

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 887

Final Reading

Introduced by Pahls, 31; McCoy, 39.

Read first time January 09, 2012

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to insurance; to amend sections 44-114, 44-154,
2 44-2120, 44-2121, 44-2126, 44-2127, 44-2129, 44-2132,
3 44-2133, 44-2135, 44-2137, 44-2138, 44-2139, 44-2702,
4 44-2703, 44-2704, 44-2719.02, 44-32,177, 44-8101,
5 44-8102, 44-8103, 44-8104, 44-8105, 44-8106, 44-8107, and
6 44-8216, Reissue Revised Statutes of Nebraska; to define
7 and redefine terms; to change provisions relating to
8 fees, confidential and privileged information, merger and
9 acquisition, registration, transactions, domestic
10 insurers, examination, confidential information, rules
11 and regulations, coverages, construction of statutes,
12 court orders, purpose, applicability, exemptions,
13 recommendations, powers and duties, and special purpose
14 financial captive insurers; to authorize supervisory
15 colleges; to provide powers for the Director of
16 Insurance; to require annuity education; to harmonize

1 provisions; to provide operative dates; and to repeal the
2 original sections.
3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 44-114, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 44-114 In addition to any other fees and charges provided
4 by law, the following shall be due and payable to the Department of
5 Insurance: (1) For filing the documents, papers, statements, and
6 information required by law upon the organization of domestic or the
7 entry of foreign or alien insurers, statistical agents, or advisory
8 organizations, three hundred dollars; (2) for filing each amendment
9 of articles of incorporation, twenty dollars; (3) for filing restated
10 articles of incorporation, twenty dollars; (4) for renewing each
11 certificate of authority of insurers, statistical agents, or advisory
12 organizations, one hundred dollars, except domestic assessment
13 associations, ~~which do business in less than thirty-one counties in~~
14 ~~Nebraska,~~ which shall pay twenty dollars; (5) for issuance of an
15 amended certificate of authority, one hundred dollars; (6) for filing
16 a certified copy of articles of merger involving a domestic or
17 foreign insurance corporation holding a certificate of authority to
18 transact insurance business in this state, fifty dollars; (7) for
19 filing an annual statement, two hundred dollars; (8) for each
20 certificate of valuation, deposit, or compliance or other certificate
21 for whomsoever issued, five dollars; (9) for filing any report which
22 may be required by the department from any unincorporated mutual
23 association, ~~five dollars; no fee shall be due;~~ (10) for copying
24 official records or documents, fifty cents per page; and (11) for a
25 preadmission review of documents required to be filed for the

1 admission of a foreign insurer or for the organization and licensing
2 of a domestic insurer other than an assessment association, a
3 nonrefundable fee of one thousand dollars.

4 Sec. 2. Section 44-154, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 44-154 (1) Unless otherwise expressly prohibited by
7 Chapter 44, the director may:

8 (a) Share documents, materials, or other information,
9 including otherwise confidential and privileged documents, materials,
10 or information, with other state, federal, foreign, and international
11 regulatory and law enforcement agencies, the International
12 Association of Insurance Supervisors, the Bank for International
13 Settlements, and ~~with~~ the National Association of Insurance
14 Commissioners and its affiliates and subsidiaries if the recipient
15 agrees to maintain the confidential or privileged status of the
16 document, material, or other information;

17 (b) Receive documents, materials, or other information,
18 including otherwise confidential and privileged documents, materials,
19 or information, from other state, federal, foreign, or international
20 regulatory and law enforcement agencies, the International
21 Association of Insurance Supervisors, the Bank for International
22 Settlements, and ~~from~~ the National Association of Insurance
23 Commissioners and its affiliates and subsidiaries. The director shall
24 maintain as confidential or privileged any document, material, or
25 other information received pursuant to an information-sharing

1 agreement entered into pursuant to this section with notice or the
2 understanding that the document, material, or other information is
3 confidential or privileged under the laws of the jurisdiction that is
4 the source of the document, material, or information; and

5 (c) Enter into agreements governing sharing and use of
6 information consistent with this subsection.

7 (2)(a) All confidential and privileged information
8 obtained by or disclosed to the director by other state, federal,
9 foreign, or international regulatory and law enforcement agencies,
10 the International Association of Insurance Supervisors, the Bank for
11 International Settlements, or ~~by~~ the National Association of
12 Insurance Commissioners and its affiliates and subsidiaries pursuant
13 to this section with notice or the understanding that it is
14 confidential or privileged under the laws of the jurisdiction that is
15 the source of the document, material, or other information shall:

16 (i) Be confidential and privileged;

17 (ii) Not be a public record subject to disclosure by the
18 director pursuant to sections 84-712 to 84-712.09;

19 (iii) Not be subject to subpoena; and

20 (iv) Not be subject to discovery or admissible in
21 evidence in any private civil action.

22 (b) Notwithstanding the provisions of subdivision (2)(a)
23 of this section, the director may use the documents, materials, or
24 other information in any regulatory or legal action brought by the
25 director.

1 (3) The director, and any other person while acting under
2 the authority of the director who has received information from other
3 state, federal, foreign, or international regulatory and law
4 enforcement agencies, the International Association of Insurance
5 Supervisors, the Bank for International Settlements, or ~~from~~ the
6 National Association of Insurance Commissioners or its affiliates and
7 subsidiaries pursuant to this section, may not, and shall not be
8 required to, testify in any private civil action concerning such
9 information.

10 (4) Nothing in this section shall constitute a waiver of
11 any applicable privilege or claim of confidentiality in the
12 documents, materials, or other information received from state,
13 federal, foreign, or international regulatory and law enforcement
14 agencies, the International Association of Insurance Supervisors, the
15 Bank for International Settlements, or ~~from~~ the National Association
16 of Insurance Commissioners or its affiliates and subsidiaries
17 pursuant to this section as a result of disclosure to the director or
18 as a result of information sharing authorized by this section.

19 Sec. 3. Section 44-2120, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 44-2120 Sections 44-2120 to 44-2153 and sections 12 and
22 15 of this act shall be known and may be cited as the Insurance
23 Holding Company System Act.

24 Sec. 4. Section 44-2121, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 44-2121 For purposes of the Insurance Holding Company
2 System Act:

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

7 (2) Control, including controlling, controlled by, and
8 under common control with, ~~shall mean~~ means the possession, direct or
9 indirect, of the power to direct or cause the direction of the
10 management and policies of a person, whether through the ownership of
11 voting securities, by contract other than a commercial contract for
12 goods or nonmanagement services, or otherwise, unless the power is
13 the result of an official position with or corporate office held by
14 the person. Control ~~shall be~~ is presumed to exist if any person,
15 directly or indirectly, owns, controls, holds with the power to vote,
16 or holds proxies representing ten percent or more of the voting
17 securities of any other person. This presumption may be rebutted by a
18 showing made in the manner provided by subsection (11) of section
19 44-2132 that control does not exist in fact. The director may
20 determine, after furnishing all persons in interest notice and
21 opportunity to be heard and making specific findings of fact to
22 support such determination, that control exists in fact,
23 notwithstanding the absence of a presumption to that effect;

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

25 (4) Enterprise risk means any activity, circumstance,

1 event, or series of events involving one or more affiliates of an
2 insurer that, if not remedied promptly, is likely to have a material
3 adverse effect upon the financial condition or liquidity of the
4 insurer or its insurance holding company system as a whole,
5 including, but not limited to, anything that would cause the
6 insurer's risk-based capital to fall into company action level as set
7 forth in section 44-6011 or would cause the insurer to be in
8 hazardous financial condition as defined by rule and regulation
9 adopted and promulgated by the director to define standards for
10 companies deemed to be in hazardous financial condition;

11 ~~(4)~~(5) An insurance holding company system shall consist
12 of two or more affiliated persons, one or more of which is an
13 insurer;

14 ~~(5)~~(6) Insurer ~~shall have~~has the same meaning as set
15 ~~forth~~ in section 44-103, except that insurer ~~shall~~does not include
16 agencies, authorities, or instrumentalities of the United States, its
17 possessions and territories, the Commonwealth of Puerto Rico, the
18 District of Columbia, or a state or political subdivision of a state;

19 ~~(6)~~(7) Person ~~shall mean~~means an individual, a
20 corporation, a partnership, a limited partnership, an association, a
21 joint-stock company, a trust, an unincorporated organization, any
22 similar entity, or any combination of such entities acting in concert
23 but ~~shall~~does not include any joint-venture partnership exclusively
24 engaged in owning, managing, leasing, or developing real or tangible
25 personal property;

1 ~~(7)-(8)~~ Security holder of a specified person ~~shall mean~~
2 means one who owns any security of such person, including common
3 stock, preferred stock, debt obligations, and any other security
4 convertible into or evidencing the right to acquire any such stock or
5 obligations;

6 ~~(8)-(9)~~ Subsidiary of a specified person ~~shall mean means~~
7 an affiliate controlled by such person directly or indirectly through
8 one or more intermediaries; and

9 ~~(9)-(10)~~ Voting security ~~shall include includes~~ any
10 security convertible into or evidencing a right to acquire a voting
11 security.

12 Sec. 5. Section 44-2126, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 44-2126 (1) No person other than the issuer shall make a
15 tender offer for or a request or invitation for tenders of, or enter
16 into any agreement to exchange securities for, or seek to acquire, or
17 acquire, in the open market or otherwise, any voting security of a
18 domestic insurer if, after the consummation thereof, such person
19 would, directly or indirectly, or by conversion or by exercise of any
20 right to acquire, be in control of such insurer, and no person shall
21 enter into an agreement to merge with or otherwise to acquire control
22 of a domestic insurer or any person controlling a domestic insurer
23 unless, at the time any such offer, request, or invitation is made or
24 any such agreement is entered into, or prior to the acquisition of
25 such securities if no offer or agreement is involved, such person has

1 filed with the director and has sent to such insurer, a statement
2 containing the information required by this section and such offer,
3 request, invitation, agreement, or acquisition has been approved by
4 the director in the manner prescribed in section 44-2127.

5 (2) For purposes of this section, any controlling person
6 of a domestic insurer seeking to divest his, her, or its controlling
7 interest in the domestic insurer, in any manner, shall file with the
8 director, with a copy to the insurer, confidential notice of its
9 proposed divestiture at least thirty days prior to the cessation of
10 control. The director shall determine those instances in which the
11 party or parties seeking to divest or to acquire a controlling
12 interest in an insurer will be required to file for and obtain
13 approval of the transaction. The information shall remain
14 confidential until the conclusion of the transaction unless the
15 director, in his or her discretion, determines that confidential
16 treatment will interfere with enforcement of this section. If the
17 statement referred to in subsection (1) of this section is otherwise
18 filed, this subsection shall not apply.

19 ~~(2)~~(3) For purposes of this section, a domestic insurer
20 ~~shall include~~includes any person controlling a domestic insurer
21 unless such person as determined by the director is either directly
22 or through its affiliates primarily engaged in business other than
23 the business of insurance. For purposes of this section, person ~~shall~~
24 does not include any securities broker holding, in the usual and
25 customary brokers function, less than twenty percent of the voting

1 securities of an insurance company or of any person which controls an
2 insurance company.

3 ~~(3)~~ (4) The statement required to be filed with the
4 director under subsection (1) of this section shall be made under
5 oath and shall contain the following: ~~information:~~

6 (a) The name and address of each person by whom or on
7 whose behalf the merger or other acquisition of control referred to
8 in subsection (1) of this section is to be effected and either:

9 (i) If such person is an individual, his or her principal
10 occupation, all offices and positions held during the past five
11 years, and any conviction of crimes other than minor traffic
12 violations during the past ten years; or

13 (ii) If such person is not an individual, a report of the
14 nature of its business operations during the past five years or for
15 such lesser period as such person and any predecessors thereof have
16 been in existence, an informative description of the business
17 intended to be done by such person and such person's subsidiaries,
18 and a list of all individuals who are or who have been selected to
19 become directors or executive officers of such person or who perform
20 or will perform functions appropriate to such positions. Such list
21 shall include for each such individual the information required by
22 subdivision (i) of this subdivision;

23 (b) The source, nature, and amount of the consideration
24 used or to be used in effecting the merger or other acquisition of
25 control, a description of any transaction in which funds were or are

1 to be obtained for any such purpose, including any pledge of the
2 insurer's stock or the stock of any of its subsidiaries or
3 controlling affiliates, and the identity of persons furnishing such
4 consideration, except that when a source of such consideration is a
5 loan made in the lender's ordinary course of business, the identity
6 of the lender shall remain confidential if the person filing such
7 statement so requests;

8 (c) Fully audited financial information as to the
9 earnings and financial condition of each acquiring party for the
10 preceding five fiscal years of each such acquiring party or for such
11 lesser period as such acquiring party and any predecessors thereof
12 have been in existence and similar unaudited information as of a date
13 not earlier than ninety days prior to the filing of the statement;

14 (d) Any plans or proposals which each acquiring party may
15 have to liquidate such insurer, to sell its assets or merge or
16 consolidate it with any person, or to make any other material change
17 in its business or corporate structure or management;

18 (e) The number of shares of any security referred to in
19 subsection (1) of this section which each acquiring party proposes to
20 acquire, the terms of the offer, request, invitation, agreement, or
21 acquisition referred to in subsection (1) of this section, and a
22 statement as to the method by which the fairness of the proposal was
23 arrived at;

24 (f) The amount of each class of any security referred to
25 in subsection (1) of this section which is beneficially owned or

1 concerning which there is a right to acquire beneficial ownership by
2 each acquiring party;

3 (g) A full description of any contracts, arrangements, or
4 understandings with respect to any security referred to in subsection
5 (1) of this section in which any acquiring party is involved,
6 including transfer of any of the securities, joint ventures, loan or
7 option arrangements, puts or calls, guarantees of loans, guarantees
8 against loss, guarantees of profits, division of losses or profits,
9 or the giving or withholding of proxies. Such description shall
10 identify the persons with whom such contracts, arrangements, or
11 understandings have been entered into;

12 (h) A description of the purchase of any security
13 referred to in subsection (1) of this section during the twelve
14 calendar months preceding the filing of the statement by any
15 acquiring party, including the dates of purchase, names of the
16 purchasers, and consideration paid or agreed to be paid therefor;

17 (i) A description of any recommendations to purchase any
18 security referred to in subsection (1) of this section made during
19 the twelve calendar months preceding the filing of the statement by
20 any acquiring party or by anyone based upon interviews or at the
21 suggestion of such acquiring party;

22 (j) Copies of all tender offers for, requests, or
23 invitations for tenders of, exchange offers for, and agreements to
24 acquire or exchange any securities referred to in subsection (1) of
25 this section and, if distributed, of additional soliciting material

1 relating thereto;

2 (k) The term of any agreement, contract, or understanding
3 made with or proposed to be made with any broker-dealer as to
4 solicitation of securities referred to in subsection (1) of this
5 section for tender and the amount of any fees, commissions, or other
6 compensation to be paid to broker-dealers with regard thereto; ~~and~~

7 (l) An agreement by the person required to file the
8 statement referred to in subsection (1) of this section that he, she,
9 or it will provide the annual report specified in subsection (12) of
10 section 44-2132 for as long as control exists;

11 (m) An acknowledgment by the person required to file the
12 statement referred to in subsection (1) of this section that the
13 person and all subsidiaries within his, her, or its control in the
14 insurance holding company system will provide information to the
15 director upon request as necessary to evaluate enterprise risk to the
16 insurer; and

17 ~~(l)-(n)~~ Such additional information as the director may
18 by rule or regulation prescribe as necessary or appropriate for the
19 protection of policyholders of the insurer or in the public interest.

20 ~~(4)-(5)~~ If the person required to file the statement is a
21 partnership, limited partnership, syndicate, or other group, the
22 director may require that the information called for by subsection
23 ~~(3)-(4)~~ of this section shall be given with respect to each partner
24 of such partnership or limited partnership, each member of such
25 syndicate or group, and each person who controls such partner or

1 member. If any such partner, member, or person is a corporation or
2 the person required to file the statement is a corporation, the
3 director may require that the information called for by subsection
4 ~~(3)~~ (4) of this section shall be given with respect to such
5 corporation, each officer and director of such corporation, and each
6 person who is directly or indirectly the beneficial owner of more
7 than ten percent of the outstanding voting securities of such
8 corporation.

9 ~~(5)~~ (6) If any material change occurs in the facts set
10 forth in the statement filed with the director and sent to such
11 insurer pursuant to this section, an amendment setting forth such
12 change, together with copies of all documents and other material
13 relevant to such change, shall be filed with the director and sent to
14 such insurer within two business days after the person learns of such
15 change.

16 ~~(6)~~ (7) If any offer, request, invitation, agreement, or
17 acquisition referred to in subsection (1) of this section is proposed
18 to be made by means of a registration statement under the Securities
19 Act of 1933, in circumstances requiring the disclosure of similar
20 information under the Securities Exchange Act of 1934, or under a
21 state law requiring similar registration or disclosure, the person
22 required to file the statement may utilize such documents in
23 furnishing the information called for by the statement.

24 Sec. 6. Section 44-2127, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 44-2127 (1) The director shall approve any merger or
2 other acquisition of control referred to in subsection (1) of section
3 44-2126 unless, after a public hearing thereon, he or she finds that:

4 (a) After the change of control, the domestic insurer
5 would not be able to satisfy the requirements for the issuance of a
6 license to write the line or lines of insurance for which it is
7 presently licensed;

8 (b) The effect of the merger or other acquisition of
9 control would be substantially to lessen competition in insurance in
10 this state or tend to create a monopoly therein;

11 (c) The financial condition of any acquiring party is
12 such as might jeopardize the financial stability of the insurer or
13 prejudice the interest of policyholders of the insurer;

14 (d) The plans or proposals which the acquiring party has
15 to liquidate the insurer, to sell its assets or consolidate or merge
16 it with any person, or to make any other material change in its
17 business or corporate structure of management are unfair and
18 unreasonable to policyholders of the insurer and not in the public
19 interest;

20 (e) The competence, experience, and integrity of those
21 persons who would control the operation of the insurer are such that
22 it would not be in the interest of policyholders of the insurer and
23 of the public to permit the merger or other acquisition of control;

24 (f) To the extent required under section 44-6115, an
25 acquisition has not been approved by the director; or

1 (g) The acquisition is likely to be hazardous or
2 prejudicial to the public.

3 (2) ~~The~~ Except as provided in subsection (3) of this
4 section, the public hearing referred to in subsection (1) of this
5 section shall be held within thirty days after the statement required
6 by subsection (1) of section 44-2126 is filed, and at least twenty
7 days' notice thereof shall be given by the director to the person
8 filing the statement. Not less than seven days' notice of such public
9 hearing shall be given by the person filing the statement to the
10 insurer and to such other persons as may be designated by the
11 director. The director shall make a determination within the sixty-
12 day period preceding the effective date of the proposed transaction.
13 At such hearing, the person filing the statement, the insurer, any
14 person to whom notice of hearing was sent, and any other person whose
15 interest may be affected thereby shall have the right to present
16 evidence, examine and cross-examine witnesses, and offer oral and
17 written arguments and in connection therewith shall be entitled to
18 conduct discovery proceedings in the same manner as is presently
19 allowed in the district court. All discovery proceedings shall be
20 concluded not later than three days prior to the commencement of the
21 public hearing.

22 (3) If the proposed acquisition of control will require
23 the approval of more than one director or commissioner of insurance,
24 the public hearing required by this section may be held on a
25 consolidated basis upon request of the person filing the statement

1 referred to in subsection (1) of section 44-2126. Such person shall
2 file the statement with the National Association of Insurance
3 Commissioners within five days after making the request for a public
4 hearing. A director or commissioner may opt out of a consolidated
5 hearing and shall provide notice to the applicant of the opt out
6 within ten days after the receipt of the statement. A hearing
7 conducted on a consolidated basis shall be public and shall be held
8 within the United States before the directors or commissioners of the
9 states in which the insurers are domiciled. Such directors or
10 commissioners shall hear and receive evidence. A director or
11 commissioner may attend such hearing in person or by
12 telecommunication.

13 ~~(3)~~(4) In connection with a change of control of a
14 domestic insurer, any determination by the director that the person
15 acquiring control of the insurer shall be required to maintain or
16 restore the capital of the insurer to the level required by the laws,
17 rules, and regulations of this state shall be made not later than
18 sixty days after the date of the director's determination. The
19 director may retain at the acquiring person's expense any attorneys,
20 actuaries, accountants, and other experts who are not employees of
21 the Department of Insurance as may be reasonably necessary to assist
22 the director in reviewing the proposed acquisition of control.

23 Sec. 7. Section 44-2129, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 44-2129 (1) It shall be a violation of section 44-2126 to

1 fail to file any statement, amendment, or other material required to
2 be filed under such section.

3 (2) It shall be a violation of section 44-2127 to
4 effectuate or attempt to effectuate an acquisition of control of,
5 divestiture of, or merger with a domestic insurer unless the director
6 has given his or her approval thereto.

7 Sec. 8. Section 44-2132, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 44-2132 (1) Every insurer which is authorized to do
10 business in this state and which is a member of an insurance holding
11 company system shall register with the director, except that
12 registration shall not be required for a foreign insurer subject to
13 registration requirements and standards adopted by statute or
14 regulation in the jurisdiction of its domicile which are
15 substantially similar to those contained in this section, subsection
16 (1) of section 44-2133, sections 44-2134 and 44-2136, and either
17 subsection (2) of section 44-2133 or a provision such as the
18 following: Each registered insurer shall keep current the information
19 required to be disclosed in its registration statement by reporting
20 all material changes or additions within fifteen days after the end
21 of the month in which it learns of each such change or addition. Any
22 insurer which is subject to registration under this section shall
23 register within fifteen days after it becomes subject to registration
24 and annually thereafter by May 1 of each year for the previous
25 calendar year unless the director for good cause shown extends the

1 time for such initial or annual registration and then within such
2 extended time. The director may require any insurer which is
3 authorized to do business in the state, which is a member of an
4 insurance holding company system, and which is not subject to
5 registration under this section to furnish a copy of the registration
6 statement, the summary specified in subsection (3) of this section,
7 or other information filed by such insurer with the insurance
8 regulatory authority of its domiciliary jurisdiction.

9 (2) Every insurer subject to registration shall file the
10 registration statement with the director on a form and in a format
11 prescribed by the National Association of Insurance Commissioners
12 which shall contain the following current information:

13 (a) The capital structure, general financial condition,
14 ownership, and management of the insurer and any person controlling
15 the insurer;

16 (b) The identity and relationship of every member of the
17 insurance holding company system;

18 (c) The following agreements in force and transactions
19 currently outstanding or which have occurred during the last calendar
20 year between such insurer and its affiliates:

21 (i) Loans, other investments, or purchases, sales, or
22 exchanges of securities of the affiliates by the insurer or of the
23 insurer by its affiliates;

24 (ii) Purchases, sales, or exchanges of assets;

25 (iii) Transactions not in the ordinary course of

1 business;

2 (iv) Guarantees or undertakings for the benefit of an
3 affiliate which result in an actual contingent exposure of the
4 insurer's assets to liability, other than insurance contracts entered
5 into in the ordinary course of the insurer's business;

6 (v) All management agreements, service contracts, and
7 cost-sharing arrangements;

8 (vi) Reinsurance agreements;

9 (vii) Dividends and other distributions to shareholders;

10 and

11 (viii) Consolidated tax allocation agreements;

12 (d) Any pledge of the insurer's stock, including stock of
13 any subsidiary or controlling affiliate, for a loan made to any
14 member of the insurance holding company system; ~~and~~

15 (e) If requested by the director, the insurer shall
16 include financial statements of or within an insurance holding
17 company system, including all affiliates. Financial statements may
18 include, but are not limited to, annual audited financial statements
19 filed with the Securities and Exchange Commission pursuant to the
20 Securities Act of 1933, as amended, or the Securities Exchange Act of
21 1934, as amended. An insurer required to file financial statements
22 pursuant to this subdivision may satisfy the request by providing the
23 director with the most recently filed parent corporation financial
24 statements that have been filed with the Securities and Exchange
25 Commission;

1 (f) Statements that show that the insurer's board of
2 directors oversees corporate governance and internal controls and
3 that the insurer's officers or senior management have approved,
4 implemented, and continue to maintain and monitor corporate
5 governance and internal control procedures;

6 ~~(e)~~(g) Other matters concerning transactions between
7 registered insurers and any affiliates as may be included from time
8 to time in any registration forms adopted or approved by the
9 director; and -

10 (h) Any other information required by rules and
11 regulations which the director may adopt and promulgate.

12 (3) All registration statements shall contain a summary
13 outlining all items in the current registration statement
14 representing changes from the prior registration statement.

15 (4) It shall not be necessary to disclose on the
16 registration statement information which is not material for the
17 purposes of this section. Unless the director by rule, regulation, or
18 order provides otherwise, sales, purchases, exchanges, loans, or
19 extensions of credit, investments, or guarantees involving one-half
20 of one percent or less of an insurer's admitted assets as of December
21 31 next preceding shall not be deemed material for purposes of this
22 section.

23 (5) Subject to the requirements of section 44-2134, each
24 registered insurer shall give notice to the director of all dividends
25 and other distributions to shareholders within five business days

1 following the declaration thereof and shall not pay any such
2 dividends or other distributions to shareholders within ten business
3 days following receipt of such notice by the director unless for good
4 cause shown the director has approved such payment within such ten-
5 business-day period.

6 (6) Any person within an insurance holding company system
7 subject to registration shall be required to provide complete and
8 accurate information to an insurer when such information is
9 reasonably necessary to enable the insurer to comply with the
10 Insurance Holding Company System Act.

11 (7) The director shall terminate the registration of any
12 insurer which demonstrates that it no longer is a member of an
13 insurance holding company system.

14 (8) The director may require or allow two or more
15 affiliated insurers subject to registration under this section to
16 file a consolidated registration statement.

17 (9) The director may allow an insurer which is authorized
18 to do business in this state and which is part of an insurance
19 holding company system to register on behalf of any affiliated
20 insurer which is required to register under subsection (1) of this
21 section and to file all information and material required to be filed
22 under this section.

23 (10) This section shall not apply to any insurer,
24 information, or transaction if and to the extent that the director by
25 rule, regulation, or order exempts the same from this section.

1 (11) Any person may file with the director a disclaimer
2 of affiliation with any authorized insurer or such a disclaimer may
3 be filed by such insurer or any member of an insurance holding
4 company system. The disclaimer shall fully disclose all material
5 relationships and bases for affiliation between such person and such
6 insurer as well as the basis for disclaiming such affiliation. ~~After~~
7 ~~a disclaimer has been filed, the insurer shall be relieved of any~~
8 ~~duty to register or report under this section which may arise out of~~
9 ~~the insurer's relationship with such person unless and until the~~
10 ~~director disallows such a disclaimer. The director shall disallow~~
11 ~~such a disclaimer only after furnishing all parties in interest with~~
12 ~~notice and opportunity to be heard and after making specific findings~~
13 ~~of fact to support such disallowance. A disclaimer of affiliation~~
14 ~~shall be deemed to have been granted unless the director, within~~
15 ~~thirty days after receipt of a complete disclaimer, notifies the~~
16 ~~filing party that the disclaimer is disallowed. If the disclaimer is~~
17 ~~disallowed, the disclaiming party may request and shall be entitled~~
18 ~~to an administrative hearing. The disclaiming party shall be relieved~~
19 ~~of its duty to register under this section if approval of the~~
20 ~~disclaimer has been granted by the director or if the disclaimer is~~
21 ~~deemed to have been approved.~~

22 (12) The ultimate controlling person of every insurer
23 subject to registration shall also file an annual enterprise risk
24 report. The report shall, to the best of the ultimate controlling
25 person's knowledge and belief, identify the material risks within the

1 insurance holding company system that could pose enterprise risk to
2 the insurer. The report shall be filed with the lead state director
3 or commissioner of the insurance holding company system as determined
4 by the procedures within the Financial Analysis Handbook adopted by
5 the National Association of Insurance Commissioners.

6 ~~(12)~~-(13) The failure to file a registration statement or
7 any summary of the registration statement thereto or enterprise risk
8 report required by this section within the time specified for such
9 filing shall be a violation of this section.

10 Sec. 9. Section 44-2133, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 44-2133 (1) Transactions within an insurance holding
13 company system to which an insurer subject to registration is a party
14 shall be subject to the following standards:

15 (a) The terms shall be fair and reasonable;

16 (b) Agreements for cost-sharing services and management
17 shall include such provisions as are required by rules and
18 regulations which the director may adopt and promulgate;

19 ~~(b)~~-(c) Charges or fees for services performed shall be
20 reasonable;

21 ~~(e)~~-(d) Expenses incurred and payment received shall be
22 allocated to the insurer in conformity with customary insurance
23 accounting practices consistently applied;

24 ~~(d)~~-(e) The books, accounts, and records of each party to
25 all such transactions shall be so maintained as to clearly and

1 accurately disclose the nature and details of the transactions,
2 including such accounting information as is necessary to support the
3 reasonableness of the charges or fees to the respective parties; and

4 ~~(e)-(f)~~ The insurer's policyholders surplus following any
5 dividends or distributions to shareholder affiliates shall be
6 reasonable in relation to the insurer's outstanding liabilities and
7 adequate to its financial needs.

8 (2) The following transactions involving a domestic
9 insurer and any person in its insurance holding company system,
10 including amendments or modifications of affiliate agreements
11 previously filed pursuant to this section which are subject to any
12 materiality standards contained in subdivisions (2)(a) through (e) of
13 this section, shall ~~may~~ not be entered into unless the insurer has
14 notified the director in writing of its intention to enter into such
15 transaction at least thirty days prior thereto or such shorter period
16 as the director may permit and the director has not disapproved it
17 within such period. The notice for amendments or modifications shall
18 include the reasons for the change and the financial impact on the
19 domestic insurer. Informal notice shall be reported, within thirty
20 days after a termination of a previously filed agreement, to the
21 director for determination of the type of filing required, if any:

22 (a) Sales, purchases, exchanges, loans, or extensions of
23 credit, guarantees, or investments if such transactions are equal to
24 or exceed (i) with respect to an insurer other than a life insurer,
25 the lesser of three percent of the insurer's admitted assets or

1 twenty-five percent of policyholders surplus as of December 31 next
2 preceding and (ii) with respect to life insurers, three percent of
3 the insurer's admitted assets as of December 31 next preceding;

4 (b) Loans or extensions of credit to any person who is
5 not an affiliate, when the insurer makes such loans or extensions of
6 credit with the agreement or understanding that the proceeds of such
7 transactions, in whole or in substantial part, are to be used to make
8 loans or extensions of credit to, to purchase assets of, or to make
9 investments in any affiliate of the insurer making such loans or
10 extensions of credit if such transactions are equal to or exceed (i)
11 with respect to an insurer other than a life insurer, the lesser of
12 three percent of the insurer's admitted assets or twenty-five percent
13 of policyholders surplus as of December 31 next preceding and (ii)
14 with respect to life insurers, three percent of the insurer's
15 admitted assets as of December 31 next preceding;

16 (c) Reinsurance agreements or modifications thereto,
17 including (i) all reinsurance pooling agreements and (ii) agreements
18 in which the reinsurance premium or a change in the insurer's
19 liabilities or the projected reinsurance premium or change in the
20 insurer's liabilities in any of the next three years equals or
21 exceeds five percent of the insurer's policyholders surplus as of
22 December 31 next preceding, including those agreements which may
23 require as consideration the transfer of assets from an insurer to a
24 nonaffiliate, if an agreement or understanding exists between the
25 insurer and nonaffiliate that any portion of such assets will be

1 transferred to one or more affiliates of the insurer;

2 (d) All management agreements, service contracts, tax-
3 allocation agreements, and cost-sharing arrangements; and

4 (e) Any material transactions, specified by rule and
5 regulation, which the director determines may adversely affect the
6 interests of the insurer's policyholders.

7 Nothing in this section shall be deemed to authorize or
8 permit any transactions which, in the case of an insurer not a member
9 of the same insurance holding company system, would be otherwise
10 contrary to law.

11 (3) A domestic insurer may not enter into transactions
12 which are part of a plan or series of like transactions with persons
13 within the insurance holding company system if the purpose of those
14 separate transactions is to avoid the statutory threshold amount and
15 thus avoid the review that would occur otherwise. If the director
16 determines that such separate transactions were entered into over any
17 twelve-month period for such purpose, the director may exercise his
18 or her authority under sections 44-2143 to 44-2147.

19 (4) The director, in reviewing transactions pursuant to
20 subsection (2) of this section, shall consider whether the
21 transactions comply with the standards set forth in subsection (1) of
22 this section and whether they may adversely affect the interests of
23 policyholders.

24 (5) The director shall be notified within thirty days of
25 any investment of the domestic insurer in any one corporation if the

1 total investment in such corporation by the insurance holding company
2 system exceeds ten percent of such corporation's voting securities.

3 Sec. 10. Section 44-2135, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 44-2135 (1) Notwithstanding the control of a domestic
6 insurer by any person, the officers and directors of the insurer
7 shall not thereby be relieved of any obligation or liability to which
8 they would otherwise be subject by law, and the insurer shall be
9 managed so as to assure its separate operating identity consistent
10 with the Insurance Holding Company System Act.

11 (2) Nothing in this section shall preclude a domestic
12 insurer from having or sharing a common management or cooperative or
13 joint use of personnel, property, or services with one or more other
14 persons under arrangements meeting the standards of subsection (1) of
15 section 44-2133.

16 (3) Not less than one-third of the directors of a
17 domestic insurer which is a member of an insurance holding company
18 system shall be persons who are not officers or employees of such
19 insurer or of any entity controlling, controlled by, or under common
20 control with such insurer and who are not beneficial owners of a
21 controlling interest in the voting stock of such insurer or any such
22 entity. At least one such person shall be included in any quorum for
23 the transaction of business at any meeting of the board of directors.

24 (4) Subsection (3) of this section shall not apply to a
25 domestic insurer if the person controlling such insurer, such as an

1 insurer, a mutual insurance holding company, or a publicly held
2 corporation, has a board of directors that meets the requirements of
3 such subsection with respect to such controlling entity.

4 (5) An insurer may make application to the director for a
5 waiver from the requirements of this section if the insurer's annual
6 direct written and assumed premium, excluding premiums reinsured with
7 the Federal Crop Insurance Corporation and the national flood
8 insurance program as defined in section 31-1014, is less than three
9 hundred million dollars. An insurer may also make application to the
10 director for a waiver from the requirements of this section based
11 upon unique circumstances. The director may consider various factors
12 including, but not limited to, the type of business entity, volume of
13 business written, availability of qualified board members, or
14 ownership or organizational structure of the entity.

15 Sec. 11. Section 44-2137, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 44-2137 (1)(a) Subject to the limitation contained in
18 this section and in addition to the powers which the director has
19 under the Insurers Examination Act relating to the examination of
20 insurers, the director ~~shall also have the power to~~ may examine any
21 insurer registered under section 44-2132 and its affiliates to
22 ascertain the financial condition of the insurer, including the
23 enterprise risk to the insurer by the ultimate controlling party, by
24 any entity or combination of entities within the insurance holding
25 company system, or by the insurance holding company system on a

1 consolidated basis.

2 (b) The director may order any insurer registered under
3 section 44-2132 to produce such records, books, or other information
4 papers in the possession of the insurer or its affiliates as are
5 reasonably necessary to ascertain the financial condition of such
6 insurer or to determine compliance with Chapter 44. In the event such
7 insurer fails to comply with such order, the director may examine
8 such affiliates to obtain such information.

9 (c) To determine compliance with Chapter 44, the director
10 may order any insurer registered under section 44-2132 to produce
11 information not in the possession of the insurer if the insurer can
12 obtain access to such information pursuant to contractual
13 relationships, statutory obligations, or another method. If the
14 insurer cannot obtain the information requested by the director, the
15 insurer shall provide the director a detailed explanation of the
16 reason that the insurer cannot obtain the information and the
17 identity of the holder of the information. If it appears to the
18 director that the detailed explanation is without merit, the director
19 may require, after notice and hearing, the insurer to pay a penalty
20 of one hundred dollars for each day's delay, not to exceed an
21 aggregate penalty of ten thousand dollars, or may suspend or revoke
22 the insurer's certificate of authority.

23 (2) The director may retain at the registered insurer's
24 expense such attorneys, actuaries, accountants, and other experts who
25 are not employees of the Department of Insurance as shall be

1 reasonably necessary to assist in the conduct of the examination
2 under this section. Any persons so retained shall be under the
3 direction and control of the director and shall act in a purely
4 advisory capacity.

5 (3) Each registered insurer producing for examination
6 records, books, and papers pursuant to this section shall be liable
7 for and shall pay the expense of such examination in accordance with
8 the Insurers Examination Act.

9 (4) If the insurer fails to comply with an order, the
10 director may examine the affiliates to obtain the information. The
11 director may also issue subpoenas, administer oaths, and examine
12 under oath any person for purposes of determining compliance with
13 this section. Upon the failure or refusal of any person to obey a
14 subpoena, the director may petition a court of competent
15 jurisdiction, and upon proper showing, the court may enter an order
16 compelling the witness to appear and testify or produce documentary
17 evidence. Failure to obey the court order shall be punishable by
18 contempt of court. Every person shall be obliged to attend as a
19 witness at the place specified in the subpoena, when subpoenaed,
20 anywhere within the state. He or she shall be entitled to the same
21 fees and mileage, if claimed, as a witness in the district court,
22 which fees, mileage, and actual expenses, if any, necessarily
23 incurred in securing the attendance of witnesses and their testimony,
24 shall be itemized, charged against, and paid by the entity being
25 examined.

1 Sec. 12. (1) With respect to any insurer registered under
2 section 44-2132 and in accordance with subsection (3) of this
3 section, the director may participate in a supervisory college for
4 any domestic insurer that is part of an insurance holding company
5 system with international operations in order to determine compliance
6 with Chapter 44 by the insurer. The powers of the director with
7 respect to supervisory colleges include, but are not limited to, the
8 following:

9 (a) Initiating the establishment of a supervisory
10 college;

11 (b) Clarifying the membership and participation of other
12 supervisors in the supervisory college;

13 (c) Clarifying the functions of the supervisory college
14 and the role of other regulators, including the establishment of a
15 group-wide supervisor;

16 (d) Coordinating the ongoing activities of the
17 supervisory college, including planning meetings, supervisory
18 activities, and processes for information sharing; and

19 (e) Establishing a crisis management plan.

20 (2) Each insurer subject to this section shall be liable
21 for and shall pay the reasonable expenses of the director's
22 participation in a supervisory college in accordance with subsection
23 (3) of this section, including reasonable travel expenses.

24 (3) In order to assess the business strategy, financial
25 position, legal and regulatory position, risk exposure, risk

1 management, and governance processes, and as part of the examination
2 of individual insurers in accordance with section 44-2137, the
3 director may participate in a supervisory college with other
4 regulators charged with supervision of the insurer or its affiliates,
5 including other state, federal, and international regulatory
6 agencies. The director may enter into agreements in accordance with
7 section 44-2138 providing the basis for cooperation between the
8 director and the other regulatory agencies and the activities of the
9 supervisory college.

10 (4) For purposes of this section, a supervisory college
11 may be convened as either a temporary or permanent forum for
12 communication and cooperation between the regulators charged with the
13 supervision of the insurer or its affiliates, and the director may
14 establish a regular assessment to the insurer for the payment of such
15 expenses.

16 (5) Nothing in this section shall delegate to the
17 supervisory college the authority of the director to regulate or
18 supervise the insurer or its affiliates within its jurisdiction.

19 Sec. 13. Section 44-2138, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 44-2138 (1) All information, documents, and copies
22 thereof obtained by or disclosed to the director or any other person
23 in the course of an examination or investigation made pursuant to
24 section 44-2137 and all information reported pursuant to sections
25 44-2132 to 44-2136 shall be given confidential treatment, shall not

1 be subject to subpoena, and shall not be made public by the director,
2 the National Association of Insurance Commissioners and its
3 affiliates and subsidiaries, or any other person, except to other
4 state, federal, foreign, and international regulatory and law
5 enforcement agencies if the recipient agrees in writing to maintain
6 the confidentiality of the information, without the prior written
7 consent of the insurer to which it pertains unless the director,
8 after giving the insurer and its affiliates who would be affected
9 thereby notice and opportunity to be heard, determines that the
10 interest of policyholders, shareholders, or the public will be served
11 by the publication thereof, in which event he or she may publish all
12 or any part thereof in such manner as he or she may deem appropriate.

13 (2) The director may receive information, documents, and
14 copies of information and documents disclosed to other state,
15 federal, foreign, or international regulatory and law enforcement
16 agencies and from the National Association of Insurance Commissioners
17 and its affiliates and subsidiaries pursuant to an examination of an
18 insurance holding company system. The director shall maintain
19 information, documents, and copies of information and documents
20 received pursuant to this subsection as confidential or privileged if
21 received with notice or the understanding that it is confidential or
22 privileged under the laws of the jurisdiction that is the source of
23 the information. Such information shall not be a public record
24 subject to disclosure by the director pursuant to sections 84-712 to
25 84-712.09, subject to subpoena, subject to discovery, or admissible

1 in evidence in any private civil action, except that the director may
2 use such information in any regulatory or legal action brought by the
3 director. The director, and any other person while acting under the
4 authority of the director who has received information pursuant to
5 this subsection, may not, and shall not be required to, testify in
6 any private civil action concerning any information subject to this
7 section. Nothing in this section shall constitute a waiver of any
8 applicable privilege or claim of confidentiality in the information
9 received pursuant to this subsection as a result of information
10 sharing authorized by this section.

11 (3) In order to assist in the performance of the
12 director's duties, the director may share information with state,
13 federal, and international regulatory agencies, the National
14 Association of Insurance Commissioners and its affiliates and
15 subsidiaries, state, federal, and international law enforcement
16 authorities, including members of any supervisory college described
17 in section 12 of this act, the International Association of Insurance
18 Supervisors, and the Bank for International Settlements under the
19 conditions set forth in section 44-154 if the recipient agrees in
20 writing to maintain the confidentiality and privileged status of the
21 document, material, or other information and has verified in writing
22 the legal authority to maintain confidentiality. The director may
23 only share confidential and privileged documents, material, or
24 information reported pursuant to subsection (12) of section 44-2132
25 with directors or commissioners of states having statutes or

1 regulations substantially similar to subsection (1) of this section
2 and who have agreed in writing not to disclose such information.

3 (4) The director shall enter into written agreements with
4 the National Association of Insurance Commissioners governing sharing
5 and use of information provided pursuant to this section that shall:

6 (a) Specify procedures and protocols regarding the
7 confidentiality and security of information shared with the National
8 Association of Insurance Commissioners and its affiliates and
9 subsidiaries pursuant to this section, including procedures and
10 protocols for sharing by the association with other state, federal,
11 or international regulators;

12 (b) Specify that ownership of information shared with the
13 National Association of Insurance Commissioners and its affiliates
14 and subsidiaries pursuant to this section remains with the director
15 and the association's use of the information is subject to the
16 direction of the director;

17 (c) Require prompt notice to be given to an insurer whose
18 confidential information in the possession of the National
19 Association of Insurance Commissioners pursuant to this section is
20 subject to a request or subpoena to the association for disclosure or
21 production; and

22 (d) Require the National Association of Insurance
23 Commissioners and its affiliates and subsidiaries to consent to
24 intervention by an insurer in any judicial or administrative action
25 in which the association and its affiliates and subsidiaries may be

1 required to disclose confidential information about the insurer
2 shared with the association and its affiliates and subsidiaries
3 pursuant to this section.

4 (5) The sharing of information by the director pursuant
5 to this section shall not constitute a delegation of regulatory
6 authority or rulemaking, and the director is solely responsible for
7 the administration, execution, and enforcement of this section.

8 (6) No waiver of any applicable privilege or claim of
9 confidentiality in the documents, materials, or information shall
10 occur as a result of disclosure to the director under this section or
11 as a result of sharing as authorized by this section.

12 (7) Documents, materials, or other information in the
13 possession or control of the National Association of Insurance
14 Commissioners pursuant to this section shall be confidential and
15 privileged, shall not be subject to public disclosure under section
16 84-712, shall not be subject to subpoena, and shall not be subject to
17 discovery or admissible as evidence in any private civil action.

18 Sec. 14. Section 44-2139, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 44-2139 The director ~~shall~~may adopt and promulgate such
21 rules and regulations and issue such orders as necessary to carry out
22 the Insurance Holding Company System Act.

23 Sec. 15. If it appears to the director that any person
24 has committed a violation of sections 44-2126 to 44-2130 which
25 prevents the full understanding of the enterprise risk to the insurer

1 by affiliates or by the insurance holding company system, the
2 violation may serve as an independent basis for disapproving
3 dividends or distributions and for placing the insurer under an order
4 of supervision in accordance with the Nebraska Insurers Supervision,
5 Rehabilitation, and Liquidation Act.

6 Sec. 16. Section 44-2702, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 44-2702 As used in the Nebraska Life and Health Insurance
9 Guaranty Association Act, unless the context otherwise requires:

10 (1) Account means any of the three accounts created
11 pursuant to section 44-2705;

12 (2) Association means the Nebraska Life and Health
13 Insurance Guaranty Association created by section 44-2705;

14 (3) Authorized, when used in the context of assessments,
15 or authorized assessment means a resolution by the board of directors
16 has passed whereby an assessment will be called immediately or in the
17 future from member insurers for a specified amount. An assessment is
18 authorized when the resolution is passed;

19 (4) Called, when used in the context of assessments, or
20 called assessment means that a notice has been issued by the
21 association to member insurers requiring that an authorized
22 assessment be paid within the timeframe set forth within the notice.
23 An authorized assessment becomes a called assessment when notice is
24 mailed by the association to member insurers;

25 ~~(3)~~(5) Director means the Director of Insurance;

1 ~~(4)~~(6) Contractual obligation means any obligation under
2 a policy or contract or portion of such policy or contract for which
3 coverage is provided under section 44-2703;

4 ~~(5)~~(7) Covered policy means any policy or contract or
5 portion of such policy or contract ~~which is not subject to assessment~~
6 ~~and~~ for which coverage is provided under section 44-2703;

7 ~~(6)~~(8) Impaired insurer means a member insurer which,
8 after August 24, 1975, (a) is deemed by the director to be
9 potentially unable to fulfill its contractual obligations and is not
10 an insolvent insurer or (b) is placed under an order of
11 rehabilitation or conservation by a court of competent jurisdiction;

12 ~~(7)~~(9) Insolvent insurer means a member insurer which
13 after August 24, 1975, is placed under an order of liquidation by a
14 court of competent jurisdiction with a finding of insolvency;

15 ~~(8)~~(10) Member insurer means any person authorized to
16 transact in this state any kind of insurance provided for under
17 section 44-2703. Member insurer includes any person whose license or
18 certificate of authority may have been suspended, ~~or~~ revoked, not
19 renewed, or voluntarily withdrawn. Member insurer does not include:

20 (a) A nonprofit hospital or medical service organization;

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

24 (c) A fraternal benefit society;

25 (d) A mandatory state pooling plan;

- 1 (e) An unincorporated mutual association;
- 2 (f) An assessment association operating under Chapter 44
3 which issues only policies or contracts subject to assessment; ~~or~~
- 4 (g) A reciprocal or interinsurance exchange which issues
5 only policies or contracts subject to assessment;
- 6 (h) A viatical settlement provider, a viatical settlement
7 broker, or a financing entity under the Viatical Settlements Act; or
- 8 (i) An entity similar to any entity listed in
9 subdivisions (10)(a) through (h) of this section;
- 10 ~~(9)~~—(11) Moody's corporate bond yield average means the
11 monthly average of corporate bond yields published by Moody's
12 Investment Service, Incorporated, or any successor to Moody's
13 Investment Service, Incorporated;
- 14 (12) Owner of a policy or contract, policy owner, and
15 contract owner means the person who is identified as the legal owner
16 under the terms of the policy or contract or who is otherwise vested
17 with legal title to the policy or contract through a valid assignment
18 completed in accordance with the terms of the policy or contract and
19 properly recorded as the owner on the books of the insurer. Owner,
20 policy owner, and contract owner does not include persons with a mere
21 beneficial interest in a policy or contract;
- 22 ~~(10)~~—(13) Person means any individual, corporation,
23 partnership, limited liability company, association, or voluntary
24 organization;
- 25 ~~(11)~~—(14) Premiums means amounts or considerations

1 received on covered policies or contracts less returned premiums,
2 considerations, and deposits, less dividends and experience credits.
3 Premiums does not include amounts or considerations received for
4 policies or contracts or for the portions of policies or contracts
5 for which coverage is not provided under subsection (2) of section
6 44-2703, except that assessable premiums shall not be reduced on
7 account of subdivision (2)(b)(iii) of section 44-2703 relating to
8 interest limitations and subdivision (3)(b) of section 44-2703
9 relating to limitations with respect to one individual, one
10 participant, and one contract owner. Premiums does not include:

11 (a) Premiums on an unallocated annuity contract; or
12 (b) With respect to multiple nongroup life insurance
13 policies owned by one owner, whether the policy owner is an
14 individual, firm, corporation, or other person and whether the
15 persons insured are officers, managers, employees, or other persons,
16 premiums exceeding five million dollars with respect to these
17 policies or contracts, regardless of the number of policies or
18 contracts held by the owner;

19 ~~(12)(a)~~ (15)(a) Principal place of business of a plan
20 sponsor or a person other than a natural person means the single
21 state in which the natural persons who establish policy for the
22 direction, control, and coordination of the operations of the entity
23 as a whole primarily exercise that function. The association shall
24 determine the principal place of business considering the following
25 factors:

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

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

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

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

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

13 (vi) In the case of a benefit plan sponsored by
14 affiliated companies comprising a consolidated corporation, the state
15 in which the holding company or controlling affiliate has its
16 principal place of business as determined using the factors in
17 subdivisions ~~(12)(a)(i)~~ (15)(a)(i) through (v) of this section,
18 except that in the case of a plan sponsor, if more than fifty percent
19 of the participants in the benefit plan are employed in a single
20 state, that state shall be deemed to be the principal place of
21 business of the plan sponsor.

22 (b) The principal place of business of a plan sponsor of
23 a benefit plan shall be deemed to be the principal place of business
24 of the association, committee, joint board of trustees, or other
25 similar group of representatives of the parties who establish or

1 maintain the benefit plan that, in lieu of a specific or clear
2 designation of a principal place of business, shall be deemed to be
3 the principal place of business of the employer or employee
4 organization that has the largest investment in the benefit plan in
5 question;

6 (16) Receivership court means the court in the insolvent
7 or impaired insurer's state having jurisdiction over the
8 conservation, rehabilitation, or liquidation of the insurer;

9 ~~(13)~~ (17) Resident means any person to whom a contractual
10 obligation is owed who resides in this state at the date of entry of
11 a court order that determines that a member insurer is an impaired or
12 insolvent insurer, whichever occurs first. A person may be a resident
13 of only one state. A person other than a natural person shall be a
14 resident of its principal place of business. Citizens of the United
15 States that are residents of foreign countries, or are residents of a
16 United States possession that does not have an association similar to
17 the association created by the act, ~~Nebraska Life and Health~~
18 Insurance Guaranty Association Act, shall be deemed residents of the
19 state of domicile of the insurer that issued the policies or
20 contracts;

21 ~~(14)~~ (18) State means a state, the District of Columbia,
22 Puerto Rico, and any United States possession, territory, or
23 protectorate;

24 (19) Structured settlement annuity means an annuity
25 purchased in order to fund periodic payments for a plaintiff or other

1 claimant in payment for or with respect to personal injury suffered
2 by the plaintiff or other claimant;

3 ~~(15)~~—(20) Supplemental contract means any agreement
4 entered into between a member insurer and an owner or beneficiary for
5 the distribution of policy or contract proceeds under a covered
6 policy or contract; and

7 ~~(16)~~—(21) Unallocated annuity contract means an annuity
8 contract or group annuity certificate that is not issued to and owned
9 by an individual, except to the extent of any annuity benefits
10 guaranteed to an individual by an insurer under the contract or
11 certificate.

12 Sec. 17. Section 44-2703, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 44-2703 (1)(a) The Nebraska Life and Health Insurance
15 Guaranty Association Act shall provide coverage for the policies and
16 contracts specified in subsection (2) of this section:

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

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

24 (A) Are residents; or

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

1 apply:

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

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

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

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

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

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

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

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

1 association created by the act; and

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

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

9 (d) The act is intended to provide coverage to a person
10 who is a resident of this state and, in special circumstances, to a
11 nonresident. To avoid duplicate coverage, if a person who would
12 otherwise receive coverage under the act is provided coverage under
13 the laws of any other state, the person shall not be provided
14 coverage under the act. In determining the application of the
15 provisions of this subdivision in situations in which a person could
16 be covered by the association of more than one state, whether as an
17 owner, payee, beneficiary, or assignee, the act shall be construed in
18 conjunction with other state laws to result in coverage by only one
19 association.

20 (2)(a) The act shall provide coverage to the persons
21 specified in subsection (1) of this section for direct nongroup life,
22 health, or annuity policies or contracts and supplemental contracts
23 to any of these and for certificates under direct group policies and
24 contracts, except as limited by the act. Annuity contracts and
25 certificates under group annuity contracts include allocated funding

1 agreements, structured settlement annuities, and any immediate or
2 deferred annuity contracts.

3 (b) The act shall not apply to:

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

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

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

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

23 (B) On and after the date on which the member insurer
24 becomes an impaired or insolvent insurer under the act, whichever is
25 earlier, exceeds the rate of interest determined by subtracting three

1 percentage points from Moody's corporate bond yield average as most
2 recently available;

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

9 (A) A multiple employer welfare arrangement as described
10 in 29 U.S.C. ~~1144~~; 1002(40);

11 (B) A minimum premium group insurance plan;

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

13 (D) An administrative services only contract;

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

16 (A) Dividends or experience rating credits;

17 (B) Voting rights; or

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

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

25 (vii) A portion of a policy or contract to the extent

1 that the assessments required by section 44-2708 with respect to the
2 policy or contract are preempted by federal or state law;

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

6 (A) Claims based on marketing materials;

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

10 (C) Misrepresentations of or regarding policy benefits;

11 (D) Extra-contractual claims; or

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

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

19 (x) A portion of a policy or contract to the extent it
20 provides for interest or other changes in value to be determined by
21 the use of an index or other external reference stated in the policy
22 or contract, but which have not been credited to the policy or
23 contract or as to which the policy or contract owner's rights are
24 subject to forfeiture as of the date the member insurer becomes an
25 impaired or insolvent insurer under the act, whichever is earlier. If

1 a policy's or contract's interest or changes in value are credited
2 less frequently than annually, then for purposes of determining the
3 values that have been credited and are not subject to forfeiture
4 under this subdivision, the interest or change in value determined by
5 using the procedures defined in the policy or contract will be
6 credited as if the contractual date of crediting interest or changing
7 values was the date of impairment or insolvency, whichever is
8 earlier, and will not be subject to forfeiture;

9 (xi) An unallocated annuity contract, a funding
10 agreement, a guaranteed interest contract, a guaranteed investment
11 contract, a synthetic guaranteed investment contract, or a deposit
12 administration contract;

13 (xii) Any such policy or contract issued by:

14 (A) A nonprofit hospital or medical service organization;

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

18 (C) A fraternal benefit society;

19 (D) A mandatory state pooling plan;

20 (E) An unincorporated mutual association;

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

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

25 (xiii) Any policy or contract issued by any person,

1 corporation, or organization which is not licensed by the Department
2 of Insurance under Chapter 44; -

3 (xiv) A policy or contract providing any hospital,
4 medical, prescription drug, or other health care benefits pursuant to
5 Title 42, Chapter 7, Subchapter XVIII, Part C or D of the United
6 States Code or any regulations issued pursuant thereto; or

7 (xv) A viatical settlement contract as defined in section
8 44-1102 or a viaticated policy as defined in section 44-1102.

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

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

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

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

19 (B) ~~Five hundred thousand dollars in~~ In health insurance
20 benefits: (I) Five hundred thousand dollars for basic hospital,
21 medical, or surgical insurance or major medical insurance. For
22 purposes of this subdivision: Basic hospital, medical, or surgical
23 insurance means a policy which pays a certain portion of hospital
24 room and board costs each day. This type of policy also pays for
25 hospital services and supplies including X-rays, lab tests, medicine,

1 and other items up to a stated amount; and major medical insurance
2 means health insurance to finance the expense of major illness and
3 injury characterized by large benefit maximums and reimburses the
4 major part of all charges for hospitals, doctors, private nurses,
5 medical appliances, prescribed out-of-hospital treatment, drugs, and
6 medicines above an initial deductible; (II) three hundred thousand
7 dollars for disability insurance or long-term care insurance as
8 defined in section 44-4509. For purposes of this subdivision,
9 disability insurance means the type of policy which pays a monthly or
10 weekly amount if an individual is disabled and cannot work; and (III)
11 one hundred thousand dollars for coverages not defined as disability
12 insurance, long-term care insurance, basic hospital, medical, or
13 surgical insurance, or major medical insurance, including any net
14 cash surrender and net cash withdrawal values; or

15 (C) ~~One~~ Two hundred fifty thousand dollars in the present
16 value of annuity benefits, including net cash surrender and net cash
17 withdrawal values;

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

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

25 (A) An aggregate of three hundred thousand dollars in

1 benefits with respect to any one life under subdivisions ~~(3)(b)(i)(A)~~
2 ~~and (C)~~ (3)(b)(i) and (ii) of this section, except that with respect
3 to benefits for ~~health basic hospital, medical, or surgical insurance~~
4 and major medical insurance under subdivision ~~(3)(b)(i)(B)~~ (3)(b)(i)
5 (B)(I) of this section, in which case the aggregate liability of the
6 association shall not exceed five hundred thousand dollars with
7 respect to any one individual; or

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

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

23 (4) In performing its obligations to provide coverage
24 under section 44-2707, the association shall not be required to
25 guarantee, assume, reinsure, or perform, or cause to be guaranteed,

1 assumed, reinsured, or performed, the contractual obligations of the
2 insolvent or impaired insurer under a covered policy or contract that
3 do not materially affect the economic values or economic benefits of
4 the covered policy or contract.

5 Sec. 18. Section 44-2704, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 44-2704 The Nebraska Life and Health Insurance Guaranty
8 Association Act shall be ~~liberally~~ construed to effect the purposes
9 enumerated in section 44-2701, ~~which shall constitute an aid and~~
10 ~~guide to interpretation.~~

11 Sec. 19. Section 44-2719.02, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 44-2719.02 (1) Any insurer under an order of liquidation,
14 rehabilitation, or conservation on February 12, 1986, shall be
15 subject to the provisions of the Nebraska Life and Health Insurance
16 Guaranty Association Act in effect on the day prior to February 12,
17 1986.

18 (2) Notwithstanding any other provision of law, the
19 provisions of the Nebraska Life and Health Insurance Guaranty
20 Association Act in effect on the date the association first becomes
21 obligated for the policies or contracts of an insolvent or impaired
22 member govern the association's rights or obligations to the
23 policyowners of the insolvent or impaired member insurer.

24 Sec. 20. Section 44-32,177, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 44-32,177 No person ~~may~~shall (1) make a tender for or a
2 request or invitation for tenders of, (2) enter into an agreement to
3 exchange securities for, or (3) acquire in the open market or
4 otherwise any voting security of a health maintenance organization or
5 enter into any other agreement if, after the consummation thereof,
6 that person would, directly or indirectly, or by conversion or by
7 exercise of any right to acquire, be in control of the health
8 maintenance organization, and no person ~~may~~shall enter into an
9 agreement to merge or consolidate with or otherwise to acquire
10 control of a health maintenance organization unless, at the time any
11 offer, request, or invitation is made or any agreement is entered
12 into or prior to the acquisition of the securities if no offer or
13 agreement is involved, the person has filed with the director and has
14 sent to the health maintenance organization information required by
15 subsection ~~(3)~~(4) of section 44-2126 and the offer, request,
16 invitation, agreement, or acquisition has been approved by the
17 director. Approval by the director shall be governed by the Insurance
18 Holding Company System Act.

19 Sec. 21. Section 44-8101, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 44-8101 Sections 44-8101 to 44-8107 and sections 28 and
22 29 of this act shall be known and may be cited as the Nebraska
23 Protection in Annuity Transactions Act.

24 Sec. 22. Section 44-8102, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 44-8102 The purpose of the Nebraska Protection in Annuity
2 Transactions Act is to require insurers to establish a system to
3 supervise recommendations and to set forth standards and procedures
4 for recommendations made by insurance producers and insurers to
5 consumers regarding annuity transactions so that consumers' insurance
6 needs and financial objectives at the time of the transaction are
7 appropriately addressed.

8 Sec. 23. Section 44-8103, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 44-8103 The Nebraska Protection in Annuity Transactions
11 Act applies to any recommendation to purchase, ~~or exchange,~~ or
12 replace an annuity made to a consumer by an insurance producer, or an
13 insurer if an insurance producer is not involved, that results in the
14 recommended purchase, ~~or exchange,~~ or replacement.

15 Sec. 24. Section 44-8104, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 44-8104 Unless otherwise specifically included, the
18 Nebraska Protection in Annuity Transactions Act does not apply to
19 ~~recommendations~~ transactions involving:

20 (1) Direct response solicitations if there is no
21 recommendation based on information collected from the consumer
22 pursuant to the act; or

23 (2) Contracts used to fund:

24 (a) An employee pension or welfare benefit plan that is
25 covered by the federal Employee Retirement Income Security Act of

1 1974;

2 (b) A plan described by section 401(a), 401(k), 403(b),
3 408(k), or 408(p) of the Internal Revenue Code if established or
4 maintained by an employer;

5 (c) A government or church plan defined in section 414 of
6 the Internal Revenue Code, a government or church welfare benefit
7 plan, or a deferred compensation plan of a state or local government
8 or tax exempt organization under section 457 of the Internal Revenue
9 Code;

10 (d) A nonqualified deferred compensation arrangement
11 established or maintained by an employer or plan sponsor;

12 (e) Settlements of or assumptions of liabilities
13 associated with personal injury litigation or any dispute or claim
14 resolution process; or

15 (f) Contracts entered into pursuant to the Burial Pre-
16 Need Sale Act.

17 Sec. 25. Section 44-8105, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 44-8105 For purposes of the Nebraska Protection in
20 Annuity Transactions Act:

21 (1) Annuity means ~~a fixed-an annuity or variable annuity~~
22 that is an insurance product under state law and is individually
23 solicited, whether the product is classified as an individual or
24 group annuity;

25 (2) Continuing education provider means an individual or

1 entity that is approved to offer continuing education courses
2 pursuant to subdivision (1)(b) of section 44-3905;

3 ~~(2)~~(3) Insurer means a company required to be licensed
4 under the laws of this state to provide insurance products, including
5 annuities;

6 ~~(3)~~(4) Insurance producer means a person required to be
7 licensed under the laws of this state to sell, solicit, or negotiate
8 insurance, including annuities; ~~and~~

9 ~~(4)~~(5) Recommendation means advice provided by an
10 insurance producer, or an insurer if an insurance producer is not
11 involved, to a consumer that results in a purchase or exchange of an
12 annuity in accordance with that advice; -

13 (6) Replacement means a transaction in which a new policy
14 or contract is to be purchased, and it is known or should be known to
15 the proposing producer, or the proposing insurer if there is no
16 producer, that by reason of the transaction, an existing policy or
17 contract has been or is to be:

18 (a) Lapsed, forfeited, surrendered, or partially
19 surrendered, assigned to the replacing insurer, or otherwise
20 terminated;

21 (b) Converted to reduced paid-up insurance, continued as
22 extended term insurance, or otherwise reduced in value by the use of
23 nonforfeiture benefits or other policy values;

24 (c) Amended so as to effect either a reduction in
25 benefits or in the term for which coverage would otherwise remain in

- 1 force or for which benefits would be paid;
2 (d) Reissued with any reduction in cash value; or
3 (e) Used in a financed purchase; and
4 (7) Suitability information means information that is
5 reasonably appropriate to determine the suitability of a
6 recommendation, including the following:
7 (a) Age;
8 (b) Annual income;
9 (c) Financial situation and need, including the financial
10 resources used for the funding of the annuity;
11 (d) Financial experience;
12 (e) Financial objectives;
13 (f) Intended use of the annuity;
14 (g) Financial time horizon;
15 (h) Existing assets, including investment and life
16 insurance holdings;
17 (i) Liquidity needs;
18 (j) Liquid net worth;
19 (k) Risk tolerance; and
20 (l) Tax status.

21 Sec. 26. Section 44-8106, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 44-8106 (1) The insurance producer, or insurer if an
24 insurance producer is not involved, shall have reasonable grounds to
25 believe that the recommendation is suitable for the consumer based on

1 the facts disclosed by the consumer before making a recommendation to
2 a consumer under the Nebraska Protection in Annuity Transactions Act.
3 The recommendation shall be based on the facts disclosed by the
4 consumer relating to his or her investments, other insurance
5 products, and the financial situation and needs of the consumer. This
6 information shall include the consumer's suitability information,
7 and, if there is a reasonable basis to believe the information, all
8 of the following:

9 (a) That the consumer has been reasonably informed of
10 various features of the annuity, such as the potential surrender
11 period and surrender charge, potential tax penalty if the consumer
12 sells, exchanges, surrenders, or annuitizes the annuity, mortality
13 and expense fees, investment advisory fees, potential charges for and
14 features of riders, limitations on interest returns, insurance and
15 investment components, and market risk;

16 (b) That the consumer would benefit from certain features
17 of the annuity, such as tax-deferred growth, annuitization, or death
18 or living benefit;

19 (c) That the particular annuity as a whole, the
20 underlying subaccounts to which funds are allocated at the time of
21 purchase or exchange of the annuity, and riders and similar product
22 enhancements, if any, are suitable, and in the case of an exchange or
23 replacement, the transaction as a whole is suitable for the
24 particular consumer based on his or her suitability information; and

25 (d) In the case of an exchange or replacement of an

1 annuity, the exchange or replacement is suitable, including the
2 consideration as to whether:

3 (i) The consumer will incur a surrender charge, be
4 subject to the commencement of a new surrender period, lose existing
5 benefits, such as death, living, or other contractual benefits, or be
6 subject to increased fees, investment advisory fees, or charges for
7 riders and similar product enhancements;

8 (ii) The consumer would benefit from product enhancements
9 and improvements; and

10 (iii) The consumer has had another annuity exchange or
11 replacement and, in particular, an exchange or replacement within the
12 preceding thirty-six months.

13 (2) Before the execution of a purchase, ~~or exchange, or~~
14 replacement of an annuity resulting from a recommendation, an
15 insurance producer, or an insurer if an insurance producer is not
16 involved, shall make reasonable efforts to obtain the consumer's
17 suitability information, concerning:

18 ~~(a) The consumer's financial status;~~

19 ~~(b) The consumer's tax status;~~

20 ~~(c) The consumer's investment objectives; and~~

21 ~~(d) Such other information used or considered to be~~
22 ~~reasonable in making recommendations to the consumer.~~

23 (3) Except as expressly permitted under subsection (4) of
24 this section, an insurer shall not issue an annuity recommended to a
25 consumer unless there is a reasonable basis to believe the annuity is

1 suitable based on the consumer's suitability information.

2 ~~(3)(a)-(4)(a)~~ Except as provided under subdivision ~~(3)(b)~~
3 ~~(4)(b)~~ of this section, neither an insurance producer, nor an
4 insurer, ~~if an insurance producer is not involved,~~ shall have any
5 obligation to a consumer under subsection (1) or (3) of this section
6 related to any ~~recommendation annuity transaction if: the consumer:~~

7 (i) No recommendation is made;

8 (ii) A recommendation was made and was later found to
9 have been prepared based on materially inaccurate information
10 provided by the consumer;

11 (iii) A consumer refuses ~~(i) Refuses~~ to provide relevant
12 suitability information and the annuity transaction is not
13 recommended; or requested by the insurance producer or insurer;

14 ~~(ii) Decides to enter into an insurance transaction that~~
15 ~~is not based on a recommendation of the insurance producer or~~
16 ~~insurer; or~~

17 ~~(iii) Fails to provide complete or accurate information.~~

18 ~~(b) If a consumer provides information as described in~~
19 ~~subdivision (3)(a) of this section, an insurance producer or insurer~~
20 ~~shall make a recommendation that is reasonable under all the~~
21 ~~circumstances that are actually known to the insurance producer or~~
22 ~~insurer at the time of the recommendation.~~

23 ~~(4)(a) An insurer shall:~~

24 ~~(i) Assure that a system to supervise recommendations~~
25 ~~that is reasonably designed to achieve compliance with the Nebraska~~

1 ~~Protection in Annuity Transactions Act is established and maintained~~
2 ~~by complying with subdivisions (4)(d) through (f) of this section; or~~

3 ~~(ii) Establish and maintain a system to supervise~~
4 ~~recommendations.~~

5 ~~(b) Such system shall include, but not be limited to:~~

6 ~~(i) Maintaining written procedures; and~~

7 ~~(ii) Conducting periodic reviews of its records that are~~
8 ~~reasonably designed to assist in detecting and preventing violations~~
9 ~~of the act.~~

10 ~~(c) A general agent and independent agency shall either~~
11 ~~adopt a system established by an insurer to supervise recommendations~~
12 ~~of its insurance producers that is reasonably designed to achieve~~
13 ~~compliance with the act or establish and maintain such a system. Such~~
14 ~~system shall include, but not be limited to:~~

15 ~~(i) Maintaining written procedures; and~~

16 ~~(ii) Conducting periodic reviews of records that are~~
17 ~~reasonably designed to assist in detecting and preventing violations~~
18 ~~of the act.~~

19 ~~(d) An insurer may contract with a third party, including~~
20 ~~a general agent or independent agency, to establish and maintain a~~
21 ~~system of supervision as required by subdivision (4)(a) of this~~
22 ~~section with respect to insurance producers under contract with or~~
23 ~~employed by the third party.~~

24 ~~(e) An insurer shall make reasonable inquiry to assure~~
25 ~~that the third party contracting under subdivision (4)(d) of this~~

1 ~~section is performing the functions required under subdivision (4)(a)~~
2 ~~of this section and shall take such reasonable action to enforce the~~
3 ~~contractual obligation to perform the functions. An insurer may~~
4 ~~comply with its obligation to make reasonable inquiry by doing the~~
5 ~~following:~~

6 ~~(i) Obtaining annually a certification from a third party~~
7 ~~senior manager that the manager represents that the third party is~~
8 ~~performing the required functions; and~~

9 ~~(ii) Periodically selecting third parties contracting~~
10 ~~under subdivision (4)(d) of this section to determine whether the~~
11 ~~third parties are performing the required functions. The insurer~~
12 ~~shall perform those procedures to conduct the review that are~~
13 ~~reasonable under the circumstances. Such third parties shall be~~
14 ~~selected based on reasonable selection criteria.~~

15 ~~(f) An insurer shall have fulfilled its responsibilities~~
16 ~~under subdivision (4)(a) of this section if the insurer:~~

17 ~~(i) Contracts with a third party pursuant to subdivision~~
18 ~~(4)(d) of this section; and~~

19 ~~(ii) Complies with the requirements to supervise in~~
20 ~~subdivision (4)(e) of this section.~~

21 ~~(iv) A consumer decides to enter into an annuity~~
22 ~~transaction that is not based on a recommendation of the insurer or~~
23 ~~the insurance producer.~~

24 ~~(b) An insurer's issuance of an annuity subject to~~
25 ~~subdivision (4)(a) of this section shall be reasonable under all the~~

1 circumstances actually known to the insurer at the time the annuity
2 is issued.

3 (5) An insurance producer, or if no insurance producer is
4 involved, the responsible insurer representative, shall at the time
5 of sale:

6 (a) Make a record of any recommendation subject to
7 subsection (1) of this section;

8 (b) Obtain a customer-signed statement documenting a
9 customer's refusal to provide suitability information, if any; and

10 (c) Obtain a customer-signed statement acknowledging that
11 an annuity transaction is not recommended if a customer decides to
12 enter into an annuity transaction that is not based on the insurance
13 producer's or insurer's recommendation.

14 (6)(a) An insurer shall establish a supervision system
15 that is reasonably designed to achieve the insurer's and its
16 insurance producers' compliance with this section, including, but not
17 limited to, the following requirements:

18 (i) The insurer shall maintain reasonable procedures to
19 inform its insurance producers of the requirements of this section
20 and shall incorporate such requirements into relevant insurance
21 producer training manuals;

22 (ii) The insurer shall establish standards for insurance
23 producer product training and shall maintain reasonable procedures to
24 require its insurance producers to comply with the requirements of
25 section 28 of this act;

1 (iii) The insurer shall provide product-specific training
2 and training materials which explain all material features of its
3 annuity products to its insurance producers;

4 (iv) The insurer shall maintain procedures for review of
5 each recommendation prior to issuance of an annuity that are designed
6 to ensure that there is a reasonable basis to determine that a
7 recommendation is suitable. Such review procedures may apply a
8 screening system for the purpose of identifying selected transactions
9 for additional review and may be accomplished electronically or
10 through other means including, but not limited to, physical review.
11 Such an electronic or other system may be designed to require
12 additional review only of those transactions identified for
13 additional review by the selection criteria;

14 (v) The insurer shall maintain reasonable procedures to
15 detect recommendations that are not suitable, including, but not
16 limited to, confirmation of consumer suitability information,
17 systematic customer surveys, interviews, confirmation letters, and
18 programs of internal monitoring. Nothing in this subdivision shall
19 prevent an insurer from complying with this subdivision by applying
20 sampling procedures or by confirming suitability information after
21 issuance or delivery of the annuity; and

22 (vi) The insurer shall annually provide a report to
23 senior management, including the senior manager responsible for audit
24 functions, which details a review, with appropriate testing,
25 reasonably designed to determine the effectiveness of the supervision

1 system, the exceptions found, and corrective action taken or
2 recommended, if any.

3 (b)(i) Nothing in this subsection restricts an insurer
4 from contracting for performance of a function, including maintenance
5 of procedures, required under subdivision (a) of this subsection. An
6 insurer is responsible for taking appropriate corrective action and
7 may be subject to sanctions and penalties pursuant to section 44-8107
8 regardless of whether the insurer contracts for performance of a
9 function and regardless of the insurer's compliance with subdivision
10 (b)(ii) of this subsection.

11 (ii) An insurer's supervision system under subdivision
12 (a) of this subsection shall include supervision of contractual
13 performance under this subsection. This includes, but is not limited
14 to, the following:

15 (A) Monitoring and, as appropriate, conducting audits to
16 assure that the contracted function is properly performed; and

17 (B) Annually obtaining a certification from a senior
18 manager who has responsibility for the contracted function that the
19 manager has a reasonable basis to represent, and does represent, that
20 the function is properly performed.

21 ~~(g)-(c) An insurer, general agent, or independent agency~~
22 ~~is not required by subdivision (4)(a) or (b) of this section to:~~ (i)
23 ~~Review all insurance producer solicited transactions; or (ii)~~
24 ~~Supervise~~ supervise an insurance producer's recommendations to
25 consumers of products other than the annuities offered by the

1 insurer, general agent, or independent agency.

2 ~~(h) A general agent or independent agency contracting~~
3 ~~with an insurer pursuant to subdivision (4)(d) of this section shall,~~
4 ~~when requested by the insurer pursuant to subdivision (4)(e) of this~~
5 ~~section, promptly give a certification as described in subdivision~~
6 ~~(4)(e)(i) of this section or give a clear statement that it is unable~~
7 ~~to meet the certification criteria.~~

8 ~~(i) No person may provide a certification under~~
9 ~~subdivision (4)(e)(i) of this section unless:~~

10 ~~(i) The person is a senior manager with responsibility~~
11 ~~for the delegated functions; and~~

12 ~~(ii) The person has a reasonable basis for making the~~
13 ~~certification.~~

14 (7) An insurance producer shall not dissuade, or attempt
15 to dissuade, a consumer from:

16 (a) Truthfully responding to an insurer's request for
17 confirmation of suitability information;

18 (b) Filing a complaint; or

19 (c) Cooperating with the investigation of a complaint.

20 ~~(5)-(8)(a) Compliance with the National Association of~~
21 ~~Securities Dealers Conduct Financial Industry Regulatory Authority~~
22 ~~Rules pertaining to suitability and supervision of annuity~~
23 ~~transactions shall satisfy the requirements under this section if the~~
24 ~~insurer complies with the requirements of subdivision (6)(b) of this~~
25 ~~section. This subsection applies to Financial Industry Regulatory~~

1 Authority broker-dealer sales of variable annuities and fixed
2 annuities if the suitability and supervision is similar to those
3 applied to variable annuity sales. for the recommendation of variable
4 annuities. However, nothing in this subsection shall limit the
5 ability of the Director of Insurance to investigate potential
6 violations of and enforce the act. Nebraska Protection in Annuity
7 Transactions Act.

8 (b) An insurer seeking to comply with the Financial
9 Industry Regulatory Authority broker-dealer sales of variable
10 annuities and fixed annuities to satisfy the requirements of this
11 section shall:

12 (i) Monitor the Financial Industry Regulatory Authority
13 member broker-dealer using information collected in the normal course
14 of an insurer's business; and

15 (ii) Provide to the Financial Industry Regulatory
16 Authority member broker-dealer information and reports that are
17 reasonably appropriate to assist the Financial Industry Regulatory
18 Authority member broker-dealer to maintain its supervision system.

19 Sec. 27. Section 44-8107, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 44-8107 (1) ~~The~~An insurer is responsible for compliance
22 with the Nebraska Protection in Annuity Transactions Act. If a
23 violation occurs, either because of the action or inaction of the
24 insurer or its insurance producer, the Director of Insurance may
25 order:

1 (a) An insurer to take reasonably appropriate corrective
2 action for any consumer harmed by an insurance producer's or
3 insurer's violation of the ~~Nebraska Protection in Annuity~~
4 ~~Transactions Act; act; and~~

5 (b) An insurance producer to take reasonably appropriate
6 corrective action for any consumer harmed by the insurance producer's
7 violation of the act. ; and

8 ~~(c) A general agency or independent agency that employs~~
9 ~~or contracts with an insurance producer to sell or solicit the sale~~
10 ~~of annuities to consumers, to take reasonably appropriate corrective~~
11 ~~action for any consumer harmed by the insurance producer's violation~~
12 ~~of the act.~~

13 (2) A violation of the act shall be an unfair trade
14 practice in the business of insurance under the Unfair Insurance
15 Trade Practices Act.

16 (3) The director may reduce or eliminate any applicable
17 penalty under section 44-1529 for a violation of subsection (1) or
18 (2) of section 44-8106 or subdivision ~~(3)(b)~~-(4)(b) of such section
19 if corrective action for the consumer was taken promptly after a
20 violation was discovered or the violation was not part of a pattern
21 or practice.

22 Sec. 28. (1) An insurance producer shall not solicit the
23 sale of an annuity product unless the insurance producer has adequate
24 knowledge of the product to recommend the annuity and the insurance
25 producer is in compliance with the insurer's standards for product

1 training. An insurance producer may rely on insurer-provided product-
2 specific training standards and materials to comply with this
3 subsection.

4 (2)(a)(i) An insurance producer who engages in the sale
5 of annuity products shall complete a one-time four-credit training
6 course approved by the Department of Insurance and provided by a
7 department-approved education provider.

8 (ii) Insurance producers who hold a life insurance line
9 of authority on the operative date of this section and who desire to
10 sell annuities shall complete the requirements of this subsection
11 within six months after the operative date of this section.
12 Individuals who obtain a life insurance line of authority on or after
13 the operative date of this section shall not engage in the sale of
14 annuities until the annuity training course required under this
15 subsection has been completed.

16 (b) The minimum length of the training required under
17 this subsection shall be sufficient to qualify for at least four
18 continuing education credits, but may be longer.

19 (c) The training required under this subsection shall
20 include information on the following topics:

21 (i) The types of annuities and various classifications of
22 annuities;

23 (ii) Identification of the parties to an annuity;

24 (iii) How fixed, variable, and indexed annuity contract
25 provisions affect consumers;

1 (iv) The application of income taxation of qualified and
2 nonqualified annuities;

3 (v) The primary uses of annuities; and

4 (vi) Appropriate sales practices and replacement and
5 disclosure requirements.

6 (d) Providers of courses intended to comply with this
7 subsection shall cover all topics listed in the prescribed outline
8 and shall not present any marketing information or provide training
9 on sales techniques or specific information about a particular
10 insurer's products. Additional topics may be offered in conjunction
11 with and in addition to the required outline.

12 (e) A provider of an annuity training course intended to
13 comply with this subsection shall register as a continuing education
14 provider in this state and comply with the requirements applicable to
15 insurance producer continuing education courses as set forth in
16 section 44-3905.

17 (f) Annuity training courses may be conducted and
18 completed by classroom or self-study methods in accordance with
19 sections 44-3901 to 44-3908.

20 (g) Providers of annuity training shall comply with the
21 reporting requirements and shall issue certificates of completion in
22 accordance with sections 44-3901 to 44-3908.

23 (h) The satisfaction of training requirements of another
24 state that are substantially similar to the provisions of this
25 subsection shall be deemed to satisfy the training requirements of

1 this subsection.

2 (i) An insurer shall verify that an insurance producer
3 has completed the annuity training course required under this
4 subsection before allowing the producer to sell an annuity product
5 for that insurer. An insurer may satisfy its responsibility under
6 this subsection by obtaining certificates of completion of the
7 training course or obtaining reports provided by National Association
8 of Insurance Commissioners-sponsored data base systems or vendors or
9 from a reasonably reliable commercial data base vendor that has a
10 reporting arrangement with approved insurance education providers.

11 Sec. 29. The changes made to the Nebraska Protection in
12 Annuity Transactions Act by this legislative bill shall apply to
13 solicitations occurring on and after January 1, 2013.

14 Sec. 30. Section 44-8216, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 44-8216 (1) This section provides for the creation of
17 special purpose financial captive insurers to diversify and broaden
18 insurers' access to sources of capital.

19 (2) For purposes of this section:

20 (a) Counterparty means a special purpose financial
21 captive insurer's parent or affiliated entity, which is an insurer
22 domiciled in Nebraska that cedes life insurance risks to the special
23 purpose financial captive insurer pursuant to the special purpose
24 financial captive insurer contract;

25 (b) Guaranty of a parent means an agreement to pay

1 specified obligations of the special purpose financial captive
2 insurer by a parent of the special purpose financial captive insurer
3 approved by the director that is not a counterparty and the guarantor
4 has sufficient equity, less the equity of all counterparties that are
5 subsidiaries of the guarantor, to satisfy the agreement during the
6 life of the guaranty;

7 ~~(b)~~(c) Insolvency or insolvent means that the special
8 purpose financial captive insurer is unable to pay its obligations
9 when they are due, unless those obligations are the subject of a bona
10 fide dispute;

11 ~~(e)~~(d) Insurance securitization means a package of
12 related risk transfer instruments, capital market offerings, and
13 facilitating administrative agreements, under which a special purpose
14 financial captive insurer obtains proceeds either directly or
15 indirectly through the issuance of securities, and may hold the
16 proceeds in trust to secure the obligations of the special purpose
17 financial captive insurer under one or more special purpose financial
18 captive insurer contracts, in that the investment risk to the holders
19 of the securities is contingent upon the obligations of the special
20 purpose financial captive insurer to the counterparty under the
21 special purpose financial captive insurer contract in accordance with
22 the transaction terms and pursuant to the Captive Insurers Act;

23 ~~(d)~~(e) Organizational document means the special purpose
24 financial captive insurer's articles of incorporation, articles of
25 organization, bylaws, operating agreement, or other foundational

1 documents that establish the special purpose financial captive
2 insurer as a legal entity or prescribes its existence;

3 ~~(e)~~—(f) Permitted investments means those investments
4 that meet the qualifications set forth in section 44-8211;

5 ~~(f)~~—(g) Securities means debt obligations, equity
6 investments, surplus certificates, surplus notes, funding agreements,
7 derivatives, and other legal forms of financial instruments;

8 ~~(g)~~—(h) Special purpose financial captive insurer means a
9 captive insurer which has received a certificate of authority from
10 the director for the limited purposes provided for in this section;

11 ~~(h)~~—(i) Special purpose financial captive insurer
12 contract means a contract between the special purpose financial
13 captive insurer and the counterparty pursuant to which the special
14 purpose financial captive insurer agrees to provide insurance or
15 reinsurance protection to the counterparty for risks associated with
16 the counterparty's insurance or reinsurance business; and

17 ~~(i)~~—(j) Special purpose financial captive insurer
18 securities means the securities issued by a special purpose financial
19 captive insurer.

20 (3)(a) The provisions of the Captive Insurers Act, other
21 than those in subdivision (3)(b) of this section, apply to a special
22 purpose financial captive insurer. If a conflict occurs between a
23 provision of the act not in this section and a provision of this
24 section, the latter controls.

25 (b) The requirements of this section shall not apply to

1 specific special purpose financial captive insurers if the director
2 finds a specific requirement is inappropriate due to the nature of
3 the risks to be insured by the special purpose financial captive
4 insurer and if the special purpose financial captive insurer meets
5 criteria established by rules and regulations adopted and promulgated
6 by the director.

7 (c) In determining whether to issue a certificate of
8 authority or to approve an amended plan of operation for a special
9 purpose financial captive insurer required under section 44-8205, the
10 director may consider any additional factors the director may deem
11 relevant, including the specific type of life insurance risks insured
12 by the special purpose financial captive insurer, the financial
13 ability of a parent that issues a guaranty pursuant to this section
14 to satisfy such guaranty, and any actuarial opinions or other
15 statements or documents required by the director to evaluate such
16 application.

17 (d) At the time a special purpose financial captive
18 insurer files an application for a certificate of authority or
19 submits an amended plan of operation in accordance with section
20 44-8205, and on each date the special purpose financial captive
21 insurer is required to file an annual financial statement in this
22 state, a senior actuarial officer of each ceding insurer shall file
23 with the director a certification that the ceding insurer's
24 transactions with the special purpose financial captive insurer are
25 not being used to gain an unfair advantage in the pricing of the

1 ceding insurer's products. A ceding insurer shall not be deemed to
2 have gained an unfair advantage if the pricing of the policies and
3 contracts reinsured by the special purpose financial captive insurer
4 reflects, at the time those policies and contracts were issued, a
5 reasonable long-term estimate of the cost to the ceding insurer of an
6 alternative third-party transaction and utilizes current pricing
7 assumptions.

8 (4) A special purpose financial captive insurer may be
9 established as a stock corporation, limited liability company,
10 partnership, or other form of organization approved by the director.

11 (5)(a) A special purpose financial captive insurer may
12 not issue a contract for assumption of risk or indemnification of
13 loss other than a special purpose financial captive insurer contract.
14 However, the special purpose financial captive insurer may cede risks
15 assumed through a special purpose financial captive insurer contract
16 to third-party reinsurers through the purchase of reinsurance or
17 retrocession protection if approved by the director.

18 (b) A special purpose financial captive insurer may enter
19 into contracts and conduct other commercial activities related or
20 incidental to and necessary to fulfill the purposes of the special
21 purpose financial captive insurer contract, insurance securitization,
22 and this section. Those activities may include, but are not limited
23 to: Entering into special purpose financial captive insurer
24 contracts; entering into agreements in connection with obtaining
25 guaranties of its parent; issuing securities of the special purpose

1 financial captive insurer in accordance with applicable securities
2 law; complying with the terms of these contracts or securities;
3 entering into trust, swap, tax, administration, reimbursement, or
4 fiscal agent transactions; or complying with trust indenture,
5 reinsurance, retrocession, and other agreements necessary or
6 incidental to effectuate a special purpose financial captive insurer
7 contract or an insurance securitization in compliance with this
8 section and in the plan of operation approved by the director.

9 (6)(a) A special purpose financial captive insurer may
10 issue securities, subject to and in accordance with applicable law,
11 its approved plan of operation, and its organization documents.

12 (b) A special purpose financial captive insurer, in
13 connection with the issuance of securities, may enter into and
14 perform all of its obligations under any required contracts to
15 facilitate the issuance of these securities.

16 (c) The obligation to repay principal or interest, or
17 both, on the securities issued by the special purpose financial
18 captive insurer shall be designed to reflect the risk associated with
19 the obligations of the special purpose financial captive insurer to
20 the counterparty under the special purpose financial captive insurer
21 contract.

22 (7) A special purpose financial captive insurer may enter
23 into swap agreements, or other forms of asset management agreements,
24 including guaranteed investment contracts, or other transactions that
25 have the objective of leveling timing differences in funding of up-

1 front or ongoing transaction expenses or managing asset, credit,
2 prepayment, or interest rate risk of the investments in the trust to
3 ensure that the investments are sufficient to assure payment or
4 repayment of the securities, and related interest or principal
5 payments, issued pursuant to a special purpose financial captive
6 insurer insurance securitization transaction or the obligations of
7 the special purpose financial captive insurer under the special
8 purpose financial captive insurer contract or for any other purpose
9 approved by the director. All asset management agreements entered
10 into by the special purpose financial captive insurer must be
11 approved by the director.

12 (8)(a) A special purpose financial captive insurer, at
13 any given time, may enter into and effectuate a special purpose
14 financial captive insurer contract with a counterparty if the special
15 purpose financial captive insurer contract obligates the special
16 purpose financial captive insurer to indemnify the counterparty for
17 losses and contingent obligations of the special purpose financial
18 captive insurer under the special purpose financial captive insurer
19 contract are securitized through a special purpose financial captive
20 insurer insurance securitization, which security for such obligations
21 may be funded and secured with assets held in trust for the benefit
22 of the counterparty pursuant to agreements contemplated by this
23 section and invested in a manner that meet the criteria as provided
24 in section 44-8211.

25 (b) A special purpose financial captive insurer may enter

1 into agreements with affiliated companies and third parties and
2 conduct business necessary to fulfill its obligations and
3 administrative duties incidental to the insurance securitization and
4 the special purpose financial captive insurer contract. The
5 agreements may include management and administrative services
6 agreements and other allocation and cost sharing agreements, or swap
7 and asset management agreements, or both, or agreements for other
8 contemplated types of transactions provided in this section.

9 (c) A special purpose financial captive insurer contract
10 must contain provisions that:

11 (i) Require the special purpose financial captive insurer
12 to either (A) enter into a trust agreement specifying what
13 recoverables or reserves, or both, the agreement is to cover and to
14 establish a trust account for the benefit of the counterparty and the
15 security holders or (B) establish such other method of security
16 acceptable to the director, including letters of credit or guaranties
17 of a parent as described in subsection (9) of this section;

18 (ii) Stipulate that assets deposited in the trust account
19 must be valued in accordance with their current fair market value and
20 must consist only of permitted investments;

21 (iii) If a trust arrangement is used, require the special
22 purpose financial captive insurer, before depositing assets with the
23 trustee, to execute assignments, to execute endorsements in blank, or
24 to take such actions as are necessary to transfer legal title to the
25 trustee of all shares, obligations, or other assets requiring

1 assignments, in order that the counterparty, or the trustee upon the
2 direction of the counterparty, may negotiate whenever necessary the
3 assets without consent or signature from the special purpose
4 financial captive insurer or another entity; and

5 (iv) If a trust arrangement is used, stipulate that the
6 special purpose financial captive insurer and the counterparty agree
7 that the assets in the trust account, established pursuant to the
8 provisions of the special purpose financial captive insurer contract,
9 may be withdrawn by the counterparty, or the trustee on its behalf,
10 at any time, only in accordance with the terms of the special purpose
11 financial captive insurer contract, and must be utilized and applied
12 by the counterparty or any successor of the counterparty by operation
13 of law, including, subject to the provisions of this section, but
14 without further limitation, any liquidator, rehabilitator, or
15 receiver of the counterparty, without diminution because of
16 insolvency on the part of the counterparty or the special purpose
17 financial captive insurer, only for the purposes set forth in the
18 credit for reinsurance laws and rules and regulations of this state.

19 (d) The special purpose financial captive insurer
20 contract may contain provisions that give the special purpose
21 financial captive insurer the right to seek approval from the
22 counterparty to withdraw from the trust all or part of the assets, or
23 income from them, contained in the trust and to transfer the assets
24 to the special purpose financial captive insurer if such provisions
25 comply with the credit for reinsurance laws and rules and regulations

1 of this state.

2 (9) A special purpose financial captive insurer contract
3 meeting the provisions of this section must be granted credit for
4 reinsurance treatment or otherwise qualify as an asset or a reduction
5 from liability for reinsurance ceded by a domestic insurer to a
6 special purpose financial captive insurer as an assuming insurer for
7 the benefit of the counterparty if and only to the extent:

8 (a)(i) Of the value of:

9 (A) The ~~the~~ assets held in trust; ~~for,~~

10 (B) Clean, or ~~clean,~~ irrevocable, unconditional letters
11 of credit, issued or confirmed by a qualified United States financial
12 institution as defined in section 44-416.08, or as approved by the
13 director; or ~~, for~~

14 (C) Guaranties of the parent; and

15 (ii) For the benefit of the counterparty under the
16 special purpose financial captive insurer contract; and

17 (b) ~~The assets~~ Assets of the special purpose financial
18 captive insurer are held or invested in one or more of the forms
19 allowed in section 44-8211.

20 (10)(a)(i) Notwithstanding the provisions of the Nebraska
21 Insurers Supervision, Rehabilitation, and Liquidation Act, the
22 director may apply to the district court of Lancaster County for an
23 order authorizing the director to rehabilitate or liquidate a special
24 purpose financial captive insurer domiciled in this state on one or
25 more of the following grounds:

1 (A) There has been embezzlement, wrongful sequestration,
2 dissipation, or diversion of the assets of the special purpose
3 financial captive insurer intended to be used to pay amounts owed to
4 the counterparty or the holders of special purpose financial captive
5 insurer securities; or

6 (B) The special purpose financial captive insurer is
7 insolvent and the holders of a majority in outstanding principal
8 amount of each class of special purpose financial captive insurer
9 securities request or consent to conservation, rehabilitation, or
10 liquidation pursuant to the provisions of this section.

11 (ii) The court may not grant relief provided by
12 subdivision (10)(a)(i) of this section unless, after notice and a
13 hearing, the director establishes that relief must be granted.

14 (b) Notwithstanding any other applicable law, rule, or
15 regulation, upon any order of rehabilitation or liquidation of a
16 special purpose financial captive insurer, the receiver shall manage
17 the assets and liabilities of the special purpose financial captive
18 insurer pursuant to the provisions of subsection (11) of this
19 section.

20 (c) With respect to amounts recoverable under a special
21 purpose financial captive insurer contract, the amount recoverable by
22 the receiver must not be reduced or diminished as a result of the
23 entry of an order of conservation, rehabilitation, or liquidation
24 with respect to the counterparty, notwithstanding another provision
25 in the contracts or other documentation governing the special purpose

1 financial captive insurer insurance securitization.

2 (d) An application or petition, or a temporary
3 restraining order or injunction issued pursuant to the provisions of
4 the Nebraska Insurers Supervision, Rehabilitation, and Liquidation
5 Act, with respect to a counterparty does not prohibit the transaction
6 of a business by a special purpose financial captive insurer,
7 including any payment by a special purpose financial captive insurer
8 made pursuant to a special purpose financial captive insurer
9 security, or any action or proceeding against a special purpose
10 financial captive insurer or its assets.

11 (e) Notwithstanding the provisions of any applicable law
12 or rule or regulation, the commencement of a summary proceeding or
13 other interim proceeding commenced before a formal delinquency
14 proceeding with respect to a special purpose financial captive
15 insurer, and any order issued by the court, does not prohibit the
16 payment by a special purpose financial captive insurer made pursuant
17 to a special purpose financial captive insurer security or special
18 purpose financial captive insurer contract or the special purpose
19 financial captive insurer from taking any action required to make the
20 payment.

21 (f) Notwithstanding the provisions of any other
22 applicable law, rule, or regulation:

23 (i) A receiver of a counterparty may not void a
24 nonfraudulent transfer by a counterparty to a special purpose
25 financial captive insurer of money or other property made pursuant to

1 a special purpose financial captive insurer contract; and

2 (ii) A receiver of a special purpose financial captive
3 insurer may not void a nonfraudulent transfer by the special purpose
4 financial captive insurer of money or other property made to a
5 counterparty pursuant to a special purpose financial captive insurer
6 contract or made to or for the benefit of any holder of a special
7 purpose financial captive insurer security on account of the special
8 purpose financial captive insurer security.

9 (g) With the exception of the fulfillment of the
10 obligations under a special purpose financial captive insurer
11 contract, and notwithstanding the provisions of any other applicable
12 law or rule or regulation, the assets of a special purpose financial
13 captive insurer, including assets held in trust, must not be
14 consolidated with or included in the estate of a counterparty in any
15 delinquency proceeding against the counterparty pursuant to the
16 provisions of this section for any purpose including, without
17 limitation, distribution to creditors of the counterparty.

18 (11) A special purpose financial captive insurer may not
19 declare or pay dividends in any form to its owners other than in
20 accordance with the insurance securitization transaction agreements,
21 and in no instance shall the dividends decrease the capital of the
22 special purpose financial captive insurer below two hundred fifty
23 thousand dollars, and, after giving effect to the dividends, the
24 assets of the special purpose financial captive insurer, including
25 any assets held in trust pursuant to the terms of the insurance

1 securitization, must be sufficient to satisfy the director that it
2 can meet its obligations. Approval by the director of an ongoing plan
3 for the payment of dividends, interest on securities, or other
4 distribution by a special purpose financial captive insurer must be
5 conditioned upon the retention, at the time of each payment, of
6 capital or surplus equal to or in excess of amounts specified by, or
7 determined in accordance with formulas approved for the special
8 purpose financial captive insurer by, the director.

9 (12) Information submitted pursuant to the provisions of
10 this section shall be given confidential treatment, shall not be
11 subject to subpoena, and shall not be made public by the director or
12 any other person, except to other state, federal, foreign, and
13 international regulatory and law enforcement agencies if the
14 recipient agrees in writing to maintain the confidentiality of the
15 information, without the prior written consent of the special purpose
16 financial captive insurer unless the director, after giving the
17 special purpose financial captive insurer notice and opportunity to
18 be heard, determines that the best interest of policyholders,
19 shareholders, or the public will be served by the publication
20 thereof, in which event he or she may publish all or any part thereof
21 in such manner as he or she may deem appropriate.

22 Sec. 31. Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13,
23 14, 15, and 32 of this act become operative on January 1, 2013. The
24 other sections of this act become operative three calendar months
25 after the adjournment of this legislative session.

1 Sec. 32. Original sections 44-2120, 44-2121, 44-2126,
2 44-2127, 44-2129, 44-2132, 44-2133, 44-2135, 44-2137, 44-2138, and
3 44-2139, Reissue Revised Statutes of Nebraska, are repealed.

4 Sec. 33. Original sections 44-114, 44-154, 44-2702,
5 44-2703, 44-2704, 44-2719.02, 44-32,177, 44-8101, 44-8102, 44-8103,
6 44-8104, 44-8105, 44-8106, 44-8107, and 44-8216, Reissue Revised
7 Statutes of Nebraska, are repealed.