

LEGISLATIVE BILL 233

Approved by the Governor March 8, 1991

Introduced by Landis, 46; Lindsay, 9; Conway, 17;
Wesely, 26; Schmit, 23; Haberman, 44

AN ACT relating to insurance; to amend sections 8-442 and 44-2909, Reissue Revised Statutes of Nebraska, 1943, and sections 44-108.01, 44-114, 44-116, 44-348, 44-522, and 44-1525, Revised Statutes Supplement, 1990; to adopt the Property and Casualty Insurance Rate and Form Act; to harmonize provisions; to eliminate exemptions to a filing requirement; to eliminate provisions relating to rates and rating organizations; to provide an operative date; to provide severability; and to repeal the original sections, and also sections 44-1401, 44-1403 to 44-1409, 44-1411 to 44-1434, 44-1436 to 44-1443, 44-1445 to 44-1452, 44-1454 to 44-1465, 44-1465.02 to 44-1479, and 44-1481 to 44-1486, Reissue Revised Statutes of Nebraska, 1943, and sections 44-1402, 44-1410, 44-1435, 44-1444, 44-1453, 44-1465.01, 44-1480, and 44-1499 to 44-14,102, Revised Statutes Supplement, 1990.

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

Section 1. Sections 1 to 39 of this act shall be known and may be cited as the Property and Casualty Insurance Rate and Form Act.

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

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

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

(3) To regulate insurance forms to the end that they are not unjust, unfair, inequitable, misleading, deceptive, contrary to public policy, or written so as to encourage the misrepresentation of coverage or so as to provide coverage of such a limited nature as to be contrary to the public interest;

(4) To promote price competition among insurers so as to provide rates and premiums that are responsive to competitive market conditions;

(5) To provide regulatory procedures for the maintenance of appropriate data reporting systems; and

(6) To authorize essential cooperative action among insurers in the ratemaking process and to regulate such activity to prevent practices that tend to substantially lessen competition or create a monopoly.

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

Sec. 4. For purposes of the Property and Casualty Insurance Rate and Form Act, the definitions found in sections 5 to 17 of this act shall be used.

Sec. 5. Advisory organization shall mean any entity, including its affiliates or subsidiaries, which has two or more member insurers or is controlled directly or indirectly by two or more insurers and which assists insurers in activities related to ratemaking or the promulgation of forms. Two or more insurers having a common ownership or operating in this state under common underwriting management shall constitute a single insurer for purposes of this definition. Advisory organization shall not include joint-reinsurance pools or insurers engaged in joint underwriting.

Sec. 6. Common underwriting management shall mean an arrangement by which insurers, whether financially related or not, share underwriting facilities.

Sec. 7. Department shall mean the Department of Insurance.

Sec. 8. Director shall mean the Director of Insurance.

Sec. 9. Expenses shall mean that portion of a rate attributable to acquisition, field supervision, collection expenses, general expenses, taxes, licenses, and fees but shall not include loss-adjustment expenses.

Sec. 10. Forms shall mean all policies, certificates, or other contracts providing insurance coverage, including bonds, and all riders, endorsements, or other amendments thereto.

Sec. 11. Joint underwriting shall mean a voluntary arrangement established on an individual-risk basis by which two or more insurers jointly contract to provide insurance coverage for insureds whose property values to be covered or limits of liability to be

provided exceed those which a single insurer is able and willing to provide.

Sec. 12. Joint-reinsurance pool shall mean a voluntary arrangement, established on an ongoing basis, pursuant to which two or more insurers participate in the sharing of risks written as direct obligations according to a predetermined basis and an arrangement by which the insurance remains the direct obligation of the pool participants and not an arrangement by which the participants are reinsuring the direct obligation of another risk-assuming entity. A joint-reinsurance pool may operate through an association, syndicate, or other pooling arrangement.

Sec. 13. Premium shall mean the net cost of insurance after all charges have been accounted for, all audit adjustments have been made, and any dividends payable have been subtracted.

Sec. 14. Prospective-loss costs shall mean that portion of a rate intended to provide for expected losses and loss-adjustment expenses and shall not include provisions for expenses other than loss-adjustment expenses, profits, or dividends.

Sec. 15. Rating system shall include rates, any manual or plan of rates, classifications, rating schedules, minimum premiums, policy fees, dividend rating plans, payment plans, rating plans or rules, anniversary rating date rules, and any other similar information needed to determine the applicable rate or premium in effect or to be in effect. Rating system shall include underwriting rules to the extent necessary to determine the applicable rate.

Sec. 16. Special assessments shall mean guaranty fund assessments, Second Injury Fund assessments, Vocational Rehabilitation Fund assessments, residual market assessments, and other similar assessments. Special assessments shall not be considered as either expenses or losses.

Sec. 17. Supporting information shall mean (1) the experience and judgment of the filer and the experience or data of other insurers or advisory organizations relied upon by the filer, (2) the interpretation of any other data relied upon by the filer, (3) descriptions of methods used in developing a rating system, and (4) any other information required by the director to be filed.

Sec. 18. (1) The Property and Casualty Insurance Rate and Form Act shall apply to any insurer holding a certificate of authority issued by the director to transact insurance business in this state

for the lines of insurance specified in subdivisions (5) through (14) and (16) through (20) of section 44-201 and to any combination of any of the foregoing on risks or operations in this state.

(2) The act shall not apply to:

(a) Reinsurance except as provided in section 29 of this act for joint-reinsurance pools;

(b) Rating systems for risks commonly insured under ocean marine, as distinguished from inland marine, insurance policies;

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

(d) Rating systems for assessment associations doing business under Chapter 44, article 8;

(e) Forms used for contracts of suretyship;
and

(f) Forms used for bonds required by a court or governmental entity.

Sec. 19. (1) Rating systems and prospective-loss costs shall be established in accordance with the following provisions:

(a) Rating systems shall not produce premiums that are excessive, inadequate, or unfairly discriminatory;

(b) Premium levels which would endanger the solvency of the insurer shall be considered to be inadequate. Premium levels which would not be expected to generate a profit on a direct basis and which would be likely to have the effect of diminishing competition shall be considered to be inadequate;

(c) Due consideration shall be given to: Loss experience within and outside this state; reasonably anticipated trends; special assessments, conflagration, and catastrophe hazards; a reasonable margin for profit; dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to policyholders, members, or subscribers; expense experience both countrywide and specially applicable to this state; and other relevant factors;

(d) Risks may be grouped by classifications for the establishment of rates and prospective-loss costs and for the use of rating systems. Rates and premiums may be modified for individual risks or for groups of risks in accordance with formulas or procedures which establish standards for measuring variations in hazards or expense provisions or both. Such standards may measure any differences among risks

or groups of risks that can be demonstrated to have a probable effect upon losses or expenses. In the case of dividend rating plans, such formulas or procedures may also measure differences in actual loss and loss-adjustment expense experience among risks. No risk classification or grouping may be based upon the race, creed, national origin, or religion of the insured;

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

(f) The expense provisions included in the rating systems used by an insurer shall reflect the requirements of the operating methods of the insurer and its anticipated expenses; and

(g) Consideration shall be given to investment income in determining the reasonableness of profit provisions and the adequacy of premium levels.

(2) Forms shall not (a) be unjust, unfair, or inequitable, (b) be misleading, be deceptive, or encourage misrepresentation of the coverage, (c) be contrary to public policy, or (d) provide coverage that is of such a limited nature so as to be contrary to public interest.

(3) Two or more insurers operating under common underwriting management for a line or kind of insurance or subdivision of such line or kind in this state shall, for that line or kind of insurance or subdivision, be treated as a single insurer for purposes of this section in order to prevent unfair discrimination between similarly situated policyholders.

Sec. 20. (1) Rating system filings shall comply with the following provisions:

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

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

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

(d) At the request of the director, an insurer using the services of an advisory organization shall provide information to demonstrate that use of prospective-loss costs and anticipated special assessments filed by the advisory organization will not result in premiums that are excessive, inadequate, or unfairly discriminatory;

(e) Rating systems shall not be required to be filed for inland marine risks which by custom of the industry are not written according to manual rates or rating plans. In determining whether new types of inland marine insurance fall under this exemption, the director shall consider the similarity of the new insurance to existing types of insurance and classes of risk and whether it would be reasonably practical to create and file rating systems prior to use; and

(f) A rate or premium in excess of that provided by a filing otherwise applicable may be used on any specific risk upon the prior written application of the insured, stating reasons therefor, filed with and approved by the director. Any such application and any correspondence relating thereto shall be considered a confidential communication and shall not be made public by the director except as may be compiled by the department in summaries of such activity.

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

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

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

(c) Forms unique in character and designed for and used with regard to a particular risk shall be exempt from filing, except that the director may by rule or order make specific restrictions relating to this exemption. In making such determination, the director shall consider whether the forms otherwise exempt would be likely to meet the requirements of subsection (2) of section 19 of this act and the extent to which it would

be practical to file such forms prior to their use for specific risks. Insurers shall not use this provision to avoid the consent-to-form provisions of subdivision (2)(d) of this section; and

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

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

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

(b) The director may by rule or order suspend or modify the filing requirements of subsection (1) or (2) of this section as to any line or kind of insurance or subdivision or combination of such line or kind of insurance or as to classes of risks for which rating systems or forms cannot practicably be filed before they are used. The director may make such examination as he or she deems necessary to ascertain whether any rating systems or forms affected by such rule or order meet the requirements of section 19 of this act;

(c) No insurer shall issue a contract or policy except in accordance with the filings which have been approved and are in effect for such insurer as provided in the act or in accordance with subdivision (1)(f) or (2)(d) of this section. This subdivision shall not apply to forms or rating systems to the extent that they are exempt or have been exempted by subdivision (1)(e), (2)(c), or (3)(b) of this section;

and

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

Sec. 21. (1) If, within the waiting period provided by section 20 of this act or any extension thereof, the director finds that a filing does not meet the requirements of the Property and Casualty Insurance Rate and Form Act, he or she shall send written notice of disapproval to the insurer or advisory organization which made the filing specifying in what respects the filing fails to meet the requirements of the act and stating that such filing shall not become effective. If the director disapproves a filing, the insurer or advisory organization may, within thirty days of receipt of the disapproval, request a hearing in accordance with section 36 of this act.

(2) If, at any time after approval, the director finds that a form, rating system, prospective-loss cost, or modification thereof does not meet or no longer meets the requirements of the act, the director shall hold a hearing in accordance with section 37 of this act.

(3) Any insured aggrieved with respect to any filing which is in effect may make written application to the director for a hearing thereon. The application shall specify the grounds to be relied upon by the applicant. If the director finds that the application is made in good faith, that the applicant would be so aggrieved if his or her grounds are established, or that such grounds otherwise justify holding a hearing, then a hearing shall be held in accordance with section 37 of this act.

(4) If after a hearing pursuant to subsection (2) or (3) of this section, the director finds that a filing does not meet the requirements of the act, he or she shall issue an order stating in what respects such filing fails to meet the requirements and when, within a reasonable period thereafter, such form, attachment rule relating thereto, prospective-loss cost, rating system, or aspect of a rating system shall no longer be used. Copies of the order shall be sent to the applicant, if applicable, and to every affected insurer and advisory organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

Sec. 22. Within a reasonable time after receiving a written request and after receiving payment of such reasonable charge as it may require, every insurer shall furnish to any insured affected by a rate or premium made by the insurer or to the authorized representative of the insured all pertinent information as to such rate or premium. Upon written request, every insurer shall provide within this state reasonable means by which the insured aggrieved by the application of the insurer's rating system may be heard, in person or by his or her authorized representative, to review the manner in which such rating system has been applied in connection with the insurance afforded the insured. If the insurer fails to act upon such request within thirty days after it is made, the applicant may proceed in the same manner as if the application had been rejected. The insured affected by the action of the insurer on such request may, within thirty days after written notice of such action, appeal to the director who, after a hearing held in accordance with section 37 of this act, may affirm the action of the insurer or issue an order stating any remedial action to be undertaken by the insurer.

Sec. 23. (1) No advisory organization shall file forms or provide any service relating to rating systems for any insurance subject to the Property and Casualty Insurance Rate and Form Act, and no insurer shall use the services of such organization for such purposes, unless the organization has been issued a certificate of authority by the director. Such certificate of authority shall expire on the last day in April of each year and shall be renewed annually if the advisory organization has continued to comply with the laws of this state and the rules and regulations of the director.

(2) No advisory organization shall refuse to provide any services for which it is authorized in this state to any insurer authorized to do business in this state which offers to pay the fair and usual compensation for the services.

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

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

(ii) The names of its members and subscribers;

(iii) The name and address of a resident of

this state upon whom notices, process, or orders of the director may be served:

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

(v) Biographical information on the advisory organization's officers; and

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

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

(c) Unless the director finds that the applicant and the natural persons through whom it acts are not competent, trustworthy, and qualified to provide the services proposed or that all requirements of the law are not met, he or she shall issue a certificate of authority stating the authorized activity of the applicant.

(4) The director may at any time, after a hearing in accordance with section 37 of this act, suspend or revoke the certificate of authority of an advisory organization which does not comply with the requirements of the act.

Sec. 24. (1) No insurer or advisory organization shall (a) attempt to monopolize or combine or conspire with any other person to monopolize an insurance market or (b) engage in a boycott, on a concerted basis, of an insurance market.

(2)(a) No insurer shall agree with any other insurer or with an advisory organization to require adherence to or to require use of any aspect of any rating system, form, prospective-loss cost, dividend payment practice, underwriting rule or practice, survey, inspection, or similar material except (i) as required by section 28 of this act, (ii) as is necessary to develop statistical plans permitted by subdivision (1) of section 26 of this act, or (iii) as required by the director pursuant to the Property and Casualty Insurance Data Reporting Act. The fact that two or more insurers, whether or not members or subscribers of an advisory organization, use consistently or intermittently the same rates, rating systems, forms, prospective-loss costs, underwriting rules or practices, surveys, inspections, or similar materials shall not be

sufficient basis in and of itself to establish a violation of this section.

(b) Two or more insurers having a common ownership or operating in this state under common management or control may act in concert between or among themselves with respect to any matters pertaining to those activities authorized in the Property and Casualty Insurance Rate and Form Act as if they constituted a single insurer.

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

Sec. 25. Except as permitted under section 26 of this act, no advisory organization shall compile, file, or distribute recommendations relating to rating systems that include expenses, profit, or dividends.

Sec. 26. Advisory organizations may:

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

(2) Collect and distribute statistical data from members, subscribers, or any other source;

(3) Prepare, file, and distribute prospective-loss costs which may include anticipated special assessments;

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

(5) Prepare, file, and distribute manuals of rating rules and rating schedules that do not include final rates, expense provisions, profit provisions, or minimum premiums;

(6) Distribute information that is required or directed to be filed with the director;

(7) Conduct research and onsite inspections in order to prepare classifications of public fire defenses;

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

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

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

(11) Conduct research and collect statistics in order to discover, identify, and classify information

relating to causes or prevention of losses;

(12) Prepare, file, and distribute forms and consult with members, subscribers, and others relative to use and application of the forms;

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

(14) Collect, compile, and distribute past and current premiums and rates charged by individual insurers if such compilations are made generally available;

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

(16) Conduct research and collect information to determine the impact of statutory changes upon prospective-loss costs;

(17) Undertake educational activities on topics, including analysis of losses, loss trends, loss reserves, expenses, and other ratemaking topics; and

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

Sec. 27. Filings by an advisory organization of prospective-loss costs, anticipated special assessments, rating systems, or forms and related attachment rules shall be subject to the provisions of the Property and Casualty Insurance Rate and Form Act applicable to filings generally.

Sec. 28. (1) Every workers' compensation insurer shall adhere to a uniform classification system and uniform experience rating system filed with the director by an advisory organization designated by the director.

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

(3) A workers' compensation insurer may develop rating plans which identify loss experience as a factor to be used. Such rating plans and the filing shall be subject to the provisions of the act applicable to filings generally.

(4) The director shall disapprove subclassifications, rating plans, or other variations from manual rules filed by a workers' compensation insurer if the insurer fails to demonstrate that the

data thereby produced can be reported consistent with the uniform classification system and experience rating system and in such a fashion so as to allow for the application of experience rating filed by the advisory organization.

Sec. 29. (1) Notwithstanding subdivision (2)(a) of section 24 of this act, insurers participating in joint underwriting or in joint-reinsurance pools may, in connection with such activity, act in cooperation with each other in the making of rates, rating systems, forms, underwriting rules, surveys, inspections, and investigations, the furnishing of loss and expense statistics or other information, or the conducting of research.

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

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

(4) If, after a hearing in accordance with section 37 of this act, the director finds that any activity or practice of an insurer participating in joint underwriting or a joint-reinsurance pool is unfair, is unreasonable, will tend to lessen competition in any market, or is otherwise inconsistent with the provisions or purposes of the act, the director may issue an order requiring the discontinuance of such activity or practice.

Sec. 30. To ascertain compliance with the Property and Casualty Insurance Rate and Form Act, the director may make or cause to be made an examination of an advisory organization, a joint-reinsurance pool, and each insurer participating in joint underwriting or joint-reinsurance pools. The reasonable costs of any such examination shall be paid by the insurer or entity examined. The officers, managers, agents, and employees of such insurer or entity may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation.

Sec. 31. (1) The director may adopt and promulgate rules and statistical plans to be used by

insurers in recording and reporting of premium, loss, and expense experience in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid in determining whether rating systems comply with the requirements of section 19 of this act. The director may designate one or more advisory organizations or other agencies to assist in gathering such data and making compilations thereof.

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

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

Sec. 32. Insurers may agree to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods. Such insurers may agree on the use of forms, rating systems, and reasonable modifications thereof for such insurance. Such agreements, forms, rating systems, and modifications thereof shall be subject to the approval of the director.

Sec. 33. The director may by rule or order exempt an advisory organization from the provisions of the Property and Casualty Insurance Rate and Form Act which prohibit the filing or promulgation of rates or profit and expense factors by advisory organizations in order to achieve the purposes of the act.

Sec. 34. (1) No person shall willfully withhold information which will affect the forms applicable, dividends payable, or rates or premiums chargeable under the Property and Casualty Insurance Rate and Form Act from the director, any statistical agency designated by the director, any advisory organization, or any insurer.

(2) No person shall knowingly give false or misleading information which will affect the forms applicable, dividends payable, or rates or premiums chargeable under the act to the director, any statistical agency designated by the director, any advisory organization, or any insurer.

(3) A person who violates this section shall be subject to provisions of section 35 of this act.

Sec. 35. (1) Whenever the director has reason to believe that any person has violated any provision of the Property and Casualty Insurance Rate and Form Act, he or she shall hold a hearing in accordance with section 37 of this act. If, after such hearing, the director determines that the person has violated any provision of the act, the director may at his or her discretion order any one or more of the following:

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

(b) Suspension or revocation of the person's license or certificate of authority if such person knew or reasonably should have known he, she, or it was in violation of the Property and Casualty Insurance Rate and Form Act.

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

Sec. 36. Any insurer, insurer engaged in joint underwriting, joint-reinsurance pool, or advisory organization aggrieved by any order or decision of the director made without a hearing may, within thirty days after notice of the order, make written request to the director for a hearing thereon in accordance with section 37 of this act. Pending such hearing and decision, the director may suspend the effective date of his or her action.

Sec. 37. If a hearing is being held at the request of a party other than the director, unless mutually agreed upon by the director and all interested parties, notice of hearing shall be provided within thirty days of the director's receipt of a written request for a hearing. Notice of hearing shall be given to all interested parties and shall state the time, place, and purpose of the hearing. Unless mutually agreed upon by the director and all interested parties, the hearing shall be held not less than ten days after notice is served. In addition, unless mutually agreed upon by the director and all interested parties or unless the hearing is being held at the request of the

director, the hearing shall be held not more than thirty days after notice is served.

Sec. 38. Any order or decision of the director made pursuant to the Property and Casualty Insurance Rate and Form Act may be appealed by any party in interest. The appeal shall be in accordance with the Administrative Procedure Act.

Sec. 39. The director may adopt and promulgate rules and regulations to carry out the Property and Casualty Insurance Rate and Form Act.

Sec. 40. That section 8-442, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-442. Notwithstanding the provisions of section 8-435, the company may require a borrower to insure tangible personal property of a kind usually requiring insurance protection, when offered as security for a loan under the provisions of sections 8-435 to 8-450, against any substantial risk of loss, damage, or destruction for an amount, and term, and upon conditions which are reasonable and appropriate considering the nature of the property and the amount, maturity, and other circumstances of the loan. The company may also be protected by a mortgage clause as the company's interest may appear. No other insurance shall be required as a condition precedent to the making of the loan. The premium on the personal property insurance shall not exceed the premium fixed pursuant to law or by the current applicable manual of a recognized standard insurance rating bureau. The company shall not require the purchasing of insurance from the company as a condition precedent to the making of a loan. The company shall, at the time the loan is made, give to the borrower or, if more than one, to one of them, a statement concerning any insurance procured by or through the company, including therein the amount of any premium which the borrower has paid or is obligated to pay and the amount and expiration date of the policy and a concise description of the risks insured. If a borrower procures insurance by or through such company, the company shall deliver to the borrower, within fifteen days after the making of the loan, an executed copy of the insurance policy or certificate of insurance.

Sec. 41. That section 44-108.01, Revised Statutes Supplement, 1990, be amended to read as follows:

44-108.01. Upon completion of the examination required or provided by law of any domestic insurance

company, fraternal benefit society, reciprocal exchange, rating bureau advisory organization, or other firm, corporation, individual, or partnership, hereinafter referred to as insurer, the examiner or other person making the examination shall sign his or her report and cause it to be filed with the Director of Insurance for acceptance thereby. Such report of examination shall contain only such facts appearing upon the books, records, or other documents of the insurer, its agents, or other persons examined or as ascertained from the statements or sworn testimony of its officers or agents or other persons examined concerning its affairs. Such report, verified under oath, shall be prima facie evidence in any action or proceeding for the conservation or liquidation of the insurer brought in the name of the state against the insurer or its officers or agents upon the facts stated therein.

Sec. 42. That section 44-114, Revised Statutes Supplement, 1990, be amended to read as follows:

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

organization and licensing of a domestic insurer other than an assessment association, a nonrefundable fee of one thousand dollars.

Sec. 43. That section 44-116, Revised Statutes Supplement, 1990, be amended to read as follows:

44-116. All money collected by the Department of Insurance for examination of the affairs of domestic, foreign, or alien insurance companies, reciprocal exchanges, fraternal benefit societies, and ~~rating bureaus~~ advisory organizations or for valuing the reserve liabilities of life insurance companies shall be remitted by the department to the state treasury and credited by the State Treasurer to a fund to be known as the Department of Insurance Cash Fund, which fund is hereby created. Money in the Department of Insurance Cash Fund may be used for transfers to the General Fund at the direction of the Legislature. Any money in the Department of Insurance Cash Fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 44. That section 44-348, Revised Statutes Supplement, 1990, be amended to read as follows:

44-348. Except as otherwise provided in Chapter 44 or by the Director of insurance director, no insurance policy, bond, or certificate issued under such policy or bond shall be issued or delivered in this state unless and until a copy of the form thereof has been filed with the Department of Insurance and approved by ~~the director~~. This section shall not apply to (1) ~~contracts of suretyship or reinsurance;~~ (2) bonds required by a court or governmental entity; or (3) forms unique in character designed for and used with regard to a particular risk.

Sec. 45. That section 44-522, Revised Statutes Supplement, 1990, be amended to read as follows:

44-522. (1) The Department of Insurance shall not approve any insurance policy filed for approval with the department, as required by Chapter 44, article 3 the Property and Casualty Insurance Rate and Form Act, which insures against loss or damage to property or against legal liability from any cause unless such policy contains an appropriate provision for cancellation thereof by either the insurer or the insured.

(2) On any policy or binder of property, marine, or liability insurance, as specified in section 44-201, the insurer shall give the insured sixty days'

written notice prior to cancellation or nonrenewal of such policy or binder, except that the insurer may cancel upon ten days' written notice to the insured in the event of nonpayment of premium or if such policy or binder has a specified term of sixty days or less unless the policy or binder has previously been renewed. The provisions of this subsection and subsection (4) of this section shall not apply to nonrenewal of a policy or binder which has a specified term of sixty days or less unless the policy or binder has previously been renewed. Such notice shall state the reason for cancellation or nonrenewal.

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

- (a) Nonpayment of premium;
- (b) The policy was obtained through a material misrepresentation;
- (c) Any insured has submitted a fraudulent claim;
- (d) Any insured has violated any of the terms and conditions of the policy;
- (e) The risk originally accepted has substantially increased;
- (f) Certification to the Director of Insurance of loss of reinsurance by the insurer which provided coverage to the insurer for all or a substantial part of the underlying risk insured; or
- (g) The determination by the director that the continuation of the policy could place the insurer in violation of the insurance laws of this state.

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

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

(6) All policy forms issued for delivery in

Nebraska shall conform to this section.

Sec. 46. That section 44-1525, Revised Statutes Supplement, 1990, 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 as to 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, 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 sections 44-1402, 44-1444, the Property and Casualty Insurance Rate and Form Act or section 44-1901 or in the coverages provided, 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 sickness and accident and health insurance, or agreement as to any such contract other than as plainly expressed in the insurance contract issued thereon, or paying, 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 44-348, 44-360, 44-361, 44-369, 44-392, 44-393, 44-1412, 44-1455, 44-1498, 44-4809, 44-4812, or 44-4817.

Sec. 47. That section 44-2909, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2909. No association organized under ~~sections 44-2901 to 44-2918~~ the Nebraska Hospital and Physicians Mutual Insurance Association Act shall transact the business of insurance until:

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

(2) It has filed with the Director of Insurance acceptable evidence that it has, and shall maintain, a minimum surplus aggregating at least five hundred thousand dollars in cash, in the investments specified in section 44-309, or a letter of credit issued by a Nebraska banking institution in accordance with loan restrictions prescribed by the laws of this state;

(3) All policies, applications, and other forms together with all manuals and rates to be used, have been filed and approved as provided in ~~sections 44-348 and 44-1405~~ the Property and Casualty Insurance Rate and Form Act;

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

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

hundred applications for policies in a physicians association.

Sec. 48. This act shall become operative on January 1, 1992.

Sec. 49. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 50. That original sections 8-442 and 44-2909, Reissue Revised Statutes of Nebraska, 1943, and sections 44-108.01, 44-114, 44-116, 44-348, 44-522, and 44-1525, Revised Statutes Supplement, 1990, and also sections 44-1401, 44-1403 to 44-1409, 44-1411 to 44-1434, 44-1436 to 44-1443, 44-1445 to 44-1452, 44-1454 to 44-1465, 44-1465.02 to 44-1479, and 44-1481 to 44-1486, Reissue Revised Statutes of Nebraska, 1943, and sections 44-1402, 44-1410, 44-1435, 44-1444, 44-1453, 44-1465.01, 44-1480, and 44-1499 to 44-14,102, Revised Statutes Supplement, 1990, are repealed.