

## LEGISLATIVE BILL 53

Approved by the Governor May 27, 1997

Introduced by Landis, 46

AN ACT relating to title insurance; to amend sections 44-203 and 44-4802, Reissue Revised Statutes of Nebraska, and section 44-1525, Revised Statutes Supplement, 1996; to adopt the Title Insurers Act and Title Insurance Agent Act; to repeal the Title Insurance Act; to harmonize provisions; to provide severability; to repeal the original sections; and to outright repeal sections 44-1927 to 44-1977, Reissue Revised Statutes of Nebraska.

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

Section 1. Sections 1 to 28 of this act shall be known and may be cited as the Title Insurers Act.

Sec. 2. The purpose of the Title Insurers Act is to provide for the effective regulation and supervision of title insurance and title insurers authorized to issue title insurance policies or otherwise transact the business of title insurance in this state.

Sec. 3. The Title Insurers Act shall apply to all persons engaged in the business of title insurance in this state.

Except as otherwise expressly provided in the act and except when the context otherwise requires, all provisions of the laws of this state applying to insurance and insurers generally shall apply to title insurance and title insurers.

Sec. 4. For purposes of the Title Insurers Act:

(1) Abstract of title means a compilation in orderly arrangement of the materials and facts of record affecting the title to a specific piece of land, issued under a certificate certifying to the matters contained in such compilation;

(2) Affiliate means a specific person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified;

(3) Bona fide employee of the title insurer means an individual who devotes substantially all of his or her time to performing services on behalf of a title insurer and whose compensation for the services is in the form of salary or its equivalent paid by the title insurer;

(4) Control, including the terms controlling, controlled by, and under common control with, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position or corporate office held by the person. Control is presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist in fact. The director may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;

(5) Direct operations means that portion of a title insurer's operations which are attributable to title insurance business written by a bona fide employee of the title insurer;

(6) Director means the Director of Insurance;

(7) Escrow means written instruments, money, or other items deposited by one party with a depository, escrow agent, or escrow for delivery to another party upon the performance of a specified condition or the happening of a certain event;

(8) ESCROW, settlement, or closing fee means the consideration for supervising or handling the actual execution, delivery, or recording of transfer and lien documents and for disbursing funds;

(9) Foreign title insurer means any title insurer incorporated or organized under the laws of any other state of the United States, the District of Columbia, or any other jurisdiction of the United States;

(10) Net retained liability means the total liability retained by a title insurer for a single risk, after taking into account any ceded liability and collateral, acceptable to the director, maintained by the title insurer;

(11) Non-United-States title insurer means any title insurer

incorporated or organized under the laws of any foreign nation or any foreign province or territory;

(12) Person means any natural person, partnership, association, cooperative, corporation, trust, or other legal entity;

(13) Producer of title insurance business has the same meaning as in section 31 of this act;

(14) Qualified financial institution means an institution that is:

(a) Organized or, in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state and has been granted authority to operate with fiduciary powers;

(b) Regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies;

(c) Insured by the appropriate federal entity; and

(d) Qualified under any additional rules and regulations adopted and promulgated by the director;

(15) Referral has the same meaning as in section 31 of this act;

(16) Security or security deposit means funds or other property received by a title insurer as collateral to secure an indemnitor's obligation under an indemnity agreement pursuant to which the title insurer is granted a perfected security interest in the collateral in exchange for agreeing to provide coverage in a title insurance policy for a specific title exception to coverage;

(17) Title insurance agent has the same meaning as in section 31 of this act;

(18) Title insurance business or business of title insurance means:

(a) Issuing as a title insurer or offering to issue as a title insurer a title insurance policy;

(b) Transacting or proposing to transact by a title insurer any of the following activities when conducted or performed in contemplation of or in conjunction with the issuance of a title insurance policy:

(i) Soliciting or negotiating the issuance of a title insurance policy;

(ii) Guaranteeing, warranting, or otherwise insuring the correctness of title searches for all instruments affecting titles to real property, any interest in real property, cooperative units, and proprietary leases and for all liens or charges affecting the same;

(iii) Handling of escrows, settlements, or closings;

(iv) Executing title insurance policies;

(v) Effecting contracts of reinsurance; or

(vi) Searching or examining titles;

(c) Guaranteeing, warranting, or insuring searches or examinations of title to real property or any interest in real property;

(d) Guaranteeing or warranting the status of title as to ownership of or liens on real property and personal property by any person other than the principals to the transaction; or

(e) Transacting or proposing to transact any business substantially equivalent to any of the activities listed in this subdivision in a manner designed to evade the provisions of the Title Insurers Act;

(19) Title insurance commitment means a preliminary commitment, report, or binder issued prior to the issuance of a title insurance policy containing the terms, conditions, exceptions, and any other matters incorporated by reference under which the title insurer is willing to issue its title insurance policy;

(20) Title insurance policy means a contract insuring or indemnifying owners of, or other persons lawfully interested in, real or personal property or any interest in real property, against loss or damage arising from any or all of the following conditions existing on or before the policy date and not excepted or excluded:

(a) Defects in or liens or encumbrances on the insured title;

(b) Unmarketability of the insured title;

(c) Invalidity, lack of priority, or unenforceability of liens or encumbrances on the stated property;

(d) Lack of legal right of access to the land; or

(e) Unenforceability of rights in title to the land;

(21) Title insurer means any insurer organized under the laws of this state for the purpose of transacting the business of title insurance and any foreign or non-United-States title insurer authorized to transact the business of title insurance in this state; and

(22) Title plant means a set of records consisting of documents, maps, surveys, or entries affecting title to real property or any interest in or encumbrance on the property which have been filed or recorded in the

jurisdiction for which the title plant is established or maintained.

Sec. 5. No person other than a domestic, foreign, or non-United States title insurer organized on the stock plan and authorized under section 44-202 as a title insurer shall issue a title insurance policy or otherwise transact the business of title insurance in this state.

Sec. 6. Subject to the exceptions and restrictions contained in the Title Insurers Act, a title insurer shall have the power to:

- (1) Transact only title insurance business; and
- (2) Reinsure title insurance policies.

Sec. 7. (1) No insurer that transacts any line of business other than title insurance shall be eligible for the issuance or renewal of a certificate of authority to transact the business of title insurance in this state nor shall title insurance be transacted, underwritten, or issued by any insurer transacting or authorized to transact any other line of business.

(2)(a) Notwithstanding subsection (1) of this section, and to the extent such coverage is lawful within this state, a title insurer is expressly authorized to issue closing or settlement protection to a proposed insured upon request if the title insurer issues a title insurance commitment or title insurance policy. Such closing or settlement protection shall conform to the terms of coverage and form of instrument as required by the director and may indemnify a proposed insured solely against loss of settlement funds only because of the following acts of a title insurer's named title insurance agent:

(i) Theft of settlement funds; and

(ii) Failure to comply with written closing instructions by the proposed insured when agreed to by the title insurance agent relating to title insurance coverage.

(b) The director may prescribe or approve a required charge for providing the coverage.

(c) A title insurer shall not provide any other coverage which purports to indemnify against improper acts or omissions of a person with regard to escrow, settlement, or closing services.

Sec. 8. Before being authorized to transact the business of title insurance in this state, a title insurer shall establish and maintain a minimum paid-in capital of not less than one million dollars and, in addition, paid-in initial surplus of at least one million dollars.

Sec. 9. (1) The net retained liability of a title insurer for a single risk in regard to property, whether assumed directly or as reinsurance, shall not exceed the aggregate of fifty percent of surplus as regards policyholders plus the statutory premium reserve less the title insurer's investment in title plants, all as shown on the most recent annual statement of the title insurer on file with the director.

(2) For purposes of the Title Insurers Act:

(a) A single risk shall be the insured amount of any title insurance policy, except that when two or more title insurance policies are issued simultaneously covering different estates in the same real property, a single risk shall be the sum of the insured amounts of all the title insurance policies; and

(b) A title insurance policy under which a claim payment reduces the amount of title insurance under one or more other title insurance policies shall be included in computing the single risk sum only to the extent that its amount exceeds the aggregate amount of the title insurance policy or policies whose amount of title insurance is reduced.

Sec. 10. In determining the financial condition of a title insurer transacting the business of title insurance under the Title Insurers Act, the general investment provisions of the Insurers Investment Act shall apply, except that an investment in a title plant or title plants in an amount equal to the actual cost shall be allowed as an admitted asset for title insurers. The aggregate amount of the investment shall not exceed the lesser of twenty percent of admitted assets or forty percent of surplus to policyholders, as shown on the most recent annual statement of the title insurer on file with the director.

Sec. 11. (1) In determining the financial condition of a title insurer transacting the business of title insurance under the Title Insurers Act, the general provisions of the insurance laws of this state requiring the establishment of reserves sufficient to cover all known and unknown liabilities, including allocated and unallocated loss-adjustment expense, shall apply except as provided in subsections (2) through (4) of this section.

(2) A title insurer shall establish and maintain a known claim reserve in an amount estimated to be sufficient to cover all unpaid losses, claims, and allocated loss-adjustment expenses arising under title insurance policies, guaranteed certificates of title, guaranteed searches, and

guaranteed abstracts of title and all unpaid losses, claims, and allocated loss-adjustment expenses for which the title insurer may be liable and for which the title insurer has received notice by or on behalf of the insured, holder of a guarantee or escrow, or security depositor.

(3)(a) If a title insurer is a foreign or non-United-States title insurer, the title insurer shall establish and maintain a statutory or unearned premium reserve consisting of the amount of statutory or unearned premium reserve required by the laws of the domiciliary state of the title insurer.

(b)(i) If a title insurer is a domestic insurer of this state, the title insurer shall establish and maintain a statutory or unearned premium reserve consisting of the amount of the statutory or unearned premium or reinsurance reserve on the effective date of this act, which balance shall be released in accordance with the law in effect at the time such sums were added to the reserve.

(ii) Out of total charges for title insurance policies written or assumed commencing on the effective date of this act, and until December 31, 1998, a title insurer shall add to and set aside in the reserve required under subdivision (3)(b)(i) of this section an amount equal to six percent of the sum of the following items set forth in the title insurer's most recent annual statement on file with the director:

(A) Direct premiums written;

(B) Escrow, settlement, and closing fees;

(C) Other title fees and service charges, including fees for closing protection letters; and

(D) Premiums for reinsurance assumed less premiums for reinsurance ceded.

(iii) Additions to the reserve required under subdivision (3)(b)(i) of this section on or after January 1, 1999, shall be made out of total charges for title insurance policies and guarantees written, equal to the sum of the following items, as set forth in the title insurer's most recent annual statement on file with the director:

(A) For each title insurance policy on a single risk written or assumed on or after January 1, 1999, twenty-five cents per one thousand dollars of net retained liability for title insurance policies under five hundred thousand dollars and twelve cents per one thousand dollars of net retained liability for title insurance policies of five hundred thousand dollars or greater; and

(B) Six percent of escrow, settlement, and closing fees collected in contemplation of the issuance of title insurance policies or guarantees.

(iv) The aggregate of the amounts set aside in the reserve required under subdivision (3)(b)(i) of this section in any calendar year pursuant to subdivisions (3)(b)(ii) and (3)(b)(iii) of this section shall be released from the reserve and restored to net profits over a period of twenty years pursuant to the following formula: Thirty percent of the aggregate sum on July 1 of the year next succeeding the year of addition; fifteen percent of the aggregate sum on July 1 of the next succeeding year; ten percent of the aggregate sum on July 1 of each of the next succeeding two years; five percent of the aggregate sum on July 1 of each of the next succeeding two years; three percent of the aggregate sum on July 1 of each of the next succeeding two years; two percent of the aggregate sum on July 1 of each of the next succeeding seven years; and one percent of the aggregate sum on July 1 of each of the next succeeding five years.

(v) The title insurer shall calculate an adjusted statutory or unearned premium reserve as of the effective date of this act. The adjusted reserve shall be calculated as if subdivisions (3)(b)(ii) through (iv) of this section had been in effect for all years beginning twenty years prior to the effective date of this act. For purposes of this calculation, the balance of the reserve as of that date shall be deemed to be zero. If the adjusted reserve so calculated exceeds the aggregate amount set aside for statutory or unearned premiums in the title insurer's annual statement on file with the director on the effective date of this act, the title insurer shall, out of total charges for title insurance policies, increase its statutory or unearned premium reserve by an amount equal to one-sixth of that excess in each of the succeeding six years, commencing with the calendar year that includes the effective date of this act, until the entire excess has been added.

(vi) The aggregate of the amounts set aside in the reserve required under subdivision (3)(b)(i) of this section in any calendar year as adjustments to the title insurer's statutory or unearned premium reserve pursuant to subdivision (3)(b)(v) of this section shall be released from the reserve and restored to net profits, or equity if the additions required by such subdivision reduced equity directly, over a period not exceeding ten

years pursuant to the following table:

Calendar Year of Addition	Release
1998	Equally over 10 years
1999	Equally over 9 years
2000	Equally over 8 years
2001	Equally over 7 years
2002	Equally over 6 years
2003	Equally over 5 years

(4) A title insurer shall establish and maintain a supplemental reserve consisting of any other reserves necessary, when taken in combination with the reserves required by subsections (2) and (3) of this section, to cover the title insurer's liabilities with respect to all losses, claims, and loss-adjustment expenses. The supplemental reserve required under this subsection shall be phased in as follows: Twenty-five percent of the otherwise applicable supplemental reserve will be required until December 31, 1998; fifty percent of the otherwise applicable supplemental reserve will be required until December 31, 1999; and seventy-five percent of the otherwise applicable supplemental reserve will be required until December 31, 2000.

(5) Each title insurer subject to the Title Insurers Act shall file with its annual financial statement required under section 44-322 a certification by a member in good standing of the American Academy of Actuaries. The actuarial certification required of a title insurer shall conform to the National Association of Insurance Commissioners' annual statement instructions for title insurers.

Sec. 12. (1) The Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act shall apply to all title insurers subject to the Title Insurers Act except as otherwise provided in this section. In applying the provisions of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, the court shall consider the unique aspects of title insurance and shall have broad authority to fashion relief that provides for the maximum protection of the title insurance policyholders.

(2) Security and escrow funds held by or on behalf of a title insurer shall not become general assets and shall be administered as secured creditor claims as defined in the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

(3) Title insurance policies that are in force at the time an order of liquidation is entered shall not be canceled except upon a showing to the court of good cause by the liquidator. The determination of good cause shall be within the discretion of the court. In making this determination, the court shall consider the unique aspects of title insurance and all other relevant circumstances.

(4) The court may set appropriate dates that potential claimants must file their claims with the liquidator. The court may set different dates for claims based upon a title insurance policy than for all other claims. In setting dates, the court shall consider the unique aspects of title insurance and all other relevant circumstances.

(5) As of the date of the order of insolvency or liquidation, all premiums paid, due, or to become due under title insurance policies of the title insurer shall be fully earned. It shall be the obligation of title insurance agents, insureds, or representatives of the title insurer to pay fully earned premiums to the liquidator or rehabilitator.

Sec. 13. A title insurer shall only declare or distribute a dividend to shareholders without the prior written approval of the director as would be permitted under section 44-2134 for insurers other than life insurers.

Sec. 14. (1) Without the prior written approval of the director, a domestic title insurer shall not accept:

(a) Additional title insurance business from a title insurance agent that is not affiliated with the title insurer if, when added to other title insurance business written through the title insurance agent during the same calendar year, that title insurance agent's aggregate premiums written on behalf of the title insurer will exceed twenty percent of the title insurer's gross premiums written during the prior calendar year as shown on the title insurer's most recent annual statement on file with the director; or

(b) Additional direct operations from a single source if, when added to other direct operations from the single source during the same calendar year, the aggregate premiums written on the direct operations of the single source will exceed twenty percent of the title insurer's gross premiums written during the prior calendar year as shown on the title insurer's most recent annual statement on file with the director. For purposes of this section, single source means a person that refers title insurance business to the title insurer and any other person that controls, is controlled by, or is

under common control with that person.

(2) In determining whether prior approval may be given, the director shall consider:

(a) The potential that the acceptance of more title insurance business from the title insurance agent or source may adversely affect the financial solidity of the title insurer;

(b) The availability of competing title insurance agents or additional sources in the territories in which the title insurer accepts risks;

(c) The number of years the title insurer has been in business;

(d) Reinsurance arrangements mitigating the concentration of title insurance business from the title insurance agent or single source;

(e) The comparative profitability of the title insurance agent's or single source's book of title insurance business;

(f) The degree of oversight of the title insurance agent's operations exercised by the title insurer; and

(g) Any other circumstances deemed by the director to be appropriate.

Sec. 15. (1) When a title insurance commitment includes an offer to issue an owner's title insurance policy covering the resale of owner-occupied residential property, the title insurance commitment shall be furnished to the purchaser-mortgagor or its representative as soon as reasonably possible prior to closing. If the title insurance commitment cannot be delivered prior to the day of closing, the title insurer shall document the reasons for the delay. The title insurance commitment furnished to the purchaser-mortgagor shall incorporate the following statement on the first page in bold type:

PLEASE READ THE EXCEPTIONS AND THE TERMS SHOWN OR REFERRED TO HEREIN CAREFULLY. THE EXCEPTIONS ARE MEANT TO PROVIDE YOU WITH NOTICE OF MATTERS WHICH ARE NOT COVERED UNDER THE TERMS OF THE TITLE INSURANCE POLICY AND SHOULD BE CAREFULLY CONSIDERED.

IT IS IMPORTANT TO NOTE THAT THIS FORM IS NOT A WRITTEN REPRESENTATION AS TO THE CONDITION OF TITLE AND MAY NOT LIST ALL LIENS, DEFECTS, AND ENCUMBRANCES AFFECTING TITLE TO THE LAND.

(2) A title insurer issuing a lender's title insurance policy in conjunction with a mortgage loan made simultaneously with the purchase of all or part of the real estate securing the loan, when no owner's title insurance policy has been requested, shall give written notice, on a form prescribed or approved by the director, to the purchaser-mortgagor at the time the title insurance commitment is prepared. The notice shall explain that a lender's title insurance policy is to be issued protecting the mortgage lender and that the lender's title insurance policy does not provide title insurance protection to the purchaser-mortgagor as the owner of the property being purchased. The notice shall explain what a title insurance policy insures against and what possible exposures exist for the purchaser-mortgagor that could be insured against through the purchase of an owner's title insurance policy. The notice shall also explain that the purchaser-mortgagor may obtain an owner's title insurance policy protecting the property owner at a specified cost or approximate cost if the proposed coverages or amount of title insurance is not then known. A copy of the notice, signed by the purchaser-mortgagor, shall be retained in the relevant underwriting file at least five years after the effective date of the lender's title insurance policy.

Sec. 16. (1) A title insurer shall not accept title insurance business from a title insurance agent unless there is in force a written contract between the parties which sets forth the responsibilities of each party and, when both parties share responsibility for a particular function, specifies the division of responsibilities.

(2) For each title insurance agent under contract with a title insurer, the title insurer shall have on file a statement of financial condition of each title insurance agent as of the end of the previous calendar year setting forth an income statement of title insurance business done during the preceding year and a balance sheet showing the condition of its affairs as of the prior December 31 certified by the title insurance agent as being a true and accurate representation of the title insurance agent's financial condition. Attorneys actively engaged in the practice of law, other than that related to title insurance business, are exempt from the requirements of this subsection.

(3) A title insurer shall, at least annually, conduct an onsite review of the underwriting, claims, and escrow practices of the title insurance agent which shall include a review of the title insurance agent's title insurance policy form inventory and processing operations. If the title insurance agent does not maintain separate financial institution or trust

accounts for each title insurer it represents, the title insurer shall verify that the funds held on its behalf are reasonably ascertainable from the books of account and records of the title insurance agent.

(4) Within thirty days after executing or terminating a contract with a title insurance agent, a title insurer shall provide written notification of the appointment or termination and the reason for termination to the director. Notices of appointment of a title insurance agent shall be made on a form prescribed or approved by the director.

(5) A title insurer shall maintain an inventory of all title insurance policy forms or title insurance policy numbers allocated to each title insurance agent.

(6) A title insurer shall have on file proof that each title insurance agent is licensed by this state.

(7) A title insurer shall establish the underwriting guidelines and, when applicable, limitations on title claims settlement authority to be incorporated into contracts with its title insurance agents.

Sec. 17. (1)(a) A title insurer may operate as an escrow, security, settlement, or closing agent subject to the requirements of subdivisions (b) through (e) of this subsection.

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

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

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

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

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

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

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

(iii) Any other provisions the director may require.

(e)(i) Disbursements may be made out of an escrow, security deposit, settlement, or closing account only if deposits in amounts at least equal to the disbursement have first been made directly relating to the transaction disbursed against and if the deposits are in one of the following forms:

(A) Lawful money of the United States;

(B) Wired funds when unconditionally held by the title insurer;

(C) Cashier's checks, certified checks, bank money orders, or teller's checks issued by a federally insured financial institution and unconditionally held by the title insurer; and

(D) United States treasury checks, federal reserve bank checks, federal home loan bank checks, and State of Nebraska warrants.

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

(2) Nothing in this section is intended to amend, alter, or supersede other sections of the Title Insurers Act or the laws of this state or the United States regarding an escrow holder's duties and obligations.

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

Sec. 18. A title insurer or other person shall not provide or receive, directly or indirectly, any consideration for the referral of title insurance business or escrow or other services provided by a title insurer.

Sec. 19. A title insurer shall not participate in any transaction in which it knows that a producer of title insurance business or other person requires, directly or indirectly, or through a trustee, director, officer, agent, employee, or affiliate, as a condition, agreement, or understanding to selling or furnishing any other person a loan, loan extension, credit, sale, property, contract, lease, or service, that the other person place a title

insurance policy of any kind with the title insurer or through a particular title insurance agent.

Sec. 20. (1) No title insurer may charge any rates regulated by the state after the effective date of this act except in accordance with the premium rate schedule and manual filed with and approved by the director in accordance with applicable statutes and rules and regulations governing rate filings.

(2) The director may adopt and promulgate rules and regulations, including rules and regulations providing statistical plans, for use by all title insurers and title insurance agents in the recording and reporting of revenue, loss, and expense experience in such form and detail as is necessary to aid him or her in the establishment of rates and fees.

(3) The director may require that the information provided under this section be verified by oath of the title insurer's or title insurance agent's president, vice president, secretary, or actuary, as applicable. The director may further require that the information required under this section be subject to an audit conducted by an independent certified public accountant. The director shall have the authority to establish a minimum threshold level at which an audit would be required.

(4) Information filed with the director relating to the experience of a particular title insurance agent shall be kept confidential unless the director finds it in the public interest to disclose the information required of title insurers or title insurance agents under this section.

Sec. 21. (1)(a) A title insurer or rate service organization shall not deliver or issue for delivery or permit any of its title insurance agents to deliver in this state any form, in connection with title insurance business written, unless it has been filed with the director and approved by the director or thirty days have elapsed and it has not been disapproved. The waiting period may be extended for an additional period not to exceed thirty days if the director gives written notice within such waiting period to the title insurer or authorized rate service organization which made the filing that additional time is needed for consideration of the filing.

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

(2) Forms covered by this section shall include:

(a) Title insurance policies, including standard form endorsements;

and

(b) Title insurance commitments.

(3) After notice and opportunity to be heard are given to the title insurer or rate service organization which submitted a form for approval, the director may withdraw approval of the form on finding that the use of the form is contrary to the legal requirements applicable at the time of withdrawal. The effective date of withdrawal of approval shall not be less than ninety days after notice of withdrawal is given.

(4) An approved title insurance policy form or endorsement providing coverage for which no identifiable premium is assessed shall be incorporated into every applicable title insurance policy. The title insurer shall disclose any additional coverage to the insured. The provisions of this section shall not operate to eliminate any underwriting standard of conditions relating to the approved title insurance policy forms or endorsements.

(5) Any term or condition related to insurance coverage provided by an approved title insurance policy or any exception to the coverage, except those ascertained from a search and examination of records relating to a title or an inspection or survey of a property to be insured, may only be included in the title insurance policy after the term, condition, or exception has been filed with the director and approved.

Sec. 22. (1) A title insurer or title insurance agent may satisfy its obligation to file premium rates, rating manuals, and forms as required by the Title Insurers Act by becoming a member of, or a subscriber to, a rate service organization, organized and licensed under the insurance laws of this state, when the organization makes the filings, and by authorizing the director in writing to accept the filings on the title insurer's behalf.

(2) Nothing in the act shall be construed as requiring any title insurer or title insurance agent to become a member of, or a subscriber to, any rate service organization. Nothing in the act shall be construed as prohibiting the filing of deviations from rate service organization filings by any member or subscriber.

Sec. 23. Evidence of the examination of title and determination of insurability for title insurance business written by a title insurer and records relating to escrow and security deposits shall be preserved and



retained by the title insurer for as long as appropriate to the circumstances but, in no event, less than fifteen years after the title insurance policy has been issued or ten years after the escrow or security deposit account has been closed. This section shall not apply to a title insurer acting as coinsurer if one of the other coinsurers has complied with this section.

Sec. 24. The director may adopt and promulgate rules and regulations and issue orders as necessary to carry out the Title Insurers Act.

Sec. 25. (1) If the director determines that a title insurer or any other person has violated the Title Insurers Act or any rule or regulation adopted and promulgated pursuant to the act, after notice and opportunity to be heard, the director may order:

(a) A penalty not exceeding one thousand dollars for each violation;

and

(b) Revocation or suspension of the title insurer's certificate of authority.

(2) Nothing in this section shall affect the right of the director to impose any other penalties provided for in the insurance laws of this state.

(3) Nothing in the act is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, and creditors.

Sec. 26. In addition to any other remedies available under the laws of this state, each violation of the Title Insurers Act and any rules and regulations adopted and promulgated thereunder shall be an unfair trade practice in the business of insurance subject to the Unfair Insurance Trade Practices Act.

Sec. 27. The director or Attorney General may bring an action in a court of competent jurisdiction to enjoin violations of the federal Real Estate Settlement Procedures Act of 1974, as amended, 12 U.S.C. 2601.

Sec. 28. The Title Insurers Act applies to all transactions entered into on or after the effective date of this act except that:

(1) If the capital and surplus required prior to the effective date of this act was less than that required by section 8 of this act, a title insurer shall have two years after the effective date of this act to comply with such section; and

(2) Section 11 of this act provides for a multivear compliance period during which requisite reserves must be established.

Sec. 29. Sections 29 to 46 of this act shall be known and may be cited as the Title Insurance Agent Act.

Sec. 30. The purpose of the Title Insurance Agent Act is to provide the State of Nebraska with a comprehensive body of law for the effective regulation and supervision of title insurance agents.

Sec. 31. For purposes of the Title Insurance Agent Act:

(1) Abstract of title has the same meaning as in section 4 of this act;

(2) Affiliated business means any portion of a title insurance agent's title insurance business written in this state that was referred to it by a producer of title insurance business or by an associate of the producer of title insurance business, if the producer of title insurance business or associate, or both, have a financial interest in the title insurance agent;

(3) Associate means any:

(a) Business organized for profit in which a producer of title insurance business is a director, an officer, a partner, an employee or an owner of a financial interest;

(b) Employee of a producer of title insurance business;

(c) Franchisor or franchisee of a producer of title insurance business;

(d) Spouse, parent, or child of a producer of title insurance business who is a natural person;

(e) Person, other than a natural person, that controls, is controlled by, or is under common control with, a producer of title insurance business; and

(f) Person with whom a producer of title insurance business or any associate of the producer of title insurance business has an agreement, arrangement, or understanding, or pursues a course of conduct, the purpose or effect of which is to provide financial benefits to that producer of title insurance business or associate for the referral of title insurance business;

(4) Bona fide employee of the title insurance agent means an individual who devotes substantially all of his or her time to performing services on behalf of a title insurance agent and whose compensation for the services is in the form of salary or its equivalent paid by the title insurance agent;

(5) Bona fide employee of the title insurer has the same meaning as

in section 4 of this act;

(6) Director means the Director of Insurance;

(7) Escrow has the same meaning as in section 4 of this act;

(8) Financial interest means a direct or indirect interest, legal or beneficial, when the holder is or will be entitled to five percent or more of the net profits or net worth of the entity in which the interest is held;

(9) Person means any natural person, partnership, association, cooperative, corporation, trust, or other legal entity;

(10) Producer of title insurance business means any person, including an officer, director, or owner of five percent or more of the equity or capital of any person, engaged in this state in the trade, business, occupation, or profession of:

(a) Buying or selling interests in real property;

(b) Making loans secured by interests in real property; or

(c) Acting as broker, agent, representative, or attorney of a person who buys or sells any interest in real property or who lends or borrows money with the interest as security;

(11) Qualified financial institution has the same meaning as in section 4 of this act;

(12) Referral means the directing or the exercising of any power or influence over the direction of title insurance business, whether or not the consent or approval of any other person is sought or obtained with respect to the referral;

(13) Security or security deposit means funds or other property received by a title insurance agent as collateral to secure an indemnitor's obligation under an indemnity agreement pursuant to which a title insurer is granted a perfected security interest in the collateral in exchange for agreeing to provide coverage in a title insurance policy for a specific title exception to coverage;

(14) Title insurance agent means an authorized person, other than a bona fide employee of the title insurer, who, on behalf of the title insurer, performs the following acts in conjunction with the issuance of a title insurance commitment or title insurance policy:

(a) Determines insurability and issues title insurance commitments or title insurance policies, or both, based upon the performance or review of a title search or an abstract of title; and

(b) Performs one or more of the following functions:

(i) Collects or disburses premiums, escrow, or security deposits or other funds;

(ii) Handles escrows, settlements, or closings;

(iii) Solicits or negotiates title insurance business; or

(iv) Records closing documents;

(15) Title insurance business or business of title insurance means:

(a) Issuing as a title insurer or offering to issue as a title insurer a title insurance policy;

(b) Transacting or proposing to transact by a title insurance agent any of the following activities when conducted or performed in contemplation of or in conjunction with the issuance of a title insurance policy:

(i) Soliciting or negotiating the issuance of a title insurance policy;

(ii) Guaranteeing, warranting, or otherwise insuring the correctness of title searches for all instruments affecting titles to real property, any interest in real property, cooperative units, and proprietary leases and for all liens or charges affecting the same;

(iii) Handling of escrows, settlements, or closings;

(iv) Executing title insurance policies;

(v) Effecting contracts of reinsurance; or

(vi) Searching or examining titles;

(c) Guaranteeing, warranting, or insuring searches or examinations of title to real property or any interest in real property;

(d) Guaranteeing or warranting the status of title as to ownership of or liens on real property and personal property by any person other than the principals to the transaction; or

(e) Transacting or proposing to transact any business substantially equivalent to any of the activities listed in this subdivision in a manner designed to evade the provisions of the Title Insurance Agent Act;

(16) Title insurance commitment has the same meaning as in section 4 of this act;

(17) Title insurance policy has the same meaning as in section 4 of this act; and

(18) Title insurer has the same meaning as in section 4 of this act.

Sec. 32. (1) A person shall not act in the capacity of a title

insurance agent and a title insurer shall not contract with any person to act in the capacity of a title insurance agent with respect to risks located in this state unless the person is a licensed title insurance agent in this state pursuant to the Insurance Producers Licensing Act.

(2)(a) Every title insurance agent licensed in this state shall:

(i) Exclude or eliminate the word insurer or underwriter or similar term from its agency's name; and

(ii) Provide, in a timely fashion, each title insurer with which it places business any information the title insurer requests in order to comply with reporting requirements of the director.

(b) A title insurance agent licensed in this state immediately prior to the effective date of this act shall be deemed on and after such date to be in compliance with the requirements of this subsection.

(3) The director shall require the title insurance agent and any bona fide employee of the title insurance agent handling escrow or security deposits to maintain a surety bond, letter of credit, certificate of deposit, or deposit of cash or securities in an amount not less than one hundred thousand dollars covering all of the title insurance agent's employees.

(4) If the title insurance agent delegates the title search to a third party, the third party shall provide the title insurance agent and the title insurer with access to and the right to copy all accounts and records maintained by the third party with respect to title insurance business placed with the title insurer.

Sec. 33. The director may, during normal business hours, examine, audit, and inspect any and all books and records maintained by a title insurance agent under the provisions of the Title Insurance Agent Act. The title insurance agent shall reimburse the director for the expense of examination, audit, and inspection.

Sec. 34. A title insurance agent or other person shall not provide or receive, directly or indirectly, any consideration for the referral of title insurance business or escrow or other services provided by a title insurance agent.

Sec. 35. (1) Whenever title insurance business to be written constitutes affiliated business, prior to commencing the transaction, the title insurance agent shall ensure that its customer has been provided with a written disclosure of the existence of the affiliated business arrangement and a written estimate of the charge or range of charges generally made for the title insurance services provided by the title insurance agent.

(2) The director may establish rules for use by all title insurance agents in the recording and reporting of the title insurance agent's owners and of the title insurance agent's ownership interests in other persons or businesses and of material transactions between the parties.

(3) The director shall require each title insurance agent to file, on forms prescribed by the director, reports setting forth the names and addresses of those persons, if any, that have a financial interest in the title insurance agent and who the title insurance agent knows or has reason to believe are producers of title insurance business or associates of producers of title insurance business.

(4) Nothing in the Title Insurance Agent Act shall be construed as prohibiting affiliated business arrangements in the provision of title insurance business so long as:

(a) The title insurance agent or party making a referral constituting affiliated business, at or prior to the time of the referral, discloses the arrangement and, in connection with the referral, provides the person being referred with a written estimate of the charge or range of charges likely to be assessed and otherwise complies with the disclosure obligations of this section;

(b) The person being referred is not required to use a specified title insurance agent or title insurer; and

(c) The only thing of value that is received by the title insurance agent or party making the referral, other than payments otherwise permitted, is a return on an ownership interest. For purposes of this subsection, the terms required use and return on an ownership interest have the meaning accorded to them under the federal Real Estate Settlement Procedures Act of 1974, as amended, 12 U.S.C. 2501, and Regulation X, 24 C.F.R. 3500 et seq.

Sec. 36. A title insurance agent shall not participate in any transaction in which it knows that a producer of title insurance business or other person requires, directly or indirectly, or through a trustee, director, officer, agent, employee, or affiliate, as a condition, agreement, or understanding to selling or furnishing any other person a loan, loan extension, credit, sale, property, contract, lease, or service, that the other person place a title insurance policy of any kind with a particular title

insurer or through a particular title insurance agent.

Sec. 37. (1) A person, firm, association, or corporation acting in the capacity of a title insurance agent shall not place title insurance business with a title insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party and, when both parties share responsibility for a particular function, specifies the division of such responsibilities subject to the requirements of subsections (2) through (17) of this section.

(2)(a) The title insurer may terminate the contract required under subsection (1) of this section upon written notice under the following circumstances:

(i) Fraud, insolvency, appointment of a receiver or conservator, bankruptcy, cancellation of the title insurance agent's license to do business, or the commencement of legal proceedings by the state of domicile of the title insurance agent which, if successful, would lead to cancellation of the title insurance agent's license to do business;

(ii) Material breach of any provision of the contract; or

(iii) Notice of cancellation provided in accordance with contract termination requirements.

(b) Upon notice of termination, the title insurance agent shall immediately discontinue all underwriting. Nothing in this subdivision is intended to relieve the title insurance agent or title insurer of any other contractual obligation.

(3) The title insurance agent shall render accounts to the title insurer detailing all transactions and remit all funds due under the contract required under subsection (1) of this section to the title insurer within the time specified by the underwriting contract.

(4) All funds collected for the account of a title insurer by a title insurance agent shall be held in a fiduciary capacity in a qualified financial institution.

(5) At the title insurer's request, the title insurance agent or its successor in interest, transferee, or receiver shall provide access to and the right to copy all escrow files and underwriting files involving a transaction in which a title insurance commitment or title insurance policy is or is to be issued.

(6) Separate records of title insurance business written by the title insurance agent shall be maintained for each title insurer. The title insurer shall have access to and a right to copy all accounts and records related to its business in a form acceptable to the title insurer. The director shall have access to all books, financial institution accounts, and records of the title insurance agent in a form usable to the director. The records shall be retained according to section 40 of this act.

(7) The contract required under subsection (1) of this section shall not be assigned in whole or in part by the title insurance agent without the express written consent of the title insurer.

(8) The contract required under subsection (1) of this section shall include appropriate guidelines relating to:

(a) The basis of the rates to be charged;

(b) The types of risks which may be written;

(c) Maximum limits of liability;

(d) Territorial limitations;

(e) Title searches and examinations; and

(f) Underwriting.

(9) It shall be the duty of the title insurance agent to immediately report and forward to the title insurer all title-related escrow claims and title claims reported to the title insurance agent by policyholders or other persons. However, if the contract required under subsection (1) of this section permits the title insurance agent to settle claims on behalf of the title insurer:

(a) A copy of the claim file shall be sent to the title insurer at its request or as soon as it becomes known that the claim:

(i) Has the potential to exceed an amount established by the title insurer;

(ii) Involves a coverage dispute;

(iii) May exceed the title insurance agent's claims settlement authority;

(iv) Is open for more than six months; or

(v) Is closed by payment exceeding an amount established by the title insurer;

(b) All title and title-related escrow claims files settled by the title insurance agent shall be the property of the title insurer; and

(c) Any settlement authority granted to the title insurance agent

may be terminated immediately upon the title insurer's written notice to the title insurance agent or upon the termination of the contract. The title insurer may suspend the settlement authority during the pendency of a dispute regarding the cause for termination. Nothing in this subdivision is intended to relieve the title insurance agent or title insurer of any other contractual obligation.

(10) If electronic claims files are in existence, the contract required under subsection (1) of this section shall address the immediate transmission of the data.

(11) The title insurance agent shall not bind reinsurance or retrocessions on behalf of the title insurer.

(12) The contract required under subsection (1) of this section shall include specific terms of a title insurance agent's compensation.

(13) The title insurance agent shall maintain an inventory of all policy forms or policy numbers assigned to the agent by the title insurer.

(14) For each title insurance agent under contract with a title insurer, the title insurer shall have on file a statement of financial condition of each title insurance agent as of the end of the previous calendar year setting forth an income statement of title insurance business done during the preceding year and a balance sheet showing the condition of its affairs as of the prior December 31 certified by the title insurance agent as being a true and accurate representation of the title insurance agent's financial condition. Attorneys actively engaged in the practice of law, other than that related to title insurance business, are exempt from the requirements of this subsection.

(15) The title insurance agent shall annually, concurrent with the renewal date of its contract, furnish the title insurer with proof that the title insurance agent is in compliance with section 32 of this act.

(16) If the title insurance agent delegates the title search to a third party, such as an abstract company, the title insurance agent must first obtain proof that the third party is operating in compliance with rules and regulations adopted and promulgated by the director.

(17) The title insurance agent shall provide the title insurer with access to and the right to copy all accounts and records maintained by the title insurance agent with respect to title insurance business placed with the title insurer.

Sec. 38. (1) When constituting an offer to issue an owner's title insurance policy covering the resale of owner-occupied residential property, a title insurance commitment shall be furnished to the purchaser-mortgagor or its representative as soon as reasonably possible prior to closing. If the title insurance commitment cannot be delivered prior to the day of closing, the title insurance agent shall document the reasons for the delay. The title insurance commitment furnished to the purchaser-mortgagor shall incorporate the following statement on the first page in bold type:

PLEASE READ THE EXCEPTIONS AND THE TERMS SHOWN OR REFERRED TO HEREIN CAREFULLY. THE EXCEPTIONS ARE MEANT TO PROVIDE YOU WITH NOTICE OF MATTERS WHICH ARE NOT COVERED UNDER THE TERMS OF THE TITLE INSURANCE POLICY AND SHOULD BE CAREFULLY CONSIDERED.

IT IS IMPORTANT TO NOTE THAT THIS FORM IS NOT A WRITTEN REPRESENTATION AS TO THE CONDITION OF TITLE AND MAY NOT LIST ALL LIENS, DEFECTS, AND ENCUMBRANCES AFFECTING TITLE TO THE LAND.

(2) A title insurance agent issuing a lender's title insurance policy in conjunction with a mortgage loan made simultaneously with the purchase of all or part of the real estate securing the loan, when no owner's title insurance policy has been requested, shall give written notice, on a form prescribed or approved by the director, to the purchaser-mortgagor at the time the title insurance commitment is prepared. The notice shall explain that a lender's title insurance policy is to be issued protecting the mortgage lender and that the lender's title insurance policy does not provide title insurance protection to the purchaser-mortgagor as the owner of the property being purchased. The notice shall explain what a title insurance policy insures against and what possible exposures exist for the purchaser-mortgagor that could be insured against through the purchase of an owner's title insurance policy. The notice shall also explain that the purchaser-mortgagor may obtain an owner's title insurance policy protecting the property owner at a specified cost or approximate cost if the proposed coverages or amount of title insurance is not then known. A copy of the notice, signed by the purchaser-mortgagor, shall be retained in the relevant underwriting file at least five years after the effective date of the lender's title insurance policy.

Sec. 39. (1)(a) A title insurance agent may operate as an escrow, security, settlement, or closing agent subject to the requirements of

subdivisions (b) through (e) of this subsection.

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

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

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

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

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

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

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

(iii) Any other provisions the director may require.

(e)(i) Disbursements may be made out of an escrow, settlement, or closing account only if deposits in amounts at least equal to the disbursement have first been made directly relating to the transaction disbursed against and if the deposits are in one of the following forms:

(A) Lawful money of the United States;

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

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

(D) United States treasury checks, federal reserve bank checks, federal home loan bank checks, and State of Nebraska warrants.

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

(2) The title insurance agent shall have an annual audit made of its escrow, settlement, closing, and security deposit accounts, conducted by a certified public accountant on a calendar year basis at its expense within ninety days after the close of the previous calendar year. The title insurance agent shall provide a copy of the audit report to each title insurer which it represents. The director may adopt and promulgate rules and regulations setting forth the minimum threshold level at which an audit would be required, the standards of audit, and the form of audit report required. In lieu of such annual audit, a title insurance agent may provide a notarized certificate of reconciliation and availability of the title insurance agent's escrow accounts to each title insurer which it represents within ninety days after the close of the previous calendar year on a form prescribed or approved by the director. The director may also require a title insurance agent to provide a copy of its audit report or certificate of reconciliation and availability to the director. Title insurance agents who are attorneys and who issue title insurance policies as part of their legal representation of clients are exempt from the requirements of this subsection. However, the title insurer may, at its expense, conduct or cause to be conducted an annual audit of the escrow, settlement, closing, and security deposit accounts of the attorney. Attorneys who are exclusively in the business of title insurance are not exempt from the requirements of this subsection.

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

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

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

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

Sec. 40. The title insurance agent shall maintain sufficient records of its affairs, including its escrow operations and escrow trust accounts, so that the director may adequately ensure that the title insurance agent is in compliance with all provisions of the Title Insurance Agent Act. The director may prescribe the specific record entries and documents to be kept and the length of time for which the records must be maintained.

Sec. 41. A title insurance agent shall be subject to all other applicable provisions of the insurance laws of this state unless specifically addressed by the Title Insurance Agent Act.

Sec. 42. The director may adopt and promulgate rules and regulations and issue orders as necessary to carry out the Title Insurance Agent Act.

Sec. 43. (1) If the director determines that a title insurance agent or any other person has violated the Title Insurance Agent Act or any rule or regulation adopted and promulgated pursuant to the act, after notice and opportunity to be heard, the director may order:

(a) A penalty not exceeding one thousand dollars for each violation;

and

(b) Revocation or suspension of the title insurance agent's license.  
(2) If an order of rehabilitation or liquidation of a title insurer has been entered pursuant to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, and the receiver appointed under that order determines that a title insurance agent or any other person has not complied with the Title Insurance Agent Act or any related rule, regulation, or order, and the title insurer suffered any resulting loss or damage, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the title insurer and its policyholders and creditors.

(3) Nothing in this section shall affect the right of the director to impose any other penalties provided for in the insurance laws of this state.

(4) Nothing in the act is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, and creditors.

Sec. 44. In addition to any other remedies available under the laws of this state, each violation of the Title Insurance Agent Act and any rules and regulations adopted and promulgated thereunder shall be an unfair trade practice in the business of insurance subject to the Unfair Insurance Trade Practices Act.

Sec. 45. The director or Attorney General may bring an action in a court of competent jurisdiction to enjoin violations of the federal Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601.

Sec. 46. The Title Insurance Agent Act applies to all activities or agreements of a title insurance agent engaged in or entered into on or after the effective date of this act. The title insurance agent shall amend all existing agreements to comply with section 37 of this act within sixty days after the effective date of this act.

Sec. 47. Section 44-203, Reissue Revised Statutes of Nebraska, is amended to read:

44-203. Except as provided in section 44-1946 7 of this act, a company may be formed or an existing company may be authorized to transact any one or more of the lines of insurance specified in section 44-201.

Sec. 48. Section 44-1525, Revised Statutes Supplement, 1996, is amended to read:

44-1525. Any of the following acts or practices, if committed in violation of section 44-1524, shall be unfair trade practices in the business of insurance:

(1) Making, issuing, circulating, or causing to be made, issued, or circulated any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:

(a) Misrepresents the benefits, advantages, conditions, or terms of any policy;

(b) Misrepresents the dividends or share of the surplus to be received on any policy;

(c) Makes any false or misleading statements as to the dividends or share of surplus previously paid on any policy;

(d) Misleads as to or misrepresents the financial condition of any insurer or the legal reserve system upon which any life insurer operates;

- (e) Uses any name or title of any policy or class of policies which misrepresents the true nature thereof;
- (f) Misrepresents for the purpose of inducing or tending to induce the purchase, lapse, forfeiture, exchange, conversion, or surrender of any policy, including intentionally misquotes ~~misquoting~~ any premium rate;
- (g) Misrepresents for the purpose of effecting a pledge or assignment of or effecting a loan against any policy; or
- (h) Misrepresents any policy as being shares of stock;
- (2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any insurer in the conduct of his or her insurance business which is untrue, deceptive, or misleading;
- (3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false or maliciously critical of or derogatory to the financial condition of any insurer and which is calculated to injure such insurer;
- (4) Entering into any agreement to commit or by any concerted action committing any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of or monopoly in the business of insurance;
- (5)(a) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or knowingly causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of an insurer; or
- (b) Knowingly making any false entry of a material fact in any book, report, or statement of any insurer or knowingly omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer;
- (6) Issuing or delivering or permitting agents, officers, or employees to issue or deliver agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance;
- (7)(a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any life insurance policy or annuity or in the dividends or other benefits payable thereon or in any other of the terms and conditions of such policy or annuity;
- (b) Making or permitting any unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, or rates charged for any sickness and accident insurance policy or in the benefits payable thereunder, in any of the terms or conditions of such policy, or in any other manner, except that this subdivision shall not limit the negotiation of preferred provider policies and contracts under sections 44-4101 to 44-4113;
- (c) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk unless:
- (i) The refusal, cancellation, or limitation is for a business purpose which is not a pretext for unfair discrimination; or
- (ii) The refusal, cancellation, or limitation is required by law, rule, or regulation;
- (d) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk, or the personal property contained therein, because of the age of the residential property unless:
- (i) The refusal, cancellation, or limitation is for a business purpose which is not a pretext for unfair discrimination; or
- (ii) The refusal, cancellation, or limitation is required by law, rule, or regulation;



(e) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual solely because of the sex or marital status of the individual. This subdivision shall not prohibit an insurer from taking marital status into account for the purpose of defining individuals eligible for dependent benefits; or

(f) Terminating or modifying coverage or refusing to issue or refusing to renew any property or casualty insurance policy solely because the applicant or insured or any employee of the applicant or insured is mentally or physically impaired unless:

(i) The termination, modification, or refusal is for a business purpose which is not a pretext for unfair discrimination; or

(ii) The termination, modification, or refusal is required by law, rule, or regulation.

This subdivision (f) shall not apply to any sickness and accident insurance policy sold by a casualty insurer and shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any policy;

(8)(a) Except as otherwise expressly provided by law:

(i) Knowingly permitting or offering to make or making any life insurance policy, annuity, or sickness and accident insurance policy, or agreement as to any such policy or annuity, other than as plainly expressed in the policy or annuity issued thereon, or paying, allowing, or giving, or offering to pay, allow, or give, directly or indirectly, as inducement to such policy or annuity, any rebate of premiums payable on the policy or annuity, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the policy or annuity; or

(ii) Giving, selling, purchasing, or offering to give, sell, or purchase as inducement to such policy or annuity or in connection therewith any stocks, bonds, or other securities of any insurer or other corporation, association, partnership, or limited liability company, or any dividends or profits accrued thereon, or anything of value not specified in the policy or annuity.

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

(i) In the case of any life insurance policy or annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance if such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the insurer and its policyholders;

(ii) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses; or

(iii) Readjustment of the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;

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

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

(11) Failing of any insurer, upon receipt of a written inquiry from the department, to respond to such inquiry or request additional reasonable time to respond within fifteen working days; and

(12) Violating any provision of section 44-320, 44-348, 44-360, 44-361, 44-369, 44-392, 44-393, 44-515 to 44-518, 44-522, 44-523, ~~44-1951~~, ~~44-1953 to 44-1955~~, ~~44-1959~~, ~~44-1960~~, ~~44-1975~~, 44-2132 to 44-2134, 44-3606, 44-4809, 44-4812, 44-4817, or 44-5266.

Sec. 49. Section 44-4802, Reissue Revised Statutes of Nebraska, is amended to read:

44-4802. The proceedings authorized by the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act may be applied to:

(1) All insurers who are doing or have done an insurance business in

this state and against whom claims arising from that business may exist now or in the future;

(2) All insurers who purport to do an insurance business in this state;

(3) All insurers who have insureds who are residents of this state;

(4) All other persons organized or in the process of organizing with the intent to do an insurance business in this state;

(5) All fraternal benefit societies subject to Chapter 44, article 10;

(6) All title insurers subject to the Title Insurance Act Title Insurers Act;

(7) All health maintenance organizations subject to the Health Maintenance Organization Act;

(8) All legal service insurance corporations subject to Chapter 44, article 33;

(9) All prepaid dental service corporations subject to Chapter 44, article 38; and

(10) All prepaid limited health service organizations subject to the Prepaid Limited Health Service Organization Act.

Sec. 50. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 51. Original sections 44-203 and 44-4802, Reissue Revised Statutes of Nebraska, and section 44-1525, Revised Statutes Supplement, 1996, are repealed.

Sec. 52. The following sections are outright repealed: Sections 44-1927 to 44-1977, Reissue Revised Statutes of Nebraska.