LEGISLATIVE BILL 259

Approved by the Governor February 24, 1999

Introduced by Landis, 46

AN ACT relating to insurance; to amend sections 44-122, 44-211, 44-787, 44-1992, 44-19,114 to 44-19,116, 44-2906, 44-4320, 44-5020, 44-5103, 44-5905, 44-6122, and 48-1,113, Reissue Revised Statutes of Nebraska; to change and provide filing requirements; to change provisions relating to incorporation; to change health insurance provisions; to change title insurance agent provisions; to change calculations for certain payments; to redefine a term; to change and eliminate provisions relating to examinations; to provide for use of the word mutual by reorganized stock insurers; to harmonize provisions; to repeal the original sections; and to outright repeal section 44-138, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 44-122, Reissue Revised Statutes of Nebraska, is amended to read:

44-122. No reduction of stock shall be made except by approval of at least two-thirds of the directors. The directors, after such reduction of stock, may require such shareholder to surrender his or her stock and in lieu thereof may issue a new certificate for such number of shares as each shall be entitled to. ~~A duly certified copy of the proceedings shall be filed in the office of the Secretary of State, in the office of the county clerk of the county in which the principal office of the company is located, and in the office of the Department of Insurance.~~

Sec. 2. Section 44-211, Reissue Revised Statutes of Nebraska, is amended to read:

44-211. The business and affairs of an insurance corporation shall be managed by the incorporators until the first meeting of shareholders or members and then and thereafter by a board of directors elected by the shareholders or members and as otherwise provided by law. The board of directors shall consist of not less than five ~~nor more than twenty-one~~ persons, and one of them shall be a resident of the State of Nebraska. Commencing January 1, 1993, not less than one-fifth of the directors of an insurance company which is not subject to section 44-2135 shall be persons who are not officers or employees of such company. A person convicted of a felony may not be a director, and all directors shall be of good moral character and known professional, administrative, or business ability, such business ability to include a practical knowledge of insurance, finance, or investment. No person shall hold the office of director unless he or she is a policyholder if the company is a mutual company or assessment association. Unless otherwise provided in the articles of incorporation, the board of directors shall make all bylaws.

Sec. 3. Section 44-787, Reissue Revised Statutes of Nebraska, is amended to read:

44-787. (1) All individual health insurance policies and contracts issued by health carriers providing benefits consisting of medical care, which are provided directly, through insurance or reimbursement, under any hospital or medical service policy, hospital or medical service plan contract, or health maintenance organization contract shall be renewable at the option of the covered individual, except in any of the following cases:

(a) The covered individual has failed to pay premiums or contributions in accordance with the terms of the individual policy or contract or the health carrier has not received timely premium payments;

(b) The covered individual has performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the coverage;

(c) A health carrier decides to discontinue offering a particular type of individual policy or contract in this state. A health carrier discontinuing such individual policy or contract shall:

(i) Provide advance notice of its decision to the commissioner of insurance in each state in which it is licensed;

(ii) Provide notice of the decision not to renew coverage to all covered individuals, and to the commissioner of insurance in each state in which a covered individual is known to reside, at least ninety days prior to the nonrenewal of any individual policies or contracts by the health carrier. Notice to the director shall be provided at least three working days prior to

the notice to the covered individuals;

(iii) Offer to each covered individual provided the type of individual policy or contract the option to purchase all other individual policies or contracts currently being offered by the health carrier to individuals in this state; and

(iv) In exercising the option to discontinue the particular type of individual policy or contract and in offering the option of coverage under subdivision (1)(c)(iii) of this section, act uniformly without regard to any health-status-related factor relating to any covered individual who may become eligible for such coverage;

(d) A health carrier decides to discontinue offering and nonrenews all its individual policies and contracts delivered or issued for delivery to individuals in this state. A health carrier that discontinues such individual policies and contracts shall:

(i) Provide advance notice of its decision to the commissioner of insurance in each state in which it is licensed;

(ii) Provide notice of the decision not to renew coverage to all covered individuals, and to the commissioner of insurance in each state in which a covered individual is known to reside, at least one hundred eighty days prior to the nonrenewal of any individual policies or contracts by the health carrier. Notice to the director shall be provided at least three working days prior to the notice to the covered individuals; and

(iii) Discontinue all health insurance issued or delivered for issuance in the state's individual market and not renew coverage under any individual policy or contract issued to an individual; and

(e) The director finds that the continuation of the coverage would:

(i) Not be in the best interests of the covered individuals; or

(ii) Impair the health carrier's ability to meet its contractual obligations.

(2) A health carrier that elects not to renew all of its individual policies or contracts in the state under subdivision (1)(d) of this section shall be prohibited from writing new business in the individual market in this state for a period of five years after the date of notice to the director.

(3) A health carrier offering coverage through a network plan shall not be required to offer coverage or accept applications pursuant to subsection (1) of this section in the case of an individual who no longer resides, lives, or works in the service area of the health carrier or in an area for which the health carrier is authorized to do business, but only if coverage is terminated under this section uniformly without regard to any health-status-related factor of covered individuals.

(4) For purposes of this section:

(a) Director means the Director of Insurance;

(b) Health carrier means any entity that issues a health insurance policy or contract, including an insurance company, a fraternal benefit society, a health maintenance organization, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation;

(c) Health-status-related factor means any of the following factors:

(i) Health status;

(ii) Medical condition, including both physical and mental illnesses;

(iii) Claims experience;

(iv) Receipt of health care;

(v) Medical history;

(vi) Genetic information;

(vii) Evidence of insurability, including conditions arising out of acts of domestic violence; and

(viii) Disability;

(d)(i) Individual policy or contract does not include one or more, or any combination, of the following:

(A) Coverage only for accident or disability income insurance, or any combination thereof;

(B) Coverage issued as a supplement to liability insurance;

(C) Liability insurance, including general liability insurance and automobile liability insurance;

(D) Workers' compensation or similar insurance;

(E) Automobile medical payment insurance;

(F) Credit-only insurance;

(G) Coverage for onsite medical clinics; and

(H) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

(ii) Individual policy or contract does not include the following benefits if they are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the policy or contract:

(A) Limited-scope dental or vision benefits;

(B) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and

(C) Such other similar, limited benefits as are specified in federal regulations.

(iii) Individual policy or contract does not include the following benefits if the benefits are provided under a separate policy, certificate, or contract of insurance:

(A) Coverage only for a specified disease or illness; and

(B) Hospital indemnity or other fixed indemnity insurance.

(iv) Individual policy or contract does not include the following if it is offered as a separate policy, certificate, or contract of insurance:

(A) Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act;

(B) Coverage supplemental to the coverage provided under 10 U.S.C. 5501 et seq.; ~~and~~

(C) Similar supplemental coverage provided to coverage under a group health plan; and

(D) Short-term limited duration insurance that has an expiration date specified in the contract that is within twelve months of the effective date of the contract; and

(e) Network plan means health insurance coverage offered by a health carrier under which the financing and delivery of medical care including items and services paid for as medical care are provided, in whole or in part, through a defined set of providers under contract with the health carrier.

Sec. 4. Section 44-1992, Reissue Revised Statutes of Nebraska, is amended to read:

44-1992. (1) When a title insurance commitment includes an offer to issue an owner's title insurance policy covering the resale of owner-occupied residential property, the title insurance commitment shall be furnished to the purchaser-mortgagor or its representative as soon as reasonably possible prior to closing. If the title insurance commitment cannot be delivered prior to the day of closing, the title insurer shall document the reasons for the delay. The title insurance commitment furnished to the purchaser-mortgagor shall incorporate the following statement on the first page in bold type:

PLEASE READ THE EXCEPTIONS AND THE TERMS SHOWN OR REFERRED TO HEREIN CAREFULLY. THE EXCEPTIONS ARE MEANT TO PROVIDE YOU WITH NOTICE OF MATTERS WHICH ARE NOT COVERED UNDER THE TERMS OF THE TITLE INSURANCE POLICY AND SHOULD BE CAREFULLY CONSIDERED.

IT IS IMPORTANT TO NOTE THAT THIS FORM IS A GUARANTEE OF TITLE AND NOT A WRITTEN REPRESENTATION AS TO THE CONDITION OF TITLE AND MAY NOT LIST ALL LIENS, DEFECTS, AND ENCUMBRANCES AFFECTING TITLE TO THE LAND.

(2) A title insurer issuing a lender's title insurance policy in conjunction with a mortgage loan made simultaneously with the purchase of all or part of the real estate securing the loan, when no owner's title insurance policy has been requested, shall give written notice, on a form prescribed or approved by the director, to the purchaser-mortgagor at the time the title insurance commitment is prepared. The notice shall explain that a lender's title insurance policy is to be issued protecting the mortgage lender and that the lender's title insurance policy does not provide title insurance protection to the purchaser-mortgagor as the owner of the property being purchased. The notice shall explain what a title insurance policy insures against and what possible exposures exist for the purchaser-mortgagor that could be insured against through the purchase of an owner's title insurance policy. The notice shall also explain that the purchaser-mortgagor may obtain an owner's title insurance policy protecting the property owner at a specified cost or approximate cost if the proposed coverages or amount of title insurance is not then known. A copy of the notice, signed by the purchaser-mortgagor, shall be retained in the relevant underwriting file at least five years after the effective date of the lender's title insurance policy.

Sec. 5. Section 44-19,114, Reissue Revised Statutes of Nebraska, is amended to read:

44-19,114. (1) A person, firm, association, or corporation acting in the capacity of a title insurance agent shall not place title insurance business with a title insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party and, when both parties share responsibility for a particular function, specifies

the division of such responsibilities subject to the requirements of subsections (2) through ~~(17)~~ (16) of this section.

(2)(a) The title insurer may terminate the contract required under subsection (1) of this section upon written notice under the following circumstances:

(i) Fraud, insolvency, appointment of a receiver or conservator, bankruptcy, cancellation of the title insurance agent's license to do business, or the commencement of legal proceedings by the state of domicile of the title insurance agent which, if successful, would lead to cancellation of the title insurance agent's license to do business;

(ii) Material breach of any provision of the contract; or

(iii) Notice of cancellation provided in accordance with contract termination requirements.

(b) Upon notice of termination, the title insurance agent shall immediately discontinue all underwriting. Nothing in this subdivision is intended to relieve the title insurance agent or title insurer of any other contractual obligation.

(3) The title insurance agent shall render accounts to the title insurer detailing all transactions and remit all funds due under the contract required under subsection (1) of this section to the title insurer within the time specified by the underwriting contract.

(4) All funds collected for the account of a title insurer by a title insurance agent shall be held in a fiduciary capacity in a qualified financial institution.

(5) At the title insurer's request, the title insurance agent or its successor in interest, transferee, or receiver shall provide access to and the right to copy all escrow files and underwriting files involving a transaction in which a title insurance commitment or title insurance policy is or is to be issued.

(6) Separate records of title insurance business written by the title insurance agent shall be maintained for each title insurer. The title insurer shall have access to and a right to copy all accounts and records related to its business in a form acceptable to the title insurer. The director shall have access to all books, financial institution accounts, and records of the title insurance agent in a form usable to the director. The records shall be retained according to section 44-19,117.

(7) The contract required under subsection (1) of this section shall not be assigned in whole or in part by the title insurance agent without the express written consent of the title insurer.

(8) The contract required under subsection (1) of this section shall include appropriate guidelines relating to:

(a) The basis of the rates to be charged;

(b) The types of risks which may be written;

(c) Maximum limits of liability;

(d) Territorial limitations;

(e) Title searches and examinations; and

(f) Underwriting.

(9) It shall be the duty of the title insurance agent to immediately report and forward to the title insurer all title-related escrow claims and title claims reported to the title insurance agent by policyholders or other persons. However, if the contract required under subsection (1) of this section permits the title insurance agent to settle claims on behalf of the title insurer:

(a) A copy of the claim file shall be sent to the title insurer at its request or as soon as it becomes known that the claim:

(i) Has the potential to exceed an amount established by the title insurer;

(ii) Involves a coverage dispute;

(iii) May exceed the title insurance agent's claims settlement authority;

(iv) Is open for more than six months; or

(v) Is closed by payment exceeding an amount established by the title insurer;

(b) All title and title-related escrow claims files settled by the title insurance agent shall be the property of the title insurer; and

(c) Any settlement authority granted to the title insurance agent may be terminated immediately upon the title insurer's written notice to the title insurance agent or upon the termination of the contract. The title insurer may suspend the settlement authority during the pendency of a dispute regarding the cause for termination. Nothing in this subdivision is intended to relieve the title insurance agent or title insurer of any other contractual obligation.

(10) If electronic claims files are in existence, the contract required under subsection (1) of this section shall address the immediate transmission of the data.

(11) The title insurance agent shall not bind reinsurance or retrocessions on behalf of the title insurer.

(12) The contract required under subsection (1) of this section shall include specific terms of a title insurance agent's compensation.

(13) The title insurance agent shall maintain an inventory of all policy forms or policy numbers assigned to the agent by the title insurer.

(14) For each title insurance agent under contract with a title insurer, the title insurer shall have on file a statement of financial condition of each title insurance agent as of the end of the previous calendar year setting forth an income statement of title insurance business done during the preceding year and a balance sheet showing the condition of its affairs as of the prior December 31 certified by the title insurance agent as being a true and accurate representation of the title insurance agent's financial condition. Attorneys actively engaged in the practice of law, other than that related to title insurance business, are exempt from the requirements of this subsection.

(15) The title insurance agent shall annually, concurrent with the renewal date of its contract, furnish the title insurer with proof that the title insurance agent is in compliance with section 44-19,109.

(16) ~~If the title insurance agent delegates the title search to a third party, such as an abstract company, the title insurance agent must first obtain proof that the third party is operating in compliance with rules and regulations adopted and promulgated by the director.~~

~~(17)~~ The title insurance agent shall provide the title insurer with access to and the right to copy all accounts and records maintained by the title insurance agent with respect to title insurance business placed with the title insurer.

Sec. 6. Section 44-19,115, Reissue Revised Statutes of Nebraska, is amended to read:

44-19,115. (1) When constituting an offer to issue an owner's title insurance policy covering the resale of owner-occupied residential property, a title insurance commitment shall be furnished to the purchaser-mortgagor or its representative as soon as reasonably possible prior to closing. If the title insurance commitment cannot be delivered prior to the day of closing, the title insurance agent shall document the reasons for the delay. The title insurance commitment furnished to the purchaser-mortgagor shall incorporate the following statement on the first page in bold type:

PLEASE READ THE EXCEPTIONS AND THE TERMS SHOWN OR REFERRED TO HEREIN CAREFULLY. THE EXCEPTIONS ARE MEANT TO PROVIDE YOU WITH NOTICE OF MATTERS WHICH ARE NOT COVERED UNDER THE TERMS OF THE TITLE INSURANCE POLICY AND SHOULD BE CAREFULLY CONSIDERED.

IT IS IMPORTANT TO NOTE THAT THIS FORM IS A GUARANTEE OF TITLE AND NOT A WRITTEN REPRESENTATION AS TO THE CONDITION OF TITLE AND MAY NOT LIST ALL LIENS, DEFECTS, AND ENCUMBRANCES AFFECTING TITLE TO THE LAND.

(2) A title insurance agent issuing a lender's title insurance policy in conjunction with a mortgage loan made simultaneously with the purchase of all or part of the real estate securing the loan, when no owner's title insurance policy has been requested, shall give written notice, on a form prescribed or approved by the director, to the purchaser-mortgagor at the time the title insurance commitment is prepared. The notice shall explain that a lender's title insurance policy is to be issued protecting the mortgage lender and that the lender's title insurance policy does not provide title insurance protection to the purchaser-mortgagor as the owner of the property being purchased. The notice shall explain what a title insurance policy insures against and what possible exposures exist for the purchaser-mortgagor that could be insured against through the purchase of an owner's title insurance policy. The notice shall also explain that the purchaser-mortgagor may obtain an owner's title insurance policy protecting the property owner at a specified cost or approximate cost if the proposed coverages or amount of title insurance is not then known. A copy of the notice, signed by the purchaser-mortgagor, shall be retained in the relevant underwriting file at least five years after the effective date of the lender's title insurance policy.

Sec. 7. Section 44-19,116, Reissue Revised Statutes of Nebraska, is amended to read:

44-19,116. (1)(a) A title insurance agent may operate as an escrow, security, settlement, or closing agent subject to the requirements of subdivisions (b) through (e) of this subsection.

(b) All funds deposited with the title insurance agent in connection

with an escrow, settlement, closing, or security deposit shall be submitted for collection to or deposited in a separate fiduciary trust account or accounts in a qualified financial institution no later than the close of the next business day in accordance with the following requirements:

(i) The funds shall be the property of the person or persons entitled to them under the provisions of the escrow, settlement, security deposit, or closing agreement and shall be segregated for each depository by escrow, settlement, security deposit, or closing in the records of the title insurance agent in a manner that permits the funds to be identified on an individual basis; and

(ii) The funds shall be applied only in accordance with the terms of the individual instructions or agreements under which the funds were accepted.

(c) Funds held in an escrow account shall be disbursed only pursuant to a written instruction or agreement specifying how and to whom such funds may be disbursed.

(d) Funds held in a security deposit account shall be disbursed only pursuant to a written agreement specifying:

(i) What actions the indemnitor shall take to satisfy his or her obligation under the agreement;

(ii) The duties of the title insurance agent with respect to disposition of the funds held, including a requirement to maintain evidence of the disposition of the title exception before any balance may be paid over to the depositing party or his or her designee; and

(iii) Any other provisions the director may require.

(e)(i) Disbursements may be made out of an escrow, settlement, or closing account only if ~~deposits in amounts~~ funds in an amount at least equal to the disbursement have first been ~~made directly relating to the transaction disbursed against~~ received and if the ~~deposits~~ funds received are in one of the following forms:

(A) Lawful money of the United States;

(B) Wired funds when unconditionally held by the title insurance agent;

(C) Cashier's checks, certified checks, bank money orders, or teller's checks issued by a federally insured financial institution and unconditionally held by the title insurance agent; and

(D) United States treasury checks, federal reserve bank checks, federal home loan bank checks, and State of Nebraska warrants.

(ii) For purposes of this subdivision, federally insured financial institution means an institution in which monetary deposits are insured by the Federal Deposit Insurance Corporation or National Credit Union Administration.

(2) The title insurance agent shall have an annual audit made of its escrow, settlement, closing, and security deposit accounts, conducted by a certified public accountant on a calendar year basis at its expense within ninety days after the close of the previous calendar year. The title insurance agent shall provide a copy of the audit report to each title insurer which it represents. The director may adopt and promulgate rules and regulations setting forth the minimum threshold level at which an audit would be required, the standards of audit, and the form of audit report required. In lieu of such annual audit, a title insurance agent may provide a notarized certificate of reconciliation and availability of the title insurance agent's escrow accounts to each title insurer which it represents within ninety days after the close of the previous calendar year on a form prescribed or approved by the director. The director may also require a title insurance agent to provide a copy of its audit report or certificate of reconciliation and availability to the director. Title insurance agents who are attorneys and who issue title insurance policies as part of their legal representation of clients are exempt from the requirements of this subsection. However, the title insurer may, at its expense, conduct or cause to be conducted an annual audit of the escrow, settlement, closing, and security deposit accounts of the attorney. Attorneys who are exclusively in the business of title insurance are not exempt from the requirements of this subsection.

(3) If the title insurance agent is appointed by two or more title insurers and maintains fiduciary trust accounts in connection with providing escrow, closing, or settlement services, the title insurance agent shall allow each title insurer reasonable access to the accounts and any or all of the supporting account information in order to ascertain the safety and security of the funds held by the title insurance agent.

(4) Nothing in the Title Insurance Agent Act shall be deemed to prohibit the recording of documents prior to the time funds are available for disbursement with respect to a transaction if all parties consent to the transaction in writing.

(5) Nothing in this section is intended to amend, alter, or

supersede other sections of the act or the laws of this state or the United States regarding an escrow holder's duties and obligations.

(6) The director may prescribe a standard agreement for escrow, settlement, closing, or security deposit funds.

Sec. 8. Section 44-2906, Reissue Revised Statutes of Nebraska, is amended to read:

44-2906. (1) Any association to be formed pursuant to ~~sections 44-2901 to 44-2918~~ the Nebraska Hospital and Physicians Mutual Insurance Association Act shall be formed by submitting executed articles of incorporation to the Department of Insurance for examination, and if approved and found by it to be in accordance with the laws of this state, the department shall so certify. When such articles are thus approved, they shall be filed in the office of the Secretary of State ~~and of the county clerk of the county in which the principal office of the corporation is to be established,~~ and a copy thereof filed in the office of the department. The articles shall not be considered filed until they have been filed in each such office.

(2) The articles and bylaws shall set forth in detail the association's proposed method of doing business. Such articles and bylaws may include provisions for the following matters:

(a) Reinsurance with a professional reinsurance company;

(b) The extent and method of risk sharing among its members; and

(c) Borrowing money.

Sec. 9. Section 44-4320, Reissue Revised Statutes of Nebraska, is amended to read:

44-4320. Every risk management pool shall pay to the Director of Insurance, on or before March 1 of each year, an amount equal to ~~one percent of the prevailing premium rate which would be paid for all policies of insurance to insure workers' compensation risks and~~ one percent of annual contributions received by the pool less any amount paid for excess or aggregate insurance during the immediately preceding calendar year for coverage of all ~~other~~ risks included within the pool's group self-insurance program. A pool which has a scheme of operations that contemplates a return of a portion of the contributions of pool members without such members being claimants under the pool's insuring agreements may deduct such return contributions and any dividends paid during the immediately preceding calendar year from the pool's contributions for the purpose of calculating the amount due. The computation of such amount shall be made on forms furnished by the Department of Insurance which shall be filed with the department together with a sworn statement by the pool's chief operating officer attesting to the accuracy of the computation. The department shall furnish such forms to each pool prior to the end of the year for which such amount is payable together with any information relative to computation of the amount as may be necessary. Upon receipt of payment, the director shall audit and examine the computations and satisfy himself or herself that the amount paid is in conformity with this section. The director shall transmit such payments to the State Treasurer. One-half of the payments shall be handled in the manner prescribed in section 77-913, and the remaining one-half of such payments shall be deposited in the General Fund promptly upon completion of the director's audit and examination and in no event later than May 1 of each year.

Sec. 10. Section 44-5020, Reissue Revised Statutes of Nebraska, is amended to read:

44-5020. (1) Rating system filings shall comply with the following provisions:

(a) Except as provided in subdivisions (1)(e) and (3)(b) of this section, each insurer shall file with the director every rating system and every modification thereof which it proposes to use. Every such filing shall state the proposed effective date and shall indicate the coverages to which the rating system shall apply;

(b) Each insurer shall file or incorporate by reference to material which has been approved by the director all supporting information relating to a rating system. When a filing is not accompanied by such information, the director may require such insurer to furnish the information, and in that event the waiting period required in subdivision (3)(a) of this section shall commence as of the date such information is furnished;

(c) An insurer may authorize the director to accept 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;

(d) At the request of the director, an insurer using the services of an advisory organization shall provide information to demonstrate that use of

prospective-loss costs and anticipated special assessments filed by the advisory organization will not result in premiums that are excessive, inadequate, or unfairly discriminatory;

(e) Rating systems shall not be required to be filed for inland marine risks which by custom of the industry are not written according to manual rates or rating plans. In determining whether new types of inland marine insurance fall under this exemption, 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; and

(f) 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, stating reasons therefor, filed with and approved by the director. Any such application and any correspondence relating thereto shall be considered a confidential communication and shall not be made public by the director except as may be compiled by the department in summaries of such activity.

(2) Forms and related attachment rules shall comply with the following provisions:

(a) Except as provided in subdivisions ~~(2)(c)~~ (2)(d) and (3)(b) of this section, an insurer shall file all forms and any related attachment rules with the director prior to use. Every such filing shall state its proposed effective date and shall explain the intended use of such forms;

(b) Each insurer shall file or incorporate by reference to material that has been approved by the director all supporting information relating to forms and related attachments. When a filing is not accompanied by such information, the director may require such insurer to furnish the information, and in that event the waiting period required in subdivision (3)(a) of this section shall commence as of the date such information is furnished;

(c) ~~(b)~~ An insurer may authorize an advisory organization to file forms and related attachment rules on its behalf;

~~(c)~~ (d) Forms unique in character and designed for and used with regard to a particular risk shall be exempt from filing, except that the director may by rule or order make specific restrictions relating to this exemption. In making such determination, the director shall consider whether the forms otherwise exempt would be likely to meet the requirements of subsection (2) of section 44-5019 and the extent to which it would be practical to file such forms prior to their use for specific risks. Insurers shall not use this provision to avoid the consent-to-form provisions of subdivision ~~(2)(d)~~ (2)(e) of this section; and

~~(d)~~ (e) Forms providing coverage that is more restrictive than that provided by a filing otherwise applicable may be used on any specific risk upon the prior written application of the insured, stating reasons therefor, filed with and approved by the director. Any such application and any correspondence relating thereto shall be considered a confidential communication and shall not be made public by the director except as may be compiled by the department in summaries of such activity.

(3) Rating system filings and form filings shall comply with the following provisions:

(a) Each filing shall be on file for a waiting period of thirty days before it becomes effective except as provided in subdivision (b) of this subsection. The waiting period may be extended for an additional period not to exceed thirty days if the director gives written notice within such waiting period to the insurer or advisory organization which made the filing that additional time is needed for the consideration of the filing. Upon written application by the insurer or advisory organization, the director may authorize a filing to become effective before the expiration of a waiting period. A filing shall be deemed to meet the requirements of the Property and Casualty Insurance Rate and Form Act unless disapproved by the director within the waiting period or any extension thereof;

(b) The director may by rule or order suspend or modify the filing requirements of subsection (1) or (2) of this section as to any line or kind of insurance or subdivision or combination of such line or kind of insurance or as to classes of risks for which rating systems or forms cannot practicably be filed before they are used. The director may make such examination as he or she deems necessary to ascertain whether any rating systems or forms affected by such rule or order meet the requirements of section 44-5019;

(c) No insurer shall issue a contract or policy except in accordance with the filings which have been approved and are in effect for such insurer as provided in the act or in accordance with subdivision (1)(f) or ~~(2)(d)~~ (2)(e) of this section. This subdivision shall not apply to forms or rating systems to the extent that they are exempt or have been exempted by

subdivision (1)(e), ~~(2)(c)~~ (2)(d), or (3)(b) of this section; and

(d) Nothing in the act shall be construed to require an insurer to refile forms or rating systems which were approved by the director prior to January 1, 1992, and which have been continuously in effect since such date, whether filed directly by the insurer or filed on its behalf.

Sec. 11. Section 44-5103, Reissue Revised Statutes of Nebraska, is amended to read:

44-5103. For purposes of the Insurers Investment Act:

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

(2) Business entity means a sole proprietorship, corporation, limited liability company, association, partnership, limited liability partnership, joint-stock company, joint venture, mutual fund, trust, joint tenancy, or other similar form of business organization, whether organized for profit or not for profit;

(3) Clearing corporation means The Depository Trust Company or any other clearing agency registered with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, section 17A, Euro-clear Clearance System Limited, and CEDEL S. A.;

(4) Custodian bank means a bank, trust company, or branch of a bank or trust company that is acting as custodian and is supervised and examined by the state or federal authority having supervision over the bank or trust company or only with respect to an insurer's foreign investments by the regulatory authority having supervision over banks or trust companies in the jurisdiction in which the bank, trust company, or branch is located. Custodian bank shall include Euro-clear Clearance System Limited and CEDEL S. A. acting as custodians;

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

(6) Director means the Director of Insurance;

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

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

(9) Obligation means a bond, debenture, note, or other evidence of indebtedness;

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

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

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

Sec. 12. Section 44-5905, Reissue Revised Statutes of Nebraska, is amended to read:

44-5905. (1) Upon determining that an examination should be conducted, the director or his or her designee shall appoint one or more examiners to conduct the examination and instruct them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners. The director may also employ such other guidelines or procedures as the director may deem appropriate.

(2)(a) Every company or person from whom information is sought and its officers, directors, employees, and agents shall provide to the examiners appointed under subsection (1) of this section timely, convenient, and free access to all books, records, accounts, papers, documents, and computer or other recordings relating to the property, assets, business, and affairs of the company being examined.

(b)(i)(A) Every company or person subject to the Insurers Examination Act shall retain all books, records, accounts, papers, documents, and computer or other recordings relating to the property, assets, financial accounts, and business of such company or person in a manner that permits examination of such books, records, accounts, papers, documents, and computer or other recordings for four years, or until the period of time in which the transaction took place has undergone a financial examination by the director, whichever is later, following the completion of a transaction relating to the

property, assets, financial accounts, and business of such company or person.

(B) Every company or person subject to the act shall retain market conduct records for four years following the completion of a transaction relating to the insurance business and affairs of such company or person. For purposes of this subdivision, market conduct records means all books, records, accounts, papers, documents, and computer or other recordings relating to transactions with insureds, certificate holders, claimants, insurance producers, other insurers, subrogees, and subrogors and recordings related to its trade practices, underwriting, rate and form practices, advertising, regulatory matters, and other affairs of such company or person.

(ii) The books, records, accounts, papers, documents, and computer or other recordings described in subdivisions (2)(b)(i)(A) and (B) of this section and maintained in electronic, computer, micrographic, or other form shall be maintained in a form capable of accurate duplication on paper.

(c) The officers, directors, employees, and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension or refusal of or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the director's jurisdiction. Any such proceedings for suspension, revocation, or refusal of any license or authority shall be conducted pursuant to the Administrative Procedure Act.

(d) For purposes of this subsection, officers, directors, employees, and agents shall include general agents, managing agents, attorneys in fact, organizers, promoters, loss adjusters, and any persons having a contract, written or oral, pertaining to the management or control of a company or any function thereof.

(3) The director or any of his or her examiners shall have the power to issue subpoenas, to administer oaths, and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the director may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. Every person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. He or she shall be entitled to the same fees and mileage, if claimed, as a witness in the district court with mileage to be computed at the rate provided in section 81-1176, which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company being examined.

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

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

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

Sec. 13. Section 44-6122, Reissue Revised Statutes of Nebraska, is amended to read:

44-6122. Sections 44-6122 to 44-6142 and section 14 of this act shall be known and may be cited as the Mutual Insurance Holding Company Act.

Sec. 14. If the name of a mutual insurer reorganizing as a reorganized stock insurer pursuant to the Mutual Insurance Holding Company Act includes the word mutual, the reorganized stock insurer may continue to use the word mutual in its name if (1) the name includes a word or words that identify the reorganized stock insurer as a stock insurer and (2) the director finds that the continued use of the word mutual in its name is not likely to mislead or deceive the public.

Sec. 15. Section 48-1,113, Reissue Revised Statutes of Nebraska, is amended to read:

48-1,113. Every insurance company which is transacting workers' compensation insurance business in this state shall on or before March 1 of each year pay to the Director of Insurance an amount equal to one percent of the gross amount of direct writing premiums received by the company during the preceding calendar year for workers' compensation insurance business transacted in this state. Every risk management pool providing workers' compensation group self-insurance coverage to any of its members shall on or before March 1 of each year pay to the Director of Insurance an amount equal to one percent of the ~~prevailing premium rate which would be paid for a policy of workers' compensation insurance to insure such risk~~ annual contributions received by the pool to provide workers' compensation coverage less any amount paid for excess or aggregate workers' compensation insurance during the immediately preceding calendar year. For the purpose of calculating the amount due, a pool which has a scheme of operations that contemplates a return of a portion of the contributions of pool members without such members being claimants under the pool's insuring agreements may deduct such return contributions and any dividends paid during the immediately preceding calendar year that are attributable to workers' compensation. The computation of the amount shall be made on forms furnished by the Department of Insurance and shall be forwarded to the department together with a sworn statement by an appropriate fiscal officer of the company or the pool's chief operating officer attesting the accuracy of the computation. The department shall furnish the forms to the companies and risk management pools prior to the end of the year for which the amounts are payable together with any information deemed necessary or appropriate by the department.

Upon receipt of the payment, the director shall audit and examine the computations to determine that the proper amount has been paid. After notice and hearing in accordance with the Administrative Procedure Act, the Director of Insurance may rescind or refuse to reissue the certificate of authority of any company which fails to remit the amount due.

The Director of Insurance shall remit the amounts paid to the State Treasurer for credit to the Compensation Court Cash Fund, except that (1) when there is a dispute as to the amount payable, the proceeds shall be credited to a suspense account in the state treasury until disposition of the controversy and (2) one percent of the amounts received shall be credited to the Department of Insurance to cover the costs of administration.

Sec. 16. Original sections 44-122, 44-211, 44-787, 44-1992, 44-19,114 to 44-19,116, 44-2906, 44-4320, 44-5020, 44-5103, 44-5905, 44-6122, and 48-1,113, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 17. The following section is outright repealed: Section 44-138, Reissue Revised Statutes of Nebraska.