

## LEGISLATIVE BILL 260

Approved by the Governor February 24, 1999

Introduced by Landis, 46

AN ACT relating to insurance; to amend sections 44-150, 44-2627, 44-2628, 44-3902, 44-3904, 44-3905, 44-4005.01, 44-4005.04, 44-4010, 44-4013, 44-4015, 44-4019, 44-4028, 44-4041, and 44-5504, Reissue Revised Statutes of Nebraska; to change provisions relating to licensing of agents, brokers, and agencies; to change and eliminate provisions relating to signatures and countersignatures; to harmonize provisions; to repeal the original sections; and to outright repeal section 44-4415, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 44-150, Reissue Revised Statutes of Nebraska, is amended to read:

44-150. (1) When by or pursuant to the laws of any other state or foreign country any taxes, licenses and other fees, in the aggregate, or any fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions, are or would be imposed upon Nebraska insurers, or upon the agents or representatives of such insurers, which are in excess of such taxes, licenses and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements, or other obligations, prohibitions, or restrictions directly imposed upon similar insurers, or upon the agents or representatives of such insurers, of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate, or fines, penalties, ~~or~~ deposit requirements, or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the Director of Insurance upon the insurers, or upon the agents or representatives of such insurers, of such other state or country doing business or seeking to do business in Nebraska. Any tax, license or other fee, or other obligation imposed by any city, county, or other political subdivision or agency of such other state or country on Nebraska insurers or their agents or representatives shall be deemed to be imposed by such state or country within the meaning of this section.

(2) This section shall not apply as to personal income taxes, nor as to ad valorem taxes on real or personal property nor as to special-purpose obligations or assessments heretofore imposed by another state in connection with particular kinds of insurance, other than property insurance; except that deductions, from premium taxes or other taxes otherwise payable, allowed on account of real estate or personal property taxes paid shall be taken into consideration by the Director of Insurance in determining the propriety and extent of retaliatory action under this section.

(3) Nothing in this section shall require retaliatory action because of fees, obligations, or prohibitions imposed on Nebraska resident agents, brokers, or agencies licensed pursuant to the Insurance Producers Licensing Act.

(4) ~~(3)~~ For the purposes of this section the domicile of an alien insurer, other than insurers formed under the laws of Canada, shall be that state designated by the insurer in writing filed with the Director of Insurance at time of admission to this state or within twelve months after September 28, 1959, whichever date is the later, and may be any one of the following states: (a) That in which the insurer was first authorized to transact insurance; (b) that in which is located the insurer's principal place of business in the United States; or (c) that in which is held the larger deposit of trust assets of the insurer for the protection of its policyholders and creditors in the United States.

If the insurer makes no such designation its domicile shall be deemed to be that state in which is located its principal place of business in the United States.

In the case of an insurer formed under the laws of Canada or a province thereof, its domicile shall be deemed to be that province in which its head office is situated.

Sec. 2. Section 44-2627, Reissue Revised Statutes of Nebraska, is amended to read:

44-2627. (1) The license shall state the name and resident address of the licensee, date of issuance, whether the licensee is qualified to consult in property and casualty, life, health, and annuities, ~~or both,~~ and

such other information as the director considers proper.

(2) All corporate, partnership, and limited liability company licenses shall expire on June 30 of each year, and all individual licenses shall expire on the last day of the month of the licensee's birthday in the first year after issuance in which his or her age is divisible by two and such individual licenses may be reissued within the ninety-day period before their expiration dates and all individual licenses also may be reissued within the thirty-day period after their expiration dates upon payment of a late reissuance fee as established by the director not to exceed one hundred twenty-five dollars in addition to the applicable fee otherwise required for reissuance of individual licenses as established by the director pursuant to section 44-2621. All individual licenses reissued within the thirty-day period after their expiration dates pursuant to this subsection shall be deemed to have been reissued before their expiration dates. The department shall establish procedures for the reissuance of licenses.

(3) Every licensed consultant shall notify the department within thirty days of any change in his or her residential or business address.

Sec. 3. Section 44-2628, Reissue Revised Statutes of Nebraska, is amended to read:

44-2628. A person holding a license issued under sections 44-2606 to 44-2635 shall ~~annually~~ pay to the department the required license fee as prescribed by section 44-2621. The department shall not issue a license to any person who fails to pay the required license fee when it becomes due except as otherwise provided in subsection (2) of section 44-2627.

Sec. 4. Section 44-3902, Reissue Revised Statutes of Nebraska, is amended to read:

44-3902. For purposes of sections 44-3901 to 44-3908, unless the context otherwise requires:

(1) Licensee shall mean a natural person who is licensed by the department as a resident agent, broker, or consultant;

(2) Director shall mean the Director of Insurance;

(3) Department shall mean the Department of Insurance; and

(4) Two-year period shall mean ~~twenty-four months commencing on April 1 following the date of licensing and each succeeding twenty-four-month period, and on and after April 30, 1990, two-year period shall mean the period commencing on the date of licensing and ending on the date of expiration of the licensee's first license effective for not less than two years and each succeeding twenty-four-month period.~~

Sec. 5. Section 44-3904, Reissue Revised Statutes of Nebraska, is amended to read:

44-3904. (1)(a)(i) Licensees qualified to solicit property and casualty insurance shall be required to complete twenty-four hours of approved continuing education activities in each two-year period commencing before January 1, 2000, and twenty-one hours of approved continuing education activities in each two-year period commencing on or after January 1, 2000.

(ii) Licensees qualified to solicit assessment association insurance shall be required to complete twelve hours of approved continuing education activities in each two-year period.

(iii) Licensees qualified to solicit only crop insurance or only fidelity and surety insurance shall be required to complete three hours of approved continuing education activities in each two-year period.

(iv) Licensees qualified to solicit any ~~other~~ lines of insurance other than those described in subdivisions (i) through (iii) of subdivision (a) of this subsection shall be required to complete six hours of approved continuing education activities in each two-year period for each line of insurance, including each miscellaneous line, in which he or she is licensed.

(b) Licensees who are neither agents nor brokers shall be required to complete twenty-four hours of continuing education activities in each two-year period commencing before January 1, 2000, and twenty-one hours of approved continuing education activities in each two-year period commencing on or after January 1, 2000.

(c) In each two-year period, every licensee shall furnish evidence to the director that he or she has satisfactorily completed the hours of approved continuing education activities required under this subsection for each line of insurance in which he or she is licensed as a resident agent or broker, except that no licensee shall be required to complete more than twenty-four cumulative hours required under this subsection in any two-year period commencing before January 1, 2000, and twenty-one cumulative hours required under this subsection in any two-year period commencing on or after January 1, 2000.

(2) In each two-year period commencing ~~on or after January 1, 1994~~ before January 1, 2000, licensees required to complete approved continuing

education activities under subsection (1) of this section shall, in addition to such activities, be required to complete six hours of approved continuing education activities on insurance industry ethics, except that licensees qualified to solicit only crop insurance, only fidelity and surety insurance, or only title insurance shall be required to complete three hours of approved continuing education activities on insurance industry ethics, and in each two-year period commencing on or after January 1, 2000, licensees required to complete approved continuing education activities under subsection (1) of this section shall, in addition to such activities, be required to complete three hours of approved continuing education activities on insurance industry ethics.

(3) When the requirements of this section have been met, the licensee shall furnish to the department evidence of completion for the current two-year period ~~commencing before January 1, 1994, or commencing on or after January 1, 1994,~~ and a filing fee as established by the director not to exceed five dollars.

Sec. 6. Section 44-3905, Reissue Revised Statutes of Nebraska, is amended to read:

44-3905. (1)(a) The director shall certify as approved continuing education activities those courses, lectures, seminars, or other instructional programs which he or she determines would be beneficial in improving the product knowledge or service capability of licensees, except that on and after January 1, 2000, the director shall refuse to certify as approved any continuing education activity if the sponsors associated with such continuing education activity are not on the list of approved continuing education sponsors maintained pursuant to subdivision (b) of this subsection. The director may require descriptive information about any continuing education activity and refuse approval of any continuing education activity that does not advance the purposes of sections 44-3901 to 44-3908. The director shall require a nonrefundable fee as established by the director not to exceed fifty dollars for review of any continuing education activity submitted for approval.

(b) The director shall maintain a list of persons or entities that the director has approved as continuing education sponsors. Such persons or entities shall meet the qualifications for continuing education sponsors established by the director. The director may require such information about any continuing education sponsor as is necessary to determine whether the continuing education sponsor has met such qualifications. The director shall require a nonrefundable fee as established by the director not to exceed two hundred dollars for approval of any continuing education sponsor. The director may impose an administrative penalty not to exceed two hundred dollars per violation, and, in addition, may remove a continuing education sponsor from the approved continuing education sponsor list, after notice and hearing, if the director determines that the continuing education sponsor has:

(i) Failed to maintain compliance with qualifications established by the director pursuant to subdivision (1)(b) of this section;

(ii) Advertised, prior to approval, that a course is approved;

(iii) Advertised a course in a materially misleading manner;

(iv) Submitted a course outline with material inaccuracies in topic content;

(v) Presented nonapproved material during the time of an approved course;

(vi) Failed to notify course registrants of removal of course approval;

(vii) Changed the program teaching method or program content in a material manner without notice to the director;

(viii) Failed to present a course for the total amount of time specified in the request for course approval forms submitted to the department;

(ix) Failed to issue certificates of completion to all individuals who have satisfactorily completed the approved course;

(x) Issued a certificate of completion to an individual who did not complete the approved course;

(xi) Issued an inaccurate or incomplete certificate of completion;

(xii) Failed to maintain records of certificates issued;

(xiii) Failed to report disciplinary action taken by another state licensing authority;

(xiv) Committed improprieties in connection with the classification, application for certification, maintenance of records, teaching method, program content, or issuance of certificates for a course or program; or

(xv) Failed to respond to the department within fifteen working days after receipt of an inquiry from the department.

(2) The director shall certify the number of hours to be awarded for participation in an approved continuing education activity based upon contact or classroom hours.

(3) The director shall certify the number of hours to be awarded for successful completion of a correspondence course or program of independent study based upon the number of hours which would be awarded in an equivalent classroom course or program.

Sec. 7. Section 44-4005.01, Reissue Revised Statutes of Nebraska, is amended to read:

44-4005.01. Except as otherwise provided by the Insurance Producers Licensing Act, no individual shall be eligible to apply for a license as an insurance agent unless he or she has completed the following prelicensing education requirements:

(1) An individual seeking a property and casualty insurance license shall complete at least six hours of education on insurance industry ethics in addition to thirty-four hours of education in the area of property and casualty insurance;

(2) An individual seeking a life insurance and annuities license shall complete at least six hours of education on insurance industry ethics in addition to ~~twenty-four~~ fourteen hours of education in the area of life insurance and annuities;

(3) An individual seeking a sickness, accident, and health insurance license shall complete at least six hours of education on insurance industry ethics in addition to ~~twenty-four~~ fourteen hours of education in the area of sickness, accident, and health insurance of which at least six hours shall be in the area of medicare supplement insurance and long-term care insurance;

(4) An individual seeking a combined life insurance and annuities and sickness, accident, and health insurance license shall complete at least six hours of education on insurance industry ethics in addition to thirty-four hours of education in the area of life insurance and annuities and sickness, accident, and health insurance and of such thirty-four hours at least seventeen hours shall be in the area of life insurance and annuities and seventeen hours shall be in the area of sickness, accident, and health insurance, and of such seventeen hours in the area of sickness, accident, and health insurance at least six hours shall be in the area of medicare supplement insurance and long-term care insurance;

(5) An individual seeking a title insurance license shall complete at least six hours of education on insurance industry ethics in addition to six hours of education in the area of title insurance;

(6) An individual seeking an assessment association insurance license shall complete at least six hours of education on insurance industry ethics in addition to six hours of education in the area of the kinds of insurance issued by an assessment association; and

(7) An individual seeking a crop insurance license shall complete at least three hours of education on insurance industry ethics in addition to three hours in the area of crop insurance.

Sec. 8. Section 44-4005.04, Reissue Revised Statutes of Nebraska, is amended to read:

44-4005.04. The written examination required by section 44-4020 shall be successfully completed and an application for a license shall be received by the department within one year after the date of obtaining a certificate of completion of the prelicensing education requirements or all prelicensing education requirements and the examination process shall be repeated.

Sec. 9. Section 44-4010, Reissue Revised Statutes of Nebraska, is amended to read:

44-4010. The director shall issue an agent's license to the following persons without examination if such person meets all other license requirements:

(1) Any applicant for a temporary license;

(2) Any applicant for a license covering the same line or lines of insurance for which the applicant was licensed under a like license in this state, other than a temporary license, within the thirty-six months preceding the date of application upon payment of a reinstatement fee as established by the director pursuant to section 44-4019 unless such previous license was revoked or suspended by the director;

(3) Any insurance agency which is required to be licensed under the Insurance Producers Licensing Act;

(4) Any ticket-selling agent of a common carrier who acts only with reference to the issuance of accident insurance or insurance on personal effects carried as baggage in connection with the transportation provided by such common carrier or any person selling limited travel insurance in

transportation terminals;

(5) Any person involved in insurance solicitation solely through enrollment of individuals under a group insurance policy;

(6) Any applicant who only solicits or procures credit life or credit sickness and accident insurance in connection with a loan or a retail time-sales transaction;

(7) Home office or branch office employees of insurers or of general agents who work with or through resident agents in the solicitation, negotiation, or effectuation of insurance and who are compensated by salary only;

(8) Any officer, employee, or secretary of any fraternal benefit society who devotes substantially all of his or her time to activities other than the solicitation of insurance contracts and who receives no commission or other compensation directly dependent upon the number or amount of contracts solicited;

(9) Any applicant for a license covering variable contracts who provides the director with a copy of his or her examination score indicating that he or she has successfully passed either the appropriate National Association of Securities Dealers or other national securities exchange examination;

(10) Any applicant who solicits, negotiates, or procures home protection insurance in connection with the sale of real estate and who at the time of such transaction is licensed as a real estate broker, associate broker, or salesperson. For purposes of this subdivision, (a) home shall mean a single living unit or multiple living units, including mobile homes, used primarily as residences and (b) home protection insurance shall mean insurance which undertakes to perform or provide repair or replacement service or indemnification for such services for the operational or structural failure of the insured home, components of the home, or personal property relating to the home or its components and shall not include protection against consequential damage from the operational or structural failure; or

(11) Any person who solicits a kind of insurance that the director finds does not require an examination to demonstrate professional competency.

Sec. 10. Section 44-4013, Reissue Revised Statutes of Nebraska, is amended to read:

44-4013. Any insurer which delivers a contract of insurance in this state to any insurance broker pursuant to the application or request of such broker shall be deemed to have authorized such broker to act on its behalf in receiving the premium, effectuating policy coverage, and receiving notification of claims. Any broker who is also a licensed agent for the company whose policy is negotiated shall be deemed to be acting as an agent for the company. ~~Resident brokers shall have authority to countersign policies in compliance with section 44-4041.~~

Sec. 11. Section 44-4015, Reissue Revised Statutes of Nebraska, is amended to read:

44-4015. (1) All licenses issued pursuant to the Insurance Producers Licensing Act shall state the name, business address, and social security number of the licensed person, the date of issue, the expiration date, the line or lines of insurance covered by the license, and such other information as the director considers proper for inclusion in the license.

(2) All agency licenses issued under the Insurance Producers Licensing Act shall expire on April 30 of each year, and all agent and broker licenses shall expire on the last day of the month of the licensed person's birthday in the first year after issuance in which his or her age is divisible by two and such agent and broker licenses may be renewed within the ninety-day period before their expiration dates and all agent and broker licenses also may be renewed within the thirty-day period after their expiration dates upon payment of a late renewal fee as established by the director pursuant to section 44-4019 in addition to the applicable fee otherwise required for renewal of agent and broker licenses as established by the director pursuant to section 44-4019. All agent and broker licenses renewed within the thirty-day period after their expiration dates pursuant to this subsection shall be deemed to have been renewed before their expiration dates. The department shall establish procedures for the renewal of licenses.

(3) Every person licensed under the Insurance Producers Licensing Act shall notify the department within thirty days of any change in such person's residential or business address. Any person failing to provide such notification shall be subject to a fine by the director of not more than five hundred dollars per violation, suspension of the person's license until the change of address is reported to the department, or both.

Sec. 12. Section 44-4019, Reissue Revised Statutes of Nebraska, is amended to read:

44-4019. (1) Before any license is issued or renewed under the Insurance Producers Licensing Act, the person requesting such license shall pay or cause to be paid to the department the following fee or fees, if applicable, as established by the director: (a) For each resident agent license, a fee not to exceed forty dollars; (b) for each nonresident agent license, a fee not to exceed eighty dollars; (c) for each resident broker license, a fee not to exceed one hundred fifty dollars; (d) for each nonresident broker license, a fee not to exceed one hundred seventy-five dollars; (e) a late renewal fee not to exceed one hundred twenty-five dollars; (f) a reinstatement fee not to exceed one hundred seventy-five dollars; and ~~(e)~~ (g) for each agency license, a fee not to exceed fifty dollars.

(2) If a licensed person (a) desires to add a line or lines of insurance to his or her existing license, (b) seeks to change any other information contained in the license for any reason, or (c) applies for a duplicate license, such person shall pay to the department a fee established by the director to cover the expense of replacing the license. The department shall not issue a license to any person who fails to pay the required license fee when it becomes due except as otherwise provided in subsection (2) of section 44-4015. Fees established by the director pursuant to this section shall not exceed one hundred seventy-five dollars. ~~7 except that if any other state imposes additional or greater fees, obligations, or prohibitions on Nebraska resident agents, brokers, or agencies, then such additional or greater fees, obligations, or prohibitions shall be imposed upon similar agents, brokers, or agencies of such other state applying for a license in Nebraska.~~

Sec. 13. Section 44-4028, Reissue Revised Statutes of Nebraska, is amended to read:

44-4028. The director may revoke or suspend any person's license or place a licensed person on probation for such period as may be determined to be appropriate if, after notice to the licensed person and hearing, the director determines such person has:

(1) Violated any insurance law or any lawful rule, regulation, or order of the director or of a director or commissioner of another state, district, or territory of the United States or any province of Canada;

(2) Improperly withheld, misappropriated, or converted to his or her own use any money belonging to policyholders, insurers, beneficiaries, or others received in the course of business;

(3) Misrepresented the terms of any existing or proposed insurance contract to the detriment of the applicant or insured;

(4) Engaged in any unfair trade practice in the business of insurance subject to the Unfair Insurance Trade Practices Act or any unfair claims settlement practice subject to the Unfair Insurance Claims Settlement Practices Act;

(5) Forged another person's name to an application for insurance or to any other document or fraudulently procured a forged signature to an insurance application or any other document, knowing such signature to be forged;

(6) Knowingly and willfully made or permitted a false or fraudulent statement or misrepresentation in or relative to an application for a policy of insurance;

(7) Been adjudged a bankrupt with debts related to the receipt or transmittal of insurance premiums or other funds to an insurer or insured in such agent's fiduciary capacity or has issued to the department an insufficient fund or no-fund check;

(8) Been convicted of any felony or a Class I, II, or III misdemeanor evidencing that such person is not worthy of the public trust;

(9) Obtained the license for the purpose of writing controlled business as described in section 44-361.01;

(10) Had an agent's or broker's license suspended or revoked in any other state, district, or territory of the United States or any province of Canada;

(11) Not demonstrated trustworthiness and competency to transact business in such a manner as to safeguard the public;

(12) Obtained a loan from an insurance client that is not a financial institution and who is not related to the licensed person by birth, marriage, or adoption;

~~(12)~~ (13) Failed to submit to a reexamination for competency or failed to pass such examination as required by section 44-4025;

~~(13)~~ (14) Obtained the license through misrepresentation, fraud, or any other act for which issuance of the license could have been refused had it been known to the director at the time of issuance;

~~(14)~~ (15) Knowingly failed to report to the department the actions

of any insurance company, licensed agent, broker, agency, or other person which violate Nebraska insurance laws;

~~(15)~~ (16) Violated the terms of the department's order of probation as applied to such licensed person; or

~~(16)~~ (17) Failed to respond to the department within fifteen working days after receipt of an inquiry from the department.

Sec. 14. Section 44-4041, Reissue Revised Statutes of Nebraska, is amended to read:

44-4041. There shall be no requirement that an agent resident in Nebraska sign or countersign a policy of insurance covering a subject of insurance resident, located, or to be performed in the state. ~~7 except that if the laws or regulations of another state require a signature or countersignature by an agent resident in that state on a policy of insurance written by a nonresident agent or nonresident broker of such state, then any policy of insurance written by an agent resident of that state licensed as a nonresident agent in Nebraska covering a subject of insurance resident, located, or to be performed in Nebraska shall be signed or countersigned in writing by an agent resident in Nebraska. No policy of insurance shall be deemed invalid due to the absence of the required signature or countersignature. If the laws or regulations of another state require an agent resident in such state to retain a portion of the commission paid on a like policy of insurance written, countersigned, or delivered by such agent in such state at the request of a nonresident agent or nonresident broker of such state, then the agent resident in Nebraska who signed or countersigned a policy of insurance written by a resident of such state licensed as a nonresident agent in Nebraska covering a subject of insurance resident, located, or to be performed in Nebraska shall retain an equal pro rata portion of any commission on such policy of insurance.~~

Sec. 15. Section 44-5504, Reissue Revised Statutes of Nebraska, is amended to read:

44-5504. (1) No person shall place, procure, or effect insurance upon any risk located in this state in any nonadmitted insurer until such person has first been issued a surplus lines license from the department as provided in section 44-5503.

(2) Application for a surplus lines license shall be made to the department on forms designated and furnished by the department and shall be accompanied by a license fee as established by the director not to exceed two hundred fifty dollars for each individual and corporate surplus lines license.

(3) Before the issuance of a surplus lines license, the applicant shall file with the director and maintain in force while so licensed a bond in favor of the State of Nebraska in the penal sum of not less than ten thousand dollars with authorized surety insurers approved by the director. The director may require a bond in an amount greater than ten thousand dollars if he or she determines that the volume of business written or to be written by a licensee warrants the maintenance of such a bond. In no event shall the director require a bond greater than one hundred thousand dollars. The bond shall be conditioned that the surplus lines licensee shall: (a) Transact business under such license in accordance with the Surplus Lines Insurance Act; (b) duly account for and pay to persons entitled thereto funds received by the licensee in transactions under the license; and (c) pay the taxes required by section 44-5506. The bond shall remain in force until released by the director or until canceled by the surety. Without prejudice to any liability previously incurred under the bond, the surety may cancel the bond upon thirty days' written notice to the licensee and the director. The form of bond shall have the prior written approval of the director.

(4)(a) All corporate surplus lines licenses shall expire on April 30 of each year, and all individual surplus lines licenses shall expire on the licensee's birthday in the first year after issuance in which his or her age is divisible by two, ~~and all individual surplus + surplus lines licenses may be renewed within the ninety-day period before their expiration dates and all individual surplus lines licenses also may be renewed within the thirty-day period after their expiration dates upon payment of a late renewal fee as established by the director not to exceed two hundred dollars in addition to the applicable fee otherwise required for renewal of individual surplus lines licenses as established by the director pursuant to subsection (2) of this section. All individual surplus lines licenses renewed within the thirty-day period after their expiration dates pursuant to this subdivision shall be deemed to have been renewed before their expiration dates.~~ The department shall establish procedures for the renewal of surplus lines licenses.

(b) Every licensee shall notify the department within thirty days of any changes in the licensee's residential or business address.

Sec. 16. Original sections 44-150, 44-2627, 44-2628, 44-3902,

LB 260

LB 260

44-3904, 44-3905, 44-4005.01, 44-4005.04, 44-4010, 44-4013, 44-4015, 44-4019, 44-4028, 44-4041, and 44-5504, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 17. The following section is outright repealed: Section 44-4415, Reissue Revised Statutes of Nebraska.