LEGISLATIVE BILL 1119

Approved by the Governor April 10, 2000

Introduced by Landis, 46

AN ACT relating to insurance; to amend sections 44-3,153, 44-2909, 48-146.01, and 48-446, Reissue Revised Statutes of Nebraska, and sections 44-522 and 48-151, Revised Statutes Supplement, 1999; to adopt the Property and Casualty Insurance Rate and Form Act; to change provisions relating to workers' compensation insurance procurement; to eliminate the Property and Casualty Insurance Data Reporting Act and the Property and Casualty Insurance Rate and Form Act; to harmonize provisions; to provide operative dates; to provide severability; to repeal the original sections; and to outright repeal sections 44-4601 to 44-4607, 44-5001 to 44-5019, and 44-5021 to 44-5039, Reissue Revised Statutes of Nebraska, and section 44-5020, Revised Statutes Supplement, 1999.

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

Section 1. Sections 1 to 35 of this act shall be known and may be cited as the Property and Casualty Insurance Rate and Form Act.

Sec. 2. The purposes of the Property and Casualty Insurance Rate and Form Act are:

(1) To prohibit price-fixing agreements and other anticompetitive behavior by insurers;

(2) To protect policyholders and the public against excessive rates and the adverse effects of inadequate or unfairly discriminatory rates;

(3) To regulate insurance contracts so they: (a) Are not unjust, unfair, ambiguous, inconsistent, inequitable, misleading, deceptive, or contrary to public policy; (b) are not written so as to encourage the misrepresentation of coverage; (c) reasonably provide the general coverage for policies of that type; (d) comply with the provisions and the intent of the laws of this state; and (e) do not provide coverage contrary to the public interest;

(4) To promote rates that reflect the benefits of competition;

(5) To provide appropriate data reporting systems;

(6) To provide regulatory oversight in the absence of competition;

(7) To authorize essential cooperative action among insurers in the development of policy forms, prospective loss costs, and other information and to regulate such activity to prevent practices that tend to substantially lessen competition or create a monopoly; and

(8) To promote the dissemination of price and other information to enable consumers to purchase insurance suitable for their needs and to foster competitive insurance markets.

Sec. 3. Nothing in the Property and Casualty Insurance Rate and Form Act shall prohibit or discourage reasonable competition or prohibit or discourage uniformity in policy forms, rating systems, or underwriting practices except to the extent necessary to accomplish the purposes of the act. The act shall be liberally interpreted to carry into effect the purposes of the act.

Sec. 4. For purposes of the Property and Casualty Insurance Rate and Form Act:

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

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

(3) Director means the Director of Insurance;

(4) Exempt commercial policyholder means an entity to which specific aspects of rate or policy form regulation do not apply or have been relaxed in accordance with rules and regulations adopted and promulgated pursuant to section 15 of this act;

(5) Expense means that portion of a rate attributable to

acquisition, field supervision, collection expense, general expense, taxes, licenses, and fees. Expense does not include loss adjustment expense;

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

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

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

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

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

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

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

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

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

(15) Special assessments means guaranty fund assessments made pursuant to section 44-2407, Second Injury Fund assessments made pursuant to section 48-128, Vocational Rehabilitation Fund assessments made pursuant to section 48-162.02, residual market assessments made pursuant to section 28 of this act or section 48-146.01, and similar assessments. Special assessments are not expenses or losses;

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

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

Sec. 5. (1) The Property and Casualty Insurance Rate and Form Act applies to any insurer holding a certificate of authority issued by the director to transact insurance business in this state for the lines of insurance specified in subdivisions (5) through (14) and (16) through (20) of section 44-201 and to any combination of any of the foregoing on risks or operations in this state.

(2) The act does not apply to:

(a) Reinsurance, except as provided in section 25 of this act for joint reinsurance pools;

(b) Ocean marine insurance;

(c) Rating systems for insurance against loss or damage to aircraft or against liability, other than workers' compensation and employers liability, arising out of the ownership, maintenance, or use of aircraft;

(d) Rating systems or policy forms used for warranties or service contracts;

(e) Rating systems or policy forms for financial guaranty insurance as defined in subdivision (19) of section 44-201, except that the act applies to financial guaranty coverage for loss of value for motor vehicles leased or sold on credit to private parties;

(f) Rating systems for the lines of insurance specified in subdivisions (5), (7), and (18) of section 44-201 for insurance written by domestic assessment associations doing business under Chapter 44, article 8; and

(g) Policy forms or rates for contracts of suretyship, except that policy forms and prospective loss costs developed or filed by advisory organizations are subject to the act.

Sec. 6. (1) All rating systems and prospective loss costs shall be filed with the director in accordance with section 8 of this act, except that filings for the following shall be filed in accordance with sections 10 and 11 of this act:

(a) Insurance covering farms and ranches, including crop insurance;

(b) Filings made by advisory organizations;

(c) Workers' compensation and employers liability insurance;

(d) Medical professional liability insurance;

(e) Insurance in noncompetitive markets as determined pursuant to section 7 of this act;

(f) Insurance covering risks of a personal nature, including insurance for homeowners, tenants, private passenger nonfleet automobiles, mobile homes, and other property and casualty insurance for personal, family, or household needs;

(g) Liability and physical damage coverages relating to the rental of private passenger automobiles on a nonfleet basis;

(h) Insurance written by joint underwriting pools or joint reinsurance pools;

(i) Insurance written in an assigned risk plan; and

(j) Insurance covering risks of a personal nature written for business entities if the costs for the insurance are charged to individuals. This does not include coverage provided without a separate charge by business entities for their customers.

(2)(a) If the director, after notice and hearing in accordance with the Administrative Procedure Act, finds that an insurer has made filings pursuant to section 8 of this act that have failed to meet the filing standards contained in that section with such frequency as to indicate a general business practice that disregards the requirements of that section, the director shall order that the insurer's filings be made subject to the requirements of sections 10 and 11 of this act.

(b) Upon application by an insurer affected by an order issued pursuant to subdivision (2)(a) of this section, demonstrating that its filings made subsequent to the order have been in compliance with section 8 of this act without the need for the director to request that the original filings be amended, the director shall vacate such order. The director shall consider any such application within thirty days after its receipt for any order that has been in effect for more than nine months since its inception or since it was last reviewed by the director pursuant to an application by the insurer.

(c) For insurers whose rating system filings that would otherwise be subject to this section have been made subject to the prior approval requirements of section 11 of this act through the application of this subsection, the percentage rating flexibilities provided in section 9 of this act shall apply to such rating system filings made by such insurers once the rating system filing has been approved pursuant to section 11 of this act.

Sec. 7. (1) The director shall monitor competition and the availability of insurance in commercial insurance markets. Such monitoring may include requests for information from insurers regarding the lines, types, and classes of insurance that the insurer is seeking and able to write. When requested by an insurer with its response, the director shall keep such responses confidential except as they may be compiled in summaries.

(2) If the director finds that a commercial insurance coverage is contributing to problems in the insurance marketplace due to excessive rates or lack of availability, the director shall report this finding to the

Legislature. Such report may be a separate report or a supplement to the annual report required by section 44-113.

(3) A competitive market is presumed to exist unless the director, after notice and hearing in accordance with the Administrative Procedure Act, determines by order that a degree of competition sufficient to warrant reliance upon competition as a regulator of rating systems does not exist in the market. In determining whether a sufficient degree of competition exists, the director may consider:

(a) Relevant tests of workable competition pertaining to market structure, market performance, and market conduct;

(b) The practical opportunities available to consumers in the market to acquire pricing and other consumer information and to compare and obtain insurance from competing insurers;

(c) Whether long-term and short-term profitability provides evidence of excessive rates;

(d) Whether rating systems filed under section 8 of this act would frequently require amendment or disapproval if filed under sections 10 and 11 of this act;

(e) Whether additional competition would appear likely to significantly lower rates;

(f) Whether rates would be lowered by the imposition of prior approval rating system regulation; and

(g) Any other relevant factors.

(4) If a market for a particular type of insurance is found to lack sufficient competition to warrant reliance upon competition as a regulator of rating systems, the director shall identify factors that appear to be the cause and the extent to which remediation can be achieved on a short-term or long-term basis. To the extent that significant remediation can be achieved consistent with the other goals of the Property and Casualty Insurance Rate and Form Act, the director shall take such action as may be within the director's authority to accomplish such remediation or to promote the accomplishment of such remediation.

(5) If the director finds pursuant to a hearing held in accordance with subsection (3) of this section that the lack of sufficient competition warrants the application of sections 10 and 11 of this act to a type of insurance, an order shall be issued pursuant to this section that applies sections 10 and 11 of this act to the type of insurance. Such order shall expire no later than one year after its original issue unless the director renews the order after a hearing and a finding of a continued lack of sufficient competition. Any order that is renewed after its first year shall not exceed three years after reissue unless the director renews the order after a hearing and a finding of a continued lack of sufficient competition.

(6) The director shall keep on file in one location all complaints from the public and insurance industry sources alleging that a competitive market does not exist. The director shall investigate each complaint to the extent necessary to determine the truth of the allegations. The director shall keep a summary of his or her findings and conclusions with the complaint.

Sec. 8. (1) Each insurer to which this section applies as provided in section 6 of this act shall file with the director every rating system and every modification of such rating system that it chooses to use. No insurer shall issue a contract or policy except in accordance with the filings that are in effect for such insurer as provided in the Property and Casualty Insurance Rate and Form Act, except:

(a) As provided in subsections (6) and (7) of this section;

(b) As provided by rules and regulations adopted and promulgated pursuant to section 15 of this act; or

(c) For types of inland marine risks that have, by custom of the industry, not been written according to manual rates or rating plans. For types of inland marine risks for which the custom of the industry has not been established, the director shall consider the similarity of the new insurance to existing types of insurance and classes of risk and whether it would be reasonably practical to create and file rating systems prior to use.

(2) Every filing shall state its effective date, which shall not be prior to the date that the director receives the filing.

(3) Every filing shall provide an objective description of the risks and the coverages to which the rating system will apply. If the insurer has another rating system on file that applies to some or all of these same risks, the filing shall disclose this and shall objectively identify those risks to which each rating system will apply. Filings shall include a list of manual pages and other rating system elements that will be replaced when the approval of a filing will result in the replacement or alteration of previously filed

rating systems. In addition, insurers shall maintain listings of manual pages and other rating system elements that have been filed with the director so that such listings can be provided upon request.

(4) Each insurer shall file or incorporate by reference to material filed with the director all supporting information relating to a rating system. If a filing is not accompanied by such information or if additional information is required to complete review of the filing, the director may require such insurer to furnish the information, and in that event the review period in subsection (10) of this section shall commence on the date such information is received by the director. If an insurer fails to furnish the required information within sixty days, the director may disapprove the filing based on the insurer's failure to provide the requested information. Disapproval shall be by written notice sent to the insurer ordering discontinuance of the filing within thirty days after the date of notice.

(5) An insurer may authorize the director to accept rating system filings and prospective loss cost filings made on its behalf by an advisory organization. The insurer shall file additional information as is necessary to complete its rating systems on file with the director.

(6) A rate or premium in excess of that provided by a filing otherwise applicable may be used on any specific risk upon the prior written consent of the insured that describes the insured's unusual or extrahazardous exposures that are not otherwise contemplated by the rates on file for that class of risk. Such signed consent shall be filed with the director no later than thirty days after the effective date of the insurance to which it applies. Insurers may not use the procedure set forth in this subsection as a regular means to gain more rate flexibility than is otherwise allowed by the Property and Casualty Insurance Rate and Form Act. The director shall monitor such rate applications to assure compliance with this subsection. The director may, after a hearing, require by order that such applications for an insurer that has demonstrated a pattern of using this rating device for risks that do not possess unusual or extrahazardous exposures or that otherwise fails to comply with this subsection shall be subject to prior approval pursuant to subdivision (6)(a) of section 11 of this act. Upon application by an insurer affected by such order, demonstrating that its filings made subsequent to the order have been in compliance with this subsection, the director shall vacate such order. The director shall consider any such application within thirty days after its receipt for any order that has been in effect for more than nine months since its inception or since it was last reviewed by the director pursuant to an application by the insurer.

(7) The director may by rules and regulations or by order suspend or modify the filing requirements of this section as to any type of insurance or class of risk for which rating systems cannot practicably be filed before they are used. In making this finding, the director shall ascertain whether a system of rating classifications and exposure bases that would equitably reflect the differences in expense requirements and expected losses between individual risks has been developed or appears reasonably capable of being developed. The director may examine insurers as is necessary to ascertain whether any rating systems affected by such rules and regulations meet the standards contained in this section and in section 10 of this act.

(8) No filing or any supporting information provided pursuant to this section shall be open to public inspection pursuant to sections 84-712 to 84-712.09 before the date on which the director completes review of the filing unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by the director pursuant to statute. Correspondence specifically relating to individual risks shall be confidential and may not be made public by the director except as may be compiled in summaries of such activity.

(9) The director shall review filings as soon as reasonably possible after they have been submitted. The director shall disapprove a filing if:

(a) The filing proposes a rating system that would produce inadequate premiums. A premium level is inadequate if it would endanger the solvency of the insurer. A premium level that would not be expected to generate a profit on a direct basis and that would be likely to have the effect of diminishing competition is also inadequate. A premium level that does not endanger the solvency of the insurer and is not likely to have the effect of diminishing competition is not inadequate;

(b) The insurer has more than one rating system applicable to the line or type of insurance and the insurer fails to specify objective differences between risks to determine the risks and the coverages to which the rating system will apply;

(c) The filing proposes to discriminate between risks based on optional commission differences for agents;

(d) The filing proposes to discriminate between risks based on race, creed, national origin, or religion of the insured;

(e) The filing would violate the Unfair Discrimination Against Subjects of Abuse in Insurance Act; or

(f) The filing discriminates between risks based on subjective factors, except that an experience rating plan may use loss reserves without being considered as subjective.

(10) Within thirty days after receipt, the director shall disapprove a filing that requires disapproval pursuant to subsection (9) of this section, except that this review period may be extended for an additional period not to exceed thirty days if the director gives written notice within the original review period to the insurer. A filing shall be deemed to meet the requirements of this section unless disapproved by the director within the review period or any extension thereof.

(11) If, within the review period provided by subsection (10) of this section or any extension thereof, the director finds that a filing does not meet the requirements of subsection (9) of this section, a written disapproval notice shall be sent to the insurer. Such notice shall specify in what respects the filing fails to meet these requirements and order discontinuance of the filing within thirty days after the date of notice.

(12) An insurer whose filing is disapproved may, within thirty days after receipt of a disapproval notice, request a hearing in accordance with section 32 of this act.

(13) If, at any time after the expiration of the review period provided by subsection (10) of this section or any extension thereof, the director finds that a rating system or modification thereof does not meet or no longer meets the requirements of subsection (9) of this section, the director shall hold a hearing in accordance with section 32 of this act.

(14) Any insured aggrieved with respect to any filing may make written application to the director for a hearing on such filing. The hearing application shall specify the grounds to be relied upon by the applicant. If the director finds that the hearing application is made in good faith, that a remedy would be available if the grounds are established, or that such grounds otherwise justify holding a hearing, the director shall hold a hearing in accordance with section 32 of this act.

(15) If, after a hearing held pursuant to subsection (13) or (14) of this section, the director finds that a filing does not meet the requirements of subsection (9) of this section, the director shall issue an order stating in what respects such filing fails to meet the requirements and when, within a reasonable period thereafter, such rating system or aspect of a rating system shall no longer be used. Copies of the order shall be sent to the applicant, if applicable, and to every affected insurer and advisory organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

Sec. 9. (1) For insurance subject to section 8 of this act, insurers may increase or decrease premiums on an individual risk basis up to forty percent based on any factor except:

(a) The rate adjustment cannot be based upon the race, creed, national origin, or religion of the insured; and

(b) The rate adjustment cannot violate the Unfair Discrimination Against Subjects of Abuse in Insurance Act.

(2) If the director finds after a hearing that (a) the utilization of this section by the insurance industry has produced a significant number of rate modifications at the upper limit and at the lower limit of the allowable range of modification and (b) the modifiers at the upper and lower limits of the allowable range of modification appear to be predominantly correlated with individual risk factors that relate to expected losses and expenses, the director may, by rules and regulations, broaden the range of plus or minus forty percent for any line or type of insurance subject to section 8 of this act.

(3) If the director finds after a hearing that modifiers at the upper or lower limits of the allowable range of modification are not predominantly correlated with individual risk factors that relate to expected losses and expenses, the director may, by rules and regulations, reduce the range of plus or minus forty percent for any line or type of insurance subject to section 8 of this act, but such reduction shall not be to less than plus or minus twenty-five percent.

Sec. 10. (1) Rating systems shall not produce premiums that are excessive. A premium level is excessive if it is likely to produce a profit that is unreasonably high for the insurance provided or if expenses are unreasonably high in relation to services rendered. In the evaluation of a premium level, due consideration shall be given to loss experience within and

outside this state; reasonably anticipated trends; investment income; special assessments, conflagration, and catastrophe hazards; a reasonable margin for profit; dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to policyholders, members, or subscribers; expense experience both countrywide and specially applicable to this state; and other relevant factors.

(2) Rating systems shall not produce premiums that are inadequate. A premium level is inadequate only if (a) it would endanger the solvency of the insurer or (b) it would not be expected to generate a profit on a direct basis and would be likely to have the effect of diminishing competition.

(3)(a) Rating systems shall not produce premiums that are unfairly discriminatory. Premiums are unfairly discriminatory if, after allowing for practical limitations, price differentials fail to equitably reflect differences in expense requirements or expected losses.

(b) Risks may be grouped by classification groupings that identify objective risk differences for the establishment of rates and prospective loss costs and for the use of rating systems.

(c) Rates and premiums may be modified for individual risks or groups of risks in accordance with objective standards for measuring differences among risks or groups of risks that can be demonstrated to have a probable effect upon losses or expenses. The fact that experience rating plans use loss reserves shall not be interpreted as making experience rating plans subjective.

(d) A rate is not unfairly discriminatory if it is averaged broadly among persons insured under a group, franchise, or blanket policy or a mass marketed plan. Mass marketed plan means a method of selling property liability insurance wherein:

(i) The insurance is offered to employees of particular employers, members of particular associations or organizations, or stockholders of publicly held corporations or to persons grouped in other ways, except groupings formed principally for the purpose of obtaining such insurance; and

(ii) The employer or other organization has agreed to, or otherwise affiliated itself with, the sale of such insurance to its employees or other groupings of persons affiliated with it.

(e) An insurer may have different rate levels for otherwise similar insureds based on expense differences between coverage sold:

(i) Through direct sales using employees of the insurer;

(ii) Through direct sales by the insurer using the Internet; and

(iii) Through agents that are not employees of the insurer.

(f) No risk classification or grouping may be based upon the race, creed, national origin, or religion of the insured.

(g) No rating system may violate the Unfair Discrimination Against Subjects of Abuse in Insurance Act.

(4) Prospective loss costs shall be as near as is practical to the expected cost of future losses, including loss adjustment expenses. Anticipated special assessments may be included with prospective loss costs.

Sec. 11. (1) Each insurer to which this section applies as provided in section 6 of this act shall file with the director every rating system and every modification of such rating system that it proposes to use. No insurer shall issue a contract or policy except in accordance with the filings that are in effect for such insurer as provided in the Property and Casualty Insurance Rate and Form Act, except:

(a) As provided in subsections (6) and (7) of this section;

(b) As provided by rules and regulations adopted and promulgated pursuant to section 15 of this act; or

(c) For types of inland marine risks that have, by custom of the industry, not been written according to manual rates or rating plans. For types of inland marine risks for which the custom of the industry has not been established, the director shall consider the similarity of the new insurance to existing types of insurance and classes of risk and whether it would be reasonably practical to create and file rating systems prior to use.

(2) Every filing shall state its proposed effective date, which shall not be prior to the date that the director receives the filing. Instead of a specific date, a filing may indicate that it will be effective a reasonable specified period of time after approval or that the insurer will notify the director of the effective date within ninety days after approval.

(3) Every filing shall provide an objective description of the risks and the coverages to which the rating system will apply. If the insurer has another rating system on file or pending that applies to some or all of these same risks, the filing shall disclose this and shall objectively identify those risks to which each rating system will apply. Filings shall include a list of manual pages and other rating system elements that will be replaced

when the approval of a filing will result in the replacement or alteration of previously approved rating systems. In addition, insurers shall maintain listings of manual pages and other rating system elements that have been approved by the director so that such listings can be provided upon request.

(4) Each insurer shall file or incorporate by reference to material filed with the director all supporting information relating to a rating system. If a filing is not accompanied by such information or if additional information is required to complete review of the filing, the director may require the filer to furnish the information, and in that event the review period in subsection (10) of this section shall commence on the date such information is received by the director. If a filer fails to furnish the required information within ninety days, the director may, by written notice sent to the insurer, deem the filing as withdrawn and not available for use.

(5) An insurer may authorize the director to accept rating system filings and prospective loss cost filings made on its behalf by an advisory organization. The insurer shall file additional information as is necessary to complete its rating systems on file with the director.

(6)(a) Except as otherwise provided in subdivision (6)(b) of this section for workers' compensation insurance, a rate or premium in excess of that provided by a filing otherwise applicable may be used on any specific risk upon the prior written application of the insured that describes the insured's unusual or extrahazardous exposures that are not otherwise contemplated by the rates on file for that class of risk, filed with and approved by the director.

(b) For workers' compensation insurance, a rate or premium in excess of that provided by a filing otherwise applicable may be used for any specific employer upon the prior written consent of the employer that describes its unusual or extrahazardous exposures that are not otherwise contemplated by the rates on file for that employer's rate classification. For employers that are offered coverage at a rate higher than would be available in the assigned risk plan, the consent must include an acknowledgment of the availability of coverage at a lower price from the assigned risk plan. Such signed consent shall be filed with the director no later than thirty days after the effective date of the insurance to which it applies. The director shall monitor such rate applications to assure compliance with this subsection. The director may, after a hearing, require by order that such applications for an insurer that has demonstrated a pattern of using this rating device for employers that do not possess unusual or extrahazardous exposures, or that otherwise fails to comply with this subsection, shall be subject to prior approval pursuant to subdivision (6)(a) of this section. Upon application by an insurer affected by such order, demonstrating that its filings made subsequent to the order have been in compliance with this subdivision, the director shall vacate such order. The director shall consider any such application within thirty days after its receipt for any order that has been in effect for more than nine months since its inception or since it was last reviewed by the director pursuant to an application by the insurer.

(7) The director may by rules and regulations or by order suspend or modify the filing requirements of this section as to any type of insurance or class of risk for which rating systems cannot practicably be filed before they are used. In making this finding, the director shall ascertain whether a system of rating classifications and exposure bases that would equitably reflect the differences in expense requirements and expected losses between individual risks has been developed or appears reasonably capable of being developed. The director may examine insurers as is necessary to ascertain whether any rating systems affected by such rules and regulations meet the standards contained in this section.

(8) No filing or any supporting information provided by an insurer pursuant to this section shall be open to public inspection pursuant to sections 84-712 to 84-712.09 before the approval or disapproval of the filing unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by the director pursuant to statute. Correspondence specifically relating to individual risks shall be confidential and may not be made public by the director except as may be compiled in summaries of such activity.

(9) The director shall review filings as soon as reasonably possible after they have been made. The director shall disapprove a filing if:

(a) The filing fails to meet the standards contained in section 10 of this act;

(b) The insurer has more than one rating system applicable to the line or type of insurance and the insurer fails to specify objective differences between risks to determine the risks and the coverages to which the rating system will apply;

(c) The filing proposes to discriminate between risks based on optional commission differences for agents; or

(d) The filing discriminates between risks based on subjective factors, except that an experience rating plan may use loss reserves without being considered as subjective.

(10) Within thirty days after receipt, the director shall approve a filing that meets the requirements of the act, except that this review period may be extended for an additional period not to exceed thirty days if the director gives written notice within the original review period to the insurer or advisory organization. A filing shall be deemed to meet the requirements of the act unless disapproved by the director within the review period or any extension thereof.

(11) If, within the review period provided by subsection (10) of this section or any extension thereof, the director finds that a filing does not meet the requirements of the act, a written disapproval notice shall be sent to the insurer. Such notice shall specify in what respects the filing fails to meet these requirements and state that such filing shall not become effective.

(12) Filings shall become effective on their proposed effective date if approved or deemed approved on or before that date. Filings approved or deemed approved after their proposed effective dates shall become effective after notification by the insurer of a revised effective date, which shall not be prior to the date that the insurer mails the notification to the director. If an insurer fails to furnish a revised effective date within a reasonable period of time not less than ninety days, the director may, by written notice sent to the insurer, deem the filing as withdrawn and not available for use.

(13) An insurer or advisory organization whose filing is disapproved may, within thirty days after receipt of a disapproval notice, request a hearing in accordance with section 32 of this act.

(14) If, at any time after approval, the director finds that a rating system or modification thereof does not meet or no longer meets the requirements of the act, the director shall hold a hearing in accordance with section 32 of this act.

(15) Any insured aggrieved with respect to any filing may make written application to the director for a hearing on such filing. The hearing application shall specify the grounds to be relied upon by the applicant. If the director finds that the hearing application is made in good faith, that a remedy would be available if the grounds are established, or that such grounds otherwise justify holding a hearing, the director shall hold a hearing in accordance with section 32 of this act.

(16) If, after a hearing initiated pursuant to subsection (14) or (15) of this section, the director finds that a filing does not meet the requirements of the act, the director shall issue an order stating in what respects such filing fails to meet the requirements and when, within a reasonable period thereafter, such rating system or aspect of a rating system shall no longer be used. Copies of the order shall be sent to the applicant, if applicable, and to every affected insurer and advisory organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

Sec. 12. No later than January 1, 2001, the director shall adopt and promulgate rules and regulations to disapprove subjective rating criteria effective January 1, 2001, in order to bring rating systems in compliance with the Property and Casualty Insurance Rate and Form Act. The rules and regulations shall require the refiling of rating systems for insurers and filings when refiling is unavoidable to meet the requirements of the act, but shall attempt to minimize the number of rating systems that must be refiled. The rules and regulations may allow insurers to indicate in a written statement filed with the director that the insurer will discontinue use of subjective rating criteria effective January 1, 2001.

Sec. 13. (1) Each insurer shall file with the director every policy form and related attachment rule and every modification thereof which it proposes to use. No insurer shall issue a contract or policy except in accordance with the filings that are in effect for such insurer as provided in the Property and Casualty Insurance Rate and Form Act except as provided in subsection (6) or (7) of this section or as provided by rules and regulations adopted and promulgated pursuant to section 14 or 15 of this act.

(2) Every filing shall state its proposed effective date, which shall not be prior to the date that the director receives the filing. Instead of a specific date, a filing may indicate that it will be effective a reasonable specified period of time after approval or that the insurer will notify the director of the effective date within ninety days after approval.

(3) Every policy form filing shall explain the intended use of such

policy forms. Filings shall include a list of policy forms that will be replaced when the approval of a filing will result in the replacement of previously approved policy forms. In addition, insurers shall maintain listings of policy forms that have been filed and approved by the director so that such listings can be provided upon request.

(4) If additional information is needed to complete review of a policy form filing, the director may require the filer to furnish the information and in that event the review period in subsection (10) of this section shall commence on the date such information is received by the director. If a filer fails to furnish the required information within ninety days, the director may, by written notice sent to the insurer, deem the filing as withdrawn and not available for use.

(5) An insurer may authorize the director to accept policy form filings made on its behalf by an advisory organization.

(6)(a) Subject to the following requirements, policy forms unique in character and designed for and used with regard to an individual risk under common ownership subject to the rate filing provisions of section 8 of this act shall be exempt from the approval requirements contained in subsection (1) of this section.

(b) At the earliest practical opportunity, but no later than the effective date of the policy using unfiled provisions, the insurer shall provide the prospective insured with a written listing of the policy forms that have not been approved by the director and receive written acknowledgment from prospective insureds for which it ultimately provides coverage. This requirement does not apply to renewals using the same unfiled policy forms.

(c) A policy form that has been used in this state or elsewhere by the insurer for another risk shall not be subject to the exemption provided by this subsection, except that an insurer may use a policy form previously developed for a single risk for a second risk if the policy form is filed for approval within sixty days after its second usage.

(d) The exemption provided by this subsection shall not apply to excess workers' compensation or to policy forms that, prior to their use by the insurer, had been filed by an advisory organization in this state or had been filed by the insurer in any jurisdiction, regardless of whether approval was received.

(e) The director may by rules and regulations or by order make specific restrictions relating to the exemption provided by this subsection and may require the informational filing of policy forms subject to such exemption within a reasonable time after their use.

(7) The director may by rules and regulations suspend or modify the filing requirements of this section as to any type of insurance or class of risk for which policy forms cannot practicably be filed before they are used. The director may examine insurers as is necessary to ascertain whether any policy forms affected by such rules and regulations meet the standards contained in the act.

(8) No filing or any supporting information provided by an insurer pursuant to this section shall be open to public inspection pursuant to sections 84-712 to 84-712.09 before the approval or disapproval of the filing unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by the director pursuant to statute. Correspondence specifically relating to individual risks shall be confidential and may not be made public by the director except as may be compiled in summaries of such activity.

(9) The director shall review filings as soon as reasonably possible after they have been made. The director shall disapprove a filing that contains provisions, exceptions, or conditions that: (a) Are unjust, unfair, ambiguous, inconsistent, inequitable, misleading, deceptive, or contrary to public policy; (b) are written so as to encourage the misrepresentation of coverage; (c) fail to reasonably provide the general coverage for policies of that type; (d) fail to comply with the provisions or the intent of the laws of this state; or (e) would provide coverage contrary to the public interest.

(10) Within thirty days after receipt, the director shall approve filings that meet the requirements of the act, except that this review period may be extended for an additional period not to exceed thirty days if the director gives written notice within the original review period to the insurer or advisory organization. A filing shall be deemed to meet the requirements of the act unless disapproved by the director within the review period or any extension thereof.

(11) If, within the review period provided by subsection (10) of this section or any extension thereof, the director finds that a filing does not meet the requirements of the act, a written disapproval notice shall be sent to the insurer. Such notice shall specify in what respects the filing

fails to meet these requirements and state that such filing shall not become effective.

(12) Filings shall become effective on their proposed effective date if approved or deemed approved on or before that date. Filings approved or deemed approved after their proposed effective dates shall become effective after notification by the insurer of a revised effective date, which shall not be prior to the date that the insurer mails the notification to the director. If an insurer fails to furnish a revised effective date within a reasonable period of time not less than ninety days, the director may, by written notice sent to the insurer, deem the filing as withdrawn and not available for use.

(13) An insurer or advisory organization whose filing is disapproved may, within thirty days after receipt of a disapproval notice, request a hearing in accordance with section 32 of this act.

(14) If, at any time after approval, the director finds that a policy form, attachment rule, or modification thereof does not meet or no longer meets the requirements of the act, the director shall hold a hearing in accordance with section 32 of this act.

(15) Any insured aggrieved with respect to any filing may make written application to the director for a hearing on such filing. The hearing application shall specify the grounds to be relied upon by the applicant. If the director finds that the hearing application is made in good faith, that a remedy would be available if the grounds are established, or that such grounds otherwise justify holding a hearing, the director shall hold a hearing in accordance with section 32 of this act.

(16) If, after a hearing initiated pursuant to subsection (14) or (15) of this section, the director finds that a filing does not meet the requirements of the act, the director shall issue an order stating in what respects such filing fails to meet the requirements and when, within a reasonable period thereafter, such policy form or attachment rule shall no longer be used. Copies of the order shall be sent to the applicant, if applicable, and to every affected insurer and advisory organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

Sec. 14. (1) The director shall adopt and promulgate rules and regulations to provide that the policy form approval requirements set forth in section 13 of this act shall not apply to policies written for individual commercial risks that are headquartered in another state or jurisdiction. To determine whether a commercial risk is headquartered in this state, such rules and regulations shall primarily consider where the largest number of the officers and senior management are physically located.

(2) Policy forms for commercial risks exempted by the rules and regulations adopted and promulgated pursuant to subsection (1) of this section may include language that conflicts with sections 44-357, 44-358, and 44-501.02. If a conflict results between a policy form and the requirements of such sections, such sections shall apply.

(3) Policy forms for commercial risks exempted by the rules and regulations adopted and promulgated pursuant to subsection (1) of this section may include language that conflicts with sections 44-349, 44-350, 44-501, 44-514 to 44-518, 44-520 to 44-523, and 44-6408 and the provision of section 44-601 that prohibits policies with a term longer than five years. If a conflict results between a policy form and the requirements of any of these sections, the language in the policy form shall apply to the extent that it is inconsistent with such sections.

(4) Except as set forth in subsections (2) and (3) of this section, the rules and regulations adopted and promulgated pursuant to this section shall require that policy forms exempted from policy form approval requirements do not violate any law of this state.

Sec. 15. (1) The director shall adopt and promulgate rules and regulations to modify or eliminate requirements for insurers to use filed rates and policy forms for commercial policyholders under common ownership identified through the application of subsection (4) of this section.

(2) The rules and regulations adopted and promulgated pursuant to this section may establish requirements and thresholds that differ by line or type of insurance or that differ for rates and policy forms.

(3) The rules and regulations adopted and promulgated pursuant to this section shall require insurers to inform exempt commercial policyholders prior to the inception of coverage of those policy forms applying to them that have not been approved by the director.

(4) The director shall consider the following factors in determining those commercial policyholders to which the rules and regulations adopted and promulgated pursuant to this section shall apply:

(a) For modification or elimination of the applicability of filed

rates, characteristics of insureds that are likely to avail themselves of regular price comparisons between competing insurers and are likely to study and understand the differences and details of pricing proposals that they receive;

(b) For modification or elimination of the applicability of filed rates, characteristics of insureds for which filed rates and rating plans are less likely to provide the lowest premiums otherwise consistent with the provisions of the Property and Casualty Insurance Rate and Form Act;

(c) Modification or elimination of the applicability of filed rates for commercial insureds that are primarily located in another jurisdiction where they are subject to similar exemptions or waivers in that jurisdiction;

(d) For modification or elimination of the applicability of filed policy forms, characteristics of insureds that are likely to study and understand the details of their business risks and insurance coverages and exclusions;

(e) For modification or elimination of the applicability of filed policy forms, characteristics of insureds that are likely to require individually written policies, as contrasted to insureds that can customarily have their coverage needs met using policy forms that could also be used for other insureds;

(f) For both rates and policy forms, favorable or adverse experiences with the modification or elimination of regulatory requirements, especially the experience in this state; and

(g) Any other relevant factor.

(5) For exempt commercial policyholders to which rating system regulation is made otherwise inapplicable, insurers shall allocate premiums between policies, exposures, and states in proportion to the expected losses and expenses for those policies, exposures, and states.

(6) The following restrictions apply to rules and regulations adopted and promulgated pursuant to this section:

(a) The rules and regulations may not allow any reduction of the benefits payable under workers' compensation or excess workers' compensation policies or any alteration of provisions for the handling and settlement of claims under such policies, but the rules and regulations may allow exempt commercial policyholders to negotiate workers' compensation or excess workers' compensation premiums and premium payment provisions;

(b) The rules and regulations may not allow any reduction of automobile insurance coverage limits to less than those required by Nebraska law, but the rules and regulations may allow exempt commercial policyholders to negotiate automobile insurance premiums and premium payment provisions;

(c) The rules and regulations may not allow any limitation of the coverage provisions necessary for health care providers to qualify under the Nebraska Hospital-Medical Liability Act, but the rules and regulations may allow exempt commercial policyholders to negotiate medical professional liability insurance premiums and premium payment provisions;

(d) The rules and regulations may not reduce the rate regulatory requirements applying to any policyholder with total premiums of less than twenty-five thousand dollars for lines of insurance subject to the Property and Casualty Insurance Rate and Form Act; and

(e) The rules and regulations may not reduce the form regulatory requirements applying to any policyholder with total premiums of less than fifty thousand dollars for lines of insurance subject to the Property and Casualty Insurance Rate and Form Act.

Sec. 16. (1) The director shall adopt and promulgate rules and regulations to allow exempt commercial policyholders to be exempt from those provisions of sections 44-5510 and 44-5511 that require, as a condition for the purchase of insurance from a nonadmitted insurer, that applicants demonstrate an inability to obtain insurance from a licensed insurer. Such exemption shall not apply to workers' compensation insurance, excess workers' compensation insurance, or automobile liability insurance, except that such exemption may apply to automobile liability insurance purchased as excess insurance over a policy that provides limits that are at least equal to the minimum limits of liability required by section 60-534.

(2) The rules and regulations adopted and promulgated pursuant to this section may establish requirements and thresholds that differ by line or type of insurance or that differ from the requirements and thresholds for exemption from rate and policy form requirements adopted and promulgated pursuant to section 15 of this act.

(3) In addition to the factors specified in section 15 of this act, the director shall consider the following in making a determination of the requirements and thresholds that will apply:

(a) The relationship of deductibles, self-insured retentions, and

limits of liability purchased by insureds versus the protection provided by the Nebraska Property and Liability Insurance Guaranty Association;

(b) The characteristics of insureds likely to be able to evaluate the ability of a nonadmitted insurer to meet its policy obligations; and

(c) The characteristics of insureds likely to be able to resolve policy and claims disputes that they may have with a nonadmitted insurer.

(4) The rules and regulations may not exempt any policyholder with total premiums of less than one hundred thousand dollars for lines of insurance subject to the Property and Casualty Insurance Rate and Form Act.

Sec. 17. Within a reasonable time after receiving a written request and after receiving payment of such reasonable charge as it may require, every insurer and advisory organization shall furnish all pertinent information to any insured affected by a rate, premium, or prospective loss cost made by the insurer or advisory organization. Upon written request, every insurer and advisory organization shall provide within this state reasonable means by which the insured aggrieved by the application of the advisory organization's or insurer's rating system may be heard, in person or by an authorized representative, to review the manner in which such rating system has been applied in connection with the insurance afforded the insured. If the insurer or advisory organization fails to act upon such request within thirty days after it is made, the applicant may proceed in the same manner as if the application had been rejected. An insured affected by the action of the insurer or advisory organization on such request may appeal to the director within thirty days after written notice of such action. The director, after a hearing held in accordance with section 32 of this act, may affirm the action of the insurer or advisory organization or order remedial action to be undertaken by the insurer or advisory organization.

Sec. 18. (1) No advisory organization or statistical agent shall provide any service relating to insurance subject to the Property and Casualty Insurance Rate and Form Act, and no insurer shall use the services of such advisory organization or statistical agent for such purposes, unless the advisory organization or statistical agent has been issued a certificate of authority by the director. Such certificate of authority shall expire on April 30 each year and shall be renewed annually if the advisory organization or statistical agent has continued to comply with the laws of this state and the rules and regulations of the director.

(2) No advisory organization or statistical agent shall refuse to supply any services for which it is licensed in this state to any insurer authorized to do business in this state and offering to pay the fair and usual compensation for the services.

(3) An advisory organization or statistical agent applying to the director for a certificate of authority shall include with its application:

(a) A copy of its constitution, charter, articles of incorporation, organization, agreement, or association, bylaws, plan of operation, and other rules or regulations governing the conduct of its business;

(b) The names of insurers that own or have control over the applicant, and a description of their ownership or control;

(c) The name and address of a resident of this state upon whom notices, process, or orders of the director may be served;

(d) Information showing its qualifications for acting in the capacity for which it seeks a certificate of authority;

(e) Biographical information on its officers; and

(f) Any other relevant information and documents that the director may require.

(4) Every applicant for a certificate of authority shall notify the director of all material changes in the information or documents on which its application was based. Any amendment to a document filed under this section shall be filed at least thirty days before it becomes effective.

(5) The director shall issue a certificate of authority stating the authorized activity of the applicant for those applicants that meet all requirements of the law and are competent, trustworthy, and qualified to provide the services proposed. The authorized activity of an advisory organization or statistical agent may be limited to specified lines or types of insurance.

(6) The director may at any time, after a hearing in accordance with section 32 of this act, suspend or revoke the certificate of authority of an advisory organization or statistical agent that does not comply with the requirements of the act.

(7) An applicant requesting a certificate of authority to operate both as an advisory organization and as a statistical agent may be so authorized under a single certificate.

Sec. 19. (1) No insurer, advisory organization, or statistical

agent shall attempt to monopolize or combine or conspire with any other person to monopolize an insurance market or to engage in a boycott, on a concerted basis, of an insurance market.

(2) No insurer shall agree with any other insurer or with any advisory organization or statistical agent to require adherence to or to require use of any aspect of any rating system, form, prospective loss cost, dividend payment practice, underwriting rule or practice, survey, inspection, or similar material except as required by section 24 of this act or as is necessary to develop statistical plans. This subsection shall not apply to agreements between insurers under the same ownership.

(3) No advisory organization or statistical agent shall agree with any insurer or with another advisory organization or statistical agent to require adherence to or to require use of any aspect of any rating system, form, prospective loss cost, dividend payment practice, underwriting rule or practice, survey, inspection, or similar material except as required by section 24 of this act or as is necessary to develop statistical plans.

(4) The fact that two or more insurers, whether or not members or subscribers of an advisory organization, consistently or intermittently use the same rates, rating systems, forms, prospective loss costs, underwriting rules or practices, surveys, inspections, or similar materials shall not be sufficient basis to establish a violation of this section.

(5) No insurer, advisory organization, or statistical agent shall make any arrangement with any other insurer, advisory organization, statistical agent, or other person which has the purpose or effect of unreasonably restraining trade or of substantially lessening competition in the business of insurance.

Sec. 20. Except as permitted in sections 21 and 22 of this act, no advisory organization or statistical agent shall compile, file, or distribute recommendations relating to rating systems that include profits, dividends, or expenses other than loss adjustment expenses.

Sec. 21. A statistical agent may, for the lines of insurance for which it has been licensed:

(1) Develop statistical plans including territorial and class definitions;

(2) Collect and distribute statistical data from insurers or any other source;

(3) Collect, compile, and publish past and current rates charged by individual insurers if such information is also made available to the general public at no more than a reasonable cost;

(4) Collect and compile exposure and loss experience for the purpose of individual risk experience ratings;

(5) Undertake educational activities relating to the collection, compilation, or interpretation of insurance-related data;

(6) Distribute any other information that is filed with the director; and

(7) Furnish any other services, as approved or directed by the director, related to those enumerated in this section.

Sec. 22. An advisory organization may, for the lines of insurance for which it has been licensed:

(1) Engage in those activities enumerated in section 21 of this act;

(2) Prepare, file, and distribute prospective loss costs;

(3) Prepare, file, and distribute manuals of rating rules, rating schedules, experience rating plans and other supplementary rating information that do not include final rates, expense provisions, profit provisions, or minimum premiums;

(4) Prepare and distribute experience rating plan modifiers for individual policyholders;

(5) Prepare, file, and distribute factors, calculations, or formulas pertaining to classification, territory, and other variables;

(6) Prepare, file, and distribute increased limits factors, which may include an incremental profit load, also called a risk load;

(7) Conduct research and inspections in order to prepare classifications of public fire defenses or to evaluate the effectiveness of building codes and their enforcement;

(8) Conduct inspections to determine rating classifications for individual insureds;

(9) Consult with public officials regarding public fire protection as it would affect members, subscribers, and others;

(10) Conduct research in order to discover, identify, and classify information relating to causes or prevention of losses;

(11) Prepare, file, and distribute policy forms and gather information from members, subscribers, and others relative to the application

and interpretation of the policy forms;

(12) Conduct research and inspections for the purpose of providing risk information relating to individual structures;

(13) If instructed by the director, file rates instead of prospective loss costs for assigned risk or other residual market mechanisms;

(14) Conduct research to determine the impact of statutory changes upon prospective loss costs;

(15) Undertake educational activities on the use of policy forms, analysis of losses, loss trends, loss reserves, expenses, and other policy form and ratemaking topics;

(16) For workers' compensation insurance, establish a committee that may include insurance company representatives to review the application of the classification system for individual insureds and to suggest modifications to the classification system;

(17) Distribute any other information that is filed with the director; and

(18) Furnish any other services approved or directed by the director related to the services enumerated in this section.

Sec. 23. Filings by an advisory organization of prospective loss costs, rating systems or policy forms and related attachment rules shall be subject to the provisions of the Property and Casualty Insurance Rate and Form Act applicable to filings generally. Rating system filings by an advisory organization shall be subject to the provisions of sections 10 and 11 of this act.

Sec. 24. (1) Every workers' compensation insurer shall adhere to a uniform classification system and shall report its experience in accordance with statistical plans and other reporting requirements to ensure that data is combined for all insurers for the development of prospective loss costs and the application of experience rating.

(2) Every insurer shall utilize experience rating plan modifiers developed by an advisory organization pursuant to an experience rating plan approved by the director.

(3) A workers' compensation insurer may develop subclassifications of the uniform classification system upon which a rate may be made. Such subclassifications and the filing shall be subject to the provisions of the Property and Casualty Insurance Rate and Form Act applicable to rating system filings generally.

(4) The director shall disapprove subclassifications, rating plans, or other variations from manual rules filed by a workers' compensation insurer or advisory organization if the insurer or advisory organization fails to demonstrate that the data produced can be reported consistently with the uniform classification system and experience rating system and will allow for the application of experience rating.

(5) Workers' compensation premiums shall be calculated on a basis that, as nearly as is practicable, after the effects of experience rating and other applicable rating plans have been considered, the sum of expected losses and expected expenses as a percentage of premium shall be the same for high-wage-paying and low-wage-paying employers in the same job classification.

Sec. 25. (1) Every joint underwriting pool or joint reinsurance pool shall file with the director a copy of its constitution, articles of incorporation, organization, agreement, or association, bylaws, and other rules and regulations governing its activities, a listing of its members, the name and address of a resident of this state upon whom notices, process, or orders of the director may be served, and any amendments or changes thereto.

(2) Notwithstanding section 19 of this act, insurers participating in joint underwriting or in joint underwriting pools or joint reinsurance pools may, in connection with such activity, act in cooperation with each other in the development of rates, rating systems, policy forms, underwriting rules, surveys, inspections, and investigations, the furnishing of loss and expense statistics or other information, or the conducting of research.

(3) Except as provided in this section, joint underwriting, joint underwriting pool, and joint reinsurance pool activities shall be subject to the Property and Casualty Insurance Rate and Form Act.

(4) If, after a hearing in accordance with section 32 of this act, the director finds that any activity or practice of an insurer participating in joint underwriting, a joint underwriting pool, or a joint reinsurance pool will tend to lessen competition in any market or is otherwise inconsistent with the provisions or purposes of the act, the director may issue an order requiring the discontinuance of such activity or practice.

Sec. 26. (1) To ascertain compliance with the Property and Casualty Insurance Rate and Form Act, the director may, as often as is deemed to be expedient, make or cause to be made an examination of each advisory

organization, statistical agent, joint underwriting pool, or joint reinsurance pool doing business in this state. The advisory organization, statistical agent, or pool examined shall pay the reasonable costs of any such examination. The officers, manager, agents, and employees of such advisory organization, statistical agent, or pool may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation.

(2) In lieu of any such examination, the director may accept (a) the report of an examination made by the insurance supervisory official of another state or (b) the report of an independent certified public accountant in good standing with the American Institute of Certified Public Accountants. Every such advisory organization, statistical agent, joint underwriting pool, or joint reinsurance pool shall, within thirty days after the receipt of a final examination report of any other state, provide a copy of the report to the director. Every such advisory organization, statistical agent, joint underwriting pool, or joint reinsurance pool shall, within thirty days after the publication or public filing of a report made by an independent certified public accountant, provide a copy of the report to the director.

Sec. 27. (1) The director shall adopt and promulgate rules and regulations to assure that the experience of all insurers is provided to the director at least annually in such form and detail as is necessary to aid in effecting the purposes of the Property and Casualty Insurance Rate and Form Act. The director may designate one or more statistical agents to assist in gathering such experience and making compilations thereof. The scope of such rules and regulations may include the data which must be reported by insurers, definitions of data elements, the timing and frequency of statistical reporting by insurers, data quality standards, data edit and audit requirements, data retention requirements, reports to be generated by statistical agents to fulfill the requirements of this section, and the timing of such reports.

(2) Should the director choose to designate more than one statistical agent to assist for a line or type of insurance, the director may adopt and promulgate rules and regulations necessary to ensure that statistical data that the director has required is combined for reports to the director.

(3) The following provisions apply only to the disclosure of data and reports provided to the director pursuant to this section and to the disclosure of reports produced by the director from data and reports provided pursuant to this section:

(a) The director shall not disclose data that identifies individual insurers;

(b) The director shall not disclose data that is likely to identify individual policyholders or claimants or when there is reason to suspect that individual open claim reserves may be identified with individual policyholders or claimants;

(c) The director may agree in advance to withhold data from public disclosure when confidentiality is requested by the statistical agent providing the data to the director, but only if the data include data elements that the director had not required, prior to their writing or occurrence, to be recorded by insurers; and

(d) All other data contained in reports made pursuant to this section shall be subject to public disclosure.

(4) The director may adopt and promulgate rules and regulations for the interchange of data necessary for the application of rating plans.

(5) In order to further uniform administration of rate regulatory laws, the director and every insurer and advisory organization may exchange information and experience data with insurance supervisory officials, insurers, and advisory organizations in other states and may consult with them with respect to the application of rating systems.

Sec. 28. Insurers may agree to the equitable apportionment among them of insurance to be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods. Such insurers may agree on the use of policy forms, rating systems, and reasonable modifications thereof for such insurance. Such agreements may include pooling arrangements or reinsurance. Such agreements, policy forms, rating systems, and modifications thereof shall be subject to the approval of the director.

Sec. 29. No person shall willfully withhold information that will affect the forms applicable, dividends payable, or rates or premiums chargeable from the director or any statistical agent, advisory organization, or insurer. No person shall knowingly give false or misleading information that will affect the policy forms applicable, dividends payable, or rates or premiums chargeable to the director or any statistical agent, advisory

organization, or insurer. A person who violates this section shall be subject to provisions of section 30 of this act.

Sec. 30. (1) Whenever the director has reason to believe that any person has violated any provision of the Property and Casualty Insurance Rate and Form Act, the director shall hold a hearing in accordance with section 32 of this act. If, after such hearing, the director determines that the person has violated any provision of the act, the director may order any one or more of the following:

(a) Payment of an administrative penalty of not more than one thousand dollars for every act or violation but not to exceed an aggregate penalty of ten thousand dollars in any six-month period unless the person knew or reasonably should have known of the violation of the act, in which case the penalty shall be not more than five thousand dollars for every act or violation not to exceed an aggregate penalty of fifty thousand dollars in any six-month period; and

(b) Suspension or revocation of the person's license or certificate of authority if such person knew or reasonably should have known of the violation.

(2) The powers, remedies, procedures, and penalties provided in the act shall be in addition to any other penalty, remedies, procedures, and penalties provided by law.

Sec. 31. Any insurer, joint underwriting pool, joint reinsurance pool, statistical agent, or advisory organization aggrieved by any order or decision of the director made without a hearing may, within thirty days after notice of the order, make written request to the director for a hearing thereon in accordance with section 32 of this act. Pending such hearing and decision, the director may suspend the effective date of his or her action.

Sec. 32. If a hearing is held at the request of a party other than the director, unless mutually agreed upon by the director and all interested parties, notice of hearing shall be provided within thirty days after the director's receipt of a written request for a hearing. Notice of hearing shall be given to all interested parties and shall state the time, place, and purpose of the hearing. Unless mutually agreed upon by the director and all interested parties, the hearing shall be held not less than ten days after notice is served. Unless mutually agreed upon by the director and all interested parties or unless the hearing is being held at the request of the director, the hearing shall be held not more than thirty days after notice is served.

Sec. 33. Any order or decision of the director made pursuant to the Property and Casualty Insurance Rate and Form Act may be appealed by any party in interest. The appeal shall be in accordance with the Administrative Procedure Act.

Sec. 34. The director may make reasonable arrangements and adopt and promulgate rules and regulations to allow or to facilitate the use of electronic media to make filings or to engage in correspondence required by the Property and Casualty Insurance Rate and Form Act.

Sec. 35. The director may adopt and promulgate rules and regulations to carry out the Property and Casualty Insurance Rate and Form Act. The rules and regulations shall not be effective prior to January 1, 2001.

Sec. 36. Section 44-3,153, Reissue Revised Statutes of Nebraska, is amended to read:

44-3,153. Under insurance policies obtained pursuant to section 44-3,151, an association is entitled to negotiate with the insurer regarding policy terms, including premiums, discounts, dividends, commissions, fees, and costs. If any policy provides for any deductible for any benefits payable under the Nebraska Workers' Compensation Act, it shall be in conformance with section 48-146.03. The insurer shall only enter into arrangements which allow it to report data compatible with the uniform classification system and ~~uniform~~ with experience rating ~~system required by subsection (1) of section 44-5028 and which allow for the application of experience rating by an advisory organization designated by the Director of Insurance pursuant to subsection (1) of section 44-5028~~ as required by subsections (1) and (2) of section 24 of this act.

Sec. 37. Section 44-522, Revised Statutes Supplement, 1999, is amended to read:

44-522. (1) The Department of Insurance shall not approve any insurance policy filed for approval with the department, as required by the ~~Property and Casualty Insurance Rate and Form Act~~ Property and Casualty Insurance Rate and Form Act, which insures against loss or damage to property or against legal liability from any cause unless such policy contains appropriate provisions for cancellation thereof by either the insurer or the

insured and for nonrenewal thereof by the insurer.

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

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

(a) Nonpayment of premium;

(b) The policy was obtained through a material misrepresentation;

(c) Any insured has submitted a fraudulent claim;

(d) Any insured has violated any of the terms and conditions of the policy;

(e) The risk originally accepted has substantially increased;

(f) Certification to the Director of Insurance of loss of reinsurance by the insurer which provided coverage to the insurer for all or a substantial part of the underlying risk insured; or

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

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

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

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

Sec. 38. Section 44-2909, Reissue Revised Statutes of Nebraska, is amended to read:

44-2909. No association organized under the Nebraska Hospital and Physicians Mutual Insurance Association Act shall transact the business of insurance until:

(1) Its articles and bylaws have been approved by the Director of Insurance and the articles filed as required by section 44-2906;

(2) It has filed with the director acceptable evidence that it has and will maintain a minimum surplus aggregating at least five hundred thousand dollars in cash in the investments authorized under the Insurers Investment Act or a letter of credit issued by a Nebraska banking institution in accordance with loan restrictions prescribed by the laws of this state;

(3) All policies, applications, and other forms together with all manuals and rates to be used have been filed and approved as provided in the ~~Property and Casualty Insurance Rate and Form Act~~ Property and Casualty Insurance Rate and Form Act;

(4) A certificate of authority has been issued to the association as provided in section 44-303; and

(5) It has received at least five applications for policies in a hospital association or at least two hundred applications for policies in a physicians association.

Sec. 39. Section 48-146.01, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

premium audit, or who has defrauded or attempted to defraud an insurer; and

(b) Director means the Director of Insurance.

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

(b) The director shall enter into an agreement with one or more workers' compensation insurers to provide workers' compensation insurance to assigned risk employers. In selecting an insurer to become an assigned risk insurer, the director shall consider the cost of coverage to assigned risk employers, the loss control and claims handling services available from the workers' compensation insurer, the financial condition of the workers' compensation insurer, and any other relevant factors. An agreement entered into under this subsection may not exceed five years.

(c) If the director determines that the cost of workers' compensation insurance premiums for an insurer to provide assigned risk coverage pursuant to such an agreement would be unreasonably high, the director may enter into an agreement in which the assigned risk insurer covers a portion of the losses incurred by the assigned risk employer. Any agreement that involves an average rate level of less than two and one-half times the prospective loss costs approved for an advisory organization pursuant to section 44-5020 shall not be considered unreasonably high for the purposes of this section. Pursuant to any such agreement, remaining losses shall be assessed against all workers' compensation insurers writing workers' compensation insurance in this state and risk management pools created under the Intergovernmental Risk Management Act based on their workers' compensation premiums written in this state or contributions made to risk management pools. Assigned risk premiums shall be excluded from the basis for such assessments. ~~for the equitable apportionment among such carriers of applicants for such policies who are in good faith entitled to but are unable to procure such policies through ordinary methods. Such system shall be so drawn as to guarantee that such an applicant, if not in default on workers' compensation premiums, shall be covered by workers' compensation insurance following his or her application to the assigned-risk system and tender of required premium. When any such system has been approved, all such carriers shall subscribe thereto and participate therein. Assignment shall be in such manner that, as far as practicable, no carrier shall be assigned a larger proportion of compensation premiums under assigned policies during any calendar year than that which the total of compensation premiums written in the state by such carrier during the preceding year bears to the total compensation premiums written in the state by all such carriers during the preceding calendar year.~~

~~(2)~~ (3) Any employer which is required to establish a safety committee pursuant to sections 48-443 to 48-445 and which is not in compliance with such sections shall not be entitled to be covered by workers' compensation insurance under this section.

Sec. 40. Section 48-151, Revised Statutes Supplement, 1999, is amended to read:

48-151. Throughout the Nebraska Workers' Compensation Act, the following words and phrases shall be considered to have the following meaning, respectively, unless the context clearly indicates a different meaning in the construction used:

(1) Physician means any person licensed to practice medicine and surgery, osteopathic medicine, chiropractic, podiatry, or dentistry in the State of Nebraska or in the state in which the physician is practicing;

(2) Accident means an unexpected or unforeseen injury happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury. The claimant has the burden of proof to establish by a preponderance of the evidence that such unexpected or unforeseen injury was in fact caused by the employment. There is no presumption from the mere occurrence of such unexpected or unforeseen injury that the injury was in fact caused by the employment;

(3) Occupational disease means only a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process, or employment and excludes all ordinary diseases of life to which the general public is exposed;

(4) Injury and personal injuries mean only violence to the physical structure of the body and such disease or infection as naturally results therefrom. The terms include disablement resulting from occupational disease arising out of and in the course of the employment in which the employee was

engaged and which was contracted in such employment. The terms include an aggravation of a preexisting occupational disease, the employer being liable only for the degree of aggravation of the preexisting occupational disease. The terms do not include disability or death due to natural causes but occurring while the employee is at work and do not include an injury, disability, or death that is the result of a natural progression of any preexisting condition;

(5) Death, when mentioned as a basis for the right to compensation, means only death resulting from such violence and its resultant effects or from occupational disease;

(6) Without otherwise affecting either the meaning or the interpretation of the abridged clause, personal injuries arising out of and in the course of employment, it is hereby declared not to cover workers except while engaged in, on, or about the premises where their duties are being performed or where their service requires their presence as a part of such service at the time of the injury and during the hours of service as such workers, and not to cover workers who on their own initiative leave their line of duty or hours of employment for purposes of their own. Property maintained by an employer is considered the premises of such employer for purposes of determining whether the injury arose out of employment;

(7) Willful negligence consists of (a) a deliberate act, (b) such conduct as evidences reckless indifference to safety, or (c) intoxication at the time of the injury, such intoxication being without the consent, knowledge, or acquiescence of the employer or the employer's agent;

(8) Intoxication includes, but is not limited to, being under the influence of a controlled substance not prescribed by a physician;

(9) ~~Prospective loss~~ Prospective loss costs means ~~prospective loss~~ prospective loss costs as defined in section ~~44-5014~~ 4 of this act and prepared, filed, or distributed by an advisory organization which has been issued a certificate of authority pursuant to section ~~44-5023~~ 18 of this act; and

(10) Whenever in the Nebraska Workers' Compensation Act the singular is used, the plural is considered included; when the masculine gender is used, the feminine is considered included.

Sec. 41. Section 48-446, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

(b) The experience modification produced by the experience rating system referenced in section ~~44-5028~~ 24 of this act;

(c) Whether the employer is covered by workers' compensation insurance under section 48-146.01;

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

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

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

(g) Previous safety and health history;

(h) Possible employee exposure to toxic substances;

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

(j) All other relevant factors.

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 42. Sections 12, 35, 39, 42, 43, and 45 of this act become operative on their effective date. The other sections of this act become operative on January 1, 2001.

Sec. 43. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 44. Original sections 44-3,153, 44-2909, and 48-446, Reissue Revised Statutes of Nebraska, and sections 44-522 and 48-151, Revised Statutes Supplement, 1999, are repealed.

Sec. 45. Original section 48-146.01, Reissue Revised Statutes of Nebraska, is repealed.

Sec. 46. The following sections are outright repealed: Sections 44-4601 to 44-4607, 44-5001 to 44-5019, and 44-5021 to 44-5039, Reissue Revised Statutes of Nebraska, and section 44-5020, Revised Statutes Supplement, 1999.