

AMENDMENTS TO LB1073

Introduced by Banking, Commerce and Insurance.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Notwithstanding section 44-3,131, beginning January 1,
4 2025, no policy, certificate, or contract, delivered, issued for
5 delivery, or renewed in this state, or any self-funded employee benefit
6 plan, to the extent not preempted by federal law, shall impose a
7 deductible, coinsurance, or any other cost-sharing requirements for lung
8 cancer screening, including screening performed with low-dose computed
9 tomography, for an individual at least fifty years of age and not older
10 than eighty years of age who has a twenty-pack-per-year smoking history
11 and currently smokes or who has quit smoking within the past fifteen
12 years. This section shall not apply if an individual (1) has not smoked
13 for fifteen years, (2) develops a health problem that substantially
14 limits life expectancy, or (3) is preparing to have curative lung
15 surgery.

16 Sec. 2. Section 44-7,115, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 44-7,115 (1) A step-therapy override exception shall be approved by
19 a health carrier or utilization review organization if any of the
20 following circumstances apply:

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

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

27 (ii) Decrease the ability of the covered individual to achieve or

1 maintain reasonable functional ability in performing daily activities; or

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

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

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

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

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

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

21 (d) The covered person is currently receiving a positive therapeutic
22 outcome on a prescription drug selected by the covered person's health
23 care provider for the medical condition under consideration while under
24 the covered person's current or previous health benefit plan. Nothing in
25 the Step-Therapy Reform Act shall prohibit the distribution of a
26 pharmaceutical sample, except that the pharmaceutical sample may not be
27 used to meet the requirements of this subdivision.

28 (2) Upon the approval of a step-therapy override exception, the
29 health carrier or utilization review organization shall authorize
30 coverage for the prescription drug selected by the covered person's
31 prescribing health care provider if the prescription drug is a covered

1 prescription drug under the covered person's health benefit plan.

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

19 (4) If a request for a step-therapy override exception is denied,
20 the health carrier or utilization review organization shall provide the
21 covered person or the covered person's authorized representative and the
22 covered person's prescribing health care provider with the reason for the
23 denial and information regarding the procedure to request external review
24 of the denial pursuant to the Health Carrier External Review Act. Any
25 denial of a request for a step-therapy override exception that is upheld
26 on an internal appeal shall be considered a final adverse determination
27 for purposes of the Health Carrier External Review Act and is eligible
28 for a request for external review by a covered person or the covered
29 person's authorized representative pursuant to the Health Carrier
30 External Review Act.

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

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

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

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

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

15 Sec. 3. Section 44-1308, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 44-1308 (1)(a) Within four months after the date of receipt of a
18 notice of an adverse determination or final adverse determination
19 pursuant to section 44-1305, a covered person or the covered person's
20 authorized representative may file a request for an external review with
21 the director.

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

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

29 (a) The individual is or was a covered person in the health benefit
30 plan at the time that the health care service was requested or, in the
31 case of a retrospective review, was a covered person in the health

1 benefit plan at the time that the health care service was provided;

2 (b) The health care service that is the subject of the adverse
3 determination or the final adverse determination is a covered service
4 under the covered person's health benefit plan, but for a determination
5 by the health carrier that the health care service is not covered because
6 it does not meet the health carrier's requirements for medical necessity,
7 appropriateness, health care setting, level of care, or effectiveness;

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

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

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

19 (i) The request is complete; and

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

21 (b) If the request:

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

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

30 (c)(i) The director may specify the form for the health carrier's
31 notice of initial determination under this subsection and any supporting

1 information to be included in the notice.

2 (ii) The notice of initial determination shall include a statement
3 informing the covered person and, if applicable, the covered person's
4 authorized representative that a health carrier's initial determination
5 that the external review request is ineligible for review may be appealed
6 to the director.

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

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

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

19 (i) Assign an independent review organization from the list of
20 approved independent review organizations compiled and maintained by the
21 director pursuant to section 44-1312 to conduct the external review and
22 notify the health carrier of the name of the assigned independent review
23 organization; and

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

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

1 (c) The director shall include in the notice provided to the covered
2 person and, if applicable, the covered person's authorized representative
3 a statement that the covered person or his or her authorized
4 representative may submit in writing to the assigned independent review
5 organization within five business days following the date of receipt of
6 the notice provided pursuant to subdivision (4)(a) of this section
7 additional information that the independent review organization shall
8 consider when conducting the external review. The independent review
9 organization is not required to but may accept and consider additional
10 information submitted after five business days.

11 (5)(a) Within five business days after the date of receipt of the
12 notice provided pursuant to subdivision (4)(a) of this section, the
13 health carrier or its designee utilization review organization shall
14 provide to the assigned independent review organization the documents and
15 any information considered in making the adverse determination or final
16 adverse determination. Any documents or information solely related to
17 cost shall not be provided.

18 (b) Except as provided in subdivision (5)(c) of this section,
19 failure by the health carrier or its utilization review organization to
20 provide the documents and information within the time specified in
21 subdivision (5)(a) of this section shall not delay the conduct of the
22 external review.

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

28 (ii) Within one business day after making the decision under
29 subdivision (5)(c)(i) of this section, the independent review
30 organization shall notify the covered person and, if applicable, the
31 covered person's authorized representative, the health carrier, and the

1 director.

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

8 (b) Upon receipt of any information submitted by the covered person
9 or the covered person's authorized representative pursuant to subdivision
10 (4)(c) of this section, the assigned independent review organization
11 shall forward the information to the health carrier within one business
12 day.

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

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

20 (c) The external review may only be terminated if the health carrier
21 decides, upon completion of its reconsideration, to reverse its adverse
22 determination or final adverse determination and provide coverage or
23 payment for the health care service that is the subject of the adverse
24 determination or final adverse determination.

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

31 (ii) The assigned independent review organization shall terminate

1 the external review upon receipt of the notice from the health carrier
2 sent pursuant to subdivision (7)(d)(i) of this section.

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

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

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

10 (c) Consulting reports from appropriate health care professionals
11 and other documents submitted by the health carrier, covered person, the
12 covered person's authorized representative, or the covered person's
13 treating provider;

14 (d) The terms of coverage under the covered person's health benefit
15 plan with the health carrier to ensure that the independent review
16 organization's decision is not contrary to the terms of coverage under
17 the covered person's health benefit plan with the health carrier;

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

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

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

28 (9)(a) Within forty-five days after the date of receipt of the
29 request for an external review, the assigned independent review
30 organization shall provide written notice of its decision to uphold or
31 reverse the adverse determination or the final adverse determination to

1 the covered person, if applicable, the covered person's authorized
2 representative, the health carrier, and the director.

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

5 (i) A general description of the reason for the request for external
6 review;

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

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

10 (iv) The date of its decision;

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

14 (vi) The rationale for its decision; and

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

17 (c) Upon receipt of a notice of a decision pursuant to subdivision
18 (9)(a) of this section reversing the adverse determination or final
19 adverse determination, the health carrier shall immediately approve the
20 coverage that was the subject of the adverse determination or final
21 adverse determination.

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

30 Sec. 4. Section 44-19,116, Reissue Revised Statutes of Nebraska, is
31 amended to read:

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

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

10 (i) The funds shall be the property of the person or persons
11 entitled to them under the provisions of the escrow, settlement, security
12 deposit, or closing agreement and shall be segregated for each depository
13 by escrow, settlement, security deposit, or closing in the records of the
14 title insurance agent in a manner that permits the funds to be identified
15 on an individual basis; and

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

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

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

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

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

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

31 (e)(i) Disbursements may be made out of an escrow, settlement, or

1 closing account only if funds in an amount at least equal to the
2 disbursement have first been received and if the funds received are in
3 one of the following forms:

4 (A) Lawful money of the United States;

5 (B) Wired funds when unconditionally held by the title insurance
6 agent;

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

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

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

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

20 (f) A title insurance agent who holds funds relating to an exchange
21 under section 1031 of the Internal Revenue Code shall provide written
22 disclosure, at or before closing, to the person whose funds are being
23 held, on a separate paper with no other information on the paper, which
24 states that:

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

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

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

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

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

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

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

18 Sec. 5. (1) For purposes of this section, an index-linked variable
19 annuity is a variable annuity that includes index-linked crediting
20 features, either in the contract or added to such contract by rider,
21 endorsement, or amendment, that credit interest based on the performance
22 of an index, subject to index parameters including, but not limited to,
23 caps, participation rates, spreads or margins, trigger or step rates, or
24 other crediting elements, and may lose value subject to limitations
25 including, but not limited to, a floor or a buffer. An index-linked
26 variable annuity may be combined in a single contract with a variable
27 annuity with unitized separate accounts, a fixed annuity, or both.

28 (2) Notwithstanding section 44-2212, a separate investment account
29 established to hold assets of index-linked variable annuity contracts may
30 be uninsured and chargeable with any liabilities arising out of any
31 other separate investment account or any other business of the company

1 which has no specific and determinable relation to or dependence upon
2 such separate account.

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

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

10 (b) Notwithstanding section 44-402.03, amounts allocated to such
11 separate account and accumulations thereon must be invested and
12 reinvested in accordance with the requirements or limitations prescribed
13 by the laws of this state governing the investments of life insurance
14 companies and the investments in such separate account or accounts shall
15 be taken into account in applying investment limitations otherwise
16 applicable to investments of such company;

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

21 (d) Notwithstanding subdivision (1) of section 44-5103, the assets
22 of such separate account are admitted assets.

23 Sec. 6. Section 44-5807, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 44-5807 (1) If an insurer utilizes the services of a third-party
26 administrator, the insurer shall be responsible for determining the
27 benefits, premium rates, underwriting criteria, and claims-payment
28 procedures and for securing reinsurance, if any. The rules pertaining to
29 these matters shall be provided, in writing, by the insurer to the third-
30 party administrator. The responsibilities of the third-party
31 administrator as to any of these matters shall be set forth in the

1 written agreement between the third-party administrator and the insurer.

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

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

10 Sec. 7. Section 48-2706, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 48-2706 (1) No person shall knowingly enter into a co-employment
13 relationship in which less than a majority of the employees of the client
14 in this state are covered employees or in which less than one-half of the
15 payroll of the client in this state is attributable to covered employees.

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

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

22 (b) The professional employer organization shall be entitled to
23 exercise only those rights and obligated to perform only those duties and
24 responsibilities specifically required by the act or in the professional
25 employer agreement. The rights, duties, and obligations of the
26 professional employer organization as co-employer with respect to any
27 covered employee shall be limited to those arising pursuant to the
28 professional employer agreement and the act during the term of co-
29 employment by the professional employer organization of such covered
30 employee; and

31 (c) Unless otherwise expressly agreed by the professional employer

1 organization and the client in a professional employer agreement, the
2 client retains the exclusive right to direct and control the covered
3 employees as is necessary to conduct the client's business, to discharge
4 any of the client's fiduciary responsibilities, or to comply with any
5 licensure requirements applicable to the client or to the covered
6 employees.

7 (3) Except as specifically provided in the Professional Employer
8 Organization Registration Act, the co-employment relationship between the
9 client and the professional employer organization, and between each co-
10 employer and each covered employee, shall be governed by the professional
11 employer agreement. Each professional employer agreement shall include
12 the following:

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

15 (b) A provision that the professional employer organization shall
16 have responsibility to pay wages to covered employees; to withhold,
17 collect, report, and remit payroll-related and unemployment taxes; and,
18 to the extent the professional employer organization has assumed
19 responsibility in the professional employer agreement, to make payments
20 for employee benefits for covered employees. For purposes of this
21 section, wages does not include any obligation between a client and a
22 covered employee for payments beyond or in addition to the covered
23 employee's salary, draw, or regular rate of pay, such as bonuses,
24 commissions, severance pay, deferred compensation, profit sharing, or
25 vacation, sick, or other paid time off pay, unless the professional
26 employer organization has expressly agreed to assume liability for such
27 payments in the professional employer agreement;

28 (c) A provision that the professional employer organization shall
29 have a right to hire, discipline, and terminate a covered employee as may
30 be necessary to fulfill the professional employer organization's
31 responsibilities under the act and the professional employer agreement.

1 The client shall have a right to hire, discipline, and terminate a
2 covered employee; and

3 (d) A provision that the responsibility to obtain workers'
4 compensation coverage for covered employees and for other employees of
5 the client from an insurer licensed to do business in this state and
6 otherwise in compliance with all applicable requirements shall be
7 specified in the professional employer agreement in accordance with
8 section 48-2709. The client shall not be relieved of its obligations
9 under the Nebraska Workers' Compensation Act to provide workers'
10 compensation coverage in the event that the professional employer
11 organization fails to obtain workers' compensation insurance for which it
12 has assumed responsibility.

13 (4) With respect to each professional employer agreement entered
14 into by a professional employer organization, such professional employer
15 organization shall provide written notice to each covered employee
16 affected by such agreement. The professional employer organization shall
17 provide, and the client shall post in a conspicuous place at the client's
18 worksite, the following:

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

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

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

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

29 (b) A client shall be solely responsible for (i) directing,
30 supervising, training, and controlling the work of the covered employees
31 with respect to the business activities of the client or when such

1 employees are otherwise acting under the express direction and control of
2 the client and (ii) the acts, errors, or omissions of the covered
3 employees with regard to such activities or when such employees are
4 otherwise acting under the express direction and control of the client;

5 (c) A client shall not be liable for the acts, errors, or omissions
6 of a professional employer organization or of any covered employee of the
7 client and a professional employer organization when such covered
8 employee is acting under the express direction and control of the
9 professional employer organization;

10 (d) Nothing in this subsection shall limit any contractual liability
11 or obligation specifically provided in a professional employer agreement;
12 and

13 (e) A covered employee is not, solely as the result of being a
14 covered employee of a professional employer organization, an employee of
15 the professional employer organization for purposes of general liability
16 insurance, fidelity bonds, surety bonds, employer's liability which is
17 not covered by workers' compensation, or liquor liability insurance
18 carried by the professional employer organization unless the covered
19 employee is included for such purposes by specific reference in the
20 professional employer agreement and in any applicable prearranged
21 employment contract, insurance contract, or bond.

22 (6) When a professional employer organization obtains workers'
23 compensation coverage for its clients that is written by an authorized
24 insurer, it shall not be considered to be an insurer based on its
25 provision of workers' compensation insurance coverage to a client, even
26 if the professional employer organization charges the client a different
27 amount than it is charged by the authorized insurer.

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

30 (a) Covered employees whose services are subject to sales tax shall
31 be deemed the employees of the client for purposes of collecting and

1 levying sales tax on the services performed by the covered employee.
2 Nothing contained in the Professional Employer Organization Registration
3 Act shall relieve a client of any sales tax liability with respect to its
4 goods or services;

5 (b) Any tax or assessment imposed upon professional employer
6 services or any business license or other fee which is based upon gross
7 receipts shall allow a deduction from the gross income or receipts of the
8 business derived from performing professional employer services that is
9 equal to that portion of the fee charged to a client that represents the
10 actual cost of wages and salaries, benefits, workers' compensation,
11 payroll taxes, withholding, or other assessments paid to or on behalf of
12 a covered employee by the professional employer organization under a
13 professional employer agreement;

14 (c) Any tax assessed or assessment or mandated expenditure on a per
15 capita or per employee basis shall be assessed against the client for
16 covered employees and against the professional employer organization for
17 its employees who are not covered employees co-employed with a client.
18 Any benefit or monetary consideration that meets the requirements of
19 mandates imposed on a client and that is received by covered employees
20 through the professional employer organization either through payroll or
21 through benefit plans sponsored by the professional employer organization
22 shall be credited against the client's obligation to fulfill such
23 mandates; and

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

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

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

1 (b) In compliance with the registration requirements of the Multiple
2 Employer Welfare Arrangement Act and the federal Employee Retirement
3 Income Security Act of 1974, as such federal act existed on January 1,
4 2024.

5 Sec. 8. Section 76-2,121, Revised Statutes Cumulative Supplement,
6 2022, is amended to read:

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

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

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

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

27 (4) Regulating entity means ~~shall mean~~ the:

28 (a) Department of Insurance;

29 (b) Supreme Court;

30 (c) State Real Estate Commission;

31 (d) Department of Banking and Finance;

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

6 Sec. 9. Section 76-2,122, Reissue Revised Statutes of Nebraska, is
7 amended to read:

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

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

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

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

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

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

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

1 (b) Lease or rental transactions; and

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

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

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

14 Sec. 10. (1) No person shall present for recording, cause to be
15 presented for recording, or record in the office of the register of deeds
16 or county clerk any (a) right-to-list home sale agreement as defined in
17 section 81-885.01 or (b) lien or encumbrance resulting from such right-
18 to-list home sale agreement.

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

23 Sec. 11. Section 76-856, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 76-856 (a) The declaration may require that all or a specified
26 number or percentage of the mortgagees or beneficiaries of deeds of trust
27 encumbering the units approve specified actions of the unit owners or the
28 association as a condition to the effectiveness of those actions, but
29 such a requirement shall be enforceable only as to matters involving the
30 subdivision of any unit and the creation of any timeshare or as to
31 proposed amendments to the declaration that adversely affect the priority

1 of the mortgagee's or beneficiary's lien or the mortgagee's or
2 beneficiary's rights to foreclose its lien by judicial or non-judicial
3 means, or that otherwise materially affect the rights and interests of
4 the mortgagee or beneficiary and no requirement for approval may operate
5 to (i) deny or delegate control over the general administrative affairs
6 of the association by the unit owners or the executive board, or (ii)
7 prevent the association or the executive board from commencing,
8 intervening in, or settling any litigation or proceeding, or receiving
9 and distributing any insurance proceeds except pursuant to section
10 76-871. The declaration may not provide that a lien on a member's unit
11 for any assessment levied against the unit relates back to the date of
12 filing of the declaration or that such lien takes priority over any
13 mortgage or deed of trust on the unit recorded subsequent to the filing
14 of the declaration and prior to the recording by the association of the
15 notice required under subsection (a) of section 76-874.

16 (b) In securing approval from a mortgagee or beneficiary of a deed
17 of trust for a proposed amendment to a declaration, the association shall
18 be entitled to rely upon public records to identify the holders of
19 outstanding mortgages or beneficiaries of deeds of trust. The association
20 may use the address provided in the original recorded mortgage or deed of
21 trust document, unless there is a different address for the holder of the
22 mortgage or beneficiary of the deed of trust in a recorded assignment or
23 modification of the mortgage or deed of trust, which recorded assignment
24 or modification shall reference the official records book and page on
25 which the original mortgage or deed of trust was recorded. Once the
26 association has identified the recorded mortgages or deeds of trust of
27 record, the association shall, in writing, request of each unit owner
28 whose unit is encumbered by a mortgage or deed of trust of record any
29 information the owner has in the owner's possession regarding the name
30 and address of the person to whom mortgage or deed of trust payments are
31 currently being made. Notice shall be sent to such person if the address

1 provided in the original recorded mortgage or deed of trust document is
2 different from the name and address of the mortgagee or assignee of the
3 mortgage or beneficiary or assignee of the deed of trust as shown by the
4 public record. The association shall be deemed to have complied with this
5 requirement by making the written request of the unit owners required
6 under this subsection. Any notices required to be sent to the mortgagees,
7 beneficiaries, or assignees under this subsection shall be sent to all
8 available addresses provided to the association.

9 (c) If any mortgagee or beneficiary of a deed of trust encumbering a
10 unit has been requested by certified mail, return receipt requested, to
11 approve a proposed amendment to a declaration, and such mortgagee or
12 beneficiary fails to approve or object to such request in writing
13 delivered to the requestor by certified mail within sixty days after the
14 date such request has been received by the mortgagee or beneficiary, such
15 failure to respond shall be deemed approval to the amendment.

16 (d) Any amendment adopted without the required approval of a
17 mortgagee or beneficiary of the deed of trust shall be voidable only by a
18 mortgagee or beneficiary who was entitled to notice and an opportunity to
19 approve. An action to void an amendment shall be subject to the statute
20 of limitations beginning five years after the adoption of an amendment to
21 a declaration. This subsection shall apply to all mortgages, regardless
22 of the date of recordation of the mortgage or deed of trust.

23 Sec. 12. Section 81-885.01, Revised Statutes Cumulative Supplement,
24 2022, is amended to read:

25 81-885.01 For purposes of the Nebraska Real Estate License Act,
26 unless the context otherwise requires:

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

30 ~~(1) Real estate means and includes condominiums and leaseholds, as~~
31 ~~well as any other interest or estate in land, whether corporeal,~~

1 ~~incorporeal, freehold, or nonfreehold, and whether the real estate is~~
2 ~~situated in this state or elsewhere;~~

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

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

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

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

31 (5) Comparative market analysis means an analysis, opinion, or

1 conclusion prepared by a person licensed under the act in the ordinary
2 course of his or her business relating to the price of specified
3 interests in or aspects of identified real estate or identified real
4 property by comparison to other real property currently or recently in
5 the marketplace for the purpose of (a) listing, purchase, or sale, (b)
6 originating, extending, renewing, or modifying a loan in a transaction
7 other than a federally related transaction, or (c) real property tax
8 appeals;

9 (6) ~~(4)~~ Designated broker means an individual holding a broker's
10 license who has full authority to conduct the real estate activities of a
11 real estate business. In a sole proprietorship, the owner, or broker
12 identified by the owner, shall be the designated broker. In the event the
13 owner identifies the designated broker, the owner shall file a statement
14 with the commission subordinating to the designated broker full authority
15 to conduct the real estate activities of the sole proprietorship. In a
16 partnership, limited liability company, or corporation, the partners,
17 limited liability company members, or board of directors shall identify
18 the designated broker for its real estate business by filing a statement
19 with the commission subordinating to the designated broker full authority
20 to conduct the real estate activities of the partnership, limited
21 liability company, or corporation. The designated broker shall also be
22 responsible for supervising the real estate activities of any associate
23 brokers or salespersons;

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

28 (8) Federal financial institution regulatory agency means (a) the
29 Board of Governors of the Federal Reserve System, (b) the Federal Deposit
30 Insurance Corporation, (c) the Office of the Comptroller of the Currency,
31 (d) the Consumer Financial Protection Bureau, (e) the National Credit

1 Union Administration, or (f) the successors of any of those agencies;

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

6 (10) (5) Inactive broker means an associate broker whose license has
7 been returned to the commission by the licensee's broker, a broker who
8 has requested the commission to place the license on inactive status, a
9 new licensee who has failed to designate an employing broker or have the
10 license issued as an individual broker, or a broker whose license has
11 been placed on inactive status under statute, rule, or regulation;

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

15 (11) (7) Inactive salesperson means a salesperson whose license has
16 been returned to the commission by the licensee's broker, a salesperson
17 who has requested the commission to place the license on inactive status,
18 a new licensee who has failed to designate an employing broker, or a
19 salesperson whose license has been placed on inactive status under
20 statute, rule, or regulation;

21 (12) (8) Person means and includes individuals, corporations,
22 partnerships, and limited liability companies, except that when referring
23 to a person licensed under the act, it means an individual;

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

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

30 (15) Regulatory jurisdiction means a state, district, or territory
31 of the United States, a province of Canada or a foreign country, or a

1 political subdivision of a foreign country, which has implemented and
2 administers laws regulating the activities of a broker;

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

4 (a) By the owner of residential real estate to provide another
5 person with the exclusive right to list such residential real estate for
6 sale at a future date in exchange for monetary consideration or an
7 equivalent to monetary consideration; and

8 (b)(i) That states that the agreement runs with the land or
9 otherwise purports to bind future owners of such residential real estate;
10 or

11 (ii) That purports to be a lien, encumbrance, or other real property
12 security interest;

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

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

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

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

31 (21) ~~(10)~~ Team leader means any person licensed by the commission

1 and appointed or recognized by his or her broker as the leader for his or
2 her team. ;

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

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

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

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

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

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

1 appeals;

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

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

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

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

19 Sec. 13. Section 81-885.10, Reissue Revised Statutes of Nebraska, is
20 amended to read:

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

1 exceed the greater of five two thousand five hundred dollars or the total
2 amount of commission earned by the licensee in each transaction that is
3 subject to the complaint per complaint. The commission may also impose a
4 civil fine on violators of section 81-885.03 subject to the limits in
5 such section.

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

9 Sec. 14. Section 81-885.17, Revised Statutes Cumulative Supplement,
10 2022, is amended to read:

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

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

20 (c) A nonresident who becomes a resident of the State of Nebraska
21 and who holds a broker's or salesperson's license in his or her prior
22 resident regulatory jurisdiction shall be issued a resident broker's or
23 salesperson's license upon filing an application, paying the applicable
24 license fee except as provided in subsection (2) of section 81-885.14,
25 complying with the criminal history record information check under
26 subsection (4) of this section, filing the affidavit required by
27 subsection (7) of this section, and providing to the commission adequate
28 proof of completion of a three-hour class approved by the commission
29 specific to the Nebraska Real Estate License Act and sections 76-2401 to
30 76-2430.

31 (2) Obtaining a nonresident broker's license shall constitute

1 sufficient contact with this state for the exercise of personal
2 jurisdiction over the licensee in any action arising out of the
3 licensee's activity in this state.

4 (3) Prior to the issuance of any license to a nonresident applicant,
5 he or she shall: (a) File with the commission a duly certified copy of
6 the license issued to the applicant by his or her resident regulatory
7 jurisdiction or provide verification of such licensure to the commission;
8 (b) pay to the commission a nonresident license fee equal to the fee for
9 obtaining a broker's or salesperson's license, whichever is applicable,
10 as provided in section 81-885.14; and (c) provide to the commission
11 adequate proof of completion of a three-hour class approved by the
12 commission specific to the Nebraska Real Estate License Act and sections
13 76-2401 to 76-2430.

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

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

1 (6) Nonresident licenses granted as provided in this section shall
2 remain in force for only as long as the requirements of issuing and
3 maintaining a license are met unless (a) suspended or revoked by the
4 commission for just cause or (b) lapsed for failure to pay the ~~annual~~
5 renewal fee.

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

11 Sec. 15. Section 81-885.24, Revised Statutes Cumulative Supplement,
12 2022, is amended to read:

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

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

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

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

31 (4) Commingling the money or other property of his or her principals

1 with his or her own;

2 (5) Failing to maintain and deposit in a separate trust account all
3 money received by a broker acting in such capacity, or as escrow agent or
4 the temporary custodian of the funds of others, in a real estate
5 transaction unless all parties having an interest in the funds have
6 agreed otherwise in writing;

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

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

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

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

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

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

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

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

28 (14) Negotiating a sale, exchange, listing, or lease of real estate
29 directly with an owner or lessor if he or she knows that such owner has a
30 written outstanding listing contract in connection with such property
31 granting an exclusive agency or an exclusive right to sell to another

1 broker or negotiating directly with an owner to withdraw from or break
2 such a listing contract for the purpose of substituting, in lieu thereof,
3 a new listing contract;

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

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

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

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

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

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

28 (21) Failing by a broker to deliver to the seller in every real
29 estate transaction, at the time the transaction is consummated, a
30 complete, detailed closing statement showing all of the receipts and
31 disbursements handled by such broker for the seller, failing to deliver

1 to the buyer a complete statement showing all money received in the
2 transaction from such buyer and how and for what the same was disbursed,
3 and failing to retain true copies of such statements in his or her files;

4 (22) Making any substantial misrepresentations;

5 (23) Acting for more than one party in a transaction without the
6 knowledge of all parties for whom he or she acts;

7 (24) Failing by an associate broker or salesperson to place, as soon
8 after receipt as practicable, in the custody of his or her employing
9 broker any deposit money or other money or funds entrusted to him or her
10 by any person dealing with him or her as the representative of his or her
11 licensed broker;

12 (25) Filing a listing contract or any document or instrument
13 purporting to create a lien based on a listing contract for the purpose
14 of casting a cloud upon the title to real estate when no valid claim
15 under the listing contract exists;

16 (26) Violating any rule or regulation adopted and promulgated by the
17 commission in the interest of the public and consistent with the Nebraska
18 Real Estate License Act;

19 (27) Failing by a subdivider, after the original certificate has
20 been issued, to comply with all of the requirements of the Nebraska Real
21 Estate License Act;

22 (28) Conviction of a felony or entering a plea of guilty or nolo
23 contendere to a felony charge by a broker or salesperson;

24 (29) Demonstrating negligence, incompetency, or unworthiness to act
25 as a broker, associate broker, or salesperson, whether of the same or of
26 a different character as otherwise specified in this section;

27 (30) Inducing or attempting to induce a person to transfer an
28 interest in real property, whether or not for monetary gain, or
29 discouraging another person from purchasing real property, by
30 representing that (a) a change has occurred or will or may occur in the
31 composition with respect to religion, race, color, national origin,

1 ethnic group, sex, familial status, or disability of the owners or
2 occupants in the block, neighborhood, or area or (b) such change will or
3 may result in the lowering of property values, an increase in criminal or
4 antisocial behavior, or a decline in the quality of schools in the block,
5 neighborhood, or area;

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

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

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

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

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

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

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

2 Sec. 16. Section 81-885.55, Reissue Revised Statutes of Nebraska, is
3 amended to read:

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

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

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

31 (4) ~~(3)~~ If the commission is unable to obtain errors and omissions

1 insurance coverage to insure all licensees who choose to participate in
2 the group errors and omissions insurance policy ~~program~~ at a reasonable
3 premium not to exceed five hundred dollars, the errors and omissions
4 insurance requirement of this section shall not apply during the year for
5 which coverage cannot be obtained.

6 Sec. 17. Section 87-302, Revised Statutes Cumulative Supplement,
7 2022, is amended to read:

8 87-302 (a) A person engages in a deceptive trade practice when, in
9 the course of his or her business, vocation, or occupation, he or she:

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

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

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

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

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

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

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

31 (8) Represents that goods or services are of a particular standard,

1 quality, or grade, or that goods are of a particular style or model, if
2 they are of another;

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

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

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

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

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

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

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

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

2 (i) Obtaining money or property by knowingly false or fraudulent
3 pretenses, representations, or promises; or

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

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

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

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

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

23 (20) Violates any provision of the Nebraska Foreclosure Protection
24 Act;

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

31 (22)(i) ~~(22)~~ In the manufacture, production, importation,

1 distribution, promotion, display for sale, offer for sale, attempt to
2 sell, or sale of a substance:

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

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

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

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

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

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

25 Sec. 18. The Revisor of Statutes shall assign section 10 of this
26 act to Chapter 76, article 2.

27 Sec. 19. Sections 1, 2, 3, 5, 6, 7, 10, 11, 12, 13, 14, 15, 16, 17,
28 and 21 of this act become operative three calendar months after the
29 adjournment of this legislative session. The other sections of this act
30 become operative on their effective date.

31 Sec. 20. Sections 44-19,116 and 76-2,122, Reissue Revised Statutes

1 of Nebraska, and section 76-2,121, Revised Statutes Cumulative
2 Supplement, 2022, are repealed.

3 Sec. 21. Sections 44-7,115, 44-1308, 44-5807, 48-2706, 76-856,
4 81-885.10, and 81-885.55, Reissue Revised Statutes of Nebraska, and
5 sections 81-885.01, 81-885.17, 81-885.24, and 87-302, Revised Statutes
6 Cumulative Supplement, 2022, are repealed.

7 Sec. 22. Since an emergency exists, this act takes effect when
8 passed and approved according to law.