

~~(b)~~ (c) Historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that such experience is reasonably available;

~~(c)~~ (d) Pro forma financial statements and projections;

~~(d)~~ (e) Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;

~~(e)~~ (f) Identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, and investment policies,

and reinsurance agreements; and

(g) Identification of each state in which the risk retention group has obtained or sought to obtain a charter and license and a description of its status in each such state; and

~~(f)~~ (h) Such other matters as may be prescribed by the ~~director~~ commissioner of the state in which the risk retention group is chartered and licensed for liability insurance companies authorized by the insurance laws of ~~the~~ that state; ~~in which the risk retention group is chartered;~~

(11) Product liability shall mean liability for damages for any personal injury, death, emotional harm, consequential economic damage, or property damage, including damages resulting from loss of use of property, arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product but shall not include the liability of any person for such damages if the product involved was in the possession of the person when the incident giving rise to the claim occurred;

(12) Purchasing group shall mean any group which:

(a) Has as one of its purposes the purchase of liability insurance on a group basis;

(b) Purchases such insurance only for its members and only to cover their similar or related liability exposure, as described in subdivision (c) of this subdivision;

(c) Is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

(d) Is domiciled in any state; and

(13) Risk retention group shall mean a corporation or other limited liability association formed under the laws of any state, Bermuda, or the Cayman Islands:

(a) Whose primary activity consists of assuming and spreading all or part of the liability exposure of its members;

(b) That is organized for the primary purpose of conducting the activity described under subdivision (a) of this subdivision;

(c) That (i) is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state or (ii) before January 1, 1985, was chartered or licensed

and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the ~~insurance~~ commissioner of at least one state that it satisfied the capitalization requirements of such state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability as such terms were defined in the federal Product Liability Risk Retention Act of 1981 before the date of the enactment of the Risk Retention Act of 1986;

(d) That does not exclude any person from membership in a group solely to provide members of such group a competitive advantage over such person;

(e) That (i) has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group or (ii) has as its sole owner an organization which has as (A) its members only persons who comprise the membership of the risk retention group and (B) its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group;

(f) Whose members are engaged in businesses or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations;

(g) Whose activities do not include the provision of insurance other than (i) liability insurance for assuming and spreading all or any portion of the liability of its group members and (ii) reinsurance with respect to the liability of any other risk retention group or any members of such other group that is engaged in businesses or activities so that such group or member meets the requirement described in subdivision (f) of this subdivision from membership in the risk retention group which provides such reinsurance; and

(h) The name of which includes the phrase Risk Retention Group; and

(14) State shall mean any state of the United States or the District of Columbia.

Sec. 47. That section 44-4404, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-4404. (1) A risk retention group seeking to be chartered and licensed in this state shall be

chartered and licensed as a liability insurance company under Chapter 44 and, except as provided elsewhere in the Risk Retention Act, shall comply with all of the laws, rules, and regulations applicable to such insurers chartered and licensed in this state and with sections 44-4405 to 44-4413 to the extent such requirements are not a limitation on laws, rules, or regulations of this state.

(2) Before a risk retention group may offer insurance in any state, it shall submit for approval to the director a plan of operation and revisions of such plan if the group intends to offer any additional lines of liability insurance.

(3) At the time of filing its application for a charter and license, the risk retention group shall provide to the director in summary form the following information: The identity of the initial members of the group; the identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group; the amount and nature of initial capitalization; the coverages to be afforded; and the states in which the group intends to operate. Upon receipt of this information, the director shall forward such information to the National Association of Insurance Commissioners. Providing notification to the National Association of Insurance Commissioners shall be in addition to and shall not be sufficient to satisfy the requirements of section 44-4405 or any other sections of the act.

Sec. 48. That section 44-4405, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-4405. Risk retention groups chartered and licensed in states other than this state and seeking to do business as a risk retention group in this state shall observe and abide by the laws of this state as follows:

(1) Before offering insurance in this state, a risk retention group shall submit to the director:

(a) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, the date of chartering and licensing, its principal place of business, and such other information, including information on its membership, as the director may require to verify that the risk retention group is qualified under subdivision (13) of section 44-4403. The identity and location of specific group members shall not be considered public record but may be

disclosed to other insurance departments and the National Association of Insurance Commissioners;

(b) A copy of its plan of ~~operations~~ operation or a feasibility study and revisions of such plan or study submitted to ~~its state of domicile~~ the state in which the risk retention group is chartered and licensed, except that the provision relating to the submission of a plan of operation or a feasibility study shall not apply with respect to any line or classification of liability insurance which (i) was defined in the federal Product Liability Risk Retention Act of 1981 before October 27, 1986, and (ii) was offered before such date by any risk retention group which had been chartered and licensed and operating for not less than three years before such date. The risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required by subsection (2) of section 44-4404 at the same time that such revision is submitted to the state in which the risk retention group is chartered and licensed; and

(c) A statement of registration which designates the director as its agent for the purpose of receiving service of legal documents or process; and

(2) Any risk retention group doing business in this state shall submit to the director:

(a) A copy of the group's financial statement submitted to ~~its state of domicile~~ the state in which the risk retention group is chartered and licensed which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist under criteria established by the National Association of Insurance Commissioners;

(b) A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination;

(c) Upon request by the director, a copy of any audit performed with respect to the risk retention group; and

(d) Such information as may be required to verify its continuing qualification as a risk retention group under subdivision (13) of section 44-4403.

Sec. 49. That section 44-4407, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-4407. Any risk retention group shall comply with and be subject to sections 44-1522 to 44-1535 regarding deceptive, false, or fraudulent acts

or practices and any rule or regulation adopted ~~and promulgated~~ under such sections. Any risk retention group and its agents and representatives shall comply with and be subject to such sections regarding unfair claims settlement practices and any rule or regulation adopted under such sections. If the director seeks an injunction regarding such conduct, the injunction shall be obtained from a court of competent jurisdiction.

Sec. 50. That section 44-4408, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-4408. Any risk retention group shall submit to an examination by the director to determine its financial condition if the commissioner of the ~~jurisdiction~~ state in which the group is chartered and licensed has not initiated an examination or does not initiate an examination within sixty days after a request by the director. Any such examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the National Association of Insurance Commissioner's Examiner Handbook.

Sec. 51. That section 44-4409, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-4409. Any application form for insurance from a risk retention group and any policy issued by a risk retention group shall contain, in ten-point type on the front page and the declaration page, the following notice:

NOTICE

THIS POLICY IS ISSUED BY YOUR RISK RETENTION GROUP. YOUR RISK RETENTION GROUP MAY NOT BE SUBJECT TO ALL OF THE INSURANCE LAWS AND REGULATIONS OF YOUR STATE. STATE INSURANCE INSOLVENCY GUARANTY FUNDS ARE NOT AVAILABLE FOR YOUR RISK RETENTION GROUP.

Sec. 52. That section 44-4413, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-4413. A risk retention group which is not chartered and licensed in this state and which is doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by the director or the commissioner of any other state if there has been a finding of financial impairment after an examination under section 44-4408.

Sec. 53. That section 44-4414, Reissue Revised Statutes of Nebraska, 1943, be amended to read

as follows:

44-4414. (1) A risk retention group shall not join or contribute financially to any insurance insolvency guaranty fund or similar mechanism in this state nor shall any risk retention group or its insureds receive any benefit from any such fund for claims arising out of operations of such risk retention group.

(2) When a purchasing group obtains insurance covering its members' risks from an insurer not admitted in this state or a risk retention group, no such risks, wherever resident or located, shall be covered by any insurance insolvency guaranty fund or similar mechanism in this state.

(3) When a purchasing group obtains insurance covering its members' risks from an insurer admitted in this state, only risks resident or located in this state shall be covered by the Nebraska Property and Liability Insurance Guaranty Association Act.

Sec. 54. That section 44-4417, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-4417. (1) A purchasing group which intends to do business in this state shall, prior to doing business, furnish notice to the director which shall:

(a) Identify the state in which the purchasing group is domiciled;

(b) Identify all other states in which the purchasing group intends to do business;

(c) Specify the lines and classifications of liability insurance which the purchasing group intends to purchase;

~~(c)~~ (d) Identify the insurance company from which the group intends to purchase its insurance and the domicile of such company;

(e) Specify the method by which and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this state;

~~(d)~~ (f) Identify the principal place of business of the group; and

~~(e)~~ (g) Provide such other information as may be required by the director to verify that the purchasing group is qualified under subdivision (12) of section 44-4403.

(2) A purchasing group shall, within ten days, notify the director of any changes in the items set forth in subsection (1) of this section.

(3) A purchasing group shall register with and designate the director as its agent solely for the

purpose of receiving service of legal documents or process, except that such requirement shall not apply in the case of a purchasing group that:

(a) Was domiciled before April 1, 1986, and is domiciled on and after October 27, 1986, in any state of the United States;

(b) Before October 27, 1986, purchased insurance from an insurance carrier licensed in any state;

(c) Since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state;

(d) Was a purchasing group under the requirements of the federal Product Liability Risk Retention Act of 1981 before October 27, 1986; and

(e) Does not purchase insurance that was not authorized for purposes of an exemption under the federal Product Liability Risk Retention Act of 1981 as in effect before October 27, 1986.

(4) Each purchasing group that is required to give notice pursuant to subsection (1) of this section shall also furnish such information as may be required by the director to:

(a) Verify that the entity qualifies as a purchasing group;

(b) Determine where the purchasing group is located; and

(c) Determine appropriate tax treatment.

Sec. 55. That section 44-4418, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-4418. (1) A purchasing group shall not purchase insurance from a risk retention group that is not chartered and licensed in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws, rules, and regulations of such state, except that such licensed agent or broker need not be a resident of this state. ~~A purchasing group shall be considered located in Nebraska if (1) there is a member of the purchasing group in Nebraska, (2) there is a covered risk or exposure in Nebraska, or (3) the purchasing group is doing business in Nebraska.~~

(2) A purchasing group which obtains liability insurance from an insurer not admitted in this state or from a risk retention group shall inform each of the members of the purchasing group which have a risk resident or located in this state that such risk is not

protected by an insurance insolvency guaranty fund in this state and that such risk retention group or such insurer may not be subject to all insurance laws, rules, and regulations of this state.

(3) No purchasing group may purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole, but coverage may provide for a deductible or self-insured retention applicable to individual members.

(4) Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits which are applicable to all purchases of group insurance.

Sec. 56. Premium taxes and taxes on premiums paid for coverage of risks resident or located in this state by a purchasing group or any members of the purchasing group shall be:

(1) Imposed at the same rate and subject to the same interest, fines, and penalties as applicable to premium taxes and taxes on premiums paid for similar coverage from a similar insurance source by other insureds; and

(2) Paid first by such insurance source if an insurer admitted in this state and, if not an insurer admitted in this state, by the surplus lines licensee acting as agent or broker for the purchasing group.

Sec. 57. That section 44-4421, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4421. (1) Any person other than a licensed surplus lines licensee acting or offering to act as an agent or broker for a risk retention group or purchasing group which solicits members, sells insurance coverage, purchases coverage for its members located within this state, or otherwise does business in this state shall, before commencing any such activity, obtain a license from the director pursuant to the Insurance Producers Licensing Act.

(2) Every person, firm, association, or corporation licensed pursuant to the Insurance Producers Licensing Act, on business placed with risk retention groups or written through a purchasing group, shall inform each prospective insured of the provisions of the notice required by section 44-4409 in the case of a risk retention group and subsection (2) of section 44-4418 in the case of a purchasing group.

Sec. 58. That section 44-4711, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4711. (1) A prepaid limited health service organization shall be subject to sections 44-1522 to 44-1535. No other provision of Chapter 44 shall apply unless specifically mentioned in the Prepaid Limited Health Service Organization Act or unless prepaid limited health service organizations are specifically mentioned in the provisions of Chapter 44.

(2) The provision of limited health services by a prepaid limited health service organization or other entity pursuant to the Prepaid Limited Health Service Organization Act shall not be deemed to be the practice of medicine or other healing arts.

(3) Solicitation to arrange for or provide limited health services in accordance with the Prepaid Limited Health Service Organization Act shall not be construed to violate any provision of law relating to solicitation or advertising by health professionals.

(4) A prepaid limited health service organization organized under the laws of this state shall be deemed to be a domestic insurer for purposes of ~~sections 44-2101 to 44-2119~~ the Insurance Holding Company System Act unless specifically exempted in writing from one or more of the provisions of ~~such sections~~ the act by the director.

Sec. 59. That section 44-4801, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4801. The purpose of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act is to protect the interests of insureds, claimants, creditors, and the public with minimum interference with the normal prerogatives of the owners and managers of insurers through:

(1) Early detection of any potentially dangerous condition in an insurer and prompt application of appropriate corrective measures;

(2) Improved methods for rehabilitating insurers involving the cooperation and management expertise of the insurance industry;

(3) Enhanced efficiency and economy of liquidation, through clarification of the law, to minimize legal uncertainty and litigation;

(4) Equitable apportionment of any unavoidable loss;

(5) Lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process and by extending the scope of personal jurisdiction over debtors of the insurer outside this state; ~~and~~

(6) Regulation of the insurance business by the impact of the law relating to delinquency procedures and substantive rules on the entire insurance business; and

(7) Providing for a comprehensive scheme for the supervision, rehabilitation, and liquidation of insurers and those subject to the act as part of the regulation of the business of insurance, insurance industry, and insurers in this state. Proceedings in cases of insurer insolvency and delinquency are deemed an integral aspect of the business of insurance and are of vital public interest and concern.

The act shall be liberally construed to effect the purposes enumerated in this section and shall not be interpreted to limit the powers granted the director by other provisions of the law.

Sec. 60. That section 44-4803, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4803. For purposes of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act:

(1) Ancillary state shall mean any state other than a domiciliary state;

(2) Creditor shall mean a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, or absolute, fixed, or contingent;

(3) Delinquency proceeding shall mean any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer and any summary proceeding under section 44-4809 or 44-4810;

(4) Department shall mean the Department of Insurance;

(5) Director shall mean the Director of Insurance;

(6) Doing business shall include any of the following acts, whether effected by mail or otherwise:

(a) The issuance or delivery of contracts of insurance to persons who are residents of this state;

(b) The solicitation of applications for such contracts or other negotiations preliminary to the execution of such contracts;

(c) The collection of premiums, membership fees, assessments, or other consideration for such contracts;

(d) The transaction of matters subsequent to execution of such contracts and arising out of them; or

(e) Operating as an insurer under a license or certificate of authority issued by the department;

(7) Domiciliary state shall mean the state in which an insurer is incorporated or organized or, in the case of an alien insurer, its state of entry;

(8) Fair consideration is given for property or an obligation:

(a) When in exchange for such property or obligation, as a fair equivalent therefor, and in good faith, (i) property is conveyed, (ii) services are rendered, (iii) an obligation is incurred, or (iv) an antecedent debt is satisfied; or

(b) When such property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained;

(9) Foreign country shall mean any other jurisdiction not in any state;

(10) Foreign guaranty association shall mean a guaranty association now in existence in or hereafter created by the legislature of another state;

(11) Formal delinquency proceeding shall mean any liquidation or rehabilitation proceeding;

(12) General assets shall mean all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, general assets shall include all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and on deposit for the security or benefit of all ~~policyholders~~ insureds or all ~~policyholders~~ insureds and creditors, in more than a single state, shall be treated as general assets;

(13) Guaranty association shall mean the Nebraska Property and Liability Insurance Guaranty Association, the Nebraska Life and Health Insurance Guaranty Association, and any other similar entity now or hereafter created by the Legislature for the payment of claims of insolvent insurers;

(14) Insolvency or insolvent shall mean:

(a) For an insurer formed under Chapter 44, article 8:

(i) The inability to pay any obligation within thirty days after it becomes payable; or

(ii) If an assessment is made within thirty days after such date, the inability to pay such

obligation thirty days following the date specified in the first assessment notice issued after the date of loss;

(b) For any other insurer, that it is unable to pay its obligations when they are due or when its admitted assets do not exceed its liabilities plus the greater of:

(i) Any capital and surplus required by law to be maintained; or

(ii) The total par or stated value of its authorized and issued capital stock; and

(c) For purposes of this subdivision, liabilities shall include, but not be limited to, reserves required by statute or by rules and regulations adopted and promulgated or specific requirements imposed by the director upon a subject company at the time of admission or subsequent thereto;

(15) Insurer shall mean any person who has done, purports to do, is doing, or is licensed to do an insurance business and is or has been subject to the authority of or to liquidation, rehabilitation, reorganization, supervision, or conservation by the director or the director, commissioner, or equivalent official of another state. Any other persons included under section 44-4802 shall be deemed to be insurers;

(16) Person shall include any individual, corporation, partnership, association, trust, or other entity;

(17) Receiver shall mean receiver, liquidator, rehabilitator, or conservator as the context requires;

(18) Reciprocal state shall mean any state other than this state in which in substance and effect sections 44-4818, 44-4852, 44-4853, and 44-4855 to 44-4857 are in force, in which provisions are in force requiring that the director, commissioner, or equivalent official of such state be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers;

(19) Secured claim shall mean any claim secured by mortgage, trust deed, pledge, or deposit as security, escrow, or otherwise but shall not include a special deposit claim or a claim against general assets. The term shall also include claims which have become liens upon specific assets by reason of judicial process;

(20) Special deposit claim shall mean any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of

persons but shall not include any claim secured by general assets;

(21) State shall mean any state, district, or territory of the United States and the Panama Canal Zone; and

(22) Transfer shall include the sale of property or an interest therein and every other and different mode, direct or indirect, of disposing of or of parting with property, an interest therein, or the possession thereof or of fixing a lien upon property or an interest therein, absolutely or conditionally, voluntarily, or by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by the debtor.

Sec. 61. That section 44-4804, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4804. (1) No delinquency proceeding shall be commenced under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act by anyone other than the director, and no court shall have jurisdiction to entertain, hear, or determine any proceeding commenced by any other person.

(2) No court of this state shall have jurisdiction to entertain, hear, or determine any complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of any insurer or praying for an injunction or restraining order or other relief preliminary to, incidental to, or relating to such proceedings other than in accordance with the act.

(3) In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction of the subject matter has jurisdiction over a person served pursuant to sections 25-505.01 to 25-530.08 or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state:

(a) If the person served is ~~obligated to the insurer in any way as an incident to any agency or brokerage arrangement that may exist or has existed between the insurer and the agent or broker, in any action on or incident to the obligation~~ an agent, broker, or other person who has at any time written policies of insurance for or has acted in any manner whatsoever on behalf of an insurer against which a delinquency proceeding has been instituted, in any

action resulting from or incident to such a relationship with the insurer;

(b) If the person served is a reinsurer who has at any time ~~written a policy~~ entered into a contract of reinsurance ~~for~~ with an insurer against which a ~~rehabilitation or liquidation order is in effect when the action is commenced~~ delinquency proceeding has been instituted or is an agent or broker of or for the reinsurer, in any action on or incident to the reinsurance contract; ~~or~~

(c) If the person served is or has been an officer, manager, trustee, organizer, promoter, or person in a position of comparable authority or influence in an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, in any action resulting from such a relationship with the insurer;

(d) If the person served is or was at the time of the institution of the delinquency proceeding against the insurer holding assets in which the receiver claims an interest on behalf of the insurer, in any action concerning the assets; or

(e) If the person served is obligated to the insurer in any way whatsoever, in any action on or incident to the obligation.

(4) If the court on motion of any party finds that any action should as a matter of substantial justice be tried in a forum outside this state, the court may enter an appropriate order to stay further proceedings on the action in this state.

(5) All actions authorized by the act shall be brought in the district court of Lancaster County.

Sec. 62. That section 44-4805, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4805. (1) Any receiver appointed in a proceeding under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act may at any time apply for, and the court may grant, such restraining orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to prevent:

(a) The transaction of further business;

(b) The transfer of property;

(c) Interference with the receiver or with a proceeding under the act;

(d) Waste of the insurer's assets;

(e) Dissipation and transfer of bank accounts;

(f) The institution or further prosecution of any actions or proceedings;

(g) The obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets, or its ~~policyholders~~ insureds;

(h) The levying of execution against the insurer, its assets, or its ~~policyholders~~ insureds;

(i) The making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;

(j) The withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer; or

(k) Any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of ~~policyholders~~ insureds, creditors, or shareholders or the administration of any proceeding under the act.

(2) The receiver may apply to any court outside of the state for the relief described in subsection (1) of this section.

Sec. 63. That section 44-4808, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4808. No insurer that is subject to any delinquency proceedings, whether formal, informal, administrative, or judicial, shall (1) be released from such proceeding unless such proceeding is converted into a judicial rehabilitation or liquidation proceeding, (2) be permitted to solicit or accept new business or request or accept the restoration of any suspended or revoked license or certificate of authority, (3) be returned to the control of its shareholders or private management, or ~~(3)~~ (4) have any of its assets returned to the control of its shareholders or private management, until all payments of or on account of the insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all such payments and expenses, have been repaid to the guaranty associations or a plan of repayment by the insurer has been approved by the guaranty association.

Sec. 64. That section 44-4809, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4809. (1) Whenever the director has reasonable cause to believe and determines, after a hearing held under subsection (5) of this section, that any domestic insurer has committed or engaged in or is about to commit or engage in any act, practice, or transaction that would subject it to delinquency

proceedings under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, he or she may make and serve upon the insurer and any other persons involved such orders as are reasonably necessary to correct, eliminate, or remedy such conduct, condition, or ground.

~~(2) If upon examination or at any other time the director has reasonable cause to believe that any domestic insurer is in such condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance or if such domestic insurer gives its consent, then the director shall upon his or her determination by order:~~

~~(a) Notify the insurer of his or her determination; and~~

~~(b) Furnish to the insurer a written list of the director's requirements to abate his or her determination.~~

(2)(a) Whenever the director has reasonable cause to believe and determines, upon examination of any domestic insurer or at any other time, that (i) the insurer's condition renders the continuance of its business hazardous to the public or to its insureds, (ii) the insurer has or appears to have exceeded its powers granted under its certificate of authority and applicable law, (iii) the insurer has failed to comply with the applicable provisions of the insurance laws of this state, (iv) the insurer's business is being conducted fraudulently, or (v) the insurer gives its consent, the director shall by order notify the insurer of his or her determination and furnish to the insurer a written list of the requirements to abate the determination.

(b) For purposes of subdivision (2)(a)(ii) of this section, an insurer has exceeded its powers if it:

(i) Has refused to permit examination of its books, papers, accounts, records, or affairs by the director or his or her deputies, employees, or examiners;

(ii) Has unlawfully removed from this state books, papers, accounts, or records necessary for an examination of the insurer;

(iii) Has failed to promptly comply with the applicable financial reporting statutes or rules and departmental requests relating thereto;

(iv) Has neglected or refused to observe an order of the director to make good, within the time prescribed by law, any prohibited deficiency in its capital, capital stock, or surplus;

(v) Has continued doing business after its license or certificate of authority has been revoked or suspended by the director;

(vi) By contract or otherwise, has unlawfully, in violation of an order of the director, or without first having obtained written approval of the director if approval is required by law:

(A) Totally reinsured its entire outstanding business; or

(B) Merged or consolidated substantially its entire property or business with another insurer;

(vii) Has engaged in any transaction in which it is not authorized to engage under the laws of this state; or

(viii) Has refused to comply with a lawful order of the director.

(3) If the director makes a determination to supervise an insurer subject to an order under subsection (1) or (2) of this section, he or she shall notify the insurer that it is under the supervision of the director. During the period of supervision, the director may appoint a supervisor to supervise such insurer. The order appointing a supervisor shall direct the supervisor to enforce orders issued under subsection (1) or (2) of this section and may also require that the insurer not do any of the following things during the period of supervision without the prior approval of the director or the supervisor:

(a) Dispose of, convey, or encumber any of its assets or its business in force;

(b) Withdraw any funds from any of its bank accounts;

(c) Lend any of its funds;

(d) Invest any of its funds;

(e) Transfer any of its property;

(f) Incur any debt, obligation, or liability;

(g) Merge or consolidate with another company;

(h) Enter into any new reinsurance contract or treaty; ~~or~~

(i) Write or renew any insurance business;

(j) Terminate, surrender, forfeit, convert, or lapse any insurance policy, certificate, or contract except for nonpayment of premiums due;

(k) Release, pay, or refund premium deposits, accrued cash or loan values, unearned premiums, or other reserves on any insurance policy, certificate, or contract;

(l) Make any material change in management; or

(m) Increase salaries and benefits of officers

or directors or make any preferential payment of bonuses, dividends, or other payments deemed preferential.

(4) Any insurer subject to an order under this section shall comply with the lawful requirements of the director and, if placed under supervision, shall have sixty days from the date the supervision order is served within which to comply with the requirements of the director. In the event of such insurer's failure to comply within such period, the director may institute proceedings under section 44-4812 or 44-4817 to have a rehabilitator or liquidator appointed or may extend the period of supervision.

(5) A notice of hearing under subsection (1) or (2) of this section and any order issued pursuant to ~~such~~ either subsection shall be served upon the insurer pursuant to the Administrative Procedure Act. The notice of hearing shall state the time and place of hearing and the conduct, condition, or ground upon which the director would base his or her order. Unless mutually agreed between the director and the insurer, the hearing shall occur not less than ten days nor more than thirty days after notice is served and shall be either in the offices of the department or in some other place convenient to the parties to be designated by the director. ~~The director shall hold all hearings under subsection (1) of this section privately unless the insurer requests a public hearing, in which case the hearing shall be public~~ Such hearings and any notices, orders, correspondence, records, or reports relating thereto shall be considered public unless the director deems it to be in the best interests of the insurer, its insureds or creditors, or the public that such hearings shall be held privately and such notices, orders, correspondence, records, or reports shall be considered confidential.

(6)(a) Any insurer subject to an order under subsection (2) of this section may request a hearing to review the order. ~~Such a hearing shall be held as provided in subsection (5) of this section,~~ but the request for a hearing shall not stay the effect of the order.

(b) If the director issues an order under subsection (2) of this section, the insurer may, at any time, waive a director's hearing and apply for immediate judicial relief by means of any remedy afforded by law without first exhausting administrative remedies. Subsequent to a hearing, any party to the proceedings whose interests are substantially affected shall be

entitled to judicial review of any order issued by the director.

(7) During the period of supervision, the insurer may request the director to review an action taken or proposed to be taken by the supervisor, specifying why the action complained of is believed not to be in the best interest of the insurer.

(8) If any person has violated any supervision order issued under this section which as to him or her was then still in effect, he or she shall be liable to pay a civil penalty imposed by the district court of Lancaster County not to exceed ten thousand dollars.

(9) The director may apply for and the court may grant such restraining orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to enforce a supervision order.

(10) In the event that any person subject to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, including those persons described in subsection (1) of section 44-4806, knowingly violates any valid order of the director issued under this section and, as a result of such violation, the net worth of the insurer is reduced or the insurer suffers loss it would not otherwise have suffered, such person shall become personally liable to the insurer for the amount of any such reduction or loss. The director or supervisor may bring an action on behalf of the insurer in the district court of Lancaster County to recover the amount of the reduction or loss together with any costs.

Sec. 65. That section 44-4810, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4810. (1) The director may file in the district court of Lancaster County a petition alleging, with respect to a domestic insurer:

(a) That there exist any grounds that would justify a court order for a formal delinquency proceeding against an insurer under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act;

(b) That the interests of ~~policyholders~~ insureds, creditors, or the public will be endangered by delay; and

(c) The contents of an order deemed necessary by the director.

(2) Upon a filing under subsection (1) of this section, the court may issue, forthwith, ex parte, and without a hearing, the requested order which shall direct the director to take possession and control of

all or a part of the property, books, accounts, documents, and other records of an insurer and of the premises occupied by it for transaction of its business and until further order of the court enjoin the insurer and its officers, managers, agents, and employees from disposition of its property and from the transaction of its business except with the written consent of the director.

(3) The court shall specify in the order what its duration shall be, which shall be such time as the court deems necessary for the director to ascertain the condition of the insurer. On motion of either party or on its own motion, the court may from time to time hold such hearings as it deems desirable after such notice as it deems appropriate and may extend, shorten, or modify the terms of the seizure order. The court shall vacate the seizure order if the director fails to commence a formal delinquency proceeding under the act after having had a reasonable opportunity to do so. An order of the court pursuant to a formal delinquency proceeding under the act shall ipso facto vacate the seizure order.

(4) Entry of a seizure order under this section shall not constitute an anticipatory breach of any contract of the insurer.

(5) An insurer subject to an ex parte order under this section may petition the court at any time after the issuance of such order for a hearing and review of the order. The court shall hold such a hearing and review not more than fifteen days after the request. A hearing under this subsection may be held privately in chambers, and it shall be so held if the insurer proceeded against so requests.

(6) If, at any time after the issuance of such an order, it appears to the court that any person whose interest is or will be substantially affected by the order did not appear at the hearing and has not been served, the court may order that notice be given to such person. An order that notice be given shall not stay the effect of any order previously issued by the court.

Sec. 66. That section 44-4811, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4811. In all proceedings and judicial review thereof under ~~sections 44-4809 and~~ section 44-4810, all records of the insurer, other documents, all department files, and court records and papers, so far as they pertain to or are a part of the record of the proceedings, shall be and remain confidential except as is necessary to obtain compliance therewith unless

and until the court, after hearing arguments from the parties in chambers, orders otherwise or unless the insurer requests that the matter be made public. Until such court order, all papers filed with the clerk of the district court shall be held by him or her in a confidential file.

Sec. 67. That section 44-4812, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4812. The director may apply by petition to the district court of Lancaster County for an order authorizing him or her to rehabilitate a domestic insurer or an alien insurer domiciled in this state on any one or more of the following grounds:

(1) The insurer is in such condition that the further transaction of business would be hazardous financially to its ~~policyholders, its~~ insureds or creditors~~,~~ or the public;

(2) There is reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that if established would endanger assets in an amount threatening the solvency of the insurer;

(3) The insurer has failed to remove any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee, or other person, if the person has been found after notice and hearing by the director to be dishonest or untrustworthy in a way affecting the insurer's business;

(4) Control of the insurer, whether by stock ownership or otherwise and whether direct or indirect, is in a person or persons found after notice and hearing to be untrustworthy;

(5) Any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, director, trustee, employee, or other person, has refused to be examined under oath or affirmation by the director concerning its affairs, whether in this state or elsewhere, and after reasonable notice of the fact, the insurer has failed promptly and effectively to terminate the employment and status of the person and all his or her influence on management;

(6) After demand by the director under section 44-108 or under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, the insurer has failed to promptly make available for examination any of

its own property, books, accounts, documents, or other records, those of any subsidiary or related company within the control of the insurer, or those of any person having executive authority in the insurer so far as they pertain to the insurer;

(7) Without first obtaining the written consent of the director, the insurer has transferred or attempted to transfer, in a manner contrary to the Insurance Holding Company System Act or sections 44-224.01 to 44-224.10, ~~or 44-2101 to 44-2119,~~ substantially its entire property or business or has entered into any transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person;

(8) The insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator, or sequestrator or similar fiduciary of the insurer or its property otherwise than as authorized under the insurance laws of this state, such appointment has been made or is imminent, and such appointment might oust the courts of this state of jurisdiction or might prejudice orderly delinquency proceedings under the ~~act~~ Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act;

(9) Within the previous four years the insurer has willfully violated its charter or articles of incorporation, its bylaws, any insurance law of this state, or any valid order of the director under section 44-4809;

(10) The insurer has failed to pay within sixty days after due date any obligation to any state or any subdivision thereof or any judgment entered in any state if the court in which such judgment was entered had jurisdiction over such subject matter, except that such nonpayment shall not be a ground until sixty days after any good faith effort by the insurer to contest the obligation has been terminated, whether it is before the director or in the courts, or the insurer has systematically attempted to compromise or renegotiate previously agreed settlements with its creditors on the ground that it is financially unable to pay its obligations in full;

(11) The insurer has failed to file its annual report or other financial report required by statute or by rule or regulation within the time allowed by law and, after written demand by the director, has failed to give an adequate explanation immediately; or

(12) The board of directors or the holders of a majority of the shares entitled to vote or a majority of those individuals entitled to the control of those entities listed in section 44-4802 requests or consents to rehabilitation under the act.

Sec. 68. That section 44-4813, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4813. (1) An order to rehabilitate the business of a domestic insurer or an alien insurer domiciled in this state shall appoint the director and his or her successors in office the rehabilitator and shall direct the rehabilitator forthwith to take possession of the assets of the insurer and to administer them under the general supervision of the court. The filing or recording of the order with the clerk of the district court of Lancaster County or register of deeds of the county in which the principal business of the company is conducted or in which its principal office or place of business is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds would have imparted. The order to rehabilitate the insurer shall by operation of law vest title to all assets of the insurer in the rehabilitator.

(2) Any order issued under this section shall require accounting to the court by the rehabilitator. Accountings shall be at such intervals as the court specifies in the order but no less frequently than semiannually. Each accounting shall include a report concerning the rehabilitator's opinion as to the likelihood that a plan under subsection (4) of section 44-4814 will be prepared by the rehabilitator and the timetable for doing so.

(3) Entry of an order of rehabilitation shall not constitute an anticipatory breach of any contracts of the insurer and shall not be grounds for retroactive revocation or retroactive cancellation of any contracts of the insurer unless such revocation or cancellation is done by the rehabilitator pursuant to section 44-4814.

Sec. 69. That section 44-4814, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4814. (1) The director as rehabilitator may appoint one or more special deputies who shall have all the powers and responsibilities of the rehabilitator granted under this section, and the director may employ such counsel, clerks, and assistants as deemed necessary. The compensation of the special deputy,

counsel, clerks, and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the director, with the approval of the court, and shall be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the director. The director, as rehabilitator, may, with the approval of the court, appoint an advisory committee of policyholders, claimants, or other creditors, including guaranty associations, should such a committee be deemed necessary. Such committee shall serve at the pleasure of the director and shall serve without compensation other than reimbursement for reasonable travel and per diem living expenses. No other committee of any nature shall be appointed by the director or the court in rehabilitation proceedings conducted under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

(2) The rehabilitator may take such action as he or she deems necessary or appropriate to reform and revitalize the insurer. He or she shall have all the powers of the directors, officers, and managers of the insurer, whose authority shall be suspended, except as they are redelegated by the rehabilitator. He or she shall have full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of the insurer.

(3) If it appears to the rehabilitator that there has been criminal or tortious conduct or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agent, broker, employee, or other person, he or she may pursue all appropriate legal remedies on behalf of the insurer.

(4) If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, he or she shall prepare a plan to effect such changes. Upon application of the rehabilitator for approval of the plan and after such notice and hearings as the court may prescribe, the court may either approve or disapprove the plan proposed or may modify it and approve it as modified. Any plan approved under this section shall be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the policies of the company if all rights of shareholders are first

relinquished. A plan for a life insurer may also propose the imposition of a moratorium upon loan and cash surrender rights under policies for such period and to such an extent as may be necessary.

(5) The rehabilitator shall have the power under sections 44-4826 and 44-4827 to avoid fraudulent transfers.

Sec. 70. That section 44-4815, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4815. (1) Any court in this state before which any action or proceeding in which the insurer is a party or is obligated to defend a party is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for ninety days and such additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take such action respecting the pending litigation as he or she deems necessary in the interests of justice and for the protection of insureds, creditors, ~~policyholders,~~ and the public. The rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

(2) No statute of limitations or defense of laches shall run with respect to any action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. Any action by or against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the order of rehabilitation is entered or the petition is denied. The rehabilitator may, upon an order for rehabilitation, within one year or such other longer time as applicable law may permit, institute an action or proceeding on behalf of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered.

(3) Any guaranty association or foreign guaranty association covering life or health insurance or annuities shall have standing to appear in any court proceeding concerning the rehabilitation of a life or health insurer if such association is or may become liable to act as a result of the rehabilitation.

Sec. 71. That section 44-4816, Revised

Statutes Supplement, 1990, be amended to read as follows:

44-4816. (1) Whenever the director believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to insureds, creditors, ~~policyholders,~~ or the public or would be futile, the director may petition the district court of Lancaster County for an order of liquidation. A petition under this subsection shall have the same effect as a petition under section 44-4817. The court shall permit the directors of the insurer to take such actions as are reasonably necessary to defend against the petition and may order payment from the estate of the insurer of such costs and other expenses of defense as justice may require.

(2) The protection of the interests of insureds, claimants, and the public requires the timely performance of all insurance policy obligations. If the payment of policy obligations is suspended in substantial part for a period of six months at any time after the appointment of the rehabilitator and the rehabilitator has not filed an application for approval of a plan under subsection (4) of section 44-4814, the rehabilitator shall petition the court for an order of liquidation on grounds of insolvency.

~~(2)~~ (3) The rehabilitator may at any time petition the district court of Lancaster County for an order terminating rehabilitation of an insurer. The court shall also permit the directors of the insurer to petition the court for an order terminating rehabilitation of the insurer and may order payment from the estate of the insurer of such costs and other expenses of such petition as justice may require. If upon the petition of the rehabilitator or the directors of the insurer or upon its own motion at any time the court finds that rehabilitation has been accomplished and that grounds for rehabilitation under section 44-4812 no longer exist, it shall order that the insurer be restored to possession of its property and the control of the business.

Sec. 72. That section 44-4817, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4817. The director may petition the district court of Lancaster County for an order directing him or her to liquidate a domestic insurer or an alien insurer domiciled in this state on the basis:

(1) Of any ground for an order of rehabilitation as specified in section 44-4812 whether

or not there has been a prior order directing the rehabilitation of the insurer;

(2) That the insurer is insolvent; or

(3) That the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its ~~policyholders, its~~ insureds or creditors, or the public.

Sec. 73. That section 44-4818, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4818. (1) An order to liquidate the business of a domestic insurer shall appoint the director and his or her successors in office liquidator and shall direct the liquidator forthwith to take possession of the assets of the insurer and to administer them under the general supervision of the court. The liquidator shall be vested by operation of law with the title to all of the property, contracts, and rights of action and all of the books and records of the insurer ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of the district court and the register of deeds of the county in which its principal office or place of business is located or, in the case of real estate, with the register of deeds of the county where the property is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds would have imparted.

(2) Upon issuance of the order, the rights and liabilities of any such insurer and of its insureds, creditors, ~~policyholders,~~ shareholders, and members and all other persons interested in its estate shall become fixed as of the date of entry of the order of liquidation except as provided in sections 44-4819 and 44-4837.

(3) An order to liquidate the business of an alien insurer domiciled in this state shall be in the same terms and have the same legal effect as an order to liquidate a domestic insurer, except that the assets and the business in the United States shall be the only assets and business included therein.

(4) At the time of petitioning for an order of liquidation or at any time thereafter, the director, after making appropriate findings of an insurer's insolvency, may petition the court for a judicial declaration of such insolvency. After providing such notice and hearing as it deems proper, the court may make the declaration.

(5) Any order issued under this section shall require ~~accounting~~ financial reports to the court by the liquidator. ~~Accountings shall be at such intervals as the court specifies in its order.~~ Financial reports shall include at a minimum the assets and liabilities of the insurer and all funds received or disbursed by the liquidator during the current period. Financial reports shall be filed within one year of the liquidation order and at least annually thereafter.

(6)(a) Within five days after the initiation of an appeal of an order of liquidation, which order has not been stayed, the director shall present for the court's approval a plan for the continued performance of the insurer's policy claims obligations, including the duty to defend insureds under liability insurance policies, during the pendency of an appeal. For appeals pending on the effective date of this act, the plan shall be filed within five days after such date. Such plan shall provide for the continued performance and payment of policy claims obligations in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation including the ground of insolvency. In the event the insurer's financial condition will not, in the judgment of the director, support the full performance of all policy claims obligations during the appeal-pendency period, the plan may prefer the claims of certain insureds and claimants over creditors and interested parties as well as other insureds and claimants, as the director finds to be fair and equitable considering the relative circumstances of such insureds and claimants. The court shall examine the plan submitted by the director, and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. No action shall lie against the director or any of his or her deputies, agents, clerks, assistants, or attorneys by any party based on preference in an appeal-pendency plan approved by the court.

(b) The appeal-pendency plan shall not supersede or affect the obligations of any guaranty association.

(c) An appeal-pendency plan shall provide for equitable adjustments to be made by the liquidator to any distributions of assets to guaranty associations in the event that the liquidator pays claims from assets of the estate which would otherwise be the obligations of any particular guaranty association but for the appeal of the order of liquidation, such that all guaranty associations equally benefit on a pro rata basis from

the assets of the estate. In the event an order of liquidation is set aside upon any appeal, the insurer shall not be released from delinquency proceedings unless all funds advanced by any guaranty association, including reasonable administrative expenses in connection therewith relating to obligations of the insurer, are repaid in full, together with interest at the judgment rate of interest, or unless an arrangement for repayment thereof has been made with the consent of all applicable guaranty associations.

Sec. 74. That section 44-4819, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4819. (1) All policies including bonds and other noncancelable business, other than life or health insurance or annuities, in effect at the time of issuance of an order of liquidation shall continue in force ~~only for the lesser~~ until the earliest of:

(a) ~~A period of thirty~~ Thirty days from the date of entry of the liquidation order;

(b) The expiration of the policy coverage;

(c) The date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy; ~~or~~

(d) The liquidator has effected a transfer of the policy obligation pursuant to subdivision ~~(1)(h)~~ (1)(i) of section 44-4821; or

(e) The date proposed by the liquidator and approved by the court to cancel coverage.

(2) An order of liquidation under section 44-4818 shall terminate coverages at the time specified in subsection (1) of this section for purposes of any other statute.

(3) Policies of life or health insurance or annuities shall continue in force for such period and under such terms as is provided for by any applicable guaranty association or foreign guaranty association.

(4) Policies of life or health insurance or annuities or any period or coverage of such policies not covered by a guaranty association or foreign guaranty association shall terminate under subsections (1) and (2) of this section.

Sec. 75. That section 44-4821, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4821. (1) The liquidator shall have the power:

(a) To appoint a special deputy to act for him or her under the Nebraska Insurers Supervision,

Rehabilitation, and Liquidation Act and to determine his or her reasonable compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator;

(b) To employ employees, agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as he or she may deem necessary to assist in the liquidation;

(c) To appoint, with the approval of the court, an advisory committee of policyholders, claimants, or other creditors, including guaranty associations, should such a committee be deemed necessary. Such committee shall serve without compensation other than reimbursement for reasonable travel and per diem living expenses. No other committee of any nature shall be appointed by the director or the court in liquidation proceedings conducted under the act;

~~(c)~~ (d) To fix the reasonable compensation of employees, agents, legal counsel, actuaries, accountants, appraisers, and consultants with the approval of the court;

~~(d)~~ (e) To pay reasonable compensation to persons appointed and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer;

~~(e)~~ (f) To hold hearings, to subpoena witnesses, to compel their attendance, to administer oaths and affirmations, to examine any person under oath or affirmation, and to compel any person to subscribe to his or her testimony after it has been correctly reduced to writing and, in connection therewith, to require the production of any books, papers, records, or other documents which he or she deems relevant to the inquiry;

(g) To audit the books and records of all agents of the insurer insofar as those records relate to the business activities of the insurer;

~~(f)~~ (h) To collect all debts and money due and claims belonging to the insurer, wherever located, and for this purpose:

(i) To institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts;

(ii) To do such other acts as are necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound,

compromise, or assign debts for purposes of collection upon such terms and conditions as he or she deems best; and

(iii) To pursue any creditor's remedies available to enforce his or her claims;

~~(g)~~ (i) To conduct public and private sales of the property of the insurer;

~~(h)~~ (j) To use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer if the transfer can be arranged without prejudice to applicable priorities under section 44-4842;

~~(i)~~ (k) To acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. He or she shall also have power to execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation;

~~(j)~~ (l) To borrow money on the security of the insurer's assets or without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation. Any such funds borrowed may be repaid as an administrative expense and shall have priority over any other claims under subdivision (1) of section 44-4842;

~~(k)~~ (m) To enter into such contracts as are necessary to carry out the order to liquidate and to affirm or disavow any contracts to which the insurer is a party;

~~(l)~~ (n) To continue to prosecute and to institute in the name of the insurer or in his or her own name any and all suits and other legal proceedings in this state or elsewhere and to abandon the prosecution of claims he or she deems unprofitable to pursue further. If the insurer is dissolved under section 44-4820, the liquidator shall have the power to apply to any court in this state or elsewhere for leave to substitute himself or herself for the insurer as plaintiff;

~~(m)~~ (o) To prosecute any action which may exist on behalf of the insureds, creditors, members, ~~policyholders,~~ or shareholders of the insurer against any officer of the insurer or any other person;

~~(n)~~ (p) To remove any or all records and property of the insurer to the offices of the director or to such other place as may be convenient for the

purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have such reasonable access to the records of the insurer as is necessary for them to carry out their statutory obligations;

~~(o)~~ (g) To deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions;

~~(p)~~ (r) To invest all sums not currently needed unless the court orders otherwise;

~~(q)~~ (s) To file any necessary documents for record in the office of any register of deeds or record office in this state or elsewhere where property of the insurer is located;

~~(r)~~ (t) To assert all defenses available to the insurer as against third persons, including statutes of limitations, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to such obligation and may defend only in the absence of a defense by such guaranty associations;

~~(s)~~ (u) To exercise and enforce all the rights, remedies, and powers of any insured, creditor, shareholder, ~~policyholder,~~ or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with sections 44-4826 to 44-4828;

~~(t)~~ (v) To intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee and to act as the receiver or trustee whenever the appointment is offered;

~~(u)~~ (w) To enter into agreements with any receiver or the director, commissioner, or equivalent official of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states; and

~~(v)~~ (x) To exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with the provisions of the act.

(2)(a) If a company placed in liquidation has issued liability policies on a claims-made basis, which policies provided an option to purchase an extended period to report claims, then the liquidator may make available to holders of such policies, for a charge, an extended period to report claims as stated in this

subsection. The extended reporting period shall be made available only to those insureds who have not secured substitute coverage. The extended period made available by the liquidator shall begin upon termination of any extended period to report claims in the basic policy and shall end at the earlier of the final date for filing of claims in the liquidation proceeding or eighteen months from the order of liquidation.

(b) The extended period to report claims made available by the liquidator shall be subject to the terms of the policy to which it relates. The liquidator shall make available such extended period within sixty days after the order of liquidation at a charge to be determined by the liquidator subject to approval of the court. Such offer shall be deemed rejected unless the offer is accepted in writing and the charge is paid within ninety days after the order of liquidation. No commissions, premium taxes, assessments, or other fees shall be due on the charge pertaining to the extended period to report claims.

(3) The enumeration in this section of the powers and authority of the liquidator shall not be construed as a limitation upon him or her nor shall it exclude in any manner his or her right to do such other acts not in this section specifically enumerated or otherwise provided for as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

(4) Notwithstanding the powers of the liquidator as stated in subsections (1) and (2) of this section, the liquidator shall have no obligation to defend claims or to continue to defend claims subsequent to the entry of a liquidation order.

Sec. 76. That section 44-4822, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4822. (1) Unless the court otherwise directs, the liquidator shall give or cause to be given notice of the liquidation order as soon as possible:

(a) By first-class mail and by telegram, electronic mail, facsimile, or telephone to the director, commissioner, or equivalent official of each jurisdiction in which the insurer is doing business;

(b) By first-class mail to any guaranty association or foreign guaranty association which is or may become obligated as a result of the liquidation;

(c) By first-class mail to all insurance agents of the insurer;

(d) By first-class mail to all persons known

or reasonably expected to have claims against the insurer, including all policyholders at their last-known address as indicated by the records of the insurer; and

(e) By publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in such other locations as the liquidator deems appropriate.

(2) Notice to potential claimants under subsection (1) of this section shall require claimants to file with the liquidator their claims together with proper proofs thereof under section 44-4836 on or before a date the liquidator shall specify in the notice. Although an earlier date may be set by the liquidator, the last day to file claims shall be no later than eighteen months following the order of liquidation. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. All claimants shall have a duty to keep the liquidator informed of any changes of address.

(3)(a) Notice under subsection (1) of this section to agents of the insurer and to potential claimants who are policyholders shall include, when applicable, notice that coverage by a guaranty association may be available for all or part of policy benefits in accordance with applicable state insurance guaranty laws.

(b) The liquidator shall promptly provide to any guaranty association such information concerning the identities and addresses of such policyholders and their policy coverages as may be within the liquidator's possession or control and shall otherwise cooperate with a guaranty association to assist in providing to such policyholders timely notice of the guaranty association's coverage of policy benefits, including, as applicable, coverage of claims and continuation or termination of coverages.

~~(3)~~ (4) If notice is given in accordance with this section, the distribution of assets of the insurer under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act shall be conclusive with respect to all claimants whether or not they receive actual notice.

Sec. 77. That section 44-4824, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4824. (1) Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in this state, no action at law or equity or in arbitration shall be brought against the

insurer or liquidator, whether in this state or elsewhere, nor shall any such existing actions be maintained or further presented after issuance of such order. The courts of this state shall give full faith and credit to injunctions against the liquidator or the company or the continuation of existing actions against the liquidator or the company when such injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other states. Whenever, in the liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, he or she may intervene in the action. The liquidator may defend any action in which he or she intervenes under this section at the expense of the estate of the insurer.

(2) The liquidator may, upon or after an order for liquidation, within two years or such time in addition to two years as applicable law may permit, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered. In any agreement, when a period of limitation is fixed for instituting a suit or proceeding upon any claim or for filing any claim, proof of claim, proof of loss, demand, notice, or the like or in any proceeding, judicial or otherwise, when a period of limitation is fixed either in the proceeding or by applicable law for taking any action, filing any claim or pleading, or doing any act, and when in any such case the period had not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any such action or do any such act required of or permitted to the insurer within a period of one hundred eighty days subsequent to the entry of an order for liquidation or within such further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

(3) No statute of limitations or defense of laches shall run with respect to any action against an insurer between the filing of a petition for liquidation against an insurer and the denial of the petition. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the petition is denied.

(4) Any guaranty association or foreign guaranty association shall have standing to appear in

any court proceeding concerning the liquidation of an insurer if such association is or may become liable to act as a result of the liquidation.

Sec. 78. That section 44-4826, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4826. (1) Every transfer made or suffered and every obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilitation or liquidation under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act shall be fraudulent as to then-existing and future creditors if made or incurred without fair consideration or with actual intent to hinder, delay, or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under the act which is fraudulent under this section may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value, and except that any purchaser, lienor, or obligee who in good faith has given a consideration less than fair for such transfer, lien, or obligation may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

(2)(a) A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee under subsection (3) of section 44-4828.

(b) A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.

(d) Any transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

(e) The provisions of this subsection shall apply whether or not there are or were creditors who

might have obtained any liens or persons who might have become bona fide purchasers.

(3) Any transaction of the insurer with a reinsurer shall be deemed fraudulent and may be avoided by the receiver under subsection (1) of this section if:

(a) The transaction consists of the termination, adjustment, or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transactions unless the reinsurer gives a present fair equivalent value for the release; and

(b) Any part of the transaction took place within one year prior to the date of filing of the petition through which the receivership was commenced.

(4) Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under subsection (1) of this section shall be personally liable therefor and shall be bound to account to the liquidator.

Sec. 79. That section 44-4827, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4827. (1) After a petition for rehabilitation or liquidation has been filed, a transfer of any of the real property of the insurer made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred. The commencement of a proceeding in rehabilitation or liquidation shall be constructive notice upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the register of deeds in the county where any real property in question is located. The exercise by a court of the United States or any state or jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

(2) After a petition for rehabilitation or liquidation has been filed and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:

(a) A transfer of any of the property of the insurer, other than real property, made to a person

acting in good faith shall be valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred;

(b) A person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property or any part thereof to the insurer or upon his or her order with the same effect as if the petition were not pending;

(c) A person having actual knowledge of the pending rehabilitation or liquidation shall be deemed not to act in good faith; and

(d) A person asserting the validity of a transfer under this section shall have the burden of proof. Except as elsewhere provided in this section, no transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator shall be valid against the liquidator.

(3) Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under subsection (1) of this section shall be liable therefor and shall be bound to account to the liquidator.

~~(3)~~ (4) Nothing in the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act shall impair the negotiability of currency or negotiable instruments.

Sec. 80. That section 44-4830, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4830. (1) Mutual debts or mutual credits whether arising out of one or more contracts between the insurer and another person in connection with any action or proceeding under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act shall be set off and the balance only shall be allowed or paid except as provided in ~~subsection (2)~~ subsections (2) through (4) of this section and in section 44-4833.

(2) No setoff ~~or counterclaim~~ shall be allowed in favor of any person when:

(a) The obligation of the insurer to the person would not at the date of the filing of a petition for liquidation entitle the person to share as a claimant in the assets of the insurer;

(b) The obligation of the insurer to the person was purchased by or transferred to the person

with a view to its being used as a setoff;

(c) The obligation of the insurer is owed to an affiliate of such person or any other entity or association other than the person;

(d) The obligation of the person is owed to an affiliate of the insurer or any other entity or association other than the insurer;

~~(e)~~ (e) The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution; or

(f) The obligation between the person and the insurer arises from business which is both ceded to and assumed from the insurer, except that the rehabilitator may, with regard to such business, allow certain setoffs in rehabilitation if he or she finds the allowance of the setoffs appropriate.

(3) The liquidator shall provide persons that assumed business from the insurer with accounting statements identifying debts which are currently due and payable. Such persons may set off against such debts only mutual credits which are currently due and payable by the insurer to such persons for the period covered by the accounting statement.

(4) A person that ceded business to the insurer may set off debts due the insurer against only those mutual credits which the person has paid or which have been allowed in the insurer's delinquency proceeding.

(5) Notwithstanding the provisions of subsections (2) through (4) of this section, a setoff of sums due on obligations in the nature of those set forth in subdivision (2)(f) of this section shall be allowed for those sums accruing from business written if the contracts were entered into, renewed, or extended with the express written approval of the director, commissioner, or equivalent official of the state of domicile of the now-insolvent insurer, when in his or her judgment it was necessary to provide reinsurance in order to prevent or mitigate a threatened impairment or insolvency of a domiciliary insurer in connection with the exercise of his or her regulatory responsibilities.

(6) The provisions of subsections (2) through (5) of this section shall apply to all contracts entered into, renewed, extended, or amended on or after January 1, 1992, and to debts or credits arising from any business written after such date pursuant to any contract, including contracts in existence prior to such

date, and shall supersede any agreements or contractual provisions which might be construed to enlarge the setoff rights of any person under any contract with the insurer. For purposes of this subsection, any change in the terms of or consideration for any such contract shall be deemed an amendment of the contract.

~~(d) The obligation of the person is to pay premiums, whether earned or unearned, to the insurer.~~

Sec. 81. That section 44-4842, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4842. The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class. The order of distribution of claims shall be:

(1) Class 1. The costs and expenses of administration during rehabilitation and liquidation, including, but not limited to, the following:

(a) The actual and necessary costs of preserving or recovering the assets of the insurer;

(b) Compensation for all properly authorized services rendered in the rehabilitation and liquidation;

(c) Any necessary filing fees;

(d) The fees and mileage payable to witnesses;

(e) ~~Reasonable~~ Authorized reasonable attorney's fees and fees for other professional services rendered in the rehabilitation and liquidation;

(f) The reasonable expenses of a guaranty association or foreign guaranty association ~~in handling claims~~ for unallocated loss-adjustment expenses; and

(g) The expenses of examinations conducted pursuant to sections 44-107 to 44-107.03;

(2) Class 2. ~~Debts due~~ Reasonable compensation to employees for services performed to the extent that they do not exceed ~~one thousand dollars~~ two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation; ~~officers~~ or, if rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation. Principal officers and directors of the insurer shall not be entitled to the benefit of this priority except as otherwise approved by the liquidator and the court. Such priority shall be in lieu of any other similar priority which may be authorized by law as to wages or

compensation of employees;

(3) Class 3. All claims under policies, including such claims of the federal or any state or local government, for losses incurred, including third-party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support or by way of succession at death or as proceeds of life insurance or as gratuities. No payment by an employer to his or her employee shall be treated as a gratuity;

(4) Class 4. Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors, including claims of ceding and assuming insurers in their capacity as such;

(5) Class 5. Claims of the federal or any state or local government except those under subdivision (3) of this section. Claims, including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subdivision (8) of this section;

(6) Class 6. Claims filed late or any other claims other than claims under subdivisions (7) and (8) of this section;

(7) Class 7. Surplus or contribution notes or similar obligations and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with law; and

(8) Class 8. The claims of shareholders or other owners in their capacity as shareholders.

Sec. 82. That section 44-4851, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4851. (1) If no domiciliary receiver has been appointed, the director may apply to the district

court of Lancaster County by verified petition for an order directing him or her to liquidate the assets found in this state of a foreign insurer or an alien insurer not domiciled in this state on any of the following grounds:

(a) Any of the grounds in section 44-4812 or 44-4817; or

(b) Any of the grounds specified in subdivisions (1)(b) through (d) of section 44-4850.

(2) When an order is sought under subsection (1) of this section, the court shall cause the insurer to be given such notice and time to respond thereto as is reasonable under the circumstances.

(3) If it appears to the court that the best interests of insureds, creditors, ~~policyholders,~~ and the public require, the court may issue an order to liquidate in whatever terms it deems appropriate. The filing or recording of the order with the clerk of the district court or the register of deeds of the county in which the principal business of the company is located or the county in which its principal office or place of business is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds would have imparted.

(4) If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding under this section, the liquidator under this section shall thereafter act as ancillary receiver under section 44-4853. If a domiciliary liquidator is appointed in a nonreciprocal state while a liquidation is proceeding under this section, the liquidator under this section may petition the court for permission to act as ancillary receiver under section 44-4853.

(5) On the same grounds as are specified in subsection (1) of this section, the director may petition any appropriate federal district court to be appointed receiver to liquidate that portion of the insurer's assets and business over which the court will exercise jurisdiction or any lesser part thereof that the director deems desirable for the protection of the ~~policyholders~~ insureds and creditors in this state.

(6) The court may order the director, when he or she has liquidated the assets of a foreign or alien insurer under this section, to pay claims of residents of this state against the insurer under such rules as to the liquidation of insurers under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act as are otherwise compatible with the provisions of this

section.

Sec. 83. That section 44-4853, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4853. (1) If a domiciliary liquidator has been appointed for an insurer not domiciled in this state, the director may file a petition with the district court of Lancaster County requesting appointment as ancillary receiver in this state:

(a) If he or she finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver; or

(b) If the protection of insureds or creditors ~~or policyholders~~ in this state so requires.

(2) The court may issue an order appointing an ancillary receiver in whatever terms it deems appropriate. The filing or recording of the order with the register of deeds in this state imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds.

(3) When a domiciliary liquidator has been appointed in a reciprocal state, then the ancillary receiver appointed in this state may, whenever necessary, aid and assist the domiciliary liquidator in recovering assets of the insurer located in this state. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state and shall pay the necessary expenses of the proceedings. He or she shall promptly transfer all remaining assets, books, accounts, and records to the domiciliary liquidator. Subject to this section, the ancillary receiver and his or her deputies shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state.

(4) When a domiciliary liquidator has been appointed in this state, ancillary receivers appointed in reciprocal states shall have, as to assets and books, accounts, and other records in their respective states, corresponding rights, duties, and powers to those provided in subsection (3) of this section for ancillary receivers appointed in this state.

Sec. 84. That section 44-4861, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4861. ~~Sections 44-4801 to 44-4861 shall be~~

~~known and may be cited as~~ The director shall adopt and promulgate rules and regulations to carry out the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

Sec. 85. Sections 44-4801 to 44-4861 and this section shall be known and may be cited as the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

Sec. 86. That section 44-4902, Revised Statutes Supplement, 1990, be amended to read as follows:

44-4902. For purposes of the Managing General Agents Act:

(1) Actuary shall mean a person who is a member in good standing of the American Academy of Actuaries;

(2) Director shall mean the Director of Insurance;

(3) Insurer shall mean any person, firm, association, or corporation duly licensed in this state as an insurance company pursuant to Chapter 44;

(4) Managing general agent shall mean any person, firm, association, or corporation who manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office, and acts as an agent for such insurer, whether known as a managing general agent, manager, or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites in any one quarter or year an amount of gross direct written premium equal to or more than five percent of the policyholder surplus as reported in the last annual statement of the insurer and who (a) adjusts or pays claims in excess of an amount determined by the director or (b) negotiates reinsurance on behalf of the insurer. Managing general agent shall not include an attorney in fact for a reciprocal or interinsurance exchange, an employee of the insurer, a United States manager of the United States branch of an alien insurer, or an underwriting manager who, pursuant to contract, manages all the insurance operations of the insurer, is under common control with the insurer, and is subject to ~~sections 44-2101 to 44-2119~~ the Insurance Holding Company System Act and whose compensation is not based on the volume of premiums written; and

(5) Underwrite shall mean the authority to accept or reject risk on behalf of the insurer.

Sec. 87. That section 44-4906, Revised

Statutes Supplement, 1990, be amended to read as follows:

44-4906. (1) The insurer shall have on file an independent audit or financial examination in a form acceptable to the director of each managing general agent with which it has done business.

(2) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. The opinion shall be in addition to any other required loss reserve certification.

(3) The insurer shall periodically, at least semiannually conduct an onsite review of the underwriting and claims-processing operations of the managing general agent.

(4) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer who is not affiliated with the managing general agent.

(5) Within thirty days of entering into or termination of a contract with a managing general agent, the insurer shall provide written notification of such appointment or termination to the director. Notices of appointment of a managing general agent shall include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the director may request.

(6) An insurer shall each quarter review its books and records to determine if any agent or broker has become a managing general agent. If the insurer determines that an agent or broker has become a managing general agent, the insurer shall promptly notify the agent or broker and the director of such determination and the insurer and agent or broker shall fully comply with the Managing General Agents Act within thirty days.

(7) No officer, director, employee, or controlling shareholder of the insurer's managing general agent shall be appointed to its board of directors. This subsection shall not apply to relationships governed by ~~sections 44-2101 to 44-2119~~ the Insurance Holding Company System Act.

Sec. 88. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 89. That original sections 44-224.11, 44-417, 44-4401, 44-4403 to 44-4405, 44-4407 to 44-4409, 44-4413, 44-4414, 44-4417, and 44-4418, Reissue Revised Statutes of Nebraska, 1943, and sections 44-211, 44-221, 44-251, 44-416, 44-416.01, 44-416.03, 44-416.04, 44-32,177, 44-4421, 44-4711, 44-4801, 44-4803, 44-4804, 44-4805, 44-4808 to 44-4819, 44-4821, 44-4822, 44-4824, 44-4826, 44-4827, 44-4830, 44-4842, 44-4851, 44-4853, 44-4861, 44-4902, and 44-4906, Revised Statutes Supplement, 1990, and also sections 44-416.02, 44-2101 to 44-2105, 44-2107 to 44-2111, 44-2113 to 44-2116, 44-2118, and 44-2119, Reissue Revised Statutes of Nebraska, 1943, and sections 44-2106, 44-2112, and 44-2117, Revised Statutes Supplement, 1990, are repealed.

Sec. 90. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.