

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 180

FINAL READING

Introduced by Scheer, 19.

Read first time January 12, 2015

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to insurance; to amend sections 44-201 and
- 2 44-1981, Reissue Revised Statutes of Nebraska; to redefine terms
- 3 relating to title insurance; and to repeal the original sections.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 44-201, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 44-201 An insurance corporation may be formed for the following
4 purposes or may insure the following lines:

5 (1) LIFE INSURANCE. Insurance upon lives of persons, including
6 endowments and annuities, and every insurance pertaining thereto and
7 disability benefits, except that life insurance shall not include
8 variable life insurance specified in subdivision (2) of this section and
9 variable annuities specified in subdivision (3) of this section;

10 (2) VARIABLE LIFE INSURANCE. Insurance on the lives of individuals,
11 the amount or duration of which varies according to the investment
12 experience of any separate account or accounts established and maintained
13 by the insurer as to such insurance;

14 (3) VARIABLE ANNUITIES. Insurance policies issued on an individual
15 or group basis by which an insurer promises to pay a variable sum of
16 money either in a lump sum or periodically for life or for some other
17 specified period;

18 (4) SICKNESS AND ACCIDENT INSURANCE. Insurance against loss or
19 expense resulting from the sickness of the insured, from bodily injury or
20 death of the insured by accident, or both, and every insurance pertaining
21 thereto;

22 (5) PROPERTY INSURANCE. Insurance against loss or damage, including
23 consequential loss or damage, to real or personal property of every kind
24 and any interest in such property from any and all hazards or causes,
25 except that property insurance shall not include title insurance
26 specified in subdivision (15) of this section and marine insurance
27 specified in subdivision (18) of this section;

28 (6) CREDIT PROPERTY INSURANCE. Insurance against loss or damage to
29 personal property used as collateral for securing a loan or to personal
30 property purchased pursuant to a credit transaction, but only insofar as
31 it applies to property sold to or pledged by individual consumers for

1 personal use;

2 (7) GLASS INSURANCE. Insurance against loss or damage to glass,
3 including its lettering, ornamentation, and fittings;

4 (8) BURGLARY AND THEFT INSURANCE. Insurance against loss or damage
5 by burglary, theft, larceny, robbery, forgery, fraud, vandalism,
6 malicious mischief, confiscation or wrongful conversion, disposal, or
7 concealment or from any attempt at any of the foregoing;

8 (9) BOILER AND MACHINERY INSURANCE. Insurance against any liability
9 and loss or damage to life, person, property, or interest resulting from
10 accidents to or explosions of boilers, pipes, pressure containers,
11 machinery, or apparatus;

12 (10) LIABILITY INSURANCE. Insurance against legal liability for the
13 death, injury, or disability of any person, for injury or damage to any
14 person, or for damage to property, and the providing of medical,
15 hospital, surgical, or disability benefits to injured persons and funeral
16 and death benefits to dependents, beneficiaries, or personal
17 representatives of persons killed, irrespective of legal liability of the
18 insured, when issued as an incidental coverage with or supplemental to
19 liability insurance, except that liability insurance shall not include
20 workers' compensation and employers liability insurance specified in
21 subdivision (11) of this section;

22 (11) WORKERS' COMPENSATION AND EMPLOYERS LIABILITY INSURANCE.
23 Insurance against the legal liability of any employer for the death or
24 disablement of or injury to an employee whether imposed by common law or
25 statute or assumed by contract, except that workers' compensation and
26 employers liability insurance shall not include liability insurance
27 specified in subdivision (10) of this section;

28 (12) VEHICLE INSURANCE. Insurance against any loss or damage to any
29 land vehicle, other than railroad rolling stock, or any draft animal,
30 from any hazard or cause, and against any loss, liability, or expense
31 resulting from or incidental to ownership, maintenance, or use of any

1 such vehicle or animal, together with insurance against accidental injury
2 to or death of any person, irrespective of legal liability of the
3 insured, if such insurance is issued as an incidental part of insurance
4 on the vehicle or draft animal;

5 (13) FIDELITY INSURANCE. Insurance guaranteeing the fidelity of
6 persons holding positions of public or private trust;

7 (14) SURETY INSURANCE. Insurance guaranteeing the performance of
8 contracts other than insurance policies or guaranteeing and executing all
9 bonds, undertakings, and contracts of suretyship, except that surety
10 insurance shall not include title insurance specified in subdivision (15)
11 of this section and financial guaranty insurance specified in subdivision
12 (19) of this section;

13 (15) TITLE INSURANCE. (a) Insurance guaranteeing or indemnifying
14 owners of real property or others interested therein against loss or
15 damage suffered by reason of (i a) liens, encumbrances upon, defects in,
16 or the unmarketability of title to such real property, or adverse claim
17 to title in real property with reasonable examination of title
18 guaranteeing, warranting, or otherwise insuring by a title insurer the
19 correctness of searches relating to the title to real property and (ii b)
20 defects in the authorization, execution, or delivery of an encumbrance
21 upon such real property, or any share, participation, or other interest
22 in such encumbrance, guaranteeing, warranting, or otherwise insuring by a
23 title insurer the validity and enforceability of evidences of
24 indebtedness secured by an encumbrance upon or interest in such real
25 property; or

26 (b) Insurance guaranteeing or indemnifying owners of personal
27 property or secured parties or others interested therein against loss or
28 damage pertaining to adverse claims to title, liens, encumbrances upon,
29 or security interests in personal property or fixtures, including the
30 existence or nonexistence of attachment, perfection, or priority of
31 security interests in personal property or fixtures under the Uniform

1 Commercial Code or other laws, rules, or regulations establishing
2 procedures for the attachment, perfection, or priority of security
3 interests in personal property or fixtures or the accuracy or
4 completeness of the search or filing results obtained from public
5 registries established for determining liens or security interests in
6 personal property or fixtures or the existence or nonexistence of
7 protected purchaser status under the Uniform Commercial Code;

8 (16) CREDIT INSURANCE. Insurance against loss or damage from the
9 failure of persons indebted to or to become indebted to the insured to
10 meet existing or contemplated liabilities, including agreements to
11 purchase uncollectible debts, except that credit insurance shall not
12 include mortgage guaranty insurance specified in subdivision (17) of this
13 section and financial guaranty insurance specified in subdivision (19) of
14 this section;

15 (17) MORTGAGE GUARANTY INSURANCE. Insurance against financial loss
16 by lenders by reason of nonpayment of principal, interest, or other sums
17 agreed to be paid under the terms of any note or bond or other evidence
18 of indebtedness secured by a mortgage, deed of trust, or other instrument
19 constituting a lien or charge on real estate;

20 (18) MARINE INSURANCE. Insurance against loss or damage, including
21 consequential loss or damage, to vessels, craft, aircraft, automobiles,
22 and vehicles of every kind as well as goods, freights, cargoes,
23 merchandise, effects, disbursements, profits, money, bullion, precious
24 stones, securities, choses in action, evidences of debt, valuable papers,
25 bottomry, and respondentia interests, and all kinds of property and
26 interests therein in respect to, pertaining to, or in connection with any
27 or all risks or perils of navigation, transit, or transportation,
28 including war risks, on or under any seas, or waters, on land or in the
29 air, or while being assembled, packed, crated, baled, compressed, or
30 similarly prepared for shipment or while awaiting the same, or during any
31 delays, storage, transshipment, or reshipment incidental thereto;

1 including marine builders' risks and war risks; and against loss or
2 damage to persons or property in connection with or appertaining to
3 marine, inland marine, transit, or transportation insurance, including
4 loss or damage to either, arising out of or in connection with the
5 construction, repair, operation, maintenance, or use of the subject
6 matter of such primary insurance, but not including life insurance or
7 surety bonds; but, except as specified in this subdivision, marine
8 insurance shall not include insurance against loss by reason of bodily
9 injury to the person;

10 (19) FINANCIAL GUARANTY INSURANCE. (1) Insurance issued in the form
11 of a surety bond, insurance policy, or, when issued by an insurer, an
12 indemnity contract and any guaranty similar to the foregoing types,
13 against financial loss to an insured claimant, obligee, or indemnitee as
14 a result of any of the following events:

15 (a) Failure of any obligor on any debt instrument or other monetary
16 obligation, including common or preferred stock guaranteed under a surety
17 bond, insurance policy, or indemnity contract, to pay when due principal,
18 interest, premium, dividend, or purchase price of or on such instrument
19 or obligation, when such failure is the result of a financial default or
20 insolvency, regardless of whether such obligation is incurred directly or
21 as guarantor by or on behalf of another obligor that has also defaulted;

22 (b) Changes in the levels of interest rates, whether short or long
23 term, or the differential in interest rates between various markets or
24 products;

25 (c) Changes in the rate of exchange of currency;

26 (d) Inconvertibility of one currency into another for any reason or
27 inability to withdraw funds held in a foreign country resulting from
28 restrictions imposed by a governmental authority;

29 (e) Changes in the value of specific assets or commodities,
30 financial or commodity indices, or price levels in general; or

31 (f) Other events which the Director of Insurance determines are

1 substantially similar to any of the events described in subdivisions (a)
2 through (e) of this subdivision.

3 (2) Financial guaranty insurance shall not include:

4 (a) Insurance of any loss resulting from any event described in
5 subdivisions (19)(1)(a) through (e) of this section if the loss is
6 payable only upon the occurrence of any of the following, as specified in
7 a surety bond, insurance policy, or indemnity contract:

8 (i) A fortuitous physical event;

9 (ii) A failure of or deficiency in the operation of equipment; or

10 (iii) An inability to extract or recover a natural resource;

11 (b) Any individual or schedule public official bond;

12 (c) Any contract bond, including bid, payment, or maintenance bond,
13 or a performance bond when the bond is guarantying the execution of any
14 contract other than a contract of indebtedness or other monetary
15 obligation;

16 (d) Any court bond required in connection with judicial, probate,
17 bankruptcy, or equity proceedings, including waiver, probate, open
18 estate, and life tenant bond;

19 (e) Any bond running to the federal, state, county, or municipal
20 government or other political subdivision as a condition precedent to
21 granting of a license to engage in a particular business or of a permit
22 to exercise a particular privilege;

23 (f) Any loss security bond or utility payment indemnity bond running
24 to a governmental unit, railroad, or charitable organization;

25 (g) Any lease, purchase, and sale or concessionaire surety bond;

26 (h) Credit unemployment insurance, meaning insurance on a debtor, in
27 connection with a specific loan or other credit transaction, to provide
28 payments to creditor in the event of unemployment of the debtor for the
29 installments or other periodic payments becoming due while a debtor is
30 unemployed;

31 (i) Credit insurance, meaning insurance indemnifying manufacturers,

1 merchants, or educational institutions extending credit against loss or
2 damage resulting from nonpayment of debts owed to them for goods or
3 services provided in the normal course of their business;

4 (j) Guaranteed investment contracts issued by life insurance
5 companies which provide that the life insurer itself will make specified
6 payments in exchange for specific premiums or contributions;

7 (k) Funding agreements;

8 (l) Synthetic guaranteed investment contracts;

9 (m) Guaranteed interest contracts;

10 (n) Deposit administration contracts;

11 (o) Surety insurance as specified in subdivision (14) of this
12 section and mortgage guaranty insurance as specified in subdivision (17)
13 of this section;

14 (p) Indemnity contracts or similar guaranties to the extent that
15 they are not otherwise limited or proscribed by Chapter 44 in which a
16 life insurer:

17 (i) Guaranties its obligations or indebtedness or the obligations or
18 indebtedness of a subsidiary of which it owns more than fifty percent,
19 other than a financial guaranty insurance corporation, except that:

20 (A) To the extent that any such obligations or indebtedness are
21 backed by specific assets, such assets shall at all times be owned by the
22 insurer or the subsidiary; and

23 (B) In the case of the guaranty of the obligations or indebtedness
24 of the subsidiary that is not backed by specific assets of the life
25 insurer, such guaranty terminates once the subsidiary ceases to be a
26 subsidiary; or

27 (ii) Guaranties obligations or indebtedness, including the
28 obligation to substitute assets where appropriate, with respect to
29 specific assets acquired by a life insurer in the course of normal
30 investment activities and not for the purpose of resale with credit
31 enhancement, or guaranties obligations or indebtedness acquired by its

1 subsidiary if such assets have been:

2 (A) Acquired by a special purpose entity, the sole purpose of which
3 is to acquire specific assets of the life insurer or the subsidiary and
4 issue securities or participation certificates backed by such assets; or

5 (B) Sold to an independent third party; or

6 (iii) Guaranties obligations or indebtedness of an employee or agent
7 of the life insurer; and

8 (q) Any other form of insurance covering risks which the director
9 determines to be substantially similar to any of the risks described in
10 subdivisions (a) through (p) of this subdivision; and

11 (20) MISCELLANEOUS INSURANCE. Insurance upon any risk, including but
12 not limited to legal expense insurance and mechanical breakdown
13 insurance, not included within subdivisions (1) through ~~to~~ (19) of this
14 section, and which is a proper subject for insurance, not prohibited by
15 law or contrary to sound public policy, to be determined by the
16 Department of Insurance.

17 Sec. 2. Section 44-1981, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 44-1981 For purposes of the Title Insurers Act:

20 (1) Abstract of title means a compilation in orderly arrangement of
21 the materials and facts of record affecting the title to a specific piece
22 of land, issued under a certificate certifying to the matters contained
23 in such compilation;

24 (2) Affiliate means a specific person that directly, or indirectly
25 through one or more intermediaries, controls or is controlled by or is
26 under common control with the person specified;

27 (3) Bona fide employee of the title insurer means an individual who
28 devotes substantially all of his or her time to performing services on
29 behalf of a title insurer and whose compensation for the services is in
30 the form of salary or its equivalent paid by the title insurer;

31 (4) Control, including the terms controlling, controlled by, and

1 under common control with, means the possession, direct or indirect, of
2 the power to direct or cause the direction of the management and policies
3 of a person, whether through the ownership of voting securities, by
4 contract other than a commercial contract for goods or nonmanagement
5 services, or otherwise, unless the power is the result of an official
6 position or corporate office held by the person. Control is presumed to
7 exist if a person, directly or indirectly, owns, controls, holds with the
8 power to vote, or holds proxies representing ten percent or more of the
9 voting securities of another person. This presumption may be rebutted by
10 a showing that control does not exist in fact. The director may
11 determine, after furnishing all persons in interest notice and
12 opportunity to be heard and making specific findings of fact to support
13 the determination, that control exists in fact, notwithstanding the
14 absence of a presumption to that effect;

15 (5) Direct operations means that portion of a title insurer's
16 operations which are attributable to title insurance business written by
17 a bona fide employee of the title insurer;

18 (6) Director means the Director of Insurance;

19 (7) Escrow means written instruments, money, or other items
20 deposited by one party with a depository, escrow agent, or escrow for
21 delivery to another party upon the performance of a specified condition
22 or the happening of a certain event;

23 (8) Escrow, settlement, or closing fee means the consideration for
24 supervising or handling the actual execution, delivery, or recording of
25 transfer and lien documents and for disbursing funds;

26 (9) Foreign title insurer means any title insurer incorporated or
27 organized under the laws of any other state of the United States, the
28 District of Columbia, or any other jurisdiction of the United States;

29 (10) Net retained liability means the total liability retained by a
30 title insurer for a single risk, after taking into account any ceded
31 liability and collateral, acceptable to the director, maintained by the

1 title insurer;

2 (11) Non-United-States title insurer means any title insurer
3 incorporated or organized under the laws of any foreign nation or any
4 foreign province or territory;

5 (12) Person means any natural person, partnership, association,
6 cooperative, corporation, trust, or other legal entity;

7 (13) Producer of title insurance business has the same meaning as in
8 section 44-19,108;

9 (14) Qualified financial institution means an institution that is:

10 (a) Organized or, in the case of a United States branch or agency
11 office of a foreign banking organization, licensed under the laws of the
12 United States or any state and has been granted authority to operate with
13 fiduciary powers;

14 (b) Regulated, supervised, and examined by federal or state
15 authorities having regulatory authority over banks and trust companies;

16 (c) Insured by the appropriate federal entity; and

17 (d) Qualified under any additional rules and regulations adopted and
18 promulgated by the director;

19 (15) Referral has the same meaning as in section 44-19,108;

20 (16) Security or security deposit means funds or other property
21 received by a title insurer as collateral to secure an indemnitor's
22 obligation under an indemnity agreement pursuant to which the title
23 insurer is granted a perfected security interest in the collateral in
24 exchange for agreeing to provide coverage in a title insurance policy for
25 a specific title exception to coverage;

26 (17) Title insurance agent has the same meaning as in section
27 44-19,108;

28 (18) Title insurance business or business of title insurance means:

29 (a) Issuing as a title insurer or offering to issue as a title
30 insurer a title insurance policy;

31 (b) Transacting or proposing to transact by a title insurer any of

1 the following activities when conducted or performed in contemplation of
2 or in conjunction with the issuance of a title insurance policy:

3 (i) Soliciting or negotiating the issuance of a title insurance
4 policy;

5 (ii) Guaranteeing, warranting, or otherwise insuring the correctness
6 of title searches for all instruments affecting titles to real property,
7 any interest in real property, cooperative units, and proprietary leases
8 and for all liens or charges affecting the same;

9 (iii) Handling of escrows, settlements, or closings;

10 (iv) Executing title insurance policies;

11 (v) Effecting contracts of reinsurance;~~or~~

12 (vi) Searching or examining titles;or

13 (vii) Guaranteeing, warranting, or otherwise insuring the
14 correctness of the search or filing results obtained from public
15 registries established for determining liens or security interests in
16 personal property or fixtures;

17 (c) Guaranteeing, warranting, or insuring searches or examinations
18 of title to real property or any interest in real property;

19 (d) Guaranteeing or warranting the status of title as to ownership
20 of or liens on real property by any person other than the principals to
21 the transaction;~~or~~

22 (e) Transacting or proposing to transact any business substantially
23 equivalent to any of the activities listed in this subdivision in a
24 manner designed to evade the provisions of the Title Insurers Act;

25 (f) Guaranteeing, warranting, or insuring the search or filing
26 results obtained from public registries established for determining liens
27 or security interests in personal property or fixtures; or

28 (g) Guaranteeing or warranting adverse claims to title, liens,
29 encumbrances upon, or security interests in personal property or fixtures
30 by any person other than the principals to the transaction;

31 (19) Title insurance commitment means a preliminary commitment,

1 report, or binder issued prior to the issuance of a title insurance
2 policy containing the terms, conditions, exceptions, and any other
3 matters incorporated by reference under which the title insurer is
4 willing to issue its title insurance policy;

5 (20) Title insurance policy means: a

6 (a) A contract insuring or indemnifying owners of, or other persons
7 lawfully interested in, real property or any interest in real property,
8 against loss or damage arising from any or all of the following
9 conditions existing on or before the policy date and not excepted or
10 excluded:

11 (i a) Defects in or liens or encumbrances on the insured title;

12 (ii b) Unmarketability of the insured title;

13 (iii c) Invalidity, lack of priority, or unenforceability of liens
14 or encumbrances on the stated property;

15 (iv d) Lack of legal right of access to the land; or

16 (v e) Unenforceability of rights in title to the land; or

17 (b) A contract insuring or indemnifying owners of personal property
18 or secured parties or others interested therein against loss or damage
19 pertaining to adverse claims to title, liens, encumbrances upon, or
20 security interests in personal property or fixtures, including the
21 existence or nonexistence of the attachment, perfection, or priority of
22 security interests in personal property or fixtures under the Uniform
23 Commercial Code or other laws, rules, or regulations establishing
24 procedures for the attachment, perfection, or priority of security
25 interests in personal property or fixtures, or the accuracy or
26 completeness of the search or filing results obtained from public
27 registries established for determining liens or security interests in
28 personal property or fixtures, and arising from any or all of the
29 following conditions not excepted or excluded:

30 (i) Other liens or encumbrances on the stated personal property or
31 fixtures;

1 (ii) Invalidity, lack of priority, or unenforceability of liens or
2 other security interests in the stated personal property or fixtures; or
3 (iii) Any other matters relating directly or indirectly to the lien
4 status of the stated personal property or fixtures;

5 (21) Title insurer means any insurer organized under the laws of
6 this state for the purpose of transacting the business of title insurance
7 and any foreign or non-United-States title insurer authorized to transact
8 the business of title insurance in this state; and

9 (22) Title plant means a set of records consisting of documents,
10 maps, surveys, or entries affecting title to real property or any
11 interest in or encumbrance on the property which have been filed or
12 recorded in the jurisdiction for which the title plant is established or
13 maintained.

14 Sec. 3. Original sections 44-201 and 44-1981, Reissue Revised
15 Statutes of Nebraska, are repealed.