

## LEGISLATIVE BILL 51

Approved by the Governor March 1, 2001

Introduced by Landis, 46

AN ACT relating to insurance; to amend sections 44-103, 44-3,151, 44-3903, 44-4005.02, 44-4005.03, 44-4005.05, 44-4421, 44-5228, 44-5232, 44-5503, and 44-5802, Reissue Revised Statutes of Nebraska, and sections 44-150, 44-1525, 44-4001, 44-4005.01, 44-4005.04, and 44-4046, Revised Statutes Supplement, 2000; to change, provide, and eliminate provisions relating to insurance producer licensing; to harmonize provisions; to provide duties for the Revisor of Statutes; to repeal the original sections; and to outright repeal sections 44-4002 to 44-4005, 44-4006 to 44-4009, 44-4011, 44-4012, 44-4014, 44-4016 to 44-4018, 44-4020, 44-4022 to 44-4027, 44-4029 to 44-4040, 44-4042 to 44-4045, and 44-5513, Reissue Revised Statutes of Nebraska, and sections 44-4010, 44-4013, 44-4015, 44-4019, 44-4028, and 44-4041, Revised Statutes Supplement, 2000.

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

Section 1. Section 44-4001, Revised Statutes Supplement, 2000, is amended to read:

~~44-4001.~~ Sections ~~44-4001 to 44-4046~~ 1 to 21 of this act shall be known and may be cited as the Insurance Producers Licensing Act.

Sec. 2. (1) The Insurance Producers Licensing Act governs the qualifications and procedures for the licensing of insurance producers. The act is intended to improve efficiency, permit the use of new technology, and reduce costs associated with issuing and renewing insurance licenses.

(2) The act does not apply to excess and surplus lines agents and brokers licensed pursuant to the Surplus Lines Insurance Act except as provided in section 8 of this act and subsection (2) of section 17 of this act.

Sec. 3. For purposes of the Insurance Producers Licensing Act:

(1) Business entity means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity;

(2) Director means the Director of Insurance;

(3) Home state means the state in which an insurance producer maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance producer;

(4) Insurance has the same meaning as in section 44-102;

(5) Insurance producer or producer has the same meaning as in section 44-103;

(6) Insurer has the same meaning as in section 44-103;

(7) License means a document issued by the director authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit an insurer;

(8) Limited line credit insurance includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the director determines should be designated a form of limited line credit insurance;

(9) Limited line credit insurance producer means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy;

(10) Limited lines insurance means any authority granted by the home state which restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to subsection (1) of section 8 of this act or any line of insurance that the director may deem it necessary to recognize for the purposes of complying with subsection (5) of section 9 of this act;

(11) Limited lines producer means a person authorized by the director to sell, solicit, or negotiate limited lines insurance;

(12) Negotiate means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or

conditions of the contract, if the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers;

(13) Person means any individual or business entity;

(14) Sell means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company;

(15) Solicit means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company;

(16) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;

(17) Terminate means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer's authority to transact insurance;

(18) Uniform application means the uniform application as prescribed by the director which conforms substantially to the uniform application for resident and nonresident producer licensing adopted by the National Association of Insurance Commissioners; and

(19) Uniform business entity application means the uniform business entity application as prescribed by the director which conforms substantially to the uniform business entity application for resident and nonresident business entities adopted by the National Association of Insurance Commissioners.

Sec. 4. A person shall not sell, solicit, or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with the Insurance Producers Licensing Act. A person who sells, solicits, or negotiates insurance in this state for any class of insurance who is not licensed for that line of authority may be restrained by temporary and permanent injunctions.

Sec. 5. (1) Nothing in the Insurance Producers Licensing Act shall be construed to require an insurer to obtain an insurance producer license. For purposes of this section, the term insurer does not include an insurer's officers, directors, employees, subsidiaries, or affiliates.

(2) The following persons need not be licensed as an insurance producer:

(a) An officer, director, or employee of an insurer or of an insurance producer if the officer, director, or employee does not receive any commission on policies written or sold to insure risks residing, located, or to be performed in this state and:

(i) The officer's, director's, or employee's activities are executive, administrative, managerial, clerical, or a combination of these, and are only indirectly related to the sale, solicitation, or negotiation of insurance;

(ii) The officer's, director's, or employee's function relates to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance; or

(iii) The officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers when the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation, or negotiation of insurance;

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

(c) An employer or his, her, or its officers, directors, or employees or the trustee of any employee trust plan to the extent that such employer, officer, director, 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 insurer if such employer, officer, director, employee, or trustee is not in any manner compensated directly or indirectly by the insurer issuing such insurance;

(d) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating, or classification of risks or in the supervision of the training of insurance producers and who are not individually engaged in the sale, solicitation, or negotiation of insurance;

(e) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media

whose distribution is not limited to residents of the state if the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this state;

(f) A person who is not a resident of this state who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract if that person is otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state; or

(g) A salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer if the employee does not sell or solicit insurance or receive a commission.

Sec. 6. (1) A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to section 10 of this act. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws, rules, and regulations of this state. Examinations required by this section shall be developed and conducted under rules and regulations adopted and promulgated by the director.

(2) The director may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in section 18 of this act.

(3) Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the director as set forth in section 18 of this act.

(4) An individual who fails to appear for the examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

Sec. 7. (1) A person applying for a resident insurance producer license shall make application to the director on the uniform application and declare under penalty of denial, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the director shall find that the individual:

(a) Is at least eighteen years of age. Notwithstanding the provisions of section 43-2101, if any person is issued a license pursuant to the Insurance Producers Licensing Act, his or her minority ends;

(b) Has not committed any act that is a ground for denial, suspension, or revocation set forth in section 13 of this act;

(c) Has completed a prelicensing course of study for the lines of authority for which the person has applied, as required by sections 29 to 33 of this act;

(d) Has paid the fees set forth in section 18 of this act; and

(e) Has successfully passed the examinations for the lines of authority for which the person has applied.

(2) A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the uniform business entity application. Before approving the application, the director shall find that:

(a) The business entity has paid the fees set forth in section 18 of this act; and

(b) The business entity has designated a licensed producer responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state.

(3) The director may require any documents reasonably necessary to verify the information contained in an application.

(4) Each insurer that sells, solicits, or negotiates any form of limited line credit insurance shall provide to each individual whose duties will include selling, soliciting, or negotiating limited line credit insurance a program of instruction that may be approved by the director.

Sec. 8. (1) Unless denied licensure pursuant to section 13 of this act, a person who has met the requirements of sections 6 and 7 of this act shall be issued an insurance producer license. An insurance producer may receive qualification for a license in one or more of the following lines of authority:

(a) Life insurance coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(b) Accident and health or sickness, insurance coverage for sickness, bodily injury, or accidental death and may include benefits for disability income;

(c) Property insurance coverage for the direct or consequential loss or damage to property of every kind;

(d) Casualty insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property;

(e) Variable life and variable annuity products, insurance coverage provided under variable life insurance contracts, and variable annuities;

(f) Limited line credit insurance;

(g) Personal lines property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes; and

(h) Any other line of insurance permitted under Nebraska laws, rules, or regulations.

(2) An insurance producer license shall remain in effect unless revoked or suspended if the fee set forth in section 18 of this act is paid and education requirements for resident individual producers are met by the due date.

(3) All business entity licenses issued under the Insurance Producers Licensing Act shall expire on April 30 of each year, and all producers licenses shall expire on the last day of the month of the producer's birthday in the first year after issuance in which his or her age is divisible by two. Such producer licenses may be renewed within the ninety-day period before their expiration dates. Business entity and producer licenses also may be renewed within the thirty-day period after their expiration dates upon payment of a late renewal fee as established by the director pursuant to section 18 of this act in addition to the applicable fee otherwise required for renewal of business entity and producer licenses as established by the director pursuant to such section. All business entity and producer licenses renewed within the thirty-day period after their expiration dates pursuant to this subsection shall be deemed to have been renewed before their expiration dates.

(4) The director may establish procedures for renewal of licenses by rule and regulation adopted and promulgated pursuant to the Administrative Procedure Act.

(5) An individual insurance producer who allows his or her license to lapse may, within twelve months from the due date of the renewal fee, reinstate the same license without the necessity of passing a written examination. Producer licenses reinstated pursuant to this subsection shall be issued only after payment of a reinstatement fee as established by the director pursuant to section 18 of this act in addition to the applicable fee otherwise required for renewal of producer licenses as established by the director pursuant to such section.

(6) The director may grant a licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance, including, but not limited to, a long-term medical disability, a waiver of those procedures. The director may grant a producer a waiver of any examination requirement or any other fine, fee, or sanction imposed for failure to comply with renewal procedures.

(7) The license shall contain the licensee's name, address, and personal identification number, the date of issuance, the lines of authority, the expiration date, and any other information the director deems necessary.

(8) Licensees shall inform the director by any means acceptable to the director of a change of legal name or address within thirty days after the change. 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, suspension of the person's license until the change of address is reported to the director, or both.

(9) The director may contract with nongovernmental entities, including the National Association of Insurance Commissioners or any affiliates or subsidiaries that the National Association of Insurance Commissioners oversees, to perform any ministerial functions, including the collection of fees, related to producer licensing that the director may deem appropriate.

Sec. 9. (1) Unless denied licensure pursuant to section 13 of this act, a nonresident person shall receive a nonresident insurance producer license if:

(a) The person is currently licensed as a resident and in good standing in his or her home state;

(b) The person has submitted the proper request for licensure and has paid the fees required by section 18 of this act;

(c) The person has submitted or transmitted to the director the

application for licensure that the person submitted to his or her home state, or in lieu of the same, a completed uniform application; and

(d) The person's home state awards nonresident producer licenses to residents of this state on the same basis.

(2) The director may verify the insurance producer's licensing status through the producer database maintained by the National Association of Insurance Commissioners or its affiliates or subsidiaries.

(3) A nonresident insurance producer who moves from one state to another state or a resident producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty days of the change of legal residence. No fee or license application is required for the filing of the change of address.

(4) Notwithstanding any other provision of the Insurance Producers Licensing Act, a person licensed as a surplus lines insurance producer in his or her home state shall receive a nonresident surplus lines producer license pursuant to subsection (1) of this section. Except as to subsection (1) of this section, nothing in this section otherwise amends or supersedes any provision of the Surplus Lines Insurance Act.

(5) Notwithstanding any other provisions of the Insurance Producers Licensing Act, a person licensed as a limited line credit insurance or other type of limited lines producer in his or her home state shall receive a nonresident limited lines insurance producer license, pursuant to subsection (1) of this section, granting the same scope of authority as granted under the license issued by the producer's home state.

Sec. 10. (1) An individual who applies for an insurance producer license in this state who was previously licensed for the same lines of authority in another state shall not be required to complete any prelicensing education or examination. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or that state's producer database records, maintained by the National Association of Insurance Commissioners or its affiliates or subsidiaries, indicate that the producer is or was licensed in good standing for the line of authority requested.

(2) A person licensed as an insurance producer in another state who moves to this state shall make application within ninety days of establishing legal residence to become a resident licensee pursuant to section 7 of this act. No prelicensing education or examination shall be required of that person to obtain any line of authority previously held in the prior state except if the director determines otherwise by rule and regulation.

Sec. 11. An insurance producer doing business under any name other than the producer's legal name shall notify the director prior to using the assumed name.

Sec. 12. (1) The director may issue a temporary insurance producer license for a period not to exceed one hundred eighty days without requiring an examination if the director deems that the temporary license is necessary for the servicing of an insurance business in the following cases:

(a) To the surviving spouse or court-appointed personal representative of a licensed insurance producer who dies or becomes mentally or physically disabled to allow adequate time for the sale of the insurance business owned by the producer or for the recovery or return of the producer to such business or to provide for the training and licensing of new personnel to operate the producer's business;

(b) To a member or employee of a business entity licensed as an insurance producer, upon the death or disability of an individual designated in the business entity application or the license;

(c) To the designee of a licensed insurance producer entering active service in the armed forces of the United States of America; or

(d) In any other circumstance in which the director deems that the public interest will best be served by the issuance of the license.

(2) The director may by order limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The director may require the temporary licensee to have a suitable sponsor who is a licensed producer or insurer and who assumes responsibility for all acts of the temporary licensee and may impose other similar requirements designed to protect insureds and the public. The director may by order revoke a temporary license if the interest of insureds or the public are endangered, or for the grounds set forth in section 13 of this act. A temporary license may not continue after the owner or the personal representative disposes of the business.

Sec. 13. (1) The director may suspend, revoke, or refuse to issue

or renew an insurance producer's license or may levy an administrative fine in accordance with subsection (4) of this section, or any combination of actions, for any one or more of the following causes:

(a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;

(b) Violating any insurance law or violating any rule, regulation, subpoena, or order of the director or of another state's insurance commissioner or director;

(c) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(d) Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business;

(e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(f) Having been convicted of a felony or a Class I, II, or III misdemeanor;

(g) Having admitted or been found to have committed any insurance unfair trade practice, any unfair claims settlement practice, or fraud;

(h) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere;

(i) Having an insurance producer license, or its equivalent, denied, suspended, placed on probation, or revoked in Nebraska or in any other state, province, district, or territory;

(j) Forging another's name to an application for insurance or to any document related to an insurance transaction;

(k) Improperly using notes or any other reference material to complete an examination for an insurance license;

(l) Knowingly accepting insurance business from an individual who is not licensed;

(m) Failing to comply with an administrative or court order imposing a child support obligation pursuant to the License Suspension Act; and

(n) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

(2) If the director does not renew or denies an application for a license, the director shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand upon the director within thirty days for a hearing before the director to determine the reasonableness of the director's action. The hearing shall be held within thirty days and shall be held pursuant to the Administrative Procedure Act.

(3) The license of a business entity may be suspended, revoked, or refused if the director finds, after notice and hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the business entity and the violation was neither reported to the director nor corrective action taken.

(4) In addition to or in lieu of any applicable denial, suspension, 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 act may waive his or her right to a hearing and consent to such discipline as the director determines is appropriate. The Administrative Procedure Act shall govern all hearings held pursuant to such act.

(5) The director shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by the Insurance Producers Licensing Act against any person who is under investigation for or charged with a violation of the act even if the person's license or registration has been surrendered or has lapsed by operation of law. No disciplinary proceeding shall be instituted against any licensed person after the expiration of three years from the termination of such license.

Sec. 14. (1) An insurer or insurance producer shall not pay a commission, service fee, brokerage, or other valuable consideration to a person for selling, soliciting, or negotiating insurance in this state if that person is required to be licensed under the Insurance Producers Licensing Act and is not so licensed.

(2) A person shall not accept a commission, service fee, brokerage, or other valuable consideration for selling, soliciting, or negotiating insurance in this state if that person is required to be licensed under the act and is not so licensed.

(3) Renewal or other deferred commissions may be paid to a person for selling, soliciting, or negotiating insurance in this state if the person was required to be licensed under the act at the time of the sale, solicitation, or negotiation and was so licensed at that time.

(4) An insurer or insurance producer may pay or assign commissions, service fees, brokerages, or other valuable consideration to an insurance agency or to persons who do not sell, solicit, or negotiate insurance in this state unless the payment would violate section 44-361.

Sec. 15. (1) An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.

(2) To appoint an insurance producer as its agent, the appointing insurer shall file, in a format approved by the director, a notice of appointment within fifteen days from the date the agency contract is executed or the first insurance application is submitted. An insurer may also elect to appoint an insurance producer to all or some insurers within the insurer's holding company system or group by the filing of a single appointment request.

(3) An insurer shall pay an appointment fee, in the amount and method of payment set forth in section 18 of this act, for each insurance producer appointed by the insurer.

(4) An insurer shall remit, in a manner prescribed by the director, a renewal appointment fee in the amount set forth in section 18 of this act.

Sec. 16. (1) An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with an insurance producer shall notify the director within thirty days following the effective date of the termination, if the reason for termination is one of the reasons set forth in section 13 of this act or the insurer has knowledge the producer was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in such section. Upon the written request of the director, the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the producer.

(2) An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with an insurance producer for any reason not set forth in section 13 of this act, shall notify the director within thirty days following the effective date of the termination. Upon written request of the director, the insurer shall provide additional information, documents, records, or other data pertaining to the termination.

(3) If an insurance producer terminates an appointment, employment, contract, or other insurance business relationship with an insurer or authorized representative of the insurer and the insurer or authorized representative has knowledge that the insurance producer has engaged in any of the activities set forth in section 13 of this act, the insurer or authorized representative shall notify the director of such activities within thirty days following the effective date of the termination. If an insurance producer terminates an appointment, employment, contract, or other insurance business relationship with an insurer or authorized representative and the insurer or authorized representative has knowledge that the insurance producer was found by a court, government body, or self-regulatory organization to have engaged in any of the activities set forth in section 13 of this act, the insurer or authorized representative shall notify the director within thirty days following the effective date of the termination. Upon the written request of the director, the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the producer.

(4) The insurer or the authorized representative of the insurer shall promptly notify the director if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the director in accordance with subsection (1) or (2) of this section had the insurer then known of its existence.

(5) Notifications made pursuant to subsection (1), (2), (3), or (4) of this section shall be made in a format acceptable to the director.

(6)(a) Within fifteen days after making the notification required by subsection (1), (2), (3), or (4) of this section, the insurer shall mail a copy of the notification to the insurance producer at his or her last-known address. If the producer is terminated pursuant to subsection (1) or (3) of this section, the insurer shall provide a copy of the notification to the producer at the producer's last-known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.

(b) Within thirty days after the insurance producer has received the

original or additional notification, the producer may file written comments concerning the substance of the notification with the director. The producer shall, by the same means, simultaneously send a copy of the comments to the reporting insurer. The comments shall become a part of the director's file and accompany every copy of a report distributed or disclosed for any reason about the producer as permitted under subsection (8) of this section.

(7)(a) In the absence of actual malice:

(i) No insurer, authorized representative of an insurer, insurance producer, director, or organization of which the director is a member that compiles information and makes it available to other insurance commissioners or regulatory or law enforcement agencies shall be subject to civil liability;

(ii) No civil cause of action of any nature shall arise against the entities set forth in subdivision (7)(a)(i) of this section, or their respective agents or employees, as a result of any statement or information provided pursuant to this section;

(iii) No civil cause of action of any nature shall arise against the entities set forth in subdivision (7)(a)(i) of this section, or their respective agents or employees, as a result of any information relating to any statement provided by an insurer or insurance producer at the written request of the director; and

(iv) No civil cause of action of any nature shall arise against the entities set forth in subdivision (7)(a)(i) of this section, or their respective agents or employees, as a result of any statement by a terminating insurer or insurance producer to an insurer or producer, limited solely and exclusively to whether a termination for cause under subsection (1) of this section or a report made pursuant to subsection (3) of this section was reported to the director if the propriety of any termination for cause under subsection (1) of this section or a report made pursuant to subsection (3) of this section is certified in writing by an officer or authorized representative of the insurer or producer terminating the relationship.

(b) In any action brought against a person that may have immunity under subdivision (7)(a) of this section, the party bringing the action shall plead specifically in any allegation that subdivision (7)(a) of this section does not apply because such person did so with actual malice.

(c) This subsection shall not abrogate or modify any existing statutory or common-law privileges or immunities.

(8)(a) Any documents, materials, or other information in the control or possession of the director furnished by an insurer, insurance producer, or employee or agent acting on behalf of the insurer or producer, or obtained by the director in an investigation pursuant to this section shall be confidential and privileged. Such documents, materials, or other information shall not be public records subject to public inspection pursuant to sections 84-712 to 84-712.09, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action, except that the director is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the director's duties.

(b) Neither the director nor any person who receives documents, materials, or other information while acting under the authority of the director, shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subdivision (8)(a) of this section.

(c) In order to assist in the performance of the director's duties under the Insurance Producers Licensing Act, the director:

(i) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subdivision (8)(a) of this section, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and state, federal, and international law enforcement authorities and regulatory agencies if the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(ii) May receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries, and state, federal, and international law enforcement authorities and regulatory agencies. The director shall maintain as confidential and privileged any document, material, or other information received with notice or the understanding that it is confidential or privileged under the laws of the source jurisdiction; and

(iii) May enter into agreements governing sharing and use of information consistent with this subsection.

(d) No waiver of any applicable privilege or claim of



confidentiality in the documents, materials, or information shall occur as a result of disclosure to the director under this section or as a result of sharing as authorized in subdivision (8)(c) of this section.

(e) Nothing in the act shall prohibit the director from releasing final, adjudicated actions, including for cause terminations or reports made pursuant to subsection (3) of this section that are open to public inspection pursuant to sections 84-712 to 84-712.09, to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners or its affiliates or subsidiaries.

(9)(a) An insurer or authorized representative of the insurer that fails to report as required under this section, or that is found to have reported with actual malice by a court of competent jurisdiction, may, after notice and hearing, have its license or certificate of authority suspended or revoked and may be fined in accordance with section 44-1529.

(b) An insurance producer that fails to report as required by this section, or that is found to have reported with actual malice by a court of competent jurisdiction, may, after notice and hearing, have its license suspended or revoked, or may be subject to an administrative fine in accordance with section 13 of this act.

Sec. 17. (1) The director shall waive any requirements for a nonresident insurance producer license applicant with a valid license from his or her home state, except the requirements imposed by section 9 of this act, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.

(2) A nonresident producer's satisfaction of his or her home state's continuing education requirements for licensed insurance producers shall constitute satisfaction of this state's continuing education requirements if the nonresident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon insurance producers from this state on the same basis.

Sec. 18. (1) Before any license or appointment is issued or renewed under the Insurance Producers Licensing Act or before any appointment is terminated, the person requesting such license shall pay or cause to be paid to the director the following fee or fees, if applicable, as established by the director:

(a) For each resident insurance producer license, a fee not to exceed forty dollars;

(b) For each nonresident insurance producer license, a fee not to exceed eighty dollars;

(c) For each annual appointment, a fee not to exceed ten dollars;

(d) For each termination of an appointment, a fee not to exceed ten dollars;

(e) A late renewal fee not to exceed one hundred twenty-five dollars;

(f) A reinstatement fee not to exceed one hundred seventy-five dollars; and

(g) For each business entity license, a fee not to exceed fifty 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 director a fee established by the director to cover the expense of replacing the license.

Sec. 19. (1) An insurance producer shall report to the director any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.

(2) Within thirty days of the date of arraignment or date of waiver of arraignment, if waived, an insurance producer shall report to the director any criminal prosecution of the producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

Sec. 20. The director may adopt and promulgate rules and regulations to carry out the Insurance Producers Licensing Act.

Sec. 21. Section 44-4046, Revised Statutes Supplement, 2000, is amended to read:

~~44-4046.~~ (1) The director may issue to a rental car company that has complied with this section a limited license authorizing the limited licensee to act as ~~agent~~ an insurance producer with reference to the kinds of insurance specified in this section for any insurer authorized to write such kinds of insurance in this state.

(2) For purposes of this section:

(a) Limited licensee means a rental car company authorized to sell certain kinds of insurance relating to the rental of rental vehicles pursuant to this section;

(b) Rental agreement means any written agreement setting forth the terms and conditions governing the use of a rental vehicle;

(c) Rental car company means any person in the business of providing leased or rented rental vehicles to the public. Rental car company includes a franchise of a rental car company;

(d) Rental vehicle means a motor vehicle of the private passenger type, including passenger vans and minivans and trucks up to twenty-six thousand pounds gross vehicle weight; and

(e) Renter means any person obtaining the use of a rental vehicle from a rental car company under the terms of a rental agreement.

(3) An applicant for a limited license shall file with the director:

(a) A written application for a limited license, signed by an officer of the applicant, containing such information as the director prescribes;

(b) A list of all rental locations at which the applicant conducts business in this state;

(c) A list of all employees of the applicant who may act on behalf and under the supervision of the applicant pursuant to this section;

(d) A training program which meets the requirements of subsection (10) of this section;

(e) A copy of the contract entered into between the insurer and the applicant; and

(f) A certificate by the insurer that is to be named in such limited license, stating that the insurer will appoint such applicant to act as the agent insurance producer in reference to the doing of such kind or kinds of insurance specified in this section if the limited license applied for is issued by the director. Such certificate shall be signed by an officer or managing agent of such insurer.

(4) Before a limited license is issued or renewed, the limited licensee shall pay or cause to be paid to the director an application fee not to exceed one hundred dollars as established by the director or a renewal fee not to exceed one hundred dollars as established by the director per year due on the anniversary date of the issuance of the limited license.

(5) A limited licensee shall provide to the director an updated list of all rental locations and of all employees of the limited licensee who may act on behalf and under the supervision of the limited licensee. Such list shall be provided to the director quarterly.

(6)(a) If any provision of this section or if one or more of the grounds provided under ~~subdivisions (1) through (17) of section 44-4028~~ 13 of this act is violated by a limited licensee, the director may, after notice and hearing:

(i) Revoke or suspend a limited license issued under this section;

(ii) Impose such other penalties, including suspending the transaction of insurance at specific rental locations where violations have occurred, as the director deems to be necessary or convenient to carry out the purposes of this section; and

(iii) Order payment of an administrative fine of not more than one thousand dollars per violation.

(b) An order issued pursuant to this subsection may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

(7) A limited licensee may act as agent an insurance producer for an authorized insurer only in connection with rental vehicles and only with respect to the following kinds of insurance:

(a) Motor vehicle liability insurance, including uninsured and underinsured motorist coverage, that provides coverage to renters and other authorized drivers of rental vehicles for liability arising from the operation of the rental vehicle;

(b) Accident and health insurance that provides coverage to renters and other rental vehicle occupants for accidental death or dismemberment and for medical expenses resulting from an accident involving the rental vehicle that occurs during the rental period; and

(c) Personal property insurance that provides coverage to renters and other rental vehicle occupants for the loss of or damage to personal property that occurs during the rental period.

(8) No insurance may be issued pursuant to this section unless:

(a) The rental period of the rental agreement does not exceed forty-five consecutive days;

(b) The limited licensee provides brochures or other written

materials to the renter that:

(i) Summarize the material terms of the insurance offered by the limited licensee to renters, including the identity of the insurer;

(ii) Describe the process for filing a claim; and

(iii) Contain information on the price, benefits, exclusions, conditions, or other limitations of such insurance as the director may by rule and regulation prescribe;

(c) The limited licensee makes the following disclosures to the renter:

(i) That the insurance offered by the limited licensee to renters may provide a duplication of coverage already provided by a renter's personal automobile insurance policy or by another source of coverage;

(ii) That if purchased, the insurance offered by the limited licensee to renters is primary over any other coverages applicable to the renter; and

(iii) That the purchase by the renter of any kind of insurance specified in this section is not required in order for the renter to rent a rental vehicle;

(d) Evidence of coverage is stated in the rental agreement; and

(e) Costs for insurance are separately itemized in the rental agreement.

(9) Any limited license issued under this section shall also authorize any employee of the limited licensee who is trained pursuant to subsection (10) of this section to act individually on behalf and under the supervision of the limited licensee with respect to the kinds of insurance specified in this section.

(10) Each limited licensee shall conduct a training program which shall meet the following minimum standards:

(a) Each trainee shall receive basic instruction about the kinds of insurance specified in this section offered for purchase by prospective renters of rental vehicles;

(b) Each trainee shall be instructed to acknowledge to a prospective renter of a rental vehicle that the purchase by the renter of any kind of insurance specified in this section is not required in order for the renter to rent a rental vehicle; and

(c) Each trainee shall be instructed to acknowledge to a prospective renter of a rental vehicle that the renter may have insurance policies that already provide the coverage being offered by the limited licensee pursuant to this section.

(11) All records pertaining to transactions under any limited license shall be kept available and open to the inspection of the director or his or her representatives at any time with notice and during business hours. Records shall be maintained for three years following the completion of transactions under a limited license.

(12) Notwithstanding any other provision of this section or rule or regulation adopted and promulgated by the director, a limited licensee shall not be required to treat money collected from renters purchasing insurance when renting rental vehicles as funds received in a fiduciary capacity, except that the charges for coverages shall be itemized and be ancillary to a rental transaction.

(13) No limited licensee subject to this section shall:

(a) Offer or sell any kind of insurance specified in this section except in conjunction with and incidental to a rental agreement;

(b) Advertise, represent, or otherwise hold itself or any of its employees out as authorized insurers, licensed insurance agents, or insurance brokers or licensed insurance producers;

(c) Pay any additional compensation, fee, or commission dependent on the placement of insurance under the limited license issued pursuant to this section; or

(d) Require the purchase of any kind of insurance specified in this section as a condition of rental of a rental vehicle.

~~(14) The director may adopt and promulgate rules and regulations to carry out this section.~~

Sec. 22. Section 44-103, Reissue Revised Statutes of Nebraska, is amended to read:

44-103. For purposes of Chapter 44, unless the context otherwise requires:

(1) The terms company, corporation, insurance company, or insurance corporation shall 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 or authorized company designates a company qualified and licensed to transact business under Chapter 44;

(5) Nonadmitted company or unauthorized company designates a company not licensed to transact business in this state under Chapter 44;

(6) Unearned premiums and net value of policies severally shall 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 shall mean 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 an insurance producer; 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, except that any individual exempted by section 44-4006 shall not be deemed an agent or insurance agent;

(9) Broker or insurance broker shall mean an insurance producer; any individual who acts or aids in any manner in negotiating contracts for 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 or insurance 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 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;

(10) Insurance producer or producer shall mean a person required to be licensed under the laws of this state, including the Insurance Producers Licensing Act, to sell, solicit, or negotiate insurance;

(11) Adjuster or insurance adjuster shall mean 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)~~ (12) Director shall mean the Director of Insurance;

~~(12)~~ (13)(a) Insurable interest shall mean 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.

(b) 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;

~~(13)~~ (14) Double insurance exists when the same party is insured by several insurers separately in respect to the same subject and interest;

~~(14)~~ (15) Overinsurance exists when 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;

~~(15)~~ (16) Reinsurance shall mean a contract by which an insurer procures a third party to insure it against loss or liability by reason of such original insurance;

~~(16)~~ (17) Department shall mean the Department of Insurance;

~~(17)~~ (18) Rebate shall mean 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 shall 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;

~~(18)~~ (19) Stock company shall mean a company with a capital stock that charges a fixed premium and is required to maintain the reserve provided by Chapter 44;

~~(19)~~ (20) Mutual company shall mean a company without capital stock that charges a fixed premium and is required to maintain the same reserve as a stock company;

~~(20)~~ (21) Assessment association shall mean a company that meets its losses and expenses from assessment levied upon its members; and

~~(21)~~ (22) Insurer shall include all companies, exchanges, societies, or associations whether organized on the stock, mutual, assessment, or

fraternal plan of insurance and reciprocal insurance exchanges.

Sec. 23. Section 44-150, Revised Statutes Supplement, 2000, is amended to read:

44-150. (1) When by or pursuant to the laws of any other state or foreign country any taxes, licenses and other fees, in the aggregate, or any fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions, are or would be imposed upon Nebraska insurers, or upon the agents or representatives of such insurers, which are in excess of such taxes, licenses and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements, or other obligations, prohibitions, or restrictions directly imposed upon similar insurers, or upon the agents or representatives of such insurers, of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate, or fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the Director of Insurance upon the insurers, or upon the agents or representatives of such insurers, of such other state or country doing business or seeking to do business in Nebraska. Any tax, license or other fee, or other obligation imposed by any city, county, or other political subdivision or agency of such other state or country on Nebraska insurers or their agents or representatives shall be deemed to be imposed by such state or country within the meaning of this section.

(2) This section shall not apply as to personal income taxes, nor as to ad valorem taxes on real or personal property nor as to special-purpose obligations or assessments heretofore imposed by another state in connection with particular kinds of insurance, other than property insurance; except that deductions, from premium taxes or other taxes otherwise payable, allowed on account of real estate or personal property taxes paid shall be taken into consideration by the Director of Insurance in determining the propriety and extent of retaliatory action under this section.

(3) Nothing in this section shall require retaliatory action because of fees, obligations, or prohibitions imposed on Nebraska ~~resident agents, brokers, or agencies~~ insurance producers licensed pursuant to the Insurance Producers Licensing Act.

(4) For the purposes of this section the domicile of an alien insurer, other than insurers formed under the laws of Canada, shall be that state designated by the insurer in writing filed with the Director of Insurance at time of admission to this state or within twelve months after September 28, 1959, whichever date is the later, and may be any one of the following states: (a) That in which the insurer was first authorized to transact insurance; (b) that in which is located the insurer's principal place of business in the United States; or (c) that in which is held the larger deposit of trusteed assets of the insurer for the protection of its policyholders and creditors in the United States.

If the insurer makes no such designation its domicile shall be deemed to be that state in which is located its principal place of business in the United States.

In the case of an insurer formed under the laws of Canada or a province thereof, its domicile shall be deemed to be that province in which its head office is situated.

Sec. 24. Section 44-3,151, Reissue Revised Statutes of Nebraska, is amended to read:

44-3,151. An association which has a constitution and bylaws and has been organized in this state for not less than two years and is maintained in good faith for purposes other than that of obtaining insurance may obtain individual workers' compensation insurance policies through an agent insurance producer licensed under the Insurance Producers Licensing Act for any or all of the voting members of the association covering the liability to which each individual employer may be subject under the Nebraska Workers' Compensation Act from an insurer authorized to transact the business of workers' compensation insurance in this state.

Sec. 25. No insurance producer, surplus lines licensee, or insurance consultant shall obtain a loan from an insurance client that is not a financial institution and who is not related to the insurance producer, surplus lines licensee, or insurance consultant by birth, marriage, or adoption.

Sec. 26. A certificate under the seal of the department, relative to the authority of the company, insurance producer, business entity, or surplus lines licensee 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. 27. Every person acting as an insurance producer or surplus lines licensee in this state shall be responsible in a fiduciary capacity for all funds received or collected as an insurance producer or surplus lines licensee. 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. 28. Section 44-1525, Revised Statutes Supplement, 2000, is amended to read:

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

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

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

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

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

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

(e) Uses any name or title of any policy or class of policies which misrepresents the true nature thereof;

(f) Misrepresents for the purpose of inducing or tending to induce the purchase, lapse, forfeiture, exchange, conversion, or surrender of any policy, including intentionally misquoting any premium rate;

(g) Misrepresents for the purpose of effecting a pledge or assignment of or effecting a loan against any policy; or

(h) Misrepresents any policy as being shares of stock;

(2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any insurer in the conduct of his or her insurance business which is untrue, deceptive, or misleading;

(3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false or maliciously critical of or derogatory to the financial condition of any insurer and which is calculated to injure such insurer;

(4) Entering into any agreement to commit or by any concerted action committing any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of or monopoly in the business of insurance;

(5)(a) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or knowingly causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of an insurer; or

(b) Knowingly making any false entry of a material fact in any book, report, or statement of any insurer or knowingly omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer;

(6) Issuing or delivering or permitting agents, officers, or employees to issue or deliver agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance;

(7)(a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any life insurance policy or annuity or in the dividends or other benefits payable thereon or in any other of the terms and conditions of such policy or annuity;

(b) Making or permitting any unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, or rates charged for any sickness and accident

insurance policy or in the benefits payable thereunder, in any of the terms or conditions of such policy, or in any other manner, except that this subdivision shall not limit the negotiation of preferred provider policies and contracts under sections 44-4101 to 44-4113;

(c) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk unless:

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

(ii) The refusal, cancellation, or limitation is required by law, rule, or regulation;

(d) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk, or the personal property contained therein, because of the age of the residential property unless:

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

(ii) The refusal, cancellation, or limitation is required by law, rule, or regulation;

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

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

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

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

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

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

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

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

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

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

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

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

(9) Failing of any insurer to maintain a complete record of all the

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

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

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

(12) Accepting applications for or writing any policy of insurance sold, negotiated, or solicited by an insurance producer or business entity not licensed or appointed as required by the Insurance Producers Licensing Act; and

(13) Violating any provision of section 44-320, 44-348, 44-360, 44-361, 44-369, 44-393, 44-515 to 44-518, 44-522, 44-523, 44-2132 to 44-2134, 44-3606, 44-4809, 44-4812, 44-4817, or 44-5266 or the Unfair Discrimination Against Subjects of Abuse in Insurance Act.

Sec. 29. Section 44-4005.01, Revised Statutes Supplement, 2000, is amended to read:

~~44-4005.01.~~ Except as otherwise provided by the Insurance Producers Licensing Act, no individual shall be eligible to apply for a license as an insurance ~~agent~~ producer unless he or she has completed the following prelicensing education requirements:

(1) An individual seeking a property and casualty insurance license shall complete at least six hours of education on insurance industry ethics in addition to thirty-four hours of education in the area of property and casualty insurance;

(2) An individual seeking a life insurance and annuities license shall complete at least six hours of education on insurance industry ethics in addition to fourteen hours of education in the area of life insurance and annuities;

(3) An individual seeking a sickness, accident, and health insurance license shall complete at least six hours of education on insurance industry ethics in addition to fourteen hours of education in the area of sickness, accident, and health insurance of which at least six hours shall be in the area of medicare supplement insurance and long-term care insurance;

(4) An individual seeking a combined life insurance and annuities and sickness, accident, and health insurance license shall complete at least six hours of education on insurance industry ethics in addition to thirty-four hours of education in the area of life insurance and annuities and sickness, accident, and health insurance and of such thirty-four hours at least seventeen hours shall be in the area of life insurance and annuities and seventeen hours shall be in the area of sickness, accident, and health insurance, and of such seventeen hours in the area of sickness, accident, and health insurance at least six hours shall be in the area of medicare supplement insurance and long-term care insurance;

(5) An individual seeking a title insurance license shall complete at least six hours of education on insurance industry ethics in addition to six hours of education in the area of title insurance;

(6) An individual seeking an assessment association insurance license shall complete at least six hours of education on insurance industry ethics in addition to six hours of education in the area of the kinds of insurance issued by an assessment association; and

(7) An individual seeking a crop insurance license shall complete at least three hours of education on insurance industry ethics in addition to three hours in the area of crop insurance.

Sec. 30. Section 44-4005.02, Reissue Revised Statutes of Nebraska, is amended to read:

~~44-4005.02.~~ The prelicensing education requirements of section ~~44-4005.01~~ 29 of this act shall not apply to an individual who, at the time of application for an ~~agent's~~ insurance producer license, has the chartered property and casualty underwriter designation, the chartered life underwriter designation, the registered health underwriter designation, the certified employee benefit specialist designation, the certified financial planner designation, the accredited adviser in insurance designation, the chartered financial consultant designation, or a master's degree with a concentration in insurance from an accredited educational institution, ~~or~~ or to any individual described in section ~~44-4010~~ 10 or 12 of this act, or to such other persons as



the director may exempt pursuant to a rule or regulation adopted and promulgated pursuant to the Administrative Procedure Act.

Sec. 31. Section 44-4005.03, Reissue Revised Statutes of Nebraska, is amended to read:

~~44-4005.03.~~ A certificate of completion of the prelicensing education requirements shall be filed with the director along with a filing fee as established by the director not to exceed ten dollars.

Sec. 32. Section 44-4005.04, Revised Statutes Supplement, 2000, is amended to read:

~~44-4005.04.~~ The written examination required by section ~~44-4020 6~~ of this act shall be successfully completed and an application for a license shall be received by the department within one year after the date of obtaining a certificate of completion of the prelicensing education requirements or all prelicensing education requirements and the examination process shall be repeated.

Sec. 33. Section 44-4005.05, Reissue Revised Statutes of Nebraska, is amended to read:

~~44-4005.05.~~ The director shall approve prelicensing education courses and the number of hours to be awarded each approved course. The director may convene an advisory council of representatives of the insurance industry to consult with him or her on the approval of such courses. The application fee for seeking approval of a prelicensing education course shall be nonrefundable and shall be as established by the director not to exceed fifty dollars. The director may require descriptive information of any prelicensing education course and may refuse approval of any prelicensing education course that does not advance knowledge or skills in the marketing and sales of insurance products. Qualifications of instructors teaching prelicensing education courses shall be established by the director. The fee to amend an approved prelicensing education course shall be nonrefundable and shall be as established by the director not to exceed twenty dollars per course.

Sec. 34. Section 44-3903, Reissue Revised Statutes of Nebraska, is amended to read:

44-3903. Sections 44-3901 to 44-3908 shall not apply to the following persons:

(1) Licensees for whom an examination is not required under the laws of this state; ~~7, except that persons who are excused from the examination under subdivisions (2), (8), (9), and (11) of section 44-4010 shall not be exempt;~~

(2) Licensees who sell or consult only in the areas of credit life insurance and credit accident and health insurance; and

(3) Licensees holding such limited or restricted licenses as the director may exempt.

Sec. 35. Section 44-4421, Reissue Revised Statutes of Nebraska, is amended to read:

44-4421. (1) Any person other than a licensed surplus lines licensee acting or offering to act as an ~~agent or broker~~ insurance producer for a risk retention group or purchasing group which solicits members, sells insurance coverage, purchases coverage for its members located within this state, or otherwise does business in this state shall, before commencing any such activity, obtain a license from the director pursuant to the Insurance Producers Licensing Act.

(2) Every person, firm, association, or corporation licensed pursuant to the Insurance Producers Licensing Act, on business placed with risk retention groups or written through a purchasing group, shall inform each prospective insured of the provisions of the notice required by section 44-4409 in the case of a risk retention group and subsection (2) of section 44-4418 in the case of a purchasing group.

Sec. 36. Section 44-5228, Reissue Revised Statutes of Nebraska, is amended to read:

44-5228. Agent shall have the same meaning as insurance producer in section 44-103.

Sec. 37. Section 44-5232, Reissue Revised Statutes of Nebraska, is amended to read:

44-5232. Broker shall have the same meaning as insurance producer in section 44-103.

Sec. 38. Section 44-5503, Reissue Revised Statutes of Nebraska, is amended to read:

44-5503. The department, in consideration of the payment of the license fee and the furnishing of a bond as provided in section 44-5504, may issue a ~~resident~~ surplus lines license, revocable at any time, to any individual who currently holds a ~~resident agent's license or resident broker's~~

an insurance producer license or to a foreign or domestic corporation. The corporate surplus lines license shall list all officers or employees of the corporation who currently hold a ~~resident broker's~~ an insurance producer license or meet the requirements for an individual surplus lines license and who have authority to ~~act as a broker or~~ transact surplus lines business on behalf of the corporation. Only individuals listed on the corporate surplus lines license shall transact surplus lines business on behalf of the corporate licensee. If the applicant is an individual, the application for the license shall ~~also~~ include the applicant's social security number.

Sec. 39. Section 44-5802, Reissue Revised Statutes of Nebraska, is amended to read:

44-5802. For purposes of the Third-Party Administrator Act:

(1) Affiliate or affiliated shall mean any entity or person who, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a specified entity or person;

(2) Control shall have the same meaning as in section 44-2121;

(3) Director shall mean the Director of Insurance;

(4) Insurance or insurance coverage shall mean any coverage offered or provided by an insurer;

(5) Insurer shall mean any person undertaking to provide life insurance, sickness and accident insurance, workers' compensation insurance coverage, or annuities in this state. Insurer shall include an authorized insurance company, a prepaid hospital or medical care plan, a health maintenance organization, or any other person providing a plan of insurance subject to state insurance regulation. Insurer shall include an employer who is approved by the Nebraska Workers' Compensation Court as a self-insurer. Insurer shall not include a bona fide employee benefit plan established by an employer or an employee organization, or both, for which the insurance laws of this state are preempted pursuant to the Employee Retirement Income Security Act of 1974, as the act existed on the effective date of this act;

(6) Third-party administrator shall mean a person who directly or indirectly solicits or effects coverage of, underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this state or residents of another state from offices in this state, in connection with life insurance, sickness and accident insurance, workers' compensation insurance coverage, or annuities, except any of the following:

(a) An employer on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of such employer;

(b) A union on behalf of its members;

(c) An insurer which is authorized to transact the business of insurance in this state with respect to a policy lawfully issued and delivered in and pursuant to the laws of this state or another state;

(d) An ~~agent or broker~~ insurance producer licensed to sell life insurance, sickness and accident insurance, workers' compensation insurance coverage, or annuities in this state whose activities are limited exclusively to the sale of insurance;

(e) A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(f) A trust and its trustees, agents, and employees acting pursuant to such trust established in conformity with 29 U.S.C. 186, as such section existed on the effective date of this act;

(g) A trust exempt from taxation under section 501(a) of the Internal Revenue Code as defined in section 49-801.01, its trustees and employees acting pursuant to such trust, or a custodian and the custodian's agents or employees acting pursuant to a custodian account which meets the requirements of section 401(f) of the Internal Revenue Code as defined in section 49-801.01;

(h) A credit union or a financial institution which is subject to supervision or examination by federal or state banking authorities or a mortgage lender, to the extent it collects and remits premiums to licensed insurance agents or authorized insurers in connection with loan payments;

(i) A credit card issuing company which advances for and collects premiums or charges from its credit card holders who have authorized collection if the company does not adjust or settle claims;

(j) A person who adjusts or settles claims in the normal course of that person's practice or employment as an attorney at law and who does not collect charges or premiums in connection with life insurance, sickness and accident insurance, workers' compensation insurance coverage, or annuities;

(k) A person who acts solely as a third-party administrator of one or more bona fide employee benefit plans established by an employer or an employee organization, or both, for which the insurance laws of this state are preempted pursuant to the Employee Retirement Income Security Act of 1974, as

the act existed on the effective date of this act; or

(1) A person licensed as a managing general agent in this state whose activities are limited exclusively to the scope of activities allowed under such license; and

(7) Underwrite or underwriting shall include, but not be limited to, the acceptance of employer or individual applications for insurance coverage of individuals in accordance with the written rules of the insurer, the overall planning and coordinating of an insurance program, and the ability to procure bonds and excess insurance.

Sec. 40. The Revisor of Statutes shall assign sections 25 to 27 of this act to Chapter 44, article 3, and sections 29 to 33 of this act to Chapter 44, article 39.

Sec. 41. Original sections 44-103, 44-3,151, 44-3903, 44-4005.02, 44-4005.03, 44-4005.05, 44-4421, 44-5228, 44-5232, 44-5503, and 44-5802, Reissue Revised Statutes of Nebraska, and sections 44-150, 44-1525, 44-4001, 44-4005.01, 44-4005.04, and 44-4046, Revised Statutes Supplement, 2000, are repealed.

Sec. 42. The following sections are outright repealed: Sections 44-4002 to 44-4005, 44-4006 to 44-4009, 44-4011, 44-4012, 44-4014, 44-4016 to 44-4018, 44-4020, 44-4022 to 44-4027, 44-4029 to 44-4040, 44-4042 to 44-4045, and 44-5513, Reissue Revised Statutes of Nebraska, and sections 44-4010, 44-4013, 44-4015, 44-4019, 44-4028, and 44-4041, Revised Statutes Supplement, 2000.