

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1073

FINAL READING

Introduced by Slama, 1.

Read first time January 09, 2024

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to law; to amend sections 44-7,115, 44-1308,
2 44-19,116, 44-5807, 48-2706, 68-956, 76-2,122, 76-856, 81-885.10,
3 and 81-885.55, Reissue Revised Statutes of Nebraska, and sections
4 44-4603, 44-4604, 76-2,121, 81-885.01, 81-885.17, 81-885.24, and
5 87-302, Revised Statutes Cumulative Supplement, 2022; to adopt the
6 Peer-to-Peer Vehicle Sharing Program Act; to prohibit certain
7 actions relating to insurance for lung cancer screening; to change
8 requirements relating to step-therapy override exceptions, documents
9 and information provided to an independent review organization,
10 title insurance, index-linked variable annuity contracts, the
11 Pharmacy Benefit Manager Licensure and Regulation Act, pharmacy
12 benefit managers, onsite audits of the operations of third-party
13 administrators, health benefit plans offered by professional
14 employer organizations, the Medicaid Prescription Drug Act,
15 requirements for real estate closing agents, the Nebraska
16 Condominium Act, the Nebraska Real Estate License Act, and deceptive
17 trade practices; to prohibit and require certain actions relating to
18 right-to-list home sale agreements; to define and redefine terms; to
19 harmonize provisions; to provide a duty for the Revisor of Statutes;
20 to provide operative dates; to repeal the original sections; and to
21 declare an emergency.

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

1 Section 1. Sections 1 to 15 of this act shall be known and may be
2 cited as the Peer-to-Peer Vehicle Sharing Program Act.

3 Sec. 2. For purposes of the Peer-to-Peer Vehicle Sharing Program
4 Act, unless the context otherwise requires:

5 (1) Agreement means the terms and conditions applicable to an owner
6 and a driver that govern the use of a vehicle shared through a peer-to-
7 peer vehicle sharing program. Agreement does not mean a rental agreement
8 as defined in section 44-4067;

9 (2) Delivery period means the period of time during which a vehicle
10 is being delivered to the location at which the start time begins, if
11 applicable, as documented by the agreement;

12 (3) Driver means an individual who has been authorized to drive a
13 vehicle by an owner under an agreement;

14 (4) Owner means the registered owner, or a person or entity
15 designated by the registered owner, of a vehicle made available for
16 sharing through a peer-to-peer vehicle sharing program;

17 (5) Peer-to-peer vehicle sharing program or program means a business
18 platform that connects owners with drivers to enable the sharing of
19 vehicles for financial consideration. A program is not a transportation
20 network company as defined in section 75-323 or a rental car company as
21 defined in section 44-4067;

22 (6) Sharing means the authorized use of a vehicle by an individual
23 other than an owner through a peer-to-peer vehicle sharing program;

24 (7) Sharing period means the period of time that commences with the
25 delivery period or, if there is no delivery period, that commences with
26 the start time and, in either case, ends at the termination time;

27 (8) Start time means the time when a vehicle becomes subject to the
28 control of a driver at or after the time the reservation is scheduled to
29 begin as documented in the records of a program;

30 (9) Termination time means the earliest of the following events:

31 (a) The expiration of the agreed upon period of time established for

1 the use of a vehicle according to the terms of the agreement if the
2 vehicle is delivered to the location specified in the agreement;

3 (b) When a vehicle is returned to an alternative location as agreed
4 upon by the owner and driver as communicated through the peer-to-peer
5 vehicle sharing program. Such alternative location shall be incorporated
6 into the agreement; and

7 (c) When an owner, or the owner's authorized designee, takes
8 possession and control of the vehicle; and

9 (10) Vehicle means a motor vehicle as defined in section 60-471 that
10 is available for use through a peer-to-peer vehicle sharing program.
11 Vehicle does not include any motor vehicle used as or offered for use as
12 a rental vehicle under section 44-4067, any commercial motor vehicle as
13 defined in section 60-465, or any vehicle subject to section 75-363.

14 Sec. 3. (1) Except as provided in subsection (2) of this section, a
15 peer-to-peer vehicle sharing program shall assume financial liability on
16 behalf of an owner for any claim for bodily injury or property damage to
17 third parties or uninsured and underinsured motorist losses during the
18 sharing period in an amount stated in the agreement. Such amount shall
19 not be less than the amount required in section 60-310.

20 (2) The assumption of financial liability by a program under
21 subsection (1) of this section does not apply if the owner:

22 (a) Makes a material, intentional, or fraudulent misrepresentation,
23 or a material, intentional, or fraudulent omission, to a program relating
24 to the vehicle or the agreement prior to the sharing period in which the
25 assumption of such liability would otherwise be required; or

26 (b) Acts in concert with a driver to trigger the assumption of such
27 liability that would otherwise be required.

28 (3) The assumption of financial liability under subsection (1) of
29 this section applies to bodily injury, property damage, and uninsured and
30 underinsured motorist losses by injured third parties.

31 Sec. 4. (1) A program shall require during each sharing period that

1 the owner and driver are insured under a motor vehicle liability
2 insurance policy that:

3 (a) Provides financial responsibility in amounts no less than the
4 minimum amounts required by section 60-310; and

5 (b)(i) Recognizes that the vehicle is made available and used
6 through the program; or

7 (ii) Does not exclude use of the vehicle by a driver through the
8 program.

9 (2) The financial responsibility required under subsection (1) of
10 this section may be satisfied by motor vehicle liability insurance or
11 other acceptable means of demonstrating financial responsibility in
12 Nebraska, voluntarily maintained by:

13 (a) The owner;

14 (b) The driver;

15 (c) The program; or

16 (d) Any combination of owner, driver, and program.

17 (3) The financial responsibility described in subsection (1) of this
18 section and satisfied pursuant to subsection (2) of this section shall be
19 the primary coverage during the sharing period in the event that a claim
20 occurs in another state with minimum financial responsibility limits
21 higher than those required under section 60-310, and during the sharing
22 period the coverage maintained under subsection (2) of this section shall
23 satisfy any difference in minimum coverage amounts, up to the applicable
24 policy limits.

25 (4) The insurer, insurers, or program providing coverage under
26 section 3 or 4 of this act shall assume primary financial liability for a
27 claim when:

28 (a) A dispute exists as to who was in control of the vehicle at the
29 time of the loss and the program does not have available, did not retain,
30 or fails to provide the information required by section 7 of this act; or

31 (b) A dispute exists as to whether the vehicle was returned to the

1 alternative location pursuant to subdivision (9)(b) of section 2 of this
2 act.

3 (5) If financial responsibility maintained by the owner or the
4 driver in accordance with subsection (2) of this section has lapsed or
5 does not provide the required financial responsibility, the program or
6 its insurer shall provide the coverage required by subsection (1) of this
7 section beginning with the first dollar of a claim and have the duty to
8 defend such claim except under circumstances as set forth in subsection
9 (2) of section 3 of this act.

10 (6) Financial responsibility maintained by the program shall not be
11 dependent on another insurer first denying a claim, nor shall another
12 motor vehicle liability insurance policy be required to first deny a
13 claim.

14 (7) Nothing in the Peer-to-Peer Vehicle Sharing Program Act:

15 (a) Limits the liability of a program for any act or omission of the
16 program itself that results in injury or economic loss to any person as a
17 result of the use of a vehicle through the program; or

18 (b) Limits the ability of a program, by contract, to seek
19 indemnification from an owner or a driver for economic loss sustained by
20 the program resulting from a breach of the terms and conditions of an
21 agreement by such owner or driver.

22 Sec. 5. At the time an owner makes a vehicle available for use
23 through a program and immediately prior to each time such owner offers
24 such vehicle for use through such program, the program shall notify the
25 owner that if the vehicle has a lien against it, the use of the vehicle
26 through the program, including such use without physical damage insurance
27 coverage, may violate the terms of the contract with the lienholder.

28 Sec. 6. (1) An authorized insurer that writes motor vehicle
29 liability insurance in Nebraska may exclude any and all coverage and the
30 duty to defend or indemnify for any claim afforded under the owner's
31 motor vehicle liability insurance policy, including:

- 1 (a) Liability coverage for bodily injury and property damage;
- 2 (b) Personal injury protection coverage;
- 3 (c) Uninsured and underinsured motorist coverage;
- 4 (d) Medical payments coverage;
- 5 (e) Comprehensive physical damage coverage; and
- 6 (f) Collision physical damage coverage.

7 (2) Nothing in the this section invalidates, limits, or restricts an
8 insurer's ability under existing law to underwrite any insurance policy.
9 Nothing in the Peer-to-Peer Vehicle Sharing Program Act invalidates,
10 limits, or restricts an insurer's ability to cancel and nonrenew
11 insurance policies.

12 Sec. 7. (1) A program shall collect and verify records pertaining
13 to the use of a vehicle, including sharing periods, sharing period pick-
14 up and drop-off locations, fees paid by each driver, and revenue received
15 by each owner.

16 (2) A program shall provide the information collected pursuant to
17 subsection (1) of this section upon request to the owner, the owner's
18 insurer, and the driver's insurer to facilitate a claim coverage
19 investigation, settlement, negotiation, or litigation.

20 (3) A program shall retain the records required in this section for
21 a period of not less than four years.

22 Sec. 8. An insurer that defends or indemnifies a claim arising from
23 the operation of a vehicle that is excluded under the terms of its policy
24 shall have the right to seek recovery against the motor vehicle insurer
25 of the program if the claim is made against the owner or driver for loss
26 or injury that occurs during the sharing period.

27 Sec. 9. (1) A program shall have an insurable interest in a vehicle
28 during the sharing period.

29 (2) Nothing in this section shall impose liability on a program to
30 maintain the coverage required by section 3 or 4 of this act.

31 (3) A program may own and maintain as the named insured one or more

1 policies of motor vehicle liability insurance that provides coverage for:

2 (a) Liabilities assumed by the program under an agreement;

3 (b) Liability of an owner or driver; or

4 (c) Damage or loss to a vehicle.

5 Sec. 10. A program and an owner shall be exempt from vicarious
6 liability in accordance with 49 U.S.C. 30106(a), as such section existed
7 on January 1, 2023, and under any state or local law that imposes
8 liability solely based on vehicle ownership.

9 Sec. 11. (1) Each agreement made in Nebraska shall disclose to each
10 owner and driver:

11 (a) Any right of the program to seek indemnification from an owner
12 or a driver for economic loss sustained by the program resulting from a
13 breach of the terms and conditions of the agreement by such owner or
14 driver;

15 (b) That a motor vehicle liability insurance policy issued to an
16 owner or a driver may not provide a defense or indemnity for any claim
17 asserted by the program;

18 (c) That a program's financial responsibility afforded to each owner
19 and driver is available only during the sharing period;

20 (d) That for any use of a vehicle by a driver after the termination
21 time, a driver or owner may not have coverage;

22 (e) The daily rate, fees, costs, and, if applicable, any insurance
23 or protection package costs that are charged to an owner or a driver; and

24 (f) That an owner's motor vehicle liability insurance may not
25 provide coverage for the vehicle.

26 (2) Each agreement made in Nebraska shall disclose to each driver:

27 (a) An emergency telephone number to contact personnel capable of
28 fielding roadside assistance and other customer service inquiries; and

29 (b) Any conditions under which a driver shall maintain a personal
30 motor vehicle liability insurance policy and any required coverage limits
31 on a primary basis in order to use a vehicle through the program.

1 Sec. 12. A program shall have sole responsibility for any
2 equipment, such as a global positioning system or other special
3 equipment, that is put in or on a vehicle to monitor or facilitate
4 sharing and shall agree to indemnify and hold harmless the owner for any
5 damage to or theft of such equipment during the sharing period not caused
6 by the owner. A program has the right to seek indemnity from a driver for
7 any loss or damage to such equipment that occurs during the sharing
8 period.

9 Sec. 13. (1) At the time an owner makes a vehicle available for use
10 by a program and immediately prior to each time the owner offers such
11 vehicle for use by such program, the program shall:

12 (a) Verify that the vehicle does not have any safety recalls for
13 which the repairs have not been made; and

14 (b) Notify the owner of the requirements under subsection (2) of
15 this section.

16 (2) An owner shall:

17 (a) Not make a vehicle available for use through a program if the
18 owner has received actual notice of a safety recall on such vehicle until
19 the safety recall repair has been made;

20 (b) Upon receipt of actual notice of a safety recall on a vehicle
21 when such vehicle is offered for use through a program, remove the
22 vehicle from availability as soon as practicably possible and until the
23 safety recall repair has been made; and

24 (c) Upon receipt of actual notice of a safety recall on a vehicle,
25 and when the vehicle is in the possession of a driver, notify the program
26 of the safety recall so that the program may notify the driver and the
27 vehicle can be removed from use until the owner makes the necessary
28 safety recall repair.

29 Sec. 14. (1) A program shall not enter into an agreement with any
30 driver unless such driver:

31 (a) Holds an operator's license issued in Nebraska authorizing the

1 driver to operate vehicles of the class of vehicle used by the program;
2 or

3 (b) Is a nonresident who:

4 (i) Holds a driver's license or an operator's license issued by the
5 state or country of the driver's residence that authorizes the driver in
6 that state or country to drive vehicles of the class of vehicle used by
7 the program; and

8 (ii) Is at least the same age as that required of a resident to
9 drive in Nebraska.

10 (2) A program shall keep a record of:

11 (a) The name and address of each driver; and

12 (b) The driver's license number and place of issuance of such
13 license for each driver who operates a vehicle under an agreement.

14 Sec. 15. Nothing in the Peer-to-Peer Vehicle Sharing Program Act
15 shall be construed to limit the powers of an airport authority under
16 Nebraska law.

17 Sec. 16. Notwithstanding section 44-3,131, beginning January 1,
18 2025, no policy, certificate, or contract, delivered, issued for
19 delivery, or renewed in this state, or any self-funded employee benefit
20 plan, to the extent not preempted by federal law, shall impose a
21 deductible, coinsurance, or any other cost-sharing requirements for lung
22 cancer screening, including screening performed with low-dose computed
23 tomography, for an individual at least fifty years of age and not older
24 than eighty years of age who has a twenty-pack-per-year smoking history
25 and currently smokes or who has quit smoking within the past fifteen
26 years. This section shall not apply if an individual (1) has not smoked
27 for fifteen years, (2) develops a health problem that substantially
28 limits life expectancy, or (3) is preparing to have curative lung
29 surgery.

30 Sec. 17. Section 44-7,115, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 44-7,115 (1) A step-therapy override exception shall be approved by
2 a health carrier or utilization review organization if any of the
3 following circumstances apply:

4 (a) The prescription drug required under the step-therapy protocol
5 is contraindicated pursuant to the drug manufacturer's prescribing
6 information for the drug or, due to a documented adverse event with a
7 previous use or a documented medical condition, including a comorbid
8 condition, is likely to do any of the following:

9 (i) Cause an adverse reaction to the covered individual;

10 (ii) Decrease the ability of the covered individual to achieve or
11 maintain reasonable functional ability in performing daily activities; or

12 (iii) Cause physical or mental harm to the covered individual;

13 (b) The prescription drug required under the step-therapy protocol
14 is expected to be ineffective based on the known clinical characteristics
15 of the covered person, such as the covered person's adherence to or
16 compliance with the covered person's individual plan of care, and any of
17 the following:

18 (i) The known characteristics of the prescription drug regimen as
19 described in peer-reviewed literature or in the manufacturer's
20 prescribing information for the drug;

21 (ii) The health care provider's medical judgment based on clinical
22 practice guidelines or peer-reviewed journals; or

23 (iii) The covered person's documented experience with the
24 prescription drug regimen;

25 (c) The covered person has had a trial of a therapeutically
26 equivalent dose of the prescription drug under the step-therapy protocol
27 while under the covered person's current or previous health benefit plan
28 for a period of time to allow for a positive treatment outcome, and such
29 prescription drug was discontinued by the covered person's health care
30 provider due to lack of effectiveness; or

31 (d) The covered person is currently receiving a positive therapeutic

1 outcome on a prescription drug selected by the covered person's health
2 care provider for the medical condition under consideration while under
3 the covered person's current or previous health benefit plan. Nothing in
4 the Step-Therapy Reform Act shall prohibit the distribution of a
5 pharmaceutical sample, except that the pharmaceutical sample may not be
6 used to meet the requirements of this subdivision.

7 (2) Upon the approval of a step-therapy override exception, the
8 health carrier or utilization review organization shall authorize
9 coverage for the prescription drug selected by the covered person's
10 prescribing health care provider if the prescription drug is a covered
11 prescription drug under the covered person's health benefit plan.

12 (3) Except in the case of an urgent care request, a health carrier
13 or utilization review organization shall make a determination to approve
14 or deny a request for a step-therapy override exception within five
15 calendar days after receipt of complete, clinically relevant written
16 documentation supporting a step-therapy override exception under
17 subsection (1) of this section. In the case of an urgent care request, a
18 health carrier or utilization review organization shall approve or deny a
19 request for a step-therapy override exception within seventy-two hours
20 after receipt of such documentation. If a request for a step-therapy
21 override exception is incomplete or additional clinically relevant
22 information is required, the health carrier or utilization review
23 organization may request such information within the applicable time
24 period provided in this section. Once the information is submitted, the
25 applicable time period for approval or denial shall begin again. If a
26 health carrier or utilization review organization fails to respond to the
27 request for a step-therapy override exception within the applicable time,
28 the step-therapy override exception shall be deemed granted.

29 (4) If a request for a step-therapy override exception is denied,
30 the health carrier or utilization review organization shall provide the
31 covered person or the covered person's authorized representative and the

1 covered person's prescribing health care provider with the reason for the
2 denial and information regarding the procedure to request external review
3 of the denial pursuant to the Health Carrier External Review Act. Any
4 denial of a request for a step-therapy override exception that is upheld
5 on an internal appeal shall be considered a final adverse determination
6 for purposes of the Health Carrier External Review Act and is eligible
7 for a request for external review by a covered person or the covered
8 person's authorized representative pursuant to the Health Carrier
9 External Review Act.

10 (5) This section shall not be construed to prevent:

11 (a) A health carrier or utilization review organization from
12 requiring a pharmacist to effect substitutions of prescription drugs
13 consistent with section 28-414.01, 38-28,111, or 71-2478;

14 (b) A health care provider from prescribing a prescription drug that
15 is determined to be medically appropriate; or

16 (c) A health carrier or utilization review organization from
17 requiring a covered person to try a prescription drug with the same
18 generic name and demonstrated bioavailability, a biosimilar, or a
19 biological product that is an interchangeable biological product pursuant
20 to the Nebraska Drug Product Selection Act prior to providing coverage
21 for the equivalent branded prescription drug.

22 (6) For purposes of this section, biosimilar has the same meaning as
23 defined in 42 U.S.C. 262(i)(2) or interchangeable biological product as
24 defined in 42 U.S.C. 262(i)(3).

25 Sec. 18. Section 44-1308, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 44-1308 (1)(a) Within four months after the date of receipt of a
28 notice of an adverse determination or final adverse determination
29 pursuant to section 44-1305, a covered person or the covered person's
30 authorized representative may file a request for an external review with
31 the director.

1 (b) Within one business day after the date of receipt of a request
2 for an external review pursuant to subdivision (1)(a) of this section,
3 the director shall send a copy of the request to the health carrier.

4 (2) Within five business days following the date of receipt of the
5 copy of the external review request from the director under subdivision
6 (1)(b) of this section, the health carrier shall complete a preliminary
7 review of the request to determine whether:

8 (a) The individual is or was a covered person in the health benefit
9 plan at the time that the health care service was requested or, in the
10 case of a retrospective review, was a covered person in the health
11 benefit plan at the time that the health care service was provided;

12 (b) The health care service that is the subject of the adverse
13 determination or the final adverse determination is a covered service
14 under the covered person's health benefit plan, but for a determination
15 by the health carrier that the health care service is not covered because
16 it does not meet the health carrier's requirements for medical necessity,
17 appropriateness, health care setting, level of care, or effectiveness;

18 (c) The covered person has exhausted the health carrier's internal
19 grievance process as set forth in the Health Carrier Grievance Procedure
20 Act unless the covered person is not required to exhaust the health
21 carrier's internal grievance process pursuant to section 44-1307; and

22 (d) The covered person has provided all the information and forms
23 required to process an external review, including the release form
24 provided under subsection (2) of section 44-1305.

25 (3)(a) Within one business day after completion of the preliminary
26 review, the health carrier shall notify the director and covered person
27 and, if applicable, the covered person's authorized representative, in
28 writing whether:

29 (i) The request is complete; and

30 (ii) The request is eligible for external review.

31 (b) If the request:

1 (i) Is not complete, the health carrier shall inform the covered
2 person and, if applicable, the covered person's authorized representative
3 and the director in writing and include in the notice what information or
4 materials are needed to make the request complete; or

5 (ii) Is not eligible for external review, the health carrier shall
6 inform the covered person and, if applicable, the covered person's
7 authorized representative and the director in writing and include in the
8 notice the reasons for its ineligibility.

9 (c)(i) The director may specify the form for the health carrier's
10 notice of initial determination under this subsection and any supporting
11 information to be included in the notice.

12 (ii) The notice of initial determination shall include a statement
13 informing the covered person and, if applicable, the covered person's
14 authorized representative that a health carrier's initial determination
15 that the external review request is ineligible for review may be appealed
16 to the director.

17 (d)(i) The director may determine that a request is eligible for
18 external review under subsection (2) of this section notwithstanding a
19 health carrier's initial determination that the request is ineligible and
20 require that it be referred for external review.

21 (ii) In making a determination under subdivision (3)(d)(i) of this
22 section, the director's decision shall be made in accordance with the
23 terms of the covered person's health benefit plan and shall be subject to
24 all applicable provisions of the Health Carrier External Review Act.

25 (4)(a) Whenever the director receives a notice that a request is
26 eligible for external review following the preliminary review conducted
27 pursuant to subsection (3) of this section, the director shall, within
28 one business day after the date of receipt of the notice:

29 (i) Assign an independent review organization from the list of
30 approved independent review organizations compiled and maintained by the
31 director pursuant to section 44-1312 to conduct the external review and

1 notify the health carrier of the name of the assigned independent review
2 organization; and

3 (ii) Notify in writing the covered person and, if applicable, the
4 covered person's authorized representative of the request's eligibility
5 and acceptance for external review.

6 (b) In reaching a decision, the assigned independent review
7 organization is not bound by any decisions or conclusions reached during
8 the health carrier's utilization review process as set forth in the
9 Utilization Review Act or the health carrier's internal grievance process
10 as set forth in the Health Carrier Grievance Procedure Act.

11 (c) The director shall include in the notice provided to the covered
12 person and, if applicable, the covered person's authorized representative
13 a statement that the covered person or his or her authorized
14 representative may submit in writing to the assigned independent review
15 organization within five business days following the date of receipt of
16 the notice provided pursuant to subdivision (4)(a) of this section
17 additional information that the independent review organization shall
18 consider when conducting the external review. The independent review
19 organization is not required to but may accept and consider additional
20 information submitted after five business days.

21 (5)(a) Within five business days after the date of receipt of the
22 notice provided pursuant to subdivision (4)(a) of this section, the
23 health carrier or its designee utilization review organization shall
24 provide to the assigned independent review organization the documents and
25 any information considered in making the adverse determination or final
26 adverse determination. Any documents or information solely related to
27 cost shall not be provided.

28 (b) Except as provided in subdivision (5)(c) of this section,
29 failure by the health carrier or its utilization review organization to
30 provide the documents and information within the time specified in
31 subdivision (5)(a) of this section shall not delay the conduct of the

1 external review.

2 (c)(i) If the health carrier or its utilization review organization
3 fails to provide the documents and information within the time specified
4 in subdivision (5)(a) of this section, the assigned independent review
5 organization may terminate the external review and make a decision to
6 reverse the adverse determination or final adverse determination.

7 (ii) Within one business day after making the decision under
8 subdivision (5)(c)(i) of this section, the independent review
9 organization shall notify the covered person and, if applicable, the
10 covered person's authorized representative, the health carrier, and the
11 director.

12 (6)(a) The assigned independent review organization shall review all
13 of the information and documents received pursuant to subsection (5) of
14 this section and any other information submitted in writing to the
15 independent review organization by the covered person or the covered
16 person's authorized representative pursuant to subdivision (4)(c) of this
17 section.

18 (b) Upon receipt of any information submitted by the covered person
19 or the covered person's authorized representative pursuant to subdivision
20 (4)(c) of this section, the assigned independent review organization
21 shall forward the information to the health carrier within one business
22 day.

23 (7)(a) Upon receipt of the information, if any, required to be
24 forwarded pursuant to subdivision (6)(b) of this section, the health
25 carrier may reconsider its adverse determination or final adverse
26 determination that is the subject of the external review.

27 (b) Reconsideration by the health carrier of its adverse
28 determination or final adverse determination pursuant to subdivision (7)
29 (a) of this section shall not delay or terminate the external review.

30 (c) The external review may only be terminated if the health carrier
31 decides, upon completion of its reconsideration, to reverse its adverse

1 determination or final adverse determination and provide coverage or
2 payment for the health care service that is the subject of the adverse
3 determination or final adverse determination.

4 (d)(i) Within one business day after making the decision to reverse
5 its adverse determination or final adverse determination as provided in
6 subdivision (7)(c) of this section, the health carrier shall notify the
7 covered person and, if applicable, the covered person's authorized
8 representative, the assigned independent review organization, and the
9 director in writing of its decision.

10 (ii) The assigned independent review organization shall terminate
11 the external review upon receipt of the notice from the health carrier
12 sent pursuant to subdivision (7)(d)(i) of this section.

13 (8) In addition to the documents and information provided pursuant
14 to subsection (5) of this section, the assigned independent review
15 organization, to the extent the information or documents are available
16 and the independent review organization considers them appropriate, shall
17 consider the following in reaching a decision:

18 (a) The covered person's medical records;

19 (b) The attending health care professional's recommendation;

20 (c) Consulting reports from appropriate health care professionals
21 and other documents submitted by the health carrier, covered person, the
22 covered person's authorized representative, or the covered person's
23 treating provider;

24 (d) The terms of coverage under the covered person's health benefit
25 plan with the health carrier to ensure that the independent review
26 organization's decision is not contrary to the terms of coverage under
27 the covered person's health benefit plan with the health carrier;

28 (e) The most appropriate practice guidelines, which shall include
29 applicable evidence-based standards and may include any other practice
30 guidelines developed by the federal government, national or professional
31 medical societies, boards, or associations;

1 (f) Any applicable clinical review criteria developed and used by
2 the health carrier or its designee utilization review organization; and

3 (g) The opinion of the independent review organization's clinical
4 reviewer or reviewers after considering subdivisions (8)(a) through (f)
5 of this section to the extent that the information or documents are
6 available and the clinical reviewer or reviewers consider it appropriate.

7 (9)(a) Within forty-five days after the date of receipt of the
8 request for an external review, the assigned independent review
9 organization shall provide written notice of its decision to uphold or
10 reverse the adverse determination or the final adverse determination to
11 the covered person, if applicable, the covered person's authorized
12 representative, the health carrier, and the director.

13 (b) The independent review organization shall include in the notice
14 sent pursuant to subdivision (9)(a) of this section:

15 (i) A general description of the reason for the request for external
16 review;

17 (ii) The date that the independent review organization received the
18 assignment from the director to conduct the external review;

19 (iii) The date that the external review was conducted;

20 (iv) The date of its decision;

21 (v) The principal reason or reasons for its decision, including what
22 applicable, if any, evidence-based standards were a basis for its
23 decision;

24 (vi) The rationale for its decision; and

25 (vii) References to the evidence or documentation, including the
26 evidence-based standards, considered in reaching its decision.

27 (c) Upon receipt of a notice of a decision pursuant to subdivision
28 (9)(a) of this section reversing the adverse determination or final
29 adverse determination, the health carrier shall immediately approve the
30 coverage that was the subject of the adverse determination or final
31 adverse determination.

1 (10) The assignment by the director of an approved independent
2 review organization to conduct an external review in accordance with this
3 section shall be done on a random basis among those approved independent
4 review organizations qualified to conduct the particular external review
5 based on the nature of the health care service that is the subject of the
6 adverse determination or final adverse determination and other
7 circumstances, including conflict of interest concerns pursuant to
8 subsection (4) of section 44-1313.

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

11 44-19,116 (1)(a) A title insurance agent may operate as an escrow,
12 security, settlement, or closing agent subject to the requirements of
13 subdivisions (b) through (f) of this subsection.

14 (b) All funds deposited with the title insurance agent in connection
15 with an escrow, settlement, closing, or security deposit shall be
16 submitted for collection to or deposited in a separate fiduciary trust
17 account or accounts in a qualified financial institution no later than
18 the close of the next business day in accordance with the following
19 requirements:

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

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

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

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

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

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

9 (iii) Any other provisions the director may require.

10 (e)(i) Disbursements may be made out of an escrow, settlement, or
11 closing account only if funds in an amount at least equal to the
12 disbursement have first been received and if the funds received are in
13 one of the following forms:

14 (A) Lawful money of the United States;

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

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

20 (D) United States treasury checks, federal reserve bank checks,
21 federal home loan bank checks, State of Nebraska warrants, and warrants
22 of a city of the metropolitan or primary class; and -

23 (E) Real-time or instant payments through the FedNow® Service of the
24 United States Federal Reserve System or through the RTP® network of The
25 Clearing House Payments Company L.L.C.

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

30 (f) A title insurance agent who holds funds relating to an exchange
31 under section 1031 of the Internal Revenue Code shall provide written

1 disclosure, at or before closing, to the person whose funds are being
2 held, on a separate paper with no other information on the paper, which
3 states that:

4 (i) Such services performed by a title insurance agent are not
5 regulated by the Department of Banking and Finance, the Department of
6 Insurance, or any other agency of the State of Nebraska or by any agency
7 of the United States Government;

8 (ii) The safety and security of such funds is not guaranteed by any
9 agency of the State of Nebraska or of the United States Government or
10 otherwise protected by law; and

11 (iii) The owner of such funds should satisfy himself or herself as
12 to the safety and security of such funds.

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

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

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

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

28 Sec. 20. (1) For purposes of this section, an index-linked variable
29 annuity is a variable annuity that includes index-linked crediting
30 features, either in the contract or added to such contract by rider,
31 endorsement, or amendment, that credit interest based on the performance

1 of an index, subject to index parameters including, but not limited to,
2 caps, participation rates, spreads or margins, trigger or step rates, or
3 other crediting elements, and may lose value subject to limitations
4 including, but not limited to, a floor or a buffer. An index-linked
5 variable annuity may be combined in a single contract with a variable
6 annuity with unitized separate accounts, a fixed annuity, or both.

7 (2) Notwithstanding section 44-2212, a separate investment account
8 established to hold assets of index-linked variable annuity contracts may
9 be uninsulated and chargeable with any liabilities arising out of any
10 other separate investment account or any other business of the company
11 which has no specific and determinable relation to or dependence upon
12 such separate account.

13 (3) If a separate investment account established to hold assets of
14 index-linked variable annuity contracts is uninsulated, then the
15 following provisions shall apply:

16 (a) Notwithstanding section 44-402.02, such separate account is not
17 required to have the income, gains, and losses, realized or unrealized,
18 from assets allocated to such account credited to or charged against such
19 account;

20 (b) Notwithstanding section 44-402.03, amounts allocated to such
21 separate account and accumulations thereon must be invested and
22 reinvested in accordance with the requirements or limitations prescribed
23 by the laws of this state governing the investments of life insurance
24 companies and the investments in such separate account or accounts shall
25 be taken into account in applying investment limitations otherwise
26 applicable to investments of such company;

27 (c) Notwithstanding sections 44-402.03 and 44-2213, assets, other
28 than derivatives, may be held by such separate account, and transferred
29 between the general account and such separate account, at book value or
30 market value; and

31 (d) Notwithstanding subdivision (1) of section 44-5103, the assets

1 of such separate account are admitted assets.

2 Sec. 21. Section 44-4603, Revised Statutes Cumulative Supplement,
3 2022, is amended to read:

4 44-4603 For purposes of the Pharmacy Benefit Manager Licensure and
5 Regulation Act:

6 (1) Auditing entity means a pharmacy benefit manager or any person
7 that represents a pharmacy benefit manager in conducting an audit for
8 compliance with a contract between the pharmacy benefit manager and a
9 pharmacy;

10 (2) Claims processing service means an administrative service
11 performed in connection with the processing and adjudicating of a claim
12 relating to a pharmacist service that includes:

13 (a) Receiving a payment for a pharmacist service; or

14 (b) Making a payment to a pharmacist or pharmacy for a pharmacist
15 service;

16 (3) Covered person means a member, policyholder, subscriber,
17 enrollee, beneficiary, dependent, or other individual participating in a
18 health benefit plan;

19 (4) Director means the Director of Insurance;

20 (5) Health benefit plan means a policy, contract, certificate, plan,
21 or agreement entered into, offered, or issued by a health carrier or
22 self-funded employee benefit plan to the extent not preempted by federal
23 law to provide, deliver, arrange for, pay for, or reimburse any of the
24 costs of a physical, mental, or behavioral health care service;

25 (6) Health carrier has the same meaning as in section 44-1303;

26 (7) Other prescription drug or device service means a service other
27 than a claims processing service, provided directly or indirectly,
28 whether in connection with or separate from a claims processing service,
29 including, but not limited to:

30 (a) Negotiating a rebate, discount, or other financial incentive or
31 arrangement with a drug company;

1 (b) Disbursing or distributing a rebate;

2 (c) Managing or participating in an incentive program or arrangement
3 for a pharmacist service;

4 (d) Negotiating or entering into a contractual arrangement with a
5 pharmacist or pharmacy;

6 (e) Developing and maintaining a formulary;

7 (f) Designing a prescription benefit program; or

8 (g) Advertising or promoting a service;

9 (8) Pharmacist has the same meaning as in section 38-2832;

10 (9) Pharmacist service means a product, good, or service or any
11 combination thereof provided as a part of the practice of pharmacy;

12 (10) Pharmacy has the same meaning as in section 71-425;

13 (11)(a) Pharmacy benefit manager means a person, business, or
14 entity, including a wholly or partially owned or controlled subsidiary of
15 a pharmacy benefit manager, that provides a claims processing service or
16 other prescription drug or device service for a health benefit plan to a
17 covered person who is a resident of this state; and

18 (b) Pharmacy benefit manager does not include:

19 (i) A health care facility licensed in this state;

20 (ii) A health care professional licensed in this state;

21 (iii) A consultant who only provides advice as to the selection or
22 performance of a pharmacy benefit manager; or

23 (iv) A health carrier to the extent that it performs any claims
24 processing service or other prescription drug or device service
25 exclusively for its enrollees; and

26 (12) Plan sponsor has the same meaning as in section 44-2702.

27 Sec. 22. Section 44-4604, Revised Statutes Cumulative Supplement,
28 2022, is amended to read:

29 44-4604 (1) The Pharmacy Benefit Manager Licensure and Regulation
30 Act applies to any contract or health benefit plan issued, renewed,
31 recredentialled, amended, or extended on or after January 1, 2023,

1 including any ~~health carrier that performs~~ a claims processing service or
2 other prescription drug or device service performed through a third
3 party.

4 (2) As a condition of licensure, any contract in existence on the
5 date a pharmacy benefit manager receives its license to do business in
6 this state shall comply with the requirements of the act.

7 (3) Nothing in the act is intended or shall be construed to conflict
8 with existing relevant federal law.

9 Sec. 23. Section 44-5807, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 44-5807 (1) If an insurer utilizes the services of a third-party
12 administrator, the insurer shall be responsible for determining the
13 benefits, premium rates, underwriting criteria, and claims-payment
14 procedures and for securing reinsurance, if any. The rules pertaining to
15 these matters shall be provided, in writing, by the insurer to the third-
16 party administrator. The responsibilities of the third-party
17 administrator as to any of these matters shall be set forth in the
18 written agreement between the third-party administrator and the insurer.

19 (2) It shall be the sole responsibility of the insurer to provide
20 for competent administration of its programs.

21 (3) In cases when a third-party administrator administers benefits
22 for more than one hundred certificate holders or subscribers on behalf of
23 an insurer, the insurer shall, at least semiannually, conduct a review of
24 the operations of the third-party administrator. The director may require
25 the insurer to conduct ~~At least one such review shall be~~ an onsite audit
26 of the operations of the third-party administrator.

27 Sec. 24. Section 48-2706, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 48-2706 (1) No person shall knowingly enter into a co-employment
30 relationship in which less than a majority of the employees of the client
31 in this state are covered employees or in which less than one-half of the

1 payroll of the client in this state is attributable to covered employees.

2 (2) Except as specifically provided in the Professional Employer
3 Organization Registration Act or in the professional employer agreement,
4 in each co-employment relationship:

5 (a) The client shall be entitled to exercise all rights and shall be
6 obligated to perform all duties and responsibilities otherwise applicable
7 to an employer in an employment relationship;

8 (b) The professional employer organization shall be entitled to
9 exercise only those rights and obligated to perform only those duties and
10 responsibilities specifically required by the act or in the professional
11 employer agreement. The rights, duties, and obligations of the
12 professional employer organization as co-employer with respect to any
13 covered employee shall be limited to those arising pursuant to the
14 professional employer agreement and the act during the term of co-
15 employment by the professional employer organization of such covered
16 employee; and

17 (c) Unless otherwise expressly agreed by the professional employer
18 organization and the client in a professional employer agreement, the
19 client retains the exclusive right to direct and control the covered
20 employees as is necessary to conduct the client's business, to discharge
21 any of the client's fiduciary responsibilities, or to comply with any
22 licensure requirements applicable to the client or to the covered
23 employees.

24 (3) Except as specifically provided in the Professional Employer
25 Organization Registration Act, the co-employment relationship between the
26 client and the professional employer organization, and between each co-
27 employer and each covered employee, shall be governed by the professional
28 employer agreement. Each professional employer agreement shall include
29 the following:

30 (a) The allocation of rights, duties, and obligations as described
31 in this section;

1 (b) A provision that the professional employer organization shall
2 have responsibility to pay wages to covered employees; to withhold,
3 collect, report, and remit payroll-related and unemployment taxes; and,
4 to the extent the professional employer organization has assumed
5 responsibility in the professional employer agreement, to make payments
6 for employee benefits for covered employees. For purposes of this
7 section, wages does not include any obligation between a client and a
8 covered employee for payments beyond or in addition to the covered
9 employee's salary, draw, or regular rate of pay, such as bonuses,
10 commissions, severance pay, deferred compensation, profit sharing, or
11 vacation, sick, or other paid time off pay, unless the professional
12 employer organization has expressly agreed to assume liability for such
13 payments in the professional employer agreement;

14 (c) A provision that the professional employer organization shall
15 have a right to hire, discipline, and terminate a covered employee as may
16 be necessary to fulfill the professional employer organization's
17 responsibilities under the act and the professional employer agreement.
18 The client shall have a right to hire, discipline, and terminate a
19 covered employee; and

20 (d) A provision that the responsibility to obtain workers'
21 compensation coverage for covered employees and for other employees of
22 the client from an insurer licensed to do business in this state and
23 otherwise in compliance with all applicable requirements shall be
24 specified in the professional employer agreement in accordance with
25 section 48-2709. The client shall not be relieved of its obligations
26 under the Nebraska Workers' Compensation Act to provide workers'
27 compensation coverage in the event that the professional employer
28 organization fails to obtain workers' compensation insurance for which it
29 has assumed responsibility.

30 (4) With respect to each professional employer agreement entered
31 into by a professional employer organization, such professional employer

1 organization shall provide written notice to each covered employee
2 affected by such agreement. The professional employer organization shall
3 provide, and the client shall post in a conspicuous place at the client's
4 worksite, the following:

5 (a) Notice of the general nature of the co-employment relationship
6 between and among the professional employer organization, the client, and
7 any covered employees; and

8 (b) Any notice required by the state relating to unemployment
9 compensation and the minimum wage.

10 (5) Except to the extent otherwise expressly provided by the
11 applicable professional employer agreement:

12 (a) A client shall be solely responsible for the quality, adequacy,
13 or safety of the goods or services produced or sold in the client's
14 business;

15 (b) A client shall be solely responsible for (i) directing,
16 supervising, training, and controlling the work of the covered employees
17 with respect to the business activities of the client or when such
18 employees are otherwise acting under the express direction and control of
19 the client and (ii) the acts, errors, or omissions of the covered
20 employees with regard to such activities or when such employees are
21 otherwise acting under the express direction and control of the client;

22 (c) A client shall not be liable for the acts, errors, or omissions
23 of a professional employer organization or of any covered employee of the
24 client and a professional employer organization when such covered
25 employee is acting under the express direction and control of the
26 professional employer organization;

27 (d) Nothing in this subsection shall limit any contractual liability
28 or obligation specifically provided in a professional employer agreement;
29 and

30 (e) A covered employee is not, solely as the result of being a
31 covered employee of a professional employer organization, an employee of

1 the professional employer organization for purposes of general liability
2 insurance, fidelity bonds, surety bonds, employer's liability which is
3 not covered by workers' compensation, or liquor liability insurance
4 carried by the professional employer organization unless the covered
5 employee is included for such purposes by specific reference in the
6 professional employer agreement and in any applicable prearranged
7 employment contract, insurance contract, or bond.

8 (6) When a professional employer organization obtains workers'
9 compensation coverage for its clients that is written by an authorized
10 insurer, it shall not be considered to be an insurer based on its
11 provision of workers' compensation insurance coverage to a client, even
12 if the professional employer organization charges the client a different
13 amount than it is charged by the authorized insurer.

14 (7) For purposes of this state or any county, municipality, or other
15 political subdivision thereof:

16 (a) Covered employees whose services are subject to sales tax shall
17 be deemed the employees of the client for purposes of collecting and
18 levying sales tax on the services performed by the covered employee.
19 Nothing contained in the Professional Employer Organization Registration
20 Act shall relieve a client of any sales tax liability with respect to its
21 goods or services;

22 (b) Any tax or assessment imposed upon professional employer
23 services or any business license or other fee which is based upon gross
24 receipts shall allow a deduction from the gross income or receipts of the
25 business derived from performing professional employer services that is
26 equal to that portion of the fee charged to a client that represents the
27 actual cost of wages and salaries, benefits, workers' compensation,
28 payroll taxes, withholding, or other assessments paid to or on behalf of
29 a covered employee by the professional employer organization under a
30 professional employer agreement;

31 (c) Any tax assessed or assessment or mandated expenditure on a per

1 capita or per employee basis shall be assessed against the client for
2 covered employees and against the professional employer organization for
3 its employees who are not covered employees co-employed with a client.
4 Any benefit or monetary consideration that meets the requirements of
5 mandates imposed on a client and that is received by covered employees
6 through the professional employer organization either through payroll or
7 through benefit plans sponsored by the professional employer organization
8 shall be credited against the client's obligation to fulfill such
9 mandates; and

10 (d) In the case of a tax or an assessment imposed or calculated upon
11 the basis of total payroll, the professional employer organization shall
12 be eligible to apply any small business allowance or exemption available
13 to the client for the covered employees for the purpose of computing the
14 tax.

15 (8) A professional employer organization shall not offer its covered
16 employees any health benefit plan ~~that~~ ~~which~~ is not:

17 (a) ~~Fully~~ ~~fully~~ insured by an authorized insurer; ~~or~~ -

18 (b) Self-funded and in compliance with:

19 (i) Sections 44-7601 to 44-7618, except subdivisions (1) and (2) of
20 section 44-7606; and

21 (ii) The federal Employee Retirement Income Security Act of 1974, as
22 such act existed on January 1, 2024.

23 Sec. 25. Section 68-956, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 68-956 (1) The department shall (a) enter ÷ (1) Enter into a
26 multistate purchasing pool, (b) ÷ (2) negotiate directly with
27 manufacturers or labelers, ÷ or (c) (3) contract with a pharmacy benefit
28 manager for negotiated discounts or rebates for all prescription drugs
29 under the medical assistance program in order to achieve the lowest
30 available price for such drugs under such program.

31 (2) Any contract under the Medicaid Prescription Drug Act with a

1 pharmacy benefit manager or a managed care organization using a pharmacy
2 benefit manager shall require any pharmacy benefit manager that is a
3 party or otherwise subject to the contract to comply with the Pharmacy
4 Benefit Manager Licensure and Regulation Act.

5 Sec. 26. Section 76-2,121, Revised Statutes Cumulative Supplement,
6 2022, is amended to read:

7 76-2,121 For purposes of sections 76-2,121 to 76-2,123:

8 (1) Federally insured financial institution means shall mean an
9 institution in which the monetary deposits are insured by the Federal
10 Deposit Insurance Corporation or National Credit Union Administration;

11 (2) Good funds means shall mean: (a) Lawful money of the United
12 States; (b) wired funds when unconditionally held by the real estate
13 closing agent or employee; (c) cashier's checks, certified checks, bank
14 money orders, or teller's checks issued by a federally insured financial
15 institution and unconditionally held by the real estate closing agent or
16 employee; ~~or~~ (d) United States treasury checks, federal reserve bank
17 checks, federal home loan bank checks, State of Nebraska warrants, and
18 warrants of a city of the metropolitan or primary class; or (e) real-time
19 or instant payments through the FedNow® Service of the United States
20 Federal Reserve System or through the RTP® network of The Clearing House
21 Payments Company L.L.C.;

22 (3) Real estate closing agent means shall mean a person who collects
23 and disburses funds on behalf of another in closing a real estate
24 transaction but does shall not include a seller or buyer closing a real
25 estate transaction on his or her own behalf or a lender closing a real
26 estate loan transaction; and

27 (4) Regulating entity means shall mean the:

- 28 (a) Department of Insurance;
29 (b) Supreme Court;
30 (c) State Real Estate Commission;
31 (d) Department of Banking and Finance;

- 1 (e) Federal Deposit Insurance Corporation;
- 2 (f) Office of the Comptroller of the Currency;
- 3 (g) Consumer Financial Protection Bureau;
- 4 (h) Federal Farm Credit Administration; or
- 5 (i) National Credit Union Administration.

6 Sec. 27. Section 76-2,122, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 76-2,122 (1) To act as a real estate closing agent, a person shall
9 be (a) licensed or regulated by one or more regulating entities or (b)
10 employed by a person or entity regulated by one or more regulating
11 entities, unless employing such person to act as a real estate closing
12 agent is otherwise prohibited by statute, rule, or regulation.

13 (2) A person acting as a real estate closing agent shall:

14 (a) Have received good funds which are available for disbursement at
15 the time of closing a real estate transaction, except that up to one
16 thousand five hundred dollars need not be available for disbursement from
17 good funds;

18 (b) Except as provided in section 81-885.21, deposit all funds
19 received on behalf of another person in a trust account controlled by the
20 real estate closing agent in a federally insured financial institution,
21 except that up to one thousand five hundred dollars may be paid by one
22 party directly to another party without first being deposited in a trust
23 account controlled by the real estate closing agent; and

24 (c) Except as provided in section 81-885.21, disburse closing funds
25 only from the real estate closing agent's trust account in a federally
26 insured financial institution in the form of good funds or in the form of
27 a check drawn from the real estate closing agent's trust account.

28 (3) The following real estate transactions are exempt from this
29 section:

30 (a) Transactions with a political subdivision which is exercising
31 its power of condemnation or eminent domain;

1 (b) Lease or rental transactions; and

2 (c) Real estate transactions in which the closing occurs within one
3 business day following another real estate closing and in which one party
4 is a principal to both transactions, but only to the extent that the
5 funds disbursed in the subsequent transaction are drawn upon funds
6 properly received by a real estate closing agent in the prior transaction
7 which were deposited in that real estate closing agent's trust account in
8 a federally insured financial institution or as otherwise provided in
9 section 81-885.21.

10 (4) The Attorney General or any county attorney may act to enjoin
11 the performance of real estate closings which violate this section.

12 (5) A person acting as a real estate closing agent in violation of
13 this section shall be guilty of a Class V misdemeanor.

14 Sec. 28. (1) No person shall present for recording, cause to be
15 presented for recording, or record in the office of the register of deeds
16 or county clerk any (a) right-to-list home sale agreement as defined in
17 section 81-885.01 or (b) lien or encumbrance resulting from such right-
18 to-list home sale agreement.

19 (2) Any right-to-list home sale agreement as defined in section
20 81-885.01 or lien or encumbrance resulting from such right-to-list home
21 sale agreement that is executed, modified, or extended after the
22 operative date of this section is void and unenforceable.

23 (3) If a right-to-list home sale agreement as defined in section
24 81-885.01 is recorded in this state, it shall not provide actual or
25 constructive notice of such agreement against an otherwise bona fide
26 purchaser or creditor.

27 (4) Any assignment or transfer of the right to provide any service
28 under a real estate service agreement recorded prior to the operative
29 date of this section that would otherwise be in violation of this section
30 is void and unenforceable without a written notice provided to and a
31 written agreement by each party to such service agreement.

1 Sec. 29. Section 76-856, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 76-856 (a) The declaration may require that all or a specified
4 number or percentage of the mortgagees or beneficiaries of deeds of trust
5 encumbering the units approve specified actions of the unit owners or the
6 association as a condition to the effectiveness of those actions, but
7 such a requirement shall be enforceable only as to matters involving the
8 subdivision of any unit and the creation of any timeshare or as to
9 proposed amendments to the declaration that adversely affect the priority
10 of the mortgagee's or beneficiary's lien or the mortgagee's or
11 beneficiary's rights to foreclose its lien by judicial or nonjudicial
12 means, or that otherwise materially affect the rights and interests of
13 the mortgagee or beneficiary and no requirement for approval may operate
14 to (i) deny or delegate control over the general administrative affairs
15 of the association by the unit owners or the executive board, or (ii)
16 prevent the association or the executive board from commencing,
17 intervening in, or settling any litigation or proceeding, or receiving
18 and distributing any insurance proceeds except pursuant to section
19 76-871. The declaration may not provide that a lien on a member's unit
20 for any assessment levied against the unit relates back to the date of
21 filing of the declaration or that such lien takes priority over any
22 mortgage or deed of trust on the unit recorded subsequent to the filing
23 of the declaration and prior to the recording by the association of the
24 notice required under subsection (a) of section 76-874.

25 (b) In securing approval from a mortgagee or beneficiary of a deed
26 of trust for a proposed amendment to a declaration, the association shall
27 be entitled to rely upon public records to identify the holders of
28 outstanding mortgages or beneficiaries of deeds of trust. The association
29 may use the address provided in the original recorded mortgage or deed of
30 trust document, unless there is a different address for the holder of the
31 mortgage or beneficiary of the deed of trust in a recorded assignment or

1 modification of the mortgage or deed of trust, which recorded assignment
2 or modification shall reference the official records book and page on
3 which the original mortgage or deed of trust was recorded. Once the
4 association has identified the recorded mortgages or deeds of trust of
5 record, the association shall, in writing, request of each unit owner
6 whose unit is encumbered by a mortgage or deed of trust of record any
7 information the owner has in the owner's possession regarding the name
8 and address of the person to whom mortgage or deed of trust payments are
9 currently being made. Notice shall be sent to such person if the address
10 provided in the original recorded mortgage or deed of trust document is
11 different from the name and address of the mortgagee or assignee of the
12 mortgage or beneficiary or assignee of the deed of trust as shown by the
13 public record. The association shall be deemed to have complied with this
14 requirement by making the written request of the unit owners required
15 under this subsection. Any notices required to be sent to the mortgagees,
16 beneficiaries, or assignees under this subsection shall be sent to all
17 available addresses provided to the association.

18 (c) If any mortgagee or beneficiary of a deed of trust encumbering a
19 unit has been requested by certified mail, return receipt requested, to
20 approve a proposed amendment to a declaration, and such mortgagee or
21 beneficiary fails to approve or object to such request in writing
22 delivered to the requestor by certified mail within sixty days after the
23 date such request has been received by the mortgagee or beneficiary, such
24 failure to respond shall be deemed approval to the amendment.

25 (d) Any amendment adopted without the required approval of a
26 mortgagee or beneficiary of the deed of trust shall be voidable only by a
27 mortgagee or beneficiary who was entitled to notice and an opportunity to
28 approve. An action to void an amendment shall be subject to the statute
29 of limitations beginning five years after the adoption of an amendment to
30 a declaration. This subsection shall apply to all mortgages, regardless
31 of the date of recordation of the mortgage or deed of trust.

1 Sec. 30. Section 81-885.01, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 81-885.01 For purposes of the Nebraska Real Estate License Act,
4 unless the context otherwise requires:

5 (1) Associate broker means a person who has a broker's license and
6 who is employed by another broker to participate in any activity
7 described in subdivision (2) of this section;

8 ~~(1) Real estate means and includes condominiums and leaseholds, as~~
9 ~~well as any other interest or estate in land, whether corporeal,~~
10 ~~incorporeal, freehold, or nonfreehold, and whether the real estate is~~
11 ~~situated in this state or elsewhere;~~

12 (2) Broker means any person who, for any form of compensation or
13 consideration or with the intent or expectation of receiving the same
14 from another, negotiates or attempts to negotiate the listing, sale,
15 purchase, exchange, rent, lease, or option for any real estate or
16 improvements thereon, or assists in procuring prospects or holds himself
17 or herself out as a referral agent for the purpose of securing prospects
18 for the listing, sale, purchase, exchange, renting, leasing, or optioning
19 of any real estate or collects rents or attempts to collect rents, gives
20 a broker's price opinion or comparative market analysis, or holds himself
21 or herself out as engaged in any of the foregoing. Broker also includes
22 any person: (a) Employed, by or on behalf of the owner or owners of lots
23 or other parcels of real estate, for any form of compensation or
24 consideration to sell such real estate or any part thereof in lots or
25 parcels or make other disposition thereof; (b) who auctions, offers,
26 attempts, or agrees to auction real estate; or (c) who buys or offers to
27 buy or sell or otherwise deals in options to buy real estate;

28 (3) Broker's price opinion means an analysis, opinion, or conclusion
29 prepared by a person licensed under the Nebraska Real Estate License Act
30 in the ordinary course of his or her business relating to the price of
31 specified interests in or aspects of identified real estate or identified

1 real property for the purpose of (a) listing, purchase, or sale, (b)
2 originating, extending, renewing, or modifying a loan in a transaction
3 other than a federally related transaction, or (c) real property tax
4 appeals;

5 ~~(3) Associate broker means a person who has a broker's license and~~
6 ~~who is employed by another broker to participate in any activity~~
7 ~~described in subdivision (2) of this section;~~

8 (4) Commission means the State Real Estate Commission;

9 (5) Comparative market analysis means an analysis, opinion, or
10 conclusion prepared by a person licensed under the act in the ordinary
11 course of his or her business relating to the price of specified
12 interests in or aspects of identified real estate or identified real
13 property by comparison to other real property currently or recently in
14 the marketplace for the purpose of (a) listing, purchase, or sale, (b)
15 originating, extending, renewing, or modifying a loan in a transaction
16 other than a federally related transaction, or (c) real property tax
17 appeals;

18 (6) (4) Designated broker means an individual holding a broker's
19 license who has full authority to conduct the real estate activities of a
20 real estate business. In a sole proprietorship, the owner, or broker
21 identified by the owner, shall be the designated broker. In the event the
22 owner identifies the designated broker, the owner shall file a statement
23 with the commission subordinating to the designated broker full authority
24 to conduct the real estate activities of the sole proprietorship. In a
25 partnership, limited liability company, or corporation, the partners,
26 limited liability company members, or board of directors shall identify
27 the designated broker for its real estate business by filing a statement
28 with the commission subordinating to the designated broker full authority
29 to conduct the real estate activities of the partnership, limited
30 liability company, or corporation. The designated broker shall also be
31 responsible for supervising the real estate activities of any associate

1 brokers or salespersons;

2 (7) Distance education means courses in which instruction does not
3 take place in a traditional classroom setting, but rather through other
4 media by which instructor and student are separated by distance and
5 sometimes by time;

6 (8) Federal financial institution regulatory agency means (a) the
7 Board of Governors of the Federal Reserve System, (b) the Federal Deposit
8 Insurance Corporation, (c) the Office of the Comptroller of the Currency,
9 (d) the Consumer Financial Protection Bureau, (e) the National Credit
10 Union Administration, or (f) the successors of any of those agencies;

11 (9) Federally related transaction means a real-estate-related
12 transaction that (a) requires the services of an appraiser and (b) is
13 engaged in, contracted for, or regulated by a federal financial
14 institution regulatory agency;

15 (10) (5) Inactive broker means an associate broker whose license has
16 been returned to the commission by the licensee's broker, a broker who
17 has requested the commission to place the license on inactive status, a
18 new licensee who has failed to designate an employing broker or have the
19 license issued as an individual broker, or a broker whose license has
20 been placed on inactive status under statute, rule, or regulation;

21 ~~(6) Salesperson means any person, other than an associate broker,~~
22 ~~who is employed by a broker to participate in any activity described in~~
23 ~~subdivision (2) of this section;~~

24 (11) (7) Inactive salesperson means a salesperson whose license has
25 been returned to the commission by the licensee's broker, a salesperson
26 who has requested the commission to place the license on inactive status,
27 a new licensee who has failed to designate an employing broker, or a
28 salesperson whose license has been placed on inactive status under
29 statute, rule, or regulation;

30 (12) (8) Person means and includes individuals, corporations,
31 partnerships, and limited liability companies, except that when referring

1 to a person licensed under the act, it means an individual;

2 (13) Purchaser means a person who acquires or attempts to acquire or
3 succeeds to an interest in land;

4 (14) Real estate means and includes condominiums and leaseholds, as
5 well as any other interest or estate in land, whether corporeal,
6 incorporeal, freehold, or nonfreehold, and whether the real estate is
7 situated in this state or elsewhere;

8 (15) Regulatory jurisdiction means a state, district, or territory
9 of the United States, a province of Canada or a foreign country, or a
10 political subdivision of a foreign country, which has implemented and
11 administers laws regulating the activities of a broker;

12 (16)(a) Right-to-list home sale agreement means an agreement:

13 (i) By the owner of residential real estate to provide another
14 person with the exclusive right to list such residential real estate for
15 sale at a future date in exchange for monetary consideration or an
16 equivalent to monetary consideration; and

17 (ii)(A) That states that the agreement runs with the land or
18 otherwise purports to bind future owners of such residential real estate;
19 or

20 (B) That purports to be a lien, encumbrance, or other real property
21 security interest; and

22 (b) Right-to-list home sale agreement does not include any lien,
23 encumbrance, or other real property security interest expressly
24 authorized under the laws of this state, including any:

25 (i) Home warranty or similar product that covers the cost of
26 maintenance of a major home system or appliance for a fixed period;

27 (ii) Insurance contract;

28 (iii) Option or right of refusal to purchase the residential real
29 estate;

30 (iv) Contract for deed or purchase;

31 (v) Declaration created in the formation of a common-interest

1 community or an amendment to such declaration;

2 (vi) Maintenance or repair agreement entered by a homeowners'
3 association in a common-interest community;

4 (vii) Mortgage or trust deed loan or a commitment to make or receive
5 a mortgage or trust deed loan;

6 (viii) Security agreement under the Uniform Commercial Code relating
7 to the sale or rental of any personal property or fixture;

8 (ix) Water, sewer, electrical, telephone, cable, or other regulated
9 utility service provider; or

10 (x) Right granted by the Nebraska Construction Lien Act;

11 (17) Salesperson means any person, other than an associate broker,
12 who is employed by a broker to participate in any activity described in
13 subdivision (2) of this section;

14 (18) Subdivider means any person who causes land to be subdivided
15 into a subdivision for himself, herself, or others or who undertakes to
16 develop a subdivision but does not include a public agency or officer
17 authorized by law to create subdivisions;

18 (19) Subdivision or subdivided land means any real estate offered
19 for sale and which has been registered under the Interstate Land Sales
20 Full Disclosure Act, 15 U.S.C. 1701 et seq., as such act existed on
21 January 1, 1973, or real estate located out of this state which is
22 divided or proposed to be divided into twenty-five or more lots, parcels,
23 or units;

24 (20) ~~(9)~~ Team means two or more persons licensed by the commission
25 who (a) work under the supervision of the same broker, (b) work together
26 on real estate transactions to provide real estate brokerage services,
27 (c) represent themselves to the public as being part of a team, and (d)
28 are designated by a team name; and

29 (21) ~~(10)~~ Team leader means any person licensed by the commission
30 and appointed or recognized by his or her broker as the leader for his or
31 her team. ÷

1 ~~(11) Subdivision or subdivided land means any real estate offered~~
2 ~~for sale and which has been registered under the Interstate Land Sales~~
3 ~~Full Disclosure Act, 15 U.S.C. 1701 et seq., as such act existed on~~
4 ~~January 1, 1973, or real estate located out of this state which is~~
5 ~~divided or proposed to be divided into twenty-five or more lots, parcels,~~
6 ~~or units;~~

7 ~~(12) Subdivider means any person who causes land to be subdivided~~
8 ~~into a subdivision for himself, herself, or others or who undertakes to~~
9 ~~develop a subdivision but does not include a public agency or officer~~
10 ~~authorized by law to create subdivisions;~~

11 ~~(13) Purchaser means a person who acquires or attempts to acquire or~~
12 ~~succeeds to an interest in land;~~

13 ~~(14) Commission means the State Real Estate Commission;~~

14 ~~(15) Broker's price opinion means an analysis, opinion, or~~
15 ~~conclusion prepared by a person licensed under the Nebraska Real Estate~~
16 ~~License Act in the ordinary course of his or her business relating to the~~
17 ~~price of specified interests in or aspects of identified real estate or~~
18 ~~identified real property for the purpose of (a) listing, purchase, or~~
19 ~~sale, (b) originating, extending, renewing, or modifying a loan in a~~
20 ~~transaction other than a federally related transaction, or (c) real~~
21 ~~property tax appeals;~~

22 ~~(16) Comparative market analysis means an analysis, opinion, or~~
23 ~~conclusion prepared by a person licensed under the act in the ordinary~~
24 ~~course of his or her business relating to the price of specified~~
25 ~~interests in or aspects of identified real estate or identified real~~
26 ~~property by comparison to other real property currently or recently in~~
27 ~~the marketplace for the purpose of (a) listing, purchase, or sale, (b)~~
28 ~~originating, extending, renewing, or modifying a loan in a transaction~~
29 ~~other than a federally related transaction, or (c) real property tax~~
30 ~~appeals;~~

31 ~~(17) Distance education means courses in which instruction does not~~

1 ~~take place in a traditional classroom setting, but rather through other~~
2 ~~media by which instructor and student are separated by distance and~~
3 ~~sometimes by time;~~

4 ~~(18) Regulatory jurisdiction means a state, district, or territory~~
5 ~~of the United States, a province of Canada or a foreign country, or a~~
6 ~~political subdivision of a foreign country, which has implemented and~~
7 ~~administers laws regulating the activities of a broker;~~

8 ~~(19) Federal financial institution regulatory agency means (a) the~~
9 ~~Board of Governors of the Federal Reserve System, (b) the Federal Deposit~~
10 ~~Insurance Corporation, (c) the Office of the Comptroller of the Currency,~~
11 ~~(d) the Consumer Financial Protection Bureau, (e) the National Credit~~
12 ~~Union Administration, or (f) the successors of any of those agencies; and~~

13 ~~(20) Federally related transaction means a real estate-related~~
14 ~~transaction that (a) requires the services of an appraiser and (b) is~~
15 ~~engaged in, contracted for, or regulated by a federal financial~~
16 ~~institution regulatory agency.~~

17 Sec. 31. Section 81-885.10, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 81-885.10 (1) The commission shall have the full power to regulate
20 the issuance of licenses and the activities of licensees and may impose
21 sanctions pursuant to this section for the protection of the public
22 health, safety, or welfare. The commission may revoke or suspend licenses
23 issued under the Nebraska Real Estate License Act, censure licensees,
24 enter into consent decrees, and issue cease and desist orders to
25 violators of section 81-885.03. The commission may, alone or in
26 combination with such disciplinary actions, impose a civil fine on a
27 licensee for each violation alleged in a complaint for which the
28 commission has made a finding of guilt. The total civil fine for each
29 complaint , ~~except that the total fine for such violations shall not~~
30 ~~exceed the greater of five two thousand five hundred dollars or the total~~
31 ~~amount of commission earned by the licensee in each transaction that is~~

1 ~~subject to the complaint per complaint.~~ The commission may also impose a
2 civil fine on violators of section 81-885.03 subject to the limits in
3 such section.

4 (2) The commission shall retain its powers under this section with
5 respect to the actions of a licensee, whether or not he or she continues
6 to be licensed under the act.

7 Sec. 32. Section 81-885.17, Revised Statutes Cumulative Supplement,
8 2022, is amended to read:

9 81-885.17 (1)(a) A nonresident of this state who is actively engaged
10 in the real estate business, who maintains a place of business in his or
11 her resident regulatory jurisdiction, and who has been duly licensed in
12 that regulatory jurisdiction to conduct such business in that regulatory
13 jurisdiction may, in the discretion of the commission, be issued a
14 nonresident broker's license.

15 (b) A nonresident salesperson employed by a broker holding a
16 nonresident broker's license may, in the discretion of the commission, be
17 issued a nonresident salesperson's license under such nonresident broker.

18 (c) A nonresident who becomes a resident of the State of Nebraska
19 and who holds a broker's or salesperson's license in his or her prior
20 resident regulatory jurisdiction shall be issued a resident broker's or
21 salesperson's license upon filing an application, paying the applicable
22 license fee except as provided in subsection (2) of section 81-885.14,
23 complying with the criminal history record information check under
24 subsection (4) of this section, filing the affidavit required by
25 subsection (7) of this section, and providing to the commission adequate
26 proof of completion of a three-hour class approved by the commission
27 specific to the Nebraska Real Estate License Act and sections 76-2401 to
28 76-2430.

29 (2) Obtaining a nonresident broker's license shall constitute
30 sufficient contact with this state for the exercise of personal
31 jurisdiction over the licensee in any action arising out of the

1 licensee's activity in this state.

2 (3) Prior to the issuance of any license to a nonresident applicant,
3 he or she shall: (a) File with the commission a duly certified copy of
4 the license issued to the applicant by his or her resident regulatory
5 jurisdiction or provide verification of such licensure to the commission;
6 (b) pay to the commission a nonresident license fee equal to the fee for
7 obtaining a broker's or salesperson's license, whichever is applicable,
8 as provided in section 81-885.14; and (c) provide to the commission
9 adequate proof of completion of a three-hour class approved by the
10 commission specific to the Nebraska Real Estate License Act and sections
11 76-2401 to 76-2430.

12 (4) An applicant for an original nonresident broker's or
13 salesperson's license shall be subject to fingerprinting and a check of
14 his or her criminal history record information maintained by the Federal
15 Bureau of Investigation through the Nebraska State Patrol. After filing
16 application for a license, each applicant shall furnish directly to the
17 Nebraska State Patrol, or to a fingerprint processing service that may be
18 selected by the commission for this purpose, a full set of fingerprints
19 to enable a criminal background investigation to be conducted. The
20 applicant shall request that the Nebraska State Patrol submit the
21 fingerprints to the Federal Bureau of Investigation for a national
22 criminal history record check. The applicant shall pay the actual cost,
23 if any, of the fingerprinting and check of his or her criminal history
24 record information. The applicant shall authorize release of the national
25 criminal history record check to the commission.

26 (5) Nothing in this section shall preclude the commission from
27 entering into reciprocal agreements with other regulatory jurisdictions
28 when such agreements are necessary to provide Nebraska residents
29 authority to secure licenses in other regulatory jurisdictions.

30 (6) Nonresident licenses granted as provided in this section shall
31 remain in force for only as long as the requirements of issuing and

1 maintaining a license are met unless (a) suspended or revoked by the
2 commission for just cause or (b) lapsed for failure to pay the ~~annual~~
3 renewal fee.

4 (7) Prior to the issuance of any license to a nonresident applicant,
5 he or she shall file an affidavit with the commission certifying that the
6 applicant has reviewed and is familiar with the Nebraska Real Estate
7 License Act and the rules and regulations of the commission and agrees to
8 be bound by the act, rules, and regulations.

9 Sec. 33. Section 81-885.24, Revised Statutes Cumulative Supplement,
10 2022, is amended to read:

11 81-885.24 The commission may, upon its own motion, and shall, upon
12 the sworn complaint in writing of any person, investigate the actions of
13 any broker, associate broker, salesperson, or subdivider, may censure the
14 licensee or certificate holder, revoke or suspend any license or
15 certificate issued under the Nebraska Real Estate License Act, or enter
16 into consent orders, and, alone or in combination with such disciplinary
17 actions, may impose a civil fine on a licensee pursuant to section
18 81-885.10, whenever the license or certificate has been obtained by false
19 or fraudulent representation or the licensee or certificate holder has
20 been found guilty of any of the following unfair trade practices:

21 (1) Refusing because of religion, race, color, national origin,
22 ethnic group, sex, familial status, or disability to show, sell, or rent
23 any real estate for sale or rent to prospective purchasers or renters;

24 (2) Intentionally using advertising which is misleading or
25 inaccurate in any material particular or in any way misrepresents any
26 property, terms, values, policies, or services of the business conducted;

27 (3) Failing to account for and remit any money coming into his or
28 her possession belonging to others;

29 (4) Commingling the money or other property of his or her principals
30 with his or her own;

31 (5) Failing to maintain and deposit in a separate trust account all

1 money received by a broker acting in such capacity, or as escrow agent or
2 the temporary custodian of the funds of others, in a real estate
3 transaction unless all parties having an interest in the funds have
4 agreed otherwise in writing;

5 (6) Accepting, giving, or charging any form of undisclosed
6 compensation, consideration, rebate, or direct profit on expenditures
7 made for a principal;

8 (7) Representing or attempting to represent a real estate broker,
9 other than the employer, without the express knowledge and consent of the
10 employer;

11 (8) Accepting any form of compensation or consideration by an
12 associate broker or salesperson from anyone other than his or her
13 employing broker without the consent of his or her employing broker;

14 (9) Acting in the dual capacity of agent and undisclosed principal
15 in any transaction;

16 (10) Guaranteeing or authorizing any person to guarantee future
17 profits which may result from the resale of real property;

18 (11) Placing a sign on any property offering it for sale or rent
19 without the written consent of the owner or his or her authorized agent;

20 (12) Offering real estate for sale or lease without the knowledge
21 and consent of the owner or his or her authorized agent or on terms other
22 than those authorized by the owner or his or her authorized agent;

23 (13) Inducing any party to a contract of sale or lease to break such
24 contract for the purpose of substituting, in lieu thereof, a new contract
25 with another principal;

26 (14) Negotiating a sale, exchange, listing, or lease of real estate
27 directly with an owner or lessor if he or she knows that such owner has a
28 written outstanding listing contract in connection with such property
29 granting an exclusive agency or an exclusive right to sell to another
30 broker or negotiating directly with an owner to withdraw from or break
31 such a listing contract for the purpose of substituting, in lieu thereof,

1 a new listing contract;

2 (15) Discussing or soliciting a discussion of, with an owner of a
3 property which is exclusively listed with another broker, the terms upon
4 which the broker would accept a future listing upon the expiration of the
5 present listing unless the owner initiates the discussion;

6 (16) Violating any provision of sections 76-2401 to 76-2430;

7 (17) Soliciting, selling, or offering for sale real estate by
8 offering free lots or conducting lotteries for the purpose of influencing
9 a purchaser or prospective purchaser of real estate;

10 (18) Providing any form of compensation or consideration to any
11 person for performing the services of a broker, associate broker, or
12 salesperson who has not first secured his or her license under the
13 Nebraska Real Estate License Act unless such person is (a) a nonresident
14 who is licensed in his or her resident regulatory jurisdiction or (b) a
15 citizen and resident of a foreign country which does not license persons
16 conducting the activities of a broker and such person provides reasonable
17 written evidence to the Nebraska broker that he or she is a resident
18 citizen of that foreign country, is not a resident of this country, and
19 conducts the activities of a broker in that foreign country;

20 (19) Failing to include a fixed date of expiration in any written
21 listing agreement and failing to leave a copy of the agreement with the
22 principal;

23 (20) Failing to deliver within a reasonable time a completed and
24 dated copy of any purchase agreement or offer to buy or sell real estate
25 to the purchaser and to the seller;

26 (21) Failing by a broker to deliver to the seller in every real
27 estate transaction, at the time the transaction is consummated, a
28 complete, detailed closing statement showing all of the receipts and
29 disbursements handled by such broker for the seller, failing to deliver
30 to the buyer a complete statement showing all money received in the
31 transaction from such buyer and how and for what the same was disbursed,

- 1 and failing to retain true copies of such statements in his or her files;
- 2 (22) Making any substantial misrepresentations;
- 3 (23) Acting for more than one party in a transaction without the
4 knowledge of all parties for whom he or she acts;
- 5 (24) Failing by an associate broker or salesperson to place, as soon
6 after receipt as practicable, in the custody of his or her employing
7 broker any deposit money or other money or funds entrusted to him or her
8 by any person dealing with him or her as the representative of his or her
9 licensed broker;
- 10 (25) Filing a listing contract or any document or instrument
11 purporting to create a lien based on a listing contract for the purpose
12 of casting a cloud upon the title to real estate when no valid claim
13 under the listing contract exists;
- 14 (26) Violating any rule or regulation adopted and promulgated by the
15 commission in the interest of the public and consistent with the Nebraska
16 Real Estate License Act;
- 17 (27) Failing by a subdivider, after the original certificate has
18 been issued, to comply with all of the requirements of the Nebraska Real
19 Estate License Act;
- 20 (28) Conviction of a felony or entering a plea of guilty or nolo
21 contendere to a felony charge by a broker or salesperson;
- 22 (29) Demonstrating negligence, incompetency, or unworthiness to act
23 as a broker, associate broker, or salesperson, whether of the same or of
24 a different character as otherwise specified in this section;
- 25 (30) Inducing or attempting to induce a person to transfer an
26 interest in real property, whether or not for monetary gain, or
27 discouraging another person from purchasing real property, by
28 representing that (a) a change has occurred or will or may occur in the
29 composition with respect to religion, race, color, national origin,
30 ethnic group, sex, familial status, or disability of the owners or
31 occupants in the block, neighborhood, or area or (b) such change will or

1 may result in the lowering of property values, an increase in criminal or
2 antisocial behavior, or a decline in the quality of schools in the block,
3 neighborhood, or area;

4 (31) Failing by a team leader to provide a current list of all team
5 members to his or her designated broker;

6 (32) Failing by a designated broker to maintain a record of all team
7 leaders and team members working under him or her;

8 (33) Utilizing advertising which does not prominently display the
9 name under which the designated broker does business as filed with the
10 commission;

11 (34) Utilizing team advertising or a team name suggesting the team
12 is an independent real estate brokerage;

13 (35) Charging or collecting, as part or all of his or her
14 compensation or consideration, any part of the earnest money or other
15 money paid to him or her or the entity under which he or she does
16 business in connection with any real estate transaction until the
17 transaction has been consummated or terminated. However, a payment for
18 goods or services rendered by a third party on behalf of the client shall
19 not be considered compensation or consideration if such payment does not
20 include any profit, compensation, or payment for services rendered by the
21 broker and the broker retains a record of the payment to the third party
22 for such goods or services;~~or~~

23 (36) Failing to provide a copy of section 81-885.04 or written
24 instructions explaining the provisions of the exemption from licensure as
25 set forth in subdivision (9) of section 81-885.04 to any unlicensed
26 person who assists in procuring a potential client or customer as defined
27 in sections 76-2407 and 76-2409, respectively, for the purpose of the
28 listing, sale, purchase, exchange, renting, leasing, or optioning of any
29 real estate; or -

30 (37) Offering or entering into a right-to-list home sale agreement.

31 Sec. 34. Section 81-885.55, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 81-885.55 (1) Every licensee under the Nebraska Real Estate License
3 Act, except an inactive broker or salesperson, shall have errors and
4 omissions insurance to cover all activities contemplated under the act.
5 The commission shall make the errors and omissions insurance available to
6 all licensees by contracting with an insurer for a group errors and
7 omissions insurance policy after competitive bidding. Any group errors
8 and omissions insurance policy obtained by the commission shall be
9 available to all licensees with no right on the part of the insurer to
10 cancel any licensee. Licensees may obtain errors and omissions insurance
11 independently if the coverage complies with the minimum requirements
12 established by the commission.

13 (2) The commission shall establish the minimum required ~~determine~~
14 ~~the terms and conditions for errors and omissions insurance of coverage~~
15 ~~required under this section~~, including the minimum limits of coverage,
16 the permissible deductible, and permissible exemptions. Each licensee
17 shall be notified of such ~~the~~ required terms and conditions at least
18 thirty days prior to the ~~annual~~ license renewal date.

19 (3) A certificate of coverage showing compliance with the minimum
20 required terms and conditions shall be on file ~~filed~~ with the commission
21 for by the annual license renewal date by each licensee who does not
22 participate in the group errors and omissions insurance policy ~~program~~
23 administered by the commission. If such a licensee fails to have the
24 certificate described in this subsection on file with the commission, the
25 commission shall place the licensee's license on inactive status until
26 the commission receives such certificate. Transfer to active status
27 pursuant to this subsection shall be subject to the fee provided for in
28 section 81-885.14.

29 (4) ~~(3)~~ If the commission is unable to obtain errors and omissions
30 insurance coverage to insure all licensees who choose to participate in
31 the group errors and omissions insurance policy ~~program~~ at a reasonable

1 premium not to exceed five hundred dollars, the errors and omissions
2 insurance requirement of this section shall not apply during the year for
3 which coverage cannot be obtained.

4 Sec. 35. Section 87-302, Revised Statutes Cumulative Supplement,
5 2022, is amended to read:

6 87-302 (a) A person engages in a deceptive trade practice when, in
7 the course of his or her business, vocation, or occupation, he or she:

8 (1) Passes off goods or services as those of another;

9 (2) Causes likelihood of confusion or of misunderstanding as to the
10 source, sponsorship, approval, or certification of goods or services;

11 (3) Causes likelihood of confusion or of misunderstanding as to
12 affiliation, connection, or association with, or certification by,
13 another;

14 (4) Uses deceptive representations or designations of geographic
15 origin in connection with goods or services;

16 (5) Represents that goods or services have sponsorship, approval,
17 characteristics, ingredients, uses, benefits, or quantities that they do
18 not have or that a person has a sponsorship, approval, status,
19 affiliation, or connection that he or she does not have;

20 (6) Represents that goods or services do not have sponsorship,
21 approval, characteristics, ingredients, uses, benefits, or quantities
22 that they have or that a person does not have a sponsorship, approval,
23 status, affiliation, or connection that he or she has;

24 (7) Represents that goods are original or new if they are
25 deteriorated, altered, reconditioned, reclaimed, used, or secondhand,
26 except that sellers may repair damage to and make adjustments on or
27 replace parts of otherwise new goods in an effort to place such goods in
28 compliance with factory specifications;

29 (8) Represents that goods or services are of a particular standard,
30 quality, or grade, or that goods are of a particular style or model, if
31 they are of another;

1 (9) Disparages the goods, services, or business of another by false
2 or misleading representation of fact;

3 (10) Advertises goods or services with intent not to sell them as
4 advertised or advertises the price in any manner calculated or tending to
5 mislead or in any way deceive a person;

6 (11) Advertises goods or services with intent not to supply
7 reasonably expectable public demand, unless the advertisement discloses a
8 limitation of quantity;

9 (12) Makes false or misleading statements of fact concerning the
10 reasons for, existence of, or amounts of price reductions;

11 (13) Uses or promotes the use of or establishes, operates, or
12 participates in a pyramid promotional scheme in connection with the
13 solicitation of such scheme to members of the public. This subdivision
14 shall not be construed to prohibit a plan or operation, or to define a
15 plan or operation as a pyramid promotional scheme, based on the fact that
16 participants in the plan or operation give consideration in return for
17 the right to receive compensation based upon purchases of goods,
18 services, or intangible property by participants for personal use,
19 consumption, or resale so long as the plan or operation does not promote
20 or induce inventory loading and the plan or operation implements an
21 appropriate inventory repurchase program;

22 (14) With respect to a sale or lease to a natural person of goods or
23 services purchased or leased primarily for personal, family, household,
24 or agricultural purposes, uses or employs any referral or chain referral
25 sales technique, plan, arrangement, or agreement;

26 (15) Knowingly makes a false or misleading statement in a privacy
27 policy, published on the Internet or otherwise distributed or published,
28 regarding the use of personal information submitted by members of the
29 public;

30 (16) Uses any scheme or device to defraud by means of:

31 (i) Obtaining money or property by knowingly false or fraudulent

1 pretenses, representations, or promises; or

2 (ii) Selling, distributing, supplying, furnishing, or procuring any
3 property for the purpose of furthering such scheme;

4 (17) Offers an unsolicited check, through the mail or by other
5 means, to promote goods or services if the cashing or depositing of the
6 check obligates the endorser or payee identified on the check to pay for
7 goods or services. This subdivision does not apply to an extension of
8 credit or an offer to lend money;

9 (18) Mails or causes to be sent an unsolicited billing statement,
10 invoice, or other document that appears to obligate the consumer to make
11 a payment for services or merchandise he or she did not order;

12 (19)(i) Installs, offers to install, or makes available for
13 installation or download a covered file-sharing program on a computer not
14 owned by such person without providing clear and conspicuous notice to
15 the owner or authorized user of the computer that files on that computer
16 will be made available to the public and without requiring intentional
17 and affirmative activation of the file-sharing function of such covered
18 file-sharing program by the owner or authorized user of the computer; or

19 (ii) Prevents reasonable efforts to block the installation,
20 execution, or disabling of a covered file-sharing program;

21 (20) Violates any provision of the Nebraska Foreclosure Protection
22 Act;

23 (21) In connection with the solicitation of funds or other assets
24 for any charitable purpose, or in connection with any solicitation which
25 represents that funds or assets will be used for any charitable purpose,
26 uses or employs any deception, fraud, false pretense, false promise,
27 misrepresentation, unfair practice, or concealment, suppression, or
28 omission of any material fact;—or

29 (22)(i) ~~(22)~~ In the manufacture, production, importation,
30 distribution, promotion, display for sale, offer for sale, attempt to
31 sell, or sale of a substance:

1 (A) ~~(i)~~ Makes a deceptive or misleading representation or
2 designation, or omits material information, about a substance or fails to
3 identify the contents of the package or the nature of the substance
4 contained inside the package; or

5 (B) ~~(ii)~~ Causes confusion or misunderstanding as to the effects a
6 substance causes when ingested, injected, inhaled, or otherwise
7 introduced into the human body.

8 (ii) A person shall be deemed to have committed a violation of the
9 Uniform Deceptive Trade Practices Act for each individually packaged
10 product that is either manufactured, produced, imported, distributed,
11 promoted, displayed for sale, offered for sale, attempted to sell, or
12 sold in violation of this section. A violation under this subdivision
13 shall be treated as a separate and distinct violation from any other
14 offense arising out of acts alleged to have been committed while the
15 person was in violation of this section; or -

16 (23) Offers or enters into a right-to-list home sale agreement as
17 defined in section 81-885.01.

18 (b) In order to prevail in an action under the Uniform Deceptive
19 Trade Practices Act, a complainant need not prove competition between the
20 parties.

21 (c) This section does not affect unfair trade practices otherwise
22 actionable at common law or under other statutes of this state.

23 Sec. 36. The Revisor of Statutes shall assign section 28 of this
24 act to Chapter 76, article 2.

25 Sec. 37. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14,
26 and 15 of this act become operative on January 1, 2025. Sections 16, 17,
27 18, 20, 21, 22, 23, 24, 25, 29, 31, 32, 34, and 39 of this act become
28 operative three calendar months after the adjournment of this legislative
29 session. The other sections of this act become operative on their
30 effective date.

31 Sec. 38. Sections 44-19,116 and 76-2,122, Reissue Revised Statutes

1 of Nebraska, and sections 76-2,121, 81-885.01, 81-885.24, and 87-302,
2 Revised Statutes Cumulative Supplement, 2022, are repealed.

3 Sec. 39. Sections 44-7,115, 44-1308, 44-5807, 48-2706, 68-956,
4 76-856, 81-885.10, and 81-885.55, Reissue Revised Statutes of Nebraska,
5 and sections 44-4603, 44-4604, and 81-885.17, Revised Statutes Cumulative
6 Supplement, 2022, are repealed.

7 Sec. 40. Since an emergency exists, this act takes effect when
8 passed and approved according to law.