

## ENGROSSED LEGISLATIVE BILL 326

Introduced by Jacobson, 42.

A BILL FOR AN ACT relating to insurance; to amend sections 44-1523, 44-1524, 44-1525, 44-1527, 44-1528, 44-1529, 44-1530, 44-1532, 44-2403, 44-2405, 44-2406, 44-2407, 44-2411, and 44-6135, Reissue Revised Statutes of Nebraska; to define and redefine terms; to change powers and duties of the Director of Insurance; to change provisions relating to the Unfair Insurance Trade Practices Act, the Nebraska Property and Liability Insurance Guaranty Association Act, and mutual insurance holding companies; to change provisions relating to the board of directors of the Nebraska Property and Liability Insurance Guaranty Association and first-party and third-party claims; to change provisions relating to settlements, releases, compromises, and judgments; to provide for defenses as prescribed; to change requirements relating to exhaustion of remedies; to change requirements relating to annual statements as prescribed; to eliminate the Health Insurance Access Act and the Health Care Purchasing Pool Act; to eliminate obsolete provisions; to harmonize provisions; to repeal the original sections; and to outright repeal sections 44-5301, 44-5302, 44-5303, 44-5304, 44-5305, 44-5306, 44-5307, 44-5308, 44-5309, 44-5310, 44-5311, 44-6701, and 44-6702, Reissue Revised Statutes of Nebraska.

Be it enacted by the people of the State of Nebraska,

**Section 1.** Section 44-1523, Reissue Revised Statutes of Nebraska, is amended to read:

44-1523 For purposes of the Unfair Insurance Trade Practices Act:

(1) Customer means an individual who purchases, applies to purchase, or is solicited to purchase an insurance product primarily for personal, family, or household purposes;

(2) Department means the Department of Insurance;

(3) Director means the Director of Insurance;

(4) Health insurance lead generator means a person that utilizes a lead generating device to (a) publicize the availability of what is, or what purports to be, a health insurance product or service that the person is not licensed to sell directly to a customer, (b) identify a customer who may want to learn about a health insurance product, or (c) sell or transmit customer information to an insurer or producer for follow-up contact and sales activity;

(5) Insured means the party named on a policy or certificate as the individual with legal rights to the benefits provided by such policy or certificate;

(6) Insurer means any person, reciprocal exchange, interinsurer, Lloyds-type insurer or other similar group which includes an incorporated and individual unincorporated underwriter, a fraternal benefit society, or other legal entity engaged in the business of insurance, including an agent, a broker, an insurance consultant, an adjuster, or a third-party administrator. Insurer also includes a health maintenance organization, a prepaid limited health service organization, and a dental, optometric, or other similar health service plan. For purposes of the Unfair Insurance Trade Practices Act, all such insurers shall be deemed to be engaged in the business of insurance;

(7) Lead generating device means a communication directed to the public that, regardless of form, content, or stated purpose, is intended to result in the compilation or qualification of a list containing names and other personal information to be used to solicit residents of this state for the purchase of what is, or what purports to be, a health insurance product or service;

(8) Person means a natural or artificial entity, including, but not limited to, an individual, a partnership, a limited liability company, an association, a trust, or a corporation, including a health insurance lead generator operating as a natural or artificial entity;

(9) Policy or certificate means any contract of insurance, indemnity, suretyship, or annuity issued, proposed for issuance, or intended for issuance by an insurer; and

(10) Recording means an audio reproduction of sales and verification of calls, including virtual technology calls, in its entirety, used in the marketing of insurance.

**Sec. 2.** Section 44-1524, Reissue Revised Statutes of Nebraska, is amended to read:

44-1524 It shall be an unfair trade practice in the business of insurance for any insurer, health insurance lead generator, or person engaged in the business of insurance to commit any act or practice defined in section 44-1525 if the act or practice (1) is committed flagrantly and in conscious disregard of the Unfair Insurance Trade Practices Act or any rule or regulation adopted pursuant to the act or (2) is committed with such frequency as to indicate a general business practice to engage in that type of conduct.

**Sec. 3.** Section 44-1525, Reissue Revised Statutes of Nebraska, is amended to read:

44-1525 Any of the following acts or practices, if committed in violation of section 44-1524, shall be an unfair trade practice in the business of insurance:

(1) Making, issuing, circulating, or causing to be made, issued, or circulated an estimate, illustration, circular, statement, sales presentation, omission, or comparison which:

(a) Misrepresents the benefits, advantages, conditions, or terms of a policy;

(b) Misrepresents the dividends or share of the surplus to be received on a policy;

(c) Makes a false or misleading statement relating to the dividends or share of surplus previously paid on a policy;

(d) Misleads or misrepresents the financial condition of an insurer or the legal reserve system upon which a life insurer operates;

(e) Uses a name or title of a policy or class of policies which misrepresents the true nature thereof;

(f) Misrepresents for the purpose of inducing or tending to induce the

purchase, lapse, forfeiture, exchange, conversion, or surrender of a policy, including intentionally misquoting a premium rate;

(g) Misrepresents for the purpose of effecting a pledge or assignment of or effecting a loan against any policy; or

(h) Misrepresents a policy as being shares of stock;

(2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, electronic mail, Internet advertisement or posting, or other publication, or in the form of a notice, circular, pamphlet, letter, electronic posting of any kind, poster, or communication over a radio or television station, or via the Internet or other electronic means, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with respect to the business of insurance or with respect to an insurer in the conduct of the insurer's insurance business which is untrue, deceptive, or misleading;

(3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or a pamphlet, circular, article, or other literature which is false or maliciously critical of, or derogatory to, the financial condition of an insurer and which is calculated to injure such insurer;

(4) Entering into an agreement to commit, or by a concerted action committing, an act of boycott, coercion, or intimidation resulting in, or tending to result in, unreasonable restraint or monopoly in the business of insurance;

(5)(a) Knowingly filing with a supervisory or other public official, or knowingly making, publishing, disseminating, circulating, or delivering to a person, or placing before the public, or knowingly causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to a person, or placed before the public, any false material statement of fact as to

the financial condition of an insurer; or

(b) Knowingly making a false entry of a material fact in a book, report, or statement of an insurer or knowingly omitting to make a true entry of a material fact pertaining to the business of such insurer in a book, report, or statement of such insurer;

(6) Issuing or delivering or permitting an agent, officer, or employee to issue or deliver agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or a special or advisory board contract or other contract of any kind promising returns and profits as an inducement to insurance;

(7)(a) Making or permitting unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for a life insurance policy or annuity or in the dividends or other benefits payable thereon or in the terms and conditions of such policy or annuity;

(b) Making or permitting unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, or rates charged for a sickness and accident insurance policy or in the benefits payable thereunder, in the terms or conditions of such policy, or in any other manner, except that this subdivision shall not limit the negotiation of preferred provider policies and contracts under sections 44-4101 to 44-4113;

(c) Making or permitting unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk unless:

(i) The refusal, cancellation, or limitation is for a business purpose which is not a pretext for unfair discrimination; or

(ii) The refusal, cancellation, or limitation is required by law, rule, or regulation;

(d) Making or permitting unfair discrimination between individuals or

risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk, or the personal property contained therein, because of the age of the residential property unless:

(i) The refusal, cancellation, or limitation is for a business purpose which is not a pretext for unfair discrimination; or

(ii) The refusal, cancellation, or limitation is required by law, rule, or regulation;

(e) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual solely because of the sex or marital status of the individual. This subdivision shall not prohibit an insurer from taking marital status into account for the purpose of defining an individual eligible for dependent benefits; or

(f) Terminating or modifying coverage or refusing to issue or refusing to renew any property or casualty insurance policy solely because the applicant or insured or an employee of the applicant or insured is mentally or physically impaired unless:

(i) The termination, modification, or refusal is for a business purpose which is not a pretext for unfair discrimination; or

(ii) The termination, modification, or refusal is required by law, rule, or regulation.

This subdivision (f) shall not apply to a sickness and accident insurance policy sold by a casualty insurer and shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any policy;

(8)(a) Except as otherwise expressly provided by law:

(i) Knowingly permitting or offering to make or making any life insurance policy, annuity, or sickness and accident insurance policy, or agreement relating to any such policy or annuity, other than as plainly expressed in the policy or annuity issued thereon, or paying, allowing, or giving, or offering to pay, allow, or give, directly or indirectly, as inducement to such policy or

annuity, a rebate of premiums payable on the policy or annuity, or a special favor or advantage in the dividends or other benefits thereon, or valuable consideration or inducement not specified in the policy or annuity; or

(ii) Giving, selling, purchasing, or offering to give, sell, or purchase as inducement to such policy or annuity or in connection therewith any stocks, bonds, or other securities of an insurer or other corporation, association, partnership, or limited liability company, or any dividends or profits accrued thereon, or anything of value not specified in the policy or annuity.

(b) Nothing in subdivision (7) or (8)(a) of this section shall be construed as including within the definition of discrimination or rebates:

(i) In the case of a life insurance policy or annuity, paying bonuses to policyholders or otherwise abating premiums, in whole or in part, out of surplus accumulated from nonparticipating insurance if such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the insurer and its policyholders;

(ii) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses; or

(iii) Readjustment of the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;

(9) Failing of an insurer to maintain a complete record of all complaints received since the date of its last examination conducted pursuant to the Insurers Examination Act. This record shall indicate the total number of complaints, classification by line of insurance, the nature of each complaint, the disposition of each complaint, and the processing time for each complaint. For purposes of this subdivision, complaint means any written communication primarily expressing a grievance;

(10) Making a false or fraudulent statement or representation on, or

relative to, an application for a policy for the purpose of obtaining a fee, commission, money, or other benefit from an insurer, agent, broker, or individual person;

(11) Failing of an insurer, upon receipt of a written inquiry from the department, to respond to such inquiry or request additional reasonable time to respond within fifteen working days;

(12) Accepting applications for, or writing any policy of, insurance sold, negotiated, or solicited by an insurance producer or business entity not licensed or appointed as required by the Insurance Producers Licensing Act;

(13) Failing of a health insurance lead generator to maintain its books, records, documents, and other business records, including recordings, in such an order that data regarding complaints and marketing are accessible and retrievable for examination by the director. Data for at least the current calendar year and the two preceding calendar years shall be maintained; and

(14) Violating any provision of section 44-320, 44-348, 44-360, 44-361, 44-369, 44-393, 44-515 to 44-518, 44-522, 44-523, 44-7,101, 44-2132 to 44-2134, 44-3606, 44-4809, 44-4812, 44-4817, or 44-5266, the Privacy of Insurance Consumer Information Act, or the Unfair Discrimination Against Subjects of Abuse in Insurance Act.

**Sec. 4.** Section 44-1527, Reissue Revised Statutes of Nebraska, is amended to read:

44-1527 The director may examine and investigate the affairs of every insurer or health insurance lead generator doing business in this state in order to determine whether such insurer or health insurance lead generator has been, or is, engaged in an unfair trade practice as defined in section 44-1524. A health insurance lead generator and an insurer other than an agent, broker, or insurance consultant shall reimburse the department for the expense of examination in the same manner as provided for examination of insurance companies in the Insurers Examination Act. In the case of a depository institution, the director may examine and investigate the insurance activities of a depository institution in order to determine whether the depository



institution has been, or is, engaged in an unfair trade practice. The director shall notify the appropriate state or federal banking agency of the director's intent to examine and investigate a depository institution and advise the appropriate state or federal banking agency of the suspected violation of state law prior to commencing the examination and investigation.

**Sec. 5.** Section 44-1528, Reissue Revised Statutes of Nebraska, is amended to read:

44-1528 (1) Whenever the director has reason to believe that an insurer, health insurance lead generator, or person has engaged, or is engaging, in this state in any unfair trade practice whether or not defined in the Unfair Insurance Trade Practices Act and that a proceeding in respect thereto would be to the interest of the public, the director shall issue and serve upon such insurer, health insurance lead generator, or person a statement of the charges and a notice of a hearing to be held at a time and place stated in the notice, which shall be given not be less than ten days after the date of the service.

(2) At the time and place fixed for such hearing, such insurer, health insurance lead generator, or person shall have an opportunity to be heard and to show cause why an order should not be made by the director requiring such insurer, health insurance lead generator, or person to cease and desist from the acts or practices complained of. Upon good cause shown, the director shall permit any person to intervene, appear, and be heard at such hearing by counsel or in person.

(3) Nothing contained in the Unfair Insurance Trade Practices Act shall require the observance at a hearing of formal rules of pleading or evidence.

(4) The director, upon such hearing, may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, subpoena witnesses, compel attendance, and require the production of books, papers, records, correspondence, or other documents which the director deems relevant to the inquiry. The director may, and upon the request of any interested party shall, cause to be made a stenographic record of all evidence and proceedings had at such hearing. If no stenographic record is made and if a judicial review

is sought, the director shall prepare a statement of the evidence and proceeding for use on review. In case of a refusal of a person to comply with a subpoena issued under this section or to testify with respect to any matter concerning which the person may be lawfully interrogated, the district court of Lancaster County or the county where such party resides, on application of the director, may require such person to comply with the subpoena and to testify, and a failure to obey such order of the court may be punished by the court as a contempt thereof.

(5) Statements of charges, notices, orders, and other processes of the director under the act may be served by a person duly authorized by the director, either in the manner provided by law for service of process in civil actions or by mailing a copy thereof to the person affected by such statement, notice, order, or other process at the person's residence or principal office or place of business by either certified or registered mail, return receipt requested. The verified return by the person so serving such statement, notice, order, or other process, setting forth the manner of such service, shall be proof of the same, and the return receipt for such statement, notice, order, or other process, registered and mailed, shall be proof of the service of the same.

**Sec. 6.** Section 44-1529, Reissue Revised Statutes of Nebraska, is amended to read:

44-1529 If, after the hearing, the director finds that the insurer, health insurance lead generator, or person charged has engaged in an unfair trade practice, the director shall reduce the findings to writing and shall issue and cause to be served upon the insurer, health insurance lead generator, or person charged with the violation a copy of such findings and an order requiring such insurer, health insurance lead generator, or person to cease and desist from engaging in the act or practice and the director may order any one or more of the following:

(1) Payment of a monetary penalty of not more than one thousand dollars for each violation, not to exceed an aggregate penalty of thirty thousand

dollars, unless the violation was committed flagrantly in conscious disregard of the Unfair Insurance Trade Practices Act, in which case the penalty shall be not more than fifteen thousand dollars for each violation, not to exceed an aggregate penalty of one hundred fifty thousand dollars; and

(2) Suspension or revocation of the insurer's license or certificate of authority if the insurer knew or reasonably should have known that the insurer was in violation of the act.

**Sec. 7.** Section 44-1530, Reissue Revised Statutes of Nebraska, is amended to read:

44-1530 (1) Any insurer, health insurance lead generator, or person subject to an order of the director under section 44-1529 or 44-1532 may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act.

(2) An order issued by the director under section 44-1529 shall become final:

(a) Upon the expiration of the time allowed for filing a petition for review if no such petition has been duly filed, except that the director may modify or set aside the order; or

(b) Upon the final decision of the court if the court directs that the order of the director be affirmed or the petition for review dismissed.

(3) No order of the director under the Unfair Insurance Trade Practices Act or order of a court shall in any way relieve or absolve a person affected by such order from liability under any other laws of this state.

**Sec. 8.** Section 44-1532, Reissue Revised Statutes of Nebraska, is amended to read:

44-1532 Any insurer, health insurance lead generator, or person violating a cease and desist order of the director under section 44-1529 may after notice and hearing and upon order of the director be subject to:

(1) A monetary penalty of not more than thirty thousand dollars for each violation, not to exceed an aggregate penalty of one hundred fifty thousand dollars; and

(2) Suspension or revocation of the insurer's license or certificate of authority.

**Sec. 9.** Section 44-2403, Reissue Revised Statutes of Nebraska, is amended to read:

44-2403 As used in the Nebraska Property and Liability Insurance Guaranty Association Act, unless the context otherwise requires:

(1) Account means any one of the three accounts created by section 44-2404;

(2) Director means the Director of Insurance or duly authorized representative;

(3) Association means the Nebraska Property and Liability Insurance Guaranty Association created by section 44-2404;

(4)(a) Covered claim means an unpaid claim as provided in the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act which arises out of, and is within the coverage of, an insurance policy to which the Nebraska Property and Liability Insurance Guaranty Association Act applies issued by a member insurer that becomes insolvent after May 26, 1971, and (i) the claimant or insured is a resident of this state at the time of the insured event or (ii) the property from which the claim arises is permanently located in this state. For entities other than an individual, the residence of a claimant, insured, or policyholder is the state in which the principal place of business is located at the time of the insured event. Covered claim includes the policyholder's unearned premiums paid by the policyholder on an insurance policy to which the act applies issued by a member insurer that becomes insolvent on or after July 9, 1988. Nothing in this section shall be construed to supersede, abrogate, or limit the common-law ownership of accounts receivable for earned premium, unearned premium, or unearned commission;

(b) Covered claim includes claim obligations that arise through the issuance of an insurance policy by a member insurer, which are later allocated, transferred, merged into, novated, assumed by, or otherwise made the sole responsibility of a member or nonmember insurer, if: (i) The original member

insurer has no remaining obligations on the policy after the transfer; (ii) a final order of liquidation with a finding of insolvency is entered against the insurer that assumes the member's coverage obligations by a court of competent jurisdiction in the insurer's state of domicile; (iii) the claim would have been a covered claim, as defined in subdivision (4)(a) of this section, if the claim had remained the responsibility of the original member insurer and the order of liquidation had been entered against the original member insurer, with the same claim submission date and liquidation date; and (iv) in cases where the member's coverage obligations are assumed by a nonmember insurer, the transaction receives prior regulatory or judicial approval;

(c) Covered claim does not include any amount due any reinsurer, insurer, liquidator, insurance pool, state or federal government program, or underwriting association, as a subrogation or assignment recovery or otherwise, a self-insured portion of the claim, a claim for any premium calculated on a retrospective basis, a premium subject to adjustment after the date of liquidation, or any amount due to an attorney or adjuster as a fee for services rendered to the insolvent insurer. Covered claim also does not include any amount as punitive or exemplary damages or any amount claimed for incurred but not reported damages. Covered claim also does not include any claim filed with the guaranty fund after the earlier of twenty-five months after the date of the order of liquidation or the final date set by the court for the filing of claims against the liquidator or receiver. Nothing in this subdivision shall prevent a person from presenting the excluded claim to the insolvent insurer or its liquidator, but the claim shall not be asserted against any other person, including the person to whom benefits were paid or the insured of the insolvent insurer, except to the extent that the claim is outside the coverage or is in excess of the limits of the policy issued by the insolvent insurer;

(5) Insolvent insurer means a member insurer licensed to transact the business of insurance in this state, either at the time the policy was issued or when the insured event occurred, and against whom a final order of liquidation, with a finding of insolvency, has been entered by a court of

competent jurisdiction in the company's state of domicile after September 2, 1977;

(6) Member insurer means a person licensed to write any kind of insurance to which the Nebraska Property and Liability Insurance Guaranty Association Act applies pursuant to the provisions of section 44-2402, including the exchange of reciprocal or interinsurance contracts, that is licensed to transact insurance in this state, except assessment associations operating under Chapter 44, article 8, and also excepting unincorporated mutuals;

(7) Net direct written premiums means direct gross premiums written in this state on insurance policies to which the Nebraska Property and Liability Insurance Guaranty Association Act applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. Net direct written premiums does not include premiums on contracts between insurers or reinsurers;

(8) Person means any individual, corporation, partnership, limited liability company, association, voluntary organization, or reciprocal insurance exchange;

(9) Insurance means those contracts defined in section 44-102; and

(10) Cybersecurity insurance means first-party and third-party coverage in a policy or endorsement, written on a direct, admitted basis for losses and loss mitigation arising out of, or relating to, data privacy breaches, unauthorized information network security intrusions, computer viruses, ransomware, cyber extortion, identity theft, and similar exposures.

**Sec. 10.** Section 44-2405, Reissue Revised Statutes of Nebraska, is amended to read:

44-2405 (1) The board of directors of the association shall consist of seven member insurers serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the director. At least four members of the board shall represent domestic insurers. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments.

(2) Subject to the limitations in subsection (1) of this section, the director shall, in approving selections to the board, consider whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors as provided in sections 81-1174 to 81-1177 for state employees.

**Sec. 11.** Section 44-2406, Reissue Revised Statutes of Nebraska, is amended to read:

44-2406 (1) The association shall be obligated only to the extent of the covered claims existing prior to the date a member insurer becomes an insolvent insurer or arising within thirty days after it has been determined that the insurer is an insolvent insurer, before the policy expiration date, if less than thirty days after such determination, or before the insured replaces the policy or on request effects cancellation, if the insured does so within thirty days of such dates, but such obligation shall include only the amount of each covered claim that does not exceed three hundred thousand dollars, except that the association shall pay the amount required by law on any covered claim arising out of a workers' compensation policy. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises. The association shall be obligated on covered claims, including those under a workers' compensation policy, for unearned premiums only for the amount of each covered claim that does not exceed ten thousand dollars per policy. The association shall not be obligated to pay an amount in excess of three hundred thousand dollars for all first-party and third-party claims under a policy or endorsement providing, or that is found to provide, cybersecurity insurance coverage and arising out of, or related to, a single insured event, without regard to the number of claims made or the number of claimants.

(2) The director shall transmit to the association all covered claims timely filed pursuant to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act. The association shall be considered to have been designated

the director's representative pursuant to the act, and it shall proceed to investigate, hear, settle, and determine such claims unless the claimant shall, within thirty days from the date the claim is filed with the director, file with the director a written demand that the claim be processed in the liquidation proceedings as a claim not covered by the Nebraska Property and Liability Insurance Guaranty Association Act. In regard to those claims transmitted to the association by the director, the association and claimants shall have all of the rights and obligations and be subject to the same limitations and procedures as are specified in the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act for the determination of claims.

(3) In the case of claims arising from bodily injury, sickness, or disease, including death resulting therefrom, the amount of any such award shall not exceed the claimant's reasonable expenses incurred for necessary medical, surgical, X-ray, and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing, and funeral services, and any amounts actually lost by reason of claimant's inability to work and earn wages or salary or their equivalent, but not other income, that would otherwise have been earned in the normal course of such injured claimant's employment. Such award may also include payments made to others who are not members of claimant's household, which were reasonably incurred to obtain from such other persons ordinary and necessary services for the production of income in lieu of those services the claimant would have performed for himself or herself had the claimant not been injured. The amount of any such award under this subsection shall be reduced by the amount the claimant is entitled to receive as the beneficiary under any health, accident, or disability insurance, under any salary or wage continuation program under which the claimant is entitled to benefits, or from the claimant's employer in the form of workers' compensation benefits, or any other such benefits to which the claimant is legally entitled, and any claimant who intentionally fails to correctly disclose a right to any such benefits shall forfeit all rights which the claimant may have by the



provisions of the Nebraska Property and Liability Insurance Guaranty Association Act.

(4) A third party having a covered claim against any insured of an insolvent insurer may file such claim with the director pursuant to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, and the association shall process such claim in the manner specified in subsections (2) and (3) of this section. The filing of such claim shall constitute an unconditional general release of all liability of such insured in connection with the claim unless the association denies the claim for the reason that the insurance policy issued by the insolvent insurer does not afford coverage or unless the claimant, within thirty days from the date of filing a claim with the director, files with the director a written demand that the claim be processed in the liquidation proceedings as a claim not covered by the Nebraska Property and Liability Insurance Guaranty Association Act.

**Sec. 12.** Section 44-2407, Reissue Revised Statutes of Nebraska, is amended to read:

44-2407 (1) The association shall:

(a) Allocate claims paid and expenses incurred among the three accounts separately and assess member insurers separately for each account in the amounts necessary to pay (i) the obligations of the association under section 44-2406, (ii) the expenses of handling covered claims, (iii) the cost of examinations under sections 44-2412 and 44-2413, and (iv) other expenses authorized by the Nebraska Property and Liability Insurance Guaranty Association Act. The assessments of each member insurer shall be in the proportion that the net direct written premiums of such member insurer, on the basis of the insurance in the account involved, bears to the net direct written premiums of all member insurers for the same period and in the same account for the calendar year preceding the date of the assessment. The association may make an assessment for the purpose of meeting administrative costs and other general expenses not related to a particular impaired insurer, not to exceed fifty dollars per member insurer in any one year. Each member insurer shall be

notified of the assessment not later than thirty days before it is due. Except for such administrative assessment, no member insurer may be assessed in any year, on any account, an amount greater than one percent of that member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account. The association may defer, in whole or in part, the assessment of any member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact business as an insurer. Deferred assessments shall be paid when such payment will not reduce capital or surplus below such required minimum amounts. Such deferred assessments, when paid, shall be refunded to those member insurers that received larger assessments by virtue of such deferment or, in the discretion of any such insurer, credited against future assessments. No member insurer may pay a dividend to shareholders or policyholders while such insurer has an unpaid deferred assessment;

(b) Handle claims through its employees or through one or more insurers or other persons designated by the association as a servicing facility, except that the designation of a servicing facility shall be subject to the approval of the director and such designation may be declined by a member insurer;

(c) Reimburse any servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and such other expenses of the association as are authorized by the Nebraska Property and Liability Insurance Guaranty Association Act;

(d) Issue to each insurer paying an assessment under this section, a certificate of contribution in appropriate form and terms as prescribed by the director for the amount paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. The insurer may offset against its premium and related retaliatory tax liability to this state, pursuant to sections 44-150 and 77-908, accrued with respect to

business transacted in such year, an amount equal to twenty percent of the original face amount of the certificate of contribution, beginning with the first calendar year after the year of issuance through the fifth calendar year after the year of issuance. If the association recovers any sum representing amounts previously written off by member insurers and offset against premium and related retaliatory taxes imposed by sections 44-150 and 77-908, such recovered sum shall be paid by the association to the director who shall handle such funds in the same manner as provided in Chapter 77, article 9;

(e) Be deemed the insolvent insurer to the extent of the association's obligation for covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer, subject to the limitations provided in the act, as if the insurer had not become insolvent, with the exception that the liquidator shall retain the sole right to recover any reinsurance proceeds. The association's rights under this section include, but are not limited to, the right to pursue and retain salvage and subrogation recoveries on paid covered claim obligations to the extent paid by the guaranty fund;

(f) Have access to impaired or insolvent insurer records. The rehabilitator or liquidator of an impaired or insolvent insurer shall permit access by the association or its authorized representatives, and by any similar organization in another state or its authorized representatives, to the impaired or insolvent insurer's records which are necessary for the association or similar organization in carrying out its functions with regard to covered claims. In addition, the rehabilitator or liquidator shall provide the association or its representative or similar organization with copies of such records upon the request and at the expense of the association or similar organization. In providing the information set forth in this subdivision, the association or its authorized representatives and the rehabilitator or liquidator of an impaired or insolvent insurer shall execute such agreements as are necessary to preserve the confidentiality of the information provided; and

(g) Have the right to review and contest settlements, releases, compromises, waivers, and judgments to which the insolvent insurer or its

insureds were parties prior to the entry of the order of liquidation. In an action to enforce settlements, releases, and judgments to which the insolvent insurer or its insureds were parties prior to the entry of the order of liquidation, the association shall have the right to assert the following defenses described in subsections (2) through (5) of this section, in addition to the defenses available to the insurer.

(2) The association is not bound by a settlement, release, compromise, or waiver executed by an insured or the insurer, or any judgment entered against an insured or the insurer by consent or through failure to exhaust all appeals, if the settlement, release, compromise, waiver, or judgment was (a) executed, or entered into, within one hundred twenty days prior to the entry of an order of liquidation, and the insured or the insurer did not use reasonable care when it entered into the settlement, release, compromise, waiver, or judgment, or did not pursue all reasonable appeals of an adverse judgment or (b) executed by or taken against an insured or the insurer based on default, fraud, collusion, or the insurer's failure to defend.

(3) If a court of competent jurisdiction finds that the association is not bound by a settlement, release, compromise, waiver, or judgment for the reason described in subdivision (2)(a) or (b) of this section, the settlement, release, compromise, waiver, or judgment shall be set aside, and the association shall be permitted to defend any covered claim on the merits. The settlement, release, compromise, waiver, or judgment shall not be considered as evidence of liability or damages in connection with any claim brought against the association or any other party.

(4) The association shall have the right to assert any statutory defenses or rights of offset against any settlement, release, compromise, or waiver executed by an insured or the insurer, or any judgment taken against the insured or the insurer.

(5) As to any covered claims arising from a judgment under any decision, verdict, or finding based on default of the insolvent insurer or its failure to defend, the association, either on its own behalf or on behalf of the insured,

may apply to have the judgment, order, decision, verdict, or finding set aside by the same court or administrator that entered the judgment, order, decision, verdict, or finding and shall be permitted to defend the claim on the merits.

(6) The association may:

(a) Appear in, defend, and appeal any action;

(b) Employ or retain such persons as are necessary to handle claims, provide covered policy benefits and services, and appoint and direct other service providers for covered services;

(c) Borrow funds necessary to effect the purposes of the Nebraska Property and Liability Insurance Guaranty Association Act in accord with the plan of operation;

(d) Sue or be sued, and such power to sue shall include the power and right to intervene as a party before any court that has jurisdiction over an insolvent insurer as defined by such act;

(e) Negotiate and become a party to such contracts as are necessary to carry out the purpose of such act;

(f) Perform such other acts as are necessary or proper to effectuate the purpose of such act; and

(g) Bring any action against any third-party administrator, agent, attorney, or other representative of the insolvent insurer to obtain custody and control of all files, records, and electronic data related to an insolvent insurer that is appropriate or necessary for the association, or a similar organization in another state, to carry out duties under such act.

**Sec. 13.** Section 44-2411, Reissue Revised Statutes of Nebraska, is amended to read:

44-2411 (1) Any person having a claim against any insurer under any provisions of any insurance policy, which claim is also a covered claim against an insolvent insurer under the Nebraska Property and Liability Insurance Guaranty Association Act, shall be required to exhaust all rights under such policy before the association is obligated to pay the covered claim, whether the claim is a first-party or third-party claim, including, but not limited to,

accident and health insurance, workers' compensation, and all other coverages except policies of an insolvent insurer. Any person having a claim against any state or federal government program, which claim would also give rise to a covered claim, shall be required to exhaust all rights under such government program before the association is obligated to pay the covered claim. Any amount payable on a covered claim shall be reduced by the amount of the recovery under any other insurance policy or state or federal government program.

(2) Any person having a claim which may be recovered under more than one insurance guaranty association, or its equivalent, shall seek recovery first from the association of the place of residence of the insured, except that if it is a first-party claim for damage to property with a permanent location, from the association of the location of the property, and if it is a workers' compensation claim, from the association of the residence of the claimant. Any recovery pursuant to the Nebraska Property and Liability Insurance Guaranty Association Act shall be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent.

**Sec. 14.** Section 44-6135, Reissue Revised Statutes of Nebraska, is amended to read:

44-6135 A mutual insurance holding company shall file with the director, by March 1 of each year, an annual statement consisting of an income statement, balance sheet, and cash flows prepared in accordance with generally accepted accounting practices or statutory accounting principles and a confidential statement disclosing any intention to pledge, borrow against, alienate, hypothecate, or in any way encumber the assets of the mutual insurance holding company. A mutual insurance holding company shall also have an annual audit by an independent certified public accountant in a form approved by the director and shall file such audit on or before June 1 of each year for the year ending December 31 immediately preceding.

**Sec. 15.** Original sections 44-1523, 44-1524, 44-1525, 44-1527, 44-1528, 44-1529, 44-1530, 44-1532, 44-2403, 44-2405, 44-2406, 44-2407, 44-2411, and

44-6135, Reissue Revised Statutes of Nebraska, are repealed.

**Sec. 16.** The following sections are outright repealed: Sections 44-5301, 44-5302, 44-5303, 44-5304, 44-5305, 44-5306, 44-5307, 44-5308, 44-5309, 44-5310, 44-5311, 44-6701, and 44-6702, Reissue Revised Statutes of Nebraska.

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**PRESIDENT OF THE LEGISLATURE**

*THIS IS TO CERTIFY that the within LB 326 was passed by the One Hundred Ninth Legislature of Nebraska at its First Session on the ..... day of ..... 20.....*

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**CLERK OF THE LEGISLATURE**

**Approved:**

..... 20....., ..... o'clock .....M.

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**GOVERNOR**