

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 192

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 44-710.03, 44-710.04, 44-4065, 44-5223, 44-5225, 44-5260,
3 44-5904, and 44-5905, Reissue Revised Statutes of
4 Nebraska, and sections 44-1988 and 44-5103, Revised
5 Statutes Cumulative Supplement, 2008; to provide powers
6 for the Director of Insurance under the Burial Pre-Need
7 Sale Act; to provide for a coordination of benefits
8 provision in sickness and accident insurance policies;
9 to change and eliminate provisions relating to reserves
10 under the Title Insurers Act; to provide and change
11 reporting requirements under the Insurance Producers
12 Licensing Act; to change provisions relating to health
13 benefit plans under the Small Employer Health Insurance
14 Availability Act; to change examination and record

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1 retention requirements under the Insurers Examination
2 Act; to define and redefine terms; to harmonize
3 provisions; and to repeal the original sections.
4 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 44-710.03, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 44-710.03 Except as provided in section 44-710.05, each
25 policy of sickness and accident insurance delivered or issued for

1 delivery to any person in this state shall contain the provisions
2 specified in this section in the words in which the same appear
3 in this section, except that the insurer may, at its option,
4 substitute for one or more of such provisions corresponding
5 provisions of different wording approved by the Director of
6 Insurance which are in each instance not less favorable in any
7 respect to the insured or the beneficiary. Such provisions shall
8 be preceded individually by the caption appearing in this section
9 or, at the option of the insurer, by such appropriate individual
10 or group captions or subcaptions as the Director of Insurance may
11 approve.

12 (1) A provision as follows: ENTIRE CONTRACT: CHANGES:
13 This policy, including the endorsements and the attached papers,
14 if any, constitutes the entire contract of insurance. No change in
15 this policy shall be valid until approved by an executive officer
16 of the insurer and unless such approval be endorsed hereon or
17 attached hereto. No agent has authority to change this policy or to
18 waive any of its provisions.

19 (2) A provision as follows: TIME LIMIT ON CERTAIN
20 DEFENSES: (a) After two years from the date of issue of this
21 policy no misstatements, except fraudulent misstatements, made by
22 the applicant in the application for such policy shall be used to
23 void the policy or to deny a claim for loss incurred or disability,
24 as defined in the policy, commencing after the expiration of such
25 two-year period. The foregoing policy provision shall not be so

1 construed as to affect any legal requirement for avoidance of a
2 policy or denial of a claim during such initial two-year period
3 nor to limit the application of subdivisions (1) through ~~(5)~~ (6)
4 of section 44-710.04 in the event of misstatement with respect to
5 age or occupation or other insurance. A policy which the insured
6 has the right to continue in force subject to its terms by the
7 timely payment of premium until at least age fifty or, in the
8 case of a policy issued after age forty-four, for at least five
9 years from its date of issue, may contain in lieu of the foregoing
10 the following provision, from which the clause "as defined in
11 the policy" may be omitted at the insurer's option, under the
12 caption INCONTESTABLE: After this policy has been in force for a
13 period of two years during the lifetime of the insured, excluding
14 any period during which the insured is disabled, it shall become
15 contestable as to the statements contained in the application.
16 (b) No claim for loss incurred or disability, as defined in the
17 policy, commencing after two years from the date of issue of this
18 policy shall be reduced or denied on the ground that disease or
19 physical condition not excluded from coverage by name or specific
20 description effective on the date of loss had existed prior to the
21 effective date of coverage of this policy.

22 (3) A provision as follows: GRACE PERIOD: A grace period
23 of (insert a number not less than 7 for weekly premium
24 policies, 10 for monthly premium policies, and 31 for all other
25 policies) days will be granted for the payment of each premium

1 falling due after the first premium, during which grace period
2 the policy shall continue in force. A policy which contains a
3 cancellation provision may add, at the end of the above provision:
4 Subject to the right of the insurer to cancel in accordance with
5 the cancellation provision hereof. A policy in which the insurer
6 reserves the right to refuse any renewal shall have, at the
7 beginning of the above provision: Unless not less than thirty days
8 prior to the premium due date the insurer has delivered to the
9 insured or has mailed to his or her last address as shown by
10 the records of the insurer written notice of its intention not to
11 renew this policy beyond the period for which the premium has been
12 accepted.

13 (4) A provision as follows: REINSTATEMENT: If any renewal
14 premium be not paid within the time granted the insured for
15 payment, a subsequent acceptance of premium by the insurer or
16 by any agent duly authorized by the insurer to accept such
17 premium, without requiring in connection therewith an application
18 for reinstatement, shall reinstate the policy, except that if the
19 insurer or such agent requires an application for reinstatement
20 and issues a conditional receipt for the premium tendered, the
21 policy will be reinstated upon approval of such application by
22 the insurer or, lacking such approval, upon the forty-fifth day
23 following the date of such conditional receipt unless the insurer
24 has previously notified the insured in writing of its disapproval
25 of such application. The reinstated policy shall cover only loss

1 resulting from such accidental injury as may be sustained after
2 the date of reinstatement and loss due to such sickness as may
3 begin more than ten days after such date. In all other respects
4 the insured and insurer shall have the same rights thereunder as
5 they had under the policy immediately before the due date of the
6 defaulted premium, subject to any provisions endorsed hereon or
7 attached hereto in connection with the reinstatement. Any premium
8 accepted in connection with a reinstatement shall be applied to a
9 period for which premium has not been previously paid but not to
10 any period more than sixty days prior to the date of reinstatement.

11 (The last sentence of the above provision may be omitted from
12 any policy which the insured has the right to continue in force
13 subject to its terms by the timely payment of premiums (a) until
14 at least age fifty or (b) in the case of a policy issued after age
15 forty-four, for at least five years from its date of issue.)

16 (5) A provision as follows: NOTICE OF CLAIM: Written
17 notice of claim must be given to the insurer within twenty days
18 after the occurrence or commencement of any loss covered by the
19 policy or as soon thereafter as is reasonably possible. Notice
20 given by or on behalf of the insured or the beneficiary to the
21 insurer at (insert the location of such office as
22 the insurer may designate for the purpose), or to any authorized
23 agent of the insurer, with information sufficient to identify
24 the insured, shall be deemed notice to the insurer. In a policy
25 providing a loss-of-time benefit which may be payable for at least

1 two years, an insurer may at its option insert the following
2 between the first and second sentences of the above provision:
3 Subject to the qualifications set forth below, if the insured
4 suffers loss of time on account of disability for which indemnity
5 may be payable for at least two years, he or she shall, at least
6 once in every six months after having given notice of claim, give
7 to the insurer notice of continuance of such disability, except in
8 the event of legal incapacity. The period of six months following
9 any filing of proof by the insured or any payment by the insurer
10 on account of such claim or any denial of liability in whole or in
11 part by the insurer shall be excluded in applying this provision.
12 Delay in the giving of such notice shall not impair the insured's
13 right to any indemnity which would otherwise have accrued during
14 the period of six months preceding the date on which such notice is
15 actually given.

16 (6) A provision as follows: CLAIM FORMS: The insurer,
17 upon receipt of a notice of claim, will furnish to the claimant
18 such forms as are usually furnished by it for filing proofs of
19 loss. If such forms are not furnished within fifteen days after
20 the giving of such notice, the claimant shall be deemed to have
21 complied with the requirements of this policy as to proof of
22 loss upon submitting, within the time fixed in the policy for
23 filing proofs of loss, written proof covering the occurrence, the
24 character, and the extent of the loss for which claim is made.

25 (7) A provision as follows: PROOFS OF LOSS: Written proof

1 of loss must be furnished to the insurer at its office in case
2 of claim for loss for which the policy provides any periodic
3 payment contingent upon continuing loss within ninety days after
4 the termination of the period for which the insurer is liable and
5 in case of claim for any other loss within ninety days after the
6 date of such loss. Failure to furnish such proof within the time
7 required shall not invalidate nor reduce any claim if it was not
8 reasonably possible to give proof within such time and if such
9 proof is furnished as soon as reasonably possible and in no event,
10 except in the absence of legal capacity, later than one year from
11 the time proof is otherwise required.

12 (8) A provision as follows: TIME OF PAYMENT OF CLAIMS:
13 Indemnities payable under this policy for any loss other than
14 loss for which this policy provides any periodic payment will be
15 paid immediately upon receipt of due written proof of such loss.
16 Subject to due written proof of loss, all accrued indemnities for
17 loss for which this policy provides periodic payment will be paid
18 (insert period for payment which must not be less
19 frequently than monthly) and any balance remaining unpaid upon the
20 termination of liability will be paid immediately upon receipt of
21 due written proof.

22 (9) A provision as follows: PAYMENT OF CLAIMS: Indemnity
23 for loss of life will be payable in accordance with the beneficiary
24 designation and the provisions respecting such payment which may
25 be prescribed herein and effective at the time of payment. If no

1 such designation or provision is then effective, such indemnity
2 shall be payable to the estate of the insured. Any other accrued
3 indemnities unpaid at the insured's death may, at the option of
4 the insurer, be paid either to such beneficiary or to such estate.
5 All other indemnities will be payable to the insured. The following
6 provisions, or either of them, may be included with the foregoing
7 provision at the option of the insurer: (a) If any indemnity of
8 this policy shall be payable to the estate of the insured, or to
9 an insured or beneficiary who is a minor or otherwise not competent
10 to give a valid release, the insurer may pay such indemnity, up
11 to an amount not exceeding \$..... (insert an amount which
12 shall not exceed five thousand dollars), to any relative by blood
13 or connection by marriage of the insured or beneficiary who is
14 deemed by the insurer to be equitably entitled thereto. Any payment
15 made by the insurer in good faith pursuant to this provision shall
16 fully discharge the insurer to the extent of such payment. (b)
17 Subject to any written direction of the insured in the application
18 or otherwise all or a portion of any indemnities provided by
19 this policy on account of hospital, nursing, medical, or surgical
20 services may, at the insurer's option and unless the insured
21 requests otherwise in writing not later than the time of filing
22 proofs of such loss, be paid directly to the hospital or person
23 rendering such services; but it is not required that the service be
24 rendered by a particular hospital or person.

25 (10) A provision as follows: PHYSICAL EXAMINATIONS AND

1 AUTOPSY: The insurer at its own expense shall have the right
2 and opportunity to examine the person of the insured when and as
3 often as it may reasonably require during the pendency of a claim
4 hereunder and to make an autopsy in case of death where it is not
5 forbidden by law.

6 (11) A provision as follows: LEGAL ACTIONS: No action at
7 law or in equity shall be brought to recover on this policy prior
8 to the expiration of sixty days after written proof of loss has
9 been furnished in accordance with the requirements of this policy.
10 No such action shall be brought after the expiration of three years
11 after the time written proof of loss is required to be furnished.

12 (12) A provision as follows: CHANGE OF BENEFICIARY:
13 Unless the insured makes an irrevocable designation of beneficiary,
14 the right to change of beneficiary is reserved to the insured
15 and the consent of the beneficiary or beneficiaries shall not
16 be requisite to surrender or assignment of this policy, to any
17 change of beneficiary or beneficiaries, or to any other changes
18 in this policy. The first clause of this provision, relating to
19 the irrevocable designation of beneficiary, may be omitted at the
20 insurer's option.

21 Sec. 3. Section 44-710.04, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 44-710.04 Except as provided in sections 44-710.05 and
24 44-787, no policy of sickness and accident insurance delivered or
25 issued for delivery to any person in this state shall contain

1 provisions respecting the matters set forth below unless such
2 provisions are in the words in which the same appear in this
3 section, except that the insurer may, at its option, use in
4 lieu of any such provision a corresponding provision of different
5 wording approved by the Director of Insurance which is not less
6 favorable in any respect to the insured or the beneficiary.
7 Any such provision contained in the policy shall be preceded
8 individually by the appropriate caption appearing in this section
9 or, at the option of the insurer, by such appropriate individual
10 or group captions or subcaptions as the Director of Insurance may
11 approve.

12 (1) A provision as follows: CHANGE OF OCCUPATION: If the
13 insured be injured or contract sickness after having changed his or
14 her occupation to one classified by the insurer as more hazardous
15 than that stated in this policy or while doing for compensation
16 anything pertaining to an occupation so classified, the insurer
17 will pay only such portion of the indemnities provided in this
18 policy as the premium paid would have purchased at the rates and
19 within the limits fixed by the insurer for such more hazardous
20 occupation. If the insured changes his or her occupation to one
21 classified by the insurer as less hazardous than that stated in
22 this policy, the insurer, upon receipt of proof of such change
23 of occupation, will reduce the premium rate accordingly and will
24 return the excess pro rata unearned premium from the date of change
25 of occupation or from the policy anniversary date immediately

1 preceding receipt of such proof, whichever is the more recent. In
2 applying this provision, the classification of occupational risk
3 and the premium rates shall be such as have been last filed by the
4 insurer prior to the occurrence of the loss for which the insurer
5 is liable or prior to date of proof of change in occupation with
6 the state official having supervision of insurance in the state
7 where the insured resided at the time this policy was issued;
8 but if such filing was not required, then the classification of
9 occupational risk and the premium rates shall be those last made
10 effective by the insurer in such state prior to the occurrence of
11 the loss or prior to the date of proof of change of occupation.

12 (2) A provision as follows: MISSTATEMENT OF AGE: If the
13 age of the insured has been misstated, all amounts payable under
14 this policy shall be such as the premium paid would have purchased
15 at the correct age.

16 (3) A Except as provided in subdivision (6) of this
17 section, a provision as follows: OTHER INSURANCE IN THIS INSURER:
18 If an accident or sickness or accident and sickness policy or
19 policies previously issued by the insurer to the insured be
20 in force concurrently herewith, making the aggregate indemnity
21 for (insert type of coverage or coverages) in
22 excess of \$..... (insert maximum limit of indemnity or
23 indemnities), the excess insurance shall be void and all premiums
24 paid for such excess shall be returned to the insured or to his
25 or her estate; or in lieu thereof: Insurance effective at any one

1 time on the insured under a like policy or policies in this insurer
2 is limited to the one such policy elected by the insured, his or
3 her beneficiary, or his or her estate, as the case may be, and the
4 insurer will return all premiums paid for all other such policies.

5 (4) A Except as provided in subdivision (6) of this
6 section, a provision as follows: INSURANCE WITH OTHER INSURERS: If
7 there be other valid coverage, not with this insurer, providing
8 benefits for the same loss on a provision-of-service basis or on an
9 expense-incurred basis and of which this insurer has not been given
10 written notice prior to the occurrence or commencement of loss, the
11 only liability under any expense-incurred coverage of this policy
12 shall be for such proportion of the loss as the amount which would
13 otherwise have been payable hereunder plus the total of the like
14 amounts under all such other valid coverages for the same loss
15 of which this insurer had notice bears to the total like amounts
16 under all valid coverages for such loss and for the return of such
17 portion of the premiums paid as shall exceed the pro rata portion
18 for the amount so determined. For the purpose of applying this
19 provision when other coverage is on a provision-of-service basis,
20 the like amount of such other coverage shall be taken as the amount
21 which the services rendered would have cost in the absence of such
22 coverage. If the foregoing policy provision is included in a policy
23 which also contains the next following policy provision there shall
24 be added to the caption of the foregoing provision the phrase
25 EXPENSE-INCURRED BENEFITS. The insurer may, at its option, include

1 in this provision a definition of other valid coverage, approved
2 as to form by the Director of Insurance, which definition shall
3 be limited in subject matter to coverage provided by organizations
4 subject to regulation by insurance law or by insurance authorities
5 of this or any other state of the United States or any province
6 of Canada and by hospital or medical service organizations and
7 to any other coverage the inclusion of which may be approved by
8 the Director of Insurance. In the absence of such definition such
9 term shall not include group insurance, automobile medical payments
10 insurance, or coverage provided by hospital or medical service
11 organizations or by union welfare plans or employer or employee
12 benefit organizations. For the purpose of applying the foregoing
13 policy provision with respect to any insured, any amount of benefit
14 provided for such insured pursuant to any compulsory benefit
15 statute, including any workers' compensation or employers liability
16 statute, whether provided by a governmental agency or otherwise
17 shall in all cases be deemed to be other valid coverage of which
18 the insurer has had notice. In applying the foregoing policy
19 provision no third-party liability coverage shall be included as
20 other valid coverage.

21 (5) A Except as provided in subdivision (6) of this
22 section, a provision as follows: INSURANCE WITH OTHER INSURERS: If
23 there be other valid coverage, not with this insurer, providing
24 benefits for the same loss on other than an expense-incurred basis
25 and of which this insurer has not been given written notice prior

1 to the occurrence or commencement of loss, the only liability for
2 such benefits under this policy shall be for such proportion of
3 the indemnities otherwise provided hereunder for such loss as the
4 like indemnities of which the insurer had notice (including the
5 indemnities under this policy) bear to the total amount of all
6 like indemnities for such loss, and for the return of such portion
7 of the premium paid as shall exceed the pro rata portion for
8 the indemnities thus determined. If the foregoing policy provision
9 is included in a policy which also contains the next preceding
10 policy provision, there shall be added to the caption of the
11 foregoing provision the phrase OTHER BENEFITS. The insurer
12 may, at its option, include in this provision a definition of
13 other valid coverage, approved as to form by the Director of
14 Insurance, which definition shall be limited in subject matter
15 to coverage provided by organizations subject to regulation by
16 insurance law or by insurance authorities of this or any other
17 state of the United States or any province of Canada and to any
18 other coverage the inclusion of which may be approved by the
19 Director of Insurance. In the absence of such definition such term
20 shall not include group insurance or benefits provided by union
21 welfare plans or by employer or employee benefit organizations. For
22 the purpose of applying the foregoing policy provision with respect
23 to any insured, any amount of benefit provided for such insured
24 pursuant to any compulsory benefit statute, including any workers'
25 compensation or employers liability statute, whether provided by a

1 governmental agency or otherwise shall in all cases be deemed to
2 be other valid coverage of which the insurer has had notice. In
3 applying the foregoing policy provision no third-party liability
4 coverage shall be included as other valid coverage.

5 (6) In lieu of the provisions set forth in subdivisions
6 (3) through (5) of this section, the insurer may at its option
7 include a provision entitled COORDINATION OF BENEFITS which
8 provides for nonduplication and coordination between two or more
9 coverages based on rules and regulations adopted and promulgated
10 by the director.

11 (6) (7) A provision as follows: RELATION OF EARNINGS TO
12 INSURANCE: If the total monthly amount of loss-of-time benefits
13 promised for the same loss under all valid loss-of-time coverage
14 upon the insured, whether payable on a weekly or monthly basis,
15 shall exceed the monthly earnings of the insured at the time
16 disability commenced or his or her average monthly earnings for
17 the period of two years immediately preceding a disability for
18 which claim is made, whichever is the greater, the insurer will
19 be liable only for such proportionate amount of such benefits
20 under this policy as the amount of such monthly earnings or such
21 average monthly earnings of the insured bears to the total amount
22 of monthly benefits for the same loss under all such coverage
23 upon the insured at the time such disability commences and for the
24 return of such part of the premiums paid during such two years as
25 shall exceed the pro rata amount of the premiums for the benefits

1 actually paid hereunder; but this shall not operate to reduce the
2 total monthly amount of benefits payable under all such coverage
3 upon the insured below the sum of two hundred dollars or the sum
4 of the monthly benefits specified in such coverages, whichever is
5 the lesser, nor shall it operate to reduce benefits other than
6 those payable for loss of time. The foregoing policy provision may
7 be inserted only in a policy which the insured has the right to
8 continue in force subject to its terms by the timely payment of
9 premiums (a) until at least age fifty or (b) in the case of a
10 policy issued after age forty-four for at least five years from
11 its date of issue. The insurer may, at its option, include in this
12 provision a definition of valid loss-of-time coverage, approved
13 as to form by the Director of Insurance, which definition shall
14 be limited in subject matter to coverage provided by governmental
15 agencies or by organizations subject to regulation by insurance
16 law or by insurance authorities of this or any other state of
17 the United States or any province of Canada or to any other
18 coverage the inclusion of which may be approved by the Director of
19 Insurance or any combination of such coverages. In the absence of
20 such definition such term shall not include any coverage provided
21 for such insured pursuant to any compulsory benefit statute,
22 including any workers' compensation or employers liability statute,
23 or benefits provided by union welfare plans or by employer or
24 employee benefit organizations.

25 (7) (8) A provision as follows: UNPAID PREMIUM: Upon the

1 payment of a claim under this policy, any premium then due and
2 unpaid or covered by any note or written order may be deducted
3 therefrom.

4 (8) (9) A provision as follows: CANCELLATION: The insurer
5 may cancel this policy at any time by written notice delivered to
6 the insured which shall be effective only if mailed by certified
7 or registered mail to the named insured at his or her last-known
8 address, as shown by the records of the insurer, at least thirty
9 days prior to the effective date of cancellation, except that
10 cancellation due to failure to pay the premium or in cases of fraud
11 or misrepresentation shall not require that such notice be given at
12 least thirty days prior to cancellation. Subject to any provisions
13 in the policy or a grace period, cancellation for failure to pay a
14 premium shall be effective as of midnight of the last day for which
15 the premium has been paid. In cases of fraud or misrepresentation,
16 coverage shall be canceled upon the date of the notice or any later
17 date designated by the insurer. After the policy has been continued
18 beyond its original term the insured may cancel this policy at
19 any time by written notice delivered or mailed to the insurer,
20 effective upon receipt or on such later date as may be specified
21 in such notice. In the event of cancellation, the insurer will
22 return promptly the unearned portion of any premium paid. If the
23 insured cancels, the earned premium shall be computed by the use
24 of the short-rate table last filed with the state official having
25 supervision of insurance in the state where the insured resided

1 when the policy was issued. If the insurer cancels, the earned
2 premium shall be computed pro rata. Cancellation shall be without
3 prejudice to any claim originating prior to the effective date of
4 cancellation.

5 (9) (10) A provision as follows: CONFORMITY WITH STATE
6 STATUTES: Any provision of this policy which, on its effective
7 date, is in conflict with the statutes of the state in which the
8 insured resides on such date is hereby amended to conform to the
9 minimum requirements of such statutes.

10 (10) (11) A provision as follows: ILLEGAL OCCUPATION: The
11 insurer shall not be liable for any loss to which a contributing
12 cause was the insured's commission of or attempt to commit a felony
13 or to which a contributing cause was the insured's being engaged in
14 an illegal occupation.

15 (11) (12) A provision as follows: INTOXICANTS AND
16 NARCOTICS: The insurer shall not be liable for any loss sustained
17 or contracted in consequence of the insured's being intoxicated
18 or under the influence of any narcotic unless administered on the
19 advice of a physician.

20 Sec. 4. Section 44-1988, Revised Statutes Cumulative
21 Supplement, 2008, is amended to read:

22 44-1988 (1) In determining the financial condition of a
23 title insurer transacting the business of title insurance under the
24 Title Insurers Act, the general provisions of the insurance laws
25 of this state requiring the establishment of reserves sufficient to

1 cover all known and unknown liabilities, including allocated and
2 unallocated loss adjustment expense, shall apply except as provided
3 in subsections (2) through (4) of this section.

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

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

18 (b) (i) If a title insurer is a domestic insurer of this
19 state, the title insurer shall establish and maintain a statutory
20 or unearned premium reserve consisting of the amount of the
21 statutory or unearned premium or reinsurance reserve on September
22 13, 1997, which balance shall be released in accordance with the
23 law in effect at the time such sums were added to the reserve, in
24 an amount equal to seventeen cents per one thousand dollars of net
25 retained liability for each insurance policy.

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

17 (iii) (c)(i) If a title insurer that is organized under
18 the laws of another state transfers its domicile to this state, the
19 statutory or unearned premium reserve shall be that amount required
20 by the laws of the state of the title insurer's former state of
21 domicile as of the date of transfer of domicile. Thereafter, the
22 aggregate of such statutory or unearned premium reserve shall be
23 released from the reserve and restored to profits over a period
24 of twenty years pursuant to the formula set forth in subdivision
25 (3)(b)(vi) (3)(c)(iii) of this section.

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

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

14 (A) Direct premiums written;
15 (B) Escrow, settlement, and closing fees;
16 (C) Other title fees and service charges, including fees
17 for closing protection letters; and
18 (D) Premiums for reinsurance assumed less premiums for
19 reinsurance ceded.

20 (iv) Additions to the reserve required under subdivision
21 (3)(b)(i) of this section commencing on January 1, 1999, and until
22 December 31, 2005, shall be made out of total charges for title
23 insurance policies and guarantees written, equal to the sum of the
24 following items, as set forth in the title insurer's most recent
25 annual statement on file with the director:

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

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

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

17 (vi) (iii) The aggregate of the amounts set aside in
18 the reserve required under subdivision (3)(b)(i) (3)(c)(i) of this
19 section in any calendar year pursuant to subdivisions (3)(b)(iii),
20 (3)(b)(iv), and (3)(b)(v) of this section and the reserve required
21 under subdivision (3)(b)(ii) of this section shall be released
22 from the reserve and restored to net profits over a period of
23 twenty years pursuant to the following formula: For an insurer that
24 transfers its domicile to this state, An initial release of thirty
25 percent of the aggregate of such reserves on the forty-fifth day

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

20 (vii) The title insurer shall calculate an adjusted
21 statutory or unearned premium reserve as of September 13, 1997.
22 The adjusted reserve shall be calculated as if subdivisions
23 (3)(b)(iii), (iv), and (vi) of this section had been in effect
24 for all years beginning twenty years prior to September 13, 1997.
25 For purposes of this calculation, the balance of the reserve as

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

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

	Calendar Year of Addition	Release
19	1998	Equally over 10 years
20	1999	Equally over 9 years
21	2000	Equally over 8 years
22	2001	Equally over 7 years
23	2002	Equally over 6 years
24	2003	Equally over 5 years

25 (4) A title insurer shall establish and maintain a

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

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

19 Sec. 5. Section 44-4065, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 44-4065 (1) An insurance producer shall report to the
22 director any administrative action taken against the producer
23 in another jurisdiction, by a professional self-regulatory
24 organization such as the Financial Industry Regulatory Authority or
25 a similar organization, or by another governmental agency in this

1 state within thirty days of the final disposition of the matter.
2 This report shall include a copy of the order, consent to order,
3 or other relevant legal documents.

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

10 (2) (3) Within thirty days of the date of arraignment or
11 date of waiver of arraignment, if waived, an insurance producer
12 shall report to the director any criminal prosecution of the
13 producer taken in any jurisdiction. The report shall include a
14 copy of the initial complaint filed, the order resulting from the
15 hearing, and any other relevant legal documents.

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

20 Sec. 6. Section 44-5103, Revised Statutes Cumulative
21 Supplement, 2008, is amended to read:

22 44-5103 For purposes of the Insurers Investment Act:
23 (1) Admitted assets means the investments authorized
24 under the act and stated at values at which they are permitted
25 to be reported in the insurer's financial statement filed under

1 section 44-322, except that admitted assets does not include assets
2 of separate accounts, the investments of which are not subject to
3 the act;

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

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

23 (4) Clearing corporation means a clearing corporation as
24 defined in subdivision (a)(5) of section 8-102, Uniform Commercial
25 Code, that is organized for the purpose of effecting transactions

1 in securities by computerized book-entry, except that with respect
2 to securities issued by institutions organized or existing under
3 the laws of a foreign country or securities used to meet the
4 deposit requirements pursuant to the laws of a foreign country
5 as a condition of doing business therein, clearing corporation
6 may include a corporation that is organized or existing under the
7 laws of a foreign country and which is legally qualified under
8 those laws to effect transactions in securities by computerized
9 book-entry. Clearing corporation also includes Treasury/Reserve
10 Automated Debt Entry Securities System and Treasury Direct system;

11 (5) Custodian means:

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

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

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

14 (6) Custodiated securities means securities held by the
15 custodian or its agent or in a clearing corporation, including
16 the Treasury/Reserve Automated Debt Entry Securities System and
17 Treasury Direct system;

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

21 (8) Director means the Director of Insurance;

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

25 (10) Mortgage means a consensual interest created by a

1 real estate mortgage, a trust deed on real estate, or a similar
2 instrument;

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

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

11 (13) Securities Valuation Office means the Securities
12 Valuation Office of the National Association of Insurance
13 Commissioners or any successor office established by the National
14 Association of Insurance Commissioners;

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

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

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

24 (17) Treasury/Reserve Automated Debt Entry Securities
25 System and Treasury Direct system mean the book-entry securities

1 systems established pursuant to 5 U.S.C. 301, 12 U.S.C. 391, and 31
2 U.S.C. 3101 et seq. The operation of the systems are subject to 31
3 C.F.R. part 357 et seq.

4 Sec. 7. Section 44-5223, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 44-5223 Sections 44-5223 to 44-5267 and section 9 of this
7 act shall be known and may be cited as the Small Employer Health
8 Insurance Availability Act.

9 Sec. 8. Section 44-5225, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 44-5225 For purposes of the Small Employer Health
12 Insurance Availability Act, the definitions found in sections
13 44-5226 to 44-5255.01 and section 9 of this act shall be used.

14 Sec. 9. Bona fide association means, with respect to
15 health insurance coverage offered in this state, an association
16 that meets the following conditions:

17 (1) Has been actively in existence for at least five
18 years;

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

21 (3) Does not condition membership in the association
22 on a health-status-related factor of an individual, including an
23 employee or a dependent of any employee;

24 (4) Makes health insurance coverage offered through
25 the association available to any member regardless of a

1 health-status-related factor of the member or individual eligible
2 for coverage through a member; and
3 (5) Does not make available health insurance coverage
4 offered through the association other than in connection with a
5 member of the association.

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

8 44-5260 (1) For purposes of this section, small employer
9 shall mean, in connection with a group health plan with respect to
10 a calendar year and a plan year, any person, firm, corporation,
11 partnership, association, or political subdivision that is actively
12 engaged in business that employed an average of at least two but
13 not more than fifty employees on business days during the preceding
14 calendar year and who employs at least two employees on the first
15 day of the plan year. All persons treated as a single employer
16 under subsection (b), (c), (m), or (o) of section 414 of the
17 Internal Revenue Code shall be treated as one employer. Subsequent
18 to the issuance of a health benefit plan to a small employer
19 and for the purpose of determining continued eligibility, the
20 size of a small employer shall be determined annually. Except as
21 otherwise specifically provided, provisions of the Small Employer
22 Health Insurance Availability Act that apply to a small employer
23 shall continue to apply at least until the health benefit plan
24 anniversary following the date the small employer no longer meets
25 the requirements of this definition. In the case of an employer

1 which was not in existence throughout the preceding calendar year,
2 the determination of whether the employer is a small or large
3 employer shall be based on the average number of employees that it
4 is reasonably expected the employer will employ on business days in
5 the current calendar year. Any reference in the act to an employer
6 shall include a reference to any predecessor of such employer.

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

20 (b) (i) Subject to subdivision (2) (a) of this section,
21 a small employer carrier shall issue any health benefit plan to
22 any eligible small employer that applies for the plan and agrees
23 to make the required premium payments and to satisfy the other
24 reasonable provisions of the health benefit plan not inconsistent
25 with the Small Employer Health Insurance Availability Act. However,

1 no small employer carrier shall be required to issue a health
2 benefit plan to a self-employed individual who is covered by, or is
3 eligible for coverage under, a health benefit plan offered by an
4 employer.

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

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

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

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

19 (D) The small employer carrier provides for the
20 acceptance of all eligible small employers into one or more classes
21 of business.

22 The provisions of subdivision (2)(b)(ii) of this section
23 shall not apply to a class of business into which the small
24 employer carrier is no longer enrolling new small businesses.

25 (3)(a) A small employer carrier shall file with the

1 director, in a format and manner prescribed by the director, the
2 basic health benefit plans and the standard health benefit plans
3 to be used by the carrier. A health benefit plan filed pursuant to
4 this subsection may be used by a small employer carrier beginning
5 thirty days after it is filed unless the director disapproves its
6 use.

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

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

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

25 (b) A health benefit plan shall not impose any

1 preexisting condition exclusion:

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

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

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

1 benefit plan.

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

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

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

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

11 (iii) This subdivision does not preclude application of
12 any waiting period applicable to all enrollees under the health
13 benefit plan if any carrier waiting period is no longer than sixty
14 days.

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

20 (B) A small employer electing to reduce the period of
21 any preexisting condition exclusion using the alternative method
22 described in subdivision (4)(c)(iv)(A) of this section shall make
23 the election on a uniform basis for all enrollees and count a
24 period of creditable coverage with respect to any class or category
25 of benefits if any level of benefits is covered within the class or

1 category.

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

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

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

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

22 (C) Has lost coverage under another health benefit plan
23 as a result of the termination of employment, the termination of
24 the other health benefit plan's coverage, death of a spouse, legal
25 separation, or divorce or was under a continuation-of-coverage

1 policy or contract available under federal law and the coverage was
2 exhausted; and

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

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

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

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

21 (I) In the case of marriage, not later than the first day
22 of the first month beginning after the date the completed request
23 for enrollment is received;

24 (II) In the case of the birth of a dependent, as of the
25 date of birth; and

1 (III) In the case of a dependent's adoption or placement
2 for adoption, the date of such adoption or placement for adoption;
3 (e)(i) Except as provided in subdivision (4)(e)(iv) of
4 this section, requirements used by a small employer carrier in
5 determining whether to provide coverage to a small employer,
6 including requirements for minimum participation of eligible
7 employees and minimum employer contributions, shall be applied
8 uniformly among all small employers with the same number of
9 eligible employees applying for coverage or receiving coverage from
10 the small employer carrier.

11 (ii) A small employer carrier may vary application
12 of minimum participation requirements and minimum employer
13 contribution requirements only by the size of the small employer
14 group.

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

21 (B) With respect to a small employer with ten or fewer
22 eligible employees, a small employer carrier may consider employees
23 or dependents who have coverage under another health benefit plan
24 sponsored by such small employer in applying minimum participation
25 requirements.

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

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

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

22 (iii) A small employer carrier shall not place any
23 restriction in regard to any health-status-related factor on an
24 eligible employee or dependent with respect to enrollment or plan
25 participation.

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

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

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

22 (6) (a) A small employer carrier offering coverage through
23 a network plan shall not be required to offer coverage or accept
24 applications pursuant to subsection (2) of this section to or from
25 a small employer as defined in subsection (1) of this section:

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

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

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

20 (7) A small employer carrier shall not be required to
21 provide coverage to small employers pursuant to subsection (2)
22 of this section for any period of time for which the director
23 determines that requiring the acceptance of small employers in
24 accordance with the provisions of such subsection would place the
25 small employer carrier in a financially impaired condition.

1 Sec. 11. Section 44-5904, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 44-5904 (1) The director or any of his or her examiners
4 may conduct an examination under the Insurers Examination Act of
5 any company incorporated in this state or in any other state
6 or country admitted to or applying for admission to transact
7 business in this state as often as the director in his or her
8 sole discretion deems appropriate but shall at a minimum conduct
9 an examination of every domestic insurer not less frequently than
10 once every ~~four~~ five years. In scheduling and determining the
11 nature, scope, and frequency of the examination of a company, the
12 director shall consider such matters as the results of financial
13 statement analyses and ratios, changes in the company's management
14 or ownership, actuarial opinions, reports of independent certified
15 public accountants, the company's ability to meet and fulfill its
16 obligations, the company's compliance with provisions of law, other
17 facts relating to the company's business methods, the company's
18 management and its dealings with its policyholders, and other
19 criteria as set forth in the Examiners' Handbook adopted by the
20 National Association of Insurance Commissioners and in effect when
21 the director conducts an examination under this section.

22 (2) For purposes of completing an examination of any
23 company under the act, the director may examine or investigate any
24 person, or the business of any person, insofar as such examination
25 or investigation is, in the sole discretion of the director,

1 necessary or material to the examination of the company.

2 Sec. 12. Section 44-5905, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 44-5905 (1) Upon determining that an examination should
5 be conducted, the director or his or her designee shall appoint one
6 or more examiners to conduct the examination and instruct them as
7 to the scope of the examination. In conducting the examination, the
8 examiner shall observe those guidelines and procedures set forth
9 in the Examiners' Handbook adopted by the National Association of
10 Insurance Commissioners. The director may also employ such other
11 guidelines or procedures as the director may deem appropriate.

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

19 (b) (i) (A) Every company or person subject to the Insurers
20 Examination Act shall retain all books, records, accounts, papers,
21 documents, and computer or other recordings relating to the
22 property, assets, financial accounts, and business of such company
23 or person in a manner that permits examination of such books,
24 records, accounts, papers, documents, and computer or other
25 recordings for ~~four~~ five years, or until the period of time

1 in which the transaction took place has undergone a financial
2 examination by the director, whichever is later, following the
3 completion of a transaction relating to the property, assets,
4 financial accounts, and business of such company or person.

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

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

21 (c) The officers, directors, employees, and agents of the
22 company or person shall facilitate the examination and aid in the
23 examination so far as it is in their power to do so. The refusal
24 of any company, by its officers, directors, employees, or agents,
25 to submit to examination or to comply with any reasonable written

1 request of the examiners shall be grounds for suspension or refusal
2 of or nonrenewal of any license or authority held by the company to
3 engage in an insurance or other business subject to the director's
4 jurisdiction. Any such proceedings for suspension, revocation, or
5 refusal of any license or authority shall be conducted pursuant to
6 the Administrative Procedure Act.

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

12 (3) The director or any of his or her examiners shall
13 have the power to issue subpoenas, to administer oaths, and to
14 examine under oath any person as to any matter pertinent to
15 the examination. Upon the failure or refusal of any person to
16 obey a subpoena, the director may petition a court of competent
17 jurisdiction, and upon proper showing, the court may enter an
18 order compelling the witness to appear and testify or produce
19 documentary evidence. Failure to obey the court order shall be
20 punishable as contempt of court. Every person shall be obliged to
21 attend as a witness at the place specified in the subpoena, when
22 subpoenaed, anywhere within the state. He or she shall be entitled
23 to the same fees and mileage, if claimed, as a witness in the
24 district court with mileage to be computed at the rate provided in
25 section 81-1176, which fees, mileage, and actual expense, if any,

1 necessarily incurred in securing the attendance of witnesses, and
2 their testimony, shall be itemized and charged against, and be paid
3 by, the company being examined.

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

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

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

23 Sec. 13. Original sections 12-1116, 44-710.03, 44-710.04,
24 44-4065, 44-5223, 44-5225, 44-5260, 44-5904, and 44-5905, Reissue
25 Revised Statutes of Nebraska, and sections 44-1988 and 44-5103,

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1 **Revised Statutes Cumulative Supplement, 2008, are repealed.**