

## LEGISLATIVE BILL 360

Approved by the Governor March 14, 2001

Introduced by Landis, 46

AN ACT relating to insurance; to amend sections 44-417, 44-516, 44-517, 44-520, 44-10,100, 44-10,106, 44-1981, 44-19,108, 44-2121, 44-2702, 44-2703, 44-2707, 44-2709, 44-2713, and 44-4201, Reissue Revised Statutes of Nebraska, and sections 44-522, 44-523, 44-1992, 44-19,115, 44-2708, and 44-4203, Revised Statutes Supplement, 2000; to define and redefine terms; to change provisions relating to credit for reinsurance, nonrenewal and cancellation of automobile liability policies, and service of process and notice requirements for foreign or alien societies; to change provisions of the Title Insurers Act, the Title Insurance Agent Act, the Insurance Holding Company System Act, the Nebraska Life and Health Insurance Guaranty Association Act, and the Comprehensive Health Insurance Pool Act; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 44-417, Reissue Revised Statutes of Nebraska, is amended to read:

44-417. No credits specified in sections 44-416.01 to 44-416.04 shall be made or allowed as an admitted asset or deduction from liability to any ceding insurer for reinsurance unless the contract of reinsurance provides in substance that, in the event of the insolvency of the ceding insurer, the portion of any risk or obligation assumed by the reinsurer, when such portion is ascertained, shall be payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract or contracts reinsured without diminution because of the insolvency of the ceding insurer. Such payments shall be made directly to the ceding insurer or to its domiciliary liquidator except (1) when the contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer or (2) when the assuming insurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees. The reinsurance agreement may provide that the domiciliary liquidator, receiver, or legal successor of an insolvent ceding insurer shall give written notice of the pendency of a claim against the insolvent ceding insurer on the policy or bond reinsured, within a reasonable time after such claim is filed in the insolvency proceeding, and that during the pendency of such claim, any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding ~~when~~ in which such claim is to be adjudicated, any defense or defenses which it may deem available to the ceding insurer or its liquidator, receiver, or legal successor. The expense thus incurred by the assuming insurer ~~may be filed as a claim shall be chargeable, subject to court approval,~~ against the insolvent ceding insurer as part of the expense of liquidation, to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer.

When two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to such claim, the expense shall be apportioned subject to court approval, in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer.

Sec. 2. Section 44-516, Reissue Revised Statutes of Nebraska, is amended to read:

44-516. (1) No notice of cancellation of a policy to which section 44-515 applies shall be effective unless mailed by registered or certified mail to the named insured at least thirty days prior to the effective date of cancellation, except that if cancellation is for nonpayment of premium, at least ten days' notice of cancellation accompanied by the reason therefor shall be given. The requirements of this subsection shall apply to a cancellation initiated by a premium finance company for nonpayment of premium.

(2) Unless the reason accompanies or is included in the notice of cancellation, the notice of cancellation shall state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than twenty-five days prior to the effective date of cancellation, the insurer will specify the reason for such cancellation. ~~(2)~~

The insurer shall, upon such written request of the named insured, mailed or delivered to the insurer not less than twenty-five days prior to the effective date of cancellation, specify in writing the reason for such cancellation. Such reason shall be mailed or delivered to the named insured within five days after receipt of such request.

(3) For purposes of sections 44-514 to 44-521:

(a) An insurer's substitution of insurance upon renewal which results in substantially equivalent coverage shall not be considered a cancellation of a policy; and

(b) The transfer of a policyholder between insurers within the same insurance group shall be considered a cancellation only if the transfer results in policy coverage or rates substantially less favorable to the insured.

(4) Subsections (1) and (2) of this This section shall not apply to nonrenewal.

Sec. 3. Section 44-517, Reissue Revised Statutes of Nebraska, is amended to read:

44-517. (1) No insurer shall refuse to renew a policy unless such insurer or its agent shall mail or deliver to the named insured, at the address shown in the policy, at least twenty days' advance notice of its intention not to renew. This section shall not apply: ~~(1) (a)~~ If the insurer has manifested its willingness to renew; nor ~~(2) (b)~~ in case of nonpayment of premium, except that ~~PROVIDED~~, notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other insurance policy with respect to any automobile designated in both policies.

(2) For purposes of sections 44-514 to 44-521:

(a) An insurer's substitution of insurance upon renewal which results in substantially equivalent coverage shall not be considered a refusal to renew a policy; and

(b) The transfer of a policyholder between insurers within the same insurance group shall be considered a refusal to renew a policy only if the transfer results in policy coverage or rates substantially less favorable to the insured.

(3) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation ~~which that~~ existed before the effective date of such renewal.

Sec. 4. Section 44-520, Reissue Revised Statutes of Nebraska, is amended to read:

44-520. When automobile bodily injury and property damage liability coverage is canceled, other than for nonpayment of premium, or in the event of failure to renew automobile bodily injury and property damage liability coverage to which section 44-517 applies, the insurer shall notify the named insured of ~~his~~ the insured's possible eligibility for automobile liability insurance through an affiliated insurer or the automobile liability assigned risk plan. Such notice shall accompany or be included in the notice of cancellation or the notice of intent not to renew.

Sec. 5. Section 44-522, Revised Statutes Supplement, 2000, is amended to read:

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

(2) On any policy or binder of property, marine, or liability insurance, as specified in section 44-201, the insurer shall give the insured sixty days' written notice prior to cancellation or nonrenewal of such policy or binder, except that the insurer may cancel upon ten days' written notice to the insured in the event of nonpayment of premium or if such policy or binder has a specified term of sixty days or less unless the policy or binder has previously been renewed. The requirements of this subsection shall apply to a cancellation initiated by a premium finance company for nonpayment of premium. The provisions of this subsection and subsection (4) of this section shall not apply to nonrenewal of a policy or binder which has a specified term of sixty days or less unless the policy or binder has previously been renewed. Such notice shall state the reason for cancellation or nonrenewal.

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

(a) Nonpayment of premium;

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

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

(5) For purposes of this section:

(a) An insurer's substitution of insurance upon renewal which results in substantially equivalent coverage shall not be considered a cancellation of or a refusal to renew a policy; and

(b) The transfer of a policyholder between insurers within the same insurance group shall be considered a cancellation or a refusal to renew a policy only if the transfer results in policy coverage or rates substantially less favorable to the insured.

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

(7) ~~(6)~~ All policy forms issued for delivery in Nebraska shall conform to this section.

Sec. 6. Section 44-523, Revised Statutes Supplement, 2000, is amended to read:

44-523. (1)(a) Except as provided in subdivision (1)(b) of this section, a notice of cancellation, given for reasons other than for nonpayment of premium, of a policy of automobile liability insurance issued or delivered in this state shall only be effective if mailed by registered or certified mail to the named insured at the address shown in the policy at least thirty days prior to the effective date of such cancellation.

(b) A notice of cancellation, initiated by a premium finance company, of a policy of automobile liability insurance issued or delivered in this state shall only be effective if mailed by registered or certified mail to the named insured at the address shown in the policy at least ten days prior to the effective date of such cancellation.

(2) For purposes of this section:

(a) An insurer's substitution of insurance upon renewal which results in substantially equivalent coverage shall not be considered a cancellation of a policy; and

(b) The transfer of a policyholder between insurers within the same insurance group shall be considered a cancellation of a policy only if the transfer results in policy coverage or rates substantially less favorable to the insured.

(3) ~~(2)~~ This section shall not apply (a) to any policy subject to sections 44-514 to 44-521, (b) to any policy issued under an automobile assigned risk plan or to any policy of insurance issued principally to cover personal or premises liability of an insured even though such insurance may also provide some incidental coverage for liability arising out of the ownership, maintenance, or use of a motor vehicle on the premises of the insured or on the ways adjoining such premises, and (c) to any policy or coverage which has been in effect less than sixty days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy.

(4) ~~(3)~~ Any attempted cancellation in violation of the provisions of this section shall be void.

Sec. 7. Section 44-10,100, Reissue Revised Statutes of Nebraska, is amended to read:

44-10,100. No foreign or alien society shall transact business in this state without a license issued by the Director of Insurance. Any such society desiring admission to this state shall comply substantially with the requirements and limitations of sections 44-1072 to 44-10,109 applicable to domestic societies. Any such society may be licensed to transact business in this state upon filing with the director:

- (1) A duly certified copy of its articles of incorporation;
- (2) A copy of its bylaws, certified by its secretary or corresponding officer;
- (3) ~~A power of attorney to the director as prescribed in section 44-10,106,~~
- (4) A statement of its business under oath of its president and secretary or corresponding officers in a form prescribed by the director, duly verified by an examination made by the supervising insurance official of its home state or other state, territory, province, or country, satisfactory to the Director of Insurance of this state;
- (5) ~~(4)~~ Certification from the proper official of its home state, territory, province, or country that the society is legally incorporated and licensed to transact business therein;
- (6) ~~(5)~~ Copies of its certificate forms; and
- (7) ~~(6)~~ Such other information as the Director of Insurance may deem necessary.

The society shall also submit evidence to the director showing that its assets are invested in accordance with sections 44-1072 to 44-10,109.

Sec. 8. Section 44-10,106, Reissue Revised Statutes of Nebraska, is amended to read:

44-10,106. ~~(1) Every society authorized to do business in this state shall appoint in writing the Director of Insurance and each successor in office to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it shall be served and shall agree in such writing that any lawful process against it which is served on the attorney will be of the same legal force and validity as if served upon the society and that the authority will continue in force so long as any liability remains outstanding in this state. Copies of such appointment, certified by the director, shall be deemed sufficient evidence of the appointment and shall be admitted in evidence with the same force and effect as the original might be admitted.~~

~~(2) Service shall only be made upon the Director of Insurance or if absent upon the person in charge of his or her office. It shall be made in duplicate and shall constitute sufficient service upon the society. When legal process against a society is served upon the director, he or she shall forthwith forward one of the duplicate copies by certified or registered mail, prepaid, directed to the secretary or corresponding officer. No such service shall require a society to file its answer, pleading, or defense in less than thirty days from the date of mailing the copy of the service to a society. Legal process shall not be served upon a society except in the manner provided in this section. Legal process shall be served upon a society in the manner provided for service of a summons in a civil action.~~

Sec. 9. Section 44-1981, Reissue Revised Statutes of Nebraska, is amended to read:

44-1981. 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 44-19,108;

(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 44-19,108;

(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 44-19,108;

(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 ~~ex~~

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. 10. Section 44-1992, Revised Statutes Supplement, 2000, is amended to read:

44-1992. (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 A GUARANTEE OF TITLE AND 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. 11. Section 44-19,108, Reissue Revised Statutes of Nebraska, is amended to read:

44-19,108. For purposes of the Title Insurance Agent Act:

- (1) Abstract of title has the same meaning as in section 44-1981;
- (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 44-1981;

(6) Director means the Director of Insurance;

(7) Escrow has the same meaning as in section 44-1981;

(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 44-1981;

(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 44-1981;

(17) Title insurance policy has the same meaning as in section 44-1981; and

(18) Title insurer has the same meaning as in section 44-1981.

Sec. 12. Section 44-19,115, Revised Statutes Supplement, 2000, is amended to read:

44-19,115. (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 A GUARANTEE OF TITLE AND 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. 13. Section 44-2121, Reissue Revised Statutes of Nebraska, is amended to read:

44-2121. For purposes of the Insurance Holding Company System Act:

(1) An affiliate of, or person affiliated with, a specific person shall mean a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified;

(2) Control, including controlling, controlled by, and under common control with, shall mean 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 with or corporate office held by the person. Control shall be presumed to exist if any 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 any other person. This presumption may be rebutted by a showing made in the manner provided by subsection (11) of section 44-2132 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 such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;

(3) Director shall mean the Director of Insurance;

(4) An insurance holding company system shall consist of two or more



affiliated persons, one or more of which is an insurer;

(5) Insurer shall have the same meaning as set forth in section 44-103, except that insurer shall not include ~~(a) agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state; or (b) fraternal benefit societies;~~

(6) Person shall mean an individual, a corporation, a partnership, a limited partnership, an association, a joint-stock company, a trust, an unincorporated organization, any similar entity, or any combination of such entities acting in concert but shall not include any joint-venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property;

(7) Security holder of a specified person shall mean one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any such stock or obligations;

(8) Subsidiary of a specified person shall mean an affiliate controlled by such person directly or indirectly through one or more intermediaries; and

(9) Voting security shall include any security convertible into or evidencing a right to acquire a voting security.

Sec. 14. Section 44-2702, Reissue Revised Statutes of Nebraska, is amended to read:

44-2702. As used in the Nebraska Life and Health Insurance Guaranty Association Act, unless the context otherwise requires:

(1) Account ~~shall mean~~ means any of the three accounts created pursuant to section 44-2705;

(2) Association ~~shall mean~~ means the Nebraska Life and Health Insurance Guaranty Association created by section 44-2705;

(3) Director ~~shall mean~~ means the Director of Insurance;

(4) Contractual obligation ~~shall mean~~ means any obligation under a policy or contract or portion of such policy or contract for which coverage is provided under section 44-2703;

(5) Covered policy ~~shall mean~~ means any policy or contract or portion of such policy or contract which is not subject to assessment and for which coverage is provided under section 44-2703;

(6) Impaired insurer ~~shall mean~~ means a member insurer which, after August 24, 1975, (a) is deemed by the director to be potentially unable to fulfill its contractual obligations and is not an insolvent insurer or (b) is placed under an order of rehabilitation or conservation by a court of competent jurisdiction;

(7) Insolvent insurer ~~shall mean~~ means a member insurer which after August 24, 1975, becomes insolvent and with respect to which there is a final determination of insolvency by a court of competent jurisdiction is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency;

(8) Member insurer ~~shall mean~~ means any person authorized to transact in this state any kind of insurance provided for under section 44-2703. Member insurer shall include includes any person whose license or certificate of authority may have been suspended or revoked. Member insurer does not, but shall not in any event include:

(a) A nonprofit hospital or medical service organization;

(b) A health maintenance organization unless such organization is controlled by an insurance company licensed by the Department of Insurance under Chapter 44;

(c) A fraternal benefit society;

(d) A mandatory state pooling plan;

(e) An unincorporated mutual association;

(f) An assessment association operating under Chapter 44 which issues only policies or contracts subject to assessment; or

(g) A reciprocal or interinsurance exchange which issues only policies or contracts subject to assessment;

~~(9) Premiums shall mean direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such direct business. Premiums shall not include premiums and considerations on contracts between insurers and reinsurers. As used in section 44-2708, premiums are those for the calendar year preceding the determination of impairment or insolvency;~~

(9) Moody's corporate bond yield average means the monthly average of corporate bond yields published by Moody's Investment Service, Incorporated, or any successor to Moody's Investment Service, Incorporated;

(10) Person ~~shall mean~~ means any individual, corporation, partnership, limited liability company, association, or voluntary organization;

(11) Premiums means amounts or considerations received on covered policies or contracts less returned premiums, considerations, and deposits, less dividends and experience credits. Premiums does not include amounts or considerations received for policies or contracts or for the portions of policies or contracts for which coverage is not provided under subsection (2) of section 44-2703, except that assessable premiums shall not be reduced on account of subdivision (2)(b)(iii) of section 44-2703 relating to interest limitations and subdivision (3)(b) of section 44-2703 relating to limitations with respect to one individual, one participant, and one contract owner. Premiums does not include:

(a) Premiums on an unallocated annuity contract; or

(b) With respect to multiple nongroup life insurance policies owned by one owner, whether the policy owner is an individual, firm, corporation, or other person and whether the persons insured are officers, managers, employees, or other persons, premiums exceeding five million dollars with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner;

(12)(a) Principal place of business of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise that function. The association shall determine the principal place of business considering the following factors:

(i) The state in which the primary executive and administrative headquarters of the entity is located;

(ii) The state in which the principal office of the chief executive officer of the entity is located;

(iii) The state in which the board of directors or similar governing person or persons of the entity conducts the majority of meetings;

(iv) The state in which the executive or management committee of the board of directors or similar governing person or persons of the entity conducts the majority of its meetings;

(v) The state from which the management of the overall operations of the entity is directed; and

(vi) In the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the factors in subdivisions (12)(a)(i) through (v) of this section, except that in the case of a plan sponsor, if more than fifty percent of the participants in the benefit plan are employed in a single state, that state shall be deemed to be the principal place of business of the plan sponsor.

(b) The principal place of business of a plan sponsor of a benefit plan shall be deemed to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, shall be deemed to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question;

~~(11)~~ (13) Resident shall mean means any person who resides in this state at the time a member insurer is determined to be an impaired or insolvent insurer and to whom a contractual obligation is owed; and to whom a contractual obligation is owed who resides in this state at the date of entry of a court order that determines that a member insurer is an impaired or insolvent insurer, whichever occurs first. A person may be a resident of only one state. A person other than a natural person shall be a resident of its principal place of business. Citizens of the United States that are residents of foreign countries, or are residents of a United States possession that does not have an association similar to the association created by the act, shall be deemed residents of the state of domicile of the insurer that issued the policies or contracts;

(14) State means a state, the District of Columbia, Puerto Rico, and any United States possession, territory, or protectorate;

~~(12)~~ (15) Supplemental contract shall mean means any agreement entered into for the distribution of policy or contract proceeds; and

(16) Unallocated annuity contract means an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under the contract or certificate.

Sec. 15. Section 44-2703, Reissue Revised Statutes of Nebraska, is

amended to read:

44-2703. (1)(a) The Nebraska Life and Health Insurance Guaranty Association Act shall apply to all direct life insurance policies, health insurance policies, annuity contracts, supplemental contracts, and certificates under group policies or contracts issued anywhere by a member insurer.

(2) The Nebraska Life and Health Insurance Guaranty Association Act shall not apply to:

(a) Any portion of any policy or contract referred to in subsection (1) of this section that is not guaranteed;

(b) Any such policy or contract, or any part of such policy or contract, under which the risk is borne by the policy or contract holder;

(c) Any such policy or contract or part thereof assumed by the impaired insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued;

(d) Any such policy or contract issued by:

(i) A nonprofit hospital or medical service organization;

(ii) A health maintenance organization unless such organization is controlled by an insurance company licensed by the Department of Insurance under Chapter 44;

(iii) A fraternal benefit society;

(iv) A mandatory state pooling plan;

(v) An unincorporated mutual association;

(vi) An assessment association operating under Chapter 44 which issues only policies or contracts subject to assessment; or

(vii) A reciprocal or interinsurance exchange which issues only policies or contracts subject to assessment; or

(e) Any policy or contract issued by any person, corporation, or organization which is not licensed by the Department of Insurance under Chapter 44. provide coverage for the policies and contracts specified in subsection (2) of this section:

(i) To persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under subdivision (1)(a)(ii) of this section; and

(ii) To persons who are owners of or certificate holders under the policies or contracts, other than structured settlement annuities, and in each case who:

(A) Are residents; or

(B) Are not residents and all of the following conditions apply:

(I) The insurer that issued the policies or contracts is domiciled in this state;

(II) The states in which the persons reside have associations similar to the association created by the act; and

(III) The persons are not eligible for coverage by an association in any other state due to the fact that the insurer was not licensed in the state at the time specified in the state's guaranty association law.

(b) For structured settlement annuities specified in subsection (2) of this section, subdivisions (1)(a)(i) and (ii) of this section do not apply. The act shall, except as provided in subdivisions (1)(c) and (d) of this section, provide coverage to a person who is a payee under a structured settlement annuity, or beneficiary of a payee if the payee is deceased, if the payee:

(i) Is a resident, regardless of where the contract owner resides;

or

(ii) Is not a resident, but only under the following conditions:

(A)(I) The contract owner of the structured settlement annuity is a resident; or

(II) The contract owner of the structured settlement annuity is not a resident, but the insurer that issued the structured settlement annuity is domiciled in this state and the state in which the contract owner resides has an association similar to the association created by the act; and

(B) The payee or beneficiary and the contract owner are not eligible for coverage by the association of the state in which the payee or contract owner resides.

(c) The act shall not provide coverage to a person who is a payee or beneficiary of a contract owner resident of this state if the payee or beneficiary is afforded any coverage by the association of another state.

(d) The act is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. To avoid duplicate coverage, if a person who would otherwise receive coverage under the act is provided coverage under the laws of any other state, the

person shall not be provided coverage under the act. In determining the application of the provisions of this subdivision in situations in which a person could be covered by the association of more than one state, whether as an owner, payee, beneficiary, or assignee, the act shall be construed in conjunction with other state laws to result in coverage by only one association.

(2)(a) The act shall provide coverage to the persons specified in subsection (1) of this section for direct nongroup life, health, or annuity policies or contracts and supplemental contracts to any of these and for certificates under direct group policies and contracts, except as limited by the act. Annuity contracts and certificates under group annuity contracts include allocated funding agreements, structured settlement annuities, and any immediate or deferred annuity contracts.

(b) The act shall not apply to:

(i) Any portion of any policy or contract not guaranteed by the insurer or under which the risk is borne by the policy or contract holder;

(ii) A policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;

(iii) A portion of a policy or contract to the extent that the rate of interest on which it is based or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(A) Averaged over the period of four years prior to the date on which the member insurer becomes an impaired or insolvent insurer under the act, whichever is earlier, exceeds the rate of interest determined by subtracting two percentage points from Moody's corporate bond yield average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the member insurer becomes an impaired or insolvent insurer under the act, whichever is earlier; and

(B) On and after the date on which the member insurer becomes an impaired or insolvent insurer under the act, whichever is earlier, exceeds the rate of interest determined by subtracting three percentage points from Moody's corporate bond yield average as most recently available;

(iv) A portion of a policy or contract issued to a plan or program of an employer, association, or other person to provide life, health, or annuity benefits to its employees, members, or others, to the extent that the plan or program is self-funded or uninsured, including benefits payable by an employer, association, or other person under:

(A) A multiple employer welfare arrangement as described in 29 U.S.C. 1144;

(B) A minimum premium group insurance plan;

(C) A stop-loss group insurance plan; or

(D) An administrative services only contract;

(v) A portion of a policy or contract to the extent that it provides

for:

(A) Dividends or experience rating credits;

(B) Voting rights; or

(C) Payment of any fees or allowances to any person, including the policy or contract owner, in connection with the service to or administration of the policy or contract;

(vi) A policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

(vii) A portion of a policy or contract to the extent that the assessments required by section 44-2708 with respect to the policy or contract are preempted by federal or state law;

(viii) An obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policy owner, including:

(A) Claims based on marketing materials;

(B) Claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable policy form, filing, or approval requirements;

(C) Misrepresentations of or regarding policy benefits;

(D) Extra-contractual claims; or

(E) A claim for penalties or consequential or incidental damages;

(ix) A contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an

affiliate of the member insurer;

(x) A portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract or as to which the policy or contract owner's rights are subject to forfeiture as of the date the member insurer becomes an impaired or insolvent insurer under the act, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this subdivision, the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture;

(xi) An unallocated annuity contract;

(xii) Any such policy or contract issued by:

(A) A nonprofit hospital or medical service organization;

(B) A health maintenance organization unless such organization is controlled by an insurance company licensed by the Department of Insurance under Chapter 44;

(C) A fraternal benefit society;

(D) A mandatory state pooling plan;

(E) An unincorporated mutual association;

(F) An assessment association operating under Chapter 44 which issues only policies or contracts subject to assessment; or

(G) A reciprocal or interinsurance exchange which issues only policies or contracts subject to assessment; or

(xiii) Any policy or contract issued by any person, corporation, or organization which is not licensed by the Department of Insurance under Chapter 44.

(3) The benefits that the association may become obligated to cover shall in no event exceed the lesser of:

(a) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(b)(i) With respect to one life, regardless of the number of policies or contracts:

(A) Three hundred thousand dollars in life insurance death benefits, but not more than one hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance;

(B) Five hundred thousand dollars in health insurance benefits; or

(C) One hundred thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(ii) With respect to each payee of a structured settlement annuity or beneficiary or beneficiaries of the payee if deceased, one hundred thousand dollars in the present value of annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any;

(iii) The association shall not be obligated to cover more than:

(A) An aggregate of three hundred thousand dollars in benefits with respect to any one life under subdivisions (3)(b)(i)(A) and (C) of this section, except that with respect to benefits for health insurance under subdivision (3)(b)(i)(B) of this section, in which case the aggregate liability of the association shall not exceed five hundred thousand dollars with respect to any one individual; or

(B) With respect to one owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation, or other person and whether the persons insured are officers, managers, employees, or other persons, more than five million dollars in benefits regardless of the number of policies and contracts held by the owner;

(iv) The limitations set forth in this subsection are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under the act may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to its subrogation and assignment rights.

(4) In performing its obligations to provide coverage under section 44-2707, the association shall not be required to guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed, reinsured, or performed, the contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.

Sec. 16. Section 44-2707, Reissue Revised Statutes of Nebraska, is amended to read:

44-2707. In addition to the powers and duties enumerated in the Nebraska Life and Health Insurance Guaranty Association Act:

(1) If a ~~domestic member~~ insurer is an impaired insurer, the association may, at its discretion and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer, and that are approved by the director:  ~~and are, except in cases of court-ordered conservation or rehabilitation, approved by the impaired insurer.~~

(a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, all the covered policies of the impaired insurer; and

(b) Provide such money, pledges, loans, notes, guarantees, or other means as are proper to effectuate subdivision (1)(a) of this section and assure payment of the contractual obligations of the impaired insurer pending action under subdivision (1)(a) of this section; and

~~(c) Loan money to the impaired insurer;~~

(2) If a foreign or alien insurer is an impaired insurer, the association may, in its discretion, or shall on order by the director after notice to the association and a hearing, with respect to the covered policies of residents and subject to any conditions which are imposed by the association other than those which impair the contractual obligations of the impaired insurer and, except in cases of court-ordered conservation or rehabilitation, which are approved by the impaired insurer and approved by the director.

~~(a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the impaired insurer's covered policies of residents;~~

~~(b) Provide such money, pledges, notes, guarantees, or other means as are proper to effectuate the provisions of subdivision (2)(a) of this section, and assure payment of the impaired insurer's contractual obligations to residents pending action under the provisions of subdivision (2)(a) of this section; and~~

~~(c) Loan money to the impaired insurer;~~

(3) (2) If a domestic member insurer is an insolvent insurer, the association shall, subject to the approval of the director in its discretion, either:

(a)(i)(A) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of residents or contracts of the insolvent insurer; or

~~(b) (B) Assure payment of the contractual obligations of the insolvent insurer; and to residents, including obligations to resident certificate holders of group insurance policies or contracts, regardless of the domicile of the group policy or contract holders;~~

~~(c) Provide the protections specified in subdivisions (3)(a) and (3)(b) of this section to nonresident policy and certificate holders of such domestic insurer if (i) they are not eligible for such protections under the laws of the states in which they reside, (ii) such domestic insurer never held a license or certificate of authority in such states, and (iii) the laws of such states provide protections similar to those provided by this subdivision to the residents of this state who are policy or certificate holders of insurers domiciled in such states; and~~

~~(d) (ii) Provide such money, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties, but if the association fails to act within a reasonable period of time under this subdivision, the director shall have the powers and duties of the association under the Nebraska Life and Health Insurance Guaranty Association Act with respect to such domestic insolvent insurer;~~

(4) If a foreign or alien insurer is an insolvent insurer, the association shall, subject to the approval of the director:

(a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of residents;

(b) Assure payment of the contractual obligations of the insolvent insurer to residents, including obligations to resident certificate holders of group insurance policies or contracts regardless of the domicile of the group policy or contract holders; and

(c) Provide such money, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties, but if the association fails to act within a reasonable period of time under this subdivision, the director shall have the powers and duties of the association under the Nebraska Life and Health Insurance Guaranty Association Act with respect to such foreign or alien insolvent insurer.

The protection provided by the Nebraska Life and Health Insurance

Guaranty Association Act shall not apply to the extent that guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the insolvent insurer other than this state;

(5)(a) In carrying out its duties under subdivisions (1), (2), (3), and (4) of this section, the association may request that there be imposed policy liens, contract liens, moratoriums on payments, or other similar means and such liens, moratoriums, or similar means may be imposed if the director:

(i) Finds that the amounts which can be assessed under the Nebraska Life and Health Insurance Guaranty Association Act are less than the amounts needed to assure full and prompt performance of the impaired or insolvent insurer's contractual obligations, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens, moratoriums, or similar means to be in the public interest; and

(ii) Approves the specific policy liens, contract liens, moratoriums, or similar means to be used.

(b) Before being obligated under subdivisions (1), (2), (3), and (4) of this section, the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans and such temporary moratoriums and liens may be imposed if they are approved by the director;

(6) The association may render assistance and advice to the director, upon his or her request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer;

(7) The association shall have standing to appear before any court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under the Nebraska Life and Health Insurance Guaranty Association Act. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations;

(8)(a) Any person receiving benefits under the Nebraska Life and Health Insurance Guaranty Association Act shall be deemed to have assigned his or her rights under the covered policy to the association to the extent of the benefits received because of such act whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, certificate holder, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by such act upon such person. The association shall be subrogated to these rights against the assets of any impaired or insolvent insurer;

(b) The subrogation rights of the association under this subdivision shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under such act;

(9) The contractual obligations of the impaired or insolvent insurer for which the association becomes or may become liable shall be as great as but no greater than the contractual obligations of the impaired or insolvent insurer would have been in the absence of an impairment or insolvency unless such obligations are reduced as permitted by subdivision (5) of this section, but the aggregate liability of the association with respect to any one life shall not exceed: (a) Three hundred thousand dollars in life insurance death benefits, but not more than one hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance; (b) one hundred thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values; or (c) three hundred thousand dollars for all life insurance, health insurance, and annuity benefits, including net cash surrender and net cash withdrawal values; and

(10) The association may:

(a) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of the Nebraska Life and Health Insurance Guaranty Association Act;

(b) Sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section 44-2708;

(c) Borrow money to effect the purposes of the act. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(d) Employ or retain such persons as are necessary to handle the financial transactions of the association and to perform such other functions

as become necessary or proper under the act;

(e) Negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association;

(f) Take such legal action as may be necessary to avoid payment of improper claims;

(g) Exercise, for the purposes of the act and to the extent approved by the director, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired or insolvent insurer; and

(h) Join an organization of one or more other state associations of similar purposes to further the purposes and administer the powers and duties of the association. the association's duties; or

(b) Provide benefits in accordance with the following provisions:

(i) With respect to life and health insurance policies and annuities, assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies or contracts of the insolvent insurer for claims incurred:

(A) With respect to group policies and contracts, not later than the earlier of the next renewal date under these policies or contracts or forty-five days but not less than thirty days after the date on which the association becomes obligated with respect to the policies and contracts;

(B) With respect to nongroup policies, contracts, and annuities, not later than the earlier of the next renewal date under the policies or contracts or one year but not less than thirty days after the date on which the association becomes obligated with respect to the policies or contracts;

(ii) Make diligent efforts to provide all known insureds or annuitants for nongroup policies and contracts, or group policy owners with respect to group policies and contracts, thirty days' notice of the termination made pursuant to subdivision (2)(b)(i) of this section of the benefits provided;

(iii) With respect to nongroup life and health insurance policies and annuities covered by the association, make available to each known insured or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly insured or formerly an annuitant under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of subdivision (2)(b)(iv) of this section if the insureds or annuitants had a right under law or the terminated policy or annuity to convert coverage to individual coverage or to continue an individual policy or annuity in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or annuity or had a right only to make changes in premium by class;

(iv)(A) In providing the substitute coverage required under subdivision (2)(b)(iii) of this section, the association may offer either to reissue the terminated coverage or to issue an alternative policy.

(B) Alternative or reissued policies shall be offered without requiring evidence of insurability and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.

(C) The association may reinsure any alternative or reissued policy;

(v)(A) Alternative policies adopted by the association shall be subject to the approval of the domiciliary insurance commissioner and the receivership court. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.

(B) Alternative policies shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates that it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured but shall not reflect any changes in the health of the insured after the original policy was last underwritten.

(C) Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association;

(vi) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the domiciliary insurance commissioner and the receivership court;



(vii) The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date the coverage or policy is replaced by another similar policy by the policy owner, the insured, or the association; and

(viii) When proceeding under subdivision (2)(b) of this section with respect to a policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with subdivision (2)(b)(iii) of section 44-2703;

(3) Nonpayment of premiums within thirty-one days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage terminates the association's obligations under the policy or coverage under the act with respect to the policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of the act;

(4) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association. The association shall be liable for unearned premiums due to policy or contract owners arising after the entry of the order;

(5) The protection provided by the act shall not apply if guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state;

(6) In carrying out its duties under subdivision (2) of this section, the association may, subject to approval by a court in this state:

(a) Impose permanent policy or contract liens in connection with a guarantee, assumption, or reinsurance agreement if:

(i) The association finds that the amounts which can be assessed under the act are less than the amounts needed to assure full and prompt performance of the association's duties under the act; or

(ii) That the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens, to be in the public interest; and

(b) Impose temporary moratoriums or liens on payments of cash values and policy loans or any other right to withdraw funds held in conjunction with policies or contracts in addition to any contractual provisions for deferral of cash or policy loan value.

If the receivership court imposes a temporary moratorium or moratorium charge on payment of cash values or policy loans or on any other right to withdraw funds held in conjunction with policies or contracts out of the assets of the impaired or insolvent insurer, the association may defer the payment of cash values, policy loans, or other rights by the association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court;

(7) A deposit in this state which is held pursuant to law or required by the director for the benefit of creditors and policy owners and not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in this state or in a reciprocal state, pursuant to section 44-4852, shall be promptly paid to the association. The association shall be entitled to retain a portion of such amount equal to the percentage determined by dividing the aggregate amount of policy owners' claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy owners' claims in this state related to that insolvency. The association shall remit to the domiciliary receiver the amount so paid to the association and retained pursuant to this subdivision. Any amount paid to the association less the amount retained by it shall be treated as a distribution of estate assets pursuant to section 44-4834 or similar provision of the state of domicile of the impaired or insolvent insurer;

(8) If the association fails to act within a reasonable period of time with respect to an insolvent insurer, as provided in subdivision (2) of this section, the director shall have the powers and duties of the association under the act with respect to the insolvent insurer;

(9) At the request of the director, the association may give assistance and advice to the director concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of an impaired or insolvent insurer;

(10) The association shall have standing to appear before any court or administrative agency in this state with jurisdiction over an impaired or

insolvent insurer concerning which the association is or may become obligated under the act or with jurisdiction over any person or property against which the association may have rights through subrogation or other basis. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring or guaranteeing the policies or contracts and contractual obligations of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations. The association shall also have the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person against whom the association may have rights through subrogation or otherwise;

(11)(a) Any person receiving benefits under the act shall be deemed to have assigned his or her rights under and any causes of action against any person for losses arising under the covered policy to the association to the extent of the benefits received because of the act whether the benefits are payments of contractual obligations or continuation of coverage or provision of substitute or alternative coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, certificate holder, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by such act upon such person.

(b) The subrogation rights of the association under this subdivision shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under such act.

(c) In addition to subdivisions (11)(a) and (b) of this section, the association shall have all common-law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or owner, beneficiary, or payee of a policy or contract with respect to the policy or contracts. Such common-law rights and equitable or legal remedies include, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received pursuant to the act, against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment therefor. Nothing in this subdivision shall include any such person responsible solely by reason of serving as an assignee in respect of a qualified assignment under section 130 of the Internal Revenue Code.

(d) If the provisions of this subdivision are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies or portion of such amount covered by the association.

(e) If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights as described in subdivision (11) of this section, the person shall pay to the association the portion of the recovery attributable to the policies or any portion of such recovery covered by the association;

(12) The association may:

(a) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of the act;

(b) Sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section 44-2708;

(c) Borrow money to effect the purposes of the act. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(d) Employ or retain such persons as are necessary to handle the financial transactions of the association and to perform such other functions as become necessary or proper under the act;

(e) Negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association;

(f) Take such legal action as may be necessary to avoid payment of improper claims;

(g) Exercise, for the purposes of the act and to the extent approved by the director, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired or insolvent insurer;

(h) Organize itself as a corporation or in other legal form

permitted by the laws of the state;

(i) Request information from a person seeking coverage from the association in order to aid the association in determining its obligations under the act with respect to the person, and the person shall promptly comply with the request;

(j) Take other necessary or appropriate action to discharge its duties and obligations under the act or to exercise its powers under the act; and

(k) Join an organization of one or more other state associations of similar purposes to further the purposes and administer the powers and duties of the association;

(13)(a) At any time within one year after the coverage date, the association may elect to succeed to the rights and obligations of the member insurer that accrue on or after the coverage date and that relate to contracts covered, in whole or in part, by the association under any one or more indemnity reinsurance agreements entered into by the member insurer as a ceding insurer and selected by the association, except that the association may not exercise an election with respect to a reinsurance agreement if the receiver, rehabilitator, or liquidator of the member insurer has previously and expressly disaffirmed the reinsurance agreement. For purposes of this section, coverage date means the date on which the association becomes responsible for the obligations of a member insurer. The election shall be effected by a notice to the receiver, rehabilitator, or liquidator and to the affected reinsurers. If the association makes an election, subdivisions (13)(a)(i) through (iv) of this section apply to the agreements selected by the association:

(i) The association shall be responsible for all unpaid premiums due under the agreements for periods both before and after the coverage date and shall be responsible for the performance of all other obligations to be performed after the coverage date in each case that relates to contracts covered, either in whole or in part, by the association. The association may charge contracts covered in part by the association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the association;

(ii) The association shall be entitled to any amounts payable by the reinsurer under the agreements with respect to losses or events that occur in periods after the coverage date and that relate to contracts covered by the association, in whole or in part, except that on receiving such amounts, the association shall pay to the beneficiary under the policy or contract on account of which the amounts were paid a portion of the amount equal to the excess of: (A) The amount received by the association, over (B) the benefits paid by the association on account of the policy or contract less the retention of the impaired or insolvent member insurer applicable to the loss or event;

(iii) Within thirty days after the association's election, the association and each indemnity reinsurer shall calculate the net balance due to or from the association under each reinsurance agreement as of the date of the association's election, giving full credit to all items paid by either the member insurer, or its receiver, rehabilitator, or liquidator, or the indemnity reinsurer during the period between the coverage date and the date of the association's election. The association or indemnity reinsurer shall pay the net balance due the other within five days after the completion of such calculation. If the receiver, rehabilitator, or liquidator has received any amounts due the association pursuant to subdivision (13)(a)(ii) of this section, the receiver, rehabilitator, or liquidator shall, as promptly as practicable, pay such amounts to the association; and

(iv) If the association, within sixty days after the election, pays the premiums due for periods both before and after the coverage date that relate to contracts covered by the association in whole or in part, the reinsurer shall not be entitled to terminate the reinsurance agreements to the extent that the agreements relate to contracts covered by the association either wholly or partially and may not set off any unpaid premium due for periods prior to the coverage date against amounts due the association;

(b) If the association transfers its obligations to another insurer and if the association and the other insurer agree, such insurer shall succeed to the rights and obligations of the association under subdivision (13)(a) of this section effective as of the date agreed upon by the association and such insurer and regardless of whether the association has made the election referred to in subdivision (13)(a) of this section except that:

(i) The indemnity reinsurance agreements shall automatically terminate for new reinsurance unless the indemnity reinsurer and the other insurer agree to the contrary;

(ii) The obligations described in the exception set forth in subdivision (13)(a)(ii) shall not apply on and after the date the indemnity reinsurance agreement is transferred to the third party insurer; and

(iii) Subdivision (13)(b) of this section shall not apply if the association has previously stated in writing that it will not exercise the election referred to in subdivision (13)(a) of this section;

(c) The provisions of subdivision (13) of this section shall supersede the provisions of any law of this state or of any affected reinsurance agreement that provides for or requires any payment of reinsurance proceeds on account of losses or events that occur in periods after the coverage date to the receiver, liquidator, or rehabilitator of the insolvent member insurer. The receiver, rehabilitator, or liquidator shall remain entitled to any amounts payable by the reinsurer under the reinsurance agreement with respect to losses or events that occur in periods prior to the coverage date, subject to applicable setoff provisions; and

(d) Except as otherwise expressly set forth in subdivision (13) of this section, nothing in such subdivision shall alter or modify the terms and conditions of the indemnity reinsurance agreements of the insolvent member insurer. Nothing in the subdivision shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance agreement. Nothing in such subdivision shall give a policyowner or beneficiary an independent cause of action against an indemnity reinsurer that is not otherwise set forth in the indemnity reinsurance agreement;

(14) The board of directors of the association shall have discretion and may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of the act in an economical and efficient manner;

(15) If the association has arranged or offered to provide the benefits of the act to a covered person under a plan or arrangement that fulfills the association's obligations under the act, such person shall not be entitled to benefits from the association in addition to or other than those provided under the plan or arrangement; and

(16) Venue in an action against the association arising under the act shall be in the district court of Lancaster County. The association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under the act.

Sec. 17. Section 44-2708, Revised Statutes Supplement, 2000, is amended to read:

44-2708. (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such times and for such amounts as the board finds necessary. The board shall collect the assessments after thirty days' written notice to the member insurers before payment is due, and the assessments shall accrue interest at the rate calculated pursuant to section 45-103 on and after the due date.

(2) There shall be ~~three~~ two classes of assessments as follows:

(a) Class A assessments shall be made for the purpose of meeting administrative costs and other general expenses, including expenses for examinations conducted under the authority of subdivision (2) of section 44-2711. Class A assessments may be made whether or not related to a particular impaired or insolvent insurer; and

(b) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 44-2707 with regard to an impaired or insolvent domestic insurer. ~~and~~

~~(c) Class C assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 44-2707 with regard to an impaired or insolvent foreign or alien insurer.~~

(3)(a) The amount of any Class A assessment for each account shall be determined by the board and may be authorized and called on a pro rata or non-pro-rata basis. If pro rata, the board may provide that it be credited against future Class B assessments. The total of all non-pro-rata assessments shall not exceed one hundred fifty dollars per member insurer in any one calendar year. The amount of any Class B ~~or C~~ assessment shall be divided among the accounts in the proportion that the premiums received by the impaired or insolvent insurer on the policies covered by each account bears to the premiums received by such insurer on all covered policies allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.

(b) Class B ~~and Class C~~ assessments against member insurers for each account and subaccount shall be in the proportion that the premiums received

on business in this state by each assessed member insurer on policies covered by each account bears, for the three most recent calendar years for which information is available preceding the year in which the insurer became insolvent or, in the case of an assessment with respect to an impaired insurer, the three most recent calendar years for which information is available preceding the year in which the insurer became impaired, to such premiums received on business in this state by all assessed member insurers.

(c) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of the Nebraska Life and Health Insurance Guaranty Association Act. Classification of assessments under subsection (2) of this section and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible. The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within one hundred eighty days after the assessment is authorized.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed two percent of such insurer's premiums in this state on the policies covered by the account.

~~(5) In the event if~~ an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth pursuant to this subsection, (4) of this section, the amount by which such assessment is abated or deferred shall be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.

(5)(a) Subject to the provisions of subdivision (b) of this subsection, the total of all assessments authorized by the association with respect to a member insurer for each subaccount of the life insurance and annuity account and for the health account shall not in one calendar year exceed two percent of that member insurer's average annual premiums received in this state on the policies and contracts covered by the subaccount or account during the three calendar years preceding the year in which the insurer became an impaired or insolvent insurer.

(b) If two or more assessments are authorized in one calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation referenced in subdivision (a) of this subsection shall be equal and limited to the higher of the three-year average annual premiums for the applicable subaccount or account as calculated pursuant to this section.

(c) If the maximum assessment, together with the other assets of the association in either account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by the Nebraska Life and Health Insurance Guaranty Association Act act.

(6) The board may, by an equitable method as established in the plan of operation, refund to member insurers in proportion to the contribution of each insurer to that account the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

(7) It shall be proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance specified under the Nebraska Life and Health Insurance Guaranty Association Act act, to consider the amount reasonably necessary to meet its assessment obligations under such act.

(8) The association shall issue to each insurer paying ~~an~~ a Class B assessment under the Nebraska Life and Health Insurance Guaranty Association Act act a certificate of contribution in a form prescribed by the director for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue.

(9)(a) A member insurer that wishes to protest all or part of an

assessment shall pay when due the full amount of the assessment as set forth in the notice provided by the association. The payment shall be available to meet association obligations during the pendency of the protest or any subsequent appeal. A statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest shall accompany the payment.

(b) Within sixty days following the payment of an assessment under protest by a member insurer, the association shall notify the member insurer in writing of its determination with respect to the protest unless the association notifies the member insurer that additional time is required to resolve the issues raised by the protest.

(c) Within thirty days after a final decision has been made, the association shall notify the protesting member insurer in writing of that final decision. Within sixty days after receipt of notice of the final decision, the protesting member insurer may appeal that final action to the director.

(d) In the alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the association may refer protests to the director for a final decision, with or without a recommendation from the association.

(e) If the protest or appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member insurer. Interest on a refund due a protesting member shall be paid at the rate actually earned by the association.

(10) The association may request information of member insurers in order to aid in the exercise of its power under this section, and member insurers shall promptly comply with a request.

Sec. 18. Section 44-2709, Reissue Revised Statutes of Nebraska, is amended to read:

44-2709. (1)(a) The association shall submit to the director a plan of operation and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments shall become effective upon approval in writing by the director.

(b) If the association fails to submit a suitable plan of operation within one hundred eighty days following August 24, 1975, or if at any time thereafter the association fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate such reasonable rules and regulations as are necessary or advisable to effectuate the Nebraska Life and Health Insurance Guaranty Association Act. Such rules and regulations shall continue in force until modified by the director or superseded by a plan submitted by the association and approved by the director.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall, in addition to requirements enumerated in the Nebraska Life and Health Insurance Guaranty Association Act:

(a) Establish procedures for handling the assets of the association;

(b) Establish the amount and method of reimbursing members of the board of directors under section 44-2706;

(c) Establish regular places and times for meetings of the board of directors;

(d) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(e) Establish the procedures whereby selections for the board of directors shall be made and submitted to the director;

(f) Establish any additional procedures for assessments pursuant to section 44-2708; and

(g) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under subdivision ~~(10)(e)~~ (12)(c) of section 44-2707 and section 44-2708, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of the association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation made under this subsection shall take effect only with the approval of both the board of directors and the director and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by the Nebraska Life and Health Insurance Guaranty Association Act.

Sec. 19. Section 44-2713, Reissue Revised Statutes of Nebraska, is amended to read:

44-2713. (1) Nothing in the Nebraska Life and Health Insurance Guaranty Association Act shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

(2) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties pursuant to section 44-2707. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the association to render a report of its activities as provided in section 44-2714.

(3) For the purpose of carrying out its obligations under the Nebraska Life and Health Insurance Guaranty Association Act, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to subdivision ~~(8)~~ (11) of section 44-2707. All assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by the act. Assets attributable to covered policies, as used in this subsection, are that proportion of the assets which the reserves that should have been established for such policies bear to the reserve that should have been established for all policies of insurance written by the impaired or insolvent insurer.

(4)(a) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders and policyowners of the impaired or insolvent insurer, and any other party with a bona fide interest in making an equitable distribution of the ownership rights of such impaired or insolvent insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(b) No distribution to shareholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of assessments levied by the association with respect to such insurer have been fully recovered by the association.

(5) It shall be a prohibited unfair trade practice for any person to make use in any manner of the protection afforded by the Nebraska Life and Health Insurance Guaranty Association Act in the sale of insurance.

(6)(a) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, from any affiliate, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of subdivisions (b), (c), and (d) of this subsection.

(b) No such dividend shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) Any person who was an affiliate of the insurer at the time the distributions were paid shall be liable up to the amount of distributions such person received. Any person who was an affiliate of the insurer at the time the distributions were declared shall be liable up to the amount of distributions such person would have received if they had been paid immediately. If two persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(d) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer.

(e) If any person liable under subdivision (c) of this subsection is insolvent, all affiliates of such person at the time the dividend was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

Sec. 20. Section 44-4201, Reissue Revised Statutes of Nebraska, is

amended to read:

44-4201. Sections 44-4201 to 44-4235 and section 22 of this act shall be known and may be cited as the Comprehensive Health Insurance Pool Act.

Sec. 21. Section 44-4203, Revised Statutes Supplement, 2000, is amended to read:

44-4203. For the purposes of the Comprehensive Health Insurance Pool Act, the definitions found in sections 44-4204 to 44-4215 and section 22 of this act shall be used.

Sec. 22. Resident means an individual who is legally domiciled in this state.

Sec. 23. Original sections 44-417, 44-516, 44-517, 44-520, 44-10,100, 44-10,106, 44-1981, 44-19,108, 44-2121, 44-2702, 44-2703, 44-2707, 44-2709, 44-2713, and 44-4201, Reissue Revised Statutes of Nebraska, and sections 44-522, 44-523, 44-1992, 44-19,115, 44-2708, and 44-4203, Revised Statutes Supplement, 2000, are repealed.