

LEGISLATIVE BILL 875

Approved by the Governor March 13, 2006

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 44-1602, 44-1988, 44-3522, 44-3523, 44-4902, 44-4903, 44-4904, 44-4906, 44-4907, and 44-7513, Reissue Revised Statutes of Nebraska, and sections 44-3,157 and 44-3521, Revised Statutes Supplement, 2005; to change provisions relating to mandated coverages and services, premium payments, premium reserves of title insurers, motor vehicle service contracts, the Managing General Agents Act, form filings, and bonds; to adopt the Nebraska Senior Protection in Annuity Transactions Act; to eliminate provisions relating to the Interstate Insurance Receivership Compact; to harmonize provisions; to provide operative dates; to provide severability; to repeal the original sections; to outright repeal section 44-6501, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Section 1. Section 44-3,157, Revised Statutes Supplement, 2005, is amended to read:

44-3,157 If the laws of any other state specify that a certificate policy 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 such a certificate policy 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 sections 44-769 to 44-7,101 shall apply to such a certificate issued to certificate holders who are residents of or employed in this state.

Sec. 2. Section 44-1602, Reissue Revised Statutes of Nebraska, is amended to read:

44-1602 A policy issued to an employer or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer shall be subject to the following requirements:

(1) The employees eligible for insurance under the policy shall be all of the employees of the employer or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term employees shall include the employees of one or more subsidiary corporations and the employees, individual proprietors, partners, and members of one or more affiliated corporations, proprietors, partnerships, or limited liability companies if the business of the employer and of such affiliated corporations, proprietors, partnerships, or limited liability companies is under common control through stock ownership or contract. The policy may provide that the term employees shall include the individual proprietor, partners, or members if the employer is an individual proprietor, partnership, or limited liability company. The policy may provide that the term employee shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor, partner, or member shall be eligible for insurance under the policy unless he or she is actively engaged in and devotes a substantial part of his or her time to the conduct of the business of the proprietor, partnership, or limited liability company.

(2) ~~The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him or her, or partly from such funds and partly from funds contributed by the insured employees or from both such funds. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five percent of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees or all except any as to whom evidence of individual~~

insurability is not satisfactory to the insurer.

(3) The policy must cover at least five employees at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees.

Sec. 3. Section 44-1988, Reissue Revised Statutes of Nebraska, is amended to read:

44-1988 (1) In determining the financial condition of a title insurer transacting the business of title insurance under the Title Insurers Act, the general provisions of the insurance laws of this state requiring the establishment of reserves sufficient to cover all known and unknown liabilities, including allocated and unallocated loss adjustment expense, shall apply except as provided in subsections (2) through (4) of this section.

(2) A title insurer shall establish and maintain a known claim reserve in an amount estimated to be sufficient to cover all unpaid losses, claims, and allocated loss adjustment expenses arising under title insurance policies, guaranteed certificates of title, guaranteed searches, and guaranteed abstracts of title and all unpaid losses, claims, and allocated loss adjustment expenses for which the title insurer may be liable and for which the title insurer has received notice by or on behalf of the insured, holder of a guarantee or escrow, or security depositor.

(3)(a) If a title insurer is a foreign or non-United-States title insurer, the title insurer shall establish and maintain a statutory or unearned premium reserve consisting of the amount of statutory or unearned premium reserve required by the laws of the domiciliary state of the title insurer.

(b)(i) If a title insurer is a domestic insurer of this state, the title insurer shall establish and maintain a statutory or unearned premium reserve consisting of the amount of the statutory or unearned premium or reinsurance reserve on September 13, 1997, which balance shall be released in accordance with the law in effect at the time such sums were added to the reserve.

(ii) If a title insurer that is organized under the laws of another state transfers its domicile to this state, the statutory or unearned premium reserve shall be that amount required by the laws of the state of the title insurer's former state of domicile as of the date of transfer of domicile. Thereafter, the aggregate of such statutory or unearned premium reserve shall be released from the reserve and restored to profits over a period of twenty years pursuant to the formula set forth in subdivision (3)(b)(vi) of this section. Following the transfer of domicile to this state of the title insurer, for business written after the date of transfer of domicile, the title insurer shall add to and set aside in the statutory or unearned premium reserve such amount as provided in subdivision (3)(b)(v) of this section.

~~(ii)~~ (iii) Out of total charges for title insurance policies written or assumed commencing on September 13, 1997, and until December 31, 1998, a title insurer shall add to and set aside in the reserve required under subdivision (3)(b)(i) of this section an amount equal to six percent of the sum of the following items set forth in the title insurer's most recent annual statement on file with the director:

(A) Direct premiums written;
 (B) Escrow, settlement, and closing fees;
 (C) Other title fees and service charges, including fees for closing protection letters; and
 (D) Premiums for reinsurance assumed less premiums for reinsurance ceded.

~~(iii)~~ (iv) Additions to the reserve required under subdivision (3)(b)(i) of this section ~~on or after~~ commencing on January 1, 1999, and until December 31, 2005, shall be made out of total charges for title insurance policies and guarantees written, equal to the sum of the following items, as set forth in the title insurer's most recent annual statement on file with the director:

(A) For each title insurance policy on a single risk written or assumed on or after January 1, 1999, and until December 31, 2005, twenty-five cents per one thousand dollars of net retained liability for title insurance policies under five hundred thousand dollars and twelve cents per one thousand dollars of net retained liability for title insurance policies of five hundred thousand dollars or greater; and

(B) Six percent of escrow, settlement, and closing fees collected in contemplation of the issuance of title insurance policies or guarantees.

(v) Out of total charges for title insurance policies written or assumed on or after January 1, 2006, a title insurer shall add to and set aside in the reserve required under subdivision (3)(b)(i) of this section

an amount equal to seventeen cents per one thousand dollars of net retained liability for each title insurance policy.

~~(iv)~~ (vi) The aggregate of the amounts set aside in the reserve required under subdivision (3)(b)(i) of this section in any calendar year pursuant to subdivisions ~~(3)(b)(ii)~~ and ~~(3)(b)(iii)~~ (3)(b)(iii), (3)(b)(iv), and (3)(b)(v) of this section and the reserve required under subdivision (3)(b)(ii) of this section shall be released from the reserve and restored to net profits over a period of twenty years pursuant to the following formula: ~~Thirty~~ For an insurer that transfers its domicile to this state, thirty percent of the aggregate of such reserves on the forty-fifth day following the last day of the calendar quarter in which the insurer transfers its domicile and thereafter pursuant to the formula as set forth in this subdivision; and for all other insurers, thirty percent of the aggregate sum on July 1 of the year next succeeding the year of addition; fifteen percent of the aggregate sum on July 1 of the next succeeding year; ten percent of the aggregate sum on July 1 of each of the next succeeding two years; five percent of the aggregate sum on July 1 of each of the next succeeding two years; three percent of the aggregate sum on July 1 of each of the next succeeding two years; two percent of the aggregate sum on July 1 of each of the next succeeding seven years; and one percent of the aggregate sum on July 1 of each of the next succeeding five years. No release of statutory or unearned premium reserve shall occur if such release would result in the aggregate reserve falling below the actuarial level required by subsection (1) of this section.

~~(v)~~ (vii) The title insurer shall calculate an adjusted statutory or unearned premium reserve as of September 13, 1997. The adjusted reserve shall be calculated as if subdivisions ~~(3)(b)(ii) through (iv)~~ (3)(b)(iii), (iv), and (vi) of this section had been in effect for all years beginning twenty years prior to September 13, 1997. For purposes of this calculation, the balance of the reserve as of that date shall be deemed to be zero. If the adjusted reserve so calculated exceeds the aggregate amount set aside for statutory or unearned premiums in the title insurer's annual statement on file with the director on September 13, 1997, the title insurer shall, out of total charges for title insurance policies, increase its statutory or unearned premium reserve by an amount equal to one-sixth of that excess in each of the succeeding six years, commencing with the calendar year that includes September 13, 1997, until the entire excess has been added.

~~(vi)~~ (viii) The aggregate of the amounts set aside in the reserve required under subdivision (3)(b)(i) of this section in any calendar year as adjustments to the title insurer's statutory or unearned premium reserve pursuant to subdivision ~~(3)(b)(v)~~ (3)(b)(vii) of this section shall be released from the reserve and restored to net profits, or equity if the additions required by such subdivision reduced equity directly, over a period not exceeding ten years pursuant to the following table:

Calendar Year of Addition	Release
1998	Equally over 10 years
1999	Equally over 9 years
2000	Equally over 8 years
2001	Equally over 7 years
2002	Equally over 6 years
2003	Equally over 5 years

(4) A title insurer shall establish and maintain a supplemental reserve consisting of any other reserves necessary, when taken in combination with the reserves required by subsections (2) and (3) of this section, to cover the title insurer's liabilities with respect to all losses, claims, and loss adjustment expenses. The supplemental reserve required under this subsection shall be phased in as follows: Twenty-five percent of the otherwise applicable supplemental reserve will be required until December 31, 1998; fifty percent of the otherwise applicable supplemental reserve will be required until December 31, 1999; and seventy-five percent of the otherwise applicable supplemental reserve will be required until December 31, 2000.

(5) Each title insurer subject to the Title Insurers Act shall file with its annual financial statement required under section 44-322 a certification by a member in good standing of the American Academy of Actuaries. The actuarial certification required of a title insurer shall

conform to the National Association of Insurance Commissioners' annual statement instructions for title insurers.

Sec. 4. Section 44-3521, Revised Statutes Supplement, 2005, is amended to read:

44-3521 For purposes of the Motor Vehicle Service Contract Reimbursement Insurance Act:

(1) Director means the Director of Insurance;

(2) Mechanical breakdown insurance means a policy, contract, or agreement that undertakes to perform or provide repair or replacement service, or indemnification for such service, for the operational or structural failure of a motor vehicle due to defect in materials or workmanship or normal wear and tear and that is issued by an insurance company authorized to do business in this state;

(3) Motor vehicle means any motor vehicle as defined in section 60-339;

(4) Motor vehicle service contract means a contract or agreement given for consideration over and above the lease or purchase price of a motor vehicle that undertakes to perform or provide repair or replacement service, or indemnification for such service, for the operational or structural failure of a motor vehicle due to defect in materials or workmanship or normal wear and tear but does not include mechanical breakdown insurance;

(5) Motor vehicle service contract provider means a person who issues, makes, provides, sells, or offers to sell a motor vehicle service contract, except that motor vehicle service contract provider does not include an insurer as defined in section 44-103;

(6) Motor vehicle service contract reimbursement insurance policy means a policy of insurance ~~providing~~ meeting the requirements in section 44-3523 that provides coverage for all obligations and liabilities incurred by a motor vehicle service contract provider under the terms of motor vehicle service contracts issued by the provider; and

(7) Service contract holder means a person who purchases a motor vehicle service contract.

Sec. 5. Section 44-3522, Reissue Revised Statutes of Nebraska, is amended to read:

44-3522 No motor vehicle service contract shall be issued, sold, or offered for sale in this state unless:

(1) The motor vehicle service contract provider is insured under a motor vehicle service contract reimbursement insurance policy issued by an insurer authorized to do business in this state;

(2) True and correct copies of the motor vehicle service contract and the motor vehicle service contract reimbursement insurance policy have been filed with the director;

(3) The contract conspicuously states: ~~that~~

(a) That the obligations of the motor vehicle service contract provider to the service contract holder are covered under the motor vehicle service contract reimbursement insurance policy; and

~~(4) (b) The contract conspicuously states the name and address of the issuer of the motor vehicle service contract reimbursement insurance policy; and~~

(4) The service contract, or a separate form provided with the service contract, shall contain the following notice in a conspicuous place as determined by the Department of Insurance:

"NOTICE OF RISKS -- Neither the motor vehicle service contract nor the motor vehicle service contract reimbursement insurance policy are covered by the Nebraska Property and Liability Insurance Guaranty Association Act and, in the event of insolvency of any party to the contract, no coverage for any losses exists from the Nebraska Property and Liability Insurance Guaranty Association.

The issuer of the motor vehicle service contract reimbursement insurance policy is not a domestic entity and the Department of Insurance can give no assurance that the issuer has adequate reserves to cover potential losses.

I have read this NOTICE OF RISKS (initials of service contract holder)."

The second paragraph of the notice is not required if the motor vehicle service contract reimbursement insurance policy is issued by an insurer that is domiciled in Nebraska.

Sec. 6. Section 44-3523, Reissue Revised Statutes of Nebraska, is amended to read:

44-3523 (1) No motor vehicle service contract reimbursement insurance policy shall be issued, sold, or offered for sale in this state unless the policy conspicuously states that the issuer of the policy insurer

will pay on behalf of the motor vehicle service contract provider all sums which the provider is legally obligated to pay in the performance of its contractual obligations under the motor vehicle service contracts issued or sold by the provider.

(2) The motor vehicle service contract reimbursement insurance policy shall completely and fully reimburse the motor vehicle service contract provider for all repair costs incurred under the motor vehicle service contract from the first dollar of coverage. The motor vehicle service contract reimbursement insurance policy shall not require or allow a motor vehicle service contract provider to assume any portion of direct or first-dollar liability for repairs under a motor vehicle service contract. The motor vehicle service contract reimbursement insurance policy shall not include any provision whereby the insurer provides coverage in excess of reserves held by the motor vehicle service contract provider or only in the event of the motor vehicle service contract provider's insolvency or default. All unearned premium reserves and claim reserve funds shall be established as liabilities on the books of the insurer in accordance with statutory accounting practices. This subsection shall not apply to programs directly obligating an automobile dealer to perform under the motor vehicle service contract.

Sec. 7. Section 44-4902, Reissue Revised Statutes of Nebraska, is amended to read:

44-4902 For purposes of the Managing General Agents Act:

(1) Actuary ~~shall mean~~ means a person who is a member in good standing of the American Academy of Actuaries;

(2) Business entity means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity;

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

~~(3)~~ (4) Insurer shall mean means any person, firm, association, or corporation duly licensed in this state as an insurance company pursuant to Chapter 44;

~~(4)~~ (5) Managing general agent shall mean means any person, firm, association, or corporation who manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office, and acts as an agent for such insurer, whether known as a managing general agent, manager, or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites in any one quarter or year an amount of gross direct written premium equal to or more than five percent of the policyholders surplus as reported in the last annual statement of the insurer in any one quarter or year and who (a) adjusts or pays claims in excess of ~~an amount determined by the director~~ ten thousand dollars or (b) negotiates reinsurance on behalf of the insurer. Managing general agent ~~shall~~ does not include an attorney in fact for a reciprocal or interinsurance exchange under a power of attorney, an employee of the insurer, a United States manager of the United States branch of an alien insurer, or an underwriting manager who, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, and is subject to the Insurance Holding Company System Act and whose compensation is not based on the volume of premiums written;

(6) Person means an individual or a business entity; and

~~(5)~~ (7) Underwrite shall mean means the authority to accept or reject risk on behalf of the insurer.

Sec. 8. Section 44-4903, Reissue Revised Statutes of Nebraska, is amended to read:

44-4903 No person, firm, association, or corporation shall act in the capacity of a managing general agent with respect to risks located in this state for an insurer licensed in this state unless such person, firm, association, or corporation is licensed in accordance with the Insurance Producers Licensing Act. No person, firm, association, or corporation shall act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless such person, firm, association, or corporation is licensed in accordance with such act. ~~The director may require a bond in an amount acceptable to him or her for the protection of the insurer. The director may require a managing general agent to maintain an errors and omissions policy.~~

Sec. 9. Section 44-4904, Reissue Revised Statutes of Nebraska, is amended to read:

44-4904 No person, firm, association, or corporation acting in the capacity of a managing general agent shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party and, if both parties share

responsibility for a particular function, specifies the division of such responsibilities and which contains the following minimum provisions:

(1) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination;

(2) The managing general agent will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis;

(3) All funds collected for the account of an insurer will be held by the managing general agent in a fiduciary capacity in a ~~bank which is a member of the federal reserve system~~ an institution that is insured by the Federal Deposit Insurance Corporation. The account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than three months' estimated claims payments and allocated loss adjustment expenses;

(4) Separate records of business written by the managing general agent will be maintained. The insurer shall have access and right to copy all accounts and records related to its business in a form usable by the insurer, and the director shall have access to all books, bank accounts, and records of the managing general agent in a form usable to the director. Such records shall be retained as determined by the director;

(5) The contract may not be assigned in whole or in part by the managing general agent;

(6) Appropriate underwriting guidelines, including:

- (a) The maximum annual premium volume;
- (b) The basis of the rates to be charged;
- (c) The types of risks which may be written;
- (d) Maximum limits of liability;
- (e) Applicable exclusions;
- (f) Territorial limitations;
- (g) Policy cancellation provisions; and

(h) The maximum policy period. The insurer shall have the right to cancel or nonrenew any policy of insurance subject to applicable insurance statutes and regulations;

~~(7) Specific provisions relating to remuneration of the managing general agent by the insurer;~~

~~(8) (7) The insurer shall require the managing general agent to obtain and maintain a surety bond for the protection of the insurer. The bond amount shall be at least one hundred thousand dollars or ten percent of the managing general agent's total annual written premium nationwide produced by the managing general agent for the insurer in the prior calendar year, whichever is greater, but not greater than five hundred thousand dollars;~~

~~(8) The insurer may require the managing general agent to maintain an errors and omissions policy;~~

~~(9) If the contract permits the managing general agent to settle claims on behalf of the insurer:~~

- (a) All claims must be reported to the insurer in a timely manner;
- (b) A copy of the claim file will be sent to the insurer at its request or as soon as it becomes known that the claim:
 - (i) Has the potential to exceed an amount determined by the director or exceeds the limit set by the insurer, whichever is less;
 - (ii) Involves a coverage dispute;
 - (iii) May exceed the managing general agent's claims settlement authority;

(iv) Is open for more than six months; or

(v) Is closed by payment of an amount set by the director or an amount set by the insurer, whichever is less;

(c) All claim files will be the joint property of the insurer and the managing general agent. Upon an order of liquidation of the insurer, such files shall become the sole property of the insurer or its estate, and the managing general agent shall have reasonable access to and the right to copy the files on a timely basis; and

(d) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination;

~~(9) (10) If electronic claims files are in existence, the contract must address the timely transmission of the data; and~~

~~(11) The managing general agent shall use only advertising material pertaining to the business issued by an insurer that has been approved in~~

writing by the insurer in advance of its use; and

~~(10)~~ (12) If the contract provides for a sharing of interim profits by the managing general agent and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments or in any other manner, interim profits will not be paid to the managing general agent until one year after they are earned for property insurance business and five years after they are earned on casualty business and not until the profits have been verified pursuant to section 44-4906.

Sec. 10. Section 44-4906, Reissue Revised Statutes of Nebraska, is amended to read:

44-4906 (1) The insurer shall have on file an independent ~~audit or~~ audited financial examination in a form acceptable to the director of each managing general agent with which it has done business or reports for the two most recent fiscal years that prove that the managing general agent has a positive net worth. If the managing general agent has been in existence for less than two fiscal years, the managing general agent shall include financial statements or reports, certified by an officer of the managing general agent and prepared in accordance with generally accepted accounting principles, for any completed fiscal years and for any month during the current fiscal year for which such financial statements or reports have been completed. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the following: (a) Amounts shown on the consolidated audited financial/annual report shall be shown on the worksheet; (b) amounts for each entity shall be stated separately; and (c) explanations of consolidating and eliminating entries.

(2) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. The opinion shall be in addition to any other required loss reserve certification.

(3) The insurer shall periodically, at least semiannually, conduct an onsite review of the underwriting and claims-processing operations of the managing general agent.

(4) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer who is not affiliated with the managing general agent.

(5) Within thirty days of entering into or termination of a contract with a managing general agent, the insurer shall provide written notification of such appointment or termination to the director. Notices of appointment of a managing general agent shall include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the director may request.

(6) An insurer shall each quarter review its books and records to determine if any ~~agent or broker~~ producer has become a managing general agent. If the insurer determines that ~~an agent or broker~~ a producer has become a managing general agent, the insurer shall promptly notify the ~~agent or broker~~ producer and the director of such determination and the insurer and ~~agent or broker~~ producer shall fully comply with the Managing General Agents Act within thirty days.

(7) No officer, director, employee, subproducer, or controlling shareholder of the insurer's managing general agent shall be appointed to its board of directors. This subsection shall not apply to relationships governed by the Insurance Holding Company System Act.

(8) The insurer shall keep the bond required by subdivision (7) of section 44-4904 on file for review by any applicable state insurance director, superintendent, or commissioner.

Sec. 11. Section 44-4907, Reissue Revised Statutes of Nebraska, is amended to read:

44-4907 The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined by the department as if it were the insurer.

Sec. 12. Section 44-7513, Reissue Revised Statutes of Nebraska, is amended to read:

44-7513 (1) Each insurer to which this section applies as provided in section 44-7508.01 shall file with the director every policy form and related attachment rule and every modification thereof which it proposes to use. No insurer to which this section applies 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 (6) or (7) 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 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 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 and approved by the director so that such listings can be provided upon request.

(4) If additional information is needed to complete review of a policy form 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 policy form filings made on its behalf by an advisory organization.

(6) (a) Subject to the following requirements, 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 the approval requirements contained in 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 approved by the director and receive written acknowledgment from prospective insureds for which it ultimately provides coverage. 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 for approval within sixty days after its second usage.

(d) The exemption provided by this subsection shall not apply to workers' compensation or excess workers' compensation insurance policy forms or 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 rules and regulations 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.

(7) The director may by rules and regulations 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 act.

(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 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.

(10) Within thirty days after receipt, the director shall approve filings that meet 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 policy form, attachment rule, 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 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. 13. Sections 13 to 19 of this act shall be known and may be cited as the Nebraska Senior Protection in Annuity Transactions Act.

Sec. 14. The purpose of the Nebraska Senior Protection in Annuity Transactions Act is to set forth standards and procedures for recommendations made by insurance producers and insurers to senior consumers regarding annuity transactions so that senior consumers' insurance needs and financial objectives at the time of the transaction are appropriately addressed.

Sec. 15. The Nebraska Senior Protection in Annuity Transactions Act applies to any recommendation to purchase or exchange an annuity made to a senior consumer by an insurance producer, or an insurer if an insurance producer is not involved, that results in the recommended purchase or exchange.

Sec. 16. Unless otherwise specifically included, the Nebraska Senior Protection in Annuity Transactions Act does not apply to recommendations involving:

(1) Direct response solicitations if there is no recommendation based on information collected from the senior consumer pursuant to the act; or

(2) Contracts used to fund:

(a) An employee pension or welfare benefit plan that is covered by the federal Employee Retirement Income Security Act of 1974;

(b) A plan described by section 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code if established or maintained by an employer;

(c) A government or church plan defined in section 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the Internal Revenue Code;

(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(e) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(f) Contracts entered into pursuant to the Burial Pre-Need Sale Act.

Sec. 17. For purposes of the Nebraska Senior Protection in Annuity Transactions Act:

(1) Annuity means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity;

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

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

(4) Recommendation means advice provided by an insurance producer, or an insurer if an insurance producer is not involved, to a senior consumer that results in a purchase or exchange of an annuity in accordance with that advice; and

(5) Senior consumer means a person sixty-five years of age or older. In the event of a joint purchase by more than one person, the purchaser will be considered to be a senior consumer if any of the purchasers is sixty-five years of age or older.

Sec. 18. (1) The insurance producer, or insurer if an insurance producer is not involved, shall have reasonable grounds to believe that the recommendation is suitable for the senior consumer based on the facts disclosed by the senior consumer before making a recommendation to a senior consumer under the Nebraska Senior Protection in Annuity Transactions Act. The recommendation shall be based on the facts disclosed by the senior consumer relating to his or her investments, other insurance products, and the financial situation and needs of the senior consumer.

(2) Before the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer if an insurance producer is not involved, shall make reasonable efforts to obtain information concerning:

(a) The senior consumer's financial status, including investments held by the senior consumer;

(b) Other insurance products owned by the senior consumer;

(c) The senior consumer's tax status;

(d) The senior consumer's investment objectives; and

(e) Such other information used or considered to be reasonable in making recommendations to the senior consumer.

(3)(a) Except as provide under subdivision (3)(b) of this section, neither an insurance producer, nor an insurer if an insurance producer is not involved, shall have any obligation to a senior consumer under subsection (1) of this section related to any recommendation if the senior consumer:

(i) Refuses to provide relevant information requested by the insurance producer or insurer;

(ii) Decides to enter into an insurance transaction that is not based on a recommendation of the insurance producer or insurer; or

(iii) Fails to provide complete or accurate information.

(b) If a senior consumer provides information as described in subdivision (3)(a) of this section, an insurance producer or insurer shall make a recommendation that is reasonable under all the circumstances that are actually known to the insurance producer or insurer at the time of the recommendation.

(4)(a) An insurer shall:

(i) Assure that a system to supervise recommendations that is reasonably designed to achieve compliance with the Nebraska Senior Protection in Annuity Transactions Act is established and maintained by complying with subdivisions (4)(d) through (f) of this section; or

(ii) Establish and maintain a system to supervise recommendations.

(b) Such system shall include, but not be limited to:

(i) Maintaining written procedures; and

(ii) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of the act.

(c) A general agent and independent agency shall either adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with the act or establish and maintain such a system. Such system shall include, but not be limited to:

(i) Maintaining written procedures; and

(ii) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of the act.

(d) An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by subdivision (4) (a) of this section with respect to insurance producers under contract with or employed by the third party.

(e) An insurer shall make reasonable inquiry to assure that the third party contracting under subdivision (4) (d) of this section is performing the functions required under subdivision (4) (a) of this section and shall take such reasonable action to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing the following:

(i) Obtaining annually a certification from a third-party senior manager that the manager represents that the third party is performing the required functions; and

(ii) Periodically selecting third parties contracting under subdivision (4) (d) of this section to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances. Such third parties shall be selected based on reasonable selection criteria.

(f) An insurer shall have fulfilled its responsibilities under subdivision (4) (a) of this section if the insurer:

(i) Contracts with a third party pursuant to subdivision (4) (d) of this section; and

(ii) Complies with the requirements to supervise in subdivision (4) (e) of this section.

(g) An insurer, general agent, or independent agency is not required by subdivision (4) (a) or (b) of this section to:

(i) Review all insurance producer solicited transactions; or

(ii) Supervise an insurance producer's recommendations to senior consumers of products other than the annuities offered by the insurer, general agent, or independent agency.

(h) A general agent or independent agency contracting with an insurer pursuant to subdivision (4) (d) of this section shall, when requested by the insurer pursuant to subdivision (4) (e) of this section, promptly give a certification as described in subdivision (4) (e) (i) of this section or give a clear statement that it is unable to meet the certification criteria.

(i) No person may provide a certification under subdivision (4) (e) (i) of this section unless:

(i) The person is a senior manager with responsibility for the delegated functions; and

(ii) The person has a reasonable basis for making the certification.

(5) Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the ability of the Director of Insurance to enforce the act.

Sec. 19. (1) The Director of Insurance may order:

(a) An insurer to take reasonably appropriate corrective action for any senior consumer harmed by an insurance producer's or insurer's violation of the Nebraska Senior Protection in Annuity Transactions Act;

(b) An insurance producer to take reasonably appropriate corrective action for any senior consumer harmed by the insurance producer's violation of the act; and

(c) A general agency or independent agency that employs or contracts with an insurance producer to sell or solicit the sale of annuities to senior consumers, to take reasonably appropriate corrective action for any senior consumer harmed by the insurance producer's violation of the act.

(2) A violation of the act shall be an unfair trade practice in the business of insurance under the Unfair Insurance Trade Practices Act.

(3) The director may reduce or eliminate any applicable penalty under section 44-1529 for a violation of subsection (1) or (2) of section 18 of this act or subdivision (3) (b) of such section if corrective action for the senior consumer was taken promptly after a violation was discovered.

Sec. 20. Section 24 of this act becomes operative on December 31, 2007. Sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 22 of this act become operative three calendar months after the adjournment of this legislative session. The other sections of this act become operative on their effective date.

Sec. 21. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 22. Original sections 44-1602, 44-3522, 44-3523, 44-4902, 44-4903, 44-4904, 44-4906, 44-4907, and 44-7513, Reissue Revised Statutes

of Nebraska, and sections 44-3,157 and 44-3521, Revised Statutes Supplement, 2005, are repealed.

Sec. 23. Original section 44-1988, Reissue Revised Statutes of Nebraska, is repealed.

Sec. 24. The following section is outright repealed: Section 44-6501, Reissue Revised Statutes of Nebraska.

Sec. 25. Since an emergency exists, this act takes effect when passed and approved according to law.