LEGISLATIVE BILL 583

Approved by the Governor May 25, 1993

Introduced by Landis, 46

AN ACT relating to insurance; to amend sections 44-319.03, 44-4009, and 44-4040, Reissue Revised Statutes of Nebraska, 1943, and sections 44-116, 44-119, 44-214, 44-219, 44-231, 44-1525, 44-1527, 44-1640, 44-1936, 44-1951, 44-1959, 44-1960, 44-1969, 44-2008, 44-2123, 44-2131, 44-2137, 44-2621, 44-2627, 44-32,115, 44-32,118, 44-32,152, 44-3904, 44-3905, 44-4001, 44-4005, 44-4015, 44-4019, 44-4028, 44-4035, 44-4812, 44-4842, 44-4902, 44-4905, 44-4908, 44-5111, 44-5602, 44-5611, and 44-5812, Revised Statutes Supplement, 1992; to adopt the Insurers Examination Act; to eliminate provisions relating to examinations; to adopt the Life and Health Insurers Risk-Based Capital Act; to change provisions relating to stock and mutual companies; to adopt the Insurers Demutualization Act; to adopt the Assumption Reinsurance Act; to change provisions relating to insurance companies, assessment associations, title insurance, act citations, investments, fees, health maintenance organizations, agents, brokers, continuing education, prelicensing requirements, managing general agents, and reinsurance; to eliminate education requirements; to harmonize provisions; to provide severability; to repeal the original sections, and also sections 44-107.01, 44-107.02, 44-108.02 to 44-111.01, and 44-118, Reissue Revised Statutes of Nebraska, 1943, and sections 44-107, 44-107.03 to 44-108.01, 44-232, and 44-3909 to 44-3916, Revised Statutes Supplement, 1992; and to declare an emergency.

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

Section 1. Sections 1 to 10 of this act shall be known and may be cited as the Insurers Examination Act.

Sec. 2. The purpose of the Insurers Examination Act is to provide an effective and efficient system for examining the activities, operations, financial condition, and affairs of all persons transacting the business of insurance in this state and all persons otherwise subject to the jurisdiction of the director. The provisions of the act are intended to enable the director to adopt a flexible system of examinations which directs resources as may be deemed appropriate and necessary for the administration of the insurance and insurance-related laws of this state.

Sec. 3. For purposes of the Insurers Examination Act:

(1) Company shall mean any person engaging in or

proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory, or taxing authority of the director;

(2) Department shall mean the Department of Insurance;

(3) Director shall mean the Director of Insurance;

(4) Examiner shall mean any individual having been appointed by the director to conduct an examination under the act;

(5) Insurer shall mean any person authorized to transact the business of insurance, including any fraternal benefit society, reciprocal exchange, advisory organization, assessment association, unincorporated mutual association, hospital or physicians mutual insurance association, and professional association mutual insurance company; and

(6) Person shall mean any individual, aggregation of individuals, trust, association, partnership, or corporation or any affiliate thereof.

Sec. 4. (1) The director or any of his or her examiners may conduct an examination under the Insurers Examination Act of any company as often as the director in his or her sole discretion deems appropriate but shall at a minimum conduct an examination of every insurer authorized to transact business in this state not less frequently than once every five years for every foreign or alien insurer except as provided in subsection (3) of this section and once every four years for every domestic insurer. In scheduling and determining the nature, scope, and frequency of the examination of a company, the director shall consider such matters as the results of financial statement analyses and ratios, changes in the company's management or ownership, actuarial opinions, reports of independent certified public accountants, the company's ability to meet and fulfill its obligations, the company's compliance with provisions of law, other facts relating to the company's business methods, the company's management and its dealings with its policyholders, and other criteria as set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners and in effect when the director conducts an examination under this section.

(2) For purposes of completing an examination of any company under the act, the director may examine or investigate any person, or the business of any person, in so far as such examination or investigation is, in the sole discretion of the director, necessary or material to the examination of the company.

(3)(a) Prior to January 1, 1994, the director may accept an examination report conducted on a foreign or alien company authorized to transact business in this state as prepared by the insurance department of the company's state of domicile or port-of-entry state in lieu of an examination under the act.

(b) On and after January 1, 1994, the director may accept an examination report conducted on a foreign or alien company licensed in this state only if:

(i) The examination is conducted by the insurance

department of the company's state of domicile or port-of-entry state and such insurance department is at the time of the examination an accredited insurance department; or

(ii) The examination is conducted (A) under the supervision of an accredited insurance department or (B) with the participation of one or more examiners who are employed by an accredited insurance department and who, after a review of the examination workpapers and report, state under oath that the examination was conducted in a manner consistent with the standards and procedures required by his, her, or their insurance department.

(c) For purposes of this subsection, accredited insurance department shall mean a state insurance department which is accredited under the Financial Regulation Standards and Accreditation Program of the National Association of Insurance Commissioners.

Sec. 5. (1) Upon determining that an examination should be conducted, the director or his or her designee shall appoint one or more examiners to conduct the examination and instruct them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners. The director may also employ such other guidelines or procedures as the director may deem appropriate.

(2) Every company or person from whom information is sought and its officers, directors, employees, and agents shall provide to the examiners appointed under subsection (1) of this section timely, convenient, and free access to all books, records, accounts, papers, documents, and computer or other recordings relating to the property, assets, business, and affairs of the company being examined. The officers, directors, employees, and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension or refusal of or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the director's jurisdiction. Any such proceedings for suspension, revocation, or refusal of any license or authority shall be conducted pursuant to the Administrative Procedure Act. For purposes of this subsection, officers, directors, employees, and agents shall include general agents, managing agents, attorneys in fact, organizers, promoters, loss adjusters, and any persons having a contract, written or oral, pertaining to the management or control of a company or any function thereof.

(3) The director or any of his or her examiners shall have the power to issue subpoenas, to administer oaths, and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the director may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or

produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. Every person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. He or she shall be entitled to the same fees and mileage, if claimed, as a witness in the district court with mileage to be computed at the rate provided in section 81-1176, which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company being examined.

(4) When conducting an examination under the Insurers Examination Act, the director may retain attorneys, appraisers, independent actuaries, independent certified public accountants, loss-reserve specialists, or other professionals and specialists, the cost of which shall be borne by the company which is the subject of the examination.

(5) Nothing in the act shall be construed to limit the director's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(6) Nothing contained in the act shall be construed to limit the director's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the director may, in his or her sole discretion, deem appropriate.

Sec. 6. (1) All examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the company and its agents or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

(2) No later than forty-five days following completion of the examination, the examiner in charge shall submit to the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) Within thirty days of the end of the period allowed for the receipt of written submissions or rebuttals, the director shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers, and shall:

(a) Adopt the examination report as submitted or with

modification or corrections. If the examination report reveals that the company is operating in violation of any law, rule, regulation, or prior order of the director, the director may order the company to take any action the director considers necessary and appropriate to cure such violation; or

(b) Reject the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information and to resubmit a report pursuant to subsection (2) of this section.

(4) Any company aggrieved by any action of the director pursuant to subsection (3) of this section may, within ten days of such action, make written request to the director for a hearing. Upon receipt of the company's request for a hearing, the director shall provide notice of the hearing no less than ten nor more than thirty days after the date of the company's request. The notice shall identify the subject of the hearing and the specific issues.

(5) Any hearing on an examination report shall be held at such time and place as designated in the notice. A hearing may be adjourned from time to time without other or further notice than the announcement thereof at such hearing. The director shall not appoint an examiner to conduct the hearing. The hearing officer shall have power to administer oaths, examine and cross-examine witnesses, and receive documentary evidence. A full stenographic record may be made at the hearing of all testimony of witnesses and rulings by the hearing officer. Upon written request, a copy of the transcript of such record, if any, shall be furnished to the company at its expense. Any witness or party affected by the hearing shall be permitted to review a transcript of the record at the office of the department. Every person affected shall be allowed to be present and represented by counsel during the giving of all the testimony and shall be allowed a reasonable opportunity to inspect all adverse documentary proof, to examine and cross-examine witnesses, and to present proof in support of his or her interest. Nothing contained in this section shall require the observance at any such hearing of formal rules of pleading or evidence. Within twenty days of the conclusion of the hearing, the director shall enter an order, which may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

(6) The examination report, with any modifications and corrections thereof, shall be accepted by the director and filed for public inspection immediately after the expiration of the times specified in subsection (4) of this section in the event that the company has not requested a hearing. Within thirty days of the filing of such report for public inspection, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the report and related orders.

(7) Nothing in the Insurers Examination Act shall prevent or be construed as prohibiting the director from disclosing the contents of an examination report, a preliminary examination report, or any results, or any matter relating thereto, to the National Association of Insurance

Commissioners, to the insurance department of any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time as long as the recipient of the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with the act.

(8) All workpapers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the director or any other person in the course of an examination conducted under the act shall be given confidential treatment and shall not be subject to subpoena and may not be made public by the director or any other person, except to the extent provided in subsection (7) of this section, and shall not be public records subject to disclosure pursuant to sections 84-712 to 84-712.09. Access may also be granted to the National Association of Insurance Commissioners. Such parties shall agree in writing prior to receiving the information to accord it the same confidential treatment as required by this section unless the prior written consent of the company to which it pertains has been obtained.

Sec. 7. (1) No examiner may be appointed by the director if such examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any company subject to examination under the Insurers Examination Act. This section shall not be construed to automatically preclude an examiner from being:

(a) A policyholder or claimant under an insurance policy;

(b) A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;

(c) An investment owner in shares of regulated diversified investment companies; or

(d) A settlor or beneficiary of a blind trust into which any otherwise impermissible holdings have been placed.

(2) Notwithstanding the requirements of this section, the director may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions even though the individuals may from time to time be similarly employed or retained by persons subject to examination under the act.

Sec. 8. The reasonable expenses of the examination of a company conducted under the Insurers Examination Act shall be fixed and determined by the director who shall collect the same from the company examined. The company shall reimburse the amount thereof upon presentation of a statement by the director. Reimbursement shall be limited to a reasonable allocation for the salary of each examiner plus actual expenses. All money collected by the director for examination of the affairs of companies shall be remitted in accordance with section 44-116.

Sec. 9. (1) No cause of action shall arise nor shall any liability be imposed against the director, his or her authorized

representatives, or any examiner appointed by the director for any statements made or conduct performed in good faith while carrying out the provisions of the Insurers Examination Act.

(2) No cause of action shall arise, nor shall any liability be imposed against any person, for the act of communicating or delivering information or data to the director or his or her authorized representative or examiner pursuant to an examination made under the Insurers Examination Act if such act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

(3) This section does not abrogate or modify in any way any common law or statutory privilege or immunity otherwise enjoyed by any person identified in subsection (1) of this section.

(4) A person identified in subsection (1) of this section shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of the act and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding shall be substantially justified if it had a reasonable basis in law or fact at the time that it was initiated.

Sec. 10. The director may adopt and promulgate rules and regulations to carry out the Insurers Examination Act.

Sec. 11. That section 44-116, Revised Statutes Supplement, 1992, be amended to read as follows:

44-116. All money collected by the Department of Insurance for examination of the affairs of domestic, foreign, or alien insurance companies~~, reciprocal exchanges, fraternal benefit societies, and advisory organizations~~ and insurers as defined in and pursuant to the Insurers Examination Act or any other provision of Chapter 44 or for valuing the reserve liabilities of life insurance companies shall be remitted by the department to the ~~state treasury and credited by the~~ State Treasurer for credit to ~~a fund to be known as~~ the Department of Insurance Cash Fund, which fund is hereby created. Money in the Department of Insurance Cash Fund may be used for transfers to the General Fund at the direction of the Legislature. Any money in the Department of Insurance Cash Fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 12. That section 44-119, Revised Statutes Supplement, 1992, be amended to read as follows:

44-119. In order to discharge the responsibilities of the department, including the requirements of ~~section 44-107~~ the Insurers Examination Act, there shall be appointed a sufficient staff of actuaries and examiners which shall include:

(1) One or more life insurance actuaries;

(2) One or more property and casualty insurance actuaries;

(3) One or more actuarial examiners;

(4) A chief financial examiner and one or more assistant

chief financial examiners;

(5) One or more financial examiners;

(6) A chief market conduct examiner; and

(7) One or more market conduct examiners.

Sec. 13. Sections 13 to 38 of this act shall be known and may be cited as the Life and Health Insurers Risk-Based Capital Act.

Sec. 14. For purposes of the Life and Health Insurers Risk-Based Capital Act, the definitions found in sections 15 to 26 of this act shall be used.

Sec. 15. Adjusted risk-based capital report shall mean a risk-based capital report which has been adjusted by the director in accordance with subsection (3) of section 27 of this act.

Sec. 16. Corrective order shall mean an order issued by the director specifying corrective actions which the director has determined are required.

Sec. 17. Director shall mean the Director of Insurance.

Sec. 18. Domestic, when referring to insurers, shall have the same meaning as in section 44-103.

Sec. 19. Foreign, when referring to insurers, shall have the same meaning as in section 44-103.

Sec. 20. Insurer shall mean an insurer as defined in section 44-103 authorized to transact life insurance business or health insurance business, or both, except that insurer shall not include unincorporated mutual associations, assessment associations licensed pursuant to Chapter 44, article 8, fraternal benefit societies, health maintenance organizations, prepaid dental service corporations, and prepaid limited health service organizations.

Sec. 21. Negative trend shall mean a negative trend over a period of time, as determined in accordance with the trend test calculation included in the risk-based capital instructions.

Sec. 22. Risk-based capital instructions shall mean the risk-based capital report, including risk-based capital instructions adopted by the National Association of Insurance Commissioners, as such instructions may be amended by the association from time to time in accordance with the procedures adopted by the association.

Sec. 23. Risk-based capital level shall mean an insurer's company action level risk-based capital, regulatory action level risk-based capital, authorized control level risk-based capital, or mandatory control level risk-based capital. For purposes of this section:

(1) Authorized control level risk-based capital shall mean the number determined under the risk-based capital formula in accordance with the risk-based capital instructions;

(2) Company action level risk-based capital shall mean, with respect to any insurer, the product of 2.0 and its authorized control level risk-based capital;

(3) Mandatory control level risk-based capital shall mean the product of 0.7 and the authorized control level risk-based capital; and

(4) Regulatory action level risk-based capital shall mean the

product of 1.5 and its authorized control level risk-based capital.

Sec. 24. Risk-based capital plan shall mean a comprehensive financial plan containing the elements specified in subsection (2) of section 28 of this act. If the director rejects a plan and it is revised by the insurer, with or without the director's recommendation, the plan shall be called the revised risk-based capital plan.

Sec. 25. Risk-based capital report shall mean the report required in section 27 of this act.

Sec. 26. Total adjusted capital shall mean the sum of:

(1) An insurer's statutory capital and surplus; and

(2) Such other items, if any, as the risk-based capital instructions may provide.

Sec. 27. (1) Every domestic insurer shall annually, on or prior to March 15, referred to in this section as the filing date, prepare and submit to the director a risk-based capital report of its risk-based capital levels as of the end of the calendar year just ended, in a form and containing such information as is required by the risk-based capital instructions. In addition, every domestic insurer shall file its risk-based capital report:

(a) With the National Association of Insurance Commissioners in accordance with the risk-based capital instructions; and

(b) With the insurance commissioner in any state in which the insurer is authorized to do business if such insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its risk-based capital report not later than the later of:

(i) Fifteen days after the receipt of notice to file its risk-based capital report with such state; or

(ii) The filing date.

(2) An insurer's risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account and may adjust for the covariance between:

(a) The risk with respect to the insurer's assets;

(b) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(c) The interest rate risk with respect to the insurer's business; and

(d) All other business risks and such other relevant risks as are set forth in the risk-based capital instructions.

Such risks shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

(3) If a domestic insurer files a risk-based capital report which in the judgment of the director is inaccurate, the director shall adjust the risk-based capital report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment.

Sec. 28. (1) Company action level event shall mean any of the following events:

(a) The filing of a risk-based capital report by an insurer which indicates that:

(i) The insurer's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital; or

(ii) The insurer has total adjusted capital which is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 2.5 and has a negative trend;

(b) The notification by the director to the insurer of an adjusted risk-based capital report that indicates an event described in subdivision (1)(a)(i) or (ii) of this section unless the insurer challenges the adjusted risk-based capital report under section 32 of this act; or

(c) If the insurer challenges an adjusted risk-based capital report that indicates an event described in subdivision (1)(a)(i) or (ii) of this section under section 32 of this act, the notification by the director to the insurer that the director has, after a hearing, rejected the insurer's challenge.

(2) In the event of a company action level event, the insurer shall prepare and submit to the director a risk-based capital plan which shall:

(a) Identify the conditions in the insurer which contribute to the company action level event;

(b) Contain proposals of corrective actions which the insurer intends to take and would be expected to result in the elimination of the company action level event;

(c) Provide projections of the insurer's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, and capital and surplus. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(d) Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(e) Identify the quality of, and problems associated with, the insurer's business, including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, and mix of business and use of reinsurance in each case, if any.

(3) The risk-based capital plan shall be submitted:

(a) Within forty-five days after the occurrence of the company action level event; or

(b) If the insurer challenges an adjusted risk-based capital report pursuant to section 32 of this act, within forty-five days after the notification to the insurer that the director has, after a hearing, rejected the insurer's challenge.

(4) Within sixty days after the submission by an insurer of

a risk-based capital plan to the director, the director shall notify the insurer whether the risk-based capital plan shall be implemented or is, in the judgment of the director, unsatisfactory. If the director determines that the risk-based capital plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination and may set forth proposed revisions which will render the risk-based capital plan satisfactory in the judgment of the director. Upon notification from the director, the insurer shall prepare a revised risk-based capital plan which may incorporate by reference any revisions proposed by the director. The insurer shall submit the revised risk-based capital plan to the director:

(a) Within forty-five days after the notification from the director; or

(b) If the insurer challenges the notification from the director under section 32 of this act, within forty-five days after a notification to the insurer that the director has, after a hearing, rejected the insurer's challenge.

(5) In the event of a notification by the director to an insurer that the insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the director may, at the director's discretion and subject to the insurer's right to a hearing under section 32 of this act, specify in the notification that the notification constitutes a regulatory action level event.

(6) Every domestic insurer that files a risk-based capital plan or revised risk-based capital plan with the director shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance commissioner of any state in which the insurer is authorized to do business if:

(a) Such state has a law substantially similar to subsection (1) of section 33 of this act; and

(b) The insurance commissioner of such state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the risk-based capital plan or revised risk-based capital plan in such state no later than the later of:

(i) Fifteen days after the receipt of notice to file a copy of its risk-based capital plan or revised risk-based capital plan with the state; or

(ii) The date on which the risk-based capital plan or revised risk-based capital plan is filed under subsection (3) of section 29 of this act.

Sec. 29. (1) Regulatory action level event shall mean any of the following events:

(a) The filing of a risk-based capital report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level risk-based capital but less than its regulatory action level risk-based capital;

(b) The notification by the director to an insurer of an adjusted risk-based capital report that indicates the event described in subdivision (1)(a) of this section unless the insurer challenges the adjusted

risk-based capital report under section 32 of this act;

(c) If the insurer challenges an adjusted risk-based capital report that indicates the event described in subdivision (1)(a) of this section under section 32 of this act, the notification by the director to the insurer that the director has, after a hearing, rejected the insurer's challenge;

(d) The failure of the insurer to file a risk-based capital report by the filing date prescribed in section 27 of this act unless the insurer has provided an explanation for such failure which is satisfactory to the director and has cured the failure within ten days after the filing date;

(e) The failure of the insurer to submit a risk-based capital plan to the director within the time period set forth in subsection (3) of section 28 of this act;

(f) Notification by the director to the insurer that:

(i) The risk-based capital plan or revised risk-based capital plan submitted by the insurer is, in the judgment of the director, unsatisfactory; and

(ii) Such notification constitutes a regulatory action level event with respect to the insurer unless the insurer has challenged the determination under section 32 of this act;

(g) If the insurer challenges a determination by the director under subdivision (1)(f) of this section pursuant to section 32 of this act, the notification by the director to the insurer that the director has, after a hearing, rejected such challenge;

(h) Notification by the director to the insurer that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan, but only if such failure has a substantial adverse effect on the ability of the insurer to eliminate the regulatory action level event in accordance with its risk-based capital plan or revised risk-based capital plan and the director has so stated in the notification unless the insurer has challenged the determination under section 32 of this act; or

(i) If the insurer challenges a determination by the director under subdivision (1)(h) of this section pursuant to section 32 of this act, the notification by the director to the insurer that the director has, after a hearing, rejected the challenge unless the failure of the insurer to adhere to its risk-based capital plan or revised risk-based capital plan has no substantial adverse effect on the ability of the insurer to eliminate the regulatory action level event with respect to the insurer.

(2) In the event of a regulatory action level event, the director shall:

(a) Require the insurer to prepare and submit a risk-based capital plan or, if applicable, a revised risk-based capital plan;

(b) Perform such examination or analysis as the director deems necessary of the assets, liabilities, and operations of the insurer including a review of its risk-based capital plan or revised risk-based capital plan; and

(c) Subsequent to the examination or analysis, issue a corrective order.

(3) In determining corrective actions, the director may take into account such factors as are deemed relevant with respect to the insurer based upon the director's examination or analysis of the assets, liabilities, and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the risk-based capital instructions. The risk-based capital plan or revised risk-based capital plan shall be submitted:

(a) Within forty-five days after the occurrence of the regulatory action level event;

(b) If the insurer challenges an adjusted risk-based capital report pursuant to section 32 of this act and the challenge is not in the judgment of the director frivolous, within forty-five days after the notification to the insurer that the director has, after a hearing, rejected the insurer's challenge; or

(c) If the insurer challenges a revised risk-based capital plan under section 32 of this act, within forty-five days after notification to the insurer that the director has, after a hearing, rejected the insurer's challenge.

(4) The director may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the director to review the insurer's risk-based capital plan or revised risk-based capital plan, to examine or analyze the assets, liabilities, and operations of the insurer, and to formulate the corrective order with respect to the insurer. The fees, costs, and expenses relating to consultants shall be borne by the affected insurer or such other party as directed by the director.

Sec. 30. (1) Authorized control level event shall mean any of the following events:

(a) The filing of a risk-based capital report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level risk-based capital but less than its authorized control level risk-based capital;

(b) The notification by the director to the insurer of an adjusted risk-based capital report that indicates the event described in subdivision (1)(a) of this section unless the insurer challenges the adjusted risk-based capital report under section 32 of this act;

(c) If the insurer challenges an adjusted risk-based capital report that indicates the event described in subdivision (1)(a) of this section under section 32 of this act, the notification by the director to the insurer that the director has, after a hearing, rejected the insurer's challenge;

(d) The failure of the insurer to respond, in a manner satisfactory to the director, to a corrective order unless the insurer has challenged the corrective order under section 32 of this act; or

(e) If the insurer has challenged a corrective order under section 32 of this act and the director has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the director, to the corrective order subsequent to rejection or modification by the director.

(2) In the event of an authorized control level event the director shall:

(a) Take such actions as are required under section 29 of this act regarding an insurer with respect to which a regulatory action level event has occurred; or

(b) If the director deems it to be in the best interests of the policyholders and creditors of the insurer and of the public, take such actions as are necessary to cause the insurer to be placed under regulatory control under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act. In the event the director takes such actions, the authorized control level event shall be deemed sufficient grounds for the director to take action under the act, and the director shall have the rights, powers, and duties with respect to the insurer as are set forth in the act. In the event the director takes actions under this subdivision pursuant to an adjusted risk-based capital report, the insurer shall be entitled to such protections as are afforded to insurers under the provisions of the act pertaining to summary proceedings.

Sec. 31. (1) Mandatory control level event shall mean any of the following events:

(a) The filing of a risk-based capital report which indicates that the insurer's total adjusted capital is less than its mandatory control level risk-based capital;

(b) The notification by the director to the insurer of an adjusted risk-based capital report that indicates the event described in subdivision (1)(a) of this section unless the insurer challenges the adjusted risk-based capital report under section 32 of this act; or

(c) If the insurer challenges an adjusted risk-based capital report that indicates the event described in subdivision (1)(a) of this section under section 32 of this act, the notification by the director to the insurer that the director has, after a hearing, rejected the insurer's challenge.

(2) In the event of a mandatory control level event, the director shall take such actions as are necessary to cause the insurer to be placed under regulatory control under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act. In the event the director takes such actions, the mandatory control level event shall be deemed sufficient grounds for the director to take action under the act, and the director shall have the rights, powers, and duties with respect to the insurer as are set forth in the act. In the event the director takes actions under this subsection pursuant to an adjusted risk-based capital report, the insurer shall be entitled to such protections as are afforded to insurers under the provisions of the act pertaining to summary proceedings. Notwithstanding the provisions of this subsection, the director may forego action for up to ninety days after the mandatory control level event if he or she finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.

Sec. 32. Upon any of the following notifications, the insurer shall have the right to a hearing pursuant to the Administrative Procedure Act at which the insurer may challenge any determination of

action by the director:

(1) Notification to an insurer by the director of an adjusted risk-based capital report;

(2) Notification to an insurer by the director that:

(a) The insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory; and

(b) Such notification constitutes a regulatory action level event with respect to such insurer;

(3) Notification to an insurer by the director that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan and that such failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its risk-based capital plan or revised risk-based capital plan; or

(4) Notification to an insurer by the director of a corrective order with respect to the insurer.

The insurer shall notify the director of its request for a hearing within five days after the notification by the director. Upon receipt of the insurer's request for a hearing, the director shall set a date for the hearing, which date shall be no less than ten nor more than thirty days after the date of the insurer's request.

Sec. 33. (1) All risk-based capital reports, to the extent the information in the reports is not required to be set forth in a publicly available annual statement schedule and risk-based capital plans, including the results or reports of any examination or analysis of an insurer performed pursuant to the Life and Health Insurers Risk-Based Capital Act and any corrective order issued by the director pursuant to examination or analysis, with respect to any domestic insurer or foreign insurer which are filed with the director shall constitute information that might be damaging to the insurer if made available to its competitors and therefor shall be kept confidential by the director and shall not be public records subject to disclosure pursuant to sections 84-712 to 84-712.09. This information shall not be made public or be subject to subpoena other than by the director and then only for the purpose of enforcement actions taken by the director pursuant to the act or any other provision of the insurance laws of this state. Nothing in the act shall prevent or be construed to prohibit the director from disclosing risk-based capital reports and risk-based capital plans to the National Association of Insurance Commissioners and to the insurance department of any other state or country if the association or department agrees in writing to keep them confidential.

(2) It is the judgment of the Legislature that the comparison of an insurer's total adjusted capital to any of its risk-based capital levels is a regulatory tool which may indicate the need for possible corrective action with respect to the insurer and is not intended as a means to rank insurers generally. Therefor, except as otherwise required under the act, the making, publishing, disseminating, circulating, or placing before the public or the causing, directly or indirectly, to be made, published,

disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the risk-based capital levels of any insurer or of any component derived in the calculation, by any insurer, agent, broker, or other person engaged in any manner in the insurance business would be misleading and is therefor prohibited. If any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to any of its risk-based capital levels or an inappropriate comparison of any other amount to the insurers' risk-based capital levels is published in any written publication and the insurer is able to demonstrate to the director with substantial proof the falsity of such statement or the inappropriateness, as the case may be, the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

Sec. 34. The provisions of the Life and Health Insurers Risk-Based Capital Act are supplemental to any other provisions of the laws of this state and shall not preclude or limit any other powers or duties of the director under such laws, including, but not limited to, the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

Sec. 35. (1) Any foreign insurer shall, upon the written request of the director, submit to the director a risk-based capital report as of the end of the calendar year just ended not later than the later of:

(a) The date a risk-based capital report would be required to be filed by a domestic insurer under section 27 of this act; or

(b) Fifteen days after the request is received by the foreign insurer.

Any foreign insurer shall, at the written request of the director, promptly submit to the director a copy of any risk-based capital plan that is filed with the insurance commissioner of any other state.

(2) In the event of a company action level event or regulatory action level event with respect to any foreign insurer as determined under the risk-based capital law applicable in the state of domicile of the insurer or, if no risk-based capital law is in force in that state, under the Life and Health Insurers Risk-Based Capital Act, if the insurance commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file a risk-based capital plan in the manner specified under the risk-based capital law applicable in the state of domicile of the insurer or, if no risk-based capital law is in force in the state of domicile of the insurer, under section 28 of this act, the director may require the foreign insurer to file a risk-based capital plan with the director. In such event, the failure of the foreign insurer to file a risk-based capital plan with the director shall be grounds to order the insurer to cease and desist from writing new insurance business in this state.

(3) In the event of a mandatory control level event with

respect to any foreign insurer, if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation and liquidation law applicable in the state of domicile of the foreign insurer, the director may make application to the district court of Lancaster County under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act with respect to the liquidation of property of foreign insurers found in this state, and the occurrence of the mandatory control level event shall be considered adequate grounds for the application.

Sec. 36. All notices by the director to an insurer which may result in regulatory action under the Life and Health Insurers Risk-Based Capital Act shall be effective upon dispatch if transmitted by registered or certified mail or, in the case of any other transmission, shall be effective upon the insurer's receipt of such notice.

Sec. 37. For risk-based capital reports required to be filed with respect to 1993 only, the following requirements shall apply in lieu of the provisions of sections 28 to 31 of this act:

(1) In the event of a company action level event with respect to a domestic insurer, the director shall take no regulatory action under the Life and Health Insurers Risk-Based Capital Act;

(2) In the event of a regulatory action level event under subdivisions (1)(a) through (c) of section 29 of this act, the director shall take the actions required under section 28 of this act;

(3) In the event of a regulatory action level event under subdivisions (1)(d) through (i) of section 29 of this act or an authorized control level event, the director shall take the actions required under section 29 of this act with respect to the insurer; and

(4) In the event of a mandatory control level event with respect to an insurer, the director shall take the actions required under section 30 of this act with respect to the insurer.

Sec. 38. The director may adopt and promulgate rules and regulations to carry out the Life and Health Insurers Risk-Based Capital Act.

Sec. 39. That section 44-214, Revised Statutes Supplement, 1992, be amended to read as follows:

44-214. (1) Except as provided in section 44-202.01, no stock insurance company shall, on and after August 25, 1989, transact any line of insurance specified in section 44-201 in this state unless it maintains a capital stock, actually paid in cash or invested as provided by law, of at least one million dollars, nor shall it, on or after such date, transact the line or lines of insurance specified in subdivisions (1) and (2) of section 44-201 and in addition thereto one or more lines of insurance other than those specified in subdivisions (3) and (4) of such section in this state unless it maintains a capital stock, actually paid in cash or invested as provided by law, of at least two million dollars. No stock insurance company shall, on and after August 25, 1989, begin to transact any line of insurance as specified in section 44-201 unless it has a surplus of at least one million dollars, nor shall it, on and after such date, begin to transact the line or lines of insurance specified in subdivisions (1) and (2) of section

44-201 and in addition thereto one or more lines of insurance other than those specified in subdivisions (3) and (4) of such section in this state unless it has a surplus of at least two million dollars.

(2) The provisions of subsection (1) of this section shall be considered minimum requirements. Stock insurers holding a certificate of authority to transact business in this state shall also be subject to the requirements of the Life and Health Insurers Risk-Based Capital Act.

Sec. 40. That section 44-219, Revised Statutes Supplement, 1992, be amended to read as follows:

44-219. (1)(a) No domestic mutual insurance company shall begin to transact the business of insurance until ~~(a)~~ (i) it has received not less than one hundred applications for insurance unless organized to write ~~(i)~~ (A) workers' compensation and employers liability insurance, in which case it shall receive applications from at least twenty employers covering in the aggregate five hundred employees, or ~~(ii)~~ (B) the line or lines of insurance specified in subdivisions (13) and (14) of section 44-201, in which case no application shall be required, and in addition thereto ~~(b)~~ (ii) it has received in cash one annual premium for each application for insurance.

(b) ~~(2)~~ Except as provided in section 44-202.01, no mutual insurance company shall, on and after August 25, 1989, transact any line of insurance specified in section 44-201 in this state unless it has and maintains a minimum surplus, in cash or invested as provided by law, of at least one million dollars, nor shall it, on and after such date, transact the line or lines of insurance specified in subdivisions (1) and (2) of section 44-201 and in addition thereto one or more lines of insurance other than those specified in subdivisions (3) and (4) of such section in this state unless it has and maintains a minimum surplus, in cash or invested as provided by law, of at least two million dollars.

(2) The provisions of subsection (1) of this section shall be considered minimum requirements. Mutual insurers holding a certificate of authority to transact business in this state shall also be subject to the requirements of the Life and Health Insurers Risk-Based Capital Act.

Sec. 41. Sections 41 to 60 of this act shall be known and may be cited as the Insurers Demutualization Act.

Sec. 42. The Legislature finds and declares that it is in the public interest that a domestic mutual insurer be permitted to convert to a stock insurer on terms and conditions that are fair and equitable to such mutual insurer's policyholders. The Legislature further finds that because it is not possible to anticipate all of the circumstances and considerations which may arise incident to a conversion from a mutual insurer to a stock insurer, the Director of Insurance should have broad authority in reviewing such conversion, and the procedures and criteria to be applied by the director should be flexible within the parameters of the Insurers Demutualization Act. The act shall be liberally construed to effect the legislative intent set forth in this section and shall not be interpreted to limit the powers granted to the director by other provisions of the law.

Sec. 43. For purposes of the Insurers Demutualization

Act, the terms defined in section 44-103 shall have the same meanings as set forth in such section and:

(1) Final order shall mean the final written order of the director approving or disapproving the conversion of a mutual insurer to a stock insurer; and

(2) Policyholders shall mean the policyholders of the mutual insurer on the day the plan of conversion is initially approved by the board of directors of the mutual insurer.

Sec. 44. A domestic mutual insurer may amend its articles of incorporation pursuant to the Insurers Demutualization Act to become a stock insurer under a fair and equitable plan of conversion approved by the director.

Sec. 45. A domestic mutual insurer may convert to a stock insurer by meeting the requirements of the Insurers Demutualization Act. The mutual insurer shall file an application to convert to a stock insurer with the director. The application shall be accompanied by a nonrefundable application fee of one thousand dollars. The application shall include the following at a minimum:

(1) A plan of conversion containing a description of the structure and form of the proposed consideration to the policyholders, the projected range of the number of shares of capital stock to be issued by the new stock insurer, and such other proposed conditions and provisions as determined by the mutual insurer not to be inconsistent with the act;

(2) A certification that the plan of conversion has been duly adopted by a vote of not less than two-thirds of the members of the board of directors of the mutual insurer;

(3) A certification adopted by not less than two-thirds of the members of the board of directors of the mutual insurer that the plan of conversion is fair and equitable to the policyholders;

(4) Certified copies of the proposed amendments to the articles of incorporation and bylaws to effectuate the conversion;

(5) A form of the proposed notice to be mailed by the mutual insurer to its policyholders as required in section 49 of this act; and

(6) Any other additional information as the director may reasonably request.

Sec. 46. The plan of conversion required by section 45 of this act shall specify the consideration to the policyholders entitled thereto, which consideration may be in cash, stock, a combination thereof, or such other valuable consideration as the director may approve. Unless otherwise ordered by the director and notwithstanding any provisions of law to the contrary, policyholders are not required to be given preemptive rights.

Sec. 47. The director shall conduct a public hearing within one hundred and twenty days after the date the application is filed pursuant to section 45 of this act. Any interested person may appear or otherwise be heard at the public hearing. The director may in his or her discretion continue the public hearing for a reasonable period of time not

to exceed sixty days. The mutual insurer applying to convert to a stock insurer shall give such reasonable notice of the public hearing as the director in his or her discretion shall require.

Sec. 48. (1) The director shall issue an order making an initial determination to approve or disapprove the application within thirty days after the close of the public hearing as required by section 47 of this act.

(2) The director shall not approve the application unless he or she finds that:

(a) The plan of conversion is fair and equitable to the policyholders;

(b) The plan of conversion does not deprive the policyholders of their property rights or due process of law; and

(c) The new stock insurer would meet the minimum requirements to be issued a certificate of authority by the director to transact business in this state and the continued operations of the new stock insurer would not be hazardous to future policyholders and the public.

(3) If the director makes a determination to disapprove the application, the director shall issue a final order setting forth specific findings for the disapproval.

Sec. 49. Within forty-five days after the date of the director's initial determination of approval pursuant to section 48 of this act, unless extended by the director for good cause, the mutual insurer shall hold a meeting of its policyholders at a reasonable time and place to vote upon the plan of conversion. The mutual insurer shall give notice at least thirty days before the time fixed for the meeting, by first-class mail to the last-known address of each policyholder, that the plan of conversion will be voted upon at a regular or special meeting of the policyholders, which notice shall include a brief description of the plan of conversion and a statement that the director has initially approved the plan of conversion. The notice mailing to each policyholder shall also include a written proxy permitting the policyholder to vote for or against the plan of conversion. The entity to which any group insurance policy is issued, and not any person covered under the group insurance policy, shall be considered the policyholder for purposes of voting. A plan of conversion shall be approved only if not less than two-thirds of the policyholders voting in person or by proxy at the meeting vote in favor of such plan of conversion. Each policyholder shall be entitled to only one vote regardless of the number of policies owned by the policyholder. The mutual insurer shall file a certification with the director setting forth the vote. The director shall enter a final order approving the application to convert to a stock insurer within ten days after receiving a valid certification from the mutual insurer certifying that the plan of conversion was approved by not less than two-thirds of the policyholders voting in person or by proxy on the plan of conversion. In such event, the director shall also publish notification of the issuance of the final order in a legal newspaper in Lancaster County and in the county of domicile of the mutual insurer if

different than Lancaster County.

Sec. 50. The director shall issue a certificate of authority to a new stock insurer when the mutual insurer files a certificate with the director stating that all of the conditions set forth in the plan of conversion have been satisfied so long as the board of directors of the mutual insurer has not abandoned the plan of conversion pursuant to section 54 of this act. The conversion shall be effective upon the issuance of a certificate of authority by the director. Upon issuance of the certificate of authority, the insurer's articles of incorporation shall be treated as amended in compliance with section 44-231.

Sec. 51. Any person affected by a final order issued pursuant to the Insurers Demutualization Act shall have the right to appeal such order to the district court of Lancaster County. The appeal shall be in accordance with the Administrative Procedure Act.

Sec. 52. Corporate existence of a mutual insurer converting to a stock insurer pursuant to the Insurers Demutualization Act shall not terminate, but the new stock insurer shall be deemed to be a continuation of the mutual insurer and to have been organized on the date the mutual insurer was originally organized.

Sec. 53. If the name of a mutual insurer converting to a stock insurer pursuant to the Insurers Demutualization Act includes the word mutual, the new stock insurer may continue to use the word mutual in its name if (1) the name includes a word or words that identify the new stock insurer as a stock insurer and (2) the director finds that the continued use of the word mutual in its name is not likely to mislead or deceive the public.

Sec. 54. A mutual insurer may, by not less than a two-thirds vote of the members of its board of directors and with the approval of the director, abandon the plan of conversion at any time before the issuance of the certificate of authority by the director. Upon such abandonment, all rights and obligations arising out of the plan of conversion shall terminate and the mutual insurer shall continue to conduct its business as a domestic mutual insurer as though no plan of conversion had ever been adopted.

Sec. 55. Except as otherwise specifically provided in section 56 of this act, prior to and for a period of five years following the issuance of a certificate of authority to a new stock insurer under the Insurers Demutualization Act, no person other than the new stock insurer shall, without the prior approval of the director, directly or indirectly offer to acquire or acquire in any manner the beneficial ownership of five percent or more of any class of a voting security of the new stock insurer or of any institution which owns a majority or all of the voting securities of the new stock insurer.

Sec. 56. Nothing in the Insurers Demutualization Act shall prohibit the inclusion in the plan of conversion of provisions under which individuals comprising the new stock insurer's board of directors, officers, employees, agents, and persons acting as trustees of employee stock ownership plans or other employee benefit plans may be entitled to

purchase for cash capital stock of the new stock insurer at the same price initially issued by the new stock insurer under the plan of conversion.

Sec. 57. No director, officer, employee, or agent of the mutual insurer and no other person shall receive any fee, commission, or other valuable consideration whatsoever, other than his or her usual regular salary and compensation, for in any manner aiding, promoting, or assisting in a plan of conversion except as set forth in the plan of conversion approved by the director. This section shall not prohibit a management-incentive compensation program which is contained in the plan of conversion and approved by the director to be adopted upon conversion to the new stock insurer or prohibit such a program to be later adopted by the new stock insurer. This section shall not be deemed to prohibit the payment of reasonable fees and compensation to attorneys, accountants, actuaries, and investment bankers for services performed in the independent practice of their professions even though any such person is also a member of the board of directors of the mutual insurer.

Sec. 58. Notwithstanding the requirements of section 45 of this act, in the event of insolvency of the mutual insurer, its board of directors by a vote of not less than two-thirds of its members may, in its application, request that the director waive the requirements imposing notice to policyholders and policyowner approval for the plan of conversion. The application shall specify both of the following:

(1) The method and basis for the issuance of the new stock insurer's shares of its capital stock to an independent party in connection with an investment by such independent party in an amount sufficient to restore the insurer to a sound financial condition; and

(2) That the conversion shall be accomplished without distribution to the past, present, or future policyholders, if the director finds that the value of the insurer, due to insolvency, is insufficient to warrant any such distribution.

If the director determines that the mutual insurer is insolvent as defined in section 44-4803, he or she shall grant the request to waive the requirements imposing notice to policyholders and policyowner approval for the plan of conversion.

Sec. 59. For the purpose of determining whether a plan of conversion meets the requirements of the Insurers Demutualization Act, the director may engage the services of experts. All reasonable costs related to the review of a plan of conversion, including those costs attributable to the use of experts, shall be paid by the mutual insurer making the filing.

Sec. 60. The director may adopt and promulgate rules and regulations to carry out the Insurers Demutualization Act.

Sec. 61. That section 44-231, Revised Statutes Supplement, 1992, be amended to read as follows:

44-231. ~~Any~~ Except as otherwise provided in the Insurers Demutualization Act, any domestic insurance company, association, or society, hereinafter called company, may amend its articles of incorporation from time to time without limitation so long as the articles

as amended contain only such provisions as are authorized in original articles of incorporation under Chapter 44. Proposed amendments to the articles shall be made in the following manner:

(1) The board of directors of such company shall adopt, by a two-thirds vote of all of the directors thereof, the proposed amendments to the articles of incorporation;

(2) Prior to the meeting of the shareholders or members at which the proposed amendments are to be considered, the proposed amendments, with all matters relating thereto, shall be submitted to the Department of Insurance for examination. If satisfied that the interests of the policyholders of such company and all concerned are properly protected and that no reasonable objections exist to the proposed amendments to the articles, the department may approve the same or it may require change or modification prior to any approval, as it may deem best for the interest of those affected; and ~~. If the proposed amendment of the articles of incorporation effects a change in the corporate structure from that of a mutual company to a stock company, the department shall also make such orders with reference to the distribution of any existing or future surplus of such company as may be just and equitable to the policyholders. The department shall duly safeguard the interests of all parties affected and especially the interests of the policyholders; and~~

(3) If the Department of Insurance requires any changes or modifications of the proposed amendments to the articles of incorporation, such amendments shall be in turn submitted to and be adopted by a two-thirds vote of all the directors of such company. The proposed amendments to the articles of incorporation as originally adopted or readopted, as the case may be, shall then be submitted to the shareholders or members of the company entitled to vote for adoption at a regular meeting or a special meeting thereof.

Except as hereinafter provided, notice of such a special meeting together with a description of the proposed amendment to the articles of incorporation shall be given to each shareholder or member entitled to vote in the manner authorized or approved by the department at least thirty days prior thereto.

If the proposed amendments to the articles of incorporation are to be considered at a regular annual meeting of the members or shareholders, the Director of Insurance may, in his or her discretion, require the giving of the same notice as is required for a special meeting.

If the proposed amendments to the articles of incorporation are to be considered at a special meeting of the members of a mutual or assessment company or at a regular annual meeting thereof, notice of which has been required, the Director of Insurance may, upon application of the board of directors of such company, permit the company to exclude from the members entitled to notice those who in the opinion of the director are not reasonably ascertainable.

~~If the proposed amendment of the articles of incorporation effects a change in the corporate structure from that of a mutual company to a stock company, there shall also be included in such~~

~~notice the approval of the Department of Insurance and its orders as to the disposition and distribution of the surplus of such company.~~ If the proposed amendments to the articles of incorporation are adopted by a two-thirds vote of all the stock, if a stock company, ~~or~~ by a vote of two-thirds of the members voting at such meeting in person or by proxy, if a mutual or assessment company, or pursuant to the Insurers Demutualization Act, then they shall be filed in the same offices as original articles of incorporation, and the same notice shall be published.

Sec. 62. Sections 62 to 72 of this act shall be known and may be cited as the Assumption Reinsurance Act.

Sec. 63. It is the purpose of the Assumption Reinsurance Act to provide for the regulation of the transfer and novation of contracts of insurance by way of assumption reinsurance. The act describes assumption reinsurance and establishes notice and disclosure requirements which protect and define the rights and obligations of policyholders, regulators, and the parties to assumption reinsurance agreements.

Sec. 64. (1) The Assumption Reinsurance Act shall apply to any insurer authorized to transact business in this state which either assumes or transfers the obligations or risks on contracts of insurance owned by policyholders residing in this state pursuant to an assumption reinsurance agreement. The act shall not relieve any insurer of any other requirements of the insurance laws of this state.

(2) The act shall not apply to:

(a) Any reinsurance agreement or transaction in which the ceding insurer continues to remain directly liable for its insurance obligations or risks under the contracts of insurance subject to the reinsurance agreement;

(b) The substitution of one insurer for another upon the expiration of insurance coverage pursuant to statutory or contractual requirements and the issuance of a new contract of insurance by another insurer;

(c) The transfer of contracts of insurance pursuant to mergers or consolidations of two or more insurers to the extent that those transactions are regulated by law;

(d) Any insurer subject to a judicial order of rehabilitation or liquidation; or

(e) Any reinsurance agreement or transaction to which a state insurance guaranty association is a party.

Sec. 65. For purposes of the Assumption Reinsurance Act:

(1) Assuming insurer shall mean the insurer which acquires an insurance obligation or risk from the transferring insurer pursuant to an assumption reinsurance agreement;

(2) Assumption reinsurance agreement shall mean any contract which both:

(a) Transfers insurance obligations or risks of existing contracts of insurance or contracts of insurance which are in force from a transferring insurer to an assuming insurer; and

(b) Is intended to effect a novation of the transferred

contract of insurance with the result that the assuming insurer becomes directly liable to the policyholders of the transferring insurer and the transferring insurer's insurance obligations or risks under such contract of insurance are extinguished;

(3) Contract of insurance shall mean any written agreement between an insurer and policyholder pursuant to which the insurer, in exchange for premium or other consideration, agrees to assume an obligation or risk of the policyholder or to make payments on behalf of or to the policyholder or its beneficiaries. The term shall include all lines of insurance specified in section 44-201;

(4) Director shall mean the Director of Insurance;

(5) Notice of transfer shall mean the written notice to the policyholders required by section 66 of this act;

(6) Policyholder shall mean any individual or entity which has the right to terminate or otherwise alter the terms of a contract of insurance. The term shall include any certificate holder whose certificate is in force on the proposed effective date of the assumption if the certificate holder has the right to keep the certificate in force without change in benefit following termination of the group policy. Such rights to keep the certificate in force shall not include the right to elect individual coverage under sections 44-1640 to 44-1645 or the federal Consolidated Omnibus Budget Reconciliation Act, section 601 et seq., of the federal Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1161 et seq.; and

(7) Transferring insurer shall mean the insurer which transfers an insurance obligation or risk to an assuming insurer pursuant to an assumption reinsurance agreement.

Sec. 66. (1) The transferring insurer shall provide or cause to be provided to each policyholder a notice of transfer by first-class mail addressed to the policyholder's last-known address or to the address to which premium notices or other policy documents are sent or, with respect to home-service business, by personal delivery with acknowledged receipt. A notice of transfer shall also be sent to the transferring insurer's agents or brokers of record on the affected policies.

(2) The notice of transfer shall state or provide:

(a) The date the transfer and novation of the policyholder's contract of insurance is proposed to take place;

(b) The names, addresses, and telephone numbers of the assuming insurer and transferring insurer;

(c) That the policyholder has the right to either accept or reject the transfer and novation;

(d) The procedures and time limit for accepting or rejecting the transfer and novation;

(e) A summary of any effect that accepting or rejecting the transfer and novation will have on the policyholder's rights;

(f) A statement that the assuming insurer is authorized to write the type of business being assumed in the state where the policyholder resides or is otherwise authorized, as provided in the

Assumption Reinsurance Act, to assume such business;

(g) The name and address of the person at the transferring insurer to whom the policyholder should send its written statement of acceptance or rejection of the transfer and novation;

(h) The address and telephone number of the insurance department of the state where the policyholder resides so that the policyholder may write or call such insurance department for further information regarding the financial condition of the assuming insurer;

(i) The following information regarding both insurers:

(i) Ratings for the last five years if available, or for such lesser period as is available, from two nationally recognized insurance rating services acceptable to the director, including the rating service's explanation of the rating's meaning. If ratings are unavailable for any year of the five-year period, this shall also be disclosed;

(ii) The annual statement balance sheet as of December 31 for the previous two years if available, or for such lesser period as is available, and as of the date of the most recent quarterly statement; and

(iii) An explanation of the reason for the transfer; and

(j) Such other information as the director may by rule and regulation require.

(3) A notice of transfer in a form identical or substantially similar to a form prescribed by the director shall be deemed to comply with the requirements of subsection (2) of this section.

(4) The notice of transfer shall include a preaddressed, postage-paid response card which a policyholder may return as its written statement of acceptance or rejection of the transfer and novation.

(5) The notice of transfer proposed to be used shall be filed with the director as part of the prior approval requirement set forth in subsection (1) of section 67 of this act.

Sec. 67. (1) Prior approval by the director shall be required for any transaction by which an insurer domiciled in this state assumes or transfers obligations or risks on contracts of insurance under an assumption reinsurance agreement. An insurer authorized to transact business in this state shall not transfer obligations or risks on contracts of insurance owned by policyholders residing in this state to any insurer that is not authorized to transact business in this state. An insurer domiciled in this state shall not assume obligations or risks on contracts of insurance owned by policyholders residing in any other state unless it is authorized to transact business in the other state or the insurance department of that state has approved such assumption.

(2) A foreign or alien insurer authorized to transact business in this state that enters into an assumption reinsurance agreement which transfers the obligations or risks on contracts of insurance owned by policyholders residing in this state shall file or cause to be filed the assumption certificate with the director, a copy of the notice of transfer and an affidavit that the transaction is subject to assumption reinsurance requirements adopted by statute or regulation in the state of domicile or port-of-entry state of both the transferring insurer and assuming insurer

which are substantially similar to those contained in the Assumption Reinsurance Act.

(3) A foreign or alien insurer authorized to transact business in this state that enters into an assumption reinsurance agreement which transfers the obligations or risks on contracts of insurance owned by policyholders residing in this state shall obtain prior approval of the director and be subject to all other requirements of the act unless the transferring insurer and assuming insurer are subject to assumption reinsurance requirements adopted by statute or regulation in the state of their domicile or port-of-entry state which are substantially similar to those contained in the act.

(4) An insurer required to receive approval of assumption reinsurance transactions under this section shall not enter into an assumption reinsurance transaction until:

(a) Thirty days after the director has received a request for approval and has not within such period disapproved such transaction; or

(b) The director has approved the transaction within the thirty-day period.

(5) The following factors, along with such other factors as the director deems appropriate under the circumstances, shall be considered by the director in reviewing a request for approval:

(a) The financial condition of the transferring insurer and assuming insurer and the effect the transaction will have on the financial condition of each insurer;

(b) The competence, experience, and integrity of those persons who control the operation of the assuming insurer;

(c) The plans or proposals the assuming insurer has with respect to the administration of the policies subject to the proposed transfer;

(d) Whether the transfer is fair and reasonable to the policyholders of both insurers; and

(e) Whether the notice of transfer to be provided by the insurer is fair, adequate, and not misleading.

Sec. 68. (1) Every policyholder shall have the right to reject the transfer and novation of his or her contracts of insurance. Policyholders electing to reject the assumption transaction shall return to the transferring insurer the preaddressed, postage-paid response card or other written notice and indicate thereon that the assumption is rejected.

(2) Payment of the next premium after notice is received to the assuming insurer shall be deemed to indicate the policyholder's acceptance of the transfer to the assuming insurer and a novation shall be deemed to have been effected if the premium notice clearly states that payment of the premium to the assuming insurer shall constitute acceptance of the transfer. Such a premium notice shall also provide a method for the policyholder to pay the premium while reserving the right to reject the transfer.

(3) After no fewer than twelve months after the mailing of the initial notice of transfer required under section 66 of this act, if positive

acceptance to the transfer and assumption has not been received or acceptance has not been deemed to have occurred under subsection (2) of this section, the transferring insurer shall send to the policyholder a second and final notice of transfer. If the policyholder does not reject the transfer during the two-month period immediately following the date on which the transferring insurer mails the second and final notice of transfer, the policyholder's acceptance will be deemed to have occurred and novation of the contract of insurance will be effected.

(4) The transferring insurer will be deemed to have received the response card on the date it is postmarked. A policyholder may also send a response card by facsimile or other electronic transmission or by registered mail, express delivery, or courier service, in which case the response card shall be deemed to have been received by the assuming insurer on the date of actual receipt by the transferring insurer.

Sec. 69. If a policyholder accepts the transfer pursuant to section 68 of this act or if the transfer is effected under section 70 of this act, there shall be a novation of the contract of insurance subject to the assumption reinsurance agreement with the result that the transferring insurer shall thereby be relieved of all insurance obligations or risks transferred under the assumption reinsurance agreement and the assuming insurer shall become directly and solely liable to the policyholder for those insurance obligations or risks.

Sec. 70. If an insurer domiciled in this state or in a state which does not have assumption reinsurance requirements adopted by statute or regulation substantially similar to those contained in the Assumption Reinsurance Act is deemed by the director to be in hazardous financial condition or an administrative or judicial proceeding has been instituted against it for the purpose of liquidating, reorganizing, or conserving such insurer, and the transfer of the contracts of insurance is in the best interest of the policyholders, as determined by the director, a transfer and novation may be effected notwithstanding the provisions of the act. This may include use of a form of implied acceptance and adequate notification to the policyholder of the circumstances requiring the transfer and novation as approved by the director.

Sec. 71. The Assumption Reinsurance Act shall apply to all assumption reinsurance agreements entered into on or after January 1, 1994.

Sec. 72. The director may adopt and promulgate rules and regulations to carry out the Assumption Reinsurance Act.

Sec. 73. That section 44-319.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-319.03. Every domestic assessment association hereafter organized to transact the business of insurance in this state, except (1) ~~assessment hail associations, (2)~~ health and accident assessment associations; and ~~(3)~~ (2) assessment associations organized primarily to write insurance coverage on farm properties against the perils of fire, lightning, windstorm, and hail, shall deposit with the Department of Insurance eligible securities for the benefit of all of its policyholders in the

United States equal to one-fifth of the minimum surplus funds required of domestic mutual insurance companies licensed to write the same kind or kinds of insurance.

Sec. 74. That section 44-1525, Revised Statutes Supplement, 1992, be amended to read as follows:

44-1525. Any of the following acts or practices, if committed in violation of section 44-1524, shall be unfair trade practices in the business of insurance:

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

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

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

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

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

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

(f) Misrepresents for the purpose of inducing or tending to induce the purchase, lapse, forfeiture, exchange, conversion, or surrender of any policy, including intentionally misquotes any premium rate;

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

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

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

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

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

(5)(a) Knowingly filing with any supervisory or other public

official, or knowingly making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or knowingly causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of an insurer; or

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

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

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

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

(c) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk unless:

(i) The refusal, cancellation, or limitation is for a business purpose which is not a pretext for unfair discrimination; or

(ii) The refusal, cancellation, or limitation is required by law, rule, or regulation;

(d) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk, or the personal property contained therein, because of the age of the residential property unless:

(i) The refusal, cancellation, or limitation is for a business purpose which is not a pretext for unfair discrimination; or

(ii) The refusal, cancellation, or limitation is required by law, rule, or regulation;

(e) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual solely because of the sex or marital status of the individual. This subdivision shall not prohibit an insurer from taking marital status into account for the purpose

of defining individuals eligible for dependent benefits; or

(f) Terminating or modifying coverage or refusing to issue or refusing to renew any property or casualty insurance policy solely because the applicant or insured or any employee of the applicant or insured is mentally or physically impaired unless:

(i) The termination, modification, or refusal is for a business purpose which is not a pretext for unfair discrimination; or

(ii) The termination, modification, or refusal is required by law, rule, or regulation.

This subdivision (f) shall not apply to any sickness and accident insurance policy sold by a casualty insurer and shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any policy;

(8)(a) Except as otherwise expressly provided by law:

(i) Knowingly permitting or offering to make or making any life insurance policy, annuity, or sickness and accident insurance policy, or agreement as to any such policy or annuity, other than as plainly expressed in the policy or annuity issued thereon, or paying, allowing, or giving, or offering to pay, allow, or give, directly or indirectly, as inducement to such policy or annuity, any rebate of premiums payable on the policy or annuity, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the policy or annuity; or

(ii) ~~giving~~ Giving, selling, purchasing, or offering to give, sell, or purchase as inducement to such policy or annuity or in connection therewith any stocks, bonds, or other securities of any insurer or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value not specified in the policy or annuity.

(b) Nothing in subdivision (7) or (8)(a) of this section shall be construed as including within the definition of discrimination or rebates any of the following acts or practices:

(i) In the case of any life insurance policy or annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance if such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the insurer and its policyholders;

(ii) In ~~in~~ the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses; or

(iii) Readjustment ~~readjustment~~ of the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;

(9) Failing of any insurer to maintain a complete record of

all the complaints received since the date of its last examination conducted pursuant to ~~section 44-107 or 44-107.01~~ the Insurers Examination Act. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. For purposes of this subdivision, complaint shall mean any written communication primarily expressing a grievance;

(10) Making false or fraudulent statements or representations on or relative to an application for a policy for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual person;

(11) Failing of any insurer, upon receipt of a written inquiry from the department, to respond to such inquiry or request additional reasonable time to respond within fifteen working days; and

(12) Violating any provision of section 44-320, 44-348, 44-360, 44-361, 44-369, 44-392, 44-393, 44-515 to 44-518, 44-522, 44-523, 44-1951, 44-1953 to 44-1955, 44-1959, 44-1960, 44-1975, 44-3606, 44-4809, 44-4812, or 44-4817.

Sec. 75. That section 44-1527, Revised Statutes Supplement, 1992, be amended to read as follows:

44-1527. The director may examine and investigate the affairs of every insurer doing business in this state in order to determine whether such insurer has been or is engaged in any unfair trade practice defined in section 44-1524. An insurer other than an agent, broker, or insurance consultant shall reimburse the department for the expense of examination in the same manner as provided for examination of insurance companies in ~~sections 44-107.02 and 44-107.03~~ the Insurers Examination Act.

Sec. 76. That section 44-1640, Revised Statutes Supplement, 1992, be amended to read as follows:

44-1640. An employer or employer trust group policy or contract delivered or issued for delivery in this state which provides coverage to a group which, based on the number of employees, is not a group subject to ~~section 162(k)~~ sections 1161 through 1168 of the Internal Revenue Code and which provides hospital, surgical, or major medical coverage, or any combination of such coverages, on an expense-incurred or service basis by an insurance company or health maintenance organization for employees or their families, but not a policy or contract which provides benefits for specific diseases or for accidental injuries only, shall provide that an employee whose hospital, surgical, or major medical coverage under the group policy or contract would otherwise be terminated because of the involuntary termination of employment of such employee, for reasons other than misconduct in connection with employment, shall be entitled to continue such coverage subject to the provisions of the group policy or contract and the following conditions:

(1) Such coverage shall be continued on a monthly renewal basis until the earliest of the following dates:

(a) The date of expiration of a period of six months following the date the coverage of the terminated employee would otherwise be terminated;

(b) The date the terminated employee becomes eligible for other group hospital, surgical, or medical coverage, whether insured or self-insured, or the date the terminated employee becomes eligible for medicare;

(c) The date of expiration of the monthly period for which premiums were paid in the event of a nonpayment of premium;

(d) The date the terminated employee exercises the privilege provided under the group policy or contract for conversion to an individual or family policy or contract; or

(e) The date on which the group insurance policy or health maintenance organization agreement is terminated or the date the employer or employer trust trustee terminates participation under such policy or agreement;

(2) The monthly premium rate to be charged for such coverage shall not exceed one hundred two percent of the total premium which would have been charged for such coverage had the terminated employee still been a member of the insured group. Such total premium rate shall be paid by the terminated employee. The experience of such coverage shall be charged to the group policy or contract which is in force; and

(3) The interruption of employment due to a labor dispute shall not be considered to be an involuntary termination of employment.

Sec. 77. That section 44-1936, Revised Statutes Supplement, 1992, be amended to read as follows:

44-1936. Net retained liability shall mean the total liability retained after the purchase of reinsurance by a title insurer under any title insurance policy or under a single ~~title~~ insurance risk.

Sec. 78. That section 44-1951, Revised Statutes Supplement, 1992, be amended to read as follows:

44-1951. (1) A title insurance agent or title insurer may engage in the business of handling escrows of real estate transactions subject to rules and regulations issued by the director. In so acting the title insurance agent or the title insurer shall:

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

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

(2) In addition to other remedies and penalties available under the laws of this state, each violation of this section and any rules

and regulations issued thereunder shall be an unfair trade practice in the business of insurance subject to the Unfair Insurance Trade Practices Act.

Sec. 79. That section 44-1959, Revised Statutes Supplement, 1992, be amended to read as follows:

44-1959. (1) Every title insurer shall file with the director all forms of title insurance policies before they are issued. In no event shall any title insurer issue any such form of title insurance policy until thirty days after it has been filed with the director unless it has received earlier approval by the director. Unless the director disapproves a form of title insurance policy within thirty days from the date of its filing, such filing shall be deemed to have been approved. If, at any time after approval, the director finds that a form of title insurance policy does not meet or no longer meets the requirements of the Title Insurance Act, the director may hold a hearing in the manner provided in subsection (2) of section 44-1963.

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

Sec. 80. That section 44-1960, Revised Statutes Supplement, 1992, be amended to read as follows:

44-1960. (1) Every title insurer shall file with the director its schedules of fees, every manual of classifications, rules and plans pertaining thereto, and every modification of any such filing which it proposes to use in this state. Every such filing shall state the proposed effective date thereof and shall indicate the character and extent of the coverage contemplated.

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

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

(4) Subject to the provisions of subsection (6) of this section, each filing shall be on file for a waiting period of ~~fifteen~~ thirty days before it becomes effective. The director may, upon written notice given within such period to the ~~person~~ title insurer or title insurance

advisory organization making the filing, extend such waiting period for an additional period, not to exceed ~~fifteen~~ thirty days, to enable him or her to complete the review of the filing. Further extensions of such waiting period may also be made with the consent of the title insurer or title insurance advisory organization making the filing. Upon written application by the title insurer or title insurance advisory organization making the filing, the director may authorize a filing or any part thereof which he or she has reviewed to become effective before the expiration of the waiting period or any extension thereof.

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

(6) When the director finds that any rate for a particular kind or class of risk cannot practically be filed before it is used or any policy or kind of title insurance, by reason of rarity or peculiar circumstances, does not lend itself to advance determination and filing of rates, he or she may, pursuant to rules and regulations, permit such rate to be used without a previous filing and waiting period.

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

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

Sec. 81. That section 44-1969, Revised Statutes Supplement, 1992, be amended to read as follows:

44-1969. Every member of or subscriber to a title insurance advisory organization shall adhere to the filings made on its behalf by such advisory organization, except that any title insurer which is a member of or subscriber to such an advisory organization may file with the director a uniform percentage of decrease or increase to be applied to any or all elements of the fees produced by the rating system so filed for a class of title insurance which is found by the director to be a proper rating unit for the application of such uniform decrease or increase or to be applied to the rates for a particular area. Such deviation filing shall specify the basis for the modification and shall be accompanied by the data or historical pattern upon which the applicant relies. A copy of the deviation filing and data shall be sent simultaneously to such advisory organization. Any such deviation filing shall be on file for a waiting period of ~~fifteen~~ thirty days before it becomes effective. Extension of such waiting period may be made in the same manner that such period is extended in the case of rate filings. The director may authorize a deviation filing or any part thereof to become effective before the expiration of the waiting period or any extension thereof. Deviation filings shall be subject to section 44-1963.

Sec. 82. That section 44-2008, Revised Statutes Supplement, 1992, be amended to read as follows:

44-2008. Sections 44-2001 to 44-2008 shall be known and may be cited as the ~~Uniform~~ Unauthorized Insurers Act.

Sec. 83. That section 44-2123, Revised Statutes Supplement, 1992, be amended to read as follows:

44-2123. 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~~ five 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. 84. That section 44-2131, Revised Statutes Supplement, 1992, be amended to read as follows:

44-2131. The total fee for filing the documents required by sections 44-2126 to 44-2130 and all amendments to such filings shall be

one thousand dollars. The initial fee for registration required by the provisions of section 44-2132 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 and after 1993 on March 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. 85. That section 44-2137, Revised Statutes Supplement, 1992, be amended to read as follows:

44-2137. (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~~ the Insurers Examination Act relating to the examination of insurers, the director shall also have the power to order any insurer registered under section 44-2132 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~~ the Insurers Examination Act.

Sec. 86. That section 44-2621, Revised Statutes Supplement, 1992, be amended to read as follows:

44-2621. Every individual applicant for a license under sections 44-2606 to 44-2635 shall have attained the age of majority, shall be competent, trustworthy, financially responsible, and of good personal and business reputation, and shall have been licensed as an agent, broker, or consultant in this state or another state for the three years immediately preceding the date of application or have successfully completed a specific program of study which has a broad national or regional recognition as determined by the director. Application shall be made to the director on forms prescribed by the director and shall be accompanied by ~~a license fee as established by the director not to exceed thirty dollars for each resident license and not to exceed thirty-six dollars for each nonresident license and on or after June 30, 1990,~~ a license fee as established by the director not to exceed ~~sixty~~ one hundred dollars for each resident individual license, not to exceed ~~seventy-two~~ one hundred fifty dollars for each nonresident individual license, not to exceed ~~thirty~~ one hundred fifty dollars for each resident corporate or partnership license, and not to

exceed ~~thirty-six~~ one hundred fifty dollars for each nonresident corporate or partnership license. The director may issue an insurance consultant's license in two areas: Property and casualty insurance; and life, health, and annuities. A person may become licensed in either one or both of such areas.

Sec. 87. That section 44-2627, Revised Statutes Supplement, 1992, be amended to read as follows:

44-2627. The license shall state the name and resident address of the licensee, date of issuance, whether the licensee is qualified to consult in property and casualty, life, health, and annuities, or both, and such other information as the director considers proper. All ~~individual,~~ corporate, and partnership licenses shall expire on June 30 of each year, ~~except that~~ and all individual licenses ~~issued on or after June 30, 1990,~~ shall expire on the last day of the month of the licensee's birthday in the first year after issuance in which his or her age is divisible by two and such individual licenses may be reissued within the ninety-day period before their expiration dates. The department shall establish procedures for the reissuance of licenses. Every licensed consultant shall notify the department within thirty days of any change in his or her residential or business address.

Sec. 88. That section 44-32,115, Revised Statutes Supplement, 1992, be amended to read as follows:

44-32,115. Any person may apply to the director for a certificate of authority to establish and operate a health maintenance organization in compliance with the Health Maintenance Organization Act. No person shall establish or operate a health maintenance organization in this state without obtaining a certificate of authority under the act. Operating a health maintenance organization without a certificate of authority shall be a violation of the ~~Uniform~~ Unauthorized Insurers Act. A foreign corporation may qualify under the Health Maintenance Organization Act if it registers to do business in this state as a foreign corporation under the Nebraska Business Corporation Act and complies with the Health Maintenance Organization Act and other applicable state laws.

Sec. 89. That section 44-32,118, Revised Statutes Supplement, 1992, be amended to read as follows:

44-32,118. (1) ~~The director may require a health maintenance organization, after receiving its certificate of authority, to submit the information, modifications, or amendments~~ Any modification or amendment to the items described in section 44-32,117, shall be submitted to the director for his or her approval ~~or for information only,~~ prior to the effectuation of the modification or amendment. ~~or may require the health maintenance organization to indicate the modifications at the time of the next succeeding site visit or examination.~~

(2) Any modification or amendment ~~for which the approval of the director is required~~ shall be deemed approved unless disapproved within thirty days, except that the director may postpone the action for such further time, not exceeding an additional thirty days, as

necessary for proper consideration.

Sec. 90. That section 44-32,152, Revised Statutes Supplement, 1992, be amended to read as follows:

44-32,152. (1) The Director of Insurance may make an examination of the affairs of any health maintenance organization in accordance with the Insurers Examination Act and any provider with whom such health maintenance organization has contracts, agreements, or other arrangements as often as is reasonably necessary for the protection of the interests of the people of this state. ~~but not less frequently than once every four years.~~ The Director of Health may make an examination concerning the quality assurance program of any health maintenance organization and any provider with whom such health maintenance organization has contracts, agreements, or other arrangements as often as is reasonably necessary for the protection of the interests of the people of this state but not less frequently than once every three years.

(2) Every health maintenance organization and provider shall submit its books and records for an examination and in every way facilitate the completion of the examination. For the purpose of an examination, the Director of Insurance and Director of Health may administer oaths to and examine the officers and agents of the health maintenance organization and the principals of a provider concerning the business. An examination shall not involve the confidential communications between physicians and patients.

(3) The expenses of an examination shall be assessed against the health maintenance organization being examined and remitted to the Director of Insurance or Director of Health for whom the examination is being conducted in the manner provided in ~~sections 44-107 and 44-107.03 for domestic insurance companies~~ the Insurers Examination Act.

(4) In lieu of an examination, the Director of Insurance or Director of Health may accept the report of an examination made by the insurance commissioner, insurance director, insurance superintendent, or equivalent official or director of health or equivalent official of another state.

Sec. 91. That section 44-3904, Revised Statutes Supplement, 1992, be amended to read as follows:

44-3904. ~~All licensees~~ (1) Licensees qualified to solicit property and casualty insurance shall be required to complete twenty-four hours of approved continuing education activities in each two-year period. ~~All licensees~~ Licensees qualified to solicit assessment association insurance shall be required to complete twelve hours of approved continuing education activities in each two-year period. Licensees qualified to solicit only crop insurance or only fidelity and surety insurance shall be required to complete three hours of approved continuing education activities in each two-year period. Licensees qualified to solicit any other lines of insurance shall be required to complete six hours of approved continuing education activities in each two-year period for each line of insurance, including each miscellaneous line, in which he or she is

licensed. Licensees who are neither agents nor brokers shall be required to complete twenty-four hours of continuing education activities in each two-year period. In each two-year period, every licensee shall furnish evidence to the director that he or she has satisfactorily completed the ~~required~~ hours of approved continuing education activities required under this subsection for each line of insurance in which he or she is licensed as a resident agent or broker, except that no licensee shall be required to complete more than twenty-four cumulative hours required under this subsection in any two-year period. ~~Licensees who are neither agents nor brokers shall be required to complete twenty-four hours of continuing education activities in each two-year period. Evidence~~

(2) In each two-year period commencing on or after January 1, 1994, licensees required to complete approved continuing education activities under subsection (1) of this section shall, in addition to such activities, be required to complete six hours of approved continuing education activities on insurance industry ethics, except that licensees qualified to solicit only crop insurance or only fidelity and surety insurance shall be required to complete three hours of approved continuing education activities on insurance industry ethics.

(3) When the requirements of this section have been met, the licensee shall furnish to the department evidence of completion for the current two-year period ~~shall be retained by each licensee and submitted to the department when the requirements of this section have been met~~ commencing before January 1, 1994, or commencing on or after January 1, 1994, and a filing fee as established by the director not to exceed five dollars.

Sec. 92. That section 44-3905, Revised Statutes Supplement, 1992, be amended to read as follows:

44-3905. (1) The director shall certify as approved continuing education activities those courses, lectures, seminars, or other instructional programs which he or she determines would be beneficial in improving the product knowledge or service capability of licensees. The director may require descriptive information about any continuing education activity and refuse approval of any continuing education activity that does not advance the purposes of sections 44-3901 to 44-3908. The director shall require a nonrefundable fee ~~of twenty-five~~ as established by the director not to exceed fifty dollars for review of any continuing education activity submitted for approval.

(2) The director shall certify the number of hours to be awarded for participation in an approved continuing education activity based upon contact or classroom hours.

(3) The director shall certify the number of hours to be awarded for successful completion of a correspondence course or program of independent study based upon the number of hours which would be awarded in an equivalent classroom course or program.

Sec. 93. That section 44-4001, Revised Statutes Supplement, 1992, be amended to read as follows:

44-4001. Sections 44-4001 to 44-4045 and sections 95 to

99 of this act shall be known and may be cited as the Insurance Producers Licensing Act.

Sec. 94. That section 44-4005, Revised Statutes Supplement, 1992, be amended to read as follows:

44-4005. An individual shall not act as or hold himself or herself out to be an agent unless such individual is duly licensed in this state. An agent shall not make application for, solicit applications for, or procure any policies for any kind of insurance for which such agent is not licensed and appointed by the insurance company. An agent may become licensed to write one or more of the following lines of insurance: (1) Property and casualty insurance; (2) life insurance and annuities; (3) variable contracts; (4) sickness, accident, and health insurance; (5) credit life and credit accident and health insurance; (6) title insurance; (7) crop insurance; (8) assessment association insurance; and (9) miscellaneous insurance. Except as otherwise provided in the Insurance Producers Licensing Act, on or after January 1, 1994, an individual shall successfully complete the necessary prelicensing education requirements and a written examination before an agent's license will be issued.

A license issued for assessment association insurance shall entitle the licensed agent to solicit for and place business in any domestic assessment association regulated by Chapter 44, article 8, by which the licensee is appointed. Such license shall also entitle the licensee to solicit and place personal and general liability coverage, from any other admitted company by which the licensee is appointed, in connection with coverages placed with an assessment association. At least seventy-five percent of the annual premiums written by the licensee under such license shall be written directly with assessment associations.

Sec. 95. Except as otherwise provided by the Insurance Producers Licensing Act, no individual shall be eligible to apply for a license as an insurance agent unless he or she has completed the following prelicensing education requirements:

(1) An individual seeking a property and casualty insurance license shall complete at least six hours of education on insurance industry ethics in addition to thirty-four hours of education in the area of property and casualty insurance;

(2) An individual seeking a life insurance and annuities license shall complete at least six hours of education on insurance industry ethics in addition to twenty-four hours of education in the area of life insurance and annuities;

(3) An individual seeking a sickness, accident, and health insurance license shall complete at least six hours of education on insurance industry ethics in addition to twenty-four hours of education in the area of sickness, accident, and health insurance of which at least six hours shall be in the area of medicare supplement insurance and long-term care insurance;

(4) An individual seeking a combined life insurance and annuities and sickness, accident, and health insurance license shall complete at least six hours of education on insurance industry ethics in

addition to thirty-four hours of education in the area of life insurance and annuities and sickness, accident, and health insurance and of such thirty-four hours at least seventeen hours shall be in the area of life insurance and annuities and seventeen hours shall be in the area of sickness, accident, and health insurance, and of such seventeen hours in the area of sickness, accident, and health insurance at least six hours shall be in the area of medicare supplement insurance and long-term care insurance;

(5) An individual seeking a title insurance license shall complete at least six hours of education on insurance industry ethics in addition to six hours of education in the area of title insurance;

(6) An individual seeking an assessment association insurance license shall complete at least six hours of education on insurance industry ethics in addition to six hours of education in the area of the kinds of insurance issued by an assessment association; and

(7) An individual seeking a crop insurance license shall complete at least three hours of education on insurance industry ethics in addition to three hours in the area of crop insurance.

Sec. 96. The prelicensing education requirements of section 95 of this act shall not apply to an individual who, at the time of application for an agent's license, has the chartered property and casualty underwriter designation, the chartered life underwriter designation, the registered health underwriter designation, the certified employee benefit specialist designation, the certified financial planner designation, the accredited adviser in insurance designation, the chartered financial consultant designation, or a master's degree with a concentration in insurance from an accredited educational institution or to any individual described in section 44-4010.

Sec. 97. A certificate of completion of the prelicensing education requirements shall be filed with the director along with a filing fee as established by the director not to exceed ten dollars.

Sec. 98. The written examination required by section 44-4020 shall be successfully completed within one year after the date of obtaining a certificate of completion of the prelicensing education requirements or all prelicensing education requirements and the examination process shall be repeated.

Sec. 99. The director shall approve prelicensing education courses and the number of hours to be awarded each approved course. The director may convene an advisory council of representatives of the insurance industry to consult with him or her on the approval of such courses. The application fee for seeking approval of a prelicensing education course shall be nonrefundable and shall be as established by the director not to exceed fifty dollars. The director may require descriptive information of any prelicensing education course and may refuse approval of any prelicensing education course that does not advance knowledge or skills in the marketing and sales of insurance products. Qualifications of instructors teaching prelicensing education courses shall be established by the director. The fee to amend an approved prelicensing education course

shall be nonrefundable and shall be as established by the director not to exceed twenty dollars per course.

Sec. 100. That section 44-4009, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-4009. The director may enter into a reciprocal agreement with the director, commissioner, or superintendent of any other state, district, or territory of the United States or any province of Canada granting to individuals who hold credentials recognized by the director to be equivalent to the requirements of the Insurance Producers Licensing Act the right to be a licensed agent without examination or prelicensing education. The director may accept, without examination, a nonresident who has a certificate of the proper licensing authority showing that such nonresident has passed a written examination comparable to the examination given in Nebraska or has been a continuous holder, prior to the time such written examination was required, of an agent's license like that being applied for in Nebraska. The director may accept, without prelicensing education, a nonresident who otherwise qualifies for a nonresident agent's license under the Insurance Producers Licensing Act. Whenever by the laws and regulations of any other state, district, or territory of the United States or any province of Canada any limitation of rights, privileges, conditions precedent, or any requirements are imposed upon residents of Nebraska who are nonresident applicants or licensees of such other state or jurisdiction in addition to or in excess of those imposed on nonresidents under the Insurance Producers Licensing Act, the same requirements shall be imposed upon the residents of such other state or jurisdiction.

Sec. 101. That section 44-4015, Revised Statutes Supplement, 1992, be amended to read as follows:

44-4015. All licenses issued pursuant to the Insurance Producers Licensing Act shall state the name and business address of the licensed person, the date of issue, the expiration date, the line or lines of insurance covered by the license, and such other information as the director considers proper for inclusion in the license. All agency~~, agent, and broker~~ licenses issued under the Insurance Producers Licensing Act shall expire on April 30 of each year, ~~except that~~ and all agent and broker licenses ~~issued on or after April 30, 1990,~~ shall expire on the last day of the month of the licensed person's birthday in the first year after issuance in which his or her age is divisible by two and such agent and broker licenses may be renewed within the ninety-day period before their expiration dates. The department shall establish procedures for the renewal of licenses. Every person licensed under the Insurance Producers Licensing Act shall notify the department within thirty days of any change in such person's residential or business address. Any person failing to provide such notification shall be subject to a fine by the director of not more than five hundred dollars per violation, suspension of the person's license until the change of address is reported to the department, or both.

Sec. 102. That section 44-4019, Revised Statutes Supplement, 1992, be amended to read as follows:

44-4019. (1) Before any license is issued or renewed under the Insurance Producers Licensing Act, the person requesting such license shall pay or cause to be paid to the department the following fee as established by the director: (a) ~~(i) For each resident agent license, a fee not to exceed ten dollars; (ii) for each nonresident agent license, a fee not to exceed twenty-five dollars; (iii) for each resident broker license, a fee not to exceed fifty dollars; (iv) for each nonresident broker license, a fee not to exceed fifty dollars; and (v) for each agency license, a fee not to exceed ten dollars; and (b) on and after April 30, 1990, (i) for~~ For each resident agent license, a fee not to exceed ~~thirty~~ forty dollars; ~~(ii)~~ (b) for each nonresident agent license, a fee not to exceed ~~seventy-five~~ eighty dollars; ~~(iii)~~ (c) for each resident broker license, a fee not to exceed one hundred fifty dollars; ~~(iv)~~ (d) for each nonresident broker license, a fee not to exceed ~~one hundred fifty~~ one hundred seventy-five dollars; and ~~(v)~~ (e) for each agency license, a fee not to exceed ~~fifteen~~ fifty dollars.

(2) If a licensed person (a) desires to add a line or lines of insurance to his or her existing license, (b) seeks to change any other information contained in the license for any reason, or (c) applies for a duplicate license, such person shall pay to the department a fee established by the director to cover the expense of replacing the license. The department shall not issue a license to any person who fails to pay the required license fee when it becomes due. Fees established by the director pursuant to this section shall not exceed ~~fifty dollars before April 30, 1990, and one hundred fifty~~ one hundred seventy-five dollars, ~~on and after April 30, 1990~~; except that if any other state imposes additional or greater fees, obligations, or prohibitions on Nebraska resident agents, brokers, or agencies, then such additional or greater fees, obligations, or prohibitions shall be imposed upon similar agents, brokers, or agencies of such other state applying for a license in Nebraska.

Sec. 103. That section 44-4028, Revised Statutes Supplement, 1992, be amended to read as follows:

44-4028. The director may revoke or suspend any person's license or place a licensed person on probation for such period as may be determined to be appropriate if, after notice to the licensed person and hearing, the director determines such person has:

(1) Violated any insurance law or any lawful rule, regulation, or order of the director or of a director or commissioner of another state, district, or territory of the United States or any province of Canada;

(2) Improperly withheld, misappropriated, or converted to his or her own use any money belonging to policyholders, insurers, beneficiaries, or others received in the course of business;

(3) Misrepresented the terms of any existing or proposed insurance contract to the detriment of the applicant or insured;

(4) Engaged in any unfair trade practice in the business of insurance subject to the Unfair Insurance Trade Practices Act or any unfair claims settlement practice subject to the Unfair Insurance Claims Settlement Practices Act;

(5) Forged another person's name to an application for insurance or to any other document or fraudulently procured a forged signature to an insurance application or any other document, knowing such signature to be forged;

(6) Knowingly and willfully made or permitted a false or fraudulent statement or misrepresentation in or relative to an application for a policy of insurance;

(7) Been adjudged a bankrupt with debts related to the receipt or transmittal of insurance premiums or other funds to an insurer or insured in such agent's fiduciary capacity or has issued to the department an insufficient fund or no-fund check;

(8) Been convicted of any felony or a Class I, II, or III misdemeanor evidencing that such person is not worthy of the public trust;

(9) Obtained the license for the purpose of writing controlled business as described in section 44-361.01;

(10) Had an agent's or broker's license suspended or revoked in any other state, district, or territory of the United States or any province of Canada;

(11) Not demonstrated trustworthiness and competency to transact business in such a manner as to safeguard the public;

(12) Failed to submit to a reexamination for competency or failed to pass such examination as required by section 44-4025;

(13) Obtained the license through misrepresentation, fraud, or any other act for which issuance of the license could have been refused had it been known to the director at the time of issuance;

(14) Knowingly failed to report to the department the actions of any insurance company, licensed agent, broker, agency, or other person which violate Nebraska insurance laws; ~~or~~

(15) Violated the terms of the department's order of probation as applied to such licensed person; or

(16) Failed to respond to the department within fifteen working days after receipt of an inquiry from the department.

Sec. 104. That section 44-4035, Revised Statutes Supplement, 1992, be amended to read as follows:

44-4035. (1) Each insurer appointing a licensed agent shall notify the director of such appointment. Such appointment shall be valid upon execution if the appointment is mailed to the department within ten days of execution. The department shall make confirmation to the insurer of the receipt of notification of appointment. The notification shall be upon forms provided by the director indicating the lines of insurance the licensed agent will be authorized to write for the insurer, and the insurer shall pay a fee ~~of five~~ as established by the director not to exceed ten dollars. Such notification shall remain on record in the department until the appointment is terminated so long as the insurer pays the annual appointment fee; as established by the director not to exceed ~~five~~ ten dollars. ~~, established by the director.~~

(2) If the appointment of a licensed agent by an insurance company is terminated, the insurer shall give written notice of the

termination and the effective date of such termination to the director within five working days of the termination and to such agent when reasonably possible. The director may require the insurer to demonstrate that he or she has made a reasonable effort to give such notice to the licensed agent.

(3) All such notices of termination shall be filed on forms prescribed by the director stating the cause and circumstances of such termination, and the insurer shall pay a fee as ~~prescribed~~ established by the director, not to exceed ~~five~~ ten dollars, to remove the licensed agent's name from the department's records. Any information, document, record, or statement provided under this section may be used by the director in any action taken against a licensed agent. However, such notice of termination shall be considered privileged in any civil action between the reporting insurer and the terminated licensed agent.

Sec. 105. That section 44-4040, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-4040. All policies and applications, the solicitation of which involves an insurance agent, insurance broker, or insurance agency, shall identify the name of each such agent, broker, ~~or~~ and agency. If the application is attached to the policy upon issuance, the required identification may be contained in either the application or the policy.

Sec. 106. That section 44-4812, Revised Statutes Supplement, 1992, 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 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~~ the Insurers Examination Act 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, 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 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. 107. That section 44-4842, Revised Statutes Supplement, 1992, 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) 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 for unallocated loss-adjustment expenses; and

(g) The expenses of examinations conducted pursuant to ~~sections 44-107 to 44-107.03~~ the Insurers Examination Act;

(2) Class 2. Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation 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. 108. That section 44-4902, Revised Statutes Supplement, 1992, 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~~ policyholders 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 or part of the insurance operations of the insurer, is under common control with the insurer, and is subject to 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. 109. That section 44-4905, Revised Statutes

Supplement, 1992, be amended to read as follows:

44-4905. The managing general agent shall not:

(1) Bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines, including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules;

(2) Commit the insurer to participate in insurance or reinsurance syndicates;

(3) Appoint any agent or broker without assuring that the agent or broker is lawfully licensed to transact the type of insurance for which he or she is appointed;

(4) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one percent of the insurer's ~~policyholder's~~ policyholders surplus as of December 31 of the last-completed calendar year;

(5) Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report shall be promptly forwarded to the insurer;

(6) Permit subagents or subbrokers of the insurer appointed by the managing general agent to serve on the insurer's board of directors;

(7) Jointly employ an individual who is employed by the insurer; or

(8) Appoint a submanaging general agent.

Sec. 110. That section 44-4908, Revised Statutes Supplement, 1992, be amended to read as follows:

44-4908. (1) If the director determines that the managing general agent or any other person has not materially complied with the Managing General Agents Act, any rule or regulation adopted or promulgated thereunder, or any order issued thereunder, after notice and opportunity to be heard in accordance with the Administrative Procedure Act, the director may:

(a) For each separate violation, order a penalty in an amount not exceeding five thousand dollars;

(b) Order revocation or suspension of the agent's or broker's license; and

(c) If it was found that because of such material noncompliance that the insurer has suffered any loss or damage, maintain a civil action brought by or on behalf of the insurer and its policyholders and creditors for recovery of damages for the benefit of the insurer and its policyholders and creditors and other appropriate relief.

(2) If an order of rehabilitation or liquidation of the insurer has been entered pursuant to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, and the receiver appointed under the

order determines that the managing general agent or any other person has not materially complied with the Managing General Agents Act, any rule or regulation adopted and promulgated thereunder, or any order issued thereunder, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages and other appropriate relief for the benefit of the insurer.

(3) This section shall not affect the right of the director to impose any other penalties provided for in Chapter 44.

(4) The Managing General Agents Act is not intended to and shall not in any manner limit or restrict the rights of policyholders, claimants, and auditors. ~~If the director finds after a hearing conducted in accordance with the Administrative Procedure Act that any person has violated any provision of the Managing General Agents Act, the director may order:~~

~~(1) For each separate violation, a penalty in an amount of five thousand dollars;~~

~~(2) Revocation or suspension of the agent's or broker's license; and~~

~~(3) The managing general agent to reimburse the insurer, the rehabilitator, or the liquidator of the insurer for any losses incurred by the insurer caused by a violation of the act committed by the managing general agent.~~

~~The decision, determination, or order of the director may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act. This section shall not affect the right of the director to impose any other penalties provided for in Chapter 44. The Managing General Agents Act shall not be construed to limit or restrict the rights of policyholders, claimants, and auditors.~~

Sec. 111. That section 44-5111, Revised Statutes Supplement, 1992, be amended to read as follows:

44-5111. Any investment limitation in the Insurers Investment Act based upon the amount of the insurer's admitted assets or policyholders surplus shall relate to admitted assets or policyholders surplus as shown by the most recent financial statement filed by the insurer pursuant to section 44-322 unless the insurer's admitted assets or policyholders surplus is revised as a result of an examination conducted pursuant to ~~section 44-107 or 44-107.01~~ the Insurers Examination Act, in which case the results of the examination shall control. Except as otherwise provided by law, an investment shall be measured by actual cost at the time of acquisition. If there is no actual cost at the time of acquisition, the investment shall be measured at fair value.

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

Sec. 112. That section 44-5602, Revised Statutes

Supplement, 1992, be amended to read as follows:

44-5602. For purposes of the Reinsurance Intermediary Act:

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

(2) Controlling person shall mean any person, firm, association, or corporation which directly or indirectly has the power to direct or cause to be directed the management, control, or activities of the reinsurance intermediary;

(3) Director shall mean the Director of Insurance;

(4) Insurer shall mean any person, firm, association, or corporation holding a certificate to transact insurance business in this state;

(5) Licensed producer shall mean an agent, broker, or reinsurance intermediary licensed pursuant to Chapter 44;

(6) 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;

(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 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 the letters of credit of which will be acceptable to the director;

(7) Reinsurance intermediary shall mean a reinsurance intermediary-broker or a reinsurance intermediary-manager;

(8) Reinsurance intermediary-broker shall mean any person other than an officer or employee of the ceding insurer, firm, association, or corporation which solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of such insurer;

(9) Reinsurance intermediary-manager shall mean any person, firm, association, or corporation which has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office, and acts as an agent for such reinsurer whether known as a reinsurance intermediary-manager, manager, or other similar term.

Reinsurance intermediary-manager shall not include:

(a) An employee of the reinsurer;

(b) A United States manager of the United States branch of an alien reinsurer;

(c) An underwriting manager which, pursuant to contract,

manages all or part of the reinsurance operations of the reinsurer, which is under common control with the reinsurer subject to the Insurance Holding Company System Act, and the compensation of which is not based on the volume of premiums written; or

(d) The manager of a group, association, pool, or organization of insurers which engages in joint underwriting or joint reinsurance and which is subject to examination by the director, commissioner, or equivalent official of the state in which the manager's principal business office is located; and

(10) Reinsurer shall mean an insurer with the authority to assume reinsurance.

Sec. 113. That section 44-5611, Revised Statutes Supplement, 1992, be amended to read as follows:

44-5611. (1) If the director determines that the reinsurance intermediary or any other person has not materially complied with the Reinsurance Intermediary Act, any rule or regulation adopted and promulgated thereunder, or any order issued thereunder, after notice and opportunity to be heard in accordance with the Administrative Procedure Act, the director may:

(a) For each separate violation, order a penalty in an amount not exceeding five thousand dollars;

(b) Order revocation or suspension of the reinsurance intermediary's license; and

(c) If it was found that because of such material noncompliance that the insurer or reinsurer has suffered any loss or damage, maintain a civil action brought by or on behalf of the reinsurer or insurer and its policyholders and creditors for recovery of damages for the benefit of the reinsurer or insurer and its policyholders and creditors and other appropriate relief.

(2) If an order of rehabilitation or liquidation of the insurer has been entered pursuant to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, and the receiver appointed under the order determines that the reinsurance intermediary or any other person has not materially complied with the Reinsurance Intermediary Act, any rule and regulation adopted and promulgated thereunder, or any order issued thereunder, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages and other appropriate relief for the benefit of the insurer.

(3) This section shall not affect the right of the director to impose any other penalties provided for in Chapter 44.

(4) The Reinsurance Intermediary Act is not intended to and shall not in any manner limit or restrict the rights of policyholders, claimants, creditors, and other third parties. ~~(1) A reinsurance intermediary, insurer, or reinsurer found by the director, after a hearing conducted in accordance with the Administrative Procedure Act, to be in violation of the Reinsurance Intermediary Act shall:~~

~~(a) For each separate violation, pay an administrative penalty in an amount not exceeding five thousand dollars;~~

~~(b) Be subject to revocation or suspension of its certificate of authority or license; and~~

~~(c) If a violation was committed by the reinsurance intermediary, make restitution to the insurer, reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to such violation.~~

~~(2) The order of the director pursuant to subsection (1) of this section may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.~~

~~(3) This section shall not affect the right of the director to impose any other penalties provided in Chapter 44.~~

~~(4) The Reinsurance Intermediary Act is not intended to and shall not in any manner limit or restrict the rights of policyholders, claimants, creditors, or other third parties or confer any rights to such persons.~~

Sec. 114. That section 44-5812, Revised Statutes Supplement, 1992, be amended to read as follows:

44-5812. (1) No person shall act as, offer to act as, or hold himself or herself out to be a third-party administrator in this state without a valid certificate of authority as a third-party administrator issued by the director.

(2) An applicant for a certificate of authority as a third-party administrator shall make application to the director upon a form to be furnished by the director. The application shall include or be accompanied by an application fee of two hundred dollars and by the following information and documents:

(a) All basic organizational documents of the applicant, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, and other applicable documents and all amendments to such documents;

(b) The bylaws, rules, regulations, or similar documents regulating the internal affairs of the applicant;

(c) The names, addresses, official positions, and professional qualifications of the individuals who are responsible for the conduct of affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers in the case of a corporation or the partners or members in the case of a partnership or association, shareholders holding directly or indirectly ten percent or more of the voting securities of the applicant, and any other person who exercises control or influence over the affairs of the applicant;

(d) Annual financial statements or reports for the two most recent years which prove that the applicant is solvent and such information as the director may require in order to review the current financial condition of the applicant;

(e) A statement describing the business plan including information on staffing levels and activities proposed in this state and nationwide. The business plan shall provide details setting forth the

applicant's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping, and underwriting;

(f) If the applicant will be managing the solicitation of new or renewal business, proof that it employs or has contracted with an agent licensed in this state for solicitation and taking of applications. Any applicant which intends to directly solicit insurance contracts or to otherwise act as an insurance agent shall provide proof that it has a license as an insurance agent in this state; and

(g) Such other pertinent information as may be required by the director.

(3) The applicant shall make available for inspection by the director copies of all written agreements with insurers and contracts with other persons utilizing the services of the applicant.

(4) The director may refuse to issue a certificate of authority as a third-party administrator if the director determines that the applicant or any individual responsible for the conduct of affairs of the applicant as described in subdivision (2)(c) of this section is not competent, trustworthy, financially responsible, or of good personal and business reputation or has had an insurance license or certificate of authority or a third-party administrator license or certificate of authority denied or revoked for cause by any state.

(5) A certificate of authority as a third-party administrator issued under this section shall remain valid, unless surrendered to or suspended or revoked by the director, for so long as the third-party administrator continues in business in this state and remains in compliance with the Third-Party Administrator Act.

(6) A third-party administrator shall not be required to hold a certificate of authority as a third-party administrator in this state if all of the following conditions are met:

(a) The third-party administrator has its principal place of business in another state;

(b) The third-party administrator is not soliciting business as a third-party administrator in this state; and

(c) In the case of any group policy, group contract, or plan of insurance serviced by the third-party administrator, the lesser of five percent or one hundred certificate holders or subscribers reside in this state.

(7) A person shall not be required to hold a certificate of authority as a third-party administrator in this state if the person exclusively provides services to one or more bona fide employee benefit plans each of which is established by an employer or an employee organization, or both, and for which the insurance laws of this state are preempted pursuant to the Employee Retirement Income Security Act of 1974. Such person shall register with the director annually and verify his or her status as described in this section.

(8) A third-party administrator shall immediately notify the director of any material change in its ownership or control or other fact or

circumstance affecting its qualification for a certificate of authority as a third-party administrator in this state.

Sec. 115. 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. 116. That original sections 44-319.03, 44-4009, and 44-4040, Reissue Revised Statutes of Nebraska, 1943, and sections 44-116, 44-119, 44-214, 44-219, 44-231, 44-1525, 44-1527, 44-1640, 44-1936, 44-1951, 44-1959, 44-1960, 44-1969, 44-2008, 44-2123, 44-2131, 44-2137, 44-2621, 44-2627, 44-32,115, 44-32,118, 44-32,152, 44-3904, 44-3905, 44-4001, 44-4005, 44-4015, 44-4019, 44-4028, 44-4035, 44-4812, 44-4842, 44-4902, 44-4905, 44-4908, 44-5111, 44-5602, 44-5611, and 44-5812, Revised Statutes Supplement, 1992, and also sections 44-107.01, 44-107.02, 44-108.02 to 44-111.01, and 44-118, Reissue Revised Statutes of Nebraska, 1943, and sections 44-107, 44-107.03 to 44-108.01, 44-232, and 44-3909 to 44-3916, Revised Statutes Supplement, 1992, are repealed.

Sec. 117. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.