

AMENDMENTS TO LB 117

Introduced by Banking, Commerce and Insurance

1 1. Strike the original sections and insert the following
2 new sections:

3 Section 1. Section 21-2005, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 21-2005 (1) The Secretary of State shall collect the fees
6 prescribed by this section when the documents described in this
7 subsection are delivered to him or her for filing:

8 (a) Articles of incorporation or documents relating to
9 domestication:

10 (i) If the capital stock is \$10,000 or less, the fee
11 shall be \$60;

12 (ii) If the capital stock is more than \$10,000 but does
13 not exceed \$25,000, the fee shall be \$100;

14 (iii) If the capital stock is more than \$25,000 but does
15 not exceed \$50,000, the fee shall be \$150;

16 (iv) If the capital stock is more than \$50,000 but does
17 not exceed \$75,000, the fee shall be \$225;

18 (v) If the capital stock is more than \$75,000 but does
19 not exceed \$100,000, the fee shall be \$300; and

20 (vi) If the capital stock is more than \$100,000, the fee
21 shall be \$300, plus \$3 additional for each \$1,000 in excess of
22 \$100,000.

23 For purposes of computing this fee, the capital stock of

1 a corporation organized under the laws of any other state that
2 domesticates in this state, and which stock does not have a par
3 value, shall be deemed to have a par value of an amount per share
4 equal to the amount paid in as capital for each of such shares
5 as are then issued and outstanding, and in no event less than one
6 dollar per share.

7 (b) Articles of incorporation or documents relating to
8 domestication if filed by an insurer holding a certificate of
9 authority issued by the Director of Insurance, the fee shall be
10 \$300.

11 ~~(b)~~ (c) Application for use of indistinguishable
12 name...\$25

13 ~~(e)~~ (d) Application for reserved name...\$25

14 ~~(d)~~ (e) Notice of transfer of reserved name...\$25

15 ~~(e)~~ (f) Application for registered name...\$25

16 ~~(f)~~ (g) Application for renewal of registered name...\$25

17 ~~(g)~~ (h) Corporation's statement of change of registered
18 agent or registered office or both...\$25

19 ~~(h)~~ (i) Agent's statement of change of registered
20 office for each affected corporation...\$25 not to exceed a total
21 of...\$1,000

22 ~~(i)~~ (j) Agent's statement of resignation...No fee

23 ~~(j)~~ (k) Amendment of articles of incorporation...\$25

24 ~~(k)~~ (l) Restatement of articles of incorporation...\$25
25 with amendment of articles...\$25

26 ~~(l)~~ (m) Articles of merger or share exchange...\$25

27 ~~(m)~~ (n) Articles of dissolution...\$45

- 1 ~~(n)~~ (o) Articles of revocation of dissolution...\$25
- 2 ~~(e)~~ (p) Certificate of administrative dissolution...No
- 3 fee
- 4 ~~(p)~~ (q) Application for reinstatement...\$25
- 5 ~~(q)~~ (r) Certificate of reinstatement...No fee
- 6 ~~(r)~~ (s) Certificate of judicial dissolution...No fee
- 7 ~~(s)~~ (t) Application for certificate of authority...\$130
- 8 ~~(t)~~ (u) Application for amended certificate of
- 9 authority...\$25
- 10 ~~(u)~~ (v) Application for certificate of withdrawal...\$25
- 11 ~~(v)~~ (w) Certificate of revocation of authority to
- 12 transact business...No fee
- 13 ~~(w)~~ (x) Articles of correction...\$25
- 14 ~~(x)~~ (y) Application for certificate of existence or
- 15 authorization...\$25
- 16 ~~(y)~~ (z) Any other document required or permitted to be
- 17 filed by the Business Corporation Act...\$25.

18 (2) The Secretary of State shall collect a recording fee

19 of five dollars per page in addition to the fees set forth in

20 subsection (1) of this section.

21 (3) The Secretary of State shall collect the following

22 fees for copying and certifying the copy of any filed document

23 relating to a domestic or foreign corporation:

- 24 (a) One dollar per page for copying; and
- 25 (b) Ten dollars for the certificate.

26 (4) All fees set forth in this section shall be collected

27 by the Secretary of State and remitted to the State Treasurer

1 and credited two-thirds to the General Fund and one-third to the
2 Corporation Cash Fund.

3 Sec. 2. Section 44-319.07, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 44-319.07 (1) The depositing insurer or assessment
6 association may, from time to time, exchange for the deposited
7 securities, or any of them, other securities eligible for deposit
8 if the aggregate value of such deposit will not thereby be reduced
9 below the amount required by sections 44-319.01 to 44-319.13. Upon
10 application of the depositing insurer or assessment association,
11 the director may approve the withdrawal of securities which
12 are in excess of the amount required by sections 44-319.01 to
13 44-319.13. Insurers and assessment associations may, upon an
14 application approved by the director, withdraw all or any part of
15 the securities so deposited upon good cause therefor being shown.
16 Securities so withdrawn shall, except if withdrawn as the result
17 of a merger, consolidation, or total reinsurance, be used to pay
18 excess losses only and shall be restored within such time and under
19 such conditions as the director may direct by order.

20 (2) If the depositing insurer or assessment association
21 fails to comply with the requirements of subsection (1) of this
22 section or the rules and regulations adopted and promulgated
23 pursuant to section 44-319.11, such insurer or assessment
24 association shall forfeit five hundred dollars for each such
25 failure. The director shall collect and remit the forfeitures to
26 the State Treasurer for distribution in accordance with Article
27 VII, section 5, of the Constitution of Nebraska.

1 Sec. 3. Section 48-146.01, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 ~~48-146.01~~ (1) For purposes of this section:

4 (a) Assigned risk employer means a Nebraska employer that
5 is in good faith entitled to, but is unable to obtain, workers'
6 compensation insurance through ordinary methods; and ~~Assigned~~
7 ~~risk employer does not include an employer who is in default on~~
8 ~~workers' compensation premiums, who has failed to reimburse an~~
9 ~~insurer for amounts to be repaid pursuant to workers' compensation~~
10 ~~insurance written on a policy with a deductible, who has failed to~~
11 ~~provide an insurer reasonable access to books and records necessary~~
12 ~~for a premium audit, or who has defrauded or attempted to defraud~~
13 ~~an insurer, and~~

14 (b) Director means the Director of Insurance.

15 ~~(2)(a)~~ The director, after consultation with insurers
16 authorized to issue workers' compensation insurance policies in
17 this state, shall put into effect a reasonable system to guarantee
18 that each assigned risk employer shall be covered by workers'
19 compensation insurance covering its employees subject to the
20 Nebraska Workers' Compensation Act following the assigned risk
21 employer's application to the assigned risk plan and tender of the
22 required premium.

23 ~~(b)~~ (2)(a) The director shall enter into an agreement
24 with one or more workers' compensation insurers to provide workers'
25 compensation insurance to assigned risk employers. In selecting an
26 insurer to become an assigned risk insurer, the director shall
27 consider the cost of coverage to assigned risk employers, the loss

1 control and claims handling services available from the workers'
2 compensation insurer, the financial condition of the workers'
3 compensation insurer, and any other relevant factors. An agreement
4 entered into under this subsection may not exceed five years.

5 ~~(e)~~ (b) If the director determines that the cost of
6 workers' compensation insurance premiums for an insurer to provide
7 assigned risk coverage pursuant to such an agreement would be
8 unreasonably high, the director may enter into an agreement
9 in which the assigned risk insurer covers a portion of the
10 losses incurred by the assigned risk employer. Any agreement
11 that involves an average rate level of less than two and
12 one-half times the prospective loss costs approved for an advisory
13 organization pursuant to section 44-7511 shall not be considered
14 unreasonably high for the purposes of this section. Pursuant to
15 any such agreement, remaining losses shall be assessed against
16 all workers' compensation insurers writing workers' compensation
17 insurance in this state and risk management pools created under
18 the Intergovernmental Risk Management Act based on their workers'
19 compensation premiums written in this state or contributions made
20 to risk management pools. Assigned risk premiums shall be excluded
21 from the basis for such assessments.

22 (c) If the assigned risk system described in subdivisions
23 (2)(a) and (b) of this section ceases to be viable because no
24 qualified insurer is willing to provide workers' compensation
25 coverage at an average rate level of two and one-half times
26 the prospective loss costs approved for an advisory organization
27 pursuant to section 44-7511 without also requiring substantial

1 sharing of losses with all other workers' compensation insurers
2 writing workers' compensation insurance in this state and
3 risk management pools created under the Intergovernmental Risk
4 Management Act, then the director may, after consultation with
5 insurers authorized to issue workers' compensation insurance
6 policies in this state, create a reasonable alternative assigned
7 risk system involving the sharing of premiums and losses for
8 assigned risk employers among all such workers' compensation
9 insurers writing workers' compensation insurance in this state
10 and such risk management pools. If established, such alternative
11 assigned risk system shall not utilize an average rate level
12 of less than two and one-half times the prospective loss costs
13 approved for an advisory organization pursuant to section 44-7511.

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

16 (4) ~~Any~~ An employer shall not be considered to be in good
17 faith entitled to be covered by workers' compensation insurance
18 under this section if:

19 (a) The employer which is required to establish a safety
20 committee pursuant to sections 48-443 to 48-445 and ~~which~~ is not in
21 compliance with such sections; ~~shall not be entitled to be covered~~
22 ~~by workers' compensation insurance under this section.~~

23 (b) The employer is in default on workers' compensation
24 premiums;

25 (c) The employer has failed to reimburse an insurer for
26 amounts to be repaid pursuant to workers' compensation insurance
27 written on a policy with a deductible;

1 (d) The employer has failed to provide an insurer
2 reasonable access to books and records necessary for a premium
3 audit;

4 (e) The employer has defrauded or attempted to defraud an
5 insurer; or

6 (f) The employer is found to have been owned or
7 controlled by persons who owned or controlled a prior employer that
8 is or would be ineligible for coverage pursuant to subdivisions
9 (4) (b) through (e) of this section.

10 Sec. 4. Section 44-501, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 44-501 No policy or contract of fire and lightning
13 insurance, including a renewal thereof, shall be made, issued,
14 used, or delivered by any insurer or by any insurance producer or
15 representative of an insurer on property within this state other
16 than such as shall conform as nearly as practicable to blanks,
17 size of type, context, provisions, agreements, and conditions with
18 the 1943 Standard Fire Insurance Policy of the State of New York,
19 a copy of which shall be filed in the office of the Director
20 of Insurance as standard policy for this state, and no other or
21 different provision, agreement, condition, or clause shall in any
22 manner be made a part of such contract or policy or be endorsed
23 thereon or delivered therewith except as provided in subdivisions
24 (1) through (11) of this section.

25 (1) The name of the company, its location and place of
26 business, the date of its incorporation or organization, the state
27 or country under which such company is organized, the amount of

1 paid-up capital stock, whether it is a stock, mutual, reciprocal,
2 or assessment company, the names of its officers, the number and
3 date of the policy, and appropriate company emblems may be printed
4 on policies issued on property in this state. Any insurer organized
5 under special charter provisions may so indicate upon its policy
6 and may add a statement of the plan under which it operates in this
7 state.

8 In lieu of the facsimile signatures of the president and
9 secretary of the insurer on such policy, there may appear the
10 signature or signatures of such persons as are duly authorized
11 by the insurer to execute the contract. No such policy shall be
12 void if the facsimile signature or signatures of any officer of
13 the company shall not correspond with the actual persons who are
14 such officers at the inception of the contract if such policy is
15 countersigned by a duly authorized agent of the insurer.

16 (2) Printed or written forms of description and
17 specifications or schedules of the property covered by any
18 particular policy and any other matter necessary to express clearly
19 all the facts and conditions of insurance on any particular
20 risk, which facts or conditions shall in no case be inconsistent
21 with or a waiver of any of the provisions or conditions of
22 the standard policy herein provided for, may be written upon or
23 attached or appended to any policy issued on property in this
24 state. Appropriate forms of supplemental contracts, contracts, or
25 endorsements, whereby the interest in the property described in
26 such policy shall be insured against one or more of the perils
27 which insurer is empowered to assume, may be used in connection

1 with the standard policy. Such forms of contracts, supplemental
2 contracts, or endorsements attached or printed thereon may contain
3 provisions and stipulations inconsistent with the standard policy
4 if applicable only to such other perils. The pages of the standard
5 policy may be renumbered and rearranged for convenience in the
6 preparation of individual contracts and to provide space for the
7 listing of rates and premiums for coverages insured thereunder or
8 under endorsements attached or printed thereon and such other data
9 as may be included for duplication on daily reports for office
10 records.

11 (3) A company, corporation, or association organized or
12 incorporated under and in pursuance of the laws of this state
13 or elsewhere, if entitled to do business in this state, may with
14 the approval of the Director of Insurance, if the same is not
15 already included in the standard form as filed in the office of
16 the Department of Insurance, print on its policies any provision
17 which it is required by law to insert therein if the provision is
18 not in conflict with the laws of this state or the United States
19 or with the provisions of the standard form provided for in this
20 section, but such provision shall be printed apart from the other
21 provisions, agreements, or conditions of the policy and in type
22 not smaller than the body of the policy and a separate title, as
23 follows: Provisions required by law to be stated in this policy,
24 and be a part of the policy.

25 (4) There may be endorsed on the outside of any policy
26 provided for in this section for the name, with the words insurance
27 producer and place of business, of any insurance producer, either

1 by writing, printing, stamping, or otherwise. There may also be
2 added, with the approval of the Director of Insurance, a statement
3 of the group of companies with which the company is financially
4 affiliated and the usual company medallion.

5 (5) When two or more companies, each having previously
6 complied with the laws of this state, unite to issue a joint
7 policy, there may be expressed in the headline of each policy the
8 fact of the severalty of the contract and also the proportion of
9 premiums to be paid to each company and the proportion of liability
10 which each company agrees to assume. In the printed conditions of
11 such policy, the necessary change may be made from the singular to
12 plural number when reference is made to the companies issuing such
13 policy.

14 (6) This section shall not apply to motor vehicle,
15 inland marine, or ocean marine insurance, reinsurance contracts
16 between insurance companies, or insurance that does not cover
17 risks of a personal nature. ~~The Director of Insurance may approve~~
18 An insurer may file with the director, pursuant to the Property
19 and Casualty Insurance Rate and Form Act, any form of policy
20 which includes coverage against the peril of fire and substantial
21 coverage against other perils without complying with the provisions
22 of this section if such policy with respect to the peril of fire
23 includes provisions which are the substantial equivalent of the
24 minimum provisions of the standard policy provided for in this
25 section and if the policy is complete as to all its terms without
26 reference to any other document.

27 (7) If the policy is made by a mutual assessment or

1 other company having special regulations lawfully applicable to
2 its organization, membership, policies, or contracts of insurance,
3 such regulations shall apply to and form a part of the policy as
4 the same may be written or printed upon or attached or appended
5 thereto.

6 (8) ~~Policies of assessment~~ Assessment associations may be
7 ~~issued~~ issue policies with such modifications as shall be ~~approved~~
8 ~~in writing by the Department of Insurance,~~ filed with the director
9 pursuant to the Property and Casualty Insurance Rate and Form Act.

10 (9) Any other coverage which a company is authorized to
11 write under the laws of this state may be written in combination
12 with a fire insurance policy.

13 (10) The policy shall provide that claims involving total
14 loss situations shall be paid in accordance with section 44-501.02.

15 (11) Notwithstanding any other provision of this section,
16 ~~the Director of Insurance may approve~~ an insurer may file, pursuant
17 to the Property and Casualty Insurance Rate and Form Act, any form
18 of policy with variations in terms and conditions from the standard
19 policy provided for in this section.

20 Sec. 5. Section 44-507, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 44-507 The policies of any insurance company not
23 organized under the laws of this state may, if ~~approved by the~~
24 ~~Department of Insurance,~~ filed with the director pursuant to the
25 Property and Casualty Insurance Rate and Form Act, contain any
26 provisions which the law of the state, territory, district, or
27 country under which the company is organized prescribes, shall be

1 in such policies when issued in this state, and the policies of any
2 insurance company organized under the laws of this state may, when
3 issued or delivered in any other state, territory, district, or
4 country, contain any provision required by the laws of the state,
5 territory, district, or country in which ~~the same~~ such policies are
6 issued, ~~anything in~~ the provisions of sections 44-501 to 44-510 to
7 the contrary notwithstanding.

8 Sec. 6. Section 44-508, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 44-508 The policies or contracts of insurance covering
11 legal liability for injury to a person or persons caused ~~through~~
12 by the ownership, operation, use, or maintenance of ~~automobiles~~
13 an automobile issued by any domestic or foreign company shall, if
14 ~~approved by the Department of Insurance,~~ filed with the director
15 pursuant to the Property and Casualty Insurance Rate and Form Act,
16 contain a provision ~~to the effect~~ that the insolvency or bankruptcy
17 of the assured shall not release the company from the payment of
18 damages for injury sustained or loss occasioned during the life
19 of the policy, and, in case of such insolvency or bankruptcy, an
20 action may be maintained within the terms and limits of the policy
21 by the injured person or his or her heirs against the insurer.
22 ~~company.~~

23 Sec. 7. Section 44-522, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 44-522 (1) ~~The Department of Insurance shall not approve~~
26 any ~~No insurer may file an insurance policy filed for approval~~
27 with the department, as required by the Property and Casualty

1 Insurance Rate and Form Act, which insures against loss or damage
2 to property or against legal liability from any cause unless such
3 policy contains appropriate provisions for cancellation thereof by
4 either the insurer or the insured and for nonrenewal thereof by the
5 insurer.

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

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

26 (a) Nonpayment of premium;

27 (b) The policy was obtained through a material

1 misrepresentation;

2 (c) Any insured has submitted a fraudulent claim;

3 (d) Any insured has violated any of the terms and
4 conditions of the policy;

5 (e) The risk originally accepted has substantially
6 increased;

7 (f) Certification to the Director of Insurance of loss of
8 reinsurance by the insurer which provided coverage to the insurer
9 for all or a substantial part of the underlying risk insured; or

10 (g) The determination by the director that the
11 continuation of the policy could place the insurer in violation of
12 the insurance laws of this state.

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

19 (5) For purposes of this section:

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

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

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

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

9 Sec. 8. Section 44-1104, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 44-1104 (1) The director may suspend, revoke, or refuse
12 to issue or renew a license if the director finds that:

13 (a) There was any material misrepresentation in the
14 application for the license;

15 (b) The applicant or licensee or any officer, partner,
16 member, or key management personnel is subject to a final
17 administrative action or is otherwise shown to be untrustworthy
18 or incompetent;

19 (c) The viatical settlement provider demonstrates a
20 pattern of unreasonable payments to viators;

21 (d) The applicant or licensee or any officer, partner,
22 member, or key management personnel has been found guilty of, or
23 has pleaded guilty or nolo contendere to, any felony or a Class
24 I, II, or III misdemeanor, regardless of whether a judgment of
25 conviction has been entered by the court;

26 (e) The viatical settlement provider has entered into any
27 viatical settlement contract that has not been approved pursuant to

1 the Viatical Settlements Act;

2 (f) The viatical settlement provider has failed to honor
3 contractual obligations set out in a viatical settlement contract;

4 (g) The licensee no longer meets the requirements for
5 initial licensure;

6 (h) The viatical settlement provider has assigned,
7 transferred, or pledged a viaticated policy to a person other
8 than a viatical settlement provider licensed in this state, a
9 viatical settlement purchaser, an accredited investor or qualified
10 institutional buyer as defined respectively in Regulation D, Rule
11 501, or Rule 144A of the federal Securities Act of 1933, as the act
12 existed on September 1, 2001, a financing entity, a special purpose
13 entity, or a related provider trust;

14 (i) The applicant or licensee or any officer, partner,
15 member, or key management personnel has violated any provision of
16 the Viatical Settlements Act; or

17 (j) The licensee has failed to respond to the department
18 within fifteen working days after receipt of an inquiry from the
19 department.

20 (2) ~~If the~~ The director denies a license application or
21 ~~suspends, revokes, or refuses to renew~~ may suspend or revoke a
22 ~~license, the director shall conduct~~ pursuant to subsection (1) of
23 this section after notice and a hearing held in accordance with the
24 Administrative Procedure Act.

25 (3) If the director denies a license application or
26 refuses to renew a license pursuant to subsection (1) of this
27 section, he or she shall notify the applicant or licensee of the

1 reason for such denial or refusal of renewal. The applicant or
2 licensee has thirty days after receipt of such notification to
3 demand a hearing. The hearing shall be held within thirty days
4 of receipt of such demand by the director and shall be held in
5 accordance with the Administrative Procedure Act.

6 Sec. 9. Section 44-4501, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 44-4501 Sections 44-4501 to 44-4520 and section 10 of
9 this act shall be known and may be cited as the Long-Term Care
10 Insurance Act.

11 Sec. 10. (1) An individual may not sell, solicit,
12 or negotiate long-term care insurance unless the individual is
13 licensed as an insurance producer for health or sickness and
14 accident insurance and has completed a one-time training course on
15 or before August 1, 2008, and ongoing training every twenty-four
16 months thereafter. All training shall meet the requirements of
17 subsection (2) of this section.

18 (2) The one-time training course required by subsection
19 (1) of this section shall be no less than eight hours in length
20 and the required ongoing training shall be no less than four
21 hours in length. All training required under subsection (1) of
22 this section shall consist of topics related to long-term care
23 insurance, long-term care services, and, if applicable, qualified
24 state long-term insurance partnership programs, including, but not
25 limited to:

26 (a) State and federal regulations and requirements and
27 the relationship between qualified state long-term care insurance

1 partnership programs and other public and private coverage of
2 long-term care services, including medicaid;

3 (b) Available long-term care services and providers;

4 (c) Changes or improvements in long-term care services or
5 providers;

6 (d) Alternatives to the purchase of private long-term
7 care insurance;

8 (e) The effect of inflation on benefits and the
9 importance of inflation protection; and

10 (f) Consumer suitability standards and guidelines.

11 Training required by subsection (1) of this section shall
12 not include any sales or marketing information, materials, or
13 training other than those required by state or federal law.

14 (3) (a) Insurers subject to the Long-Term Care Insurance
15 Act shall obtain verification that the insurance producer receives
16 training required by subsection (1) of this section before a
17 producer is permitted to sell, solicit, or negotiate the insurer's
18 long-term care insurance products. Records shall be maintained in
19 accordance with section 44-5905 and shall be made available to the
20 director upon request.

21 (b) Insurers subject to the act shall maintain records
22 with respect to the training of its producers concerning the
23 distribution of its partnership policies that will allow the
24 director to provide assurance to the Department of Health and
25 Human Services Finance and Support that producers have received
26 the training required by subsection (1) of this section and that
27 producers have demonstrated an understanding of the partnership

1 policies and their relationship to public and private coverage of
2 long-term care, including medicaid, in this state. These records
3 shall be maintained in accordance with section 44-5905 and shall be
4 made available to the director upon request.

5 (4) The satisfaction of the training requirements in any
6 state shall be deemed to satisfy the training requirements of the
7 State of Nebraska.

8 (5) The training requirements of subsection (1) of this
9 section may be approved as continuing education courses pursuant to
10 sections 44-3901 to 44-3913.

11 Sec. 11. Section 44-4519, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 44-4519 The director may adopt and promulgate rules
14 and regulations to carry out the Long-Term Care Insurance Act,
15 including minimum standards for insurance producer training.

16 Sec. 12. Section 44-5103, Revised Statutes Cumulative
17 Supplement, 2006, is amended to read:

18 44-5103 For purposes of the Insurers Investment Act:

19 (1) Admitted assets means the investments authorized
20 under the act and stated at values at which they are permitted
21 to be reported in the insurer's financial statement filed under
22 section 44-322, except that admitted assets does not include assets
23 of separate accounts, the investments of which are not subject to
24 the act;

25 (2) Agent means a national bank, state bank, trust
26 company, or broker-dealer that maintains an account in its name
27 in a clearing corporation or that is a member of the Federal

1 Reserve System and through which a custodian participates in a
2 clearing corporation including the Treasury/Reserve Automated Debt
3 Entry Securities System and Treasury Direct system, except that
4 with respect to securities issued by institutions organized or
5 existing under the laws of a foreign country or securities used
6 to meet deposit requirements pursuant to the laws of a foreign
7 country as a condition of doing business therein, agent may include
8 a corporation that is organized or existing under the laws of a
9 foreign country and that is legally qualified under those laws to
10 accept custody of securities;

11 (3) Business entity means a sole proprietorship,
12 corporation, limited liability company, association, partnership,
13 limited liability partnership, joint-stock company, joint venture,
14 mutual fund, trust, joint tenancy, or other similar form of
15 business organization, whether organized for profit or not for
16 profit;

17 (4) Clearing corporation means a clearing corporation as
18 defined in subdivision (a)(5) of section 8-102, Uniform Commercial
19 Code, that is organized for the purpose of effecting transactions
20 in securities by computerized book-entry, except that with respect
21 to securities issued by institutions organized or existing under
22 the laws of a foreign country or securities used to meet the
23 deposit requirements pursuant to the laws of a foreign country
24 as a condition of doing business therein, clearing corporation
25 may include a corporation that is organized or existing under the
26 laws of a foreign country and which is legally qualified under
27 those laws to effect transactions in securities by computerized

1 book-entry. Clearing corporation also includes Treasury/Reserve
2 Automated Debt Entry Securities System and Treasury Direct system;

3 (5) Custodian means:

4 (a) A national bank, state bank, or trust company that
5 shall at all times during which it acts as a custodian pursuant to
6 the Insurers Investment Act be no less than adequately capitalized
7 as determined by the standards adopted by United States banking
8 regulators and that is regulated by either state banking laws
9 or is a member of the Federal Reserve System and that is
10 legally qualified to accept custody of securities in accordance
11 with the standards set forth below, except that with respect to
12 securities issued by institutions organized or existing under the
13 laws of a foreign country, or securities used to meet the deposit
14 requirements pursuant to the laws of a foreign country as a
15 condition of doing business therein, custodian may include a bank
16 or trust company incorporated or organized under the laws of a
17 country other than the United States that is regulated as such by
18 that country's government or an agency thereof that shall at all
19 times during which it acts as a custodian pursuant to the Insurers
20 Investment Act be no less than adequately capitalized as determined
21 by the standards adopted by international banking authorities and
22 that is legally qualified to accept custody of securities; or

23 (b) A broker-dealer that shall be registered with and
24 subject to jurisdiction of the Securities and Exchange Commission,
25 maintains membership in the Securities Investor Protection
26 Corporation, and has a tangible net worth equal to or greater than
27 two hundred fifty million dollars;

1 (6) Custodied securities means securities held by the
2 custodian or its agent or in a clearing corporation, including
3 the Treasury/Reserve Automated Debt Entry Securities System and
4 Treasury Direct system;

5 (7) Direct when used in connection with the term
6 obligation means that the designated obligor is primarily liable on
7 the instrument representing the obligation;

8 (8) Director means the Director of Insurance;

9 (9) Insurer is defined as provided in section 44-103,
10 and unless the context otherwise requires, insurer means domestic
11 insurer;

12 (10) Mortgage means a consensual interest created by a
13 real estate mortgage, a trust deed on real estate, or a similar
14 instrument;

15 (11) Obligation means a bond, debenture, note, or other
16 evidence of indebtedness or participations, certificates, or other
17 evidences of an interest in any of the foregoing;

18 (12) Policyholders surplus means the amount obtained by
19 subtracting from the admitted assets (a) actual liabilities and (b)
20 any and all reserves which by law must be maintained. In the case
21 of a stock insurer, the policyholders surplus also includes the
22 paid-up and issued capital stock;

23 (13) Securities Valuation Office means the Securities
24 Valuation Office of the National Association of Insurance
25 Commissioners or any successor office established by the National
26 Association of Insurance Commissioners;

27 (14) Security certificate has the same meaning as defined

1 in subdivision (a) (16) of section 8-102, Uniform Commercial Code;

2 (15) State means any state of the United States, the
3 District of Columbia, or any territory organized by Congress;

4 (16) Tangible net worth means shareholders equity, less
5 intangible assets, as reported in the broker-dealer's most recent
6 Annual or Transition Report pursuant to section 13 or 15(d) of the
7 Securities Exchange Act of 1934, S.E.C. Form 10-K, filed with the
8 Securities and Exchange Commission; and

9 (17) Treasury/Reserve Automated Debt Entry Securities
10 System and Treasury Direct system mean the book-entry securities
11 systems established pursuant to 5 U.S.C. 301, 12 U.S.C. 391, and 31
12 U.S.C. 3101 et seq. The operation of the systems are subject to 31
13 C.F.R. part 357 et seq.

14 Sec. 13. Section 44-5110, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 44-5110 (1) An insurer may invest in an individual
17 interest of a pool of obligations or a fractional interest of a
18 single obligation if:

19 (a) The certificate of participation or interest or the
20 confirmation of participation or interest in the investment is
21 issued in the name of the insurer, a custodian bank, or the nominee
22 of either; and

23 (b) The certificate or confirmation, if held by a
24 custodian bank, is kept separate and apart from the investment
25 of others so that at all times the participation or interest
26 may be identified as belonging solely to the insurer making the
27 investment.

1 (2) If an investment is not evidenced by a certificate,
2 adequate evidence of the insurer's investment shall be obtained
3 from the issuer or its transfer or recording agent and retained
4 by the insurer, custodian bank, or clearing corporation except as
5 provided in subdivision (2) of section 44-5109. For purposes of
6 this subsection, adequate evidence shall mean a written receipt
7 or other verification issued by the depository, issuer, or
8 custodian bank which shows that the investment is held for the
9 insurer. Transfers of ownership or investments held as described in
10 subdivisions (1)(c) and (2) of section 44-5109 and this section may
11 be evidenced by a bookkeeping entry on the books of the issuer of
12 the investment, its transfer or recording agent, or the clearing
13 corporation without physical delivery of certificates, if any,
14 evidencing the insurer's investment.

15 (3) Any investment made pursuant to this section shall
16 also conform with the following:

17 (a) The investment in which the interest is purchased
18 shall be authorized under the Insurers Investment Act; and

19 (b) The insurer's pro rata interest in the investment
20 shall be in the same percentage as the par amount of its interest
21 bears to the outstanding par amount of the investment at the time
22 of purchase. +

23 ~~(c) Any person, other than an insurer, that is the~~
24 ~~obligor of the investment instrument or the investor from whom~~
25 ~~the interest is purchased shall have outstanding senior debt or~~
26 ~~commercial paper having a minimum quality rating as described in~~
27 ~~subdivision (2) of section 44-5112 or subsection (2) of section~~

1 ~~44-5138, and~~

2 ~~(d) Any insurer that is the obligor of the investment~~
3 ~~instrument or the investor from whom the interest is purchased~~
4 ~~shall be rated A or better by A.M. Best's rating service or the~~
5 ~~corresponding rating of a successor organization approved by the~~
6 ~~director.~~

7 (4) An investment may be authorized under this section
8 although its interest does not include the right to exercise the
9 investor's rights or enforce the investor's remedies according to
10 the provisions of the issue.

11 (5) Any investment made pursuant to this section shall be
12 purchased pursuant to a written participation agreement.

13 ~~(6) An insurer's investments authorized under this~~
14 ~~section shall not exceed ten percent of its admitted assets.~~

15 Sec. 14. Section 44-5111, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 44-5111 Any investment limitation in the Insurers
18 Investment Act based upon the amount of the insurer's admitted
19 assets or policyholders surplus shall relate to admitted assets
20 or policyholders surplus as shown by the most recent financial
21 statement filed by the insurer pursuant to section 44-322 unless
22 the insurer's admitted assets or policyholders surplus is revised
23 as a result of an examination conducted pursuant to the Insurers
24 Examination Act, in which case the results of the examination shall
25 control. Except as otherwise provided by law, an investment shall
26 be measured by the lesser of actual cost or admitted value at the
27 time of acquisition. If there is no actual cost at the time of

1 acquisition, the investment shall be measured at the lesser of fair
2 value or admitted value.

3 For purposes of this section, actual cost ~~shall mean~~
4 means the total amount invested, expended, or which should
5 be reasonably anticipated to be invested or expended in the
6 acquisition or organization of any investment, insurer, or
7 subsidiary, including all organizational expenses or contributions
8 to capital and surplus whether or not represented by the purchase
9 of capital stock or issuance of other securities.

10 Sec. 15. Section 44-5120, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 44-5120 (1) An insurer may lend its securities if:

13 (a) The securities are created or existing under the
14 laws of the United States and, simultaneously with the delivery
15 of the loaned securities, the insurer receives collateral from the
16 borrower consisting of cash or securities backed by the full faith
17 and credit of the United States or an agency or instrumentality
18 of the United States, except that any securities provided as
19 collateral shall not be of lesser quality than the quality of the
20 loaned securities. Any investment made by an insurer with cash
21 received as collateral for loaned securities shall be made in the
22 same kinds, classes, and investment grades as those authorized
23 under the Insurers Investment Act and in a manner that recognizes
24 the liquidity needs of the transaction or is used by the insurer
25 for its general corporate purposes. The securities provided as
26 collateral shall have a market value when the loan is made of at
27 least one hundred two percent of the market value of the loaned

1 securities;

2 (b) The securities are created or existing under the
3 laws of Canada or are securities described in section 44-5137 and,
4 simultaneously with the delivery of the loaned securities, the
5 insurer receives collateral from the borrower consisting of cash
6 or securities backed by the full faith and credit of the foreign
7 country, except that any securities provided as collateral shall
8 not be of lesser quality than the quality of the loaned securities.
9 Any investment made by an insurer with cash received as collateral
10 for loaned securities shall be made in the same kinds, classes, and
11 investment grades as those authorized under the Insurers Investment
12 Act and in a manner that recognizes the liquidity needs of the
13 transaction or is used by the insurer for its general corporate
14 purposes. The securities provided as collateral shall have a market
15 value when the loan is made of at least one hundred two percent of
16 the market value of the loaned securities;

17 (c) Prior to the loan, the borrower or any indemnifying
18 party furnishes the insurer with or the insurer otherwise obtains
19 the most recent financial statement of the borrower or any
20 indemnifying party;

21 (d) The insurer receives a reasonable fee related to the
22 market value of the loaned securities and to the term of the loan;

23 (e) The loan is made pursuant to a written loan
24 agreement; and

25 (f) The borrower is required to furnish by the close of
26 each business day during the term of the loan a report of the
27 market value of all collateral and the market value of all loaned

1 securities as of the close of trading on the previous business
2 day. If at the close of any business day the market value of the
3 collateral for any loan outstanding to a borrower is less than
4 one hundred percent of the market value of the loaned securities,
5 the borrower shall deliver by the close of the next business day
6 an additional amount of cash or securities. The market value of
7 the additional securities, together with the market value of all
8 previously delivered collateral, shall equal at least one hundred
9 two percent of the market value of the loaned securities for that
10 loan.

11 ~~(2) If at the close of any business day the market value~~
12 ~~of the collateral for all loans outstanding to a borrower is less~~
13 ~~than one hundred two percent of the market value of the loaned~~
14 ~~securities, the borrower shall deliver by the close of the next~~
15 ~~business day an additional amount of cash or securities. The market~~
16 ~~value of the additional securities, together with the market value~~
17 ~~of all previously delivered collateral, shall equal at least one~~
18 ~~hundred two percent of the market value of the loaned securities~~
19 ~~for all loans to that borrower. This subsection does not apply if~~
20 ~~the insurer receives cash collateral for all loans outstanding to~~
21 ~~the borrower.~~

22 ~~(3) (2) For purposes of this section, market value shall~~
23 ~~include includes accrued interest.~~

24 ~~(4) (3) An insurer shall effect securities lending only~~
25 ~~through the services of a custodian bank or similar entity as~~
26 ~~approved by the director.~~

27 ~~(5) (4) An insurer's investments authorized under this~~

1 section shall not exceed ten percent of its admitted assets.

2 Sec. 16. Section 44-5137, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 44-5137 (1) An insurer may invest in securities or other
5 investments (a) issued in, (b) located in, (c) denominated in the
6 currency of, (d) whose ultimate payment amounts of principal or
7 interest are subject to fluctuations in the currency of, or (e)
8 whose obligors are domiciled in countries other than the United
9 States or Canada, which are substantially of the same kinds and
10 classes as those authorized for investment under the Insurers
11 Investment Act.

12 (2) Subject to the limitations in subsection (3) of this
13 section:

14 (a) An insurer's investments authorized under subsection
15 (1) of this section in any one foreign jurisdiction whose sovereign
16 debt has a 1 designation from the Securities Valuation Office shall
17 not exceed ten percent of the insurer's admitted assets;

18 (b) An insurer's investments authorized under subsection
19 (1) of this section in any one foreign jurisdiction whose sovereign
20 debt has a 2 or 3 designation from the Securities Valuation Office
21 shall not exceed five percent of the insurer's admitted assets;

22 (c) An insurer's investments authorized under subsection
23 (1) of this section ~~shall not include investments~~ in any one
24 foreign jurisdiction whose sovereign debt has a 4, 5, or 6
25 designation from the Securities Valuation Office shall not exceed
26 three percent of the insurer's admitted assets;

27 (d) An insurer's investments authorized under subsection

1 (1) of this section denominated in any one foreign currency shall
2 not exceed two percent of the insurer's admitted assets; ~~and~~

3 (e) An insurer's investments authorized under subsection
4 (1) of this section denominated in foreign currencies, in the
5 aggregate, shall not exceed five percent of the insurer's admitted
6 assets; and -

7 (f) An insurer's investments authorized under subsection
8 (1) of this section shall not be considered denominated in a
9 foreign currency if the acquiring insurer enters into one or
10 more contracts in transactions permitted under section 44-5149 to
11 exchange all payments made on the foreign currency denominated
12 investments for United States currency at a rate which effectively
13 insulates the investment cash flows against future changes in
14 currency exchange rates during the period the contract or contracts
15 are in effect.

16 (3) An insurer's investments authorized under subsection
17 (1) of this section shall not exceed, in the aggregate, ~~fifteen~~
18 twenty percent of its admitted assets.

19 (4) An insurer which is authorized to do business in a
20 foreign country or which has outstanding insurance, annuity, or
21 reinsurance contracts on lives or risks resident or located in
22 a foreign country may, in addition to the investments authorized
23 by subsection (1) of this section, invest in securities and
24 investments (a) issued in, (b) located in, (c) denominated in the
25 currency of, (d) whose ultimate payment amounts of principal and
26 interest are subject to fluctuations in the currency of, or (e)
27 whose obligors are domiciled in such foreign countries, which are

1 substantially of the same kinds and classes as those authorized for
2 investment under the act.

3 (5) An insurer's investments authorized under subsection
4 (4) of this section and cash in the currency of such country which
5 is at any time held by such insurer, in the aggregate, shall not
6 exceed the greater of (a) one and one-half times the amount of
7 its reserves and other obligations under such contracts or (b) the
8 amount which such insurer is required by law to invest in such
9 country.

10 (6) Any investment in debt obligations authorized under
11 this section shall have a minimum quality rating as described in
12 subdivision (2) of section 44-5112.

13 (7) An insurer's investments made under this section
14 shall be aggregated with investments of the same kinds and classes
15 made under the Insurers Investment Act except section 44-5153 for
16 purposes of determining compliance with the limitations contained
17 in other sections.

18 Sec. 17. Section 44-5140, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 44-5140 (1) An insurer may invest in the preferred stock
21 of any corporation which:

22 (a) Has retained earnings of not less than one million
23 dollars;

24 (b) Has earned and paid regular dividends at the regular
25 prescribed rate each year upon its preferred stock, if any is or
26 has been outstanding, for not less than five years immediately
27 preceding the purchase of such preferred stock or during such part

1 of such five-year period as it has had preferred stock outstanding;
2 and

3 (c) Has had no material defaults in principal payments
4 of or interest on any obligations of such corporation and its
5 subsidiaries having a priority equal to or higher than those
6 purchased during the period of five years immediately preceding the
7 date of acquisition or, if outstanding for less than five years, at
8 any time since such obligations were issued.

9 The earnings of and the regular dividends paid by all
10 predecessor, merged, consolidated, or purchased corporations may be
11 included through the use of consolidated or pro forma statements.

12 (2) Except as authorized under the Insurance Holding
13 Company System Act, an insurer shall not own more than five percent
14 of the total issued shares of stock of any corporation other than
15 an insurer.

16 (3) A life insurer's investments authorized under this
17 section shall not exceed the greater of ~~ten~~ twenty-five percent of
18 its admitted assets or one hundred percent of its policyholders
19 surplus, nor shall a life insurer's investments authorized under
20 this section that are not rated P-1 or P-2 by the Securities
21 Valuation Office exceed ten percent of its admitted assets.

22 Sec. 18. Section 44-5141, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 44-5141 (1) An insurer may invest in the common stock or
25 rights to purchase or sell common stock of any corporation which
26 has retained earnings of not less than one million dollars, except
27 that an investment may be made in any corporation having a majority

1 of its operations in this state which has retained earnings of
2 not less than two hundred fifty thousand dollars. The earnings of
3 all predecessor, merged, consolidated, or purchased corporations
4 shall be included through the use of consolidated or pro forma
5 statements.

6 (2) (a) An insurer may invest in equity interests or
7 rights to purchase or sell equity interests in business entities,
8 other than general partnerships, ~~created or existing under the~~
9 ~~laws of the United States or Canada or any state or province~~
10 ~~thereof.~~

11 (b) (i) A life insurer's investments authorized under this
12 subsection shall not exceed fifty percent of its policyholders
13 surplus.

14 (ii) A life insurer shall not invest under this
15 subsection in any investment which the life insurer may invest in
16 under section 44-5140 or 44-5144 or subsection (1) of this section.

17 (3) Except as authorized under the Insurance Holding
18 Company System Act, an insurer shall not invest in more than ten
19 percent of the total equity interests in any business entity other
20 than an insurer.

21 (4) A life insurer's investments authorized under this
22 section shall not exceed one hundred percent of its policyholders
23 surplus.

24 Sec. 19. Section 44-5152, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 44-5152 (1) ~~Subject~~ In addition to investments otherwise
27 authorized under the Insurers Investment Act and subject to the

1 limitations in subsections (2) ~~through (4)~~ and (3) of this section,
2 an insurer may invest in obligations having 3, 4, 5, and 6
3 designations from the Securities Valuation Office.

4 (2) Subject to the limitation in subsection ~~(4)~~ (3) of
5 this section, an insurer shall not acquire, directly or indirectly
6 through an investment subsidiary, investments in obligations:

7 (a) ~~An insurer's investments in obligations having a~~
8 ~~4 designation from the Securities Valuation Office shall not~~
9 ~~exceed four percent of the insurer's admitted assets;~~ Having a 4
10 designation from the Securities Valuation Office if, as a result of
11 and giving effect to the investment, the aggregate amount of such
12 investments would exceed four percent of the insurer's admitted
13 assets;

14 (b) ~~An insurer's investments in obligations having a 5~~
15 ~~designation from the Securities Valuation Office shall not exceed~~
16 ~~two percent of the insurer's admitted assets;~~ and Having a 5
17 designation from the Securities Valuation Office if, as a result
18 of and giving effect to the investment, the aggregate amount of
19 such investments would exceed two percent of the insurer's admitted
20 assets; and

21 (c) ~~An insurer's investments in obligations having a~~
22 ~~6 designation from the Securities Valuation Office shall not~~
23 ~~exceed one percent of the insurer's admitted assets;~~ Having a 6
24 designation from the Securities Valuation Office if, as a result
25 of and giving effect to the investment, the aggregate amount of
26 such investments would exceed one percent of the insurer's admitted
27 assets.

1 ~~(3) Subject to the limitations in subsection (2) of this~~
2 ~~section.~~

3 ~~(a) An insurer's investments in obligations having any~~
4 ~~combination of 4, 5, and 6 designations from the Securities~~
5 ~~Valuation Office, except the combination described in subdivision~~
6 ~~(3)(b) of this section, in the aggregate, shall not exceed four~~
7 ~~percent of the insurer's admitted assets, and~~

8 ~~(b) An insurer's investments in obligations having 5~~
9 ~~and 6 designations from the Securities Valuation Office, in the~~
10 ~~aggregate, shall not exceed two percent of the insurer's admitted~~
11 ~~assets.~~

12 ~~(4) An insurer's investments authorized under this~~
13 ~~section, in the aggregate, shall not exceed fifteen percent of its~~
14 ~~admitted assets.~~

15 (3) An insurer shall not acquire, directly or indirectly
16 through an investment subsidiary, investments under this section
17 if, as a result of and giving effect to the investment, the
18 aggregate amount would exceed fifteen percent of the insurer's
19 admitted assets.

20 Sec. 20. Section 44-5153, Revised Statutes Cumulative
21 Supplement, 2006, is amended to read:

22 44-5153 (1)(a)(i) A life insurer may make investments
23 not otherwise authorized under the Insurers Investment Act in an
24 amount, in the aggregate, not exceeding the lesser of five percent
25 of its admitted assets or one hundred percent of its policyholders
26 surplus.

27 (ii) An insurer other than a life insurer may make

1 investments not otherwise authorized under the act in an amount,
2 in the aggregate, not exceeding the lesser of twenty-five percent
3 of the amount by which its admitted assets exceed its total
4 liabilities, excluding capital, or five percent of its admitted
5 assets.

6 (b) Investments authorized under this subsection shall
7 not include obligations having 3, 4, 5, and 6 designations from the
8 Securities Valuation Office.

9 (2) (a) ~~Notwithstanding~~ In addition to the provisions of
10 subdivision (1)(a)(i) of this section, a life insurer may make
11 investments not otherwise authorized under the act in an amount not
12 exceeding that portion of its policyholders surplus which is in
13 excess of ten percent of its admitted assets.

14 (b) ~~Notwithstanding~~ In addition to the provisions of
15 subdivisions (1)(a)(ii) and (b) of this section, an insurer other
16 than a life insurer may make investments not otherwise authorized
17 under the act in an amount not exceeding that portion of its
18 policyholders surplus which is in excess of fifty percent of its
19 annual net written premiums as shown by the most recent annual
20 financial statement filed by the insurer pursuant to section
21 44-322.

22 (3) Investments authorized under subsection (1) or (2)
23 of this section shall not include insurance agents' balances or
24 amounts advanced to or owing by insurance agents.

25 (4) The limitations set forth in this section shall be
26 applied at the time the investment in question is made and at the
27 end of each calendar quarter. An insurer's investment, which at the

1 time of its acquisition was authorized only under the provisions
2 of this section but which has subsequently and while held by such
3 insurer become of such character as to be authorized elsewhere
4 under the act, shall not be included in determining the amount of
5 such insurer's investments, in the aggregate, authorized under this
6 section, and investments otherwise authorized under the act at the
7 time of their acquisition shall not be included in making such
8 determination.

9 (5) Derivative instruments described in subsections (1),
10 (2), and (3) of section 44-5149 shall not be authorized investments
11 under this section.

12 Sec. 21. Section 44-5501, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 44-5501 Sections 44-5501 to 44-5514 and section 24 of
15 this act shall be known and may be cited as the Surplus Lines
16 Insurance Act.

17 Sec. 22. Section 44-5502, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 44-5502 For purposes of the Surplus Lines Insurance Act:

20 (1) Department ~~shall mean~~ means the Department of
21 Insurance;

22 (2) Director ~~shall mean~~ means the Director of Insurance;

23 (3) Insurer ~~shall have~~ has the same meaning as in section
24 44-103; ~~and~~

25 (4) Foreign, alien, admitted, and nonadmitted, when
26 referring to insurers, ~~shall have~~ has the same meanings as in
27 section 44-103; ~~and~~ -

1 (5) Industrial insured means an insured that:

2 (a) Procures the insurance of any risk or risks
3 other than sickness and accident insurance and life and annuity
4 contracts, has fifty full-time employees, and has aggregate
5 annual premiums for insurance on all risks other than workers'
6 compensation insurance that total at least one hundred thousand
7 dollars; and

8 (b) Uses, to procure such insurance, the services of a
9 salaried full-time employee who counsels or advises his or her
10 employer regarding the insurance interests of the employer or the
11 employer's subsidiaries or business affiliates, if the employee
12 does not sell or solicit insurance or receive a commission.

13 Sec. 23. Section 44-5504, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 44-5504 (1) No person, other than an industrial insured,
16 shall place, procure, or effect insurance upon any risk located in
17 this state in any nonadmitted insurer until such person has first
18 been issued a surplus lines license from the department as provided
19 in section 44-5503.

20 (2) Application for a surplus lines license shall be
21 made to the department on forms designated and furnished by the
22 department and shall be accompanied by a license fee as established
23 by the director not to exceed two hundred fifty dollars for each
24 individual and corporate surplus lines license.

25 (3) (a) All corporate surplus lines licenses shall expire
26 on April 30 of each year, and all individual surplus lines
27 licenses shall expire on the licensee's birthday in the first year

1 after issuance in which his or her age is divisible by two, and
2 all individual surplus lines licenses may be renewed within the
3 ninety-day period before their expiration dates and all individual
4 surplus lines licenses also may be renewed within the thirty-day
5 period after their expiration dates upon payment of a late renewal
6 fee as established by the director not to exceed two hundred
7 dollars in addition to the applicable fee otherwise required for
8 renewal of individual surplus lines licenses as established by the
9 director pursuant to subsection (2) of this section. All individual
10 surplus lines licenses renewed within the thirty-day period after
11 their expiration dates pursuant to this subdivision shall be
12 deemed to have been renewed before their expiration dates. The
13 department shall establish procedures for the renewal of surplus
14 lines licenses.

15 (b) Every licensee shall notify the department within
16 thirty days of any changes in the licensee's residential or
17 business address.

18 Sec. 24. Every industrial insured shall annually, on or
19 before February 15, pay to the department a tax of three percent on
20 the total gross amount of insurance premiums for policies procured
21 through nonadmitted insurers. Every industrial insured shall pay
22 the fire insurance tax prescribed in section 81-523. The department
23 shall prescribe a form for an industrial insured tax filing.

24 Sec. 25. Section 44-7504, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 44-7504 For purposes of the Property and Casualty
27 Insurance Rate and Form Act:

1 (1) Advisory organization means any entity, including its
2 affiliates or subsidiaries, which (a) has majority ownership or
3 control by two or more insurers and assists two or more insurers
4 in activities related to ratemaking, the promulgation of policy
5 forms, or related matters or (b) makes the same prospective loss
6 cost or policy form filings on behalf of or to be available for
7 two or more insurers. For purposes of this subdivision, a group
8 of insurers under common ownership or control shall be considered
9 a single insurer. Advisory organization does not include joint
10 reinsurance pools, joint underwriting pools, or insurers engaged in
11 joint underwriting;

12 (2) Classification means the process of grouping insureds
13 with similar loss or expense characteristics so that differences in
14 losses and expenses may be recognized;

15 (3) Director means the Director of Insurance;

16 (4) Exempt commercial policyholder means an entity to
17 which specific aspects of rate or policy form regulation do not
18 apply or have been relaxed in accordance with rules and regulations
19 adopted and promulgated pursuant to section 44-7515;

20 (5) Expense means that portion of a rate attributable
21 to acquisition, field supervision, collection expense, general
22 expense, taxes, licenses, and fees. Expense does not include loss
23 adjustment expense;

24 (6) Experience rating plan means a rating formula
25 and related procedures that use past loss experience of an
26 individual policyholder to forecast future losses by measuring
27 the policyholder's loss experience against the expected losses

1 for policyholders in that classification to produce a prospective
2 premium credit, debit, or unity modification;

3 (7) Joint reinsurance pool means an ongoing voluntary
4 arrangement pursuant to which two or more insurers participate in
5 the reinsurance of risks written by one or more member insurers
6 and reinsured by one or more other member insurers. For purposes
7 of this subdivision, a group of insurers under common ownership or
8 control shall be considered a single insurer. A joint reinsurance
9 pool may operate through an association, syndicate, or other
10 arrangement;

11 (8) Joint underwriting means a voluntary arrangement
12 established on an individual risk basis by which two or more
13 insurers jointly contract to provide coverage for an insured.
14 For purposes of this subdivision, a group of insurers under
15 common ownership or control shall be considered a single insurer.
16 Joint underwriting does not include any arrangement by which
17 the participants are reinsuring the direct obligation of another
18 risk-assuming entity;

19 (9) Joint underwriting pool means an ongoing voluntary
20 arrangement pursuant to which two or more insurers participate
21 in the sharing of risks written as their direct obligations
22 according to a predetermined basis and the insurance remains the
23 direct obligation of the pool participants. For purposes of this
24 subdivision, a group of insurers under common ownership or control
25 shall be considered a single insurer. A joint underwriting pool may
26 operate through an association, syndicate, or other arrangement;

27 (10) Loss adjustment expense means the expense incurred

1 by an insurer in the course of settling claims;

2 (11) Policy form means all policies, certificates, or
3 other contracts providing insurance coverage. Policy form includes
4 bonds and includes riders, endorsements, or other amendments to the
5 policy form;

6 (12) Premium means the cost of insurance to the
7 policyholder after all audit adjustments have been made and any
8 dividends payable have been subtracted;

9 (13) Prospective loss cost means that portion of a
10 rate intended to provide for expected losses and loss adjustment
11 expenses. Prospective loss costs may provide for anticipated
12 special assessments. Prospective loss costs do not include
13 provisions for profits, dividends, or expenses other than loss
14 adjustment expenses;

15 (14) Rating system means the information needed to
16 determine the applicable rate or premium including rates, any
17 manual or plan of rates, classifications, rating schedules, minimum
18 premiums, policy fees, payment plans, rating plans or rules,
19 anniversary rating date rules, and other similar information.
20 Rating system does not include dividend rating plans or other
21 provisions for the possible payment of dividends if such dividends
22 are declared by the insurer's board of directors and are not
23 guaranteed;

24 (15) Special assessments means guaranty fund assessments
25 made pursuant to section 44-2407, Workers' Compensation Trust Fund
26 assessments made pursuant to section 48-162.02, residual market
27 assessments made pursuant to section 44-7528 or ~~48-146.01~~, section

1 3 of this act, and similar assessments. Special assessments are not
2 expenses or losses;

3 (16) Statistical agent means an entity that, for the
4 purpose of fulfilling the statistical reporting obligations of two
5 or more insurers under the act, collects or compiles statistics
6 from two or more insurers or provides reports developed from these
7 statistics to the director. For purposes of this subdivision,
8 a group of insurers under common ownership or control shall be
9 considered a single insurer; and

10 (17) Supporting information means the experience and
11 judgment of the filer and the experience or data of other
12 insurers or advisory organizations relied upon by the filer,
13 the interpretation of any other data relied upon by the filer,
14 descriptions of methods used in developing a rating system, and any
15 other information required by the director to be filed.

16 Sec. 26. Section 44-8101, Revised Statutes Cumulative
17 Supplement, 2006, is amended to read:

18 44-8101 Sections 44-8101 to 44-8107 shall be known
19 and may be cited as the Nebraska ~~Senior~~ Protection in Annuity
20 Transactions Act.

21 Sec. 27. Section 44-8102, Revised Statutes Cumulative
22 Supplement, 2006, is amended to read:

23 44-8102 The purpose of the Nebraska ~~Senior~~ Protection in
24 Annuity Transactions Act is to set forth standards and procedures
25 for recommendations made by insurance producers and insurers to
26 ~~senior~~ consumers regarding annuity transactions so that ~~senior~~
27 consumers' insurance needs and financial objectives at the time of

1 the transaction are appropriately addressed.

2 Sec. 28. Section 44-8103, Revised Statutes Cumulative
3 Supplement, 2006, is amended to read:

4 44-8103 The Nebraska ~~Senior~~ Protection in Annuity
5 Transactions Act applies to any recommendation to purchase or
6 exchange an annuity made to a ~~senior~~ consumer by an insurance
7 producer, or an insurer if an insurance producer is not involved,
8 that results in the recommended purchase or exchange.

9 Sec. 29. Section 44-8104, Revised Statutes Cumulative
10 Supplement, 2006, is amended to read:

11 44-8104 Unless otherwise specifically included, the
12 Nebraska ~~Senior~~ Protection in Annuity Transactions Act does not
13 apply to recommendations involving:

14 (1) Direct response solicitations if there is no
15 recommendation based on information collected from the ~~senior~~
16 consumer pursuant to the act; or

17 (2) Contracts used to fund:

18 (a) An employee pension or welfare benefit plan that is
19 covered by the federal Employee Retirement Income Security Act of
20 1974;

21 (b) A plan described by section 401(a), 401(k), 403(b),
22 408(k), or 408(p) of the Internal Revenue Code if established or
23 maintained by an employer;

24 (c) A government or church plan defined in section 414
25 of the Internal Revenue Code, a government or church welfare
26 benefit plan, or a deferred compensation plan of a state or local
27 government or tax exempt organization under section 457 of the

1 Internal Revenue Code;

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

4 (e) Settlements of or assumptions of liabilities
5 associated with personal injury litigation or any dispute or claim
6 resolution process; or

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

9 Sec. 30. Section 44-8105, Revised Statutes Cumulative
10 Supplement, 2006, is amended to read:

11 44-8105 For purposes of the Nebraska ~~Senior~~ Protection in
12 Annuity Transactions Act:

13 (1) Annuity means a fixed annuity or variable annuity
14 that is individually solicited, whether the product is classified
15 as an individual or group annuity;

16 (2) Insurer means a company required to be licensed under
17 the laws of this state to provide insurance products, including
18 annuities;

19 (3) Insurance producer means a person required to be
20 licensed under the laws of this state to sell, solicit, or
21 negotiate insurance, including annuities; and

22 (4) Recommendation means advice provided by an insurance
23 producer, or an insurer if an insurance producer is not involved,
24 to a ~~senior~~ consumer that results in a purchase or exchange of an
25 annuity in accordance with that advice. + and

26 ~~(5) Senior consumer means a person sixty-five years of~~
27 ~~age or older. In the event of a joint purchase by more than one~~

1 ~~person, the purchaser will be considered to be a senior consumer if~~
2 ~~any of the purchasers is sixty-five years of age or older.~~

3 Sec. 31. Section 44-8106, Revised Statutes Cumulative
4 Supplement, 2006, is amended to read:

5 44-8106 (1) The insurance producer, or insurer if an
6 insurance producer is not involved, shall have reasonable grounds
7 to believe that the recommendation is suitable for the ~~senior~~
8 consumer based on the facts disclosed by the ~~senior~~ consumer before
9 making a recommendation to a ~~senior~~ consumer under the Nebraska
10 ~~Senior~~ Protection in Annuity Transactions Act. The recommendation
11 shall be based on the facts disclosed by the ~~senior~~ consumer
12 relating to his or her investments, other insurance products, and
13 the financial situation and needs of the ~~senior~~ consumer.

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

18 (a) The ~~senior~~ consumer's financial status; ~~including~~
19 ~~investments held by the senior consumer;~~

20 **(b)** ~~Other insurance products owned by the senior~~
21 ~~consumer;~~

22 **(c)** ~~The~~ (b) The ~~senior~~ consumer's tax status;

23 **(d)** ~~(c)~~ (c) The ~~senior~~ consumer's investment objectives; and

24 **(e)** ~~(d)~~ (d) Such other information used or considered to be
25 reasonable in making recommendations to the ~~senior~~ consumer.

26 (3) (a) Except as provided under subdivision (3) (b) of
27 this section, neither an insurance producer, nor an insurer if an

1 insurance producer is not involved, shall have any obligation to a
2 ~~senior~~ consumer under subsection (1) of this section related to any
3 recommendation if the ~~senior~~ consumer:

4 (i) Refuses to provide relevant information requested by
5 the insurance producer or insurer;

6 (ii) Decides to enter into an insurance transaction that
7 is not based on a recommendation of the insurance producer or
8 insurer; or

9 (iii) Fails to provide complete or accurate information.

10 (b) If a ~~senior~~ consumer provides information as
11 described in subdivision (3)(a) of this section, an insurance
12 producer or insurer shall make a recommendation that is reasonable
13 under all the circumstances that are actually known to the
14 insurance producer or insurer at the time of the recommendation.

15 (4)(a) An insurer shall:

16 (i) Assure that a system to supervise recommendations
17 that is reasonably designed to achieve compliance with the Nebraska
18 ~~Senior~~ Protection in Annuity Transactions Act is established and
19 maintained by complying with subdivisions (4)(d) through (f) of
20 this section; or

21 (ii) Establish and maintain a system to supervise
22 recommendations.

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

24 (i) Maintaining written procedures; and

25 (ii) Conducting periodic reviews of its records that
26 are reasonably designed to assist in detecting and preventing
27 violations of the act.

1 (c) A general agent and independent agency shall
2 either adopt a system established by an insurer to supervise
3 recommendations of its insurance producers that is reasonably
4 designed to achieve compliance with the act or establish and
5 maintain such a system. Such system shall include, but not be
6 limited to:

7 (i) Maintaining written procedures; and

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

11 (d) An insurer may contract with a third party, including
12 a general agent or independent agency, to establish and maintain
13 a system of supervision as required by subdivision (4)(a) of this
14 section with respect to insurance producers under contract with or
15 employed by the third party.

16 (e) An insurer shall make reasonable inquiry to assure
17 that the third party contracting under subdivision (4)(d) of this
18 section is performing the functions required under subdivision
19 (4)(a) of this section and shall take such reasonable action to
20 enforce the contractual obligation to perform the functions. An
21 insurer may comply with its obligation to make reasonable inquiry
22 by doing the following:

23 (i) Obtaining annually a certification from a third-party
24 senior manager that the manager represents that the third party is
25 performing the required functions; and

26 (ii) Periodically selecting third parties contracting
27 under subdivision (4)(d) of this section to determine whether the

1 third parties are performing the required functions. The insurer
2 shall perform those procedures to conduct the review that are
3 reasonable under the circumstances. Such third parties shall be
4 selected based on reasonable selection criteria.

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

7 (i) Contracts with a third party pursuant to subdivision
8 (4) (d) of this section; and

9 (ii) Complies with the requirements to supervise in
10 subdivision (4) (e) of this section.

11 (g) An insurer, general agent, or independent agency is
12 not required by subdivision (4) (a) or (b) of this section to:

13 (i) Review all insurance producer solicited transactions;
14 or

15 (ii) Supervise an insurance producer's recommendations to
16 ~~senior~~ consumers of products other than the annuities offered by
17 the insurer, general agent, or independent agency.

18 (h) A general agent or independent agency contracting
19 with an insurer pursuant to subdivision (4) (d) of this section
20 shall, when requested by the insurer pursuant to subdivision (4) (e)
21 of this section, promptly give a certification as described in
22 subdivision (4) (e) (i) of this section or give a clear statement
23 that it is unable to meet the certification criteria.

24 (i) No person may provide a certification under
25 subdivision (4) (e) (i) of this section unless:

26 (i) The person is a senior manager with responsibility
27 for the delegated functions; and

1 (ii) The person has a reasonable basis for making the
2 certification.

3 (5) Compliance with the National Association of
4 Securities Dealers Conduct Rules pertaining to suitability shall
5 satisfy the requirements under this section for the recommendation
6 of variable annuities. However, nothing in this subsection shall
7 limit the ability of the Director of Insurance to enforce the act.

8 Sec. 32. Section 44-8107, Revised Statutes Cumulative
9 Supplement, 2006, is amended to read:

10 44-8107 (1) The Director of Insurance may order:

11 (a) An insurer to take reasonably appropriate corrective
12 action for any ~~senior~~ consumer harmed by an insurance producer's
13 or insurer's violation of the Nebraska ~~Senior~~ Protection in Annuity
14 Transactions Act;

15 (b) An insurance producer to take reasonably appropriate
16 corrective action for any ~~senior~~ consumer harmed by the insurance
17 producer's violation of the act; and

18 (c) A general agency or independent agency that employs
19 or contracts with an insurance producer to sell or solicit the sale
20 of annuities to ~~senior~~ consumers, to take reasonably appropriate
21 corrective action for any ~~senior~~ consumer harmed by the insurance
22 producer's violation of the act.

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

26 (3) The director may reduce or eliminate any applicable
27 penalty under section 44-1529 for a violation of subsection (1) or

1 (2) of section 44-8106 or subdivision (3)(b) of such section if
2 corrective action for the ~~senior~~ consumer was taken promptly after
3 a violation was discovered.

4 Sec. 33. Section 48-144.03, Revised Statutes Cumulative
5 Supplement, 2006, is amended to read:

6 48-144.03 (1) Notwithstanding policy provisions that
7 stipulate a workers' compensation insurance policy to be a contract
8 with a fixed term of coverage that expires at the end of the
9 term, coverage under a workers' compensation insurance policy
10 shall continue in full force and effect until notice is given in
11 accordance with this section.

12 (2) No cancellation of a workers' compensation insurance
13 policy within the policy period shall be effective unless notice
14 of the cancellation is given by the workers' compensation insurer
15 to the Nebraska Workers' Compensation Court and to the employer.
16 No such cancellation shall be effective until thirty days after
17 the giving of such notices, except that the cancellation may
18 be effective ten days after the giving of such notices if such
19 cancellation is based on (a) notice from the employer to the
20 insurer to cancel the policy, (b) nonpayment of premium due the
21 insurer under any policy written by the insurer for the employer,
22 (c) failure of the employer to reimburse deductible losses as
23 required under any policy written by the insurer for the employer,
24 or (d) failure of the employer, if covered pursuant to section
25 ~~48-146.01~~, 3 of this act, to comply with sections 48-443 to 48-445.

26 (3) No workers' compensation insurance policy shall
27 expire or lapse at the end of the policy period unless notice

1 of nonrenewal is given by the workers' compensation insurer to the
2 compensation court and to the employer. No workers' compensation
3 insurance policy shall expire or lapse until thirty days after the
4 giving of such notices, except that a policy may expire or lapse
5 ten days after the giving of such notices if the nonrenewal is
6 based on (a) notice from the employer to the insurer to not renew
7 the policy, (b) nonpayment of premium due the insurer under any
8 policy written by the insurer for the employer, (c) failure of
9 the employer to reimburse deductible losses as required under any
10 policy written by the insurer for the employer, or (d) failure of
11 the employer, if covered pursuant to section ~~48-146.01~~, 3 of this
12 act, to comply with sections 48-443 to 48-445.

13 (4) Notwithstanding other provisions of this section, if
14 the employer has secured workers' compensation insurance coverage
15 with another workers' compensation insurer, then the cancellation
16 or nonrenewal shall be effective as of the effective date of such
17 other insurance coverage.

18 (5) The notices required by this section shall state the
19 reason for the cancellation or nonrenewal of the policy.

20 (6) The notices required by this section shall be
21 provided in writing and shall be deemed given upon the mailing
22 of such notices by certified mail, except that notices from
23 insurers to the compensation court may be provided by electronic
24 means if such electronic means is approved by the administrator of
25 the compensation court. If notice is provided by electronic means
26 pursuant to such an approval, it shall be deemed given upon receipt
27 by the compensation court.

1 Sec. 34. Section 48-446, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 48-446 (1) There is hereby created the Workplace Safety
4 Consultation Program. It is the intent of the Legislature that such
5 program help provide employees in Nebraska with safe and healthful
6 workplaces.

7 (2) Under the Workplace Safety Consultation Program,
8 the Department of Labor may conduct workplace inspections and
9 consultations to determine whether employers are complying with
10 standards issued by the federal Occupational Safety and Health
11 Administration or the federal Mine Safety and Health Administration
12 for safe and healthful workplaces. Workplace inspections and safety
13 consultations shall be performed by employees of the Department
14 of Labor who are knowledgeable and experienced in the occupational
15 safety and health field and who are trained in the federal
16 standards and in the recognition of safety and health hazards.
17 The Department of Labor may employ qualified persons as may be
18 necessary to carry out this section.

19 (3) All employers shall be subject to occupational
20 safety and health inspections covering their Nebraska operations.
21 Employers shall be selected by the Commissioner of Labor for
22 inspection on the basis of factors intended to identify the
23 likelihood of workplace injuries and to achieve the most efficient
24 utilization of safety personnel of the Department of Labor. Such
25 factors shall include:

26 (a) The amount of premium paid by the employer for
27 workers' compensation insurance;

1 (b) The experience modification produced by the
2 experience rating system referenced in section 44-7524;

3 (c) Whether the employer is covered by workers'
4 compensation insurance under section ~~48-146.01~~, 3 of this act;

5 (d) The relative hazard of the employer's type of
6 business as evidenced by insurance rates or loss costs filed with
7 the Director of Insurance for the insurance rating classification
8 or classifications applicable to the employer;

9 (e) The nature, type, or frequency of accidents for the
10 employer as may be reported to the Department of Insurance, the
11 Nebraska Workers' Compensation Court, or the Department of Labor;

12 (f) Workplace hazards as may be reported to the
13 Department of Insurance, the Nebraska Workers' Compensation Court,
14 or the Department of Labor;

15 (g) Previous safety and health history;

16 (h) Possible employee exposure to toxic substances;

17 (i) Requests by employers for the Department of Labor to
18 inspect their workplaces or otherwise provide consulting services
19 on a basis by which the employer will reimburse the Department of
20 Labor; and

21 (j) All other relevant factors.

22 (4) Hazards identified by an inspection shall be
23 eliminated within a reasonable time as specified by the
24 Commissioner of Labor.

25 (5) An employer who refuses to eliminate workplace
26 hazards in compliance with an inspection shall be referred to
27 the federal Occupational Safety and Health Administration or the

1 federal Mine Safety and Health Administration for enforcement.

2 (6) At the discretion of the Commissioner of Labor,
3 inspection of an employer may be repeated to ensure compliance by
4 the employer, with the expenses incurred by the Department of Labor
5 to be paid by the employer.

6 (7) The Commissioner of Labor shall adopt and promulgate
7 rules and regulations establishing a schedule of fees for
8 consultations and inspections. Such fees shall be established with
9 due regard for the costs of administering the Workplace Safety
10 Consultation Program. The cost of consultations and inspections
11 shall be borne by each employer for which these services are
12 rendered.

13 (8) There is hereby created the Workplace Safety
14 Consultation Program Cash Fund. All fees collected pursuant to the
15 Workplace Safety Consultation Program shall be remitted to the
16 State Treasurer for credit to the fund and shall be used for the
17 sole purpose of administering the program. Any money in the fund
18 available for investment shall be invested by the state investment
19 officer pursuant to the Nebraska Capital Expansion Act and the
20 Nebraska State Funds Investment Act.

21 (9) Each employer provided a consultation or inspection
22 by the Department of Labor shall retain up-to-date records for
23 each place of employment as recommended by the inspection or
24 consultation. The employer shall make such records available to
25 the Department of Labor upon request to ensure continued progress
26 of the employer's efforts to comply with the federal Occupational
27 Safety and Health Administration or the federal Mine Safety and

1 Health Administration standards.

2 (10) Any person who knowingly operates or causes to be
3 operated a business in violation of recommendations to correct
4 serious or imminent hazards as identified by the Workplace Safety
5 Consultation Program shall be referred to the federal Occupational
6 Safety and Health Administration or the federal Mine Safety and
7 Health Administration.

8 (11) The Attorney General, acting on behalf of the
9 Commissioner of Labor, or the county attorney in a county in which
10 a business is located or operated may apply to the district court
11 for an order against any employer in violation of this section.

12 (12) The Workplace Safety Consultation Program shall not
13 be construed to alter the duty of care or the liability of an
14 owner or a business for injuries or death of any person or damage
15 to any property. The state and its officers and employees shall
16 not be construed to assume liability arising out of an accident
17 involving a business by reason of administration of the Workplace
18 Safety Consultation Program.

19 (13) Inspectors employed by the Department of Labor
20 may inspect any place of employment with or without notice
21 during normal hours of operation. Such inspectors may suspend the
22 operation of equipment determined to constitute an imminent danger
23 situation. Operation of such equipment shall not resume until the
24 hazardous or unsafe condition is corrected to the satisfaction of
25 the inspector.

26 (14) No person with a reasonable cause to believe the
27 truth of the information shall be subject to civil liability for

1 libel, slander, or any other relevant tort cause of action by
2 virtue of providing information without malice on workplace hazards
3 or the nature, type, or frequency of accidents to the Department
4 of Insurance, the Nebraska Workers' Compensation Court, or the
5 Department of Labor.

6 (15) Safety and health inspectors employed by the
7 Department of Labor shall have the right and power to enter
8 any premise, building, or structure, public or private, for the
9 purpose of inspecting any work area or equipment. A refusal by the
10 employer of entry by a safety and health inspector employed by the
11 Department of Labor shall be a violation of this subsection. If
12 the Commissioner of Labor finds, after notice and hearing, that an
13 employer has violated this subsection, he or she may order payment
14 of a civil penalty of not more than one thousand dollars for
15 each violation. Each day of continued violation shall constitute
16 a separate violation.

17 (16) The Commissioner of Labor shall adopt and promulgate
18 rules and regulations to carry out this section.

19 Sec. 35. Sections 35 to 52 of this act shall be known and
20 may be cited as the Captive Insurers Act.

21 Sec. 36. The purposes of the Captive Insurers Act are
22 to set forth the procedures for organizing and regulating the
23 operations of captive insurers within the State of Nebraska and to
24 encourage integrity, financial solvency, and stability of captive
25 insurers for the purpose of promoting the development of Nebraska
26 businesses.

27 Sec. 37. For purposes of the Captive Insurers Act:

1 (1) Affiliated entity means any entity that directly or
2 indirectly controls, is controlled by, or is under common control
3 with a captive insurer;

4 (2) Captive insurer means a domestic insurer authorized
5 under the act to provide insurance and reinsurance to its parent,
6 any affiliated entity, or both. Such insurance and reinsurance
7 shall be limited to the risks, hazards, and liabilities of its
8 parent and affiliated entities;

9 (3) Control means the power to direct or cause the
10 direction of the management and policies of an entity through
11 ownership of voting securities;

12 (4) Director means the Director of Insurance; and

13 (5) Parent means an entity that directly or indirectly
14 owns, controls, or holds, with power to vote, more than fifty
15 percent of the outstanding voting securities or other ownership
16 interest of a captive insurer.

17 Sec. 38. No captive insurer shall adopt the name of any
18 existing insurer or any name that may be misleading to the public.

19 Sec. 39. (1) No person shall transact the business
20 of insurance as a captive insurer without first applying for
21 and obtaining from the director a certificate of authority. An
22 applicant shall submit a nonrefundable application fee of five
23 hundred dollars with a plan of operation which includes:

24 (a) Articles of incorporation and bylaws or other
25 documents of organization;

26 (b) Pro forma financial statements for two years;

27 (c) The source and nature of initial and ongoing capital;

1 (d) A feasibility study which discloses the types and
2 adequacy of the insurance programs of the captive insurer, the
3 identity of the parent and affiliated entities benefiting from such
4 insurance program, and the relationships to the captive insurer as
5 well as all projected expenses, contracts, and a holding company
6 system chart identifying the ownership and relationship of the
7 parent and affiliated entities;

8 (e) Copies of all insurance and reinsurance agreements
9 of the captive insurer as well as disclosure of all transactions
10 material to the insurance operations;

11 (f) Financial condition of the parent and, if requested
12 by the director, any affiliated entities, benefiting from the
13 captive insurance program;

14 (g) A management overview including competence,
15 experience, and integrity of those controlling the insurance
16 operations;

17 (h) A statement submitting to the jurisdiction of the
18 director; and

19 (i) An explanation of how the operation of the captive
20 insurer promotes the development of a Nebraska business.

21 (2) If the plan of operation is accepted and approved
22 by the director, the articles and other documents of organization
23 shall be filed in the office of the Secretary of State. A copy of
24 the articles or other documents of organization, certified by the
25 Secretary of State, shall be filed with the director. Amendments
26 to organizational documents shall be deemed a change to the plan
27 of operation and shall be filed with and approved by the director

1 before they are submitted to the Secretary of State.

2 (3) The director may refuse to issue a certificate of
3 authority until he or she is reasonably satisfied that the plan of
4 operation contains sufficient indication of a successful insurance
5 operation and that the captive insurer will be able to meet
6 expected or ongoing policy obligations.

7 (4) A captive insurer shall obtain prior written approval
8 of any subsequent amendments to any components of the original plan
9 of operation. The director shall deem that any captive insurer that
10 has failed to disclose a transaction or a series of transactions
11 that would circumvent the Captive Insurers Act to be in hazardous
12 financial condition with respect to the public or its policyholders
13 and subject to suspension or revocation of the certificate of
14 authority of the captive insurer.

15 (5) Except as otherwise authorized in section 50 of
16 this act, a captive insurer may only transact any line or lines
17 of insurance specified in subdivisions (5), (7), (8), (9), (10),
18 and (18) of section 44-201. A captive insurer shall not transact
19 directors and officers insurance.

20 (6) Every captive insurer shall provide to the director
21 books and records in the state as to enable the financial
22 examination of the captive insurer by the director.

23 Sec. 40. A board of directors or other governing body
24 consisting of not less than three individuals shall manage the
25 business of each captive insurer. The organizational documents or
26 bylaws shall provide for the terms, meetings, and elections of the
27 directors and officers of the governing body. No individual may

1 serve as a director or officer who has been convicted of fraud
2 involving any financial institution or of a felony involving misuse
3 of funds.

4 Sec. 41. The certificate of authority issued to a captive
5 insurer shall expire on June 30 of each year. The director shall
6 renew the certificate of authority upon payment of an annual
7 renewal fee of five hundred dollars and all other required fees and
8 the filing of all required reports.

9 Sec. 42. (1) Every captive insurer with a certificate
10 of authority to transact business in this state pursuant to the
11 Captive Insurers Act shall file with the director a report, signed
12 and sworn to by its chief officers, of its financial condition as
13 of the end of each fiscal year. The report shall be in a form
14 prescribed by the director and contain such information as the
15 director deems necessary for the purpose of ascertaining whether
16 the captive insurer can continue to meet its policy obligations to
17 its parent, affiliated entities, and claimants. The report shall be
18 filed within sixty days following the end of the captive insurer's
19 fiscal year. The director may require that the report include the
20 information required by section 44-322, including any instructions,
21 procedures, and guidelines consistent with the act.

22 (2) The director may prescribe the format and frequency
23 of other reports to be filed, which may include, but not be
24 limited to, summary loss reports, quarterly financial statements,
25 audited annual financial statements, holding company statements,
26 biographical information on officers and directors, and other
27 professional reports.

1 Sec. 43. (1) No captive insurer shall be permitted to
2 transact any business in this state unless it maintains total
3 capital and surplus in the amount of at least one hundred thousand
4 dollars in such form as is acceptable to the director.

5 (2) Upon a written finding by the director that the
6 approved plan of operation or the operational results of the
7 captive insurer require either additional capital or a larger
8 surplus than required by this section, the director may require
9 that additional capital or surplus, or both, be obtained.
10 Additional capital or surplus may be tendered in the form of an
11 irrevocable evergreen letter of credit acceptable to the director.

12 (3) Any letter of credit provided to satisfy the
13 requirements of the Captive Insurers Act shall be:

14 (a) Jointly held under the control of the director and
15 the captive insurer for the benefit of claimants;

16 (b) Issued or confirmed by an institution that is insured
17 by the Federal Deposit Insurance Corporation;

18 (c) The sole property of such captive insurer; and

19 (d) Free and clear of any claim or encumbrance.

20 Sec. 44. The director may examine the financial
21 condition, affairs, and management of any applicant or captive
22 insurer pursuant to the Insurers Examination Act.

23 Sec. 45. (1) Captive insurers shall be subject to the
24 types and nature of investments as set forth in the Insurers
25 Investment Act, but not subject to any limitations contained in
26 such act as to invested amounts, except that the director may
27 prohibit or limit any investment that threatens the solvency or

1 liquidity of any such captive insurer or if such investments are
2 not made in accordance with the approved plan of operation.

3 (2) No captive insurer may make a loan to or an
4 investment in its parent or affiliated entities without prior
5 written approval of the director and any such transaction shall
6 be evidenced by documentation approved by the director. Loans of
7 minimum capital and surplus funds are prohibited.

8 Sec. 46. (1) Except as otherwise provided in subsection
9 (2) of this section, any captive insurer authorized to do business
10 in this state may take credit for reserves on risks ceded to
11 a reinsurer pursuant to the provisions of sections 44-416.05 to
12 44-416.10 and any rules and regulations adopted and promulgated
13 under such sections.

14 (2) Notwithstanding the provisions of subsection (1) of
15 this section, any captive insurer may cede risks to a reinsurer not
16 meeting the standards of sections 44-416.05 to 44-416.10 and may
17 take reserve credits if the captive insurer receives prior written
18 approval from the director.

19 Sec. 47. A captive insurer shall not be a member of the
20 Nebraska Property and Liability Insurance Guaranty Association or
21 the Nebraska Life and Health Insurance Guaranty Association. The
22 Nebraska Property and Liability Insurance Guaranty Association Act
23 and the Nebraska Life and Health Insurance Guaranty Association Act
24 shall not be applicable to coverage offered by a captive insurer.

25 Sec. 48. The director shall approve any voluntary
26 dissolution of a captive insurer if the director determines that
27 all obligations of the captive insurer have been satisfied. The

1 dissolution of a captive insurer shall not impair the right of any
2 person to commence an action against the captive insurer for any
3 liability previously incurred.

4 Sec. 49. (1) After notice and a hearing conducted
5 pursuant to the Administrative Procedure Act, the director may
6 suspend or revoke a certificate of authority or may impose
7 an administrative fine not to exceed one thousand dollars per
8 violation, or any combination of such actions, if the director
9 finds the captive insurer:

10 (a) Engages in financial practices that make further
11 transaction of business in this state hazardous or injurious to
12 claimants or the public as defined by rule and regulation adopted
13 and promulgated by the director;

14 (b) Within fifteen business days fails to respond to an
15 inquiry of the director;

16 (c) Fails to pay any final judgment rendered against it
17 in this state on any contractual obligation in a reasonable period
18 of time;

19 (d) Conducts business fraudulently or has not met its
20 contractual obligations in good faith; or

21 (e) Violates any provision of the laws of this or any
22 other state.

23 (2) In lieu of or in addition to the administrative fines
24 set forth in subsection (1) of this section, the director may
25 issue a cease and desist order to a captive insurer if the captive
26 insurer engages in any of the activities set forth in subsection
27 (1) of this section.

1 Sec. 50. (1) This section provides for the creation of
2 special purpose financial captive insurers to diversify and broaden
3 insurers' access to sources of capital.

4 (2) For purposes of this section:

5 (a) Counterparty means a special purpose financial
6 captive insurer's parent or affiliated entity, which is an insurer
7 domiciled in Nebraska that cedes life insurance risks to the
8 special purpose financial captive insurer pursuant to the special
9 purpose financial captive insurer contract;

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

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

27 (d) Organizational document means the special purpose

1 financial captive insurer's articles of incorporation, articles of
2 organization, bylaws, operating agreement, or other foundational
3 documents that establish the special purpose financial captive
4 insurer as a legal entity or prescribes its existence;

5 (e) Permitted investments means those investments that
6 meet the qualifications set forth in section 45 of this act;

7 (f) Securities means debt obligations, equity
8 investments, surplus certificates, surplus notes, funding
9 agreements, derivatives, and other legal forms of financial
10 instruments;

11 (g) Special purpose financial captive insurer means a
12 captive insurer which has received a certificate of authority from
13 the director for the limited purposes provided for in this section;

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

20 (i) Special purpose financial captive insurer securities
21 means the securities issued by a special purpose financial captive
22 insurer.

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

1 (b) The requirements of this section shall not apply to
2 specific special purpose financial captive insurers if the director
3 finds a specific requirement is inappropriate due to the nature of
4 the risks to be insured by the special purpose financial captive
5 insurer and if the special purpose financial captive insurer
6 meets criteria established by rules and regulations adopted and
7 promulgated by the director.

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
11 director.

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

19 (b) A special purpose financial captive insurer may enter
20 into contracts and conduct other commercial activities related
21 or incidental to and necessary to fulfill the purposes of the
22 special purpose financial captive insurer contract, insurance
23 securitization, and this section. Those activities may include,
24 but are not limited to: Entering into special purpose financial
25 captive insurer contracts; issuing securities of the special
26 purpose financial captive insurer in accordance with applicable
27 securities law; complying with the terms of these contracts

1 or securities; entering into trust, swap, tax, administration,
2 reimbursement, or fiscal agent transactions; or complying with
3 trust indenture, reinsurance, retrocession, and other agreements
4 necessary or incidental to effectuate an insurance securitization
5 in compliance with this section and in the plan of operation
6 approved by the director.

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

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

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

20 (7) A special purpose financial captive insurer may
21 enter into swap agreements, or other forms of asset management
22 agreements, including guaranteed investment contracts, or other
23 transactions that have the objective of leveling timing differences
24 in funding of up-front or ongoing transaction expenses or managing
25 asset, credit, prepayment or interest rate risk of the investments
26 in the trust to ensure that the investments are sufficient to
27 assure payment or repayment of the securities, and related interest

1 or principal payments, issued pursuant to a special purpose
2 financial captive insurer insurance securitization transaction or
3 the obligations of the special purpose financial captive insurer
4 under the special purpose financial captive insurer contract or for
5 any other purpose approved by the director. All asset management
6 agreements entered into by the special purpose financial captive
7 insurer must be approved by the director.

8 (8) (a) A special purpose financial captive insurer,
9 at any given time, may enter into and effectuate a special
10 purpose financial captive insurer contract with a counterparty if
11 the special purpose financial captive insurer contract obligates
12 the special purpose financial captive insurer to indemnify the
13 counterparty for losses and that contingent obligations of the
14 special purpose financial captive insurer under the special purpose
15 financial captive insurer contract are securitized through a
16 special purpose financial captive insurer insurance securitization,
17 which security for such obligations may be funded and secured with
18 assets held in trust for the benefit of the counterparty pursuant
19 to agreements contemplated by this section and invested in a manner
20 that meet the criteria as provided in section 45 of this act.

21 (b) A special purpose financial captive insurer may
22 enter into agreements with affiliated companies and third parties
23 and conduct business necessary to fulfill its obligations and
24 administrative duties incidental to the insurance securitization
25 and the special purpose financial captive insurer contract. The
26 agreements may include management and administrative services
27 agreements and other allocation and cost sharing agreements, or

1 swap and asset management agreements, or both, or agreements for
2 other contemplated types of transactions provided in this section.

3 (c) A special purpose financial captive insurer contract
4 must contain provisions that:

5 (i) Require the special purpose financial captive insurer
6 to either (A) enter into a trust agreement specifying what
7 recoverables or reserves, or both, the agreement is to cover and
8 to establish a trust account for the benefit of the counterparty
9 and the security holders or (B) to establish such other method of
10 security acceptable to the director;

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

14 (iii) If a trust arrangement is used, require the special
15 purpose financial captive insurer, before depositing assets with
16 the trustee, to execute assignments, endorsements in blank, or to
17 take such actions as are necessary to transfer legal title to
18 the trustee of all shares, obligations, or other assets requiring
19 assignments, in order that the counterparty, or the trustee upon
20 the direction of the counterparty, may negotiate whenever necessary
21 the assets without consent or signature from the special purpose
22 financial captive insurer or another entity; and

23 (iv) If a trust arrangement is used, stipulate that the
24 special purpose financial captive insurer and the counterparty
25 agree that the assets in the trust account, established pursuant
26 to the provisions of the special purpose financial captive insurer
27 contract, may be withdrawn by the counterparty, or the trustee on

1 its behalf, at any time, only in accordance with the terms of
2 the special purpose financial captive insurer contract, and must
3 be utilized and applied by the counterparty or any successor of
4 the counterparty by operation of law, including, subject to the
5 provisions of this section, but without further limitation, any
6 liquidator, rehabilitator, receiver, or the counterparty, without
7 diminution because of insolvency on the part of the counterparty
8 or the special purpose financial captive insurer, only for the
9 purposes set forth in the credit for reinsurance laws and rules and
10 regulations of this state.

11 (d) The special purpose financial captive insurer
12 contract may contain provisions that give the special purpose
13 financial captive insurer the right to seek approval from the
14 counterparty to withdraw from the trust all or part of the assets,
15 or income from them, contained in the trust and to transfer the
16 assets to the special purpose financial captive insurer if such
17 provisions comply with the credit for reinsurance laws and rules
18 and regulations of this state.

19 (9) A special purpose financial captive insurer contract
20 meeting the provisions of this section must be granted credit
21 for reinsurance treatment or otherwise qualify as an asset or
22 a reduction from liability for reinsurance ceded by a domestic
23 insurer to a special purpose financial captive insurer as an
24 assuming insurer for the benefit of the counterparty if and only to
25 the extent:

26 (a) Of the value of the assets held in trust, for,
27 or clean, irrevocable, unconditional letters of credit, issued or

1 confirmed by a qualified United States financial institution as
2 defined in section 44-416.08, or as approved by the director, for
3 the benefit of the counterparty under the special purpose financial
4 captive insurer contract; and

5 (b) The assets are held or invested in one or more of the
6 forms allowed in section 45 of this act.

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

13 (A) There has been embezzlement, wrongful sequestration,
14 dissipation, or diversion of the assets of the special purpose
15 financial captive insurer intended to be used to pay amounts owed
16 to the counterparty or the holders of special purpose financial
17 captive insurer securities; or

18 (B) The special purpose financial captive insurer is
19 insolvent and the holders of a majority in outstanding principal
20 amount of each class of special purpose financial captive insurer
21 securities request or consent to conservation, rehabilitation, or
22 liquidation pursuant to the provisions of this section.

23 (ii) The court may not grant relief provided by
24 subdivision (10) (a) (i) unless, after notice and a hearing, the
25 director establishes that relief must be granted.

26 (b) Notwithstanding any other application of law, rule,
27 or regulation, upon any order of rehabilitation or liquidation of

1 a special purpose financial captive insurer, the receiver shall
2 manage the assets and liabilities of the special purpose financial
3 captive insurer pursuant to the provisions of subsection (11) of
4 this section.

5 (c) With respect to amounts recoverable under a special
6 purpose financial captive insurer contract, the amount recoverable
7 by the receiver must not be reduced or diminished as a result
8 of the entry of an order of conservation, rehabilitation, or
9 liquidation with respect to the counterparty, notwithstanding
10 another provision in the contracts or other documentation
11 governing the special purpose financial captive insurer insurance
12 securitization.

13 (d) An application or petition, or a temporary
14 restraining order or injunction issued pursuant to the provisions
15 of the Nebraska Insurers Supervision, Rehabilitation, and
16 Liquidation Act, with respect to a counterparty does not prohibit
17 the transaction of a business by a special purpose financial
18 captive insurer, including any payment by a special purpose
19 financial captive insurer made pursuant to a special purpose
20 financial captive insurer security, or any action or proceeding
21 against a special purpose financial captive insurer or its assets.

22 (e) Notwithstanding the provisions of any applicable law
23 or rule or regulation, the commencement of a summary proceeding
24 or other interim proceeding commenced before a formal delinquency
25 proceeding with respect to a special purpose financial captive
26 insurer, and any order issued by the court does not prohibit
27 the payment by a special purpose financial captive insurer made

1 pursuant to a special purpose financial captive insurer security or
2 special purpose financial captive insurer contract or the special
3 purpose financial captive insurer from taking any action required
4 to make the payment.

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

7 (i) A receiver of a counterparty may not void a
8 nonfraudulent transfer by a counterparty to a special purpose
9 financial captive insurer of money or other property made pursuant
10 to a special purpose financial captive insurer contract; and

11 (ii) A receiver of a special purpose financial captive
12 insurer may not void a nonfraudulent transfer by the special
13 purpose financial captive insurer of money or other property made
14 to a counterparty pursuant to a special purpose financial captive
15 insurer contract or made to or for the benefit of any holder of
16 a special purpose financial captive insurer security on account of
17 the special purpose financial captive insurer security.

18 (g) With the exception of the fulfillment of the
19 obligations under a special purpose financial captive insurer
20 contract, and notwithstanding the provisions of any other
21 applicable law or rule or regulation, the assets of a special
22 purpose financial captive insurer, including assets held in trust,
23 must not be consolidated with or included in the estate of a
24 counterparty in any delinquency proceeding against the counterparty
25 pursuant to the provisions of this section for any purpose
26 including, without limitation, distribution to creditors of the
27 counterparty.

1 (11) A special purpose financial captive insurer may
2 not declare or pay dividends in any form to its owners other
3 than in accordance with the insurance securitization transaction
4 agreements, and in no instance shall the dividends decrease the
5 capital of the special purpose financial captive insurer below
6 two hundred fifty thousand dollars, and, after giving effect to
7 the dividends, the assets of the special purpose financial captive
8 insurer, including any assets held in trust pursuant to the terms
9 of the insurance securitization, must be sufficient to satisfy
10 the director that it can meet its obligations. Approval by the
11 director of an ongoing plan for the payment of dividends, interest
12 on securities or other distribution by a special purpose financial
13 captive insurer must be conditioned upon the retention, at the time
14 of each payment, of capital or surplus equal to or in excess of
15 amounts specified by, or determined in accordance with formulas
16 approved for the special purpose financial captive insurer by the
17 director.

18 (12) Information submitted pursuant to the provisions
19 of this section shall be given confidential treatment, shall not
20 be subject to subpoena, and shall not be made public by the
21 director or any other person, except to other state, federal,
22 foreign, and international regulatory and law enforcement agencies
23 if the recipient agrees in writing to maintain the confidentiality
24 of the information, without the prior written consent of the
25 special purpose financial captive insurer unless the director,
26 after giving the special purpose financial captive insurer notice
27 and opportunity to be heard, determines that the best interest of

1 policyholders, shareholders, or the public will be served by the
2 publication thereof, in which event he or she may publish all or
3 any part thereof in such manner as he or she may deem appropriate.

4 Sec. 51. The director may adopt and promulgate rules and
5 regulations to carry out the Captive Insurers Act.

6 Sec. 52. (1) The insurance laws of this state shall
7 not apply to captive insurers except as permitted in the Captive
8 Insurers Act.

9 (2) The following provisions of Chapter 44 apply to
10 captive insurers:

11 (a) The Insurers Examination Act;

12 (b) Sections 44-101, 44-101.01, 44-102, 44-103, 44-114,
13 44-116, 44-154, 44-205.01, 44-231, 44-301, 44-318, 44-320, 44-326,
14 and 44-360; and

15 (c) The Nebraska Insurers Supervision, Rehabilitation,
16 and Liquidation Act. Such act shall only apply to a captive insurer
17 that provides insurance and reinsurance to a parent or affiliated
18 entity that is an insurer.

19 Sec. 53. Section 77-908, Revised Statutes Cumulative
20 Supplement, 2006, is amended to read:

21 77-908 Every insurance company organized under the stock,
22 mutual, assessment, or reciprocal plan, except fraternal benefit
23 societies, which is transacting business in this state shall, on
24 or before March 1 of each year, pay a tax to the director of one
25 percent of the gross amount of direct writing premiums received by
26 it during the preceding calendar year for business done in this
27 state, except that (1) for group sickness and accident insurance

1 the rate of such tax shall be five-tenths of one percent, (2) for
2 property and casualty insurance, excluding individual sickness and
3 accident insurance, the rate of such tax shall be one percent,
4 and (3) for capitation payments made in accordance with the
5 Medical Assistance Act, the rate of tax shall be five percent. A
6 captive insurer authorized under the Captive Insurers Act that is
7 transacting business in this state shall, on or before March 1 of
8 each year, pay to the director a tax of one-fourth of one percent
9 of the gross amount of direct writing premiums received by such
10 insurer during the preceding calendar year for business transacted
11 in the state. The taxable premiums shall include premiums paid on
12 the lives of persons residing in this state and premiums paid for
13 risks located in this state whether the insurance was written in
14 this state or not, including that portion of a group premium paid
15 which represents the premium for insurance on Nebraska residents
16 or risks located in Nebraska included within the group when the
17 number of lives in the group exceeds five hundred. The tax shall
18 also apply to premiums received by domestic companies for insurance
19 written on individuals residing outside this state or risks located
20 outside this state if no comparable tax is paid by the direct
21 writing domestic company to any other appropriate taxing authority.
22 Companies whose scheme of operation contemplates the return of a
23 portion of premiums to policyholders, without such policyholders
24 being claimants under the terms of their policies, may deduct
25 such return premiums or dividends from their gross premiums for
26 the purpose of tax calculations. Any such insurance company shall
27 receive a credit on the tax imposed as provided in the Community

1 Development Assistance Act and section 77-27,222.

2 Sec. 54. The Revisor of Statutes shall assign section 3
3 of this act to Chapter 44, article 3.

4 Sec. 55. Original sections 21-2005, 44-319.07, 44-501,
5 44-507, 44-508, 44-522, 44-1104, 44-4501, 44-4519, 44-5110,
6 44-5111, 44-5120, 44-5137, 44-5140, 44-5141, 44-5152, 44-5501,
7 44-5502, 44-5504, 44-7504, and 48-446, Reissue Revised Statutes of
8 Nebraska, and sections 44-5103, 44-5153, 44-8101, 44-8102, 44-8103,
9 44-8104, 44-8105, 44-8106, 44-8107, 48-144.03, 48-146.01, and
10 77-908, Revised Statutes Cumulative Supplement, 2006, are repealed.