

## LEGISLATIVE BILL 2

Approved by the Governor February 8, 1985

Introduced by Beutler, 28, Chairperson, Executive Board

AN ACT relating to internal references; to amend sections 14-1005, 44-1525, 70-601, and 81-187, Reissue Revised Statutes of Nebraska, 1943, and sections 28-318 and 70-619, Revised Statutes Supplement, 1984; to correct references to statutes which have been repealed; and to repeal the original sections.

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

Section 1. That section 14-1005, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

14-1005. (1) Any vacancy occurring in the board of directors shall be filled for the unexpired term by the remaining members thereof within thirty days after the vacancy shall occur. It is the intent and purpose, but not the inducement, of sections 14-1001 to ~~14-1033~~ 14-1032, to render the board of directors nonpartisan in character.

(2) Before entering upon their offices, members of the board of directors shall give bond for the faithful performance of their duties in the amount of five thousand dollars each, which bond must be filed with the secretary of the metropolitan water district and be approved by the board of directors, or by a judge of the district court of the judicial district including ~~said~~ the metropolitan city, before the day fixed for assuming the duties of office.

(3) The ~~chairman~~ chairperson of the board of directors of a metropolitan water district or a metropolitan utilities district shall be paid, as compensation for his or her services, not to exceed the sum of six hundred dollars per month. Each of the other members of ~~said~~ the board of directors shall be paid, as compensation for his or her services, not to exceed the sum of five hundred dollars per month. Any adjustments in compensation shall be made only at regular meetings of the board of directors, and the salaries of the ~~chairman~~ chairperson and other members of such board shall not be increased more often than once in any calendar year.

(4) The ~~chairman~~ chairperson and other members of such board of directors shall also be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

Sec. 2. That section 28-318, Revised Statutes Supplement, 1984, be amended to read as follows:

28-318. As used in sections 28-317 to ~~28-323~~  
28-321, unless the context otherwise requires:

- (1) Actor shall mean a person accused of sexual assault;
- (2) Intimate parts shall mean the genital area, groin, inner thighs, buttocks, or breasts;
- (3) Past sexual behavior shall mean sexual behavior other than the sexual behavior upon which the sexual assault is alleged;
- (4) Serious personal injury shall mean great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease, or loss or impairment of a sexual or reproductive organ;
- (5) Sexual contact shall mean the intentional touching of the victim's sexual or intimate parts or the intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts. Sexual contact shall also mean the touching by the victim of the actor's sexual or intimate parts or the clothing covering the immediate area of the actor's sexual or intimate parts when such touching is intentionally caused by the actor. Sexual contact shall include only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party;
- (6) Sexual penetration shall mean sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical or nonhealth purposes. Sexual penetration shall not require emission of semen; and
- (7) Victim shall mean the person alleging to have been sexually assaulted.

Sec. 3. That section 44-1525, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1525. The following shall be unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

- (1) Making, issuing, circulating, or causing to be made, issued, or circulated any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:
  - (a) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy;
  - (b) Misrepresents the dividends or share of the surplus to be received on any insurance policy;
  - (c) Makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy;
  - (d) Misleads or misrepresents the financial

condition of any person or the legal reserve system upon which any life insurer operates;

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

(f) Misrepresents for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy;

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

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

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

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

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

(5)(a) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person; or

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

(6) Issuing or delivering or permitting agents, officers, or employees to issue or deliver agency company

stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance;

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

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

(c) Making or permitting any unfair discrimination between individuals, risks, or insurance policies of the same class involving essentially the same hazards in the amount of premium, policy fees, or rates charged for any risks or insurance policies as described in section 44-1402, 44-1444, or 44-1901 or in the coverages provided, or in any of the terms or conditions of such contracts, or in any other manner. Any rate or classification approved by the Director of Insurance shall be presumed to be nondiscriminatory;

(8)(a) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity, or accident and health insurance, or agreement as to any such contract other than as plainly expressed in the insurance contract issued thereon, or paying, ~~or~~ allowing, or giving, or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, selling, purchasing, or offering to give, sell, or purchase as inducement to such insurance contract or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value not specified in the contract.

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

of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance if such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the company and its policyholders; (ii) in the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses; or (iii) readjustment of the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;

(9) Committing or performing with such frequency as to indicate a general business practice any act which:

(a) Misrepresents pertinent facts or insurance policy provisions relating to coverage at issue;

(b) Fails to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(c) Fails to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(d) Refuses to pay claims without conducting a reasonable investigation based upon all available information;

(e) Fails to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(f) Does not attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

(g) Compels an insured to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by insureds;

(h) Attempts to settle a claim for less than the amount to which a reasonable person would have believed he or she was entitled by reference to written or printed advertising material accompanying or made part of an application;

(i) Attempts to settle claims on the basis of an application which was altered without notice to or knowledge or consent of the insured;

(j) Makes claims payments to an insured or beneficiary not accompanied by a statement setting forth the coverage under which the payments are being made;

(k) Makes known to an insured or claimant a policy of appealing from arbitration awards in favor of the insured or claimant for the purpose of compelling them to

accept settlements or compromises less than the amount awarded in arbitration;

(l) Delays the investigation or payment of claims by requiring an insured or claimant or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(m) Fails to promptly settle claims, when liability has become clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(n) Fails to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;

(10) Failing of any person to maintain a complete record of all the complaints received since the date of its last examination pursuant to section 44-107. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition thereof, and the time it took to process each complaint. For purposes of this subdivision, complaint shall mean any written communication primarily expressing a grievance;

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

(12) Violating any provision of section 44-125, 44-327, 44-339, 44-339-02, 44-340, 44-348, 44-360, 44-361, 44-362, 44-363, 44-364, 44-365, 44-369, 44-392, 44-393, 44-1412, 44-1455, or 44-1498.

Sec. 4. That section 70-601, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-601. As used in Chapter 70, article 6, unless the context otherwise requires:

(1) Public power district, public irrigation district, public power and irrigation district, or district; shall mean a district organized under Chapter 70, article 6, either as originally organized or as the same may from time to time be altered or extended, and shall include, when applicable, rural public power districts organized under Chapter 70, article 8, and subject to Chapter 70, article 6; -

(2) Municipality, when used in relation to the organization of a public power district, shall mean any county, city, incorporated village, or voting precinct in this state; but when used in relation to the election of successors to the board of directors of a public power district, as provided in sections 70-610 to 70-618 70-617,

municipality or municipalities, comprising such public power district, shall be deemed automatically to be extended so as to include each incorporated city or village to which the public power district shall furnish or sell electrical energy either at retail to the inhabitants of such city or village or at wholesale to the city or village to be resold by it if the sale at wholesale is for more than fifty per cent of the power requirements of the city or village. When the public power district ceases to sell electrical energy at retail to the inhabitants of the city or village, or at wholesale to the city or village, for more than fifty per cent of the power requirements, such city or village shall cease to be a part of the public power district;

(3) Governing body, whenever used in relation to any municipality, shall mean the duly constituted legislative body or authority within and for such municipality as a public corporation and governmental subdivision. When used with reference to a voting precinct, governing body shall mean the county board of the county in which the precinct is located;

(4) Irrigation works shall mean any and all sites, dams, dikes, abutments, reservoirs, canals, flumes, ditches, head gates, machinery, equipment, materials, apparatus, and all other property used or useful for the storage, diversion, damming, distribution, sale, or furnishing of water supply or storage of water for irrigation purposes, or for flood control, or used or useful for flood control, whether such works be operated in conjunction with or separately from electric light and power plants or systems;

(5) Power shall include any and all electrical energy generated, distributed, bought, or sold for purposes of lighting, heating, power, and any and every other useful purpose whatsoever; and

(6) Plant or system shall include any and all property owned, used, or operated, or useful for operation, in the generation by means of water power, steam, or other means, or the transmission, distribution, sale, or purchase of electrical energy for any and every useful purpose, including any and all irrigation works, as defined herein, which may be owned, used, or operated in conjunction with such power plant or system.

Sec. 5. That section 70-619, Revised Statutes Supplement, 1984, be amended to read as follows:

70-619. The corporate powers of the district shall be vested in and exercised by the board of directors of the district. No person shall be qualified to hold office as a member of the board of directors unless he or she shall be an elector of such chartered area or, if such chartered area be subdivided for election purposes as provided in sections 70-610 to ~~70-618~~ 70-617, of the subdivision of which he or she shall be an elector, or of

one of the municipalities from which directors are to be elected at large as provided in section 70-612, or a retail customer duly certified in accordance with subsection (3) of section 70-604.03. No person who is a full-time or part-time employee of the district shall be eligible to serve as a member of the board of directors unless such person resigns or assumes an unpaid leave of absence for the term as a member. The district shall grant such leave of absence when requested by any employee for the purpose of the employee serving as a member of the board of directors. No person shall be qualified to be a member of more than one such district board, except that a director of a rural public power district may serve as a director of another public power district formed or organized for the purpose of generating electric energy or transmitting electric energy exclusively for resale to some other public power districts, rural electric cooperatives, and membership associations or municipalities. No member of a governing body of any one of the municipalities within the areas of the district shall be qualified to serve on the original board of directors under the provisions of sections 70-603 to 70-609.

Sec. 6. That section 81-187, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-187. A copy of all estimates, reports, and allocation requests required by sections 81-173 to ~~81-191~~ 81-190, 85-106, and 85-304 shall be submitted to the Legislative Fiscal Analyst.

Sec. 7. That original sections 14-1005, 44-1525, 70-601, and 81-187, Reissue Revised Statutes of Nebraska, 1943, and sections 28-318 and 70-619, Revised Statutes Supplement, 1984, are repealed.