

## LEGISLATIVE BILL 757

Approved by the Governor April 30, 1971

Introduced by C. W. Holmquist, 16th District

AN ACT relating to insurance; to prohibit payment of commissions to persons not agents or brokers; to change licensing requirements as prescribed; to provide for examinations, personnel and procedure; to provide for license revocation under certain conditions; to amend sections 44-147, 44-332, 44-333, 44-334, 44-339, and 44-341, Reissue Revised Statutes of Nebraska, 1943, and sections 44-330 and 44-333.02, Revised Statutes Supplement, 1969; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 44-147, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-147. Every agent or broker, transacting business under the provisions of sections 44-139 to 44-145, shall ascertain the financial condition of each insurer before he procures a policy of insurance therefrom or places any insurance with such insurer. ~~Any~~ No such agent or broker ~~who shall~~ knowingly, or without proper investigation, ~~places~~ place any insurance with or ~~procures~~ procure any insurance from any nonadmitted foreign insurer that does not have surplus, capital, and reserves in amounts equal to or greater than the aggregate requirements of surplus, capital, and reserves placed on companies admitted to do business in this state which write the same kinds of insurance; or, ~~places~~ place any insurance with or ~~procures~~ procure any insurance from nonadmitted alien insurers who do not maintain in the United States adequate guaranty deposits for the protection of policyholders in the United States. 7 ANY person violating the provisions of this section shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than twenty-five dollars nor more than one hundred dollars for each offense.

Sec. 2. That section 44-330, Revised Statutes Supplement, 1969, be amended to read as follows:

44-330. No person shall act as soliciting agent for any insurance company or as a broker in the transaction of any business of insurance within this state, or negotiate for or place risks for any such company, or in any way or manner aid such company in effecting insurance in this state except as provided in sections 44-139 to 44-145, unless such company shall in all things have complied with the provisions of this chapter, and unless such person shall first procure and maintain an appropriate agent's or broker's license from the Department of Insurance, which shall make and keep a record thereof. Only a natural person who is at least eighteen years of age shall be licensed as an agent or broker. Every resident agent's license shall expire on the last day of June and every resident broker's license shall expire on the last day of August in each year, but and such licenses may be annually renewed or extended in such manner as the department may provide by rules and regulations or as otherwise provided in Chapter 44. A strictly salaried employee who performs clerical or administrative services only and who does not solicit insurance or applications therefor, shall not be required to be licensed by the provisions of this section.

Sec. 3. That section 44-332, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-332. The Director of Insurance may issue a license, to be known as a resident broker's license, to any resident licensed agent. Prior to the issuance of any such license, the director may require every such person to pay a fee of five ten dollars and to submit to, and pass to the satisfaction of the director, a personal written examination on the kinds of insurance, rates and rating matters, the rights and duties of insurance agents and brokers, and any other phase of insurance the director may prescribe as being reasonable and relevant to the competency of such person to act as a resident broker. Such examination shall be held at such times and places as the director shall from time to time determine and may be conducted by any person salaried-employee-or--employees--of--the--Department--of Insurance designated by the director for such purpose. The form of such examination shall be prescribed by the director and may be changed from time to time. The director may, whenever in his judgment it appears advisable in order to determine the competency of any such broker with respect to a renewal or extension of such license, require such person to pass to the satisfaction of the director, a similar written

examination. Life or annuity or variable annuity contracts shall not be sold on a brokerage basis.

Sec. 4. That section 44-333, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-333. No license shall be issued to any resident agent, except upon the application of the agent, specifying the insurance coverages he intends to write, and the requisition therefor by the company. Such requisition shall state that the requisitioning company has investigated the applicant and that he is a person of good character and business reputation. Such an application shall be upon a form to be furnished to all licensed insurers by the Department of Insurance. Such applications shall be sworn to and signed by the applicant and shall require the applicant to state, in addition to any other information which may be required by the department relating to his eligibility for a license, the following information: (1) His name and date of birth, (2) his residence and the period of his residency in Nebraska, (3) the names of any insurance companies he has worked for or solicited insurance for in the past, together with their addresses, (4) whether he has ever been terminated or discharged by any insurance company for cause, and if so, the reasons, (5) whether he owes any insurance company or companies, for which he is not currently licensed, any money for premiums collected by him and not turned over to said company or companies, (6) whether he violated any of the insurance laws of any state, province, district, or territory where he may have been so employed or licensed, (7) whether he has ever been convicted of a crime other than a traffic violation, and if so, a statement of the type and nature of the offense and the date and place of conviction, (8) a resume of his educational background, including any experience or training in the field of insurance, and (9) whether he has been licensed previously as an insurance agent in the State of Nebraska to write the kinds of insurance which he will be authorized to write by the requisitioning company, and the names of companies for which such lines were written, and (10) whether he has been adjudged a bankrupt in this or any other state. Except as otherwise provided in section 44-334, when it is shown from such application and requisition that the applicant is of good character and business reputation and is in all other respects qualified for a license, the director shall issue to the applicant the appropriate license to transact business in this state as a resident agent.

Sec. 5. That section 44-333.02, Revised Statutes Supplement, 1969, be amended to read as follows:

44-333.02. (1) Examination of an applicant for a resident agent's license shall be in the form of a true-false or multiple choice test and shall be of such scope as the Director of Insurance deems reasonably necessary to test the applicant's general knowledge of (a) the duties and responsibilities of a resident agent, and (b) his competence with respect to the particular insurance coverages for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications of insurance coverages: (1) Life insurance and annuity contracts; (2) variable annuity contracts; (3) sickness, accident and health insurance; (4) credit life insurance and credit accident and health insurance; (5) fire and allied lines; (6) automobile liability and automobile physical damage insurance; (7) comprehensive personal liability coverages; (8) general liability insurance; (9) marine and transportation insurance; (10) workmen's compensation; (11) credit insurance; (12) burglary and theft insurance; (13) crop insurance; (14) fidelity and surety insurance; (15) homeowners' multiple peril insurance; (16) farmowners' multiple peril insurance; (17) commercial multiple peril insurance; (18) plate glass insurance; (19) boiler and machinery insurance; and (20) other miscellaneous coverages.

(2) The Director of Insurance shall prepare and make available upon request study material, covering each kind of insurance specified in subsection (1) of this section, except variable annuities, from which the examination questions will be taken. The director shall charge a fee for such material in such amount as shall be reasonably necessary to defray the expense of preparation thereof.

(3) Examinations shall be given by the Department of Insurance at the times and places set forth in the rules and regulations adopted pursuant to section 44-333.06, but an examination shall be held at least once each two weeks.

(4) The director shall permit the applicant to take, on the same day and at the same place, all examinations required for the license for which the applicant has applied, and for which the examination fee has been paid.

(5) The applicant shall pay an examination fee

of ten dollars in advance, which fee shall cover all of the examinations given to the applicant at the same time and place. If the applicant applies for a series of examinations, the director may allow a schedule of not fewer than four examinations per day to be taken on any scheduled day without requiring the payment of an additional fee. The fee shall not be refunded to the applicant. It shall be unlawful for any person other than the applicant, directly or indirectly, to pay the examination fee. Examination fees so collected shall be deposited in the Insurance Supervision Fund. Any money in the Insurance Supervision Fund available for investment shall be invested by the state investment officer pursuant to the provisions of sections 72-1237 to 72-1259.

(6) The director may designate any ~~employee--of this state, or any political subdivision thereof~~ person, to conduct the such examination, but such examination shall be graded only by such personnel of the Department of Insurance as the director shall specify. It shall be the duty of the director to require that all such examinations are fairly and impartially prepared, conducted, and graded promptly and without unfair discrimination as between individuals examined.

(7) Any person who shall impersonate any other person or permit or aid in any manner any other person to impersonate him, in connection with any examination held in accordance with the provisions of this chapter shall, upon conviction thereof, be deemed guilty of a misdemeanor and fined not more than one hundred dollars for each offense.

~~(7)~~ (8) The director may require a reasonable waiting period, not to exceed sixty days, before reexamination of an applicant who has taken and failed to pass a previous examination covering the same kind or kinds of insurance coverages.

~~(8)~~ (9) If, after approval of the application for a license, the director shall find that the applicant has taken and passed any examination specified by this section, and that the applicant has fully met the requirements of this chapter, the director shall issue a resident agent's license authorizing the applicant to solicit the kinds of insurance covered by the examinations successfully completed by the applicant; otherwise, the director shall refuse to issue the license and shall promptly notify the applicant and the requisitioning insurer of such refusal and the grounds therefor.

Sec. 6. That section 44-334, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-334. The Director of Insurance may deny the application for an agent's license, or the renewal thereof, if (1) such applicant has failed to comply with any prerequisite of law for the issuance or renewal of such license, (2) such applicant has not been a resident of Nebraska for at least six months, (3) such applicant owes any insurance company for which he is not licensed money for premiums collected or is withholding improperly other funds belonging to any insurance company or to an insured, (4) a primary purpose for obtaining such license or renewal is or was to circumvent the enforcement of section 44-361, (5) such applicant has violated the insurance laws of this state or of any state, province, district, or territory, ~~where he may have been employed or licensed;~~ (6) such applicant has been guilty of fraud, misrepresentation or dishonest practices, or (7) such applicant has been convicted of a felony or a misdemeanor involving moral turpitude, (8) such applicant has been denied an insurance license in any other state, (9) such applicant's license in any other state has been suspended or revoked, (10) such applicant has been adjudged a bankrupt, (11) such applicant has failed to account for or remit any money coming into his possession in the course of insurance business which belongs to others, or (12) such applicant has forged another person's name to an application for insurance.

Sec. 7. That section 44-339, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-339. The Director of Insurance may revoke or suspend for such period as he may determine, any insurance agent's license, if, after notice and hearing, he determines that the licensee has (1) ~~violated any provision of, or any obligation imposed by, the insurance law, or has violated any law in the course of his dealings~~ laws of this state or of any state, province, district, or territory, (2) made an untrue statement or a material misstatement in the application for such license, or (3) has been guilty of fraud, misrepresentation or dishonest practices, (4) improperly withheld any funds belonging to any insurance company or to any insured or owes any insurance company, for which he is not licensed, any funds for premiums collected or for any other advances, (5) been convicted of a felony or a misdemeanor involving moral turpitude, (6) failed

to account for or remit any money coming into his possession in the course of insurance business which belongs to others, (7) been adjudged a bankrupt, (8) forged another person's name to an application for insurance, (9) not demonstrated trustworthiness and competency to transact business as an insurance agent or broker in such manner as to safeguard the public, or (10) had an agent's license suspended or revoked in any other state.

Sec. 8. It shall be unlawful for any agent or broker to pay a commission or fee or other compensation to any person for performing the service of an insurance agent or broker unless such person is licensed as an insurance agent or broker in this state.

Sec. 9. That section 44-341, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-341. A license, to be known as a nonresident's license, to be good for one year from the date of its issuance, may be granted by the Director of Insurance to any nonresident of this state who is at least eighteen years of age certifying that he is regularly licensed by the Department of Insurance of the state or province of Canada in which he resides, or licensed by the appropriate authority on any United States government installation, and that he will not negotiate nor effect any contract of insurance on property in this state in whole or in part in any company not qualified to do business in this state. The director shall require an examination from nonresident applicants whose states or province require examinations from residents of this state and such nonresident applicant shall file with the Department of Insurance a written consent providing that a legal action may be commenced against such nonresident agent in any county of this state wherein any cause of action may arise or be claimed to have arisen out of any transaction occurring in such county or because of any transaction commenced or conducted by such nonresident agent in such county. Such consent shall provide that a service of summons in any such action may be served on the Department of Insurance for and in behalf of such nonresident and such service shall be held to be sufficient to give the court jurisdiction over such nonresident agent. Such service shall be made on the department in the same manner as service made pursuant to section 44-137.

Sec. 10. That original sections 44-147,

LB757

44-332, 44-333, 44-334, 44-339, and 44-341, Reissue Revised Statutes of Nebraska, 1943, and sections 44-330 and 44-333.02, Revised Statutes Supplement, 1969, are repealed.

Sec. 11. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.