

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 192

FINAL READING

Introduced by Pahls, 31.

Read first time January 12, 2009

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to insurance; to amend sections 12-1116,
2 44-4065, 44-5223, 44-5225, 44-5260, 44-5904, and
3 44-5905, Reissue Revised Statutes of Nebraska, and
4 sections 44-1988 and 44-5103, Revised Statutes Cumulative
5 Supplement, 2008; to provide powers for the Director
6 of Insurance under the Burial Pre-Need Sale Act; to
7 change and eliminate provisions relating to reserves
8 under the Title Insurers Act; to provide and change
9 reporting requirements under the Insurance Producers
10 Licensing Act; to change provisions relating to health
11 benefit plans under the Small Employer Health Insurance
12 Availability Act; to change examination and record
13 retention requirements under the Insurers Examination

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1 Act; to define and redefine terms; to harmonize
2 provisions; and to repeal the original sections.
3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 12-1116, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 12-1116 (1) The director may deny, revoke, or suspend
4 any license of any pre-need seller or agent or may levy an
5 administrative fine in accordance with subsection (3) of this
6 section if the director finds that:

7 (a) The licensee has failed to pay the license fee
8 prescribed for such license;

9 (b) The licensee, either knowingly or without the
10 exercise of due care to prevent the same, has violated any of
11 the provisions of the Burial Pre-Need Sale Act or any rule or
12 regulation adopted and promulgated by the director pursuant to such
13 act; ~~or~~

14 (c) An act or condition exists which, if it had existed
15 at the time of the original application of such licensee, would
16 have resulted in the director refusing to issue such license; ~~or-~~

17 (d) The licensee, upon receipt of a written inquiry from
18 the department, has failed to respond to such inquiry or has failed
19 to request an additional reasonable amount of time to respond to
20 such inquiry within fifteen business days after such receipt.

21 (2) Written notification shall be provided to the
22 licensee upon the director's making such determination, and the
23 notice shall be mailed by the director to the last address on file
24 for the licensee by certified or registered mail, return receipt
25 requested. The notice shall state the specific action contemplated

1 by the director and the specific grounds for such action. The
2 notice shall allow the licensee receiving such notice twenty days
3 from the date of actual receipt to:

4 (a) Voluntarily surrender his or her license; or

5 (b) File a written notice of protest of the proposed
6 action of the director. If a written notice of protest is filed
7 by the licensee, the Administrative Procedure Act shall govern the
8 hearing process and procedure, including all appeals. Failure to
9 file a notice of protest within the twenty-day period shall be
10 equivalent to a voluntary surrender of the licensee's license, and
11 the licensee shall surrender the license to the director.

12 (3) In addition to or in lieu of any applicable denial,
13 suspension, or revocation of a license, any person violating the
14 Burial Pre-Need Sale Act may, after notice and hearing, be subject
15 to an administrative fine of not more than one thousand dollars per
16 violation. Such fine may be enforced in the same manner as civil
17 judgments. Any person charged with a violation of the act may waive
18 his or her right to a hearing and consent to such discipline as the
19 director determines is appropriate. The Administrative Procedure
20 Act shall govern all hearings held pursuant to the Burial Pre-Need
21 Sale Act.

22 Sec. 2. Section 44-1988, Revised Statutes Cumulative
23 Supplement, 2008, is amended to read:

24 44-1988 (1) In determining the financial condition of a
25 title insurer transacting the business of title insurance under the

1 Title Insurers Act, the general provisions of the insurance laws
2 of this state requiring the establishment of reserves sufficient to
3 cover all known and unknown liabilities, including allocated and
4 unallocated loss adjustment expense, shall apply except as provided
5 in subsections (2) through (4) of this section.

6 (2) A title insurer shall establish and maintain a known
7 claim reserve in an amount estimated to be sufficient to cover
8 all unpaid losses, claims, and allocated loss adjustment expenses
9 arising under title insurance policies, guaranteed certificates of
10 title, guaranteed searches, and guaranteed abstracts of title and
11 all unpaid losses, claims, and allocated loss adjustment expenses
12 for which the title insurer may be liable and for which the title
13 insurer has received notice by or on behalf of the insured, holder
14 of a guarantee or escrow, or security depositor.

15 (3) (a) If a title insurer is a foreign or
16 non-United-States title insurer, the title insurer shall
17 establish and maintain a statutory or unearned premium reserve
18 consisting of the amount of statutory or unearned premium reserve
19 required by the laws of the domiciliary state of the title insurer.

20 (b) (i) If a title insurer is a domestic insurer of this
21 state, the title insurer shall establish and maintain a statutory
22 or unearned premium reserve ~~consisting of the amount of the~~
23 ~~statutory or unearned premium or reinsurance reserve on September~~
24 ~~13, 1997, which balance shall be released in accordance with the~~
25 ~~law in effect at the time such sums were added to the reserve.~~ in

1 an amount equal to seventeen cents per one thousand dollars of net
2 retained liability for each insurance policy.

3 (ii) The amount set aside in the reserve required under
4 subdivision (3)(b)(i) of this section shall be released from the
5 reserve and restored to net profits over a period of twenty years
6 pursuant to the following formula: Thirty percent of the aggregate
7 sum in the year next succeeding the year of addition; fifteen
8 percent of the aggregate sum in the next succeeding year; ten
9 percent of the aggregate sum in each of the next succeeding two
10 years; five percent of the aggregate sum in each of the next
11 succeeding two years; three percent of the aggregate sum in each
12 of the next succeeding two years; two percent of the aggregate
13 sum in each of the next succeeding seven years; and one percent
14 of the aggregate sum in each of the next succeeding five years.
15 For each year in which a release of statutory or unearned premium
16 reserve is authorized under this subdivision, such reserve shall
17 be released over the course of the year in twelve equal monthly
18 amounts, beginning on July 1.

19 ~~(ii)~~ (c)(i) If a title insurer that is organized under
20 the laws of another state transfers its domicile to this state, the
21 statutory or unearned premium reserve shall be that amount required
22 by the laws of the state of the title insurer's former state of
23 domicile as of the date of transfer of domicile. Thereafter, the
24 aggregate of such statutory or unearned premium reserve shall be
25 released from the reserve and restored to profits over a period

1 of twenty years pursuant to the formula set forth in subdivision
 2 ~~(3)(b)(vi)~~ (3)(c)(iii) of this section.

3 (ii) Following the transfer of domicile to this state
 4 of the title insurer described in subdivision (3)(c)(i) of this
 5 section, for business written after the date of transfer of
 6 domicile, the title insurer shall add to and set aside in the
 7 statutory or unearned premium reserve such amount as provided in
 8 subdivision ~~(3)(b)(v)~~ (3)(b)(i) of this section.

9 ~~(iii)~~ Out of total charges for title insurance policies
 10 written or assumed commencing on September 13, 1997, and until
 11 December 31, 1998, a title insurer shall add to and set aside in
 12 the reserve required under subdivision ~~(3)(b)(i)~~ of this section an
 13 amount equal to six percent of the sum of the following items set
 14 forth in the title insurer's most recent annual statement on file
 15 with the director:

16 ~~(A) Direct premiums written;~~

17 ~~(B) Escrow, settlement, and closing fees;~~

18 ~~(C) Other title fees and service charges, including fees~~
 19 ~~for closing protection letters; and~~

20 ~~(D) Premiums for reinsurance assumed less premiums for~~
 21 ~~reinsurance ceded.~~

22 ~~(iv)~~ Additions to the reserve required under subdivision
 23 ~~(3)(b)(i)~~ of this section commencing on January 1, 1999, and until
 24 December 31, 2005, shall be made out of total charges for title
 25 insurance policies and guarantees written, equal to the sum of the

1 following items, as set forth in the title insurer's most recent
2 annual statement on file with the director:

3 (A) For each title insurance policy on a single risk
4 written or assumed on or after January 1, 1999, and until December
5 31, 2005, twenty-five cents per one thousand dollars of net
6 retained liability for title insurance policies under five hundred
7 thousand dollars and twelve cents per one thousand dollars of net
8 retained liability for title insurance policies of five hundred
9 thousand dollars or greater; and

10 (B) Six percent of escrow, settlement, and closing fees
11 collected in contemplation of the issuance of title insurance
12 policies or guarantees.

13 (v) Out of total charges for title insurance policies
14 written or assumed on or after January 1, 2006, a title insurer
15 shall add to and set aside in the reserve required under
16 subdivision (3)(b)(i) of this section an amount equal to seventeen
17 cents per one thousand dollars of net retained liability for each
18 title insurance policy.

19 (vi) (iii) The aggregate of the amounts set aside in
20 the reserve required under subdivision (3)(b)(i) (3)(c)(i) of this
21 section in any calendar year pursuant to subdivisions (3)(b)(iii),
22 (3)(b)(iv), and (3)(b)(v) of this section and the reserve required
23 under subdivision (3)(b)(ii) of this section shall be released
24 from the reserve and restored to net profits over a period of
25 twenty years pursuant to the following formula: For an insurer that

1 ~~transfers its domicile to this state,~~ An initial release of thirty
2 percent of the aggregate of such reserves on the forty-fifth day
3 following the last day of the calendar quarter in which the insurer
4 transfers its domicile; ~~and thereafter pursuant to the formula as~~
5 ~~set forth in this subdivision,~~ and for all other insurers, ~~thirty~~
6 percent of the aggregate sum on July 1 of the year next succeeding
7 the year of addition, ~~fifteen percent of the aggregate sum on July~~
8 ~~1 of~~ in the next succeeding year; ten percent of the aggregate
9 sum on July 1 of in each of the next succeeding two years; five
10 percent of the aggregate sum on July 1 of in each of the next
11 succeeding two years; three percent of the aggregate sum on July
12 ~~1 of~~ in each of the next succeeding two years; two percent of the
13 aggregate sum on July 1 of in each of the next succeeding seven
14 years; and one percent of the aggregate sum on July 1 of in each
15 of the next succeeding five years. For each year in which a release
16 of statutory or unearned premium reserve is authorized under this
17 subdivision, such reserve shall be released over the course of
18 the year in twelve equal monthly amounts, beginning on July 1. No
19 ~~release of statutory or unearned premium reserve shall occur if~~
20 ~~such release would result in the aggregate reserve falling below~~
21 ~~the actuarial level required by subsection (1) of this section.~~

22 (vii) The title insurer shall calculate an adjusted
23 statutory or unearned premium reserve as of September 13, 1997.
24 The adjusted reserve shall be calculated as if subdivisions
25 (3)(b)(iii), (iv), and (vi) of this section had been in effect

1 for all years beginning twenty years prior to September 13, 1997.
 2 For purposes of this calculation, the balance of the reserve as
 3 of that date shall be deemed to be zero. If the adjusted reserve
 4 so calculated exceeds the aggregate amount set aside for statutory
 5 or unearned premiums in the title insurer's annual statement on
 6 file with the director on September 13, 1997, the title insurer
 7 shall, out of total charges for title insurance policies, increase
 8 its statutory or unearned premium reserve by an amount equal to
 9 one-sixth of that excess in each of the succeeding six years,
 10 commencing with the calendar year that includes September 13, 1997,
 11 until the entire excess has been added.

12 (viii) The aggregate of the amounts set aside in the
 13 reserve required under subdivision (3)(b)(i) of this section in
 14 any calendar year as adjustments to the title insurer's statutory
 15 or unearned premium reserve pursuant to subdivision (3)(b)(vii) of
 16 this section shall be released from the reserve and restored to net
 17 profits, or equity if the additions required by such subdivision
 18 reduced equity directly, over a period not exceeding ten years
 19 pursuant to the following table:

20	Calendar Year of Addition	Release
21	1998	Equally over 10 years
22	1999	Equally over 9 years
23	2000	Equally over 8 years
24	2001	Equally over 7 years
1	2002	Equally over 6 years

2

2003

Equally over 5 years

3

4 (4) A title insurer shall establish and maintain a
5 supplemental reserve consisting of any other reserves necessary,
6 when taken in combination with the reserves required by subsections
7 (2) and (3) of this section, to cover the title insurer's
8 liabilities with respect to all losses, claims, and loss adjustment
9 expenses. ~~The supplemental reserve required under this subsection
10 shall be phased in as follows: Twenty-five percent of the otherwise
11 applicable supplemental reserve will be required until December
12 31, 1998; fifty percent of the otherwise applicable supplemental
13 reserve will be required until December 31, 1999; and seventy-five
14 percent of the otherwise applicable supplemental reserve will be
15 required until December 31, 2000.~~

15

16 (5) Each title insurer subject to the Title Insurers
17 Act shall file with its annual financial statement required under
18 section 44-322 a certification by a member in good standing of the
19 American Academy of Actuaries. The actuarial certification required
20 of a title insurer shall conform to the National Association of
21 Insurance Commissioners' annual statement instructions for title
22 insurers.

22

23 Sec. 3. Section 44-4065, Reissue Revised Statutes of
24 Nebraska, is amended to read:

24

1 44-4065 (1) An insurance producer shall report to the
2 director any administrative action taken against the producer

2 in another jurisdiction, by a professional self-regulatory
3 organization such as the Financial Industry Regulatory Authority or
4 a similar organization, or by another governmental agency ~~in this~~
5 ~~state~~ within thirty days of the final disposition of the matter.
6 This report shall include a copy of the order, consent to order,
7 or other relevant legal documents.

8 (2) An insurance producer shall report to the director
9 any obligation regarding insurance premiums or fiduciary funds
10 owed to a company, including a premium finance company, or
11 a managing general agent within thirty days of the date of
12 discharge or attempt to discharge such obligation in a personal or
13 organizational bankruptcy proceeding.

14 ~~(2)~~ (3) Within thirty days of the date of arraignment or
15 date of waiver of arraignment, if waived, an insurance producer
16 shall report to the director any criminal prosecution of the
17 producer taken in any jurisdiction. The report shall include a
18 copy of the initial complaint filed, the order resulting from the
19 hearing, and any other relevant legal documents.

20 (4) For purposes of this section, administrative action
21 shall include, but not be limited to, any arbitration or mediation
22 award, disciplinary action, civil action, or sanction taken against
23 or involving an insurance producer.

24 Sec. 4. Section 44-5103, Revised Statutes Cumulative
25 Supplement, 2008, is amended to read:

1 44-5103 For purposes of the Insurers Investment Act:

2 (1) Admitted assets means the investments authorized
3 under the act and stated at values at which they are permitted
4 to be reported in the insurer's financial statement filed under
5 section 44-322, except that admitted assets does not include assets
6 of separate accounts, the investments of which are not subject to
7 the act;

8 (2) Agent means a national bank, state bank, trust
9 company, or broker-dealer that maintains an account in its name
10 in a clearing corporation or that is a member of the Federal
11 Reserve System and through which a custodian participates in a
12 clearing corporation including the Treasury/Reserve Automated Debt
13 Entry Securities System and Treasury Direct system, except that
14 with respect to securities issued by institutions organized or
15 existing under the laws of a foreign country or securities used
16 to meet deposit requirements pursuant to the laws of a foreign
17 country as a condition of doing business therein, agent may include
18 a corporation that is organized or existing under the laws of a
19 foreign country and that is legally qualified under those laws to
20 accept custody of securities;

21 (3) Business entity means a sole proprietorship,
22 corporation, limited liability company, association, partnership,
23 limited liability partnership, joint-stock company, joint venture,
24 mutual fund, trust, joint tenancy, or other similar form of
25 business organization, whether organized for profit or not for
1 profit;

2 (4) Clearing corporation means a clearing corporation as
3 defined in subdivision (a)(5) of section 8-102, Uniform Commercial
4 Code, that is organized for the purpose of effecting transactions
5 in securities by computerized book-entry, except that with respect
6 to securities issued by institutions organized or existing under
7 the laws of a foreign country or securities used to meet the
8 deposit requirements pursuant to the laws of a foreign country
9 as a condition of doing business therein, clearing corporation
10 may include a corporation that is organized or existing under the
11 laws of a foreign country and which is legally qualified under
12 those laws to effect transactions in securities by computerized
13 book-entry. Clearing corporation also includes Treasury/Reserve
14 Automated Debt Entry Securities System and Treasury Direct system;

15 (5) Custodian means:

16 (a) A national bank, state bank, Federal Home Loan Bank,
17 or trust company that shall at all times during which it acts
18 as a custodian pursuant to the Insurers Investment Act be no
19 less than adequately capitalized as determined by the standards
20 adopted by ~~United States banking regulators~~ the regulator charged
21 with establishing such standards and assessing the solvency of
22 such institutions and that is regulated by ~~either~~ federal or state
23 banking laws or the Federal Home Loan Bank Act or is a member
24 of the Federal Reserve System and that is legally qualified to
25 accept custody of securities in accordance with the standards set
1 forth below, except that with respect to securities issued by

2 institutions organized or existing under the laws of a foreign
3 country, or securities used to meet the deposit requirements
4 pursuant to the laws of a foreign country as a condition of doing
5 business therein, custodian may include a bank or trust company
6 incorporated or organized under the laws of a country other than
7 the United States that is regulated as such by that country's
8 government or an agency thereof that shall at all times during
9 which it acts as a custodian pursuant to the Insurers Investment
10 Act be no less than adequately capitalized as determined by the
11 standards adopted by international banking authorities and that is
12 legally qualified to accept custody of securities; or

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

18 (6) Custodied securities means securities held by the
19 custodian or its agent or in a clearing corporation, including
20 the Treasury/Reserve Automated Debt Entry Securities System and
21 Treasury Direct system;

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

25 (8) Director means the Director of Insurance;

1 (9) Insurer is defined as provided in section 44-103,

2 and unless the context otherwise requires, insurer means domestic
3 insurer;

4 (10) Mortgage means a consensual interest created by a
5 real estate mortgage, a trust deed on real estate, or a similar
6 instrument;

7 (11) Obligation means a bond, debenture, note, or other
8 evidence of indebtedness or a participation, certificate, or other
9 evidence of an interest in any of the foregoing;

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

15 (13) Securities Valuation Office means the Securities
16 Valuation Office of the National Association of Insurance
17 Commissioners or any successor office established by the National
18 Association of Insurance Commissioners;

19 (14) Security certificate has the same meaning as defined
20 in subdivision (a)(16) of section 8-102, Uniform Commercial Code;

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

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

2 Securities and Exchange Commission; and

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

8 Sec. 5. Section 44-5223, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 44-5223 Sections 44-5223 to 44-5267 and section 7 of this
11 act shall be known and may be cited as the Small Employer Health
12 Insurance Availability Act.

13 Sec. 6. Section 44-5225, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 44-5225 For purposes of the Small Employer Health
16 Insurance Availability Act, the definitions found in sections
17 44-5226 to 44-5255.01 and section 7 of this act shall be used.

18 Sec. 7. Bona fide association means, with respect to
19 health insurance coverage offered in this state, an association
20 that meets the following conditions:

21 (1) Has been actively in existence for at least five
22 years;

23 (2) Has been formed and maintained in good faith for
24 purposes other than obtaining insurance;

25 (3) Does not condition membership in the association
1 on a health-status-related factor of an individual, including an

2 employee or a dependent of any employee;

3 (4) Makes health insurance coverage offered through
4 the association available to any member regardless of a
5 health-status-related factor of the member or individual eligible
6 for coverage through a member; and

7 (5) Does not make available health insurance coverage
8 offered through the association other than in connection with a
9 member of the association.

10 Sec. 8. Section 44-5260, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 44-5260 (1) For purposes of this section, small employer
13 shall mean, in connection with a group health plan with respect to
14 a calendar year and a plan year, any person, firm, corporation,
15 partnership, association, or political subdivision that is actively
16 engaged in business that employed an average of at least two but
17 not more than fifty employees on business days during the preceding
18 calendar year and who employs at least two employees on the first
19 day of the plan year. All persons treated as a single employer
20 under subsection (b), (c), (m), or (o) of section 414 of the
21 Internal Revenue Code shall be treated as one employer. Subsequent
22 to the issuance of a health benefit plan to a small employer
23 and for the purpose of determining continued eligibility, the
24 size of a small employer shall be determined annually. Except as
25 otherwise specifically provided, provisions of the Small Employer
1 Health Insurance Availability Act that apply to a small employer

2 shall continue to apply at least until the health benefit plan
3 anniversary following the date the small employer no longer meets
4 the requirements of this definition. In the case of an employer
5 which was not in existence throughout the preceding calendar year,
6 the determination of whether the employer is a small or large
7 employer shall be based on the average number of employees that it
8 is reasonably expected the employer will employ on business days in
9 the current calendar year. Any reference in the act to an employer
10 shall include a reference to any predecessor of such employer.

11 (2) (a) Every small employer carrier shall, as a condition
12 of transacting business in this state with small employers,
13 actively offer to small employers all health benefit plans it
14 actively markets to small employers in this state, including at
15 least two health benefit plans. One health benefit plan offered
16 by each small employer carrier shall be a basic health benefit
17 plan, and one plan shall be a standard health benefit plan. A
18 small employer carrier shall be considered to be actively marketing
19 a health benefit plan if it offers that plan to any small
20 employer not currently receiving a health benefit plan by such
21 small employer carrier. This subdivision shall not require a small
22 employer carrier to offer to small employers a health benefit plan
23 marketed only through a bona fide association.

24 (b) (i) Subject to subdivision (2) (a) of this section,
25 a small employer carrier shall issue any health benefit plan to
1 any eligible small employer that applies for the plan and agrees

2 to make the required premium payments and to satisfy the other
3 reasonable provisions of the health benefit plan not inconsistent
4 with the Small Employer Health Insurance Availability Act. However,
5 no small employer carrier shall be required to issue a health
6 benefit plan to a self-employed individual who is covered by, or is
7 eligible for coverage under, a health benefit plan offered by an
8 employer.

9 (ii) In the case of a small employer carrier that
10 establishes more than one class of business, the small employer
11 carrier shall maintain and issue to eligible small employers at
12 least one basic health benefit plan and at least one standard
13 health benefit plan in each class of business so established. A
14 small employer carrier may apply reasonable criteria in determining
15 whether to accept a small employer into a class of business if:

16 (A) The criteria are not intended to discourage or
17 prevent acceptance of small employers applying for a basic health
18 benefit plan or a standard health benefit plan;

19 (B) The criteria are not related to the health status or
20 claim experience of employees or dependents of the small employer;

21 (C) The criteria are applied consistently to all small
22 employers applying for coverage in the class of business; and

23 (D) The small employer carrier provides for the
24 acceptance of all eligible small employers into one or more classes
25 of business.

1 The provisions of subdivision (2)(b)(ii) of this section

2 shall not apply to a class of business into which the small
3 employer carrier is no longer enrolling new small businesses.

4 (3)(a) A small employer carrier shall file with the
5 director, in a format and manner prescribed by the director, the
6 basic health benefit plans and the standard health benefit plans
7 to be used by the carrier. A health benefit plan filed pursuant to
8 this subsection may be used by a small employer carrier beginning
9 thirty days after it is filed unless the director disapproves its
10 use.

11 (b) The director at any time may, after providing notice
12 and an opportunity for a hearing to the small employer carrier,
13 disapprove the continued use by a small employer carrier of a basic
14 health benefit plan or standard health benefit plan on the grounds
15 that the plan does not meet the requirements of the act.

16 (4) Health benefit plans covering small employers shall
17 comply with the following provisions:

18 (a) A health benefit plan shall not deny, exclude,
19 or limit benefits for a covered individual for losses incurred
20 more than twelve months, or eighteen months in the case of a
21 late enrollee, following the enrollment date of the individual's
22 coverage due to a preexisting condition or the first date of
23 the waiting period for enrollment if that date is earlier than
24 the enrollment date. A health benefit plan shall not define
25 a preexisting condition more restrictively than as defined in
1 section 44-5246.02. A health benefit plan shall not impose

2 any preexisting condition exclusion relating to pregnancy as a
3 preexisting condition;

4 (b) A health benefit plan shall not impose any
5 preexisting condition exclusion:

6 (i) To an individual who, as of the last day of the
7 thirty-day period beginning with the date of birth, is covered
8 under creditable coverage, and the individual had creditable
9 coverage that was continuous to a date not more than sixty-three
10 days prior to the enrollment date of new coverage; or

11 (ii) To a child less than eighteen years of age who is
12 adopted or placed for adoption and who, as of the last day of
13 the thirty-day period beginning on the date of the adoption or
14 placement for adoption, is covered under creditable coverage, and
15 the child had creditable coverage that was continuous to a date
16 not more than sixty-three days prior to the enrollment date of new
17 coverage;

18 (c)(i) A small employer carrier shall waive any
19 time period applicable to a preexisting condition exclusion or
20 limitation period with respect to particular services in a health
21 benefit plan for the aggregate period of time an individual was
22 previously covered by creditable coverage that provided benefits
23 with respect to such services if the creditable coverage was
24 continuous to a date not more than sixty-three days prior to the
25 enrollment date of new coverage. The period of continuous coverage
1 shall not include any waiting period or affiliation period for the

2 effective date of the new coverage applied by the employer or the
3 carrier. This subdivision shall not preclude application of any
4 waiting period applicable to all new enrollees under the health
5 benefit plan.

6 (ii) A small employer carrier that does not use
7 preexisting condition limitations in any of its health benefit
8 plans may impose an affiliation period:

9 (A) That does not exceed sixty days for new entrants and
10 does not exceed ninety days for late enrollees;

11 (B) During which the carrier charges no premiums and the
12 coverage issued is not effective; and

13 (C) That is applied uniformly, without regard to any
14 health-status-related factor.

15 (iii) This subdivision does not preclude application of
16 any waiting period applicable to all enrollees under the health
17 benefit plan if any carrier waiting period is no longer than sixty
18 days.

19 (iv) (A) In lieu of the requirements of subdivision
20 (4) (c) (i) of this section, a small employer carrier may elect to
21 reduce the period of any preexisting condition exclusion based on
22 coverage of benefits within each of several classes or categories
23 of benefits specified in federal regulations.

24 (B) A small employer electing to reduce the period of
25 any preexisting condition exclusion using the alternative method
1 described in subdivision (4) (c) (iv) (A) of this section shall make

2 the election on a uniform basis for all enrollees and count a
3 period of creditable coverage with respect to any class or category
4 of benefits if any level of benefits is covered within the class or
5 category.

6 (C) A small employer carrier electing to reduce the
7 period of any preexisting condition exclusion using the alternative
8 method described in subdivision (4) (c) (iv) (A) of this section shall
9 prominently state that the election has been made in any disclosure
10 statements concerning coverage under the health benefit plan to
11 each enrollee at the time of enrollment under the plan and to each
12 small employer at the time of the offer or sale of the coverage and
13 include in the disclosure statements the effect of the election;

14 (d) (i) A small employer carrier shall permit an eligible
15 employee or dependent, who requests enrollment following the open
16 enrollment opportunity, to enroll, and the eligible employee or
17 dependent shall not be considered a late enrollee if the eligible
18 employee or dependent:

19 (A) Was covered under another health benefit plan at the
20 time the eligible employee or dependent was eligible to enroll;

21 (B) Stated in writing at the time of the open enrollment
22 period that coverage under another health benefit plan was the
23 reason for declining enrollment but only if the health benefit plan
24 or health carrier required such a written statement and provided a
25 notice of the consequences of such written statement;

1 (C) Has lost coverage under another health benefit plan

2 as a result of the termination of employment, the termination of
3 the other health benefit plan's coverage, death of a spouse, legal
4 separation, or divorce or was under a continuation-of-coverage
5 policy or contract available under federal law and the coverage was
6 exhausted; and

7 (D) Requests enrollment within thirty days after the
8 termination of coverage under the other health benefit plan.

9 (ii)(A) If a small employer carrier issues a health
10 benefit plan and makes coverage available to a dependent of an
11 eligible employee and such dependent becomes a dependent of the
12 eligible employee through marriage, birth, adoption, or placement
13 for adoption, then such health benefit plan shall provide for a
14 dependent special enrollment period during which the dependent may
15 be enrolled under the health benefit plan and, in the case of the
16 birth or adoption of a child, the spouse of an eligible employee
17 may be enrolled if otherwise eligible for coverage.

18 (B) A dependent special enrollment period shall be a
19 period of not less than thirty days and shall begin on the later of
20 (I) the date such dependent coverage is available or (II) the date
21 of the marriage, birth, adoption, or placement for adoption.

22 (C) If an eligible employee seeks to enroll a dependent
23 during the first thirty days of such a dependent special enrollment
24 period, the coverage of the dependent shall become effective:

25 (I) In the case of marriage, not later than the first day
1 of the first month beginning after the date the completed request

2 for enrollment is received;

3 (II) In the case of the birth of a dependent, as of the
4 date of birth; and

5 (III) In the case of a dependent's adoption or placement
6 for adoption, the date of such adoption or placement for adoption;

7 (e) (i) Except as provided in subdivision (4) (e) (iv) of
8 this section, requirements used by a small employer carrier in
9 determining whether to provide coverage to a small employer,
10 including requirements for minimum participation of eligible
11 employees and minimum employer contributions, shall be applied
12 uniformly among all small employers with the same number of
13 eligible employees applying for coverage or receiving coverage from
14 the small employer carrier.

15 (ii) A small employer carrier may vary application
16 of minimum participation requirements and minimum employer
17 contribution requirements only by the size of the small employer
18 group.

19 (iii) (A) Except as provided in subdivision (4) (e) (iii) (B)
20 of this section, in applying minimum participation requirements
21 with respect to a small employer, a small employer carrier shall
22 not consider employees or dependents who have creditable coverage
23 in determining whether the applicable percentage of participation
24 is met.

25 (B) With respect to a small employer with ten or fewer
1 eligible employees, a small employer carrier may consider employees

2 or dependents who have coverage under another health benefit plan
3 sponsored by such small employer in applying minimum participation
4 requirements.

5 (iv) A small employer carrier shall not increase any
6 requirement for minimum employee participation or any requirement
7 for minimum employer contribution applicable to a small employer at
8 any time after the small employer has been accepted for coverage;
9 and

10 (f)(i) If a small employer carrier offers coverage to
11 a small employer, the small employer carrier shall offer coverage
12 to all of the eligible employees of a small employer and their
13 dependents who apply for enrollment during the period in which the
14 employee first becomes eligible to enroll under the terms of the
15 plan. A small employer carrier shall not offer coverage to only
16 certain individuals in a small employer group or to only part of
17 the group except in the case of late enrollees as provided in
18 subdivision (4)(a) of this section.

19 (ii) Except as permitted under subdivisions (a) and (d)
20 of this subsection, a small employer carrier shall not modify
21 a health benefit plan with respect to a small employer or any
22 eligible employee or dependent, through riders, endorsements, or
23 otherwise, to restrict or exclude coverage or benefits for specific
24 diseases, medical conditions, or services otherwise covered by the
25 plan.

1 (iii) A small employer carrier shall not place any

2 restriction in regard to any health-status-related factor on an
3 eligible employee or dependent with respect to enrollment or plan
4 participation.

5 (5) A small employer carrier shall not be required to
6 offer coverage or accept applications pursuant to subsection (2) of
7 this section in the case of the following:

8 (a) To an employee if previous basic health benefit plans
9 or standard health benefit plans have, in the aggregate, paid one
10 million dollars in benefits on behalf of the employee. Benefits
11 paid on behalf of the employee in the immediately preceding two
12 calendar years by prior small employer carriers under basic and
13 standard plans shall be included when calculating the lifetime
14 maximum benefits payable under the succeeding basic or standard
15 plans. In any situation in which a determination of the total
16 amount of benefits paid by prior small employer carriers is
17 required by the succeeding carrier, prior carriers shall furnish a
18 statement of the total benefits paid under basic and standard plans
19 at the succeeding carrier's request; or

20 (b) Within an area where the small employer carrier
21 reasonably anticipates, and demonstrates to the satisfaction of the
22 director, that it will not have the capacity within its established
23 geographic service area to deliver service adequately to the
24 members of such groups because of its obligations to existing group
25 policyholders and enrollees.

1 (6) (a) A small employer carrier offering coverage through

2 a network plan shall not be required to offer coverage or accept
3 applications pursuant to subsection (2) of this section to or from
4 a small employer as defined in subsection (1) of this section:

5 (i) If the small employer does not have eligible
6 employees who live, work, or reside in the service area for
7 such network plan; or

8 (ii) If the small employer does have eligible employees
9 who live, work, or reside in the service area for such network
10 plan, the carrier has demonstrated, if required, to the director
11 that it will not have the capacity to deliver services adequately
12 to enrollees of any additional groups because of its obligations
13 to existing group contract holders and enrollees and that it
14 is applying subdivision (6)(a)(ii) of this section uniformly
15 to all employers without regard to the claims experience of
16 those employers and their employees and their dependents or
17 any health-status-related factor relating to such employees and
18 dependents.

19 (b) A small employer carrier, upon denying health
20 insurance coverage in any service area in accordance with
21 subdivision (6)(a)(ii) of this section, shall not offer coverage in
22 the small employer market within such service area for a period of
23 one hundred eighty days after the date such coverage is denied.

24 (7) A small employer carrier shall not be required to
25 provide coverage to small employers pursuant to subsection (2)
1 of this section for any period of time for which the director

2 determines that requiring the acceptance of small employers in
3 accordance with the provisions of such subsection would place the
4 small employer carrier in a financially impaired condition.

5 Sec. 9. Section 44-5904, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 44-5904 (1) The director or any of his or her examiners
8 may conduct an examination under the Insurers Examination Act of
9 any company incorporated in this state or in any other state
10 or country admitted to or applying for admission to transact
11 business in this state as often as the director in his or her
12 sole discretion deems appropriate but shall at a minimum conduct
13 an examination of every domestic insurer not less frequently than
14 once every ~~four~~ five years. In scheduling and determining the
15 nature, scope, and frequency of the examination of a company, the
16 director shall consider such matters as the results of financial
17 statement analyses and ratios, changes in the company's management
18 or ownership, actuarial opinions, reports of independent certified
19 public accountants, the company's ability to meet and fulfill its
20 obligations, the company's compliance with provisions of law, other
21 facts relating to the company's business methods, the company's
22 management and its dealings with its policyholders, and other
23 criteria as set forth in the Examiners' Handbook adopted by the
24 National Association of Insurance Commissioners and in effect when
25 the director conducts an examination under this section.

1 (2) For purposes of completing an examination of any

2 company under the act, the director may examine or investigate any
3 person, or the business of any person, insofar as such examination
4 or investigation is, in the sole discretion of the director,
5 necessary or material to the examination of the company.

6 Sec. 10. Section 44-5905, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 44-5905 (1) Upon determining that an examination should
9 be conducted, the director or his or her designee shall appoint one
10 or more examiners to conduct the examination and instruct them as
11 to the scope of the examination. In conducting the examination, the
12 examiner shall observe those guidelines and procedures set forth
13 in the Examiners' Handbook adopted by the National Association of
14 Insurance Commissioners. The director may also employ such other
15 guidelines or procedures as the director may deem appropriate.

16 (2) (a) Every company or person from whom information is
17 sought and its officers, directors, employees, and agents shall
18 provide to the examiners appointed under subsection (1) of this
19 section timely, convenient, and free access to all books, records,
20 accounts, papers, documents, and computer or other recordings
21 relating to the property, assets, business, and affairs of the
22 company being examined.

23 (b) (i) (A) Every company or person subject to the Insurers
24 Examination Act shall retain all books, records, accounts, papers,
25 documents, and computer or other recordings relating to the
1 property, assets, financial accounts, and business of such company

2 or person in a manner that permits examination of such books,
3 records, accounts, papers, documents, and computer or other
4 recordings for ~~four~~ five years, or until the period of time
5 in which the transaction took place has undergone a financial
6 examination by the director, whichever is later, following the
7 completion of a transaction relating to the property, assets,
8 financial accounts, and business of such company or person.

9 (B) Every company or person subject to the act shall
10 retain market conduct records for ~~four~~ five years following
11 the completion of a transaction relating to the insurance
12 business and affairs of such company or person. For purposes
13 of this subdivision, market conduct records means all books,
14 records, accounts, papers, documents, and computer or other
15 recordings relating to transactions with insureds, certificate
16 holders, claimants, insurance producers, other insurers, subrogees,
17 and subrogors and recordings related to its trade practices,
18 underwriting, rate and form practices, advertising, regulatory
19 matters, and other affairs of such company or person.

20 (ii) The books, records, accounts, papers, documents, and
21 computer or other recordings described in subdivisions (2) (b) (i) (A)
22 and (B) of this section and maintained in electronic, computer,
23 micrographic, or other form shall be maintained in a form capable
24 of accurate duplication on paper.

25 (c) The officers, directors, employees, and agents of the
1 company or person shall facilitate the examination and aid in the

2 examination so far as it is in their power to do so. The refusal
3 of any company, by its officers, directors, employees, or agents,
4 to submit to examination or to comply with any reasonable written
5 request of the examiners shall be grounds for suspension or refusal
6 of or nonrenewal of any license or authority held by the company to
7 engage in an insurance or other business subject to the director's
8 jurisdiction. Any such proceedings for suspension, revocation, or
9 refusal of any license or authority shall be conducted pursuant to
10 the Administrative Procedure Act.

11 (d) For purposes of this subsection, officers, directors,
12 employees, and agents shall include general agents, managing
13 agents, attorneys in fact, organizers, promoters, loss adjusters,
14 and any persons having a contract, written or oral, pertaining to
15 the management or control of a company or any function thereof.

16 (3) The director or any of his or her examiners shall
17 have the power to issue subpoenas, to administer oaths, and to
18 examine under oath any person as to any matter pertinent to
19 the examination. Upon the failure or refusal of any person to
20 obey a subpoena, the director may petition a court of competent
21 jurisdiction, and upon proper showing, the court may enter an
22 order compelling the witness to appear and testify or produce
23 documentary evidence. Failure to obey the court order shall be
24 punishable as contempt of court. Every person shall be obliged to
25 attend as a witness at the place specified in the subpoena, when
1 subpoenaed, anywhere within the state. He or she shall be entitled

2 to the same fees and mileage, if claimed, as a witness in the
3 district court with mileage to be computed at the rate provided in
4 section 81-1176, which fees, mileage, and actual expense, if any,
5 necessarily incurred in securing the attendance of witnesses, and
6 their testimony, shall be itemized and charged against, and be paid
7 by, the company being examined.

8 (4) When conducting an examination under the Insurers
9 Examination Act, the director may retain attorneys, appraisers,
10 independent actuaries, independent certified public accountants,
11 loss-reserve specialists, or other professionals and specialists,
12 the cost of which shall be borne by the company which is the
13 subject of the examination.

14 (5) Nothing in the act shall be construed to limit the
15 director's authority to terminate or suspend any examination in
16 order to pursue other legal or regulatory action pursuant to the
17 insurance laws of this state. Findings of fact and conclusions made
18 pursuant to any examination shall be prima facie evidence in any
19 legal or regulatory action.

20 (6) Nothing contained in the act shall be construed to
21 limit the director's authority to use and, if appropriate, to make
22 public any final or preliminary examination report, any examiner
23 or company workpapers or other documents, or any other information
24 discovered or developed during the course of any examination in the
25 furtherance of any legal or regulatory action which the director
1 may, in his or her sole discretion, deem appropriate.

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2 Sec. 11. Original sections 12-1116, 44-4065, 44-5223,
3 44-5225, 44-5260, 44-5904, and 44-5905, Reissue Revised Statutes
4 of Nebraska, and sections 44-1988 and 44-5103, Revised Statutes
5 Cumulative Supplement, 2008, are repealed.