

## LEGISLATIVE BILL 801

Approved by the Governor April 10, 1984

Introduced by Barrett, 39

AN ACT relating to insurance; to amend sections 44-103 and 44-140, Reissue Revised Statutes of Nebraska, 1943, and section 44-114, Revised Statutes Supplement, 1982; to adopt the Insurance Producers Licensing Act; to redefine terms; to harmonize provisions; to eliminate certain licensing provisions and penalties; to provide an operative date; to provide severability; and to repeal the original sections, and also sections 44-327 to 44-335, 44-339 to 44-340, 44-342 to 44-342.02, 44-342.04 to 44-344, and 44-345 to 44-347, Reissue Revised Statutes of Nebraska, 1943, section 44-344.01, Revised Statutes Supplement, 1982, and sections 44-341 and 44-342.03, Revised Statutes Supplement, 1983.

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

Section 1. Sections 1 to 44 of this act shall be known and may be cited as the Insurance Producers Licensing Act.

Sec. 2. As used in the Insurance Producers Licensing Act, unless the context otherwise requires:

(1) Appointment shall mean written notification to the department by an insurance company that it will accept applications for insurance from a licensed agent named in such notification;

(2) Broker shall mean any individual who acts or aids in any manner in negotiating contracts of insurance, in placing risks, or in soliciting or effecting contracts of insurance as an agent for an insured other than himself or herself and not as an agent of an insurance company or any other type of insurance carrier. Broker shall not include (a) a person working as an officer for an insurance carrier, (b) a person in a clerical, administrative, or service capacity for an insurance carrier, licensed agent, or broker if the person does not solicit contracts of insurance, (c) an attorney-at-law in the performance of his or her duties, (d) an insured who places or negotiates the placement of his or her own insurance, or (e) any employee of an insured engaged in placing or negotiating for placement of insurance for his or her employer;

(3) Department shall mean the Department of Insurance;

(4) Director shall mean the Director of

Insurance;

(5) Insurance agent or agent shall mean any individual, whether or not compensated, who solicits, negotiates, effects, procures, renews, continues, or binds policies or certificates of insurance covering property or risks located in Nebraska, except that any individual exempted by section 6 of this act shall not be deemed an insurance agent;

(6) Insurance agency shall mean any partnership, unincorporated association, or corporation transacting or doing business with the public or insurance companies as an insurance agent or broker;

(7) License or insurance license shall mean any agent's license, broker's license, or insurance agency's license; and

(8) Person shall mean any individual, corporation, partnership, or other entity.

Sec. 3. Any person not licensed as an insurance agent or broker who engages in any activity specified in subdivision (2) or (5) of section 2 of this act shall be deemed an insurance agent or broker and shall be subject to the Insurance Producers Licensing Act.

Sec. 4. Every agent who solicits an application for insurance of any kind shall in any controversy between the insured or the insured's beneficiary and the company issuing any policy upon such application be presumed to be representing the company and not the insured and nothing in the Insurance Producers Licensing Act shall be construed to rebut such presumption. Such presumption shall not apply to a broker who is not an appointed agent of the company.

Sec. 5. An individual shall not act as or hold himself or herself out to be an agent unless such individual is duly licensed in this state. An agent shall not make application for, solicit applications for, or procure any policies for any kind of insurance for which such agent is not licensed. An agent may become licensed to write one or more of the following lines of insurance: (1) Personal lines property and casualty insurance; (2) commercial lines property and casualty insurance; (3) life insurance and annuities; (4) variable contracts; (5) sickness, accident, and health insurance; (6) credit life and credit accident and health insurance; (7) title insurance; (8) crop insurance; (9) assessment association insurance; and (10) miscellaneous insurance.

A license issued for assessment association insurance shall entitle the licensed agent to solicit for and place business in any domestic assessment association regulated by Chapter 44, article 8, by which the licensee is appointed. Such license shall also entitle the licensee to solicit and place personal and general liability coverage, from any other admitted company by which the licensee is appointed, in connection with coverages placed

with an assessment association. At least seventy-five per cent of the annual premiums written by the licensee under such license shall be written directly with assessment associations.

Sec. 6. The following persons need not be licensed as an agent:

(1) A strictly salaried employee of an agent or company who performs clerical or administrative services only;

(2) A person who secures and furnishes information for (a) the purpose of group or wholesale life insurance, (b) enrolling individuals under such insurance plans or issuing certificates thereunder, or (c) otherwise assisting in administering such insurance plans, when no commission is paid for such service; and

(3) An employer or his, her, or its officers or employees or the trustee of any employee trust plan to the extent that such employer, officer, employee, or trustee is engaged in the administration or operation of any program of employee benefits for his, her, or its own employees or the employees of a subsidiary or affiliate involving the use of insurance issued by a licensed insurance company if such employer, officer, employee, or trustee is not in any manner compensated directly or indirectly by the insurance company issuing such insurance.

Sec. 7. An applicant may qualify for a resident agent's or broker's license only if the applicant maintains his or her principal place of residence in Nebraska. Any application for a resident agent's or broker's license shall constitute an election of residency in Nebraska. A license may be granted if the applicant, while holding a resident agent's or broker's license in another state, verifies on the application form that such applicant has taken all steps necessary to cancel his or her resident agent's or broker's license in such other state and that the applicant has established his or her principal residency in Nebraska. A license may be revoked if the licensed agent or broker while holding a resident license in Nebraska also holds or makes application for a resident license in or claims to be a resident of any other state or other jurisdiction or ceases to be a resident of Nebraska.

Sec. 8. An applicant may qualify for a license under the Insurance Producers Licensing Act as a nonresident only if the applicant holds a resident agent's, broker's, or consultant's license in any state, district, or territory of the United States or any province of Canada. A license issued to a nonresident of Nebraska shall grant the same rights and privileges offered a resident licensee, except as limited by section 9 of this act.

Sec. 9. The director may enter into a reciprocal



agreement with the director, commissioner, or superintendent of any other state, district, or territory of the United States or any province of Canada granting to individuals who hold credentials recognized by the director to be equivalent to the requirements of the Insurance Producers Licensing Act the right to be a licensed agent without examination. The director may accept, without examination, a nonresident who has a certificate of the proper licensing authority showing that such nonresident has passed a written examination comparable to the examination given in Nebraska or has been a continuous holder, prior to the time such written examination was required, of an agent's license like that being applied for in Nebraska. Whenever by the laws and regulations of any other state, district, or territory of the United States or any province of Canada any limitation of rights, privileges, conditions precedent, or any requirements are imposed upon residents of Nebraska who are nonresident applicants or licensees of such other state or jurisdiction in addition to or in excess of those imposed on nonresidents under the Insurance Producers Licensing Act, the same requirements shall be imposed upon the residents of such other state or jurisdiction.

Sec. 10. The director shall issue an agent's license to the following persons without examination if such person meets all other license requirements:

- (1) Any applicant for a temporary license;
- (2) Any applicant for a license covering the same line or lines of insurance for which the applicant was licensed under a like license in this state, other than a temporary license, within the thirty-six months preceding the date of application unless such previous license was revoked or suspended by the director;
- (3) Any insurance agency which is required to be licensed under the Insurance Producers Licensing Act;
- (4) Any ticket-selling agent of a common carrier who acts only with reference to the issuance of accident insurance or insurance on personal effects carried as baggage, in connection with the transportation provided by such common carrier, or any person selling limited travel insurance in transportation terminals;
- (5) Any person involved in insurance solicitation solely through enrollment of individuals under a group insurance policy;
- (6) Any applicant who only solicits or procures credit life or credit sickness and accident insurance in connection with a loan or a retail time sales transaction;
- (7) Home office or branch office employees of insurers or of general agents who work with or through resident agents in the solicitation, negotiation, or effectuation of insurance and who are compensated by salary only;
- (8) Any officer, employee, or secretary of any

fraternal benefit society who devotes substantially all of his or her time to activities other than the solicitation of insurance contracts and who receives no commission or other compensation directly dependent upon the number or amount of contracts solicited; or

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

Sec. 11. An individual shall not act as or hold himself or herself out to be a broker until such individual has procured a broker's license pursuant to the Insurance Producers Licensing Act, and no broker shall solicit or take applications for, procure, or place for others any kind of insurance for which such broker is not licensed. A broker may become licensed as a casualty insurance broker or a life insurance broker. Casualty insurance broker shall mean an individual licensed pursuant to the Insurance Producers Licensing Act for the brokerage of property and casualty insurance. Life insurance broker shall mean an individual licensed pursuant to the Insurance Producers Licensing Act for the brokerage of life and accident and health insurance.

Sec. 12. (1) No individual shall be eligible to apply for a license as a life insurance broker unless such individual has been licensed as a life and accident and health insurance agent or broker in this or another state, a United States territory, or a province of Canada for the three years immediately preceding the date of application. Such requirement shall not include variable contract licenses.

(2) No individual shall be eligible to apply for a license as a casualty insurance broker unless such individual has been licensed as a personal lines and commercial lines agent in Nebraska or has been licensed in similar lines in another state, a United States territory, or a province of Canada for the three years immediately preceding the date of application.

(3) Except as otherwise provided by this subsection, no individual shall be eligible for a broker's license unless such individual is a resident of the State of Nebraska and a citizen of the United States. Evidence of such facts shall be submitted to the director at the time of application. A broker's license may be issued to a nonresident who is licensed as a broker by the state in which he or she resides if such nonresident (a) has been licensed as a nonresident agent in this state for the three years immediately preceding the date of application or (b) satisfactorily demonstrates to the director that he or she is qualified in the line of insurance to be transacted under the broker's license for which application is made.

(4) Nothing in the Insurance Producers Licensing Act shall be construed to prevent an individual from being simultaneously licensed under such act as a life insurance

broker and a casualty insurance broker.

Sec. 13. Any insurer which delivers a contract of insurance in this state to any insurance broker pursuant to the application or request of such broker shall be deemed to have authorized such broker to act on its behalf in receiving the premium, effectuating policy coverage, and receiving notification of claims. Any broker who is also a licensed agent for the company whose policy is negotiated shall be deemed to be acting as an agent for the company. Resident brokers shall have authority to countersign policies in compliance with section 41 of this act.

Sec. 14. No person shall act as or hold himself, herself, or itself out to be an insurance agency until such person has procured a license in this state. No license shall be granted to an insurance agency unless the agency designates a licensed agent or broker who shall have full responsibility for the conduct of all business transactions of the insurance agency within the state relative to insurance. Such designated agent or broker shall be either an officer or a member of the agency and shall have either (1) more than a nominal financial interest in the agency or (2) be an active participant in the management of the agency. Any individual associated with a licensed agency who solicits insurance shall be a licensed agent or broker. No agency shall pay any commission to anyone other than a licensed agent or broker and no licensed agent or broker shall assign any commissions to any unlicensed agency.

Sec. 15. All licenses issued pursuant to the Insurance Producers Licensing Act shall state the name and business address of the licensed person, date of issue, the expiration date of April 30, the line or lines of insurance covered by the license, and such other information as the director considers proper for inclusion in the license. All licenses issued under the Insurance Producers Licensing Act shall be valid for one year. The department shall establish procedures for the renewal of licenses. Every person licensed under the Insurance Producers Licensing Act shall notify the department within thirty days of any change in such person's residential or business address. Any person failing to provide such notification shall be subject to a fine by the director of not more than five hundred dollars per violation or suspension of the person's license until the change of address is reported to the department or both.

Sec. 16. The department shall issue a single license to each agent or broker, whether a resident or nonresident, and each agency licensed under Chapter 44.

Sec. 17. Application for any insurance license shall be made to the director by the applicant on a form prescribed by the director and shall be accompanied by a license fee as established by the director. An applicant



for any license under the Insurance Producers Licensing Act shall be competent, trustworthy, and financially responsible and have a good personal and business reputation. An applicant for any agent's or broker's license shall be at least nineteen years of age.

Sec. 18. The director may issue a duplicate license for any lost, stolen, or destroyed license issued pursuant to the Insurance Producers Licensing Act upon receipt of an affidavit of the licensed person concerning the facts of such loss and payment of a duplicate license fee.

Sec. 19. (1) Before any license is issued or renewed under the Insurance Producers Licensing Act, the person requesting such license shall pay or cause to be paid to the department the following fee as established by the director: (a) For each resident agent license, a fee not to exceed ten dollars; (b) for each nonresident agent license, a fee not to exceed twenty-five dollars; (c) for each resident broker license, a fee not to exceed fifty dollars; (d) for each nonresident broker license, a fee not to exceed fifty dollars; and (e) for each agency license, a fee not to exceed ten dollars.

(2) If a licensed person (a) desires to add a line or lines of insurance to his or her existing license, (b) seeks to change any other information contained in the license for any reason, or (c) applies for a duplicate license, such person shall pay to the department a fee established by the director to cover the expense of replacing the license. The department shall not issue a license to any person who fails to pay the required license fee when it becomes due. No fee established by the director pursuant to this section shall exceed fifty dollars, except that if any other state imposes additional or greater fees, obligations, or prohibitions on Nebraska resident agents, brokers, or agencies, then such additional or greater fees, obligations, or prohibitions shall be imposed upon similar agents, brokers, or agencies of such other state applying for a license in Nebraska.

Sec. 20. Except as permitted by section 10 of this act, after the completion and filing of the application for any license, the director shall give each applicant a written examination to determine competence to act as a licensed agent or broker in those lines of insurance for which such applicant desires to become licensed. Each examination shall be approved for use by the director and shall reasonably test the applicant's knowledge of (1) the lines of insurance, policies, and transactions to be handled under the license applied for, (2) the duties and responsibilities of a licensed agent or broker, and (3) the pertinent insurance laws of Nebraska. Examination shall be at such reasonable times and places as designated by the director.

Sec. 21. The director shall prepare or cause to

be prepared and make available upon request study material covering each kind of insurance specified in section 5 of this act. The examination questions shall be taken from such study material. The director shall charge a fee for study material in an amount reasonably necessary to defray the expense of preparation or procurement of such material.

Sec. 22. The applicant for any license under the Insurance Producers Licensing Act shall pay or cause to be paid an examination fee as established by the director in advance of such examination, which fee shall not exceed fifty dollars and shall cover all of the examinations given to the applicant at the same time and place. The fee shall not be refunded to the applicant. Examination fees collected under the Insurance Producers Licensing Act shall be deposited by the State Treasurer in the Department of Insurance Cash Fund unless the director contracts with an independent testing organization in which case the applicant shall pay the examination fee directly to such independent testing organization and the fee shall be the amount charged by the testing organization.

Sec. 23. The director may designate personnel within the department or contract with any independent testing organization to conduct and grade all examinations in a fair and impartial manner and without discrimination as between individuals examined. The applicant shall pass the examination with a grade determined by the director to indicate satisfactory knowledge and understanding of the line or lines of insurance for which the applicant seeks qualification.

Sec. 24. Any person who impersonates any other person or permits any other person to impersonate him or her in connection with any examination held in accordance with the Insurance Producers Licensing Act shall be deemed guilty of a Class IV misdemeanor and, if such person is a licensed agent or broker, he or she shall be subject to any of the penalties provided under sections 28 and 31 of this act.

Sec. 25. The director may require a licensed agent or broker to submit to reexamination if, after notice and hearing, the director has reason to believe that such agent or broker lacks competence in any area of insurance for which he or she is licensed.

Sec. 26. The director may deny the application for an agent's, broker's, or agency license if the applicant has:

- (1) Failed to comply with any prerequisite of law for the issuance of such license;
- (2) Failed to account for or remit any money belonging to another which comes into the applicant's possession in the course of such applicant's insurance business;
- (3) Been adjudged a bankrupt with debts related



to the receipt or transmittal of insurance premiums or other funds to an insurer or insured in such applicant's fiduciary capacity or has issued to the department an insufficient fund or no-fund check;

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

(5) Engaged in any fraud, misrepresentation, or dishonest practice or has not demonstrated trustworthiness or competency to transact business in such a manner as to safeguard the public;

(6) Been denied an insurance license or has had a license suspended or revoked in this or any other state;

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

(8) Violated the insurance laws of this state or of any state, district, or territory of the United States or any province of Canada; or

(9) Attempted to obtain a license through misrepresentation or fraud or has cheated on an examination for an agent's or broker's license.

Sec. 27. If the director denies any application for a license, the director shall notify the applicant and advise the applicant in writing of the reasons for the denial. Within thirty days of receipt of notification of denial, the applicant may make written demand to the director for a hearing on the matter of denial. Such hearing shall be commenced within thirty days from the date the written demand is received by the director. The director shall advise the applicant of the time and place of the hearing. If after such hearing the director's decision to deny the application remains unchanged, the applicant may appeal from the decision of the director in the manner provided by Chapter 84, article 9.

Sec. 28. The director may revoke or suspend any person's license or place a licensed person on probation for such period as may be determined to be appropriate if, after notice to the licensed person and hearing, the director determines such person has:

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

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

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

(4) Engaged in any unfair method of competition or an unfair or deceptive act or practice in the business

of insurance as defined in Chapter 44, article 15;

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

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

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

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

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

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

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

(12) Failed to submit to a reexamination for competency or has failed to pass such examination as required by section 25 of this act;

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

(14) Knowingly failed to report to the department the actions of any insurance company, licensed agent, broker, agency, or other person which violate Nebraska insurance laws; or

(15) Violated the terms of the department's order of probation as applied to such licensed person.

Sec. 29. Before revoking or suspending the license of any person or placing a licensed person on probation, the director shall give notice of a hearing on the matter to the licensed person and any appointing company of a licensed agent. The notice shall state the time, place, and basis of the proposed hearing. If the director revokes or suspends any nonresident's license through a formal proceeding under the Insurance Producers Licensing Act or places such nonresident person on probation, the director shall promptly notify the appropriate director or commissioner of the nonresident's resident state, district, or territory of the United States or province of Canada of such action and the particulars of such proceeding.

Sec. 30. The license of an insurance agency may be suspended, revoked, or refused if the director finds, after hearing, that a violation by a licensed agent or broker was known or should have been known by the designated agent of such agency and such violation was not reported to the insurance department. If the designated agent of the agency loses his or her agent's or broker's license for any reason or leaves or is removed from such position, the agency shall replace such designated agent with a duly licensed agent within thirty days or its license shall be revoked.

Sec. 31. In addition to or in lieu of any applicable denial, suspension, probation, or revocation of a license, any person violating the Insurance Producers Licensing Act may, after notice and hearing, be subject to an administrative fine of not more than one thousand dollars per violation. Such fine may be enforced in the same manner as civil judgments. Any person charged with a violation of the Insurance Producers Licensing Act may waive his or her right to a hearing and consent to such discipline as the director determines is appropriate. All hearings held pursuant to such act shall be governed by Chapter 84, article 9, and Chapter 44, article 15.

Sec. 32. The lapse or suspension of a license by operation of law, by voluntary surrender, or by failure to have such license reissued shall not deprive the director of jurisdiction or the right to institute or proceed with any disciplinary proceeding to render any decision against such licensed person as provided by sections 28 and 31 of this act or to establish and make record of the facts of any violation of law for any lawful purpose. No disciplinary proceeding shall be instituted against any licensed person after the expiration of three years from the termination of such license.

Sec. 33. (1) If the director suspends or revokes a license or places a licensed person on probation or if a licensed person fails to have his, her, or its license reissued upon expiration, the director shall so notify such licensed person and all appointing insurers of such agent, when applicable. Upon suspension, revocation, or termination of the license of a resident of Nebraska, the director may notify the director, commissioner, or superintendent of each state, district, or territory of the United States or any province of Canada with whom such licensed agent has executed a certificate as provided for in the Insurance Producers Licensing Act.

(2) Upon suspension or revocation of a license, the licensed person shall immediately deliver the license to the director by personal delivery or by certified mail within thirty days after suspension or revocation.

Sec. 34. No insurance company admitted to do business in this state shall accept applications for, write, place, or cause to be written or placed any policy



of insurance covering risks located or residing in this state except through a licensed agent who has been appointed by such company pursuant to section 35 of this act or through an individual licensed as a broker in this state.

Sec. 35. (1) Each insurer appointing a licensed agent shall notify the director of such appointment. Such appointment shall be valid upon execution if the appointment is mailed to the department within ten days of execution. The department shall make confirmation to the insurer of the receipt of notification of appointment. The notification shall be upon forms provided by the director indicating the lines of insurance the licensed agent will be authorized to write for the insurer and shall be accompanied by a fee of five dollars. Such notification shall remain on record in the department until the appointment is terminated so long as the insurer pays the annual appointment fee, not to exceed five dollars, established by the director.

(2) If the appointment of a licensed agent by an insurance company is terminated, the insurer shall give written notice of the termination and the effective date of such termination to the director within five working days of the termination and to such agent when reasonably possible. The director may require the insurer to demonstrate that he or she has made a reasonable effort to give such notice to the licensed agent.

(3) All such notices of termination shall be filed on forms prescribed by the director stating the cause and circumstances of such termination and shall be accompanied by a fee as prescribed by the director, not to exceed five dollars, to remove the licensed agent's name from the department's records. Any information, document, record, or statement provided under this section may be used by the director in any action taken against a licensed agent. However, such notice of termination shall be considered privileged in any civil action between the reporting insurer and the terminated licensed agent.

Sec. 36. A temporary license shall not be issued except under the following circumstances:

(1) To the surviving spouse, next of kin, personal representative, an employee of the personal representative or legal guardian, or an employee of a deceased licensed agent;

(2) To the designee of a licensed agent entering upon active service in the armed forces of the United States of America;

(3) At the discretion of the director, to an agency required to be licensed under the Insurance Producers Licensing Act; or

(4) In any other circumstances when the director deems that the public interest will best be served by the issuance of such license.

Sec. 37. Unless otherwise authorized by law, an insurer, broker, or agent shall not pay any commission, brokerage, or other valuable consideration to any person for services rendered in this state as an agent or broker unless such person has been appointed by the insurer or is licensed as a broker in this state. Any person licensed under the Insurance Producers Licensing Act may pay or assign any commissions or direct that any commissions be paid to a licensed insurance agency with which such person is associated. This section shall not prevent the payment or receipt of renewal or deferred commissions to or by any person entitled to such renewals or any valid collateral assignment of commissions by a licensed agent to satisfy a debt obligation.

Sec. 38. Every person acting as an insurance agent, broker, or agency in this state shall be responsible in a fiduciary capacity for all funds received or collected as an insurance agent, broker, or agency. Nothing in this section shall be construed to require any person to maintain a separate bank deposit if the funds of each principal are clearly ascertainable from the books of accounts and records of that person.

Sec. 39. Every person licensed as an insurance agent, insurance broker, or insurance agency shall keep at his, her, or its place of business the usual and customary records pertaining to transactions under his, her, or its license. All records shall be kept available and open to the inspection of the director or his or her representatives at any time during business hours. Records shall be maintained for three years following the completion of any insurance transaction.

Sec. 40. All policies and applications, the solicitation of which involves an insurance agent, insurance broker, or insurance agency, shall identify the name of each such agent, broker, or agency. If the application is attached to the policy upon issuance, the required identification may be contained in either the application or the policy.

Sec. 41. There shall be no requirement that an agent resident in Nebraska sign or countersign a policy of insurance covering a subject of insurance resident, located, or to be performed in the state, except that if the laws or regulations of another state require a signature or countersignature by an agent resident in that state on a policy of insurance written by a nonresident agent or nonresident broker of such state, then any policy of insurance written by an agent resident of that state licensed as a nonresident agent in Nebraska covering a subject of insurance resident, located, or to be performed in Nebraska shall be signed or countersigned in writing by an agent resident in Nebraska. No policy of insurance shall be deemed invalid due to the absence of the required signature or countersignature. If the laws or regulations

of another state require an agent resident in such state to retain a portion of the commission paid on a like policy of insurance written, countersigned, or delivered by such agent in such state at the request of a nonresident agent or nonresident broker of such state, then the agent resident in Nebraska who signed or countersigned a policy of insurance written by a resident of such state licensed as a nonresident agent in Nebraska covering a subject of insurance resident, located, or to be performed in Nebraska shall retain an equal pro rata portion of any commission on such policy of insurance.

Sec. 42. A certificate under the seal of the department, relative to the authority of the company or licensed agent to transact business in this state upon any particular date, shall be received by any court in this state in lieu of the testimony of the director.

Sec. 43. The director may adopt and promulgate reasonable rules and regulations for the implementation and administration of the Insurance Producers Licensing Act.

Sec. 44. Any person who is, on the operative date of this act, duly licensed as an insurance agent or broker under the laws of the State of Nebraska in effect immediately prior to such date shall thereafter be eligible to renew such license according to the provisions of the Insurance Producers Licensing Act without examination. The director shall determine what line or lines of insurance each such renewed license shall include, but each person licensed on the operative date of this act shall be able to retain each line he or she is licensed in on such date without further examination. Any license valid on the operative date of this act shall expire on April 30, 1985.

Sec. 45. That section 44-103, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-103. (1) The terms company, corporation, insurance company, or insurance corporation, unless the context otherwise requires, ~~includes~~ include all corporations, associations, partnerships, or individuals engaged as insurers in the business of insurance.

(2) Domestic designates those companies incorporated or formed in this state.

(3) Foreign designates those companies incorporated or formed under the laws of the United States or any other state in the United States, and alien designates those companies incorporated or formed under the laws of any country other than the United States.

(4) Admitted company designates companies qualified and licensed to transact business under the provisions of this chapter.

(5) Nonadmitted companies designates companies not licensed to transact business in this state under the provisions of this chapter.



(6) Unearned premiums and net value of policies severally mean the liability of an insurance company upon its insurance contracts, other than accrued claims, computed by rules of valuation established herein.

(7) Profits of a mutual company means that portion of its cash funds not required for payment of losses and expenses; nor set apart for any purpose allowed by law.

(8) Agent or insurance agent shall mean any individual, whether compensated or not, who solicits, negotiates, effects, procures, renews, continues, or binds policies or certificates of insurance covering property or risks located in Nebraska. is a person, copartnership, corporation, attorney, board or committee, duly appointed and authorized by the insurance company to solicit applications for insurance to be known as the soliciting agent, or to solicit applications and effect insurance in the name of the company, to be known as a recording or policy-writing agent, and to discharge such other duties as may be vested in or required of the agent by the company.

(9) Broker or insurance broker shall mean any individual who is any person, copartnership or corporation, who for compensation, not being an appointed agent for the company in which insurance or reinsurance is effected, acts or aids in any manner in negotiating contracts for insurance, or reinsurance or placing risks or effecting insurance or reinsurance for a party other than himself or itself in placing risks, or in soliciting or effecting contracts of insurance as an agent for an insured other than himself or herself and not as an agent of an insurance company or any other type of insurance carrier.

(10) Adjuster or insurance adjuster is a person, copartnership, or corporation who undertakes to ascertain and report the actual loss or damage to the subject matter of the insurance due to the hazard or peril insured against.

(11) Director within the intent of this chapter means trustee shall mean the Director of Insurance.

(12) Insurable interest is every interest in property or any relation thereto, or liability in respect thereof, of such a nature that a contemplated peril might directly damnify the insured.

(13) Insurable interest, in the matter of life and health insurance, exists when the beneficiary because of relationship, either pecuniary or from ties of blood or marriage, has reason to expect some benefit from the continuance of the life of the insured.

(14) Double insurance exists where the same party is insured by several insurers separately in respect to the same subject and interest.

(15) Overinsurance exists where a party having an insurable interest in property has insurance thereon

against the same hazard or peril in excess of the actual value of his or her interest therein.

(16) Reinsurance means a contract by which an insurer procures a third party to insure it against loss or liability by reason of such original insurance.

(17) Department shall mean Department of Insurance.

(18) Rebate means anything of value or the making of an agreement, expressed or implied, that will directly or indirectly diminish any premium below the amount specified in the policy, but does not include the dividend or refund paid or allowed on participating policies; nor bonuses paid or allowed directly by any company upon nonparticipating policies which have been in force at least five years.

(19) Stock company is one with a capital stock that charges a fixed premium and is required to maintain the reserve provided by this chapter.

(20) Mutual company is one without capital stock that charges a fixed premium and is required to maintain the same reserve as a stock company.

(21) Assessment association is one that meets its losses and expenses from assessment levied upon its members.

Sec. 46. That section 44-114, Revised Statutes Supplement, 1982, be amended to read as follows:

44-114. In addition to any other fees and charges provided by law, the following shall be due and payable to the Department of Insurance: (1) For filing the documents, papers, statements, and information required by law upon the organization of domestic or the entry of foreign or alien insurers or rating bureaus, one hundred dollars, except assessment associations, which shall pay a fee of fifty dollars only; (2) for filing each amendment of articles of incorporation, ten dollars; (3) for filing restated articles of incorporation, ten dollars; (4) for renewing each certificate of authority of insurers or rating bureaus, fifty dollars, except domestic assessment associations which do business in less than thirty-one counties in Nebraska, which shall pay five dollars; (5) for issuance of an amended certificate of authority, fifty dollars; (6) for filing a certified copy of articles of merger involving a domestic or foreign insurance corporation holding a certificate of authority to transact insurance business in this state, thirty dollars; (7) for filing an annual statement, one hundred dollars; (8) for copies of annual statements, which shall be made available to any person, persons, or corporation making request therefor, the fee shall be the actual cost; (9) for filing power of attorney, ten dollars; (10) for each certificate of valuation, deposit, compliance, or other certificate for whomsoever issued, five dollars; (11) for filing any report which may be required by the department from any

unincorporated mutual association, five dollars; (12) for copying official records or documents other than annual statements of authorized insurers, fifty cents per page; (13) for each license requisitioned by a domestic, foreign, or alien insurer for a resident agent thereof, five dollars; (14) for each license requisitioned for or issued to a nonresident agent, twenty dollars; (15) for each resident broker's license issued, thirty dollars; (16) for each license requisitioned for or issued to a nonresident broker, thirty-six dollars; (17) (13) for each resident consultant's license issued, thirty dollars; (18) (14) for each nonresident consultant's license issued, thirty-six dollars; and (19) (15) for each license issued pursuant to section 44-139 as now existing or as hereafter amended, one hundred dollars.

Sec. 47. That section 44-140, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-140. (1) No person shall place, procure, or effect insurance upon any risk located in this state, in any company not licensed to do business in this state, until such person shall have first procured a license from the Department of Insurance as provided in section 44-139.

(2) Application for a surplus lines agent's license shall be made to the Department of Insurance on forms designated and furnished by the department. The license fees shall be as specified in subdivision (17) (13) of section 44-114. Before the issuance of a surplus lines agent's license, the applicant therefor shall file with the director and thereafter maintain in force while so licensed a bond in favor of the State of Nebraska in the penal sum of not less than ten thousand dollars with authorized surety insurers approved by the director. The director may require a bond in an amount greater than ten thousand dollars if he or she determines that the volume of business written or to be written by an agent warrants the maintenance of such a bond. In no event shall the director require a bond greater than fifty thousand dollars. The bond shall be conditioned that the surplus lines licensee shall: (a) Conduct business under such license in accordance with the provisions of this act; (b) duly account for and pay to persons entitled thereto funds received by him or her in transactions under the license; and (c) pay the taxes required by section 44-142. The bond shall remain in force until released by the director or until canceled by the surety. Without prejudice to any liability previously incurred thereunder, the surety may cancel the bond upon thirty days' written notice to the agent and the director. The form of bond must have the prior written approval of the director.

Sec. 48. This act shall become operative on January 1, 1985.

Sec. 49. If any section in this act or any part of any section shall be declared invalid or



unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 50. That original sections 44-103 and 44-140, Reissue Revised Statutes of Nebraska, 1943, and section 44-114, Revised Statutes Supplement, 1982, and also sections 44-327 to 44-335, 44-339 to 44-340, 44-342 to 44-342.02, 44-342.04 to 44-344, and 44-345 to 44-347, Reissue Revised Statutes of Nebraska, 1943, section 44-344.01, Revised Statutes Supplement, 1982, and sections 44-341 and 44-342.03, Revised Statutes Supplement, 1983, are repealed.