

LEGISLATURE OF NEBRASKA  
ONE HUNDRED NINTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 326**

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 a  
15 statement of the charges ~~in that respect~~ and a notice of a hearing  
16 ~~thereon~~ to be held at a time and place stated ~~fixed~~ in the notice, which  
17 shall be given not be less than ten days after the date of the service  
18 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 to cease and desist from the acts or  
23 practices ~~so~~ complained of. Upon good cause shown, the director shall  
24 permit any person to intervene, appear, and be heard at such hearing by  
25 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.