

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 743

Introduced by Lindstrom, 18.

Read first time January 03, 2018

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to insurance; to amend sections 44-2614,
2 44-3905, 44-3908, 44-4053, 44-4056, and 44-4521, Reissue Revised
3 Statutes of Nebraska, and sections 44-4068 and 44-8105, Revised
4 Statutes Cumulative Supplement, 2016; to adopt the Public Adjusters
5 Licensing Act; to change the certification of continuing education
6 activities as prescribed; to remove a requirement for rules and
7 regulations; to remove prelicensing education requirements; to
8 harmonize provisions; to repeal the original sections; and to
9 outright repeal sections 44-3911, 44-3912, and 44-3913, Reissue
10 Revised Statutes of Nebraska, and sections 44-3909 and 44-3910,
11 Revised Statutes Cumulative Supplement, 2016.
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 19 of this act shall be known and may be
2 cited as the Public Adjusters Licensing Act.

3 Sec. 2. The purpose of the Public Adjusters Licensing Act is to
4 govern the qualifications and procedures for licensing public adjusters
5 in this state and to specify the duties of and restrictions on public
6 adjusters, including limitation of such licensure to assisting only
7 insureds with first-party claims.

8 Sec. 3. As used in the Public Adjusters Licensing Act, unless the
9 context otherwise requires:

10 (1) Business entity means a corporation, association, partnership,
11 limited liability company, limited liability partnership, or any other
12 legal entity;

13 (2) Catastrophic disaster means an event declared to be a
14 catastrophic disaster by the President of the United States or the
15 governor of the state in which the disaster occurred that (a) results in
16 large numbers of deaths and injuries, (b) causes extensive damage or
17 destruction of facilities that provide and sustain human needs, (c)
18 produces an overwhelming demand on state and local response resources and
19 mechanisms, (d) causes a severe long-term effect on general economic
20 activity, and (e) severely affects state, local, and private sector
21 capabilities to begin and sustain response activities;

22 (3) Department means the Department of Insurance;

23 (4) Director means the Director of Insurance;

24 (5) Home state means the District of Columbia or any state or
25 territory of the United States in which the principal place of residence
26 or principal place of business of the public adjuster is located;

27 (6) Individual means a natural person;

28 (7) Insured means a person insured under the insurance policy
29 against which the claim is made;

30 (8) Person means an individual or a business entity;

31 (9) Public adjuster means any person who, for compensation or any

1 other thing of value, acts on behalf of an insured by doing any of the
2 following:

3 (a) Acting for or aiding an insured in negotiating for or effecting
4 the settlement of a first-party claim for loss or damage to real or
5 personal property of the insured;

6 (b) Advertising for employment as a public adjuster of first-party
7 claims or otherwise soliciting business or representing to the public
8 that the person is a public adjuster of first-party claims for loss or
9 damage to real or personal property of an insured; or

10 (c) Directly or indirectly soliciting the business of investigating
11 or adjusting losses, or of advising an insured about first-party claims
12 for loss or damage to real or personal property of the insured;

13 (10) Uniform business entity application means the uniform business
14 entity application prescribed by the director which conforms
15 substantially to the uniform business entity application for resident and
16 nonresident business entities adopted by the National Association of
17 Insurance Commissioners; and

18 (11) Uniform individual application means the uniform individual
19 application prescribed by the director which conforms substantially to
20 the uniform application for individual adjuster licensing adopted by the
21 National Association of Insurance Commissioners.

22 Sec. 4. (1) A person shall not operate as or represent that such
23 person is a public adjuster in this state unless such person is licensed
24 as a public adjuster in accordance with the Public Adjusters Licensing
25 Act.

26 (2) A public adjuster shall not misrepresent to any claimant that
27 such public adjuster is an adjuster representing an insurer in any
28 capacity, including acting as an employee of the insurer or acting as an
29 independent adjuster unless so appointed by an insurer in writing to act
30 on behalf of the insurer for that specific claim or purpose. A public
31 adjuster is prohibited from charging any claimant a fee when appointed by

1 the insurer and the appointment is accepted by the public adjuster.

2 (3) A public adjuster shall not, directly or indirectly, solicit, or
3 enter into, an agreement for the repair or replacement of damaged
4 property on which such public adjuster has engaged to adjust or settle
5 claims for losses or damages of the insured.

6 (4) Notwithstanding subsection (1) of this section, licensing as a
7 public adjuster shall not be required for:

8 (a) An attorney admitted to practice in this state, when acting in
9 the attorney's professional capacity as an attorney;

10 (b) A person who negotiates or settles claims arising under a life
11 or health insurance policy or an annuity contract;

12 (c) A person employed only for the purpose of obtaining facts
13 surrounding a loss or furnishing technical assistance to a licensed
14 public adjuster, including, but not limited to, a photographer,
15 estimator, private investigator, engineer, or handwriting expert;

16 (d) A licensed health care provider, or an employee of a licensed
17 health care provider, who prepares or files a health claim form on behalf
18 of a patient; or

19 (e) A person who settles subrogation claims between insurers.

20 Sec. 5. An individual applying for a resident public adjuster
21 license shall make application to the director on the uniform individual
22 application and declare under penalty of denial, suspension, or
23 revocation of the license that the statements made in the application are
24 true, correct, and complete to the best of such individual's knowledge
25 and belief. Before approving an application for a resident public
26 adjuster license, the director shall find that such individual:

27 (1) Is at least eighteen years of age. Notwithstanding the
28 provisions of section 43-2101, if an individual is issued a license
29 pursuant to the Public Adjusters Licensing Act, his or her minority ends;

30 (2) Has his or her principal place of residence or principal place
31 of business in this state;

1 (3) Has not committed any act that is a ground for denial,
2 suspension, or revocation set forth in section 11 of this act;

3 (4) Has paid the resident licensing fee, not to exceed one hundred
4 dollars, prescribed by the director;

5 (5) Except as otherwise provided under the act, has passed the
6 examinations required by section 8 of this act;

7 (6) Is trustworthy, reliable, and of good reputation, evidence of
8 which may be determined by the director;

9 (7) Is financially responsible to exercise the license and has
10 provided proof of financial responsibility as required in section 12 of
11 this act; and

12 (8) Maintains an office in this state with public access to such
13 office by reasonable appointment or regular business hours.

14 Sec. 6. (1) An individual applying for a nonresident public
15 adjuster license shall make application to the director in the manner
16 prescribed by the director and declare under penalty of denial,
17 suspension, or revocation of the license that the statements made in the
18 application are true, correct, and complete to the best of such
19 individual's knowledge and belief. Before approving an application for a
20 nonresident public adjuster license, the director shall find that the
21 applicant:

22 (a) Is licensed as a resident public adjuster and in good standing
23 in such individual's home state and that such home state awards
24 nonresident public adjuster licenses to residents of this state on the
25 same basis as provided for in the Public Adjusters Licensing Act; and

26 (b) Has paid the nonresident licensing fee, not to exceed one
27 hundred dollars, prescribed by the director.

28 (2) The director may verify the licensing status of a nonresident
29 public adjuster through the producer data base maintained by the National
30 Association of Insurance Commissioners, its affiliates, or subsidiaries.

31 (3) As a condition to continuation of a nonresident public adjuster

1 license, a licensed nonresident public adjuster shall maintain a resident
2 public adjuster license in good standing in his or her home state.

3 (4) A nonresident public adjuster license issued pursuant to this
4 section shall terminate and be surrendered immediately to the director if
5 the home state public adjuster license terminates for any reason, unless
6 the individual has been issued a license as a resident public adjuster in
7 a new home state and such new home state has reciprocity with this state.
8 A licensed nonresident public adjuster shall notify the director of any
9 change to a new home state as soon as possible, but no later than thirty
10 days after receiving a license as a resident public adjuster from the new
11 home state. The nonresident public adjuster shall include both the new
12 and the old addresses in the notice to the director.

13 Sec. 7. (1) A business entity acting as a public adjuster in this
14 state is required to obtain a public adjuster license and shall make
15 application to the director on the uniform business entity application
16 and declare under penalty of denial, suspension, or revocation of the
17 license that the statements made in the application are true, correct,
18 and complete to the best of the knowledge and belief of such entity.
19 Before approving an application for a business entity public adjuster
20 license, the director shall find that the applicant:

21 (a) Has paid the business entity licensing fee, not to exceed one
22 hundred fifty dollars, prescribed by the director; and

23 (b) Has designated a resident public adjuster or a nonresident
24 public adjuster licensed pursuant to the act to be responsible for
25 compliance with the insurance laws, rules, and regulations of this state
26 for such business entity.

27 (2) The director may require any documents reasonably necessary to
28 verify the information contained in any application submitted pursuant to
29 this section.

30 Sec. 8. (1) An individual applying for a resident public adjuster
31 license shall pass a written examination, unless exempt pursuant to

1 section 9 of this act. Such examination shall test the knowledge of the
2 individual concerning the duties and responsibilities of a public
3 adjuster and the insurance laws and regulations of this state and shall
4 be conducted as prescribed by the director.

5 (2) The director may make arrangements, including contracting with
6 an outside testing service, for administering the written examination
7 required pursuant to subsection (1) of this section and collecting a fee
8 prescribed by the director. The fee shall not exceed one hundred dollars.

9 Sec. 9. (1) An individual who moves to this state, was previously
10 licensed as a public adjuster in another state based on a public adjuster
11 examination, and applies for a resident public adjuster license in this
12 state within ninety days of establishing legal residence shall not be
13 required to pass an examination pursuant to section 8 of this act in this
14 state if:

15 (a) Such individual is currently licensed in the other state or if
16 an application for a resident public adjuster license is received within
17 twelve months of the cancellation of his or her previous license; and

18 (b) The other state issues a certification that such individual is
19 licensed and in good standing in that state or was licensed and in good
20 standing at the time of cancellation.

21 (2) An individual who applies for either a resident public adjuster
22 license or a nonresident public adjuster license in this state and who
23 was previously licensed as either a resident public adjuster or a
24 nonresident public adjuster in this state shall not be required to
25 complete an examination if the application is received within twelve
26 months of the termination of such previous license in this state and if,
27 at the time of such termination, the applicant was in good standing in
28 this state.

29 Sec. 10. (1)(a) An individual who meets the requirements for a
30 resident public adjuster license shall be issued such license. An
31 individual who meets the requirements for a nonresident public adjuster

1 license shall be issued such license.

2 (b) Each resident public adjuster license and each nonresident
3 public adjuster license shall expire on the last day of the month of such
4 public adjuster's birthday in the first year after issuance of such
5 license in which his or her age is divisible by two.

6 (c) Each resident public adjuster license and each nonresident
7 public adjuster license may be renewed within the ninety-day period
8 immediately preceding the expiration date upon payment of the renewal
9 fee, not to exceed one hundred dollars, prescribed by the director. A
10 resident public adjuster or nonresident public adjuster who allows his or
11 her license to lapse may, within the twelve-month period immediately
12 following the expiration date, reinstate the same license without the
13 necessity of passing a written examination upon payment of a
14 reinstatement fee, not to exceed one hundred twenty-five dollars,
15 prescribed by the director in addition to the renewal fee.

16 (d) The director may grant an individual licensee who is unable to
17 comply with license renewal procedures due to military service or some
18 other extenuating circumstance, including, but not limited to, a long-
19 term medical disability, a waiver of any examination requirement or any
20 other fine, fee, or sanction imposed for failure to comply with renewal
21 procedures.

22 (2)(a) A business entity that has met the requirements of the act
23 shall be issued a business entity public adjuster license.

24 (b) Each business entity public adjuster license shall expire on
25 April 30 of each year.

26 (c) A business entity public adjuster license may be renewed within
27 the ninety-day period immediately preceding the expiration date upon
28 payment of the renewal fee, not to exceed one hundred fifty dollars,
29 prescribed by the director. A business entity public adjuster that allows
30 its license to lapse may, within the thirty-day period immediately
31 following the expiration date, renew the same license upon payment of a

1 late renewal fee, not to exceed one hundred twenty-five dollars,
2 prescribed by the director in addition to the renewal fee.

3 (d) Any business entity public adjuster license renewed within the
4 thirty-day period immediately following the expiration date pursuant to
5 this subsection shall be deemed to have been renewed before the
6 expiration date.

7 (3)(a) Each license issued pursuant to the act shall contain the
8 licensee's name, address, and license number, the date of issuance, the
9 lines of authority, the expiration date, and any other information the
10 director deems necessary.

11 (b) Each licensee shall inform the director, by any means acceptable
12 to the director, of any change of legal name, address, or other
13 information submitted on the application within thirty days after the
14 change. Any licensee failing to provide such notification shall be
15 subject to a fine by the director of not more than five hundred dollars
16 per violation, suspension of the license until the change of address is
17 reported to the director, or both.

18 (c) Each licensee doing business under any name other than the
19 licensee's legal name shall notify the director prior to using the
20 assumed name.

21 (d) Each licensee shall be subject to the Unfair Insurance Trade
22 Practices Act and the Unfair Insurance Claims Settlement Practices Act.

23 (e) Each licensee shall report to the director any administrative
24 action taken against such licensee in another jurisdiction or by another
25 governmental agency in this state within thirty days of the final
26 disposition of the matter. This report shall include a copy of the order,
27 consent to order, or other relevant legal documents.

28 (f) Each licensee shall report to the director any criminal
29 prosecution of such licensee taken in any jurisdiction within thirty days
30 of arraignment. The report shall include a copy of the initial complaint
31 filed, the order resulting from the hearing, and any other relevant legal

1 documents.

2 (4) The director may contract with nongovernmental entities,
3 including the National Association of Insurance Commissioners or any
4 affiliates or subsidiaries that the National Association of Insurance
5 Commissioners oversees, to perform any ministerial functions, including
6 the collection of fees, related to the administration of the act.

7 (5) The director may establish license renewal procedures by rule
8 and regulation adopted and promulgated pursuant to the Administrative
9 Procedure Act.

10 Sec. 11. (1) The director may suspend, revoke, or refuse to issue
11 or renew a resident public adjuster license, nonresident public adjuster
12 license, or business entity public adjuster license or may levy an
13 administrative fine in accordance with subsection (4) of this section, or
14 any combination of such actions, for any one or more of the following
15 causes:

16 (a) Providing incorrect, misleading, incomplete, or materially
17 untrue information in the license application;

18 (b) Violating any insurance law or violating any rule, regulation,
19 subpoena, or order of the director or of another state's insurance
20 commissioner or director;

21 (c) Obtaining or attempting to obtain a license through
22 misrepresentation or fraud;

23 (d) Improperly withholding, misappropriating, or converting any
24 money or property received in the course of doing insurance business;

25 (e) Intentionally misrepresenting the terms of an actual or proposed
26 insurance contract or application for insurance;

27 (f) Having been convicted of a felony or a Class I, II, or III
28 misdemeanor;

29 (g) Having admitted or been found to have committed any insurance
30 unfair trade practice, any unfair claims settlement practice, or any
31 fraud;

1 (h) Using fraudulent, coercive, or dishonest practices, or
2 demonstrating incompetence, untrustworthiness, or financial
3 irresponsibility in the conduct of business in this state or elsewhere;

4 (i) Having an insurance license, or its equivalent, denied,
5 suspended, placed on probation, or revoked in Nebraska or in any other
6 state, province, district, or territory;

7 (j) Forging another's name to an application for insurance or to any
8 document related to an insurance transaction;

9 (k) Improperly using notes or any other reference material to
10 complete an examination for an insurance license;

11 (l) Knowingly accepting insurance business from an individual who is
12 not licensed;

13 (m) Failing to comply with an administrative or court order imposing
14 a child support obligation pursuant to the License Suspension Act;

15 (n) Failing to pay state income tax or comply with any
16 administrative or court order directing payment of state income tax; or

17 (o) Failing to maintain in good standing a resident license in the
18 public adjuster's home state.

19 (2) If the director does not renew or denies an application for a
20 public adjuster license, the director shall notify the applicant or
21 licensee and advise, in writing, the applicant or licensee of the reason
22 for the denial or nonrenewal of the applicant's or licensee's license.
23 The applicant or licensee may make written demand upon the director
24 within thirty days for a hearing before the director to determine the
25 reasonableness of the director's action. The hearing shall be held within
26 thirty days and shall be held pursuant to the Administrative Procedure
27 Act.

28 (3) A business entity public adjuster license may be suspended,
29 revoked, or refused if the director finds, after notice and hearing, that
30 a violation committed by an individual licensee providing services
31 through the business entity was known or should have been known by one or

1 more of the partners, officers, or managers acting on behalf of the
2 business entity and the violation was neither reported to the director
3 nor corrective action taken.

4 (4) In addition to or in lieu of any applicable denial, suspension,
5 or revocation of a license, any person violating the act may, after
6 notice and hearing, be subject to an administrative fine of not more than
7 one thousand dollars per violation. Such fine may be enforced in the same
8 manner as civil judgments. Any person charged with a violation of the act
9 may waive his or her right to a hearing and consent to such discipline as
10 the director determines is appropriate. The Administrative Procedure Act
11 shall govern all hearings held pursuant to this subsection.

12 (5) The director shall retain the authority to enforce the
13 provisions of and impose any penalty or remedy authorized by this act
14 against any person who is under investigation for or charged with a
15 violation of the act even if the person's license or registration has
16 been surrendered or has lapsed by operation of law. No disciplinary
17 proceeding shall be instituted against any licensed person after the
18 expiration of three years from the termination of such license.

19 Sec. 12. (1) Prior to the issuance of a resident public adjuster
20 license or a nonresident public adjuster license and for the duration of
21 such license, an applicant shall secure evidence of financial
22 responsibility in a format prescribed by the director through a surety
23 bond. The surety bond shall be executed and issued by an insurer
24 authorized to issue surety bonds in this state, which bond:

25 (a) Shall be in the minimum amount of twenty thousand dollars; and

26 (b) Shall not be terminated unless written notice has been filed
27 with the director and submitted to such public adjuster at least thirty
28 days prior to such termination.

29 (2) The director may request the evidence of financial
30 responsibility at any time the director deems relevant.

31 (3) A public adjuster shall immediately notify the director if

1 evidence of financial responsibility terminates or becomes impaired. The
2 authority to act as a public adjuster shall automatically terminate if
3 the evidence of financial responsibility terminates or becomes impaired.

4 Sec. 13. (1) Except as otherwise provided in this section, an
5 individual who holds a resident public adjuster license or a nonresident
6 public adjuster license shall satisfactorily complete a minimum of
7 twenty-four credits of continuing education, including three credits of
8 ethics, reported on a biennial basis in conjunction with the license
9 renewal cycle.

10 (2) The requirements of subsection (1) of this section shall not
11 apply to a nonresident public adjuster who has met the continuing
12 education requirements of the adjuster's home state and whose home state
13 gives credit to residents of this state on the same basis.

14 (3) Only continuing education courses approved by the director
15 pursuant to Chapter 44, article 39, shall be used to satisfy the
16 requirements of this section.

17 Sec. 14. (1) Public adjusters shall ensure that all contracts for
18 their services are in writing and contain the following terms:

19 (a) Legible full name of the public adjuster signing the contract,
20 as specified in director records;

21 (b) Home state, business address, and telephone number;

22 (c) Public adjuster license number;

23 (d) Title of "Public Adjuster Contract";

24 (e) Insured's full name, street address, insurer name, and insurance
25 policy number, if known or upon notification;

26 (f) Description of the loss and its location, if applicable;

27 (g) Description of services to be provided to the insured;

28 (h) Signatures of the public adjuster and the insured;

29 (i) Date contract was signed by the public adjuster and date the
30 contract was signed by the insured;

31 (j) Attestation language stating that the public adjuster is fully

1 bonded pursuant to state law; and

2 (k) The specific amount of the full salary, fee commission,
3 compensation, or other consideration the public adjuster is to receive
4 for services.

5 (2)(a) The contract may specify that the public adjuster shall be
6 named as a co-payee on an insurer's payment of a claim.

7 (b) If the compensation is based on a share of the insurance
8 settlement, the exact percentage shall be specified.

9 (c) Initial expenses to be reimbursed to the public adjuster from
10 the proceeds of the claim payment shall be specified by type and the
11 dollar estimates shall be set forth in the contract. Any additional
12 expenses shall be approved in writing by the insured.

13 (d) Compensation provisions in a public adjuster contract shall not
14 be redacted in any copy of the contract provided to the director.

15 (3) If the insurer, not later than seventy-two hours after the date
16 on which the loss is reported to the insurer, either pays or commits in
17 writing to pay to the insured the policy limit of the insurance policy,
18 the public adjuster shall:

19 (a) Not receive a commission that consists of a percentage of the
20 total amount paid by an insurer to resolve a claim;

21 (b) Inform the insured that the loss recovery amount might not be
22 increased by the insurer; and

23 (c) Be entitled only to reasonable compensation from the insured for
24 services provided by the public adjuster on behalf of the insured, based
25 on the time spent on a claim and expenses incurred by the public
26 adjuster, until the claim is paid or the insured receives a written
27 commitment to pay from the insurer.

28 (4) A public adjuster contract may not contain any contract term
29 that:

30 (a) Allows a percentage fee to be collected by the public adjuster
31 when money is due from an insurer, but not paid, or that allows a public

1 adjuster to collect the entire fee from the first check issued by an
2 insurer, rather than as a percentage of each check issued by an insurer;

3 (b) Requires the insured to authorize an insurer to issue a check
4 only in the name of the public adjuster;

5 (c) Imposes collection costs or late fees; or

6 (d) Precludes a public adjuster from pursuing civil remedies.

7 (5) Prior to the signing of the contract the public adjuster shall
8 provide the insured with a separate disclosure document regarding the
9 claim process that states:

10 (a) Property insurance policies obligate the insured to present a
11 claim to his or her insurer for consideration;

12 (b) There are three types of adjusters that could be involved in the
13 claim process. The definitions of the three types are as follows:

14 (i) Company adjuster means an insurance adjuster who is an employee
15 of an insurer. He or she represents the interest of the insurer, is paid
16 by the insurer, and will not charge the insured a fee;

17 (ii) Independent adjuster means an insurance adjuster who is hired
18 on a contract basis by an insurer to represent the interest of the
19 insurer in the settlement of the claim. He or she is paid by the insurer
20 and will not charge the insured a fee; and

21 (iii) Public adjuster means an insurance adjuster who does not work
22 for any insurer. He or she works for the insured to assist in the
23 preparation, presentation, and settlement of the claim. The insured hires
24 a public adjuster by signing a contract agreeing to pay a fee or
25 commission based on a percentage of the settlement or other method of
26 compensation;

27 (c) The insured is not required to hire a public adjuster to help
28 the insured meet the insured's obligations under the policy, but has the
29 right to do so;

30 (d) The insured has the right to initiate direct communications with
31 the insured's attorney, the insurer, the company adjuster, and the

1 insurer's attorney, or any other person regarding the settlement of the
2 insured's claim;

3 (e) The public adjuster is not a representative or employee of the
4 insurer; and

5 (f) The salary, fee, commission, or other consideration to be paid
6 to a public adjuster is the obligation of the insured, not the insurer.

7 (6) The contract shall be executed in duplicate to provide an
8 original contract to the public adjuster and an original contract to the
9 insured. The original contract retained by the public adjuster shall be
10 available at all times for inspection without notice by the department.

11 (7) The public adjuster shall provide the insurer a notification
12 letter, which has been signed by the insured, authorizing the public
13 adjuster to represent the insured's interest.

14 (8) The public adjuster shall give the insured written notice of the
15 insured's rights as provided in this section.

16 (9) The insured has the right to rescind the contract within three
17 business days after the date the contract was signed. The rescission
18 shall be in writing and mailed or delivered to the public adjuster at the
19 address in the contract within the three-business-day period.

20 (10) If the insured exercises the right to rescind the contract,
21 anything of value given by the insured under the contract will be
22 returned to the insured within fifteen days following the receipt by the
23 public adjuster of the cancellation notice.

24 (11) The director may require a public adjuster to file a contract
25 with the department in a manner prescribed by the director.

26 Sec. 15. A public adjuster who receives, accepts, or holds, on
27 behalf of an insured, any funds toward the settlement of a claim for loss
28 or damage shall deposit the funds in a non-interest-bearing escrow
29 account in a financial institution that is insured by an agency of the
30 federal government in the home state of such public adjuster or the state
31 where the loss occurred.

1 Sec. 16. (1) A public adjuster shall maintain a complete record of
2 each transaction as a public adjuster. The records required by this
3 section shall include the following:

4 (a) The name of the insured;

5 (b) The date, location, and amount of the loss;

6 (c) A copy of the contract between the public adjuster and the
7 insured;

8 (d) The name of the insurer, amount, expiration date, and policy
9 number for each policy carried with respect to the loss;

10 (e) An itemized statement of the amount recovered for the insured;

11 (f) An itemized statement of all compensation received by the public
12 adjuster, from any source whatsoever, in connection with the loss;

13 (g) A register of all money received, deposited, disbursed, or
14 withdrawn in connection with a transaction with an insured, including
15 fees, transfers, and disbursements from a trust account and all
16 transactions concerning all interest-bearing accounts;

17 (h) The name of the public adjuster who executed the contract;

18 (i) The name of the attorney representing the insured, if
19 applicable, and the name of the claims representative of the insurer; and

20 (j) Evidence of financial responsibility in a format prescribed by
21 the director.

22 (2) Records shall be maintained for at least five years after the
23 termination of the transaction with an insured and shall be open to
24 examination by the department at all times.

25 (3) Records submitted to the department in accordance with this
26 section that contain information identified in writing as proprietary by
27 the public adjuster shall be treated as confidential by the department.

28 Sec. 17. (1) A public adjuster shall serve with objectivity and
29 complete loyalty to the interest of the insured and shall, in good faith,
30 render to the insured such information, counsel, and service, as within
31 the knowledge, understanding, and opinion of such public adjuster will

1 best serve the insurance claim needs and interest of the insured.

2 (2) A public adjuster shall not solicit, nor attempt to solicit, an
3 insured during the progress of a loss-producing occurrence, as defined in
4 the insured's insurance contract.

5 (3) A public adjuster shall not permit an unlicensed employee or
6 representative of the public adjuster to conduct business for which a
7 license is required under the Public Adjusters Licensing Act.

8 (4) A public adjuster shall not have a direct or indirect financial
9 interest in any aspect of the claim, other than the salary, fee,
10 commission, or other consideration established in the written contract
11 with the insured. Direct or indirect financial interest includes, but is
12 not limited to, ownership of, employment by, or other consideration
13 received from any business entity or individual that performs any work
14 pertaining to damage related to the insured loss.

15 (5) A public adjuster shall not acquire any interest in salvage of
16 property subject to the contract with the insured unless the public
17 adjuster obtains written permission from the insured after settlement of
18 the claim with the insurer.

19 (6) Unless disclosed to the insured, a public adjuster shall abstain
20 from referring or directing the insured to obtain needed repairs or
21 services in connection with a loss from any person:

22 (a) With whom the public adjuster has a direct or indirect financial
23 interest; or

24 (b) From whom the public adjuster may receive direct or indirect
25 compensation or other consideration for the referral.

26 (7) A public adjuster shall not undertake the adjustment of any
27 claim if such public adjuster is not competent and knowledgeable as to
28 the terms and conditions of the insurance coverage or if the loss or
29 coverage otherwise exceeds the current expertise of the public adjuster.

30 (8) A public adjuster shall not knowingly make any false oral or
31 written material statements regarding any person engaged in the business

1 of insurance to any insured client or potential insured client.

2 (9) A public adjuster, while so licensed pursuant to the act, shall
3 not represent or act as a company adjuster or independent adjuster in any
4 circumstance.

5 (10) A public adjuster shall not enter into a contract or accept a
6 power of attorney that vests in such public adjuster the effective
7 authority to choose the persons who shall perform repair work.

8 (11) A public adjuster shall not agree to any loss settlement
9 without the knowledge and consent of the insured.

10 Sec. 18. (1) A public adjuster may charge the insured a reasonable
11 fee for public adjuster services. A reasonable fee shall be any payment,
12 commission, fee, or other thing of value equal to or less than fifteen
13 percent of any insurance settlement or proceeds.

14 (2) A person shall not accept a commission, service fee, or other
15 valuable consideration for investigating or settling claims in this state
16 if that person is required to be licensed under the Public Adjusters
17 Licensing Act and is not so licensed.

18 (3) In the event of a catastrophic disaster, there shall be limits
19 on catastrophic fees. No public adjuster shall charge, agree to, or
20 accept as compensation or reimbursement any payment, commission, fee, or
21 other thing of value equal to or more than ten percent of any insurance
22 settlement or proceeds resulting from a catastrophic disaster.

23 (4) No public adjuster shall require, demand, or accept any fee,
24 retainer, compensation, deposit, or other thing of value, prior to
25 settlement of a claim, unless the loss is being handled by the public
26 adjuster on a time-plus-expense basis.

27 Sec. 19. The director may adopt and promulgate rules and
28 regulations to carry out the Public Adjusters Licensing Act.

29 Sec. 20. Section 44-2614, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 44-2614 No person shall, in or on advertisements, cards, signs,

1 circulars, letterheads, or elsewhere or in any other manner by which
2 public announcements are made, use the title insurance consultant,~~public~~
3 ~~adjuster~~, or any similar title or any title, word, combination of words,
4 or abbreviation indicating that he or she gives or is engaged in the
5 business of offering to the public any advice, counsel, opinion, or
6 service with respect to insurable risks, concerning the benefits,
7 coverages, or provisions under any policy of insurance that could be
8 issued in this state, or involving the advantages or disadvantages of any
9 such policy of insurance, unless such person holds a license as an
10 insurance consultant under sections 44-2606 to 44-2635.

11 Sec. 21. Section 44-3905, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 44-3905 (1)(a) The director shall certify as approved continuing
14 education activities those courses, lectures, seminars, or other
15 instructional programs which he or she determines would be beneficial in
16 improving the product knowledge or service capability of licensees,
17 except that ~~on and after January 1, 2000~~, the director shall refuse to
18 certify as approved any continuing education activity if the sponsors
19 associated with such continuing education activity are not on the list of
20 approved continuing education sponsors maintained pursuant to subdivision
21 (c) ~~(b)~~ of this subsection. The director may require descriptive
22 information about any continuing education activity and refuse approval
23 of any continuing education activity that does not advance the purposes
24 of sections 44-3901 to 44-3908. The director may ~~shall~~ require a
25 nonrefundable fee as established by the director not to exceed fifty
26 dollars for review of any continuing education activity submitted for
27 approval or renewal.

28 (b) Beginning January 1, 2019, any certification by the director of
29 an approved continuing education activity shall be for a four-year
30 period. Any continuing education activity approved prior to January 1,
31 2019, shall expire on January 1, 2020, or four years after the date of

1 approval, whichever is later. Prior to the expiration of any such
2 certification, the approved continuing education sponsor may seek a
3 renewal of such certification from the director, and the director may
4 recertify such continuing education activity as approved if the director
5 determines the courses, lectures, seminars, or other instructional
6 programs continue to benefit the product knowledge or service
7 capabilities of licensees.

8 (c) ~~(b)~~ The director shall maintain a list of persons or entities
9 that the director has approved as continuing education sponsors. Such
10 persons or entities shall meet the qualifications for continuing
11 education sponsors established by the director. The director may require
12 such information about any continuing education sponsor as is necessary
13 to determine whether the continuing education sponsor has met such
14 qualifications. The director shall require a nonrefundable fee as
15 established by the director not to exceed two hundred dollars for
16 approval of any continuing education sponsor. The director may impose an
17 administrative penalty not to exceed two hundred dollars per violation,
18 and, in addition, may remove a continuing education sponsor from the
19 approved continuing education sponsor list, after notice and hearing, if
20 the director determines that the continuing education sponsor has:

21 (i) Failed to maintain compliance with qualifications established by
22 the director pursuant to this subdivision ~~(1)(b) of this section~~;

23 (ii) Advertised, prior to approval, that a continuing education
24 activity course is approved;

25 (iii) Advertised a continuing education activity course in a
26 materially misleading manner;

27 (iv) Submitted a course outline with material inaccuracies in topic
28 content;

29 (v) Presented nonapproved material during the time of an approved
30 continuing education activity course;

31 (vi) Failed to notify course registrants of removal or expiration of

1 ~~a continuing education activity course~~ approval;

2 (vii) Changed the program teaching method or program content in a
3 material manner without notice to the director;

4 (viii) Failed to present a course for the total amount of time
5 specified in the certification request for course approval forms
6 submitted to the department for a continuing education activity;

7 (ix) Advertised, after expiration of the certification, that a
8 continuing education activity is approved;

9 (x) Failed to inform the director of an individual's successful
10 completion of an approved continuing education activity in a manner and
11 timeframe prescribed by the director;

12 (xi) Committed other acts which reasonably indicated that the course
13 provider is incompetent or fails to use reasonable care;

14 ~~(ix) Failed to issue certificates of completion to all individuals~~
15 ~~who have satisfactorily completed the approved course~~;

16 ~~(x) Issued a certificate of completion to an individual who did not~~
17 ~~complete the approved course~~;

18 ~~(xi) Issued an inaccurate or incomplete certificate of completion~~;

19 (xii) Failed to maintain records of successful completion
20 ~~certificates issued~~;

21 (xiii) Failed to report disciplinary action taken by another state
22 licensing authority;

23 (xiv) Committed improprieties in connection with the classification,
24 application for certification, maintenance of records, teaching method,
25 ~~or program content, or issuance of certificates~~ for a continuing
26 education activity course or program; or

27 (xv) Failed to respond to the department within fifteen working days
28 after receipt of an inquiry from the department.

29 (2) The director shall certify the number of hours to be awarded for
30 participation in an approved continuing education activity based upon
31 contact or classroom hours.

1 (3) The director shall certify the number of hours to be awarded for
2 successful completion of a correspondence course or program of
3 independent study based upon the number of hours which would be awarded
4 in an equivalent classroom course or program.

5 Sec. 22. Section 44-3908, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 44-3908 The director ~~may shall~~ adopt and promulgate ~~such~~ rules and
8 regulations ~~as are necessary~~ for the effective administration of sections
9 44-3901 to 44-3908 pursuant to the Administrative Procedure Act.

10 Sec. 23. Section 44-4053, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 44-4053 (1) A person applying for a resident insurance producer
13 license shall make application to the director on the uniform application
14 and declare under penalty of denial, suspension, or revocation of the
15 license that the statements made in the application are true, correct,
16 and complete to the best of the individual's knowledge and belief. Before
17 approving the application, the director shall find that the individual:

18 (a) Is at least eighteen years of age. Notwithstanding the
19 provisions of section 43-2101, if any person is issued a license pursuant
20 to the Insurance Producers Licensing Act, his or her minority ends;

21 (b) Has not committed any act that is a ground for denial,
22 suspension, or revocation set forth in section 44-4059;

23 ~~(c) Has completed a prelicensing course of study for the lines of~~
24 ~~authority for which the person has applied, as required by sections~~
25 ~~44-3909 to 44-3913;~~

26 ~~(c)~~ ~~(d)~~ Has paid the fees set forth in section 44-4064; and

27 ~~(d)~~ ~~(e)~~ Has successfully passed the examinations for the lines of
28 authority for which the person has applied.

29 (2) A business entity acting as an insurance producer is required to
30 obtain an insurance producer license. Application shall be made using the
31 uniform business entity application. Before approving the application,

1 the director shall find that:

2 (a) The business entity has paid the fees set forth in section
3 44-4064; and

4 (b) The business entity has designated a licensed producer
5 responsible for the business entity's compliance with the insurance laws,
6 rules, and regulations of this state.

7 (3) The director may require any documents reasonably necessary to
8 verify the information contained in an application.

9 (4) Each insurer that sells, solicits, or negotiates any form of
10 limited line credit insurance shall provide to each individual whose
11 duties will include selling, soliciting, or negotiating limited line
12 credit insurance a program of instruction that may be approved by the
13 director.

14 Sec. 24. Section 44-4056, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 44-4056 (1) An individual who applies for an insurance producer
17 license in this state who was previously licensed for the same lines of
18 authority in another state shall not be required to complete any
19 ~~prelicensing education or~~ examination. This exemption is only available
20 if the person is currently licensed in that state or if the application
21 is received within ninety days of the cancellation of the applicant's
22 previous license and if the prior state issues a certification that, at
23 the time of cancellation, the applicant was in good standing in that
24 state or that state's producer data base records, maintained by the
25 National Association of Insurance Commissioners or its affiliates or
26 subsidiaries, indicate that the producer is or was licensed in good
27 standing for the line of authority requested.

28 (2) A person licensed as an insurance producer in another state who
29 moves to this state shall make application within ninety days of
30 establishing legal residence to become a resident licensee pursuant to
31 section 44-4053. No ~~prelicensing education or~~ examination shall be

1 required of that person to obtain any line of authority previously held
2 in the prior state except if the director determines otherwise by rule
3 and regulation.

4 Sec. 25. Section 44-4068, Revised Statutes Cumulative Supplement,
5 2016, is amended to read:

6 44-4068 (1) For purposes of this section:

7 (a) Limited lines travel insurance producer means a licensed
8 insurance producer, including a limited lines producer, who is designated
9 by an insurer as the travel insurance supervising entity;

10 (b) Offer and disseminate means to provide general information about
11 travel insurance, including a description of the coverage and price, as
12 well as processing the application, collecting premiums, and performing
13 other nonlicensable activities permitted by the state;

14 (c) Travel insurance means insurance coverage for personal risks
15 incident to planned travel, including interruption or cancellation of a
16 trip or event, loss of baggage or personal effects, damages to
17 accommodations or rental vehicles, and sickness, accident, disability, or
18 death occurring during travel. Travel insurance does not include major
19 medical plans that provide comprehensive medical protection for travelers
20 with trips lasting six months or longer, including those working overseas
21 as an expatriate or as deployed military personnel; and

22 (d) Travel retailer means a business entity that makes, arranges, or
23 offers travel services and that offers and disseminates travel insurance
24 as a service to its customers on behalf of and under the direction of a
25 limited lines travel insurance producer.

26 (2)(a) The director may issue a limited lines travel insurance
27 producer license to an individual or business entity that authorizes the
28 limited lines travel insurance producer to sell, solicit, or negotiate
29 travel insurance through a licensed insurer in a form and manner
30 prescribed by the director.

31 (b) A travel retailer, its employees, and its authorized

1 representatives may offer and disseminate travel insurance as a service
2 to the travel retailer's customers, on behalf of and under the direction
3 of an individual or a business entity that holds a limited lines travel
4 insurance producer license. In doing so, the travel retailer must provide
5 to prospective purchasers of travel insurance:

6 (i) A description of the material terms or the actual material terms
7 of the insurance coverage;

8 (ii) A description of the process for filing a claim;

9 (iii) A description of the review or cancellation process for the
10 travel insurance policy; and

11 (iv) The identity and contact information of the insurer and limited
12 lines travel insurance producer.

13 (c) At the time of licensure, the limited lines travel insurance
14 producer shall establish and maintain a register of each travel retailer
15 that offers travel insurance on the limited lines travel insurance
16 producer's behalf on a form prescribed by the director. The limited lines
17 travel insurance producer must maintain and update the register annually
18 and include: The name, address, and contact information of each travel
19 retailer; the name, address, and contact information of an officer or
20 person who directs or controls the travel retailer's operations; and the
21 travel retailer's federal tax identification number. The limited lines
22 travel insurance producer must submit the register to the director upon
23 request. The limited lines travel insurance producer must also certify
24 that the travel retailer registered is not in violation of 18 U.S.C.
25 1033.

26 (d) The limited lines travel insurance producer must designate one
27 of its employees who is a licensed individual producer as the person
28 responsible for the limited lines travel insurance producer's compliance
29 with the travel insurance laws, rules, and regulations of the state.

30 (e) The limited lines travel insurance producer shall require each
31 employee and authorized representative of the travel retailer whose

1 duties include offering and disseminating travel insurance to receive a
2 program of instruction or training, which may be subject to review by the
3 director. The training material must include, at minimum, instructions on
4 the types of insurance offered, ethical sales practices, and required
5 disclosures to prospective customers.

6 (3) A limited lines travel insurance producer and those registered
7 under its license are exempt from the examination requirements in section
8 44-4052, ~~the prelicensing education requirements in sections 44-3909 to~~
9 ~~44-3913,~~ and the continuing education requirements in sections 44-3901 to
10 44-3908.

11 (4) Any travel retailer offering or disseminating travel insurance
12 shall make brochures or other written materials available to prospective
13 purchasers that:

14 (a) Provide the identity and contact information of the insurer and
15 the limited lines travel insurance producer;

16 (b) Explain that the purchase of travel insurance is not required in
17 order to purchase any other product or service from the travel retailer;
18 and

19 (c) Explain that an unlicensed travel retailer is permitted to
20 provide general information about the insurance offered by the travel
21 retailer, including a description of the coverage and price, but is not
22 qualified or authorized to answer technical questions about the terms and
23 conditions of the insurance offered by the travel retailer or to evaluate
24 the adequacy of the customer's existing insurance coverage.

25 (5) A travel retailer's employee or authorized representative who is
26 not licensed as an insurance producer may not:

27 (a) Evaluate or interpret the technical terms, benefits, or
28 conditions of the offered travel insurance coverage;

29 (b) Evaluate or provide advice concerning a prospective purchaser's
30 existing insurance coverage; or

31 (c) Hold himself or herself out as a licensed insurer, licensed

1 producer, or insurance expert.

2 (6) A travel retailer whose insurance-related activities, and those
3 of its employees and authorized representatives, are limited to offering
4 and disseminating travel insurance on behalf of and under the direction
5 of a limited lines travel insurance producer meeting the conditions
6 stated in this section is authorized to receive related compensation for
7 the services upon registration by the limited lines travel insurance
8 producer.

9 (7) Travel insurance may be provided under an individual policy or
10 under a group or master policy.

11 (8) The limited lines travel insurance producer is responsible for
12 the acts of the travel retailer and shall use reasonable means to ensure
13 that the travel retailer complies with this section.

14 (9) The director may take disciplinary action against a limited
15 lines travel insurance producer pursuant to section 44-4059.

16 Sec. 26. Section 44-4521, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 44-4521 (1) On or after August 1, 2008, an individual may not sell,
19 solicit, or negotiate long-term care insurance unless the individual is
20 licensed as an insurance producer for health or sickness and accident
21 insurance and has completed a one-time training course and ongoing
22 training every twenty-four months thereafter. All training shall meet the
23 requirements of subsection (2) of this section.

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

31 (a) State and federal regulations and requirements and the

1 relationship between qualified state long-term care insurance partnership
2 programs and other public and private coverage of long-term care
3 services, including medicaid;

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

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

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

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

10 (f) Consumer suitability standards and guidelines.

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

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

20 (b) Insurers subject to the act shall maintain records with respect
21 to the training of its producers concerning the distribution of its
22 partnership policies that will allow the director to provide assurance to
23 the Department of Health and Human Services that producers have received
24 the training required by subsection (1) of this section and that
25 producers have demonstrated an understanding of the partnership policies
26 and their relationship to public and private coverage of long-term care,
27 including medicaid, in this state. These records shall be maintained in
28 accordance with section 44-5905 and shall be made available to the
29 director upon request.

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

1 (5) The training requirements of subsection (1) of this section may
2 be approved as continuing education courses pursuant to sections 44-3901
3 to 44-3908 ~~44-3913~~.

4 Sec. 27. Section 44-8105, Revised Statutes Cumulative Supplement,
5 2016, is amended to read:

6 44-8105 For purposes of the Nebraska Protection in Annuity
7 Transactions Act:

8 (1) Annuity means an annuity that is an insurance product under
9 state law and is individually solicited, whether the product is
10 classified as an individual or group annuity;

11 (2) Continuing education provider means an individual or entity that
12 is approved to offer continuing education courses pursuant to subdivision
13 (1)(c) ~~(1)(b)~~ of section 44-3905;

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

16 (4) Insurance producer means a person required to be licensed under
17 the laws of this state to sell, solicit, or negotiate insurance,
18 including annuities;

19 (5) Recommendation means advice provided by an insurance producer,
20 or an insurer if an insurance producer is not involved, to a consumer
21 that results in a purchase or exchange of an annuity in accordance with
22 that advice;

23 (6) Replacement means a transaction in which a new policy or
24 contract is to be purchased, and it is known or should be known to the
25 proposing producer, or the proposing insurer if there is no producer,
26 that by reason of the transaction, an existing policy or contract has
27 been or is to be:

28 (a) Lapsed, forfeited, surrendered, or partially surrendered,
29 assigned to the replacing insurer, or otherwise terminated;

30 (b) Converted to reduced paid-up insurance, continued as extended
31 term insurance, or otherwise reduced in value by the use of nonforfeiture

1 benefits or other policy values;

2 (c) Amended so as to effect either a reduction in benefits or in the
3 term for which coverage would otherwise remain in force or for which
4 benefits would be paid;

5 (d) Reissued with any reduction in cash value; or

6 (e) Used in a financed purchase; and

7 (7) Suitability information means information that is reasonably
8 appropriate to determine the suitability of a recommendation, including
9 the following:

10 (a) Age;

11 (b) Annual income;

12 (c) Financial situation and need, including the financial resources
13 used for the funding of the annuity;

14 (d) Financial experience;

15 (e) Financial objectives;

16 (f) Intended use of the annuity;

17 (g) Financial time horizon;

18 (h) Existing assets, including investment and life insurance
19 holdings;

20 (i) Liquidity needs;

21 (j) Liquid net worth;

22 (k) Risk tolerance; and

23 (l) Tax status.

24 Sec. 28. Original sections 44-2614, 44-3905, 44-3908, 44-4053,
25 44-4056, and 44-4521, Reissue Revised Statutes of Nebraska, and sections
26 44-4068 and 44-8105, Revised Statutes Cumulative Supplement, 2016, are
27 repealed.

28 Sec. 29. The following sections are outright repealed: Sections
29 44-3911, 44-3912, and 44-3913, Reissue Revised Statutes of Nebraska, and
30 sections 44-3909 and 44-3910, Revised Statutes Cumulative Supplement,
31 2016.