

LEGISLATIVE BILL 119

Approved by the Governor March 9, 2005

Introduced by Banking, Commerce and Insurance Committee: Mines, 18,
Chairperson; Flood, 19; Jensen, 20; Johnson, 37; Langemeier, 23;
Louden, 49; Pahls, 31; Redfield, 12

AN ACT relating to insurance; to amend sections 12-1108, 12-1110, 12-1115, 12-1116, 44-401, 44-402.01, 44-409, 44-417, 44-797, 44-2131, 44-2132, 44-4814, 44-5103, 44-5109, 44-5143, 44-5144, 44-5149, 44-5153, 44-5154, 44-5505, 44-5508, 44-6122, 44-6125, 44-7506, 44-7508.01 to 44-7509, 44-7511, and 48-146.01, Reissue Revised Statutes of Nebraska; to change provisions of the Burial Pre-Need Sale Act; to change provisions relating to insurance reserves and coverage of breast reconstruction; to change a registration date; to change provisions relating to rehabilitation and investments; to change record requirements; to change provisions relating to the Mutual Insurance Holding Company Act; to change provisions relating to filings of rating systems and prospective loss costs; to adopt the Property and Casualty Actuarial Opinion Act and the Interstate Insurance Product Regulation Compact; to provide and eliminate requirements relating to reinsurance and qualified United States financial institutions; to provide powers for the Director of Insurance; to provide requirements for mandatory coverage and services; to provide for rules and regulations; to harmonize provisions; to repeal the original sections; and to outright repeal sections 44-416, 44-416.01, 44-416.03, and 44-416.04, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 12-1108, Reissue Revised Statutes of Nebraska, is amended to read:

12-1108. (1) No pre-need seller shall make or offer to make a pre-need sale without first obtaining a license from the director. An application for such a license or a renewal of an existing license shall be made in writing, signed by the proposed pre-need seller, duly verified on forms prepared and furnished by the director, and accompanied by an application fee of ~~fifty~~ one hundred dollars. Each application shall contain the following information:

(a) The applicant's full name and his, her, or its home and business address, and if the applicant is a partnership, limited liability company, corporation, or association, the application shall list the names and addresses of all of the officers, directors, members, or trustees thereof;

(b) The names and addresses of all agents, including employees and independent contractors, authorized to make pre-need sales in the name of the applicant;

(c) If the applicant is an individual, the applicant's social security number;

(d) Whether such agents are presently licensed as agents pursuant to section 12-1115 and if not the date upon which application will be made;

(e) Whether the pre-need seller's license has previously been suspended, revoked, or voluntarily surrendered and the reason therefor; and

(f) Whether the applicant or any officers, directors, members, or association trustees have been convicted of fraud or a crime involving misappropriation or misuse of funds within the past ten years.

(2) Upon receipt of the application, the director shall issue a license to the pre-need seller unless the director determines that the applicant (a) is unable to demonstrate its financial ability to meet the requirements of the Burial Pre-Need Sale Act, (b) has made false statements or misrepresentations in the application, (c) is not duly authorized to transact business in the state, (d) has been convicted of fraud or a crime involving misappropriation or misuse of funds within the last ten years, or (e) has failed to comply with any of the terms or conditions of the Burial Pre-Need Sale Act and such is deemed by the director to substantially impede the applicant's ability to abide by such act. If the director determines that an unrestricted license will not be issued or that no license will be issued on the basis of the application, the director may:

(i) Request additional information from the applicant;

(ii) Issue a temporary license with restrictions and reporting requirements as the director deems necessary so as to monitor the actions of

the applicant for a period not to exceed six months; or

(iii) Refuse to issue the license.

The director shall notify the applicant of the action taken, and the notification and any protest shall be made in the same manner as provided in subsection (2) of section 12-1116.

(3) A license shall expire five years from the date of the issuance and may be renewed for additional five-year periods upon filing with the director a new application for such license.

(4) The licensee shall maintain accurate accounts, books, and records of all transactions required including copies of all contracts involving pre-need sales and shall make a report as prescribed in section 12-1110.

(5)(a) The licensee shall make all books and records pertaining to trust funds available to the director for examination. The director, or a qualified person designated by the director, may during ordinary business hours examine the books, records, and accounts of the licensee with respect to the funds received by such licensee and may require the attendance at an examination under oath of all persons whose testimony he or she may deem necessary.

(b) The reasonable expenses for the examination of the books, records, and accounts of the licensee shall be fixed and determined by the director. The licensee shall be responsible for the payment of the determined expenses to the director within a reasonable time after the receipt of a statement for such expenses. The expenses shall be limited to a reasonable allocation for the salary of each examiner plus actual expenses.

Sec. 2. Section 12-1110, Reissue Revised Statutes of Nebraska, is amended to read:

12-1110. Each pre-need seller shall file a report with the director on or before June 1 of each year in such form as the director may require. The report shall contain the name and address of each trustee with which the pre-need seller has trust funds on deposit and the amount on deposit with each such trustee as of December 31 of that year or such other reporting period as the director may establish. The report shall include a list of all amounts retained as required by section 12-1114. Any pre-need seller who has discontinued making pre-need sales but who continues to have trust funds on deposit with a trustee or trustees shall not be required to obtain a renewal of his, her, or its license but shall continue as long as trust funds are being held to make reports to the director. Each such report, when filed with the director, shall be accompanied by a fee of ~~twenty-five~~ fifty dollars.

Sec. 3. Section 12-1115, Reissue Revised Statutes of Nebraska, is amended to read:

12-1115. (1) No agent shall make any pre-need sales on behalf of a pre-need seller in this state without first obtaining a license from the director. The director shall not issue such a license without requiring the proposed agent to fill out an application form stating his or her name, address, and telephone number and the pre-need seller for whom he or she will be making pre-need sales. The pre-need seller for whom the agent will be making pre-need sales shall also sign the agent's application and agree to be responsible for supervising the agent in conjunction with any pre-need sales. The fee for an agent's license shall be ~~ten~~ twenty dollars which shall accompany the application.

(2) The agent's license, when issued, shall allow the agent to make pre-need sales only for the pre-need seller whose name appears on the license. If the agency relationship between the pre-need seller and the agent terminates for any reason, the pre-need seller shall immediately notify the department of such termination. Once such notification has been received, the acts of the agent shall no longer be imputed to the pre-need seller and the agent's license shall be considered as void. The agent, upon written request by the department, shall surrender to the department the license within a period of ten days after the receipt of such written notice. Failure on the part of the agent to surrender the license after written notification shall be a Class IV misdemeanor.

(3) It shall be the responsibility of the licensed agent to notify the director of any change of the agent's address.

Sec. 4. Section 12-1116, Reissue Revised Statutes of Nebraska, is amended to read:

12-1116. (1) The director may ~~revoke~~ deny, revoke, or suspend any license of any pre-need seller or agent or may levy an administrative fine in accordance with subsection (3) of this section if the director finds that:

(a) The licensee has failed to pay the license fee prescribed for such license;

(b) The licensee, either knowingly or without the exercise of due

care to prevent the same, has violated any of the provisions of the Burial Pre-Need Sale Act or any rule or regulation adopted and promulgated by the director pursuant to such act; or

(c) An act or condition exists which, if it had existed at the time of the original application of such licensee, would have resulted in the director refusing to issue such license.

(2) Written notification shall be provided to the licensee upon the director's making such determination, and the notice shall be mailed by the director to the last address on file for the licensee by certified or registered mail, return receipt requested. The notice shall state the specific action contemplated by the director and the specific grounds for such action. The notice shall allow the licensee receiving such notice twenty days from the date of actual receipt to:

(a) Voluntarily surrender his or her license; or

(b) File a written notice of protest of the proposed action of the director. If a written notice of protest is filed by the licensee, the Administrative Procedure Act shall govern the hearing process and procedure, including all appeals. Failure to file a notice of protest within the twenty-day period shall be equivalent to a voluntary surrender of the licensee's license, and the licensee shall surrender the license to the director.

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

Sec. 5. Section 44-401, Reissue Revised Statutes of Nebraska, is amended to read:

44-401. In ascertaining the condition of a domestic stock property or casualty insurance company, there shall be allowed as assets only such investments, cash, and accounts as are authorized by the laws of this state at the date of the examination. In ascertaining its liabilities, there shall be charged in addition to the capital stock, all outstanding claims, and a sum equal to one hundred percent of the unearned premiums on the policies in force, after deducting credit for reinsurance authorized by sections ~~44-416.01 to 44-416.04~~ 30 to 35 of this act, calculated on the gross sum without any deductions on any account, charged to the policyholder on each respective risk from the date of the issuance of the policy. In ascertaining the condition of a domestic mutual property or casualty insurance company, other than a company licensed solely to write the line of insurance specified in subdivision (4) of section 44-201, there shall be allowed as assets only such investments, cash, and accounts as are authorized by the laws of this state at the date of examination. In ascertaining its liabilities, there shall be charged all outstanding claims and a reserve in an amount equal to one hundred percent of the total unearned premium on all their policies in force. If the department finds this section to be impractical in ascertaining the condition of certain kinds of insurance companies, the department shall adopt and promulgate such rules and regulations as it deems proper, efficient, and consistent with law. Such rules and regulations shall give due regard to the statutes, rules, regulations, and established industry practices which may be used in other states or which are approved by the National Association of Insurance Commissioners.

Sec. 6. Section 44-402.01, Reissue Revised Statutes of Nebraska, is amended to read:

44-402.01. Any domestic life insurance company, including, for the purposes of sections 44-402.01 to 44-402.05, all domestic fraternal benefit societies which operate on a legal reserve basis, may, after adoption of a resolution by its board of directors and certification thereof to the Director of Insurance, establish one or more separate accounts and may allocate thereto amounts, including without limitation proceeds applied under optional modes of settlement or under dividend options, to provide for life insurance and benefits incidental thereto, payable in fixed or variable amounts or both, and may, upon approval of the director, guarantee the value of the assets allocated to a separate account.

Sec. 7. Section 44-409, Reissue Revised Statutes of Nebraska, is amended to read:

44-409. In ascertaining the condition of a domestic sickness and accident insurance company, it shall be allowed as assets only such investments, cash, and accounts as are authorized by the laws of this state at

the date of the examination. In ascertaining its liabilities, there shall be charged, in addition to the capital stock and all outstanding claims, a sum equal to the total unearned premium on the policies in force, after deducting credit for reinsurance authorized by sections ~~44-416.01 to 44-416.04~~ 30 to 35 of this act, calculated on the gross sum without any deductions on any account, charged to the policyholder on each respective risk from the date of the issuance of the policy.

Sec. 8. Section 44-417, Reissue Revised Statutes of Nebraska, is amended to read:

44-417. No credits specified in sections ~~44-416.01 to 44-416.04~~ 30 to 35 of this act shall be made or allowed as an admitted asset or deduction from liability to any ceding insurer for reinsurance unless the contract of reinsurance provides in substance that, in the event of the insolvency of the ceding insurer, the portion of any risk or obligation assumed by the reinsurer, when such portion is ascertained, shall be payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract or contracts reinsured without diminution because of the insolvency of the ceding insurer. Such payments shall be made directly to the ceding insurer or to its domiciliary liquidator except (1) when the contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer or (2) when the assuming insurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees. The reinsurance agreement may provide that the domiciliary liquidator, receiver, or legal successor of an insolvent ceding insurer shall give written notice of the pendency of a claim against the insolvent ceding insurer on the policy or bond reinsured, within a reasonable time after such claim is filed in the insolvency proceeding, and that during the pendency of such claim, any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding in which such claim is to be adjudicated, any defense or defenses which it may deem available to the ceding insurer or its liquidator, receiver, or legal successor. The expense thus incurred by the assuming insurer may be filed as a claim against the insolvent ceding insurer as part of the expense of liquidation, to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer.

When two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to such claim, the expense shall be apportioned subject to court approval, in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer.

Sec. 9. Section 44-797, Reissue Revised Statutes of Nebraska, is amended to read:

44-797. (1)(a) ~~A~~ Any individual or group sickness and accident insurance policy, subscriber contract, or group health maintenance organization contract that provides medical and surgical benefits with respect to a mastectomy shall provide, in a case of a participant or beneficiary who is receiving benefits in connection with a mastectomy and who elects breast reconstruction in connection with such mastectomy, coverage for all stages of reconstruction of the breast on which the mastectomy has been performed, surgery and reconstruction of the other breast to produce a symmetrical appearance, and prostheses and physical complications of mastectomy, including lymphedemas in a manner determined in consultation with the attending physician and the patient. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits under the individual or group sickness and accident insurance policy, subscriber contract, or group health maintenance organization contract. Written notice of the availability of such coverage shall be delivered to the participant upon enrollment and annually thereafter.

(b) ~~A~~ Each individual or group sickness and accident insurance policy, subscriber contract, or group health maintenance organization contract shall provide notice to each policyholder and certificate holder of the coverage required by this section. Such notice shall be in writing and prominently positioned in any literature or correspondence made available or distributed by the plan or issuer. ~~Such~~ For group policies, such notice shall be sent to the policyholder or certificate holder by the plan or issuer to the participant or beneficiary not later than January 1, 2001 by the issuer. For individual policies, such notice shall be sent to the policyholder by the issuer no later than December 31, 2006.

(2) ~~A~~ No individual or group sickness and accident insurance policy,

subscriber contract, or group health maintenance organization contract may ~~not~~ deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section, or penalize or otherwise reduce or limit the reimbursement of an attending provider, or provide monetary or other incentives to an attending provider, to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section. Nothing in this section shall be construed to prohibit normal underwriting.

(3) Nothing in this section shall be construed to prevent a an individual or group sickness and accident insurance policy, subscriber contract, or group health maintenance organization contract offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

(4) The provisions of this section shall not apply to any individual or group policy or certificate which provides:

(a) Coverage only for accident or disability income insurance, or any combination thereof;

(b) Coverage issued as a supplement to liability insurance;

(c) Liability insurance, including general liability insurance and automobile liability insurance;

(d) Workers' compensation or similar insurance;

(e) Automobile medical payment insurance;

(f) Credit-only insurance;

(g) Coverage for onsite medical clinics;

(h) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits;

(i) Limited-scope dental or vision benefits;

(j) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof;

(k) Such other similar, limited benefits as are specified in federal regulations;

(l) Coverage only for a specified disease or illness;

(m) Hospital indemnity or other fixed indemnity insurance;

(n) Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act, as such section existed on January 1, 2005;

(o) Coverage supplemental to the coverage provided under 10 U.S.C. chapter 55, as such chapter existed on January 1, 2005; and

(p) Similar supplemental coverage provided to coverage under a group health plan.

Sec. 10. Section 44-2131, Reissue Revised Statutes of Nebraska, is amended to read:

44-2131. The total fee for filing the documents required by sections 44-2126 to 44-2130 and all amendments to such filings shall be one thousand dollars. The initial fee for registration required by the provisions of section 44-2132 shall be onethousand dollars, and an additional fee of two hundred dollars shall be payable on ~~August 1 of each calendar year thereafter so long as such registration continues and after 1993 on March~~ May 1 of each calendar year thereafter so long as such registration continues. The fees provided for by this section shall be payable to the Department of Insurance and shall be remitted to the State Treasurer for credit to the Department of Insurance Cash Fund.

Sec. 11. Section 44-2132, Reissue Revised Statutes of Nebraska, is amended to read:

44-2132. (1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the director, except that registration shall not be required for a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section, subsection (1) of section 44-2133, sections 44-2134 and 44-2136, and either subsection (2) of section 44-2133 or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen days after the end of the month in which it learns of each such change or addition. Any insurer which is subject to registration under this section shall register within fifteen days after it becomes subject to registration and annually thereafter by ~~March~~ May 1 of each year for the previous calendar year unless the director for good cause shown extends the time for such initial or annual registration and then within such extended time. The

director may require any insurer which is authorized to do business in the state, which is a member of an insurance holding company system, and which is not subject to registration under this section to furnish a copy of the registration statement, the summary specified in subsection (3) of this section, or other information filed by such insurer with the insurance regulatory authority of its domiciliary jurisdiction.

(2) Every insurer subject to registration shall file the registration statement on a form prescribed by the National Association of Insurance Commissioners which shall contain the following current information:

(a) The capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(b) The identity and relationship of every member of the insurance holding company system;

(c) The following agreements in force and transactions currently outstanding or which have occurred during the last calendar year between such insurer and its affiliates:

(i) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) Purchases, sales, or exchanges of assets;

(iii) Transactions not in the ordinary course of business;

(iv) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) All management agreements, service contracts, and cost-sharing arrangements;

(vi) Reinsurance agreements;

(vii) Dividends and other distributions to shareholders; and

(viii) Consolidated tax allocation agreements;

(d) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system; and

(e) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the director.

(3) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(4) It shall not be necessary to disclose on the registration statement information which is not material for the purposes of this section. Unless the director by rule, regulation, or order provides otherwise, sales, purchases, exchanges, loans, or extensions of credit, investments, or guarantees involving one-half of one percent or less of an insurer's admitted assets as of December 31 next preceding shall not be deemed material for purposes of this section.

(5) Subject to the requirements of section 44-2134, each registered insurer shall give notice to the director of all dividends and other distributions to shareholders within five business days following the declaration thereof and shall not pay any such dividends or other distributions to shareholders within ten business days following receipt of such notice by the director unless for good cause shown the director has approved such payment within such ten-business-day period.

(6) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer when such information is reasonably necessary to enable the insurer to comply with the Insurance Holding Company System Act.

(7) The director shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(8) The director may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement.

(9) The director may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) of this section and to file all information and material required to be filed under this section.

(10) This section shall not apply to any insurer, information, or transaction if and to the extent that the director by rule, regulation, or order exempts the same from this section.

(11) Any person may file with the director a disclaimer of

affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the director disallows such a disclaimer. The director shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(12) The failure to file a registration statement or any summary of the registration statement thereto required by this section within the time specified for such filing shall be a violation of this section.

Sec. 12. Section 44-4814, Reissue Revised Statutes of Nebraska, is amended to read:

44-4814. (1) The director as rehabilitator may appoint one or more special deputies who shall have all the powers and responsibilities of the rehabilitator granted under this section, and the director may employ such counsel, clerks, and assistants as deemed necessary. The compensation of the special deputy, counsel, clerks, and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the director, with the approval of the court, and shall be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the director. The director, as rehabilitator, may, with the approval of the court, appoint an advisory committee of policyholders, claimants, or other creditors, including guaranty associations, should such a committee be deemed necessary. Such committee shall serve at the pleasure of the director and shall serve without compensation other than reimbursement for reasonable travel and per diem living expenses. No other committee of any nature shall be appointed by the director or the court in rehabilitation proceedings conducted under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

(2) The rehabilitator may take such action as he or she deems necessary or appropriate to reform and revitalize the insurer. He or she shall have all the powers of the directors, officers, and managers of the insurer, whose authority shall be suspended, except as they are redelegated by the rehabilitator. He or she shall have full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of the insurer.

(3) If it appears to the rehabilitator that there has been criminal or tortious conduct or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agent, broker, employee, or other person, he or she may pursue all appropriate legal remedies on behalf of the insurer.

~~(4)~~ (4) (a) (i) If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, he or she shall prepare a plan to effect such changes.

(ii) Such plan may include the establishment of a trust to be treated as an insurer with the trustee serving as liquidator under the act retaining all liabilities and assets except the charter and licenses and shall include provisions requiring the rehabilitator to petition the court to convert the rehabilitation proceedings to a liquidation. Such trust shall be considered an insurer for the purposes of the act. Such plan may include provisions for cancellation of all outstanding stock and other securities of, and other equity interests in, the insurer and court approval of the issuance and sale of new stock or other securities for the purpose of transferring to one or more buyers control and ownership of the insurer together with any or all of its licenses and certificates to do business and such other assets as the rehabilitator deems appropriate to the transaction. The proceeds of such sale shall be assets of the trust. The order of the court approving such a sale may provide that the sale is free and clear of all claims and interests of the insurer's insureds, creditors, shareholders, and members and all other persons interested in the insurer and may discharge the insurer and all property which is the subject of the sale from all claims and interests of the insurer's insureds, creditors, shareholders, and members and all other persons interested in the insurer, except that such a discharge shall not affect the rights of the insurer's insureds, creditors, shareholders, and members and all other persons interested in the insurer's estate to participate in distributions from the trust as otherwise provided in the act.

(b) Upon application of the rehabilitator for approval of the plan and after such notice and hearings as the court may prescribe, the court may

either approve or disapprove the plan proposed or may modify it and approve it as modified. Any plan approved under this section shall be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the policies of the company if all rights of shareholders are first relinquished. A plan for a life insurer may also propose the imposition of a moratorium upon loan and cash surrender rights under policies for such period and to such an extent as may be necessary.

(5) The rehabilitator shall have the power under sections 44-4826 and 44-4827 to avoid fraudulent transfers.

Sec. 13. Section 44-5103, Reissue Revised Statutes of Nebraska, is amended to read:

44-5103. For purposes of the Insurers Investment Act:

(1) Admitted assets means the investments authorized under the act and stated at values at which they are permitted to be reported in the insurer's financial statements filed with the director pursuant to statement filed under section 44-322, except that admitted assets does not include assets of separate accounts, the investments of which are not subject to the act;

(2) Agent means a national bank, state bank, trust company, or broker-dealer that maintains an account in its name in a clearing corporation or that is a member of the Federal Reserve System and through which a custodian participates in a clearing corporation including the Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country or securities used to meet deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, agent may include a corporation that is organized or existing under the laws of a foreign country and that is legally qualified under those laws to accept custody of securities;

(3) Business entity means a sole proprietorship, corporation, limited liability company, association, partnership, limited liability partnership, joint-stock company, joint venture, mutual fund, trust, joint tenancy, or other similar form of business organization, whether organized for profit or not for profit;

(3) Clearing corporation means The Depository Trust Company or any other clearing agency registered with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, section 17A, Euro-clear Clearance System Limited, and CEDEL S. A.;

(4) Custodian bank means a bank, trust company, or branch of a bank or trust company that is acting as custodian and is supervised and examined by the state or federal authority having supervision over the bank or trust company or only with respect to an insurer's foreign investments by the regulatory authority having supervision over banks or trust companies in the jurisdiction in which the bank, trust company, or branch is located. Custodian bank shall include Euro-clear Clearance System Limited and CEDEL S. A. acting as custodians;

(5) (4) Clearing corporation means a clearing corporation as defined in subdivision (a)(5) of section 8-102, Uniform Commercial Code, that is organized for the purpose of effecting transactions in securities by computerized book-entry, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, clearing corporation may include a corporation that is organized or existing under the laws of a foreign country and which is legally qualified under those laws to effect transactions in securities by computerized book-entry. Clearing corporation also includes Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system;

(5) Custodian means:

(a) A national bank, state bank, or trust company that shall at all times during which it acts as a custodian pursuant to the Insurers Investment Act be no less than adequately capitalized as determined by the standards adopted by United States banking regulators and that is regulated by either state banking laws or is a member of the Federal Reserve System and that is legally qualified to accept custody of securities in accordance with the standards set forth below, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country, or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, custodian may include a bank or trust company incorporated or organized under the laws of a

country other than the United States that is regulated as such by that country's government or an agency thereof that shall at all times during which it acts as a custodian pursuant to the Insurers Investment Act be no less than adequately capitalized as determined by the standards adopted by international banking authorities and that is legally qualified to accept custody of securities; or

(b) A broker-dealer that shall be registered with and subject to jurisdiction of the Securities and Exchange Commission, maintains membership in the Securities Investor Protection Corporation, and has a tangible net worth equal to or greater than two hundred fifty million dollars;

(6) Custodied securities means securities held by the custodian or its agent or in a clearing corporation, including the Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system;

(7) Direct when used in connection with the term obligation means that the designated obligor is primarily liable on the instrument representing the obligation;

~~(6)~~ (8) Director means the Director of Insurance;

~~(7)~~ (9) Insurer is defined as provided in section 44-103, and unless the context otherwise requires, insurer means domestic insurer;

~~(8)~~ (10) Mortgage means a consensual interest created by a real estate mortgage, a trust deed on real estate, or a similar instrument;

~~(9)~~ (11) Obligation means a bond, debenture, note, or other evidence of indebtedness;

~~(10)~~ (12) Policyholders surplus means the amount obtained by subtracting from the admitted assets (a) actual liabilities and (b) any and all reserves which by law must be maintained. In the case of a stock insurer, the policyholders surplus also includes the paid-up and issued capital stock;

~~(11)~~ (13) Securities Valuation Office means the Securities Valuation Office of the National Association of Insurance Commissioners or any successor office established by the National Association of Insurance Commissioners; and

(14) Security certificate has the same meaning as defined in subdivision (a) (16) of section 8-102, Uniform Commercial Code;

~~(12)~~ (15) State means any state of the United States, the District of Columbia, or any territory organized by Congress;

(16) Tangible net worth means shareholders equity, less intangible assets, as reported in the broker-dealer's most recent Annual or Transition Report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934, S.E.C. Form 10-K, filed with the Securities and Exchange Commission; and

(17) Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system mean the book-entry securities systems established pursuant to 5 U.S.C. 301, 12 U.S.C. 391, and 31 U.S.C. 3101 et seq. The operation of the systems are subject to 31 C.F.R. part 357 et seq.

Sec. 14. Section 44-5109, Reissue Revised Statutes of Nebraska, is amended to read:

44-5109. An insurer's investments shall be held in its own name or the name of its nominee, except that:

(1) Investments may be held in the name of a clearing corporation, a custodian, ~~bank,~~ or the nominee of either on the following conditions:

(a) The clearing corporation, custodian, ~~bank,~~ or nominee shall be legally authorized to hold the particular investment for the account of others;

(b) If the investment is evidenced by a certificate and held in the name of a custodian bank or the nominee of a custodian bank, a written agreement shall provide that certificates so deposited shall at all times be kept separate and apart from other deposits with the depository so that at all times they may be identified as belonging solely to the insurer making the deposit, and

~~(c) If a clearing corporation is to act as depository, the investment may be merged or held in bulk in the name of a clearing corporation or the nominee of the clearing corporation with other investments deposited with the clearing corporation by any other person if a written agreement provides that adequate evidence of the deposit is to be obtained and retained by the insurer or a custodian bank, and Security certificates held by the custodian shall be held separate from the security certificates of the custodian and of all its other customers; and~~

(c) Securities held indirectly by the custodian and securities in a clearing corporation shall be separately identified on the custodian's official records as being owned by the insurer. The records shall identify which securities are held by the custodian or by its agent and which securities are in a clearing corporation. If the securities are in a clearing corporation, the records shall also identify where the securities are and if in a clearing corporation, the name of the clearing corporation, and if

through an agent, the name of the agent; and

(2) An insurer may participate through a member bank in the Federal Reserve book-entry system. The records of the member bank shall at all times show that the investments are held for the insurer or for specific accounts of the insurer.

Sec. 15. Section 44-5143, Reissue Revised Statutes of Nebraska, is amended to read:

44-5143. (1) An insurer may invest in bonds or notes secured by a first mortgage on real estate in the United States or Canada if the amount loaned by the insurer, together with any amount secured by an equal security interest, does not exceed ~~seventy-five~~ eighty percent of the appraised value of the real estate and improvements at the time of making the investment, or if the funds are used for a construction loan, the amount does not exceed ~~seventy-five~~ eighty percent of the market value of the real estate together with the actual costs of improvements constructed thereon at the time of final funding by the insurer. The limitation in this subsection shall not:

(a) Apply to investments authorized under section 44-5132;

(b) Prohibit an insurer from renewing or extending a loan for the original amount when the value of such real estate has depreciated;

(c) Prohibit an insurer from accepting, as part payment for real estate sold by it, a mortgage thereon for more than ~~seventy-five~~ eighty percent of the purchase price of such real estate; or

(d) Prohibit an insurer from advancing additional loan funds to protect its real estate security.

(2) An insurer may invest in bonds or notes secured by a first mortgage on leasehold estates in improved real estate located in the United States or Canada if:

(a) Such underlying real estate is unencumbered except by rentals to accrue therefrom to the owner of the real estate;

(b) There is no condition or right of reentry or forfeiture under which such lien can be cut off, subordinated, or otherwise disturbed so long as the lessee is not in default;

(c) The amount loaned by the insurer, together with any amount secured by an equal security interest, does not exceed ~~seventy-five~~ eighty percent of the appraised value of such leasehold with improvements at the time of making the loan; and

(d) Such mortgage loan will be completely amortized during the unexpired portion of the lease or leasehold estate.

(3) Nothing in this section shall prevent any amount invested under this section that exceeds ~~seventy-five~~ eighty percent of the appraised value of the real estate or leasehold and improvements, as the case may be, from being authorized under section 44-5153.

(4) All buildings and other real estate improvements which constitute a material part of the value of the mortgaged premises, whether estates in fee or leasehold estates or combination thereof, shall be (a) (i) substantially completed before the investment is made or (ii) of a value that is at all times substantial in value in relation to the amount of construction loan funds advanced by the insurer on account of the loan and (b) kept insured against loss or damage by fire or windstorm in a reasonable amount for the benefit of the mortgagee.

(5) If there are more than four holders of the issue of such bonds or notes described in subsection (1) or (2) of this section, (a) the security of such bonds or notes, as well as all collateral papers including insurance policies executed in connection therewith, shall be made to and held by a trustee, which trustee shall be a solvent bank or trust company having a paid-in capital of not less than two hundred fifty thousand dollars, except in case of a bank or trust company incorporated under the laws of this state, in which case a paid-in capital of not less than one hundred thousand dollars shall be required, and (b) it shall be agreed that, in case of proper notification of default, such trustee, upon request of at least twenty-five percent of the holders of the par amount of the bonds outstanding and proper indemnification, shall proceed to protect the rights of such bondholders under the provisions of the trust indenture.

~~(6)~~ (6) (a) An insurer may invest in notes or bonds secured by second mortgages or other second liens, including all inclusive or wraparound mortgages or liens, upon real property encumbered only by a first mortgage or lien which meets the requirements set forth in this section, subject to either of the following conditions:

(i) The insurer also owns the note or bond secured by the prior first mortgage or lien and the aggregate value of both loans does not exceed the loan to market value ratio requirements of this section; or

(ii) The note or bond is secured by an all-inclusive or wraparound

lien or mortgage which conforms to the requirements set forth in subdivision (b) of this subsection, if the aggregate value of the resulting loan does not exceed the loan to market value ratio requirements of this section.

(b) For purposes of this subsection, the terms wraparound and all-inclusive lien or mortgage refer to a loan made by an insurer to a borrower on the security of a mortgage or lien on real property other than property containing a residence of one to four units or on which a residence of one to four units is to be constructed, where such real property is encumbered by a first mortgage or lien and which loan is subject to all of the following requirements:

(i) There is no more than one preexisting mortgage or lien on the real property;

(ii) The total amount of the obligation of the borrower to the insurer under the loan is not less than the sum of the amount disbursed by the insurer on account of the loan and the outstanding balance of the obligation secured by the preexisting lien or mortgage;

(iii) The instrument evidencing the lien or mortgage by which the obligation of the borrower to the insurer under the loan is secured, is recorded, and the lien is insured under a policy of title insurance in an amount not less than the total amount of the obligation of the borrower to the insurer under the loan; and

(iv) The insurer either (A) files for record in the office of the recorder of the county in which the real property is located a duly acknowledged request for a copy of any notice of default or of sale under the preexisting lien or (B) is entitled under applicable law to receive notice of default, sale, or foreclosure of the preexisting lien.

(7) (a) An insurer may invest in mezzanine real estate loans subject to the following conditions:

(i) The terms of the mezzanine loan agreement:

(A) Require that each pledgor abstain from granting additional security interests in the equity interest pledged;

(B) Employ techniques to minimize the likelihood or impact of a bankruptcy filing on the part of the real estate owner or the mezzanine real estate loan borrower; and

(C) Require the real estate owner, or mezzanine real estate loan borrower, to: (I) Hold no assets other than, in the case of the real estate owner, the real property, and in the case of the mezzanine borrower, the equity interest in the real estate owner; (II) not engage in any business other than, in the case of the real estate owner, the ownership and operation of the real estate, and in the case of the mezzanine real estate borrower, holding an ownership interest in the real estate owner; and (III) not incur additional debt, other than limited trade payables, a first mortgage loan, and the mezzanine real estate loan; and

(ii) At the time of the initial investment, the mezzanine real estate loan lender shall corroborate that the sum of the first mortgage and the mezzanine real estate loan does not exceed one hundred percent of the value of the real estate as evidenced by a current appraisal.

(b) The value of an insurer's investments authorized under this subsection shall not exceed three percent of its admitted assets.

(c) For purposes of this subsection, mezzanine real estate loan refers to a loan made by an insurer to a borrower on the security of debt obligation, that is not a security, which is secured by a pledge of a direct or indirect equity interest in an entity that owns real estate.

(8) An insurer's investments authorized under this section shall not exceed forty percent of its admitted assets, and an insurer's investments authorized under this section and section 44-5144, in the aggregate, shall not exceed fifty percent of its admitted assets.

Sec. 16. Section 44-5144, Reissue Revised Statutes of Nebraska, is amended to read:

44-5144. (1) An insurer may acquire and hold unencumbered real estate or certificates evidencing participation with other investors, either directly or through partnership or limited liability company interests, in unencumbered real estate if:

(a) The real estate is leased under a lease contract in which the lessee contracts to pay all assessments, taxes, maintenance, and operating costs;

(b) The net amount of the annual lease payments to the owner of the real estate is sufficient to amortize the cost of the real estate within the duration of the lease, but in no event for a period of longer than forty years, and pay at least three percent per annum on the unamortized balance of the cost of the real estate; and

(c) The amount invested in any such real estate does not exceed its

appraised value.

When the lessee under a lease described in this subsection is the United States or any agency or instrumentality thereof, any state or any county, municipality, district, or other governmental subdivision thereof, or any agency, board, authority, or institution established or maintained under the laws of the United States or any state thereof, such lease contract may provide that upon the termination of the term thereof, title to such real estate shall vest in the lessee.

When an insurer owns less than the entire real estate leased under a lease described in this subsection, the legal title to the real estate shall be in the name of a trustee which meets the qualifications set out in subsection (5) of section 44-5143 under a trust agreement which provides, among other things, that upon proper notification of default under such lease and request to such trustee by an investor or investors representing at least twenty-five percent of the equitable ownership of the real estate and proper indemnification, the trustee shall proceed to protect the rights and interest of the investors owning the equitable title to the real estate.

For purposes of this subsection, unencumbered real estate means real estate in which other interests may exist which if enforced would not result in the forfeiture of the insurer's interest.

(2) An insurer may also acquire and hold real estate:

(a) Mortgaged to it in good faith by way of security for a loan previously contracted or for money due;

(b) Conveyed to it in satisfaction of debts previously contracted in the course of its dealings; and

(c) Purchased at sale upon judgments, decrees, or mortgages obtained or made for such debts.

(3) An insurer may invest in real estate required for its home offices or to be otherwise occupied by the insurer or its employees in the transaction of its business and may rent the balance of the space therein. The value of an insurer's investments authorized under this subsection shall not exceed ten percent of its admitted assets.

(4) (a) An insurer with policyholders surplus of at least one million dollars may individually or in conjunction with other investors acquire, own, hold, develop, and improve real estate that is essentially residential or commercial in character, even though subject to an existing mortgage or thereafter mortgaged by the insurer, if such real estate is located in a city or village or within five miles of the limits thereof.

(b) For purposes of this subsection, real estate shall include a leasehold having an unexpired term of at least twenty years, including the term provided by any enforceable option of renewal. The income from such leasehold shall be applied so as to amortize the cost of leasehold and improvements within the lesser of eighty percent of such ~~expired~~ unexpired term or forty years from acquisition.

(c) The value of an insurer's investments authorized under this subsection shall not exceed ten percent of its admitted assets.

(5) An insurer may also acquire such other real estate as may be acquired ancillary to a corporate merger, acquisition, or reorganization of the insurer.

(6) The value of an insurer's investments authorized under subsections (3), (4), and (5) of this section, in the aggregate, shall not exceed fifteen percent of its admitted assets.

(7) For purposes of this section, value shall mean original cost plus any development and improvement costs whenever expended less the unpaid balance of any mortgage and annual depreciation on improvements of not less than two percent.

(8) An insurer's investments authorized under this section and section 44-5143, in the aggregate, shall not exceed fifty percent of its admitted assets.

Sec. 17. Section 44-5149, Reissue Revised Statutes of Nebraska, is amended to read:

44-5149. (1) An insurer may use derivative instruments in hedging transactions if:

(a) The aggregate statement value of options, caps, floors, and warrants not attached to any financial instrument and used in hedging transactions does not exceed the lesser of seven and one-half percent of the insurer's admitted assets or seventy-five percent of the insurer's policyholders surplus;

(b) The aggregate statement value of options, caps, and floors written in hedging transactions does not exceed the lesser of three percent of the insurer's admitted assets or thirty percent of the insurer's policyholders surplus; and

(c) The aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed the lesser of six and one-half percent of the insurer's admitted assets or sixty-five percent of the insurer's policyholders surplus.

(2) (a) An insurer may use derivative instruments in income-generation transactions by selling:

(i) Covered call options on non-callable fixed income securities or callable fixed income securities if the option expires by its terms prior to the end of the non-callable period;

(ii) Covered call options on equity securities if the insurer holds in its portfolio, or can immediately acquire through the exercise of options, warrants, or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold;

(iii) Covered puts on investments that the insurer is permitted to acquire under the Insurers Investment Act if the insurer has escrowed, or entered into a custodian agreement segregating, cash or cash equivalents with a market value equal to the amount of its purchase obligations under that put during the complete term of the put option sold; and

(iv) Covered caps or floors if the insurer holds in its portfolio the investments generating the cash flow to make the required payments under such caps or floors during the complete term that the cap or floor is outstanding.

(b) An insurer may enter into income-generation transactions under this subsection if the aggregate statement value of the fixed income assets that are subject to call or that generate the cash flows for payments under the caps or floors, plus the face value of fixed income securities underlying any derivative instrument subject to call, does not exceed the lesser of ten percent of the insurer's admitted assets or one hundred percent of the insurer's policyholders surplus.

(3) An insurer may use derivative instruments in replication transactions if:

(a) The aggregate statement value of options, caps, floors, and warrants not attached to any financial instrument and used in replication transactions does not exceed the lesser of seven and one-half percent of the insurer's admitted assets or seventy-five percent of the insurer's policyholders' surplus;

(b) The aggregate statement value of options, caps, and floors written in replication transactions does not exceed the lesser of three percent of the insurer's admitted assets or thirty percent of the insurer's policyholders' surplus;

(c) The aggregate potential exposure of collars, swaps, forwards, and futures used in replication transactions does not exceed the lesser of six and one-half percent of the insurer's admitted assets or sixty-five percent of the insurer's policyholders' surplus;

(d) The replication transactions are limited to the replication of investments or instruments otherwise permitted under the Insurers Investment Act; and

(e) The insurer engages in hedging transactions or income generation transactions pursuant to this section and has sufficient experience with derivatives generally such that its performance and procedures reflect that the insurer has been successful in adequately identifying, measuring, monitoring, and limiting exposures associated with such transactions and that the insurer has superior corporate controls over such activities as well as a sufficient number of dedicated staff who are knowledgeable and skilled with these sophisticated financial instruments.

(4) An insurer may purchase or sell one or more derivative instruments to offset any derivative instrument previously purchased or sold, as the case may be, without regard to the quantitative limitations of this section, provided that the derivative instrument is an exact offset to the original derivative instrument being offset.

(5) An insurer shall demonstrate to the director upon request the intended hedging, ~~or~~ income-generation, or replication characteristics and the ongoing effectiveness of the derivative transaction or combination of the transactions through cash flow testing or other appropriate analysis.

~~(4)~~ (6) An insurer shall include all counterparty exposure amounts in determining compliance with the limitations in section 44-5115.

~~(5)~~ (7) The director may approve additional transactions involving the use of derivative instruments pursuant to rules and regulations adopted and promulgated by the director.

~~(6)~~ (8) For purposes of this section:

(a) Derivative instrument means an agreement, option, instrument, or a series or combination thereof:

(i) To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests or to make a cash settlement in lieu thereof; or

(ii) That has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one or more underlying interests.

Derivative instrument includes, and is limited to, all investment instruments or contracts that derive all or almost all of their value from the performance of an underlying market, index, or financial instrument, including, but not limited to, options, warrants, used in a hedging transaction and not attached to another financial instrument, caps, floors, collars, swaps, credit default swaps, swaptions, forwards, and futures. Derivative instrument does not include investments authorized under any other section of the Insurers Investment Act;

(b) Hedging transaction means a derivative transaction which is entered into and maintained to reduce:

(i) The risk of a change in value, yield, price, cash flow, or quantity of assets or liabilities which the insurer has acquired or incurred or anticipates acquiring or incurring; or

(ii) The currency exchange rate risk or the degree of exposure as to assets or liabilities which an insurer has acquired or incurred or anticipates acquiring or incurring; and

(c) Income-generation transaction means a derivative transaction involving the writing of covered call options, covered put options, covered caps, or covered floors that is intended to generate income or enhance return; and

(d) Replication transaction means a derivative transaction or combination of derivative transactions effected either separately or in conjunction with cash market investments included in the insurer's portfolio in order to replicate the investment characteristic of another authorized transaction, investment, or instrument or that may operate as a substitute for cash market investments. A derivative transaction entered into by the insurer as a hedging or income-generation transaction authorized pursuant to this section shall not be considered a replication transaction.

Sec. 18. Section 44-5153, Reissue Revised Statutes of Nebraska, is amended to read:

44-5153. (1)(a)(i) A life insurer may make investments not otherwise authorized under the Insurers Investment Act in an amount, in the aggregate, not exceeding the lesser of five percent of its admitted assets or one hundred percent of its policyholders surplus.

(ii) An insurer other than a life insurer may make investments not otherwise authorized under the act in an amount, in the aggregate, not exceeding the lesser of twenty-five percent of the amount by which its admitted assets exceed its total liabilities, excluding capital, or five percent of its admitted assets.

(b) Investments authorized under this subsection shall not include obligations having 3, 4, 5, and 6 designations from the Securities Valuation Office.

(2)(a) Notwithstanding the provisions of subdivision (1)(a)(i) of this section, a life insurer may make investments not otherwise authorized under the act in an amount not exceeding that portion of its policyholders surplus which is in excess of ten percent of its admitted assets.

(b) Notwithstanding the provisions of subdivisions (1)(a)(ii) and (b) of this section, an insurer other than a life insurer may make investments not otherwise authorized under the act in an amount not exceeding that portion of its policyholders surplus which is in excess of fifty percent of its annual net written premiums.

(3) Investments authorized under subsection (1) or (2) of this section shall not include insurance agents' balances or amounts advanced to or owing by insurance agents.

(4) The limitations set forth in this section shall be applied at the time the investment in question is made and at the end of each calendar quarter. An insurer's investment, which at the time of its acquisition was authorized only under the provisions of this section but which has subsequently and while held by such insurer become of such character as to be authorized elsewhere under the act, shall not be included in determining the amount of such insurer's investments, in the aggregate, authorized under this section, and investments otherwise authorized under the act at the time of their acquisition shall not be included in making such determination.

(5) Derivative instruments described in subsections (1), and (2), and (3) of section 44-5149 shall not be authorized investments under this section.

Sec. 19. Section 44-5154, Reissue Revised Statutes of Nebraska, is amended to read:

44-5154. The director may adopt and promulgate rules and regulations to carry out the Insurers Investment Act, including, but not limited to, establishing standards for qualification as custodians for insurer investments and establishing requirements for custody agreements.

Sec. 20. Section 44-5505, Reissue Revised Statutes of Nebraska, is amended to read:

44-5505. Each surplus lines licensee shall keep in the licensee's office ~~in this state~~ a true and complete record of the business transacted by the licensee showing (1) the exact amount of insurance or limits of exposure, (2) the gross premiums charged therefor, (3) the return premium paid thereon, (4) the rate of premium charged for such insurance, (5) the date of such insurance and terms thereof, (6) the name and address of the nonadmitted insurer writing such insurance, (7) a copy of the declaration page of each policy and a copy of each policy form issued by the licensee, (8) a copy of the written statement described in subdivision (3) of section 44-5510 or, in lieu thereof, a copy of the application containing such written statement, (9) the name and address of the insured, (10) a brief and general description of the risk or exposure insured and where located, (11) documentation showing that the nonadmitted insurer writing such insurance complies with the requirements of section 44-5508, and (12) such other facts and information as the department may direct and require. Such records shall be kept by the licensee in the licensee's office within the state for not less than five years and shall at all times be open and subject to the inspection and examination of the department or its officers. The expense of any examination shall be paid by the licensee.

Sec. 21. Section 44-5508, Reissue Revised Statutes of Nebraska, is amended to read:

44-5508. (1) Every surplus lines licensee transacting business under the Surplus Lines Insurance Act shall ascertain the financial condition of each insurer before such licensee places any insurance with or procures any insurance from such insurer. If requested by the director, the licensee shall provide a copy of the current annual statement certified and sworn to by such insurer.

(2) No surplus lines licensee shall knowingly or without proper investigation place any insurance with or procure any insurance from any nonadmitted foreign or alien insurer that does not have surplus, capital, and reserves in amounts equal to or greater than the requirements of surplus, capital, and reserves placed on admitted insurers which write the same kinds of insurance.

(3) In addition to the requirements of subsection (2) of this section, no surplus lines licensee shall place any insurance with or procure any insurance from any nonadmitted alien insurer unless such insurer (a) maintains in the United States a trust fund in a qualified United States financial institution as defined in ~~subdivision (1) of section 44-416~~ subsection (2) of section 33 of this act in an amount not less than two million five hundred thousand dollars for the protection of policyholders in the United States, consisting of cash in United States currency, readily marketable securities, or clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution as defined in ~~subdivision (2) of section 44-416~~ subsection (1) of section 33 of this act, and such trust fund shall have an expiration date which at no time shall be less than five years, or (b) is approved by the Nonadmitted Insurers Information Office of the National Association of Insurance Commissioners, and the director, in his or her discretion, has not independently determined such insurer to be in an unsound financial condition.

(4) No surplus lines licensee shall place any insurance with or procure any insurance from any nonadmitted Lloyd's plan or other similar group which includes incorporated and individual unincorporated underwriters unless such group maintains a trust fund of not less than fifty million dollars as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group and such trust complies with the terms and conditions established in subsection (3) of this section for nonadmitted alien insurers.

(5) Any surplus lines licensee violating this section shall be guilty of a Class III misdemeanor.

(6)(a) No nonadmitted foreign or alien insurer shall transact business under the act if it does not comply with the surplus, capital, and reserves requirements of subsection (2) of this section.

(b) In addition to the requirements of subdivision (a) of this subsection, no nonadmitted alien insurer shall transact business under the act

if it does not comply with the requirements of subdivision (3) (a) or (b) of this section.

(c) No nonadmitted Lloyd's plan or other similar group which includes incorporated and individual unincorporated underwriters shall transact business under the act if it does not comply with the requirements of subsection (4) of this section.

Sec. 22. Section 44-6122, Reissue Revised Statutes of Nebraska, is amended to read:

44-6122. Sections 44-6122 to 44-6142 and section 24 of this act shall be known and may be cited as the Mutual Insurance Holding Company Act.

Sec. 23. Section 44-6125, Reissue Revised Statutes of Nebraska, is amended to read:

44-6125. (1) A domestic mutual insurer, upon approval of the director, may reorganize (a) by forming a mutual insurance holding company, (b) by merging its policyholders' membership interests into the mutual insurance holding company, and (c) by continuing the mutual insurer's corporate existence as a stock insurer subsidiary of the mutual insurance holding company.

(2) A domestic mutual insurer, upon the approval of the director, may reorganize by merging its policyholders' membership interests into an existing mutual insurance holding company formed under subsection (1) of this section and by continuing the mutual insurer's corporate existence as a stock insurer subsidiary of the mutual insurance holding company.

(3) All of the initial shares of the capital stock of a reorganized stock insurer which has reorganized as described in subsection (1) or (2) of this section shall be issued to the mutual insurance holding company or to one or more intermediate stock holding companies.

(4) Policyholders of a domestic mutual insurer which has reorganized as described in subsection (1) or (2) of this section shall be members of the mutual insurance holding company and their voting rights shall be determined in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall provide its members with the same membership rights as were provided to policyholders of the mutual insurer immediately prior to reorganization. The reorganization shall not reduce, limit, or affect the number or identity of the policyholders who may become members of the mutual insurance holding company or secure for individuals comprising management any unfair advantage through or connected with the reorganization.

(5) If an insurer which is organized under the laws of another state transfers its domicile to this state in accordance with section 44-161 and is a direct or indirect subsidiary of a mutual insurance holding company organized under the laws of such other state, then, in connection with the transfer of the domicile of such insurer, upon approval of the director of a plan of merger and transfer, the foreign mutual insurance holding company may form a mutual insurance holding company under this section, and the foreign mutual insurance holding company may merge into such domestic mutual insurance holding company simultaneously with the transfer of domicile of the insurer to this state. Until the merger takes effect, the foreign mutual insurance holding company shall be the sole member of the domestic mutual insurance holding company. When the merger takes effect, the separate existence of the foreign mutual insurance holding company shall cease, the domestic mutual insurance holding company shall survive and have all the assets and liabilities formerly held by the foreign mutual insurance holding company, all of the members of the foreign mutual insurance holding company shall become members of the domestic mutual insurance holding company, policyholders of the insurer shall be members of the domestic mutual insurance holding company, and their voting rights shall be determined in accordance with the articles of incorporation and bylaws of the domestic mutual insurance holding company. After the transfer and merger take effect, for purposes of the Mutual Insurance Holding Company Act, the insurer shall be deemed to be a reorganized stock insurer. If the foreign mutual insurance holding company owns a majority of the voting stock of a stock holding company organized under the laws of another state that in turn owns all of the voting stock of the insurer, then the plan of merger and transfer may provide that the stock holding company shall continue as a corporation organized under the laws of the other state.

(6) (a) A mutual insurance holding company or any intermediate stock holding company formed under the Mutual Insurance Holding Company Act shall not be authorized to transact the business of insurance.

(b) A mutual insurance holding company formed under the act shall not issue stock.

(c) The director shall have jurisdiction over a mutual insurance

holding company and any intermediate stock holding company to ensure that policyholder interests are protected.

(d) A mutual insurance holding company and any intermediate stock holding company shall be treated as domestic insurers subject to the Insurers Demutualization Act, the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, Chapter 44, article 2, and section 44-301, except that a foreign intermediate stock holding company shall not be subject to Chapter 44, article 2, and section 44-301.

(e) Except with the approval of the director, the aggregate pledges and encumbrances of a mutual insurance holding company's assets shall not affect more than forty-nine percent of the mutual insurance holding company's stock in an intermediate stock holding company or a reorganized stock insurer.

(f) At least fifty percent of the net worth of a mutual insurance holding company, as determined by generally accepted accounting practices, shall be invested in insurers or any other subsidiaries or investments authorized by the Insurance Holding Company System Act.

(g) If any proceeding under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act is brought against a reorganized stock insurer, the mutual insurance holding company and intermediate stock holding company shall become parties to the proceedings. All of the assets of the mutual insurance holding company are deemed assets of the estate of the reorganized stock insurer to the extent necessary to satisfy policy claims against the reorganized stock insurer.

(h) No distribution to members of a mutual insurance holding company may occur without prior written approval of the director and only upon the director's satisfaction that such distribution is fair and equitable to policyholders as members of the mutual insurance holding company.

(i) No solicitation for the sale of the stock of an intermediate stock holding company or a reorganized stock insurer may be made without the director's prior written approval.

(j) A mutual insurance holding company or an intermediate stock holding company shall not voluntarily dissolve without the approval of the director.

Sec. 24. (1) A mutual insurance holding company or an intermediate stock holding company may engage in actions and activities related to expanding the business of any company into other insurance, insurance-related, and financial services businesses. Any such expansion may be accomplished through acquisition, merger, consolidation, strategic alliance, joint venture, or other business combination. A mutual insurance holding company may:

(a) Merge or consolidate with, or acquire the assets of, a mutual insurance holding company formed under the laws of the State of Nebraska or any similar entity or organization formed under the laws of any other state;

(b) Either alone or together with one or more intermediate stock holding companies, or other subsidiaries, directly or indirectly acquire the stock of a stock insurance company or a mutual insurance company that reorganizes as a mutual insurance holding company under the laws of the State of Nebraska or the laws of its state of organization;

(c) Together with one or more of its stock insurance company subsidiaries, acquire the assets of a stock insurance company or a mutual insurance company;

(d) Acquire a stock insurance company through the merger of such stock insurance subsidiary with a stock insurance company or intermediate stock insurance company subsidiary of the mutual insurance holding company; or

(e) Acquire the stock or assets of any other person to the same extent as would be permitted for a mutual insurance company.

(2) A plan and agreement for merger or consolidation in accordance with subsection (1) of this section shall be submitted to and approved by two-thirds of the members of each domestic mutual insurance holding company or mutual insurance company involved in the merger or consolidation who vote either in person or by proxy thereon at meetings called for such purposes pursuant to such reasonable notice and procedure as has been approved by the director.

(3) No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the director and approved by the director.

(4) All of the initial shares of the capital stock of the reorganized stock insurer shall be issued either to the mutual insurance holding company or to an intermediate stock holding company that is a subsidiary of the mutual insurance holding company. The membership interests of the policyholders of the reorganized stock insurer shall become membership interests in the mutual insurance holding company in accordance with the plan and agreement of merger or consolidation. Policyholders of the reorganized

stock insurer shall be members of the mutual insurance holding company in accordance with the plan and agreement of merger or consolidation and the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times directly or indirectly own a majority of the voting shares of the capital stock of any reorganized stock insurer.

Sec. 25. Section 44-7506, Reissue Revised Statutes of Nebraska, is amended to read:

44-7506. (1) All rating systems and prospective loss costs shall be filed with the director in accordance with section 44-7508, except that filings for the following shall be filed in accordance with sections 44-7510 and 44-7511:

- ~~(a) Insurance covering farms and ranches, including crop insurance;~~
- ~~(b) Filings made by advisory organizations;~~
- ~~(c) Workers' compensation and employers liability insurance;~~
- ~~(d) (b) Medical professional liability insurance;~~
- ~~(e) (c) Insurance in noncompetitive markets as determined pursuant to section 44-7507;~~
- ~~(f) Insurance covering risks of a personal nature, including insurance for homeowners, tenants, private passenger nonfleet automobiles, mobile homes, and other property and casualty insurance for personal, family, or household needs;~~
- ~~(g) (d) Liability and physical damage coverages relating to the rental of private passenger automobiles on a nonfleet basis;~~
- ~~(h) (e) Insurance written by joint underwriting pools or joint reinsurance pools;~~
- ~~(i) (f) Insurance written in an assigned risk plan; and~~
- ~~(j) (g) Insurance covering risks of a personal nature written for business entities if the costs for the insurance are charged to individuals. This does not include coverage provided without a separate charge by business entities for their customers.~~

(2) (a) If the director, after notice and hearing in accordance with the Administrative Procedure Act, finds that an insurer has made filings pursuant to section 44-7508 that have failed to meet the filing standards contained in that section with such frequency as to indicate a general business practice that disregards the requirements of that section, the director shall order that the insurer's filings be made subject to the requirements of sections 44-7510 and 44-7511.

(b) Upon application by an insurer affected by an order issued pursuant to subdivision (2) (a) of this section, demonstrating that its filings made subsequent to the order have been in compliance with section 44-7508 without the need for the director to request that the original filings be amended, the director shall vacate such order. The director shall consider any such application within thirty days after its receipt for any order that has been in effect for more than nine months since its inception or since it was last reviewed by the director pursuant to an application by the insurer.

(c) For insurers whose rating system filings that would otherwise be subject to this section have been made subject to the prior approval requirements of section 44-7511 through the application of this subsection, the percentage rating flexibilities provided in section 44-7509 shall apply to such rating system filings made by such insurers once the rating system filing has been approved pursuant to section 44-7511.

Sec. 26. Section 44-7508.01, Reissue Revised Statutes of Nebraska, is amended to read:

44-7508.01. (1) All policy forms and related rules of attachment shall be filed with the director in accordance with section 44-7508.02, except that an insurer may at its option file policy forms and related rules of attachment in accordance with section 44-7513 and filings for the following shall be filed in accordance with section 44-7513:

- (a) Filings made by advisory organizations;
- (b) Workers' compensation and employers liability insurance;
- (c) ~~Insurance covering farms and ranches, including crop insurance;~~
- ~~(d) Excess workers' compensation and employers liability insurance;~~
- (e) (d) Medical professional liability insurance;
- ~~(f) (e) Insurance in noncompetitive markets as determined pursuant to section 44-7507;~~
- ~~(g) Insurance covering risks of a personal nature, including insurance for homeowners, tenants, private passenger nonfleet automobiles, mobile homes, and other property and casualty insurance for personal, family, or household needs;~~
- ~~(h) (f) Liability and physical damage coverages relating to the rental of private passenger automobiles on a nonfleet basis;~~

~~(i)~~ (g) Insurance written by joint underwriting pools or joint reinsurance pools;

~~(j)~~ (h) Insurance written in an assigned risk plan; and

~~(k)~~ (i) Insurance covering risks of a personal nature written for business entities if the costs for the insurance are charged to individuals. This does not include coverage provided without a separate charge by business entities for their customers.

(2) (a) If the director, after notice and hearing in accordance with the Administrative Procedure Act, finds that an insurer has made filings pursuant to section 44-7508.02 that have failed to meet the filing standards contained in such section with such frequency as to indicate a general business practice that disregards the requirements of such section or finds that the insurer committed one or more egregious acts relating to the filing standards, the director shall order that the insurer's filings be made subject to the requirements of section 44-7513.

(b) Upon application by an insurer affected by an order issued pursuant to subdivision (2) (a) of this section demonstrating that its filings made subsequent to the order have been in compliance with section 44-7508.02 without the need for the director to request that the original filings be amended, the director may vacate such order. The director shall consider any such application within thirty days after its receipt for any order that has been in effect for more than nine months since its inception or since it was last reviewed by the director pursuant to an application by the insurer.

Sec. 27. Section 44-7508.02, Reissue Revised Statutes of Nebraska, is amended to read:

44-7508.02. (1) For policy forms to which this section applies as provided in section 44-7508.01, each insurer shall file with the director every policy form and related attachment rule and every modification thereof which it proposes to use. For policy forms to which this section applies, no insurer shall issue a contract or policy except in accordance with the filings that are in effect for such insurer as provided in the Property and Casualty Insurance Rate and Form Act except as provided in subsection (10) or (11) of this section or as provided by rules and regulations adopted and promulgated pursuant to section 44-7514 or 44-7515.

(2) Every filing shall state its effective date, which shall not be prior to the date that the director receives ~~the~~ such filing.

(3) Every policy form filing shall explain the intended use of such policy forms. Filings shall include a list of policy forms that will be replaced when the approval of a filing will result in the replacement of previously approved policy forms. In addition, insurers shall maintain listings of policy forms that have been filed so that such listings can be provided upon request.

(4) The director shall acknowledge receipt of a policy form filing as soon as practical. A review of the filing by the director is not required to issue this acknowledgment, and acknowledgment shall not constitute an approval by the director.

(5) The director may review a policy form filing at any time after it has been made. The director shall review a policy form filing for insurance covering risks of a personal nature, including insurance for homeowners, tenants, private passenger nonfleet automobiles, mobile homes, and other property and casualty insurance for personal, family, or household needs, within thirty days after the filing has been made. Following such review, the director shall disapprove a filing that contains provisions, exceptions, or conditions that: (a) Are unjust, unfair, ambiguous, inconsistent, inequitable, misleading, deceptive, or contrary to public policy; (b) are written so as to encourage the misrepresentation of coverage; (c) fail to reasonably provide the general coverage for policies of that type; (d) fail to comply with the provisions or the intent of the laws of this state; or (e) would provide coverage contrary to the public interest.

(6) If, within thirty days after its receipt, the director disapproves a filing that requires disapproval pursuant to subsection (5) of this section, then a written disapproval notice shall be sent to the insurer. The disapproval notice shall specify in what respects the filing fails to meet these requirements. Upon receipt of the notice of disapproval, the insurer shall cease use of the filing as soon as practical but may use the form for policies that have already been issued or when pending coverage proposals are outstanding.

(7) If, within thirty days after its receipt, the director requests additional information to complete review of a policy form filing, the thirty-day review period allowed in subsection (6) of this section shall commence on the date such information is received by the director. If a filer fails to furnish the required information within ninety days, the director

may, by written notice sent to the insurer, deem the filing as withdrawn and not available for use.

(8) An insurer whose filing is disapproved pursuant to subsection (6) of this section may, within thirty days after receipt of a disapproval notice, request a hearing in accordance with section 44-7532.

(9) An insurer may authorize the director to accept policy form filings made on its behalf by an advisory organization.

(10)(a) Subject to the requirements of this subsection, policy forms unique in character and designed for and used with regard to an individual risk under common ownership subject to the rate filing provisions of section 44-7508 shall be exempt from subsection (1) of this section.

(b) At the earliest practical opportunity, but no later than thirty days after the effective date of the policy using unfiled provisions, the insurer shall provide the prospective insured with a written listing of the policy forms that have not been filed with the director. This requirement does not apply to renewals using the same unfiled policy forms.

(c) A policy form that has been used in this state or elsewhere by the insurer for another risk shall not be subject to the exemption provided by this subsection, except that an insurer may use a policy form previously developed for a single risk for a second risk if the policy form is filed within sixty days after its second usage.

(d) The exemption provided by this subsection shall not apply to policy forms that, prior to their use by the insurer, had been filed by an advisory organization in this state or had been filed by the insurer in any jurisdiction, regardless of whether approval was received.

(e) The director may by rule and regulation or by order make specific restrictions relating to the exemption provided by this subsection and may require the informational filing of policy forms subject to such exemption within a reasonable time after their use. Any such informational filings specifically relating to individual risks shall be confidential and may not be made public by the director except as may be compiled in summaries of such activity.

(11) The director may by rule and regulation suspend or modify the filing requirements of this section as to any type of insurance or class of risk for which policy forms cannot practicably be filed before they are used. The director may examine insurers as is necessary to ascertain whether any policy forms affected by such rules and regulations meet the standards contained in the Property and Casualty Insurance Rate and Form Act.

(12) If, at any time after the expiration of the review period provided by subsection (6) of this section or any extension thereof, the director finds that a policy form, attachment rule, or modification thereof does not meet or no longer meets the requirements of subsection (5) of this section, the director shall hold a hearing in accordance with section 44-7532.

(13) Any insured aggrieved with respect to any policy form filing subject to this section may make written application to the director for a hearing on such filing. The hearing application shall specify the grounds to be relied upon by the applicant. If the director finds that the hearing application is made in good faith, that a remedy would be available if the grounds are established, or that such grounds otherwise justify holding a hearing, the director shall hold a hearing in accordance with section 44-7532.

(14) If, after a hearing held pursuant to subsection (12) or (13) of this section, the director finds that a filing does not meet the requirements of subsection (5) of this section, the director shall issue an order stating in what respects such filing fails to meet the requirements and when, within a reasonable period thereafter, such policy form or attachment rule shall no longer be used. Copies of the order shall be sent to the applicant, if applicable, and to every affected insurer and advisory organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

Sec. 28. Section 44-7509, Reissue Revised Statutes of Nebraska, is amended to read:

44-7509. (1) For medical professional liability insurance and for insurance subject to section 44-7508, insurers may increase or decrease premiums on an individual risk basis up to forty percent based on any factor except:

(a) The rate adjustment cannot be based upon the race, creed, national origin, or religion of the insured; ~~and~~

(b) The rate adjustment cannot violate the Unfair Discrimination Against Subjects of Abuse in Insurance Act; and

(c) The rate adjustment cannot apply to (i) insurance covering risks of a personal nature, including insurance for homeowners, tenants, private passenger nonfleet automobiles, mobile homes, and other property and casualty

insurance for personal, family, or household needs or (ii) insurance covering farms and ranches, including crop insurance.

(2) If the director finds after a hearing that (a) the utilization of this section by the insurance industry has produced a significant number of rate modifications at or near the upper limit and at the lower limit of the allowable range of modification and (b) the modifiers at and near the upper and lower limits of the allowable range of modification appear to be predominantly correlated with individual risk factors that relate to expected losses and expenses, the director may, by rules and regulations, broaden the range of plus or minus forty percent for any line or type of insurance subject to section 44-7508.

(3) If the director finds after a hearing that modifiers at or near the upper or lower limits of the allowable range of modification are not predominantly correlated with individual risk factors that relate to expected losses and expenses, the director may, by rules and regulations, reduce the range of plus or minus forty percent for any line or type of insurance subject to section 44-7508, but such reduction shall not be to less than plus or minus twenty-five percent.

Sec. 29. Section 44-7511, Reissue Revised Statutes of Nebraska, is amended to read:

44-7511. (1) Each insurer to which this section applies as provided in section 44-7506 shall file with the director every rating system and every modification of such rating system that it proposes to use. No insurer shall issue a contract or policy except in accordance with the filings that are in effect for such insurer as provided in the Property and Casualty Insurance Rate and Form Act, except:

(a) As provided in subsections (6) and (7) of this section;

(b) As provided by rules and regulations adopted and promulgated pursuant to section 44-7515; or

(c) For types of inland marine risks that have, by custom of the industry, not been written according to manual rates or rating plans. For types of inland marine risks for which the custom of the industry has not been established, the director shall consider the similarity of the new insurance to existing types of insurance and classes of risk and whether it would be reasonably practical to create and file rating systems prior to use.

(2) Every filing shall state its proposed effective date, which shall not be prior to the date that the director receives the filing. Instead of a specific date, a filing may indicate that it will be effective a reasonable specified period of time after approval or that the insurer will notify the director of the effective date within ninety days after approval.

(3) Every filing shall provide an objective description of the risks and the coverages to which the rating system will apply. If the insurer has another rating system on file or pending that applies to some or all of these same risks, the filing shall disclose this and shall objectively identify those risks to which each rating system will apply. Filings shall include a list of manual pages and other rating system elements that will be replaced when the approval of a filing will result in the replacement or alteration of previously approved rating systems. In addition, insurers shall maintain listings of manual pages and other rating system elements that have been approved by the director so that such listings can be provided upon request.

(4) Each insurer shall file or incorporate by reference to material filed with the director all supporting information relating to a rating system. If a filing is not accompanied by such information or if additional information is required to complete review of the filing, the director may require the filer to furnish the information, and in that event the review period in subsection (10) of this section shall commence on the date such information is received by the director. If a filer fails to furnish the required information within ninety days, the director may, by written notice sent to the insurer, deem the filing as withdrawn and not available for use.

(5) An insurer may authorize the director to accept rating system filings and prospective loss cost filings made on its behalf by an advisory organization. The insurer shall file additional information as is necessary to complete its rating systems on file with the director.

(6)(a) Except as otherwise provided in subdivision (6)(b) of this section for ~~workers' compensation insurance and subdivision (6)(c) of this section~~ for medical professional liability insurance, a rate or premium in excess of that provided by a filing otherwise applicable may be used on any specific risk upon the prior written application of the insured that describes the insured's unusual or extrahazardous exposures that are not otherwise contemplated by the rates on file for that class of risk, filed with and approved by the director.

(b) ~~For workers' compensation insurance, a rate or premium in excess~~

of that provided by a filing otherwise applicable may be used for any specific employer upon the prior written consent of the employer that describes its unusual or extrahazardous exposures that are not otherwise contemplated by the rates on file for that employer's rate classification. For employers that are offered coverage at a rate higher than would be available in the assigned risk plan, the consent must include an acknowledgment of the availability of coverage at a lower price from the assigned risk plan. Such signed consent shall be filed with the director no later than thirty days after the effective date of the insurance to which it applies. The director shall monitor such rate applications to assure compliance with this subdivision. The director may, after a hearing, require by order that such applications for an insurer that has demonstrated a pattern of using this rating device for employers that do not possess unusual or extrahazardous exposures, or that otherwise fails to comply with this subdivision, shall be subject to prior approval pursuant to subdivision (6)(a) of this section. Upon application by an insurer affected by such order, demonstrating that its filings made subsequent to the order have been in compliance with this subdivision, the director shall vacate such order. The director shall consider any such application within thirty days after its receipt for any order that has been in effect for more than nine months since its inception or since it was last reviewed by the director pursuant to an application by the insurer.

(e) For medical professional liability insurance, a rate or premium in excess of that provided by a filing otherwise applicable may be used for any specific medical professional upon the prior written consent of the medical professional that describes its unusual or extrahazardous exposures that are not otherwise contemplated by the rates on file for that medical professional's rate classification. Such signed consent shall be filed with the director no later than thirty days after the effective date of the insurance to which it applies. The director shall monitor such rate applications to assure compliance with this subdivision. The director may, after a hearing, require by order that such applications for an insurer that has demonstrated a pattern of using this rating device for medical professionals that do not possess unusual or extrahazardous exposures, or that otherwise fails to comply with this subdivision, shall be subject to prior approval pursuant to subdivision (6)(a) of this section. Upon application by an insurer affected by such order, demonstrating that its filings made subsequent to the order have been in compliance with this subdivision, the director shall vacate such order. The director shall consider any such application within thirty days after its receipt for any order that has been in effect for more than nine months since its inception or since it was last reviewed by the director pursuant to an application by the insurer.

(7) The director may by rules and regulations or by order suspend or modify the filing requirements of this section as to any type of insurance or class of risk for which rating systems cannot practicably be filed before they are used. In making this finding, the director shall ascertain whether a system of rating classifications and exposure bases that would equitably reflect the differences in expense requirements and expected losses between individual risks has been developed or appears reasonably capable of being developed. The director may examine insurers as is necessary to ascertain whether any rating systems affected by such rules and regulations meet the standards contained in this section.

(8) No filing or any supporting information provided by an insurer pursuant to this section shall be open to public inspection pursuant to sections 84-712 to 84-712.09 before the approval or disapproval of the filing unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by the director pursuant to statute. Correspondence specifically relating to individual risks shall be confidential and may not be made public by the director except as may be compiled in summaries of such activity.

(9) The director shall review filings as soon as reasonably possible after they have been made. The director shall disapprove a filing if:

(a) The filing fails to meet the standards contained in section 44-7510;

(b) The insurer has more than one rating system applicable to the line or type of insurance and the insurer fails to specify objective differences between risks to determine the risks and the coverages to which the rating system will apply;

(c) The filing proposes to discriminate between risks based on optional commission differences for agents; or

(d) The filing discriminates between risks based on subjective factors, except that (i) an experience rating plan may use loss reserves without being considered as subjective and (ii) a fire insurance rating plan

applying to commercial risks filed for the sole use by an advisory organization may be approved even though it contains subjective rating factors.

(10) Within thirty days after receipt, the director shall approve a filing that meets the requirements of the act, except that this review period may be extended for an additional period not to exceed thirty days if the director gives written notice within the original review period to the insurer or advisory organization. A filing shall be deemed to meet the requirements of the act unless disapproved by the director within the review period or any extension thereof.

(11) If, within the review period provided by subsection (10) of this section or any extension thereof, the director finds that a filing does not meet the requirements of the act, a written disapproval notice shall be sent to the insurer. Such notice shall specify in what respects the filing fails to meet these requirements and state that such filing shall not become effective.

(12) Filings shall become effective on their proposed effective date if approved or deemed approved on or before that date. Filings approved or deemed approved after their proposed effective dates shall become effective after notification by the insurer of a revised effective date, which shall not be prior to the date that the insurer mails the notification to the director. If an insurer fails to furnish a revised effective date within a reasonable period of time not less than ninety days, the director may, by written notice sent to the insurer, deem the filing as withdrawn and not available for use.

(13) An insurer or advisory organization whose filing is disapproved may, within thirty days after receipt of a disapproval notice, request a hearing in accordance with section 44-7532.

(14) If, at any time after approval, the director finds that a rating system or modification thereof does not meet or no longer meets the requirements of the act, the director shall hold a hearing in accordance with section 44-7532.

(15) Any insured aggrieved with respect to any filing may make written application to the director for a hearing on such filing. The hearing application shall specify the grounds to be relied upon by the applicant. If the director finds that the hearing application is made in good faith, that a remedy would be available if the grounds are established, or that such grounds otherwise justify holding a hearing, the director shall hold a hearing in accordance with section 44-7532.

(16) If, after a hearing initiated pursuant to subsection (14) or (15) of this section, the director finds that a filing does not meet the requirements of the act, the director shall issue an order stating in what respects such filing fails to meet the requirements and when, within a reasonable period thereafter, such rating system or aspect of a rating system shall no longer be used. Copies of the order shall be sent to the applicant, if applicable, and to every affected insurer and advisory organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

Sec. 30. The purpose of sections 30 to 35 of this act is to protect the interest of insureds, claimants, ceding insurers, assuming insurers, and the public generally. The Legislature hereby declares its intent is to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom they owe obligations. In furtherance of that state interest, the Legislature hereby provides a mandate that upon the insolvency of a non-United States insurer or reinsurer that provides security to fund its United States obligations in accordance with such sections, the assets representing the security shall be maintained in the United States and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight, and the assets shall be distributed, in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies. The Legislature declares that the matters contained in such sections are fundamental to the business of insurance in accordance with 15 U.S.C. 1011 and 1012.

Sec. 31. (1) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsection (2), (3), (4), (5), or (6) of this section. Except as otherwise provided in section 44-224.11, credit shall be allowed under subsection (2), (3), or (4) of this section only for cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to

transact insurance or reinsurance. Credit shall be allowed under subsection (4) or (5) of this section only if the applicable requirements of subsection (7) of this section have been satisfied.

(2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance in this state.

(3) (a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this state. An accredited reinsurer is one that:

(i) Files with the Director of Insurance evidence of its submission to this state's jurisdiction;

(ii) Submits to this state's authority to examine its books and records;

(iii) Is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state; and

(iv) Files annually with the director a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement and either:

(A) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars and whose accreditation has not been denied by the director within ninety days of its submission; or

(B) Maintains a surplus as regards policyholders in an amount less than twenty million dollars and whose accreditation has been approved by the director.

(b) Credit shall not be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the director after notice and hearing.

(4) (a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled in, or in the case of a United States branch of an alien assuming insurer is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this section and the assuming insurer or United States branch of an alien assuming insurer:

(i) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars; and

(ii) Submits to the authority of this state to examine its books and records.

(b) The requirement of subdivision (4) (a) (i) of this section does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(5) (a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States ceding insurers and their assigns and successors in interest. To enable the director to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the director information substantially the same as that required to be reported on the National Association of Insurance Commissioners Annual Statement form by licensed insurers. The assuming insurer shall submit to examination of its books and records by the director and bear the expense of examination.

(b) (i) Credit for reinsurance shall not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by:

(A) The commissioner of the state where the trust is domiciled; or

(B) The commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

(ii) The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the director.

(iii) The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year the trustee of the trust shall report to the director in writing the balance of the trust and listing the trust's investments at the preceding year end and shall certify

the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.

(c) The following requirements apply to the following categories of assuming insurer:

(i) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers and, in addition, the assuming insurer shall maintain a trusted surplus of not less than twenty million dollars; and

(ii) (A) In the case of a group including incorporated and individual unincorporated underwriters:

(I) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after August 1, 1995, the trust shall consist of a trusted account in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group;

(II) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of sections 30 to 35 of this act, the trust shall consist of a trusted account in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States; and

(III) In addition to these trusts, the group shall maintain in trust a trusted surplus of which one hundred million dollars shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account;

(B) The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members; and

(C) Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the director an annual certification by the group's domiciliary regulator of the solvency of each underwriter member, or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group.

(6) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection (2), (3), (4), or (5) of this section, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

(7) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subsections (4) and (5) of this section shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(a) (i) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and

(ii) To designate the director or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

(b) This subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

(8) If the assuming insurer does not meet the requirements of subsection (2), (3), or (4) of this section, the credit permitted by subsection (5) of this section shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(a) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by subdivision (5)(c) of this section, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the state insurance commissioner with regulatory oversight all of the assets of the trust fund;

(b) The assets shall be distributed by and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies;

(c) If the state insurance commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the state insurance commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement; and

(d) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

Sec. 32. An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 31 of this act shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of:

(1) Cash;

(2) Securities approved by the Director of Insurance. The director may use the list of securities furnished by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets;

(3) (a) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution effective no later than December 31 of the year for which the filing is being made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement; or

(b) Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or

(4) Any other form of security acceptable to the director.

Sec. 33. (1) For purposes of subdivision (3) of section 32 of this act, qualified United States financial institution means an institution that:

(a) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(b) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(c) Has been determined by either the Director of Insurance or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the director.

(2) For purposes of those provisions of sections 30 to 35 of this act specifying those institutions that are eligible to act as a fiduciary of a trust, qualified United States financial institution means an institution that:

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

(b) Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

Sec. 34. The director may adopt and promulgate rules and regulations to carry out sections 30 to 35 of this act.

Sec. 35. Sections 30 to 35 of this act apply to all cessions after the effective date of this act under reinsurance agreements that have an inception, anniversary, or renewal date not less than six months after the effective date of this act.

Sec. 36. The State of Nebraska ratifies the following Interstate Insurance Product Regulation Compact:

Article I. PURPOSES

The purposes of this Compact are, through means of joint and cooperative action among the Compacting States:

1. To promote and protect the interest of consumers of individual and group annuity, life insurance, disability income and long-term care insurance products;
2. To develop uniform standards for insurance products covered under the Compact;
3. To establish a central clearinghouse to receive and provide prompt review of insurance products covered under the Compact and, in certain cases, advertisements related thereto, submitted by insurers authorized to do business in one or more Compacting States;
4. To give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard;
5. To improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the Compact;
6. To create the Interstate Insurance Product Regulation Commission; and
7. To perform these and such other related functions as may be consistent with the state regulation of the business of insurance.

Article II. DEFINITIONS

For purposes of this Compact:

1. "Advertisement" means any material designed to create public interest in a Product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy, as more specifically defined in the Rules and Operating Procedures of the Commission.
2. "Bylaws" mean those bylaws established by the Commission for its governance, or for directing or controlling the Commission's actions or conduct.
3. "Compacting State" means any State which has enacted this Compact legislation and which has not withdrawn pursuant to Article XIV, Section 1, or been terminated pursuant to Article XIV, Section 2.
4. "Commission" means the "Interstate Insurance Product Regulation Commission" established by this Compact.
5. "Commissioner" means the chief insurance regulatory official of a State including, but not limited to commissioner, superintendent, director or administrator.
6. "Domiciliary State" means the state in which an Insurer is incorporated or organized; or, in the case of an alien Insurer, its state of entry.
7. "Insurer" means any entity licensed by a State to issue contracts of insurance for any of the lines of insurance covered by this Act.
8. "Member" means the person chosen by a Compacting State as its representative to the Commission, or his or her designee.
9. "Non-compacting State" means any State which is not at the time a Compacting State.
10. "Operating Procedures" mean procedures promulgated by the Commission implementing a Rule, Uniform Standard or a provision of this Compact.
11. "Product" means the form of a policy or contract, including any application, endorsement, or related form which is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income or long-term care insurance product that an Insurer is authorized to issue.
12. "Rule" means a statement of general or particular applicability and future effect promulgated by the Commission, including a Uniform Standard developed pursuant to Article VII of this Compact, designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the Commission, which shall have the force and effect of law in the Compacting States.
13. "State" means any state, district or territory of the United States of America.
14. "Third-Party Filer" means an entity that submits a Product filing to the Commission on behalf of an Insurer.
15. "Uniform Standard" means a standard adopted by the Commission for a Product line, pursuant to Article VII of this Compact, and shall include all of the Product requirements in aggregate; provided, that each Uniform Standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading or ambiguous provisions in a Product and the form of the Product made available to the public shall not be unfair, inequitable or against public policy as determined by the Commission.

Article III. ESTABLISHMENT OF THE COMMISSION AND VENUE

1. The Compacting States hereby create and establish a joint public agency known as the "Interstate Insurance Product Regulation Commission." Pursuant to Article IV, the Commission will have the power to develop Uniform Standards for Product lines, receive and provide prompt review of Products filed therewith, and give approval to those Product filings satisfying applicable Uniform Standards; provided, it is not intended for the Commission to be the exclusive entity for receipt and review of insurance product filings. Nothing herein shall prohibit any Insurer from filing its product in any State wherein the Insurer is licensed to conduct the business of insurance; and any such filing shall be subject to the laws of the State where filed.

2. The Commission is a body corporate and politic, and an instrumentality of the Compacting States.

3. The Commission is solely responsible for its liabilities except as otherwise specifically provided in this Compact.

4. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a Court of competent jurisdiction where the principal office of the Commission is located.

Article IV. POWERS OF THE COMMISSION

The Commission shall have the following powers:

1. To promulgate Rules, pursuant to Article VII of this Compact, which shall have the force and effect of law and shall be binding in the Compacting States to the extent and in the manner provided in this Compact;

2. To exercise its rule-making authority and establish reasonable Uniform Standards for Products covered under the Compact, and Advertisement related thereto, which shall have the force and effect of law and shall be binding in the Compacting States, but only for those Products filed with the Commission, provided, that a Compacting State shall have the right to opt out of such Uniform Standard pursuant to Article VII, to the extent and in the manner provided in this Compact, and, provided further, that any Uniform Standard established by the Commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the National Association of Insurance Commissioners' Long-Term Care Insurance Model Act and Long-Term Care Insurance Model Regulation, respectively, adopted as of 2001. The Commission shall consider whether any subsequent amendments to the NAIC Long-Term Care Insurance Model Act or Long-Term Care Insurance Model Regulation adopted by the NAIC require amending of the Uniform Standards established by the Commission for long-term care insurance products;

3. To receive and review in an expeditious manner Products filed with the Commission, and rate filings for disability income and long-term care insurance Products, and give approval of those Products and rate filings that satisfy the applicable Uniform Standard, where such approval shall have the force and effect of law and be binding on the Compacting States to the extent and in the manner provided in the Compact;

4. To receive and review in an expeditious manner Advertisement relating to long-term care insurance products for which Uniform Standards have been adopted by the Commission, and give approval to all Advertisement that satisfies the applicable Uniform Standard. For any product covered under this Compact, other than long-term care insurance products, the Commission shall have the authority to require an insurer to submit all or any part of its Advertisement with respect to that product for review or approval prior to use, if the Commission determines that the nature of the product is such that an Advertisement of the product could have the capacity or tendency to mislead the public. The actions of Commission as provided in this section shall have the force and effect of law and shall be binding in the Compacting States to the extent and in the manner provided in the Compact;

5. To exercise its rule-making authority and designate Products and Advertisement that may be subject to a self-certification process without the need for prior approval by the Commission;

6. To promulgate Operating Procedures, pursuant to Article VII of this Compact, which shall be binding in the Compacting States to the extent and in the manner provided in this Compact;

7. To bring and prosecute legal proceedings or actions in its name as the Commission; provided, that the standing of any state insurance department to sue or be sued under applicable law shall not be affected;

8. To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence;

9. To establish and maintain offices;

10. To purchase and maintain insurance and bonds;

11. To borrow, accept or contract for services of personnel, including, but not limited to, employees of a Compacting State;

12. To hire employees, professionals or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the Compact, and determine their qualifications; and to establish the Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation and qualifications of personnel;

13. To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the Commission shall strive to avoid any appearance of impropriety;

14. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall strive to avoid any appearance of impropriety;

15. To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed;

16. To remit filing fees to Compacting States as may be set forth in the Bylaws, Rules or Operating Procedures;

17. To enforce compliance by Compacting States with Rules, Uniform Standards, Operating Procedures and Bylaws;

18. To provide for dispute resolution among Compacting States;

19. To advise Compacting States on issues relating to Insurers domiciled or doing business in Non-compacting jurisdictions, consistent with the purposes of this Compact;

20. To provide advice and training to those personnel in state insurance departments responsible for product review, and to be a resource for state insurance departments;

21. To establish a budget and make expenditures;

22. To borrow money;

23. To appoint committees, including advisory committees comprising Members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in the Bylaws;

24. To provide and receive information from, and to cooperate with law enforcement agencies;

25. To adopt and use a corporate seal; and

26. To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of the business of insurance.

Article V. ORGANIZATION OF THE COMMISSION

1. Membership, Voting and Bylaws

a. Each Compacting State shall have and be limited to one Member. Each Member shall be qualified to serve in that capacity pursuant to applicable law of the Compacting State. Any Member may be removed or suspended from office as provided by the law of the State from which he or she shall be appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the Compacting State wherein the vacancy exists. Nothing herein shall be construed to affect the manner in which a Compacting State determines the election or appointment and qualification of its own Commissioner.

b. Each Member shall be entitled to one vote and shall have an opportunity to participate in the governance of the Commission in accordance with the Bylaws. Notwithstanding any provision herein to the contrary, no action of the Commission with respect to the promulgation of a Uniform Standard shall be effective unless two-thirds (2/3) of the Members vote in favor thereof.

c. The Commission shall, by a majority of the Members, prescribe Bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the Compact, including, but not limited to:

i. Establishing the fiscal year of the Commission;

ii. Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the Management Committee;

iii. Providing reasonable standards and procedures: (i) for the establishment and meetings of other committees, and (ii) governing any general or specific delegation of any authority or function of the Commission;

iv. Providing reasonable procedures for calling and conducting meetings of the Commission that consists of a majority of Commission members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets. The Commission

may meet in camera only after a majority of the entire membership votes to close a meeting en toto or in part. As soon as practicable, the Commission must make public (i) a copy of the vote to close the meeting revealing the vote of each Member with no proxy votes allowed, and (ii) votes taken during such meeting;

v. Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the Commission;

vi. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar laws of any Compacting State, the Bylaws shall exclusively govern the personnel policies and programs of the Commission;

vii. Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees; and

viii. Providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment and/or reserving of all of its debts and obligations.

d. The Commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the Compacting States.

2. Management Committee, Officers and Personnel

a. A Management Committee comprising no more than fourteen (14) members shall be established as follows:

i. One (1) member from each of the six (6) Compacting States with the largest premium volume for individual and group annuities, life, disability income and long-term care insurance products, determined from the records of the NAIC for the prior year;

ii. Four (4) members from those Compacting States with at least two percent (2%) of the market based on the premium volume described above, other than the six (6) Compacting States with the largest premium volume, selected on a rotating basis as provided in the Bylaws; and

iii. Four (4) members from those Compacting States with less than two percent (2%) of the market, based on the premium volume described above, with one (1) selected from each of the four (4) zone regions of the NAIC as provided in the Bylaws.

b. The Management Committee shall have such authority and duties as may be set forth in the Bylaws, including but not limited to:

i. Managing the affairs of the Commission in a manner consistent with the Bylaws and purposes of the Commission;

ii. Establishing and overseeing an organizational structure within, and appropriate procedures for, the Commission to provide for the creation of Uniform Standards and other Rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a Compacting State to opt out of a Uniform Standard; provided that a Uniform Standard shall not be submitted to the Compacting States for adoption unless approved by two-thirds (2/3) of the members of the Management Committee;

iii. Overseeing the offices of the Commission; and

iv. Planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the Commission.

c. The Commission shall elect annually officers from the Management Committee, with each having such authority and duties, as may be specified in the Bylaws.

d. The Management Committee may, subject to the approval of the Commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Commission may deem appropriate. The executive director shall serve as secretary to the Commission, but shall not be a Member of the Commission. The executive director shall hire and supervise such other staff as may be authorized by the Commission.

3. Legislative and Advisory Committees

a. A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the Commission, including the Management Committee; provided that the manner of selection and term of any legislative committee member shall be as set forth in the Bylaws. Prior to the adoption by the Commission of any Uniform Standard, revision to the Bylaws, annual budget or other significant matter as may be provided in the Bylaws, the Management Committee shall consult with and report to the legislative committee.

b. The Commission shall establish two (2) advisory committees, one

of which shall comprise consumer representatives independent of the insurance industry, and the other comprising insurance industry representatives.

c. The Commission may establish additional advisory committees as its Bylaws may provide for the carrying out of its functions.

4. Corporate Records of the Commission

The Commission shall maintain its corporate books and records in accordance with the Bylaws.

5. Qualified Immunity, Defense and Indemnification

a. The Members, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided, that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of that person.

b. The Commission shall defend any Member, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided, that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error or omission did not result from that person's intentional or willful and wanton misconduct.

c. The Commission shall indemnify and hold harmless any Member, officer, executive director, employee or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities, provided, that the actual or alleged act, error or omission did not result from the intentional or willful and wanton misconduct of that person.

Article VI. MEETINGS AND ACTS OF THE COMMISSION

1. The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the Bylaws.

2. Each Member of the Commission shall have the right and power to cast a vote to which that Compacting State is entitled and to participate in the business and affairs of the Commission. A Member shall vote in person or by such other means as provided in the Bylaws. The Bylaws may provide for Members' participation in meetings by telephone or other means of communication.

3. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the Bylaws.

Article VII. RULES AND OPERATING PROCEDURES: RULEMAKING FUNCTIONS OF THE COMMISSION AND OPTING OUT OF UNIFORM STANDARDS

1. Rulemaking Authority. The Commission shall promulgate reasonable Rules, including Uniform Standards, and Operating Procedures in order to effectively and efficiently achieve the purposes of this Compact. Notwithstanding the foregoing, in the event the Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Act, or the powers granted hereunder, then such an action by the Commission shall be invalid and have no force and effect.

2. Rulemaking Procedure. Rules and Operating Procedures shall be made pursuant to a rulemaking process that conforms to the Model State Administrative Procedure Act of 1981 as amended, as may be appropriate to the operations of the Commission. Before the Commission adopts a Uniform Standard, the Commission shall give written notice to the relevant state legislative committee(s) in each Compacting State responsible for insurance issues of its intention to adopt the Uniform Standard. The Commission in adopting a Uniform Standard shall consider fully all submitted materials and issue a concise explanation of its decision.

3. Effective Date and Opt Out of a Uniform Standard. A Uniform Standard shall become effective ninety (90) days after its promulgation by the Commission or such later date as the Commission may determine; provided, however, that a Compacting State may opt out of a Uniform Standard as provided in this Article. "Opt out" shall be defined as any action by a Compacting

State to decline to adopt or participate in a promulgated Uniform Standard. All other Rules and Operating Procedures, and amendments thereto, shall become effective as of the date specified in each Rule, Operating Procedure or amendment.

4. Opt Out Procedure. A Compacting State may opt out of a Uniform Standard, either by legislation or regulation duly promulgated by the Insurance Department under the Compacting State's Administrative Procedure Act. If a Compacting State elects to opt out of a Uniform Standard by regulation, it must (a) give written notice to the Commission no later than ten (10) business days after the Uniform Standard is promulgated, or at the time the State becomes a Compacting State and (b) find that the Uniform Standard does not provide reasonable protections to the citizens of the State, given the conditions in the State. The Commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the State which warrant a departure from the Uniform Standard and determining that the Uniform Standard would not reasonably protect the citizens of the State. The Commissioner must consider and balance the following factors and find that the conditions in the State and needs of the citizens of the State outweigh: (i) the intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the Products subject to this Act; and (ii) the presumption that a Uniform Standard adopted by the Commission provides reasonable protections to consumers of the relevant Product.

Notwithstanding the foregoing, a Compacting State may, at the time of its enactment of this Compact, prospectively opt out of all Uniform Standards involving long-term care insurance products by expressly providing for such opt out in the enacted Compact, and such an opt out shall not be treated as a material variance in the offer or acceptance of any State to participate in this Compact. Such an opt out shall be effective at the time of enactment of this Compact by the Compacting State and shall apply to all existing Uniform Standards involving long-term care insurance products and those subsequently promulgated.

5. Effect of Opt Out. If a Compacting State elects to opt out of a Uniform Standard, the Uniform Standard shall remain applicable in the Compacting State electing to opt out until such time the opt out legislation is enacted into law or the regulation opting out becomes effective.

Once the opt out of a Uniform Standard by a Compacting State becomes effective as provided under the laws of that State, the Uniform Standard shall have no further force and effect in that State unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the State. If a Compacting State opts out of a Uniform Standard after the Uniform Standard has been made effective in that State, the opt out shall have the same prospective effect as provided under Article XIV for withdrawals.

6. Stay of Uniform Standard. If a Compacting State has formally initiated the process of opting out of a Uniform Standard by regulation, and while the regulatory opt out is pending, the Compacting State may petition the Commission, at least fifteen (15) days before the effective date of the Uniform Standard, to stay the effectiveness of the Uniform Standard in that State. The Commission may grant a stay if it determines the regulatory opt out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the Commission, the stay or extension thereof may postpone the effective date by up to ninety (90) days, unless affirmatively extended by the Commission; provided, a stay may not be permitted to remain in effect for more than one (1) year unless the Compacting State can show extraordinary circumstances which warrant a continuance of the stay, including, but not limited to, the existence of a legal challenge which prevents the Compacting State from opting out. A stay may be terminated by the Commission upon notice that the rulemaking process has been terminated.

7. Not later than thirty (30) days after a Rule or Operating Procedure is promulgated, any person may file a petition for judicial review of the Rule or Operating Procedure; provided, that the filing of such a petition shall not stay or otherwise prevent the Rule or Operating Procedure from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Commission consistent with applicable law and shall not find the Rule or Operating Procedure to be unlawful if the Rule or Operating Procedure represents a reasonable exercise of the Commission's authority.

Article VIII. COMMISSION RECORDS AND ENFORCEMENT

1. The Commission shall promulgate Rules establishing conditions and procedures for public inspection and copying of its information and

official records, except such information and records involving the privacy of individuals and insurers' trade secrets. The Commission may promulgate additional Rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

2. Except as to privileged records, data and information, the laws of any Compacting State pertaining to confidentiality or nondisclosure shall not relieve any Compacting State Commissioner of the duty to disclose any relevant records, data or information to the Commission; provided, that disclosure to the Commission shall not be deemed to waive or otherwise affect any confidentiality requirement; and further provided, that, except as otherwise expressly provided in this Act, the Commission shall not be subject to the Compacting State's laws pertaining to confidentiality and nondisclosure with respect to records, data and information in its possession. Confidential information of the Commission shall remain confidential after such information is provided to any Commissioner.

3. The Commission shall monitor Compacting States for compliance with duly adopted Bylaws, Rules, including Uniform Standards, and Operating Procedures. The Commission shall notify any non-complying Compacting State in writing of its noncompliance with Commission Bylaws, Rules or Operating Procedures. If a non-complying Compacting State fails to remedy its noncompliance within the time specified in the notice of noncompliance, the Compacting State shall be deemed to be in default as set forth in Article XIV.

4. The Commissioner of any State in which an Insurer is authorized to do business, or is conducting the business of insurance, shall continue to exercise his or her authority to oversee the market regulation of the activities of the Insurer in accordance with the provisions of the State's law. The Commissioner's enforcement of compliance with the Compact is governed by the following provisions:

a. With respect to the Commissioner's market regulation of a Product or Advertisement that is approved or certified to the Commission, the content of the Product or Advertisement shall not constitute a violation of the provisions, standards or requirements of the Compact except upon a final order of the Commission, issued at the request of a Commissioner after prior notice to the Insurer and an opportunity for hearing before the Commission.

b. Before a Commissioner may bring an action for violation of any provision, standard or requirement of the Compact relating to the content of an Advertisement not approved or certified to the Commission, the Commission, or an authorized Commission officer or employee, must authorize the action. However, authorization pursuant to this paragraph does not require notice to the Insurer, opportunity for hearing or disclosure of requests for authorization or records of the Commission's action on such requests.

Article IX. DISPUTE RESOLUTION

The Commission shall attempt, upon the request of a Member, to resolve any disputes or other issues that are subject to this Compact and which may arise between two or more Compacting States, or between Compacting States and Non-compacting States, and the Commission shall promulgate an Operating Procedure providing for resolution of such disputes.

Article X. PRODUCT FILING AND APPROVAL

1. Insurers and Third-Party Filers seeking to have a Product approved by the Commission shall file the Product with, and pay applicable filing fees to, the Commission. Nothing in this Act shall be construed to restrict or otherwise prevent an insurer from filing its Product with the insurance department in any State wherein the insurer is licensed to conduct the business of insurance, and such filing shall be subject to the laws of the States where filed.

2. The Commission shall establish appropriate filing and review processes and procedures pursuant to Commission Rules and Operating Procedures. Notwithstanding any provision herein to the contrary, the Commission shall promulgate Rules to establish conditions and procedures under which the Commission will provide public access to Product filing information. In establishing such Rules, the Commission shall consider the interests of the public in having access to such information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a Product filing or supporting information.

3. Any Product approved by the Commission may be sold or otherwise issued in those Compacting States for which the Insurer is legally authorized to do business.

Article XI. REVIEW OF COMMISSION DECISIONS REGARDING FILINGS

1. Not later than thirty (30) days after the Commission has given

notice of a disapproved Product or Advertisement filed with the Commission, the Insurer or Third Party Filer whose filing was disapproved may appeal the determination to a review panel appointed by the Commission. The Commission shall promulgate Rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the Commission, in disapproving a Product or Advertisement filed with the Commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with Article III, Section 4.

2. The Commission shall have authority to monitor, review and reconsider Products and Advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant Uniform Standard. Where appropriate, the Commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in Section 1 above.

Article XII. FINANCE

1. The Commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the Commission may accept contributions and other forms of funding from the National Association of Insurance Commissioners, Compacting States and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the Commission concerning the performance of its duties shall not be compromised.

2. The Commission shall collect a filing fee from each Insurer and Third Party Filer filing a product with the Commission to cover the cost of the operations and activities of the Commission and its staff in a total amount sufficient to cover the Commission's annual budget.

3. The Commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in Article VII of this Compact.

4. The Commission shall be exempt from all taxation in and by the Compacting States.

5. The Commission shall not pledge the credit of any Compacting State, except by and with the appropriate legal authority of that Compacting State.

6. The Commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the Commission shall be subject to the accounting procedures established under its Bylaws. The financial accounts and reports including the system of internal controls and procedures of the Commission shall be audited annually by an independent certified public accountant. Upon the determination of the Commission, but no less frequently than every three (3) years, the review of the independent auditor shall include a management and performance audit of the Commission. The Commission shall make an Annual Report to the Governor and legislature of the Compacting States, which shall include a report of the independent audit. The Commission's internal accounts shall not be confidential and such materials may be shared with the Commissioner of any Compacting State upon request provided, however, that any work papers related to any internal or independent audit and any information regarding the privacy of individuals and insurers' proprietary information, including trade secrets, shall remain confidential.

7. No Compacting State shall have any claim to or ownership of any property held by or vested in the Commission or to any Commission funds held pursuant to the provisions of this Compact.

Article XIII. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

1. Any State is eligible to become a Compacting State.

2. The Compact shall become effective and binding upon legislative enactment of the Compact into law by two Compacting States; provided, the Commission shall become effective for purposes of adopting Uniform Standards for, reviewing, and giving approval or disapproval of, Products filed with the Commission that satisfy applicable Uniform Standards only after twenty-six (26) States are Compacting States or, alternatively, by States representing greater than forty percent (40%) of the premium volume for life insurance, annuity, disability income and long-term care insurance products, based on records of the NAIC for the prior year. Thereafter, it shall become effective and binding as to any other Compacting State upon enactment of the Compact into law by that State.

3. Amendments to the Compact may be proposed by the Commission for enactment by the Compacting States. No amendment shall become effective and binding upon the Commission and the Compacting States unless and until all Compacting States enact the amendment into law.

Article XIV. WITHDRAWAL, DEFAULT AND TERMINATION

1. Withdrawal

a. Once effective, the Compact shall continue in force and remain binding upon each and every Compacting State; provided, that a Compacting State may withdraw from the Compact ("Withdrawing State") by enacting a statute specifically repealing the statute which enacted the Compact into law.

b. The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any product filings approved or self-certified, or any Advertisement of such products, on the date the repealing statute becomes effective, except by mutual agreement of the Commission and the Withdrawing State unless the approval is rescinded by the Withdrawing State as provided in Paragraph e of this section.

c. The Commissioner of the Withdrawing State shall immediately notify the Management Committee in writing upon the introduction of legislation repealing this Compact in the Withdrawing State.

d. The Commission shall notify the other Compacting States of the introduction of such legislation within ten (10) days after its receipt of notice thereof.

e. The Withdrawing State is responsible for all obligations, duties and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the Commission and the Withdrawing State. The Commission's approval of Products and Advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the Withdrawing State, unless formally rescinded by the Withdrawing State in the same manner as provided by the laws of the Withdrawing State for the prospective disapproval of products or advertisement previously approved under state law.

f. Reinstatement following withdrawal of any Compacting State shall occur upon the effective date of the Withdrawing State reenacting the Compact.

2. Default

a. If the Commission determines that any Compacting State has at any time defaulted ("Defaulting State") in the performance of any of its obligations or responsibilities under this Compact, the Bylaws or duly promulgated Rules or Operating Procedures, then, after notice and hearing as set forth in the Bylaws, all rights, privileges and benefits conferred by this Compact on the Defaulting State shall be suspended from the effective date of default as fixed by the Commission. The grounds for default include, but are not limited to, failure of a Compacting State to perform its obligations or responsibilities, and any other grounds designated in Commission Rules. The Commission shall immediately notify the Defaulting State in writing of the Defaulting State's suspension pending a cure of the default. The Commission shall stipulate the conditions and the time period within which the Defaulting State must cure its default. If the Defaulting State fails to cure the default within the time period specified by the Commission, the Defaulting State shall be terminated from the Compact and all rights, privileges and benefits conferred by this Compact shall be terminated from the effective date of termination.

b. Product approvals by the Commission or product self-certifications, or any Advertisement in connection with such product, that are in force on the effective date of termination shall remain in force in the Defaulting State in the same manner as if the Defaulting State had withdrawn voluntarily pursuant to Section 1 of this article.

c. Reinstatement following termination of any Compacting State requires a reenactment of the Compact.

3. Dissolution of Compact

a. The Compact dissolves effective upon the date of the withdrawal or default of the Compacting State which reduces membership in the Compact to one Compacting State.

b. Upon the dissolution of this Compact, the Compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Commission shall be wound up and any surplus funds shall be distributed in accordance with the Bylaws.

Article XV. SEVERABILITY AND CONSTRUCTION

1. The provisions of this Compact shall be severable; and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the Compact shall be enforceable.

2. The provisions of this Compact shall be liberally construed to effectuate its purposes.

Article XVI. BINDING EFFECT OF COMPACT AND OTHER LAWS

1. Other Laws

a. Nothing herein prevents the enforcement of any other law of a

Compacting State, except as provided in Paragraph b of this section.

b. For any Product approved or certified to the Commission, the Rules, Uniform Standards and any other requirements of the Commission shall constitute the exclusive provisions applicable to the content, approval and certification of such Products. For Advertisement that is subject to the Commission's authority, any Rule, Uniform Standard or other requirement of the Commission which governs the content of the Advertisement shall constitute the exclusive provision that a Commissioner may apply to the content of the Advertisement. Notwithstanding the foregoing, no action taken by the Commission shall abrogate or restrict: (i) the access of any person to state courts; (ii) remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the Product; (iii) state law relating to the construction of insurance contracts; or (iv) the authority of the attorney general of the state, including but not limited to maintaining any actions or proceedings, as authorized by law.

c. All insurance products filed with individual States shall be subject to the laws of those States.

2. Binding Effect of this Compact

a. All lawful actions of the Commission, including all Rules and Operating Procedures promulgated by the Commission, are binding upon the Compacting States.

b. All agreements between the Commission and the Compacting States are binding in accordance with their terms.

c. Upon the request of a party to a conflict over the meaning or interpretation of Commission actions, and upon a majority vote of the Compacting States, the Commission may issue advisory opinions regarding the meaning or interpretation in dispute.

d. In the event any provision of this Compact exceeds the constitutional limits imposed on the legislature of any Compacting State, the obligations, duties, powers or jurisdiction sought to be conferred by that provision upon the Commission shall be ineffective as to that Compacting State, and those obligations, duties, powers or jurisdiction shall remain in the Compacting State and shall be exercised by the agency thereof to which those obligations, duties, powers or jurisdiction are delegated by law in effect at the time this Compact becomes effective.

Sec. 37. The Director of Insurance is hereby designated to serve as the representative of this state to the Interstate Insurance Product Regulation Commission.

Sec. 38. If the laws of any other state specify that a certificate issued for delivery in that state need not provide the coverages or services mandated by that state to certificate holders who are not residents or not employed in that state, and if a certificate issued for delivery in that state does not provide the coverages or services mandated by that state to certificate holders who are not residents or not employed in that state, then the coverages or services mandated by Chapter 44 shall apply to such certificate issued to certificate holders who are residents of or employed in this state.

Sec. 39. Sections 39 to 41 of this act shall be known and may be cited as the Property and Casualty Actuarial Opinion Act.

Sec. 40. (1) Beginning January 1, 2007, every property and casualty insurance company doing business in this state, unless otherwise exempted by the domiciliary commissioner, shall annually submit the opinion of an appointed actuary entitled Statement of Actuarial Opinion. This opinion shall be filed in accordance with the appropriate National Association of Insurance Commissioners Property and Casualty Annual Statement Instructions.

(2)(a) Every property and casualty insurance company domiciled in this state that is required to submit a Statement of Actuarial Opinion shall annually submit an actuarial opinion summary, written by the company's appointed actuary. This actuarial opinion summary shall be filed in accordance with the appropriate National Association of Insurance Commissioners Property and Casualty Annual Statement Instructions and shall be considered as a document supporting the Statement of Actuarial Opinion required in subsection (1) of this section.

(b) A property and casualty insurance company authorized to do business in this state but not domiciled in this state shall provide the actuarial opinion summary to the Director of Insurance upon request.

(3)(a) An actuarial report and underlying workpapers as required by the appropriate National Association of Insurance Commissioners Property and Casualty Annual Statement Instructions shall be prepared to support each Statement of Actuarial Opinion.

(b) If the insurance company fails to provide a supporting actuarial report or workpapers at the request of the director or the director determines

that the supporting actuarial report or workpapers provided by the insurance company is otherwise unacceptable to the director, the director may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting actuarial report or workpapers.

(4) The appointed actuary shall not be liable for damages to any person, other than the insurance company or the director, for any act, error, omission, decision, or conduct with respect to the actuary's opinion, except in cases of fraud or willful misconduct on the part of the appointed actuary.

Sec. 41. (1) The Statement of Actuarial Opinion shall be provided with the annual statement in accordance with the appropriate National Association of Insurance Commissioners Property and Casualty Annual Statement Instructions and shall be a public document.

(2) (a) Documents, materials, or other information in the possession or control of the Department of Insurance that are considered an actuarial report, workpapers, or actuarial opinion summary provided in support of the opinion, and any other material provided by the company to the Director of Insurance in connection with the actuarial report, workpapers, or actuarial opinion summary, shall be confidential by law and privileged, shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

(b) This section shall not be construed to limit the director's authority to release the documents to the Actuarial Board for Counseling and Discipline if the material is required for the purpose of professional disciplinary proceedings and that the Actuarial Board for Counseling and Discipline establishes procedures satisfactory to the director for preserving the confidentiality of the documents, nor shall this section be construed to limit the director's authority to use the documents, materials or other information in furtherance of any regulatory or legal action brought as part of the director's official duties.

(3) Neither the director nor any person who received documents, materials, or other information while acting under the authority of the director shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (2) of this section.

(4) The director:

(a) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (2) of this section with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, if the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information and has the legal authority to maintain confidentiality; and

(b) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information from other state, federal, foreign, or international regulatory and law enforcement agencies and from the National Association of Insurance Commissioners and its affiliates and subsidiaries. The director shall maintain information received pursuant to this subdivision as confidential or privileged if received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the information. Such information shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, subject to subpoena, subject to discovery, or admissible in evidence in any private civil action, except that the director may use such information in any regulatory or legal action brought by the director. The director, and any other person while acting under the authority of the director who has received information pursuant to this subdivision, may not, and shall not be required to, testify in any private civil action concerning any information subject to this section. Nothing in this section shall constitute a waiver of any applicable privilege or claim of confidentiality in the information received pursuant to this subdivision as a result of information sharing authorized by this section.

Sec. 42. Section 48-146.01, Reissue Revised Statutes of Nebraska, is amended to read:

48-146.01. (1) For purposes of this section:

(a) Assigned risk employer means a Nebraska employer that is in good faith entitled to, but is unable to obtain, workers' compensation insurance through ordinary methods. Assigned risk employer does not include an employer

who is in default on workers' compensation premiums, who has failed to reimburse an insurer for amounts to be repaid pursuant to workers' compensation insurance written on a policy with a deductible, who has failed to provide an insurer reasonable access to books and records necessary for a premium audit, or who has defrauded or attempted to defraud an insurer; and

(b) Director means the Director of Insurance.

(2) (a) The director, after consultation with insurers authorized to issue workers' compensation insurance policies in this state, shall put into effect a reasonable system to guarantee that each assigned risk employer shall be covered by workers' compensation insurance covering its employees subject to the Nebraska Workers' Compensation Act following the assigned risk employer's application to the assigned risk plan and tender of the required premium.

(b) The director shall enter into an agreement with one or more workers' compensation insurers to provide workers' compensation insurance to assigned risk employers. In selecting an insurer to become an assigned risk insurer, the director shall consider the cost of coverage to assigned risk employers, the loss control and claims handling services available from the workers' compensation insurer, the financial condition of the workers' compensation insurer, and any other relevant factors. An agreement entered into under this subsection may not exceed five years.

(c) If the director determines that the cost of workers' compensation insurance premiums for an insurer to provide assigned risk coverage pursuant to such an agreement would be unreasonably high, the director may enter into an agreement in which the assigned risk insurer covers a portion of the losses incurred by the assigned risk employer. Any agreement that involves an average rate level of less than two and one-half times the prospective loss costs approved for an advisory organization pursuant to section ~~44-5020~~ 44-7511 shall not be considered unreasonably high for the purposes of this section. Pursuant to any such agreement, remaining losses shall be assessed against all workers' compensation insurers writing workers' compensation insurance in this state and risk management pools created under the Intergovernmental Risk Management Act based on their workers' compensation premiums written in this state or contributions made to risk management pools. Assigned risk premiums shall be excluded from the basis for such assessments.

(3) The director may adopt and promulgate rules and regulations to carry out this section.

(4) Any employer which is required to establish a safety committee pursuant to sections 48-443 to 48-445 and which is not in compliance with such sections shall not be entitled to be covered by workers' compensation insurance under this section.

Sec. 43. Original sections 12-1108, 12-1110, 12-1115, 12-1116, 44-401, 44-402.01, 44-409, 44-417, 44-797, 44-2131, 44-2132, 44-4814, 44-5103, 44-5109, 44-5143, 44-5144, 44-5149, 44-5153, 44-5154, 44-5505, 44-5508, 44-6122, 44-6125, 44-7506, 44-7508.01 to 44-7509, 44-7511, and 48-146.01, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 44. The following sections are outright repealed: Sections 44-416, 44-416.01, 44-416.03, and 44-416.04, Reissue Revised Statutes of Nebraska.