

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 326

FINAL READING

Introduced by Jacobson, 42.

Read first time January 16, 2025

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to insurance; to amend sections 44-1523,
2 44-1524, 44-1525, 44-1527, 44-1528, 44-1529, 44-1530, 44-1532,
3 44-2403, 44-2405, 44-2406, 44-2407, 44-2411, and 44-6135, Reissue
4 Revised Statutes of Nebraska; to define and redefine terms; to
5 change powers and duties of the Director of Insurance; to change
6 provisions relating to the Unfair Insurance Trade Practices Act, the
7 Nebraska Property and Liability Insurance Guaranty Association Act,
8 and mutual insurance holding companies; to change provisions
9 relating to the board of directors of the Nebraska Property and
10 Liability Insurance Guaranty Association and first-party and third-
11 party claims; to change provisions relating to settlements,
12 releases, compromises, and judgments; to provide for defenses as
13 prescribed; to change requirements relating to exhaustion of
14 remedies; to change requirements relating to annual statements as
15 prescribed; to eliminate the Health Insurance Access Act and the
16 Health Care Purchasing Pool Act; to eliminate obsolete provisions;
17 to harmonize provisions; to repeal the original sections; and to
18 outright repeal sections 44-5301, 44-5302, 44-5303, 44-5304,
19 44-5305, 44-5306, 44-5307, 44-5308, 44-5309, 44-5310, 44-5311,
20 44-6701, and 44-6702, Reissue Revised Statutes of Nebraska.
21 Be it enacted by the people of the State of Nebraska,

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

3 44-1523 For purposes of the Unfair Insurance Trade Practices Act:

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

7 (2) (1) Department means shall mean the Department of Insurance;

8 (3) (2) Director means shall mean the Director of Insurance;

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

16 (5) (3) Insured means shall mean the party named on a policy or
17 certificate as the individual with legal rights to the benefits provided
18 by such policy or certificate;

19 (6) (4) Insurer means shall mean any person, reciprocal exchange,
20 interinsurer, Lloyds-type insurer or other similar group which includes
21 an incorporated and individual unincorporated underwriter underwriters, a
22 fraternal benefit society, or and other legal entity engaged in the
23 business of insurance, including an agent agents, a broker brokers, an
24 insurance consultant consultants, an adjuster adjusters, or a and third-
25 party administrator administrators. Insurer also includes a shall also
26 mean health maintenance organization organizations, a prepaid limited
27 health service organization organizations, and a dental, optometric, or
28 and other similar health service plan plans. For purposes of the Unfair
29 Insurance Trade Practices Act act, all such insurers shall be deemed to
30 be engaged in the business of insurance;

31 (7) Lead generating device means a communication directed to the

1 public that, regardless of form, content, or stated purpose, is intended
2 to result in the compilation or qualification of a list containing names
3 and other personal information to be used to solicit residents of this
4 state for the purchase of what is, or what purports to be, a health
5 insurance product or service;

6 (8) (5) Person means a shall mean any natural or artificial entity,
7 including, but not limited to, an individual, a partnership, a limited
8 liability company, an association, a trust, or a corporation, including a
9 health insurance lead generator operating as a natural or artificial
10 entity; and

11 (9) (6) Policy or certificate means shall include any contract of
12 insurance, indemnity, suretyship, or annuity issued, proposed for
13 issuance, or intended for issuance by an any insurer; and -

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

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

19 44-1524 It shall be an unfair trade practice in the business of
20 insurance for any insurer, health insurance lead generator, or person
21 engaged in the business of insurance to commit any act or practice
22 defined in section 44-1525 if the act or practice (1) is committed
23 flagrantly and in conscious disregard of the Unfair Insurance Trade
24 Practices Act or any rule or regulation adopted pursuant to the act or
25 (2) is ~~has been~~ committed with such frequency as to indicate a general
26 business practice to engage in that type of conduct.

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

29 44-1525 Any of the following acts or practices, if committed in
30 violation of section 44-1524, shall be an unfair trade practice ~~practices~~
31 in the business of insurance:

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

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

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

8 (c) Makes a any false or misleading statement relating ~~statements as~~
9 to the dividends or share of surplus previously paid on a any policy;

10 (d) Misleads ~~as to~~ or misrepresents the financial condition of an
11 any insurer or the legal reserve system upon which a any life insurer
12 operates;

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

15 (f) Misrepresents for the purpose of inducing or tending to induce
16 the purchase, lapse, forfeiture, exchange, conversion, or surrender of a
17 any policy, including intentionally misquoting a any premium rate;

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

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

21 (2) Making, publishing, disseminating, circulating, or placing
22 before the public, or causing, directly or indirectly, to be made,
23 published, disseminated, circulated, or placed before the public, in a
24 newspaper, magazine, electronic mail, Internet advertisement or posting,
25 or other publication, or in the form of a notice, circular, pamphlet,
26 letter, electronic posting of any kind, ~~or~~ poster, or communication over
27 a any radio or television station, or via the Internet or other
28 electronic means, or in any other way, an advertisement, announcement, or
29 statement containing an any assertion, representation, or statement with
30 respect to the business of insurance or with respect to an any insurer in
31 the conduct of the insurer's ~~his or her~~ insurance business which is

1 untrue, deceptive, or misleading;

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

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

12 (5)(a) Knowingly filing with a any supervisory or other public
13 official, or knowingly making, publishing, disseminating, circulating, or
14 delivering to a any person, or placing before the public, or knowingly
15 causing, directly or indirectly, to be made, published, disseminated,
16 circulated, delivered to a any person, or placed before the public, any
17 false material statement of fact as to the financial condition of an
18 insurer; or

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

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

29 (7)(a) Making or permitting ~~any~~ unfair discrimination between
30 individuals of the same class and equal expectation of life in the rates
31 charged for a any life insurance policy or annuity or in the dividends or

1 other benefits payable thereon or in ~~any other~~ of the terms and
2 conditions of such policy or annuity;

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

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

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

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

19 (d) Making or permitting ~~any~~ unfair discrimination between
20 individuals or risks of the same class and of essentially the same
21 hazards by refusing to issue, refusing to renew, canceling, or limiting
22 the amount of insurance coverage on a residential property risk, or the
23 personal property contained therein, because of the age of the
24 residential property unless:

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

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

29 (e) Refusing to insure, refusing to continue to insure, or limiting
30 the amount of coverage available to an individual solely because of the
31 sex or marital status of the individual. This subdivision shall not

1 prohibit an insurer from taking marital status into account for the
2 purpose of defining an individual ~~individuals~~ eligible for dependent
3 benefits; or

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

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

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

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

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

17 (i) Knowingly permitting or offering to make or making any life
18 insurance policy, annuity, or sickness and accident insurance policy, or
19 agreement relating ~~as~~ to any such policy or annuity, other than as
20 plainly expressed in the policy or annuity issued thereon, or paying,
21 allowing, or giving, or offering to pay, allow, or give, directly or
22 indirectly, as inducement to such policy or annuity, a ~~any~~ rebate of
23 premiums payable on the policy or annuity, or a ~~any~~ special favor or
24 advantage in the dividends or other benefits thereon, or ~~any~~ valuable
25 consideration or inducement ~~whatever~~ not specified in the policy or
26 annuity; or

27 (ii) Giving, selling, purchasing, or offering to give, sell, or
28 purchase as inducement to such policy or annuity or in connection
29 therewith any stocks, bonds, or other securities of an ~~any~~ insurer or
30 other corporation, association, partnership, or limited liability
31 company, or any dividends or profits accrued thereon, or anything of

1 value not specified in the policy or annuity.

2 (b) Nothing in subdivision (7) or (8)(a) of this section shall be
3 construed as including within the definition of discrimination or rebates
4 ~~any of the following acts or practices:~~

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

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

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

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

28 (10) Making a ~~false~~ or fraudulent statement ~~statements~~ or
29 representation ~~representations~~ on, or relative to, an application for a
30 policy for the purpose of obtaining a fee, commission, money, or other
31 benefit from an ~~any~~ insurer, agent, broker, or individual person;

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

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

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

14 (14) (13) Violating any provision of section 44-320, 44-348, 44-360,
15 44-361, 44-369, 44-393, 44-515 to 44-518, 44-522, 44-523, 44-7,101,
16 44-2132 to 44-2134, 44-3606, 44-4809, 44-4812, 44-4817, or 44-5266, the
17 Privacy of Insurance Consumer Information Act, or the Unfair
18 Discrimination Against Subjects of Abuse in Insurance Act.

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

21 44-1527 The director may examine and investigate the affairs of
22 every insurer or health insurance lead generator doing business in this
23 state in order to determine whether such insurer or health insurance lead
24 generator has been, or is, engaged in an ~~any~~ unfair trade practice as
25 defined in section 44-1524. A health insurance lead generator and an ~~An~~
26 insurer other than an agent, broker, or insurance consultant shall
27 reimburse the department for the expense of examination in the same
28 manner as provided for examination of insurance companies in the Insurers
29 Examination Act. In the case of a depository institution, the director
30 may examine and investigate the insurance activities of a depository
31 institution in order to determine whether the depository institution has

1 been, or is, engaged in ~~an any~~ unfair trade practice ~~defined in section~~
2 ~~44-1524~~. The director shall notify the appropriate state or federal
3 banking agency of the director's intent to examine and investigate a
4 depository institution and advise the appropriate state or federal
5 banking agency of the suspected violation ~~violations~~ of state law prior
6 to commencing the examination and investigation.

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

9 44-1528 (1) Whenever the director has reason to believe that an any
10 insurer, health insurance lead generator, or person has engaged, or is
11 engaging, in this state in any unfair trade practice whether or not
12 defined in the Unfair Insurance Trade Practices Act and that a proceeding
13 ~~by him or her~~ in respect thereto would be to the interest of the public,
14 the director ~~he or she~~ shall issue and serve upon such insurer, health
15 insurance lead generator, or person a statement of the charges ~~in that~~
16 ~~respect~~ and a notice of a hearing ~~thereon~~ to be held at a time and place
17 stated ~~fixed~~ in the notice, which shall be given not be less than ten
18 days after the date of the service ~~thereof~~.

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

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

29 (4) The director, upon such hearing, may administer oaths, examine
30 and cross-examine witnesses, receive oral and documentary evidence,
31 subpoena witnesses, compel ~~their~~ attendance, and require the production

1 of books, papers, records, correspondence, or other documents which the
2 director ~~he or she~~ deems relevant to the inquiry. The director may, and
3 upon the request of any interested party shall, cause to be made a
4 stenographic record of all the evidence and ~~all the~~ proceedings had at
5 such hearing. If no stenographic record is made and if a judicial review
6 is sought, the director shall prepare a statement of the evidence and
7 proceeding for use on review. In case of a refusal of a ~~any~~ person to
8 comply with a ~~any~~ subpoena issued under this section or to testify with
9 respect to any matter concerning which the person ~~he or she~~ may be
10 lawfully interrogated, the district court of Lancaster County or the
11 county where such party resides, on application of the director, may
12 require such person to comply with the ~~such~~ subpoena and to testify, and
13 a ~~any~~ failure to obey ~~any~~ such order of the court may be punished by the
14 court as a contempt thereof.

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

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

29 44-1529 If, after the hearing, the director finds that the insurer,
30 health insurance lead generator, or person charged has engaged in an
31 unfair trade practice, the director ~~he or she~~ shall reduce the ~~his or her~~

1 findings to writing and shall issue and cause to be served upon the
2 insurer, health insurance lead generator, or person charged with the
3 violation a copy of such findings and an order requiring such insurer,
4 health insurance lead generator, or person to cease and desist from
5 engaging in the act or practice and the director ~~he or she~~ may order any
6 one or more of the following:

7 (1) Payment of a monetary penalty of not more than one thousand
8 dollars for each violation, not to exceed an aggregate penalty of thirty
9 thousand dollars, unless the violation was committed flagrantly in
10 conscious disregard of the Unfair Insurance Trade Practices Act, in which
11 case the penalty shall be not more than fifteen thousand dollars for each
12 violation, not to exceed an aggregate penalty of one hundred fifty
13 thousand dollars; and

14 (2) Suspension or revocation of the insurer's license or certificate
15 of authority if the insurer knew or reasonably should have known that the
16 insurer ~~he, she, or it~~ was in violation of the act.

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

19 44-1530 (1) Any insurer, health insurance lead generator, or person
20 subject to an order of the director under section 44-1529 or 44-1532 may
21 appeal the order. The appeal shall be in accordance with the
22 Administrative Procedure Act.

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

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

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

31 (3) No order of the director under the Unfair Insurance Trade

1 Practices Act or order of a court ~~to enforce such order~~ shall in any way
2 relieve or absolve a any person affected by such order from any liability
3 under any other laws of this state.

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

6 44-1532 Any insurer, health insurance lead generator, or person
7 violating ~~who violates~~ a cease and desist order of the director under
8 section 44-1529 may after notice and hearing and upon order of the
9 director be subject to:

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

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

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

17 44-2403 As used in the Nebraska Property and Liability Insurance
18 Guaranty Association Act, unless the context otherwise requires:

19 (1) Account means ~~shall mean~~ any one of the three accounts created
20 by section 44-2404;

21 (2) Director means ~~shall mean~~ the Director of Insurance or ~~his or~~
22 ~~her~~ duly authorized representative;

23 (3) Association means ~~shall mean~~ the Nebraska Property and Liability
24 Insurance Guaranty Association created by section 44-2404;

25 (4)(a) Covered claim means ~~shall mean~~ an unpaid claim as provided
26 ~~for~~ in the Nebraska Insurers Supervision, Rehabilitation, and Liquidation
27 Act ~~and~~ which arises out of, and is within the coverage of, an insurance
28 policy to which the Nebraska Property and Liability Insurance Guaranty
29 Association Act applies issued by a member insurer that becomes insolvent
30 after May 26, 1971, and (i) the claimant or insured is a resident of this
31 state at the time of the insured event or (ii) the property from which

1 the claim arises is permanently located in this state. For entities other
2 than an individual, the residence of a claimant, insured, or policyholder
3 is the state in which the principal place of business is located at the
4 time of the insured event. Covered claim includes ~~shall also include~~ the
5 policyholder's unearned premiums paid by the policyholder on an insurance
6 policy to which the act applies issued by a member insurer that becomes
7 insolvent on or after July 9, 1988. Nothing in this section shall be
8 construed to supersede, abrogate, or limit the common-law ownership of
9 accounts receivable for earned premium, unearned premium, or unearned
10 commission;

11 (b) Covered claim includes claim obligations that arise through the
12 issuance of an insurance policy by a member insurer, which are later
13 allocated, transferred, merged into, novated, assumed by, or otherwise
14 made the sole responsibility of a member or nonmember insurer, if: (i)
15 The original member insurer has no remaining obligations on the policy
16 after the transfer; (ii) a final order of liquidation with a finding of
17 insolvency is entered against the insurer that assumes the member's
18 coverage obligations by a court of competent jurisdiction in the
19 insurer's state of domicile; (iii) the claim would have been a covered
20 claim, as defined in subdivision (4)(a) of this section, if the claim had
21 remained the responsibility of the original member insurer and the order
22 of liquidation had been entered against the original member insurer, with
23 the same claim submission date and liquidation date; and (iv) in cases
24 where the member's coverage obligations are assumed by a nonmember
25 insurer, the transaction receives prior regulatory or judicial approval;

26 (c) ~~(b)~~ Covered claim does ~~shall~~ not include any amount due any
27 reinsurer, insurer, liquidator, insurance pool, state or federal
28 government program, or underwriting association, as a subrogation or
29 assignment recovery recoveries or otherwise, a self-insured portion of
30 the claim, a claim for any premium calculated on a retrospective basis, a
31 premium ~~any premiums~~ subject to adjustment after the date of liquidation,

1 or any amount due to an attorney or adjuster as a fee fees for services
2 rendered to the insolvent insurer. Covered claim ~~shall~~ also does not
3 include any amount as punitive or exemplary damages or any amount claimed
4 for incurred but not reported damages. Covered claim ~~shall~~ also does not
5 include any claim filed with the guaranty fund after the earlier of
6 twenty-five months after the date of the order of liquidation or the
7 final date set by the court for the filing of claims against the
8 liquidator or receiver. Nothing in this ~~This subdivision (4)(b)~~ shall ~~not~~
9 prevent a person from presenting the excluded claim to the insolvent
10 insurer or its liquidator, but the claim shall not be asserted against
11 any other person, including the person to whom benefits were paid or the
12 insured of the insolvent insurer, except to the extent that the claim is
13 outside the coverage or is in excess of the limits of the policy issued
14 by the insolvent insurer;

15 (5) Insolvent insurer means ~~shall mean~~ a member insurer licensed to
16 transact the business of insurance in this state, either at the time the
17 policy was issued or when the insured event occurred, and against whom a
18 final order of liquidation, with a finding of insolvency, has been
19 entered by a court of competent jurisdiction in the company's state of
20 domicile after September 2, 1977;

21 (6) Member insurer means ~~a shall mean any~~ person licensed to write
22 any kind of insurance to which the Nebraska Property and Liability
23 Insurance Guaranty Association Act applies pursuant to ~~by~~ the provisions
24 of section 44-2402, including the exchange of reciprocal or
25 interinsurance contracts, that is licensed to transact insurance in this
26 state, except assessment associations operating under Chapter 44, article
27 8, and also excepting unincorporated mutuals;

28 (7) Net direct written premiums means ~~shall mean~~ direct gross
29 premiums written in this state on insurance policies to which the
30 Nebraska Property and Liability Insurance Guaranty Association Act
31 applies, less return premiums thereon and dividends paid or credited to

1 policyholders on such direct business. Net direct written premiums does
2 ~~shall~~ not include premiums on contracts between insurers or reinsurers;

3 (8) Person means ~~shall—mean~~ any individual, corporation,
4 partnership, limited liability company, association, voluntary
5 organization, or reciprocal insurance exchange; ~~and~~

6 (9) Insurance means ~~shall—mean~~ those contracts defined in section
7 44-102; ~~and~~ -

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

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

16 44-2405 (1) The board of directors of the association shall consist
17 of seven member insurers ~~persons~~ serving terms as established in the plan
18 of operation. The members of the board shall be selected by member
19 insurers subject to the approval of the director. At least four members
20 of the board shall represent domestic insurers. Vacancies on the board
21 shall be filled for the remaining period of the term in the same manner
22 as initial appointments. ~~If no members are selected within sixty days~~
23 ~~after May 26, 1971, the director may appoint the initial members of the~~
24 ~~board of directors.~~

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

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

31 **Sec. 11.** Section 44-2406, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 44-2406 (1) The association shall be obligated only to the extent of
3 the covered claims existing prior to the date a member insurer becomes an
4 insolvent insurer or arising within thirty days after it has been
5 determined that the insurer is an insolvent insurer, before the policy
6 expiration date, if less than thirty days after such determination, or
7 before the insured replaces the policy or on request effects
8 cancellation, if the insured ~~he or she~~ does so within thirty days of such
9 dates, but such obligation shall include only the amount of each covered
10 claim that does not exceed three hundred thousand dollars, except that
11 the association shall pay the amount required by law on any covered claim
12 arising out of a workers' compensation policy. In no event shall the
13 association be obligated to a policyholder or claimant in an amount in
14 excess of the face amount of the policy from which the claim arises. The
15 association shall be obligated on covered claims, including those under a
16 workers' compensation policy, for unearned premiums only for the amount
17 of each covered claim that does not exceed ten thousand dollars per
18 policy. The association shall not be obligated to pay an amount in excess
19 of three hundred thousand dollars for all first-party and third-party
20 claims under a policy or endorsement providing, or that is found to
21 provide, cybersecurity insurance coverage and arising out of, or related
22 to, a single insured event, without regard to the number of claims made
23 or the number of claimants.

24 (2) The director shall transmit to the association all covered
25 claims timely filed ~~with him or her~~ pursuant to the Nebraska Insurers
26 Supervision, Rehabilitation, and Liquidation Act. The association shall
27 ~~thereupon~~ be considered to have been designated the director's
28 representative pursuant to the act, and it shall proceed to investigate,
29 hear, settle, and determine such claims unless the claimant shall, within
30 thirty days from the date the claim is filed with the director, file with
31 the director a written demand that the claim be processed in the

1 liquidation proceedings as a claim not covered by the Nebraska Property
2 and Liability Insurance Guaranty Association Act. In regard to those
3 claims transmitted to the association by the director, the association
4 and claimants shall have all of the rights and obligations and be subject
5 to the same limitations and procedures as are specified in the Nebraska
6 Insurers Supervision, Rehabilitation, and Liquidation Act for the
7 determination of claims.

8 (3) In the case of claims arising from bodily injury, sickness, or
9 disease, including death resulting therefrom, the amount of any such
10 award shall not exceed the claimant's reasonable expenses incurred for
11 necessary medical, surgical, X-ray, and dental services, including
12 prosthetic devices and necessary ambulance, hospital, professional
13 nursing, and funeral services, and any amounts actually lost by reason of
14 claimant's inability to work and earn wages or salary or their
15 equivalent, but not other income, that would otherwise have been earned
16 in the normal course of such injured claimant's employment. Such award
17 may also include payments ~~in fact~~ made to others who are ~~not~~ members of
18 claimant's household, which were reasonably incurred to obtain from such
19 other persons ordinary and necessary services for the production of
20 income in lieu of those services the claimant would have performed for
21 himself or herself had the claimant ~~he or she~~ not been injured. The
22 amount of any such award under this subsection shall be reduced by the
23 amount the claimant is entitled to receive as the beneficiary under any
24 health, accident, or disability insurance, under any salary or wage
25 continuation program under which the claimant ~~he or she~~ is entitled to
26 benefits, or from the claimant's ~~his or her~~ employer in the form of
27 workers' compensation benefits, or any other such benefits to which the
28 claimant is legally entitled, and any claimant who intentionally fails to
29 correctly disclose a right ~~his or her rights~~ to any such benefits shall
30 forfeit all rights which the claimant ~~he or she~~ may have by the
31 provisions of the Nebraska Property and Liability Insurance Guaranty

1 Association Act.

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

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

17 44-2407 (1) The association shall:

18 (a) Allocate claims paid and expenses incurred among the three
19 accounts separately and assess member insurers separately for each
20 account in the amounts necessary to pay (i) the obligations of the
21 association under section 44-2406, (ii) the expenses of handling covered
22 claims, (iii) the cost of examinations under sections 44-2412 and
23 44-2413, and (iv) other expenses authorized by the Nebraska Property and
24 Liability Insurance Guaranty Association Act. The assessments of each
25 member insurer shall be in the proportion that the net direct written
26 premiums of such member insurer, on the basis of the insurance in the
27 account involved, bears to the net direct written premiums of all member
28 insurers for the same period and in the same account for the calendar
29 year preceding the date of the assessment. The association may make an
30 assessment for the purpose of meeting administrative costs and other
31 general expenses not related to a particular impaired insurer, not to

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

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

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

29 (d) Issue to each insurer paying an assessment under this section, a
30 certificate of contribution in appropriate form and terms as prescribed
31 by the director for the amount so paid. All outstanding certificates

1 shall be of equal dignity and priority without reference to amounts or
2 dates of issue. The insurer may offset against its premium and related
3 retaliatory tax liability to this state, pursuant to sections 44-150 and
4 77-908, accrued with respect to business transacted in such year, an
5 amount equal to twenty percent of the original face amount of the
6 certificate of contribution, beginning with the first calendar year after
7 the year of issuance through the fifth calendar year after the year of
8 issuance. If the association recovers any sum representing amounts
9 previously written off by member insurers and offset against premium and
10 related retaliatory taxes imposed by sections 44-150 and 77-908, such
11 recovered sum shall be paid by the association to the director who shall
12 handle such funds in the same manner as provided in Chapter 77, article
13 9;

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

23 (f) Have access to impaired or insolvent insurer records. The
24 rehabilitator or liquidator of an impaired or insolvent insurer shall
25 permit access by the association or its authorized representatives, and
26 by any similar organization in another state or its authorized
27 representatives, to the impaired or insolvent insurer's records which are
28 necessary for the association or ~~such~~ similar organization in carrying
29 out its functions with regard to covered claims. In addition, the
30 rehabilitator or liquidator shall provide the association or its
31 representative or ~~such~~ similar organization with copies of such records

1 upon the request and at the expense of the association or similar
2 organization. In providing the information set forth in this subdivision,
3 the association or its authorized representatives and the rehabilitator
4 or liquidator of an impaired or insolvent insurer shall execute such
5 agreements as are necessary to preserve the confidentiality of the
6 information provided; and

7 (g) Have the right to review and contest settlements, releases,
8 compromises, waivers, and judgments to which the insolvent insurer or its
9 insureds were parties prior to the entry of the order of liquidation. In
10 an action to enforce settlements, releases, and judgments to which the
11 insolvent insurer or its insureds were parties prior to the entry of the
12 order of liquidation, the association shall have the right to assert the
13 following defenses described in subsections (2) through (5) of this
14 section, in addition to the defenses available to the insurer.

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

26 (3) If a court of competent jurisdiction finds that the association
27 is not bound by a settlement, release, compromise, waiver, or judgment
28 for the reason described in subdivision (2)(a) or (b) of this section,
29 the settlement, release, compromise, waiver, or judgment shall be set
30 aside, and the association shall be permitted to defend any covered claim
31 on the merits. The settlement, release, compromise, waiver, or judgment

1 shall not be considered as evidence of liability or damages in connection
2 with any claim brought against the association or any other party.

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

7 (5) As to any covered claims arising from a judgment under any
8 decision, verdict, or finding based on default of the insolvent insurer
9 or its failure to defend, the association, either on its own behalf or on
10 behalf of the insured, may apply to have the judgment, order, decision,
11 verdict, or finding set aside by the same court or administrator that
12 entered the judgment, order, decision, verdict, or finding and shall be
13 permitted to defend the claim on the merits.

14 (6) {2} The association may:

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

16 (b) Employ or retain such persons as are necessary to handle claims,
17 provide covered policy benefits and services, and appoint and direct
18 other service providers for covered services and perform other duties of
19 the association;

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

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

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

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

30 (g) Bring any action against any third-party administrator, agent,
31 attorney, or other representative of the insolvent insurer to obtain

1 custody and control of all files, records, and electronic data related to
2 an insolvent insurer that is appropriate or necessary for the
3 association, or a similar organization in another state, to carry out
4 duties under such act.

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

7 44-2411 (1) Any person having a claim against any insurer under any
8 provisions of any insurance policy, which claim is also a covered claim
9 against an insolvent insurer under the Nebraska Property and Liability
10 Insurance Guaranty Association Act, shall be required to exhaust all
11 rights under such policy before the association is obligated to pay the
12 covered claim, whether the claim is a first-party or third-party claim,
13 including, but not limited to, accident and health insurance, workers'
14 compensation, and all other coverages except policies of an insolvent
15 insurer. Any person having a claim against any state or federal
16 government program, which claim would also give rise to a covered claim,
17 shall be required to exhaust all rights under such government program
18 before the association is obligated to pay the covered claim under such
19 act. Any amount payable on a covered claim ~~by the provisions of such act~~
20 shall be reduced by the amount of the such recovery under any other
21 insurance policy or state or federal government program.

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

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

3 44-6135 A mutual insurance holding company shall file with the
4 director, by March 1 of each year, an annual statement consisting of an
5 income statement, balance sheet, and cash flows prepared in accordance
6 with generally accepted accounting practices or statutory accounting
7 principles and a confidential statement disclosing any intention to
8 pledge, borrow against, alienate, hypothecate, or in any way encumber the
9 assets of the mutual insurance holding company. A mutual insurance
10 holding company shall also have an annual audit by an independent
11 certified public accountant in a form approved by the director and shall
12 file such audit on or before June 1 of each year for the year ending
13 December 31 immediately preceding.

14 **Sec. 15.** Original sections 44-1523, 44-1524, 44-1525, 44-1527,
15 44-1528, 44-1529, 44-1530, 44-1532, 44-2403, 44-2405, 44-2406, 44-2407,
16 44-2411, and 44-6135, Reissue Revised Statutes of Nebraska, are repealed.

17 **Sec. 16.** The following sections are outright repealed: Sections
18 44-5301, 44-5302, 44-5303, 44-5304, 44-5305, 44-5306, 44-5307, 44-5308,
19 44-5309, 44-5310, 44-5311, 44-6701, and 44-6702, Reissue Revised Statutes
20 of Nebraska.