LEGISLATIVE BILL 216

Approved by the Governor April 2, 2003

Introduced by Banking, Commerce and Insurance Committee:
Quandahl, 31, Chairperson; Foley, 29; Jensen, 20; Johnson, 37; Louden, 49; Mines, 18; Redfield, 12; Tyson, 19

AN ACT relating to insurance; to amend sections 44-113, 44-114, 44-407.14, 44-501, 44-1994, 44-5101, 44-5110, and 44-5138, Reissue Revised Statutes of Nebraska, and sections 44-322, 44-924, 44-1103, 44-1106, 44-19,116, 44-2707, 44-5120, 44-5814, 44-7501, 44-7507, 44-7513, and 44-7515, Revised Statutes Supplement, 2002; to change provisions relating to reports, fees, financial statements, interest, policy forms, rules and regulations, form filing and approval requirements, collateral, and investments; to eliminate an applicability provision; to repeal the original sections; and to outright repeal section 44-2823, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 44-113, Reissue Revised Statutes of Nebraska, is amended to read:

44-113. The Department of Insurance shall transmit to the Governor, ten days prior to the opening of each session of the Legislature, a report of its official transactions, containing in a condensed form the statements made to the department by every insurance company authorized to do business in this state pursuant to the provisions of ~~this chapter~~ Chapter 44, as audited and corrected by it, arranged in tabular form or in abstracts, in classes according to the kind of insurance, which report shall also contain (1) a statement of all insurance companies authorized to do business in this state during the year ending December 31 next preceding, with their names, locations, amounts of capital, dates of incorporation, and of the commencement of business and kinds of insurance in which they are engaged respectively; and (2) a statement of the insurance companies whose business has been closed since making the last report, and the reasons for closing the same, with the amount of their assets and liabilities, so far as the same are known or can be ascertained by the department. ~~There shall be printed and bound by the state the necessary number of copies thereof for the use of the department.~~ The report shall also be ~~filed with~~ transmitted to the Clerk of the Legislature. Each member of the Legislature shall receive a copy of such report by making a request for it to the director. ~~The department may also compile, and have printed by the state, all books and insurance laws in pamphlet form, for distribution.~~ The department may transmit the report by electronic format through the gateway or electronic network established under section 84-1204 after notification of such type of delivery is given to the recipient. The department shall maintain the report in a form capable of accurate duplication on paper.

Sec. 2. Section 44-114, Reissue Revised Statutes of Nebraska, is amended to read:

44-114. In addition to any other fees and charges provided by law, the following shall be due and payable to the Department of Insurance: (1) For filing the documents, papers, statements, and information required by law upon the organization of domestic or the entry of foreign or alien insurers, statistical agents, or advisory organizations, three hundred dollars; (2) for filing each amendment of articles of incorporation, twenty dollars; (3) for filing restated articles of incorporation, twenty dollars; (4) for renewing each certificate of authority of insurers, statistical agents, or advisory organizations, one hundred dollars, except domestic assessment associations which do business in less than thirty-one counties in Nebraska, which shall pay twenty dollars; (5) for issuance of an amended certificate of authority, one hundred dollars; (6) for filing a certified copy of articles of merger involving a domestic or foreign insurance corporation holding a certificate of authority to transact insurance business in this state, fifty dollars; (7) for filing an annual statement, two hundred dollars; (8) for each certificate of valuation, deposit, or compliance or other certificate for whomsoever issued, five dollars; (9) for filing any report which may be required by the department from any unincorporated mutual association, five dollars; (10) for copying official records or documents, fifty cents per page; and (11) for a preadmission review of documents required to be filed for the admission of a foreign insurer or for the organization and licensing of a domestic insurer other than an assessment association, a nonrefundable fee of one thousand

dollars.

Sec. 3. Section 44-322, Revised Statutes Supplement, 2002, is amended to read:

44-322. (1)(a)(i) Every insurance company holding a certificate of authority to transact the business of insurance in this state shall file with the director or, if required by the director, with the National Association of Insurance Commissioners, on or before March 1 of each year, an annual financial statement for the year ending December 31 immediately preceding on forms prescribed by the director which conform substantially to the forms adopted by the National Association of Insurance Commissioners, except that fees, premium tax payments, and other payments associated with such filings shall be paid to the director.

~~(ii)(A) Before January 1, 2001, unless the director provides otherwise, the financial statement shall be prepared in accordance with the annual statement instructions and the Accounting Practices and Procedures Manual adopted by the National Association of Insurance Commissioners and shall include the salaries and compensation of the officers and any other information required by the director.~~

~~(B) On and after January 1, 2001, the~~ (ii) The financial statement shall be prepared in accordance with annual statement instructions and accounting practices and procedures manuals as prescribed by the director which conform substantially to the annual statement instructions and the Accounting Practices and Procedures Manuals adopted by the National Association of Insurance Commissioners. ~~and shall include the salaries and compensation of the officers and any other information required by the director.~~

(iii) The salaries and compensation of the officers and any other information required by the director shall be filed with the director.

(iv) ~~(iii)~~ Every insurance company subject to this section shall make such other periodic financial filings as the director may reasonably require.

(b)(i) Within seven days after the failure of an insurance company to comply with the requirements of subdivision (1)(a) of this section, the director shall notify the insurance company of such failure.

(ii) Subject to subdivision (1)(b)(iii) of this section, if an insurance company fails to comply with the requirements of subdivision (1)(a) of this section and any rules and regulations adopted and promulgated under such subdivision and any orders issued under such subdivision, (A) such insurance company shall forfeit one hundred dollars for each day thereafter such failure continues and the insurance company continues to transact any business of insurance and (B) in addition to the forfeiture required under subdivision (1)(b)(ii)(A) of this section, the director may suspend or refuse to renew the certificate of authority of the insurance company until it has complied with the requirements of subdivision (1)(a) of this section and any rules and regulations adopted and promulgated under such subdivision and any orders issued under such subdivision. All such forfeitures collected by the director shall be remitted to the State Treasurer for credit to the permanent school fund.

(iii) For good and sufficient cause shown, the director may grant a reasonable extension of time not to exceed thirty days within which the financial statement may be filed as required under subdivision (1)(a) of this section without the forfeiture required under subdivision (1)(b)(ii)(A) of this section and without any suspension or refusal to renew authorized under subdivision (1)(b)(ii)(B) of this section.

(2) Every insurance company holding a certificate of authority to transact the business of insurance in this state shall participate in the National Association of Insurance Commissioners Insurance Regulatory Information System, including the payment of all fees and charges of such system, except as exempted by the director. Each participating insurance company shall file with the National Association of Insurance Commissioners on or before March 1 of each year a copy of its annual financial statement along with any additional filings required by the director for the immediately preceding year. The financial statement so filed shall be in the same format and scope as that required by subsection (1) of this section and shall include a signed jurat page and actuarial certification except as exempted by the director. Each participating insurance company shall file with the National Association of Insurance Commissioners any amendments and addendums to the financial statement and annual and quarterly financial statement information in computer readable format as required by the Insurance Regulatory Information System.

Sec. 4. Section 44-407.14, Reissue Revised Statutes of Nebraska, is amended to read:

44-407.14. With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a rate of interest of ~~three~~ one and one-half percent per annum of percentages of the net considerations paid prior to such time, decreased by the sum of (1) any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of ~~three~~ one and one-half percent per annum; and (2) the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars and less a collection charge of one dollar and twenty-five cents per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five percent of the net consideration for the first contract year and eighty-seven and one-half percent of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five percent.

Sec. 5. Section 44-501, Reissue Revised Statutes of Nebraska, is amended to read:

44-501. No policy or contract of fire and lightning insurance, including a renewal thereof, shall be made, issued, used, or delivered by any insurer or by any ~~agent~~ insurance producer or representative ~~thereof~~ of an insurer on property within this state other than such as shall conform as nearly as practicable to blanks, size of type, context, provisions, agreements, and conditions with the 1943 Standard Fire Insurance Policy of the State of New York, a copy of which shall be filed in the office of the Director of Insurance as standard policy for this state, and no other or different provision, agreement, condition, or clause shall in any manner be made a part of such contract or policy or be endorsed thereon or delivered therewith except as provided in subdivisions (1) through (11) of this section.

(1) The name of the company, its location and place of business, the date of its incorporation or organization, the state or country under which such company is organized, the amount of paid-up capital stock, whether it is a stock, mutual, reciprocal, or assessment company, the names of its officers, the number and date of the policy, and appropriate company emblems may be printed on policies issued on property in this state. Any insurer organized under special charter provisions may so indicate upon its policy and may add a statement of the plan under which it operates in this state.

In lieu of the facsimile signatures of the president and secretary of the insurer on such policy, there may appear the signature or signatures of such persons as are duly authorized by the insurer to execute the contract. No such policy shall be void if the facsimile signature or signatures of any officer of the company shall not correspond with the actual persons who are such officers at the inception of the contract if such policy is countersigned by a duly authorized agent of the insurer.

(2) Printed or written forms of description and specifications or schedules of the property covered by any particular policy and any other matter necessary to express clearly all the facts and conditions of insurance on any particular risk, which facts or conditions shall in no case be inconsistent with or a waiver of any of the provisions or conditions of the standard policy herein provided for, may be written upon or attached or appended to any policy issued on property in this state. Appropriate forms of supplemental contracts, contracts, or endorsements, whereby the interest in the property described in such policy shall be insured against one or more of the perils which insurer is empowered to assume, may be used in connection with the standard policy. Such forms of contracts, supplemental contracts, or endorsements attached or printed thereon may contain provisions and stipulations inconsistent with the standard policy if applicable only to such other perils. The pages of the standard policy may be renumbered and rearranged for convenience in the preparation of individual contracts and to provide space for the listing of rates and premiums for coverages insured thereunder or under endorsements attached or printed thereon and such other data as may be included for duplication on daily reports for office records.

(3) A company, corporation, or association organized or incorporated under and in pursuance of the laws of this state or elsewhere, if entitled to

do business in this state, may with the approval of the Director of Insurance, if the same is not already included in the standard form as filed in the office of the Department of Insurance, print on its policies any provision which it is required by law to insert therein if the provision is not in conflict with the laws of this state or the United States or with the provisions of the standard form provided for in this section, but such provision shall be printed apart from the other provisions, agreements, or conditions of the policy and in type not smaller than the body of the policy and a separate title, as follows: Provisions required by law to be stated in this policy, and be a part of the policy.

(4) There may be endorsed on the outside of any policy provided for in this section for the name, with the ~~word Agent or Agents~~ words insurance producer and place of business, of any insurance ~~agent or agents~~ producer, either by writing, printing, stamping, or otherwise. There may also be added, with the approval of the Director of Insurance, a statement of the group of companies with which the company is financially affiliated and the usual company medallion.

(5) When two or more companies, each having previously complied with the laws of this state, unite to issue a joint policy, there may be expressed in the headline of each policy the fact of the severalty of the contract and also the proportion of premiums to be paid to each company and the proportion of liability which each company agrees to assume. In the printed conditions of such policy, the necessary change may be made from the singular to plural number when reference is made to the companies issuing such policy.

(6) This section shall not apply to motor vehicle, inland ~~marine, nor ocean marine insurance nor shall it apply to reinsurance contracts between insurance companies. The Director of~~ marine, or ocean marine insurance, reinsurance contracts between insurance companies, or insurance that does not cover risks of a personal nature. The Director of Insurance may approve any form of policy which includes coverage against the peril of fire and substantial coverage against other perils without complying with the provisions of this section if such policy with respect to the peril of fire includes provisions which are the substantial equivalent of the minimum provisions of the standard policy provided for in this section and if the policy is complete as to all its terms without reference to any other document.

(7) If the policy is made by a mutual assessment or other company having special regulations lawfully applicable to its organization, membership, policies, or contracts of insurance, such regulations shall apply to and form a part of the policy as the same may be written or printed upon or attached or appended thereto.

(8) Policies of assessment associations may be issued with such modifications as shall be approved in writing by the Department of Insurance.

(9) Any other coverage which a company is authorized to write under the laws of this state may be written in combination with a fire insurance policy.

(10) The policy shall provide that claims involving total loss situations shall be paid in accordance with section 44-501.02.

(11) ~~The~~ Notwithstanding any other provision of this section, the Director of Insurance may approve any form of policy with variations in terms and conditions from the standard policy provided for in this section.

Sec. 6. Section 44-924, Revised Statutes Supplement, 2002, is amended to read:

44-924. (1) The director may adopt and promulgate rules and regulations to carry out the Privacy of Insurance Consumer Information Act.

~~(2)(a) Prior to January 1, 2003, the director may adopt and promulgate rules and regulations that:~~

~~(i) Set standards for the maintenance of the privacy of health and nonpublic personal health information held by licensees;~~

~~(ii) Conform to the standards contained in the act for the maintenance of health information and nonpublic personal health information held by licensees.~~

~~(b) Rules and regulations adopted under this subsection expire on January 1, 2003.~~

~~(c) This subsection terminates on January 1, 2003.~~

(2) The director may adopt and promulgate rules and regulations to establish standards that licensees must meet in the development and implementation of administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of consumer and customer information.

Sec. 7. Section 44-1103, Revised Statutes Supplement, 2002, is amended to read:

44-1103. (1)(a) A person shall not operate as a viatical settlement provider or viatical settlement broker without first obtaining a license from the director or the chief insurance regulatory official of the state of residence of the viator. If there is more than one viator on a single policy and the viators are residents of different states, the viatical settlement shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all viators.

(b)(i) A licensed insurance producer who has received qualification for a license in life insurance shall be exempt from the requirements of subdivision (1)(a) of this section if:

(A) The insurance producer is involved in no more than five viatical settlements per year;

(B) The insurance producer registers as a licensed insurance producer involved in no more than five viatical settlements per year;

(C) The insurance producer makes such registration no later than three days following the referral of a potential settlement to a viatical settlement provider; and

(D) The insurance producer meets the requirements set forth in subsections (4) through (7) of this section.

(ii) A registration application made pursuant to this subdivision shall be accompanied by a registration fee as set forth in subsection (2) of this section.

(iii) The director may suspend, revoke, or refuse to issue or renew a registration of an insurance producer pursuant to this subdivision for any of the grounds set forth in section 44-1104.

(2) Application for a viatical settlement provider or viatical settlement broker license shall be made to the director by the applicant on a form prescribed by the director. The viatical settlement broker application shall be accompanied by a fee established by the director of not to exceed forty dollars. The viatical settlement provider application shall be accompanied by a fee established by the director of not to exceed one thousand five hundred dollars.

(3) All viatical settlement broker licenses shall expire on the last day of the month of the licensed person's birthday in the first year after issuance in which his or her age is divisible by two and may be renewed upon payment of a fee established by the director not to exceed forty dollars. All viatical settlement provider licenses shall expire on the last day of April in each year and may be renewed upon payment of a renewal fee established by the director not to exceed one hundred dollars. Failure to pay the fee by the renewal date results in expiration of the license.

(4) The applicant shall provide information on forms required by the director. The director shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members, and employees, and the director may, in the exercise of the director's discretion, refuse to issue a license in the name of a legal entity if not satisfied that any stockholder, partner, officer, member, or employee thereof who may materially influence the applicant's conduct meets the standards of the Viatical Settlements Act.

(5) A license issued to a legal entity authorizes all partners, officers, members, and designated employees to act as viatical settlement providers and viatical settlement brokers, as applicable, under the license, and all those persons shall be named in the application and any supplements to the application.

(6) Upon the filing of an application and the payment of the license fee, the director shall make an investigation of each applicant and issue a license if the director finds that the applicant:

(a) If a viatical settlement provider, provides a detailed plan of operation;

(b) Is competent and trustworthy and intends to act in good faith in the capacity for which application for a license is made;

(c) Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which application for a license is made;

(d) If a legal entity, provides a certificate of good standing from the state of its domicile; and

(e) If a viatical settlement provider or viatical settlement broker, provides an antifraud plan that meets the requirements of subsection (7) of section 44-1112.

(7) A licensee shall provide to the director new or revised information about officers, ten-percent or more stockholders, partners, directors, members, or designated employees within thirty days after the

change.

Sec. 8. Section 44-1106, Revised Statutes Supplement, 2002, is amended to read:

44-1106. (1) Each ~~licensee~~ viatical settlement provider shall file with the director on or before March 1 of each year an annual statement containing such information as the director may prescribe by rule and regulation.

(2) Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity shall not disclose that identity as an insured or the insured's financial or medical information to any other person unless the disclosure:

(a) Is necessary to effect a viatical settlement between the viator and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

(b) Is provided in response to an investigation or examination by the director or any other governmental officer or agency or pursuant to the requirements of subsection (3) of section 44-1112;

(c) Is a term of or condition to the transfer of a policy by one viatical settlement provider to another viatical settlement provider;

(d) Is necessary to permit a financing entity, related provider trust, or special purpose entity to finance the purchase of policies by a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

(e) Is necessary to allow the viatical settlement provider or viatical settlement broker or his or her authorized representative to make contacts for the purpose of determining health status; or

(f) Is required to purchase stop-loss coverage.

Sec. 9. Section 44-1994, Reissue Revised Statutes of Nebraska, is amended to read:

44-1994. (1)(a) A title insurer 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 insurer in connection with an escrow, security deposit, settlement, or closing 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, security deposit, settlement, or closing agreement and shall be segregated for each depository by escrow, security deposit, settlement, or closing in the records of the title insurer 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 insurer 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, security deposit, settlement, or closing account only if deposits in amounts at least equal to the disbursement have first been made directly relating to the transaction disbursed against and if the deposits are in one of the following forms:

(A) Lawful money of the United States;

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

(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 insurer; and

(D) United States treasury checks, federal reserve bank checks, federal home loan bank checks, ~~and~~ State of Nebraska warrants, and warrants of a city of the metropolitan or primary class.

(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) Nothing in this section is intended to amend, alter, or supersede other sections of the Title Insurers Act or the laws of this state or the United States regarding an escrow holder's duties and obligations.

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

Sec. 10. Section 44-19,116, Revised Statutes Supplement, 2002, 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 funds in an amount at least equal to the disbursement have first been received and if the 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, and warrants of a city of the metropolitan or primary class.

(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) On and after January 1, 2004, every 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. The director may also require a title insurance agent to provide a copy of its audit report 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. 11. Section 44-2707, Revised Statutes Supplement, 2002, is amended to read:

44-2707. In addition to the powers and duties enumerated in the Nebraska Life and Health Insurance Guaranty Association Act:

(1) If a member insurer is an impaired insurer, the association may, at its discretion and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer and that are approved by the director:

(a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, all the covered policies of the impaired insurer; and

(b) Provide such money, pledges, loans, notes, guarantees, or other means as are proper to effectuate subdivision (1)(a) of this section and assure payment of the contractual obligations of the impaired insurer pending action under subdivision (1)(a) of this section;

(2) If a member insurer is an insolvent insurer, the association shall, in its discretion, either:

(a)(i)(A) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies or contracts of the insolvent insurer; or

(B) Assure payment of the contractual obligations of the insolvent insurer; and

(ii) Provide such money, pledges, notes, guarantees, or other means as are reasonably necessary to discharge the association's duties; or

(b) Provide benefits in accordance with the following provisions:

(i) With respect to life and health insurance policies and annuities, assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies or contracts of the insolvent insurer for claims incurred:

(A) With respect to group policies and contracts, not later than the earlier of the next renewal date under these policies or contracts or forty-five days but not less than thirty days after the date on which the association becomes obligated with respect to the policies and contracts;

(B) With respect to nongroup policies, contracts, and annuities, not later than the earlier of the next renewal date under the policies or contracts or one year but not less than thirty days after the date on which the association becomes obligated with respect to the policies or contracts;

(ii) Make diligent efforts to provide all known insureds or annuitants for nongroup policies and contracts, or group policy owners with respect to group policies and contracts, thirty days' notice of the termination made pursuant to subdivision (2)(b)(i) of this section of the benefits provided;

(iii) With respect to nongroup life and health insurance policies and annuities covered by the association, make available to each known insured or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly insured or formerly an annuitant under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of subdivision (2)(b)(iv) of this section if the insureds or annuitants had a right under law or the terminated policy or annuity to convert coverage to individual coverage or to continue an individual policy or annuity in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or annuity or had a right only to make changes in premium by class;

(iv)(A) In providing the substitute coverage required under subdivision (2)(b)(iii) of this section, the association may offer either to reissue the terminated coverage or to issue an alternative policy.

(B) Alternative or reissued policies shall be offered without requiring evidence of insurability and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.

(C) The association may reinsure any alternative or reissued policy;

(v)(A) Alternative policies adopted by the association shall be subject to the approval of the domiciliary insurance commissioner and the receivership court. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.

(B) Alternative policies shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates that it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured but shall not reflect any changes in the health of the insured after the original policy was last underwritten.

(C) Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association;

(vi) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the domiciliary insurance commissioner and the receivership court;

(vii) The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date the coverage or policy is replaced by another similar policy by the policy owner, the insured, or the association; and

(viii) When proceeding under subdivision (2)(b) of this section with respect to a policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with subdivision (2)(b)(iii) of section 44-2703;

(3) Nonpayment of premiums within thirty-one days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage terminates the association's obligations under the policy or coverage under the act with respect to the policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of the act;

(4) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association. The association shall be liable for unearned premiums due to policy or contract owners arising after the entry of the order;

(5) The protection provided by the act shall not apply if guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state;

(6) In carrying out its duties under subdivision (2) of this section, the association may, subject to approval by a court in this state:

(a) Impose permanent policy or contract liens in connection with a guarantee, assumption, or reinsurance agreement if:

(i) The association finds that the amounts which can be assessed under the act are less than the amounts needed to assure full and prompt performance of the association's duties under the act; or

(ii) That the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens, to be in the public interest; and

(b) Impose temporary moratoriums or liens on payments of cash values and policy loans or any other right to withdraw funds held in conjunction with policies or contracts in addition to any contractual provisions for deferral of cash or policy loan value.

If the receivership court imposes a temporary moratorium or moratorium charge on payment of cash values or policy loans or on any other right to withdraw funds held in conjunction with policies or contracts out of the assets of the impaired or insolvent insurer, the association may defer the payment of cash values, policy loans, or other rights by the association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court;

(7) A deposit in this state which is held pursuant to law or required by the director for the benefit of creditors and policy owners and not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in this state or in a reciprocal state, pursuant to section 44-4852,

shall be promptly paid to the association. The association shall be entitled to retain a portion of such amount equal to the percentage determined by dividing the aggregate amount of policy owners' claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy owners' claims in this state related to that insolvency. The association shall remit to the domiciliary receiver the amount so paid to the association and not retained pursuant to this subdivision. Any amount paid to the association less the amount not retained by it shall be treated as a distribution of estate assets pursuant to section 44-4834 or similar provision of the state of domicile of the impaired or insolvent insurer;

(8) If the association fails to act within a reasonable period of time with respect to an insolvent insurer, as provided in subdivision (2) of this section, the director shall have the powers and duties of the association under the act with respect to the insolvent insurer;

(9) At the request of the director, the association may give assistance and advice to the director concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of an impaired or insolvent insurer;

(10) The association shall have standing to appear before any court or administrative agency in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under the act or with jurisdiction over any person or property against which the association may have rights through subrogation or other basis. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring or guaranteeing the policies or contracts and contractual obligations of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations. The association shall also have the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person against whom the association may have rights through subrogation or otherwise;

(11)(a) Any person receiving benefits under the act shall be deemed to have assigned his or her rights under and any causes of action against any person for losses arising under the covered policy to the association to the extent of the benefits received because of the act whether the benefits are payments of contractual obligations or continuation of coverage or provision of substitute or alternative coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, certificate holder, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by such act upon such person.

(b) The subrogation rights of the association under this subdivision shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under such act.

(c) In addition to subdivisions (11)(a) and (b) of this section, the association shall have all common-law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or owner, beneficiary, or payee of a policy or contract with respect to the policy or contracts. Such common-law rights and equitable or legal remedies include, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received pursuant to the act, against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment therefor. Nothing in this subdivision shall include any such person responsible solely by reason of serving as an assignee in respect of a qualified assignment under section 130 of the Internal Revenue Code.

(d) If the provisions of this subdivision are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies or portion of such amount covered by the association.

(e) If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights as described in subdivision (11) of this section, the person shall pay to the association the portion of the recovery attributable to the policies or any portion of such recovery covered by the association;

(12) The association may:

(a) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of the act;

(b) Sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section 44-2708;

(c) Borrow money to effect the purposes of the act. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(d) Employ or retain such persons as are necessary to handle the financial transactions of the association and to perform such other functions as become necessary or proper under the act;

(e) Negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association;

(f) Take such legal action as may be necessary to avoid payment of improper claims;

(g) Exercise, for the purposes of the act and to the extent approved by the director, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired or insolvent insurer;

(h) Organize itself as a corporation or in other legal form permitted by the laws of the state;

(i) Request information from a person seeking coverage from the association in order to aid the association in determining its obligations under the act with respect to the person, and the person shall promptly comply with the request;

(j) Take other necessary or appropriate action to discharge its duties and obligations under the act or to exercise its powers under the act; and

(k) Join an organization of one or more other state associations of similar purposes to further the purposes and administer the powers and duties of the association;

(13)(a) At any time within one year after the coverage date, the association may elect to succeed to the rights and obligations of the member insurer that accrue on or after the coverage date and that relate to contracts covered, in whole or in part, by the association under any one or more indemnity reinsurance agreements entered into by the member insurer as a ceding insurer and selected by the association, except that the association may not exercise an election with respect to a reinsurance agreement if the receiver, rehabilitator, or liquidator of the member insurer has previously and expressly disaffirmed the reinsurance agreement. For purposes of this section, coverage date means the date on which the association becomes responsible for the obligations of a member insurer. The election shall be effected by a notice to the receiver, rehabilitator, or liquidator and to the affected reinsurers. If the association makes an election, subdivisions (13)(a)(i) through (iv) of this section apply to the agreements selected by the association:

(i) The association shall be responsible for all unpaid premiums due under the agreements for periods both before and after the coverage date and shall be responsible for the performance of all other obligations to be performed after the coverage date in each case that relates to contracts covered, either in whole or in part, by the association. The association may charge contracts covered in part by the association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the association;

(ii) The association shall be entitled to any amounts payable by the reinsurer under the agreements with respect to losses or events that occur in periods after the coverage date and that relate to contracts covered by the association, in whole or in part, except that on receiving such amounts, the association shall pay to the beneficiary under the policy or contract on account of which the amounts were paid a portion of the amount equal to the excess of: (A) The amount received by the association, over (B) the benefits paid by the association on account of the policy or contract less the retention of the impaired or insolvent member insurer applicable to the loss or event;

(iii) Within thirty days after the association's election, the association and each indemnity reinsurer shall calculate the net balance due to or from the association under each reinsurance agreement as of the date of the association's election, giving full credit to all items paid by either the member insurer, or its receiver, rehabilitator, or liquidator, or the indemnity reinsurer during the period between the coverage date and the date of the association's election. The association or indemnity reinsurer shall

pay the net balance due the other within five days after the completion of such calculation. If the receiver, rehabilitator, or liquidator has received any amounts due the association pursuant to subdivision (13)(a)(ii) of this section, the receiver, rehabilitator, or liquidator shall, as promptly as practicable, pay such amounts to the association; and

(iv) If the association, within sixty days after the election, pays the premiums due for periods both before and after the coverage date that relate to contracts covered by the association in whole or in part, the reinsurer shall not be entitled to terminate the reinsurance agreements to the extent that the agreements relate to contracts covered by the association either wholly or partially and may not set off any unpaid premium due for periods prior to the coverage date against amounts due the association;

(b) If the association transfers its obligations to another insurer and if the association and the other insurer agree, such insurer shall succeed to the rights and obligations of the association under subdivision (13)(a) of this section effective as of the date agreed upon by the association and such insurer and regardless of whether the association has made the election referred to in subdivision (13)(a) of this section except that:

(i) The indemnity reinsurance agreements shall automatically terminate for new reinsurance unless the indemnity reinsurer and the other insurer agree to the contrary;

(ii) The obligations described in the exception set forth in subdivision (13)(a)(ii) of this section shall not apply on and after the date the indemnity reinsurance agreement is transferred to the third party insurer; and

(iii) Subdivision (13)(b) of this section shall not apply if the association has previously stated in writing that it will not exercise the election referred to in subdivision (13)(a) of this section;

(c) The provisions of subdivision (13) of this section shall supersede the provisions of any law of this state or of any affected reinsurance agreement that provides for or requires any payment of reinsurance proceeds on account of losses or events that occur in periods after the coverage date to the receiver, liquidator, or rehabilitator of the insolvent member insurer. The receiver, rehabilitator, or liquidator shall remain entitled to any amounts payable by the reinsurer under the reinsurance agreement with respect to losses or events that occur in periods prior to the coverage date, subject to applicable setoff provisions; and

(d) Except as otherwise expressly set forth in subdivision (13) of this section, nothing in such subdivision shall alter or modify the terms and conditions of the indemnity reinsurance agreements of the insolvent member insurer. Nothing in the subdivision shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance agreement. Nothing in such subdivision shall give a policyowner or beneficiary an independent cause of action against an indemnity reinsurer that is not otherwise set forth in the indemnity reinsurance agreement;

(14) The board of directors of the association shall have discretion and may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of the act in an economical and efficient manner;

(15) If the association has arranged or offered to provide the benefits of the act to a covered person under a plan or arrangement that fulfills the association's obligations under the act, such person shall not be entitled to benefits from the association in addition to or other than those provided under the plan or arrangement; and

(16) Venue in an action against the association arising under the act shall be in the district court of Lancaster County. The association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under the act.

Sec. 12. Section 44-5101, Reissue Revised Statutes of Nebraska, is amended to read:

44-5101. Sections 44-5101 to 44-5154 and section 14 of this act shall be known and may be cited as the Insurers Investment Act.

Sec. 13. Section 44-5110, Reissue Revised Statutes of Nebraska, is amended to read:

44-5110. (1) An insurer may invest in an individual interest of a pool of obligations or a fractional interest of a single obligation if:

(a) The certificate of participation or interest or the confirmation of participation or interest in the investment is issued in the name of the insurer, a custodian bank, or the nominee of either; and

(b) The certificate or confirmation, if held by a custodian bank, is kept separate and apart from the investment of others so that at all times the participation or interest may be identified as belonging solely to the insurer

making the investment.

(2) If an investment is not evidenced by a certificate, adequate evidence of the insurer's investment shall be obtained from the issuer or its transfer or recording agent and retained by the insurer, custodian bank, or clearing corporation except as provided in subdivision (2) of section 44-5109. For purposes of this subsection, adequate evidence shall mean a written receipt or other verification issued by the depository, issuer, or custodian bank which shows that the investment is held for the insurer. Transfers of ownership or investments held as described in subdivisions (1)(c) and (2) of section 44-5109 and this section may be evidenced by a bookkeeping entry on the books of the issuer of the investment, its transfer or recording agent, or the clearing corporation without physical delivery of certificates, if any, evidencing the insurer's investment.

(3) Any investment made pursuant to this section shall also conform with the following:

(a) The investment in which the interest is purchased shall be authorized under the Insurers Investment Act;

(b) The insurer's pro rata interest in the investment shall be in the same percentage as the par amount of its interest bears to the outstanding par amount of the investment at the time of purchase;

(c) Any person, other than an insurer, that is the obligor of the investment instrument or the investor from whom the interest is purchased shall have outstanding senior debt or commercial paper having a minimum quality rating as described in subdivision (2) of section 44-5112 or subsection ~~(3)~~ (2) of section 44-5138; and

(d) Any insurer that is the obligor of the investment instrument or the investor from whom the interest is purchased shall be rated A or better by A.M. Best's rating service or the corresponding rating of a successor organization approved by the director.

(4) An investment may be authorized under this section although its interest does not include the right to exercise the investor's rights or enforce the investor's remedies according to the provisions of the issue.

(5) Any investment made pursuant to this section shall be purchased pursuant to a written participation agreement.

(6) An insurer's investments authorized under this section shall not exceed ten percent of its admitted assets.

Sec. 14. (1) For purposes of this section:

(a) Acceptable collateral means:

(i) As to repurchase transactions, cash, cash equivalents, and direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States or an agency of the government of the United States or the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and

(ii) As to reverse repurchase transactions, cash and cash equivalents;

(b) Cash equivalents means short-term, highly rated investments or securities readily convertible to known amounts of cash without penalty and so near maturity that they present insignificant risk of change in value. Cash equivalents includes government money market mutual funds and class one money market mutual funds. For purposes of this definition:

(i) Short-term means investments with a remaining term to maturity of ninety days or less; and

(ii) Highly rated means an investment rated at least P-1 by Moody's Investors Service, Inc., A-1 by Standard and Poor's division of The McGraw Hill Companies, Inc., or its equivalent rating by a nationally recognized statistical rating organization recognized by the Securities Valuation Office;

(c) Repurchase transaction means a transaction in which an insurer purchases securities from a business entity that is obligated to repurchase the purchased securities or equivalent securities from the insurer at a specified price, either within a specified period of time or upon demand; and

(d) Reverse repurchase transaction means a transaction in which an insurer sells securities to a business entity and is obligated to repurchase the sold securities or equivalent securities from the business entity at a specified price, either within a specified period of time or upon demand.

(2) An insurer may engage in repurchase and reverse repurchase transactions as set forth in this section. The insurer shall enter into a written agreement for transactions entered under this section. Such agreements shall require that each transaction terminate no more than one year from its inception.

(3) Cash received in a transaction under this section shall be invested in accordance with the Insurers Investment Act and in a manner that recognizes the liquidity needs of the transaction or is used by the insurer

for its general corporate purposes.

(4) So long as the transaction remains outstanding, the insurer, or its agent or custodian, shall maintain as acceptable collateral received in a transaction under this section, either physically or through the book entry systems of the federal reserve, depository trust company, participants' trust company, or other securities depositories approved by the director:

(a) Possession of the acceptable collateral;

(b) A perfected security interest in the acceptable collateral; or

(c) In the case of a jurisdiction outside of the United States, title to, or rights of a secured creditor to, the acceptable collateral.

(5) The limitations of sections 44-5115 and 44-5137 shall not apply to the business entity counterparty exposure created by transactions under this section. An insurer shall not enter into a transaction under this section if, as a result of and after giving effect to the transaction:

(a) The aggregate amount of securities then sold to or purchased from any one business entity counterparty under this section would exceed five percent of its admitted assets; and in calculating the amount sold to or purchased from a business entity counterparty under repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement; or

(b) The aggregate amount of all securities then sold to or purchased from all business entities under this section would exceed twenty percent of its admitted assets.

(6)(a) In a reverse repurchase transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to ninety-five percent of the market value of the securities transferred by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than ninety-five percent of the market value of the securities so transferred, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals ninety-five percent of the market value of the transferred securities.

(b) In a repurchase transaction, the insurer shall receive acceptable collateral having a market value at least equal to one hundred two percent of the purchase price paid by the insurer. If at any time the market value of the acceptable collateral is less than one hundred percent of the purchase price paid by the insurer, the business entity counterparty shall be obligated to provide additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent of the purchase price. Securities acquired by an insurer in a repurchase transaction shall not be sold in a reverse repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.

Sec. 15. Section 44-5120, Revised Statutes Supplement, 2002, is amended to read:

44-5120. (1) An insurer may lend its securities if:

(a) The securities are created or existing under the laws of the United States and, simultaneously with the delivery of the loaned securities, the insurer receives collateral from the borrower consisting of cash or securities backed by the full faith and credit of the United States or an agency or instrumentality of the United States, except that any securities provided as collateral shall not be of lesser quality than the quality of the loaned securities. Any investment made by an insurer with cash received as collateral for loaned securities shall be made in the same kinds, classes, and investment grades as those authorized under the Insurers Investment Act. The securities provided as collateral shall have a market value when the loan is made of at least one hundred two percent of the market value of the loaned securities;

(b) The securities are created or existing under the laws of Canada or are securities described in section 44-5137 and, simultaneously with the delivery of the loaned securities, the insurer receives collateral from the borrower consisting of cash or securities backed by the full faith and credit of the foreign country, except that any securities provided as collateral shall not be of lesser quality than the quality of the loaned securities. Any investment made by an insurer with cash received as collateral for loaned securities shall be made in the same kinds, classes, and investment grades as those authorized under the Insurers Investment Act. The securities provided as collateral shall have a market value when the loan is made of at least one hundred two percent of the market value of the loaned securities;

(c) Prior to the loan, the borrower or any indemnifying party furnishes the insurer with or the insurer otherwise obtains the most recent

financial statement of the borrower or any indemnifying party;

(d) The insurer receives a reasonable fee related to the market value of the loaned securities and to the term of the loan;

(e) The loan is made pursuant to a written loan agreement; and

(f) The borrower is required to furnish by the close of each business day during the term of the loan a report of the market value of all collateral and the market value of all loaned securities as of the close of trading on the previous business day. If at the close of any business day the market value of the collateral for any loan outstanding to a borrower is less than one hundred percent of the market value of the loaned securities, the borrower shall deliver by the close of the next business day an additional amount of cash or securities. The market value of the additional securities, together with the market value of all previously delivered collateral, shall equal at least one hundred two percent of the market value of the loaned securities for that loan.

(2) If at the close of any business day the market value of the collateral for all loans outstanding to a borrower is less than one hundred two percent of the market value of the loaned securities, the borrower shall deliver by the close of the next business day an additional amount of cash or securities. The market value of the additional securities, together with the market value of all previously delivered collateral, shall equal at least one hundred two percent of the market value of the loaned securities for all loans to that borrower. This subsection does not apply if the insurer receives cash collateral for all loans outstanding to the borrower.

(3) For purposes of this section, market value shall include accrued interest.

(4) An insurer shall effect securities lending only through the services of a custodian bank or similar entity as approved by the director.

(5) An insurer's investments authorized under this section shall not exceed ten percent of its admitted assets.

Sec. 16. Section 44-5138, Reissue Revised Statutes of Nebraska, is amended to read:

44-5138. (1) An insurer may invest in:

(a) Bank certificates of deposit, banker's acceptances, or corporate promissory notes with a remaining term of no more than one year; and

~~(b) Written repurchase agreements collateralized by securities authorized under section 44-5123 or 44-5124; and~~

~~(c)~~ (b) Shares, interests, or participation certificates in any management type of investment trust, corporate or otherwise, registered under the Investment Company Act of 1940, as amended, as a diversified open-end investment company, that invests solely in such investments as described in ~~subdivisions (1)(a) and (b)~~ subdivision (1)(a) of this section.

(2) ~~For purposes of this section, repurchase agreement shall mean a bilateral agreement whereby an insurer purchases securities with a related agreement that the seller will purchase or repurchase at a specified price the equivalent or similar securities within a specified period of time or upon demand.~~

~~(3)~~ Any investment in corporate promissory notes authorized under subdivision (1)(a) of this section shall have a 1 or 2 designation from the Securities Valuation Office. If the Securities Valuation Office does not rate the investment in question but does rate an obligation of the obligor having a priority equal to or lower than the investment in question, the insurer may apply such rating to the investment. If the Securities Valuation Office does not rate the investment in question or an outstanding obligation of the obligor having a priority equal to or lower than the investment in question, the investment shall have a minimum short-term quality rating of P-2 by Moody's Investors Service, Inc., A-2 by Standard and Poor's Corporation, or the corresponding investment grade rating from any nationally recognized statistical rating organization recognized by the Securities Valuation Office. If the obligor of an investment is authorized by, established by, or incorporated under the laws of Canada or any province thereof and the Securities Valuation Office does not rate the investment in question, the minimum quality rating shall be R-2 by the Dominion Bond Rating Service, A-1 by the Canadian Bond Rating Service, or the corresponding rating of any successor organization approved by the director.

Sec. 17. Section 44-5814, Revised Statutes Supplement, 2002, is amended to read:

44-5814. (1) Each third-party administrator shall file an annual report for the preceding calendar year with the director on or before March 1 of each year or within such extension of time therefor as the director for good cause may grant. The annual report shall be in the form and contain such matters as the director prescribes and shall be verified by at least two

officers of the third-party administrator.

(2) The annual report shall include the complete names and addresses of all insurers with which the third-party administrator had a written agreement during the preceding fiscal year.

(3) At the time of filing its annual report, the third-party administrator shall pay to the director a filing fee of two hundred dollars.

(4)(a) Within seven business days after the failure of a third-party administrator to comply with the requirements of this section, the director shall notify the third-party administrator of such failure.

(b) Subject to subdivision (4)(c) of this section, if a third-party administrator fails to comply with the requirements of this section and any rules and regulations adopted and promulgated under this section and any orders issued under this section:

(i) Such third-party administrator shall forfeit fifty dollars for each day thereafter such failure continues and the third-party administrator continues to transact any business of insurance; and

(ii) In addition to the forfeiture required under subdivision (4)(b)(i) of this section, the director may suspend ~~or refuse to renew~~ the certificate of authority of the third-party administrator until it has complied with the requirements of this section, any rules and regulations adopted and promulgated under this section, and any orders issued under this section. All such forfeitures collected by the director shall be remitted to the State Treasurer for credit to the permanent school fund.

(c) For good and sufficient cause shown, the director may grant a reasonable extension of time not to exceed thirty days within which the annual report may be filed as required under this section without the forfeiture required under subdivision (4)(b)(i) of this section and without any suspension ~~or refusal to renew~~ authorized under subdivision (4)(b)(ii) of this section.

Sec. 18. Section 44-7501, Revised Statutes Supplement, 2002, is amended to read:

44-7501. Sections 44-7501 to 44-7535 and sections 19 and 21 of this act shall be known and may be cited as the Property and Casualty Insurance Rate and Form Act.

Sec. 19. (1) All policy forms and related rules of attachment shall be filed with the director in accordance with section 21 of this act, except that an insurer may at its option file policy forms and related rules of attachment in accordance with section 44-7513 and filings for the following shall be filed in accordance with section 44-7513:

(a) Filings made by advisory organizations;

(b) Workers' compensation and employers liability insurance;

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

(d) Excess workers' compensation and employers liability insurance;

(e) Medical professional liability insurance;

(f) Insurance in noncompetitive markets as determined pursuant to section 44-7507;

(g) 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;

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

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

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

(k) 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 21 of this act that have failed to meet the filing standards contained in such section with such frequency as to indicate a general business practice that disregards the requirements of such section or finds that the insurer committed one or more egregious acts relating to the filing standards, the director shall order that the insurer's filings be made subject to the requirements of section 44-7513.

(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 21 of this act without the need for the director to request that the original filings be amended, the director may 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.

Sec. 20. Section 44-7507, Revised Statutes Supplement, 2002, is amended to read:

44-7507. (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, policy forms, or both 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 44-7508 would frequently require amendment or disapproval if filed under sections 44-7510 and 44-7511;

(e) Whether additional competition would appear likely to significantly lower rates or improve the policy forms offered to insureds;

(f) Whether rates would be lowered ~~by the imposition of prior approval rating system regulation~~ or policy forms would be improved by the imposition of a system of prior approval regulation;

(g) Whether policy forms filed under section 21 of this act would frequently require amendment or disapproval if filed under section 44-7513; and

~~(g)~~ (h) 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 or policy forms, 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 44-7510 and 44-7511 to the rates charged for a type of insurance, an order shall be issued pursuant to this section that applies sections 44-7510 and 44-7511 to the type of insurance. 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 section 44-7513 to regulate the forms offered for a type of insurance, an order shall be issued pursuant to this section that applies section 44-7513 to the type of insurance. An order issued under this subsection ~~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. 21. (1) For policy forms to which this section applies as

provided in section 19 of this act, each insurer shall file with the director every policy form and related attachment rule and every modification thereof which it proposes to use. For policy forms to which this section applies, 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 (10) or (11) of this section or as provided by rules and regulations adopted and promulgated pursuant to section 44-7514 or 44-7515.

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

(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 so that such listings can be provided upon request.

(4) The director shall acknowledge receipt of a policy form filing as soon as practical. A review of the filing by the director is not required to issue this acknowledgment, and acknowledgment shall not constitute an approval by the director.

(5) The director may review a policy form filing at any time after it has been made. Following such review, 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.

(6) If, within thirty days after its receipt, the director disapproves a filing that requires disapproval pursuant to subsection (5) of this section, then a written disapproval notice shall be sent to the insurer. The disapproval notice shall specify in what respects the filing fails to meet these requirements. Upon receipt of the notice of disapproval, the insurer shall cease use of the filing as soon as practical but may use the form for policies that have already been issued or when pending coverage proposals are outstanding.

(7) If, within thirty days after its receipt, the director requests additional information to complete review of a policy form filing, the thirty-day review period allowed in subsection (6) 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.

(8) An insurer whose filing is disapproved pursuant to subsection (6) of this section may, within thirty days after receipt of a disapproval notice, request a hearing in accordance with section 44-7532.

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

(10)(a) Subject to the requirements of this subsection, 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 44-7508 shall be exempt from subsection (1) of this section.

(b) At the earliest practical opportunity, but no later than thirty days after 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 filed with the director. 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 within sixty days after its second usage.

(d) The exemption provided by this subsection shall not apply 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 rule and regulation 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. Any such informational filings 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.

(11) The director may by rule and regulation 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 Property and Casualty Insurance Rate and Form Act.

(12) If, at any time after the expiration of the review period provided by subsection (6) of this section or any extension thereof, the director finds that a policy form, attachment rule, or modification thereof does not meet or no longer meets the requirements of subsection (5) of this section, the director shall hold a hearing in accordance with section 44-7532.

(13) Any insured aggrieved with respect to any policy form filing subject to this section 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 44-7532.

(14) If, after a hearing held pursuant to subsection (12) or (13) of this section, the director finds that a filing does not meet the requirements of subsection (5) 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 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. 22. Section 44-7513, Revised Statutes Supplement, 2002, is amended to read:

44-7513. (1) Each insurer to which this section applies as provided in section 19 of this act shall file with the director every policy form and related attachment rule and every modification thereof which it proposes to use. No insurer to which this section applies 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 44-7514 or 44-7515.

(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 44-7508 shall be exempt from the approval requirements contained in subsection (1) of this section.

(b) At the earliest practical opportunity, but no later than thirty days after 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 44-7532.

(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 44-7532.

(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 44-7532.

(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. 23. Section 44-7515, Revised Statutes Supplement, 2002, is amended to read:

44-7515. (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 at the earliest practical date, but no later than thirty days after 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.

(7) Policy forms for commercial risks exempted by the rules and regulations adopted and promulgated pursuant to this section may include language that conflicts with section 44-501. If a conflict results between a policy form and the requirements of section 44-501, the language in the policy form shall apply to the extent that it is inconsistent with such section.

Sec. 24. Original sections 44-113, 44-114, 44-407.14, 44-501, 44-1994, 44-5101, 44-5110, and 44-5138, Reissue Revised Statutes of Nebraska, and sections 44-322, 44-924, 44-1103, 44-1106, 44-19,116, 44-2707, 44-5120, 44-5814, 44-7501, 44-7507, 44-7513, and 44-7515, Revised Statutes Supplement, 2002, are repealed.

Sec. 25. The following section is outright repealed: Section 44-2823, Reissue Revised Statutes of Nebraska.